

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of the National Suicide Hotline
Improvement Act of 2018
WC Docket No. 18-336

FURTHER NOTICE OF PROPOSED RULEMAKING

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statements.

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I. INTRODUCTION

1. Reaching suicide prevention and mental health crisis intervention services should be
easy, intuitive, and available to all. The concerning rise of suicide in this country heightens the
importance of ensuring easy access to help. The Centers for Disease Control and Prevention (CDC)
report that in 2019 there were 47,511 deaths by suicide in the United States,<sup>1</sup> and the toll of the global

<sup>1</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, Suicide and Self-Inflicted Injury,
https://www.cdc.gov/nchs/fastats/suicide.htm (last visited Mar. 19, 2021); see also Centers for Disease Control and
Prevention, National Center for Injury Prevention and Control, “Preventing Suicide” Fact Sheet, at 1 (2020),

(continued....)

pandemic, economic challenges, and civil unrest has only increased the strain on many Americans' mental health and well-being.<sup>2</sup> Suicide has disproportionately impacted at-risk communities for some time. Among Black youth, as of 2018 suicide is the second leading cause of death between the ages of 10 and 14 and the third leading cause of death between the ages of 15 and 19.<sup>3</sup> LGBTQ young adults between the ages of 18 and 25 contemplate suicide at a rate more than four times higher than heterosexual young adults, and more than 1.8 million LGBTQ youth between the ages of 13 and 24 seriously consider suicide each year.<sup>4</sup> A 2020 study showed that college students who are deaf or hard of hearing are twice as likely to consider or attempt suicide than students without hearing loss.<sup>5</sup> Overall, suicide is the second most common cause of death among teenagers and young adults, and the rate of suicide for youth aged 10-24 increased by 56% between 2007 and 2017.<sup>6</sup> Nearly 18 Veterans die by suicide every day, and between 2008 and 2018, the number of Veteran suicides exceeded 6,000 each year.<sup>7</sup> Suicide rates are also higher among Native Americans and Americans living in rural areas.<sup>8</sup> And evidence suggests that at-risk groups are more susceptible to suicidal thoughts and actions during the COVID-19 pandemic.<sup>9</sup>

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[https://www.cdc.gov/violenceprevention/pdf/Suicide-factsheet\\_508.pdf](https://www.cdc.gov/violenceprevention/pdf/Suicide-factsheet_508.pdf) (indicating suicide as the tenth leading cause of death in the United States).

<sup>2</sup> Mark É Czeisler et al., *Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic — United States, June 24–30, 2020*, Centers for Disease Control and Prevention at 1 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6932a1-H.pdf> (stating that data collected during June 2020 indicates that symptoms of anxiety disorder and depressive disorder increased considerably in the U.S. during the April to June 2020 period, compared with the same period in 2019, and over 10% of respondents reported having seriously considered suicide in the 30 days before completing the survey).

<sup>3</sup> Joshua Gordon, *Addressing the Crisis of Black Youth Suicide*, National Institute of Mental Health (Sept. 22, 2020), <https://www.nimh.nih.gov/about/director/messages/2020/addressing-the-crisis-of-black-youth-suicide.shtml>.

<sup>4</sup> See Amy Green et al., *Suicidality Disparities by Sexual Identity Persist from Adolescence into Young Adulthood*, The Trevor Project (Feb. 6, 2020), <https://www.thetrevorproject.org/2020/02/06/suicidality-disparities-by-sexual-identity-persist-from-adolescence-into-young-adulthood/>; Amy Green et al., *National Estimate of LGBTQ Youth Seriously Considering Suicide*, The Trevor Project (June 27, 2019), [https://www.thetrevorproject.org/trvr\\_press/national-estimate-of-lgbtq-youth-seriously-considering-suicide/](https://www.thetrevorproject.org/trvr_press/national-estimate-of-lgbtq-youth-seriously-considering-suicide/); see also The Trevor Project, *National Survey on LGBTQ Youth Mental Health 2020*, <https://www.thetrevorproject.org/survey-2020/> (last visited Mar. 4, 2021) (finding that 40% of LGBTQ respondents seriously considered committing suicide in the past twelve months).

<sup>5</sup> Meghan L. Fox, Psy.D, Tyler G. James, MS, CHES, and Steven L. Barnett, MD, *Suicidal Behaviors and Help-Seeking Attitudes Among Deaf and Hard-of-Hearing College Students*, American Association of Suicidology Journal, Volume 50, Issue 2, pp. 387-396 (Apr. 2020).

<sup>6</sup> Sally C. Curtin, M.A. and Melonie Heron, Ph.D., *Death Rates Due to Suicide and Homicide Among Persons Aged 10-24: United States, 2000-2017*, NCHS Data Brief No. 352, at 1, 5 (Oct. 2019), <https://www.cdc.gov/nchs/data/databriefs/db352-h.pdf>.

<sup>7</sup> See U.S. Dept. of Veterans Affairs, Veterans Health Administration, Office of Mental Health and Suicide Prevention, National Veteran Suicide Prevention Annual Report, at 17 (2020), <https://www.mentalhealth.va.gov/docs/data-sheets/2020/2020-National-Veteran-Suicide-Prevention-Annual-Report-11-2020-508.pdf>.

<sup>8</sup> According to the CDC, American Indians/Alaska Natives have the highest rates of suicide of any racial or ethnic group in the United States, and the rates of suicide among this population have been increasing since 2003. Centers for Disease Control and Prevention, *Suicides Among American Indian/Alaska Natives – National Violent Death Reporting System, 18 States, 2003-2014*, Morbidity and Mortality Weekly Report (Mar. 2, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6708a1.htm#>.

<sup>9</sup> William Wan, *For months, he helped his son keep suicidal thoughts at bay. Then came the pandemic.*, Washington Post, Nov. 23, 2020, <https://www.washingtonpost.com/health/2020/11/23/covid-pandemic-rise-suicides/> (according to data from the CDC in August 2020, 25.5% of young adults (ages 18 to 24) said they had seriously considered suicide in the prior 30 days).

2. To expand the availability of mental health and crisis counseling resources, the Commission previously designated 988 as the 3-digit dialing code to reach the National Suicide Prevention Lifeline (Lifeline) by telephone. Today, we take an important step to further increase the effectiveness of the Lifeline by proposing and seeking comment on requiring covered text providers to support text messaging to 988. In 2019, Americans sent an estimated 2.1 trillion text messages.<sup>10</sup> Text messaging is especially popular with groups who are at heightened risk of suicide or mental health crises, including teenagers and young adults<sup>11</sup> and individuals who are deaf, hard of hearing, deafblind, or have speech disabilities.<sup>12</sup> Given the pervasiveness of text messaging, particularly among at-risk groups, we believe it is essential to explore making it as easy as possible to reach the Lifeline by text through use of the same short, easy-to-remember code by which Americans will be able to call the Lifeline.

## II. BACKGROUND

3. *988 Proceeding.* The Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) oversees and partially funds the Lifeline, a national network of approximately 180 crisis centers linked by the Lifeline's current toll free number, 1-800-273-8255 (TALK), that provides free, confidential support to Americans in "suicidal crisis or emotional distress at any time of the day or night."<sup>13</sup> The Lifeline also is the access number for the Veterans Crisis

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<sup>10</sup> CTIA, *2020 Annual Survey Highlights*, <https://api.ctia.org/wp-content/uploads/2020/08/2020-Annual-Survey-final.pdf> (last visited Mar. 4, 2021). As far back as 2008, Americans sent more texts than they made phone calls. Nielsen, *In U.S., SMS Text Messaging Tops Mobile Phone Calling* (Sept. 23, 2008), <https://www.nielsen.com/us/en/insights/article/2008/in-us-text-messaging-tops-mobile-phone-calling/>.

<sup>11</sup> Thirty-five percent of teens prefer texting above other forms of communication, including in-person. Text Request, *How Many Texts Do People Send Every Day (2018)?*, <https://www.textrequest.com/blog/how-many-texts-people-send-per-day/> (last visited Mar. 4, 2021) (article originally posted on May 18, 2016 but has since been updated to reflect 2018 data); see also Common Sense Media, *Social Media, Social Life: Teens Reveal Their Experiences* (2018), <https://www.commonsensemedia.org/social-media-social-life-infographic> (finding that texting is now the preferred means of communication among surveyed teens, surpassing face-to-face communications, which has declined 17% in the past six years); Common Sense Media-Survey Monkey Poll, *How Teens Are Coping and Connecting in the Time of the Coronavirus*, 4 (2020), [https://www.commonsensemedia.org/sites/default/files/uploads/pdfs/2020\\_surveymonkey-key-findings-toplines-teens-and-coronavirus.pdf](https://www.commonsensemedia.org/sites/default/files/uploads/pdfs/2020_surveymonkey-key-findings-toplines-teens-and-coronavirus.pdf) (finding that 65% of teens surveyed reported talking to friends or family through texting or social media more than usual in response to the coronavirus); Jessica T. Markowitz, PhD, et al., *Text Messaging Intervention for Teens and Young Adults with Diabetes*, *Journal of Diabetes Science and Technology*, 1 (2014), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4455383/pdf/10.1177\\_1932296814540130.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4455383/pdf/10.1177_1932296814540130.pdf) (finding that adolescents and young adults use text messaging as their primary mode of communication, with "[a]dolescents 'out-text[ing]' any other age group, with an average of 3364 texts per month, followed by young adults").

<sup>12</sup> The Commission has recognized that "people who are deaf, hard of hearing, or speech disabled have been consistently migrating away from specialized legacy devices [such as text telephones (TTY) and telecommunications relay services (TRS)] and towards more ubiquitous forms of text messaging communications because of the ease of access, wide availability, and practicability of modern text-capable devices." *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846, 9853, para. 14 (2014) (*Text-to-911 Second Report and Order*); see also Emergency Access Advisory Committee (EAAC) Report and Recommendations (Dec. 6, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-312161A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312161A1.doc) (EAAC Report). Additionally, for purposes of this item, the term "individuals with disabilities" means people who are deaf, hard of hearing, deafblind, or have speech disabilities.

<sup>13</sup> Substance Abuse and Mental Health Services Administration, *The Substance Abuse and Mental Health Services Administration Report to the Federal Communications Commission*, WC Docket No. 18-336, CC Docket No. 92-105 at 3, 5 (Feb. 7, 2019) (SAMHSA Report); see also National Suicide Prevention Lifeline, *Our Crisis Centers*, <https://suicidepreventionlifeline.org/our-crisis-centers/> (last visited Feb. 11, 2021).

Line, which is overseen by the Department of Veterans Affairs (VA).<sup>14</sup> The Veterans Crisis Line offers Service Members, Veterans, and their families “supportive, timely, high quality crisis intervention services” on a 24/7 basis, nationwide.<sup>15</sup> In response to the National Suicide Hotline Improvement Act of 2018,<sup>16</sup> Commission staff, after receiving input from the North American Numbering Council<sup>17</sup> and the Commission’s federal partners—SAMHSA<sup>18</sup> and the VA<sup>19</sup>—recommended to Congress that the Commission “initiate a rulemaking proceeding to consider designating 988 as the 3-digit code for the Lifeline.”<sup>20</sup> Following that recommendation, and after seeking public input on a rulemaking proposal,<sup>21</sup> the Commission designated 988 as the 3-digit number to reach the Lifeline by voice call.<sup>22</sup> The Commission required all telecommunications carriers, interconnected voice over Internet Protocol (VoIP) providers, and one-way VoIP providers to make any network changes necessary to ensure that users can dial 988 to reach the Lifeline by July 16, 2022.<sup>23</sup> Since adoption, several providers—including T-Mobile and Verizon mobile service—have made 988 available to customers well ahead of the July 16, 2022 deadline.<sup>24</sup> Following the Commission’s adoption of the *988 Report and Order*, Congress passed the National Suicide Hotline Designation Act of 2020, which statutorily mandated designation of a universal, easy-to-remember, 3-digit telephone number and designated 988 as the universal telephone number “for the purpose of the national suicide prevention and mental health crisis hotline system.”<sup>25</sup>

4. In the *988 Report and Order*, the Commission found that it was premature to address texting to 988, given that at the time the Lifeline could not receive texts.<sup>26</sup> In October 2020, the Communications Equality Advocates filed a Petition for Reconsideration requesting that the Commission

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<sup>14</sup> U.S. Dept. of Veterans Affairs, Veterans Health Administration, Report to the Federal Communications Commission, WC Docket No. 18-336, CC Docket No. 92-105 at 4 (Feb. 7, 2019) (VA Report) (explaining that callers can reach the Veterans Crisis Line by calling the Lifeline’s toll free number and pressing “1”).

<sup>15</sup> VA Report at 4.

<sup>16</sup> National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 § 3(a)(1), (a)(2)(A)(i)-(iii), (b) (2018).

<sup>17</sup> See Report and Recommendation on the Feasibility of Establishing a 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline from Travis Kavulla, Chair, North American Numbering Council, to Kris Anne Monteith, Chief, FCC Wireline Competition Bureau, WC Docket No. 18-336, CC Docket No. 92-105 at 6-19, 25-26 (May 10, 2019) (NANC Report).

<sup>18</sup> See SAMHSA Report at 8, 11-12.

<sup>19</sup> See VA Report at 3, 7-11.

<sup>20</sup> See Wireline Competition Bureau and Office of Economics and Analytics, Report on the National Suicide Hotline Improvement Act of 2018 (Aug. 14, 2019), <https://docs.fcc.gov/public/attachments/DOC-359095A1.pdf> (FCC Staff Report).

<sup>21</sup> *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Notice of Proposed Rulemaking, 34 FCC Rcd 12562 (2019) (*988 Notice*).

<sup>22</sup> *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373, 7376, para. 4 (2020) (*988 Report and Order*); see 47 CFR § 52.200.

<sup>23</sup> *988 Report and Order*, 35 FCC Rcd at 7376, para. 4; see 47 CFR § 52.200.

<sup>24</sup> T-Mobile, *T-Mobile Makes 988 Emergency Lifeline’s Critical Mental Health Support Services Immediately Available to Customers* (Nov. 20, 2020), <https://www.t-mobile.com/news/community/t-mobile-makes-988-emergency-lifeline-available-to-customers>; Verizon, *Verizon reaches milestone with new connection to National Suicide Prevention Hotline* (Dec. 21, 2020), <https://www.verizon.com/about/news/verizon-milestone-national-suicide-prevention-hotline>.

<sup>25</sup> National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 §§ 2, 3 (2020).

<sup>26</sup> *988 Report and Order*, 35 FCC Rcd at 7420, para. 83.

reconsider its decision to defer mandating text messaging to 988.<sup>27</sup> Communications Equality Advocates further argued that if the record was insufficient to proceed immediately to requiring text messaging to 988, then the Commission should instead seek comment on mandating text-to-988, with the goal to adopt text-to-988 requirements that would take effect by July 16, 2022, the same date by which carriers must route 988 calls to the Lifeline.<sup>28</sup> In response to the Petition, commenters—including mental health organizations, providers of suicide prevention and crisis intervention services, and mobile carriers<sup>29</sup>—all expressed support for a text-to-988 mandate. Numerous commenters to both the *988 Notice of Proposed Rulemaking* and the Petition for Reconsideration asserted that existing text and chat functions are insufficient to meet the needs of young people, individuals with disabilities, low-income individuals, members of the LGBTQ community, and other at-risk groups.<sup>30</sup>

5. *Currently-Available Alternatives to Voice Calls for Nationwide Suicide Prevention Services.* Americans in suicidal crisis or emotional distress have a variety of nationally available text- and chat-based options if they prefer not to or cannot speak to a counselor on the telephone. The Lifeline engages in online chats through its website on a 24/7 basis.<sup>31</sup> In August 2020, shortly after adoption of the *988 Report and Order*, the Lifeline “soft-launched” texting service and began responding to texts received on the Lifeline’s toll free number, presently 1-800-273-8255 (TALK). Five crisis centers now answer text messages at all hours of the day and night. Similar to its traditional call intake protocol, the Lifeline’s trained crisis counselors use these means to assess for suicidal risk, provide crisis counseling and crisis intervention, engage emergency services when necessary, and offer referrals to mental health and/or substance use services. Though the Lifeline has yet to advertise its texting service, an average of 5,000 Americans currently send text messages to the Lifeline each month.<sup>32</sup> Individuals with disabilities

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<sup>27</sup> Petition of Communications Equality Advocates for Reconsideration, WC Docket No. 18-336 (filed Oct. 16, 2020), <https://ecfsapi.fcc.gov/file/1016434511128/Communications%20Equality%20Advocates%20Petition%20for%20Reconsideration.pdf>; corrected by, Petition of Communications Equality Advocates for Reconsideration, WC Docket No. 18-336 (filed Oct. 20, 2020), <https://ecfsapi.fcc.gov/file/10201183107079/Communications%20Equality%20Advocates%20Petition%20for%20Reconsideration%20-%20Corrected.pdf> (Petition). Communications Equality Advocates also argues that the Commission should reconsider its decision to decline requiring the deployment of direct video calling. *Id.* We proceed incrementally and today address only the portion of the Petition concerning text messaging. Therefore, we grant the Petition in part by initiating a rulemaking on text-to-988 as requested in the alternative by the Petitioners but do not otherwise act on the Petition.

<sup>28</sup> Petition at 4-5.

<sup>29</sup> See Crisis Text Line Petition Comments at 2; International Council for Helplines Petition Comments at 1; Karen Sutherland Petition Comments at 1; Mental Health America Petition Comments at 1; T-Mobile Petition Comments at 1; Vibrant Emotional Health Petition Comments at 1; Center for Dignity in Healthcare for People with Disabilities Petition Reply at 1; CTIA Petition Reply at 1-3.

<sup>30</sup> See, e.g., American Association of Suicidology *988 Notice* Comments at 2; Entercom Communications Corp. *988 Notice* Comments at 3; Madison Jacobs *988 Notice* Comments at 1; National Alliance on Mental Illness *988 Notice* Comments at 4; National Association of Crisis Organization Directors *988 Notice* Comments at 1; Pivotal Ventures *988 Notice* Comments at 1; Telecommunications for the Deaf and Hard of Hearing, Inc. et al. *988 Notice* Comments at 8-9; Crisis Text Line *988 Notice* Reply at 2; Petition at 12-15; Vibrant Emotional Health Petition Comments at 3.

<sup>31</sup> See National Suicide Prevention Lifeline, *Lifeline Chat*, <https://suicidepreventionlifeline.org/chat/> (last visited Feb. 16, 2021); see also SAMHSA Report at 4-5 (explaining that “26 of the Lifeline’s crisis centers answered online chats on a 24/7 basis” by February 2019 and that “the Lifeline responded to 102,640 crisis chats, with an average of 8,553 chats per month” in 2018).

<sup>32</sup> All text messages to the Lifeline are currently “short message service” (SMS) messages.



can also access the Lifeline through telecommunications relay services (TRS) and the Lifeline’s online chat portal.<sup>33</sup>

6. The VA also responds to texts and online chats. Since 2011, Veterans and Service Members can text the Veterans Crisis Line through a dedicated short code, 838255.<sup>34</sup> Veterans and Service Members in crisis can also reach the Veterans Crisis Line through an online chat portal on the Veterans Crisis Line’s website, [www.veteranscrisisline.net](http://www.veteranscrisisline.net).<sup>35</sup>

7. Non-governmental options also provide free crisis chat and text services to persons in need on a 24/7 basis. For example, the Trevor Project is “the nation’s largest LGBTQ youth suicide prevention and crisis intervention organization,” and offers confidential chat and text services with a Trevor Counselor.<sup>36</sup> In 2018, the Trevor Project “[a]nswered almost 75,000 calls, chats, and texts” and anticipated responding to at least 125,000 calls, chats, and texts in 2019.<sup>37</sup> Another private, non-profit service offers access to crisis counselors and volunteers and has “exchanged over 130 million text messages with people in crisis” since 2013.<sup>38</sup>

8. *Text-to-911*. The Commission’s decision to require “covered text providers” to enable texting to 911 provides important precedent for our proposal today.<sup>39</sup> The Commission launched the *Text-to-911* proceeding in 2011 “to accelerate the development and deployment of Next Generation 911 (NG911) technology,” including text-to-911.<sup>40</sup> The Commission did so, in part, because it recognized that adding non-voice capabilities to the nation’s 911 system would expand access to emergency help “both for people with disabilities and for people in situations where placing a voice call to 911 could be difficult or dangerous.”<sup>41</sup> As an interim step prior to mandating provider support for texting to 911, the Commission required all covered text providers to send consumers a “bounce-back” message when text-

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<sup>33</sup> See National Suicide Prevention Lifeline, *Deaf, Hard of Hearing, Hearing Loss*, <https://suicidepreventionlifeline.org/help-yourself/for-deaf-hard-of-hearing/> (last visited Feb. 16, 2021). In the 988 *Report and Order*, the Commission also required Internet-based telecommunications relay services (TRS) providers to ensure that callers using Video Relay Service, Internet Protocol Relay, and Internet Protocol Captioned Telephone Service reach the Lifeline by dialing 988 upon its implementation. Users of speech-to-speech services and TTY-based TRS dial 711 first to connect to a communications assistant who will complete the call to the Lifeline. 988 *Report and Order*, 35 FCC Rcd at 7396, para. 43 & nn.196-98.

<sup>34</sup> VA Report at 4.

<sup>35</sup> *Id.* (stating that “[s]ince launching chat services in 2009 and text services in 2011, the [Veterans Crisis Line] ha[d] answered more than 439,000 chats and nearly 108,000 texts” by February 2019).

<sup>36</sup> The Trevor Project 988 *Notice* Comments at 1-2; The Trevor Project, *Get Help Now*, <https://www.thetrevorproject.org/get-help-now/> (last visited Feb. 12, 2021) (providing access to the chat portal, TrevorChat, and explaining that reaching the text service, TrevorText, requires texting “START” to the short code 678-678).

<sup>37</sup> The Trevor Project, *Annual Report FY 2018: August 1, 2017 to July 31, 2018*, <https://www.thetrevorproject.org/about/financials-annual-report/2018-annual-report/> (last visited Feb. 19, 2021).

<sup>38</sup> See Crisis Text Line 988 *Notice* Comments at 2.

<sup>39</sup> 47 CFR § 9.10(q)(1) (defining a “covered text provider” as “all [Commercial Mobile Radio Service] providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones”).

<sup>40</sup> See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 10-255 and 11-153, Notice of Proposed Rulemaking, 26 FCC Rcd 13615, 13616, para. 1 (2011) (*Text-to-911 Notice*).

<sup>41</sup> See *id.* at 13616, para. 1 (explaining that allowing users of 911 communication networks to send texts, photos, and video clips could also “significantly improve emergency response, save lives, and reduce property damage”).

to-911 is not available.<sup>42</sup> Subsequently, the Commission required covered text providers “to make any preparations necessary to provide text-to-911” service to Public Safety Answering Points (PSAPs) by December 31, 2014, a deadline that was roughly five months after adoption of the Commission’s mandate.<sup>43</sup> The Commission also required these providers to implement text-to-911 by delivering texts sent to 911 to a requesting PSAP by June 30, 2015 or within six months of the PSAP’s valid request for text-to-911 service, whichever was later.<sup>44</sup> Significant progress in deploying text messaging to 911 nationwide continues today. In 2019, 581,151 texts to 911 were received in 38 states as compared to 188,646 texts in 33 states in 2018.<sup>45</sup> By the end of 2019, 2,708 of the nation’s 5,373 PSAPs were capable of receiving text messages.<sup>46</sup>

### III. DISCUSSION

#### A. Text-to-988 Can Save Lives

9. We tentatively conclude that text-to-988 functionality will greatly improve consumer access to the Lifeline, particularly for at-risk populations, and thereby save lives. We seek comment on this tentative conclusion, and on the benefits of text messaging as a means to facilitate access to the critical mental health resources offered by the Lifeline generally.

10. We tentatively conclude that ensuring that Americans in crisis can text 988 is likely to save lives. In the *988 Notice of Proposed Rulemaking*, the Commission observed that “Americans, particularly younger Americans, increasingly rely on texting to communicate,” and sought comment on how to account for this fact in establishing 988 as a nationwide 3-digit code for the Lifeline.<sup>47</sup> In response, numerous experts in mental health and other fields have submitted comments in this proceeding underscoring the importance of texting as a vital communications medium by which many individuals may wish to obtain crisis counseling.<sup>48</sup> Further, many of these commenters noted that texting is particularly important for “members of vulnerable communities such as young people, low-income

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<sup>42</sup> *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 10-255 and 11-153, Report and Order, 28 FCC Rcd 7556, 7557, paras. 1-2 (2013) (*Bounce-Back Order*); see 47 CFR § 9.10(q)(2), (3), (5); see also 47 CFR § 9.10(q)(4)(i)-(ii) (providing limited exceptions to the bounce-back requirement).

<sup>43</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9864, para. 38 (providing examples of preparations such as determining the particular technical solution a provider will use to deliver and route texts to 911, identifying and entering into the necessary contractual arrangements to implement text-to-911, and making the necessary budget and resource allocations to implement text-to-911); see 47 CFR § 9.10(q)(1), (9), (10), (11).

<sup>44</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9870-71, para. 47. Currently, PSAPs can elect to receive text messages to 911 via “text to TTY, Web Browser, Direct [Internet Protocol (IP)], [Real Time Text (RTT)], or other [reliable] method,” such as Short Media Service (SMS) or Multimedia Message Service (MMS). *Public Safety and Homeland Security Bureau Announces Availability of Updated PSAP Text-To-911 Certification and Readiness Form and Registry to Facilitate Real-Time Text*, PS Docket Nos. 10-255 and 11-153, CG Docket No. 16-145, GN Docket No. 15-178, Public Notice, DA 21-301, 3, 6 (PSHSB Mar. 12, 2021); *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9867-68, para. 44. Regardless of the delivery method that PSAPs choose, providers are only required to deliver the text portion of text messages to PSAPs. *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9868, para. 44 n. 134. The Commission has also sought comment on how to enable delivering text messages to PSAPs in emerging text messaging services, such as Rich Communication Services (RCS). See *id.* at 9897-98, 9901-02, paras. 124, 131.

<sup>45</sup> National 911 Program, National 911 Annual Report: 2019 Data at 8 (2020).

<sup>46</sup> See FCC, Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 11 Fees and Charges: For the Period January 1, 2019 to December 31, 2019 at 3, 6 (2020).

<sup>47</sup> *988 Notice*, 34 FCC Rcd at 12573, para. 27.

<sup>48</sup> See *988 Report and Order*, 35 FCC Rcd at 7419, para. 82 n.352.

individuals, members of the LGBTQ community, and individuals who are deaf and hard of hearing.”<sup>49</sup> We seek comment on our tentative conclusion and the assertions of these commenters regarding the importance of texting as a means to access the lifesaving resources offered by the Lifeline.

11. Just as “Americans in crisis are in need of an easy-to-remember number to access the Lifeline’s potentially life-saving resources” by telephone,<sup>50</sup> in our preliminary view Americans have a similarly strong need for an easy-to-remember number to reach the Lifeline by text. Because stakeholders will widely advertise 988 as the telephone number for the Lifeline, we preliminarily believe that providing text access at the same number will generate synergies that enhance the value of efforts to promote 988. Conversely, we fear that if text-to-988 is not available, Americans in crisis may be confused by efforts to promote 988 as the Lifeline’s telephone number and mistakenly believe that they can reach the Lifeline by texting 988, putting lives at risk. We seek comment on this preliminary analysis.

12. As the Commission noted in the *988 Report and Order*, young people are disproportionately at risk for mental health crises.<sup>51</sup> They are also more likely to be most comfortable communicating via text. According to the National Alliance on Mental Illness, “[n]early 95% of teens have access to smart phones and say that texting is the primary way that they connect.”<sup>52</sup> For this reason, the International Council for Helplines describes the increasing use of “chat and text services . . . for those who are in a mental health crisis,” pointing to a recent survey indicating that “75% of millennials prefer texting over talking.”<sup>53</sup> According to Mental Health America, “[m]ultiple sources of data demonstrate youth prefer communicating by text rather than calls,” including a study finding that young people “were more likely to forgo psychological support than talk in person or over the phone.”<sup>54</sup> As a result, Mental Health America argues, the “data strongly support[] the implementation of texting for providing resources to individuals experiencing suicidal ideation.”<sup>55</sup> We seek comment on these views and whether adopting a text-to-988 mandate would provide particular benefits for young Americans. Are young people more inclined to seek help by text than by telephone, and if so, would making it easier to text the Lifeline save lives?

13. In our preliminary view, facilitating Lifeline accessibility by text message to 988 is also likely to provide significant benefits to many other at-risk communities as well, further justifying our proposed mandate. As the Commission explained in the *988 Report and Order*, a broad range of American communities are disproportionately impacted by suicide, including Veterans, LGBTQ individuals, racial and ethnic minorities, and rural Americans.<sup>56</sup> Many members of these affected communities may prefer to seek help through text messages. For example, Mental Health America reports that data they collect demonstrate that individuals “who identify as Black or African American are more likely to report that they would like to receive a phone number they can immediately call or text for

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<sup>49</sup> *Id.* at 7419, para. 82; *see* Petition at 10-12.

<sup>50</sup> *Id.* at 7385, para. 28.

<sup>51</sup> *Id.* at 7374, para. 2; *see also* National Alliance on Mental Illness *988 Notice Comments* at 4.

<sup>52</sup> National Alliance on Mental Illness *988 Notice Comments* at 4 (“[Y]outh and young adults have a high risk of experiencing a mental health crisis. Suicide is the second leading cause of death for this demographic, and three fourths of all chronic mental illnesses begin between the ages of 14 and 24.”).

<sup>53</sup> International Council for Helplines Petition Comments at 1 (noting that more than half of their member organizations currently offer “crisis chat and texting services”).

<sup>54</sup> Mental Health America Petition Comments at 2.

<sup>55</sup> *Id.* at 1.

<sup>56</sup> *See 988 Report and Order*, 35 FCC Rcd at 7374, para. 2.



help” than members of any other race or ethnicity.<sup>57</sup> Do commenters agree with Mental Health America that making crisis counseling services available via text message “may mean the difference between accessing psychological support and forgoing it, especially among youth of color?”<sup>58</sup> Is Mental Health America correct that easy access to crisis services via text may be the difference between seeking and forgoing help for such groups, and if so would use of a 3-digit dialing code for the Lifeline make a significant difference in widespread understanding that such crisis services are available?

14. Indeed, demographic evidence regarding usage of currently available non-governmental text and chat options indicate that texting is a particularly valuable means to obtain help, not only for young people, but also for many members of low income, minority, and other communities that are disproportionately impacted by mental health crises.<sup>59</sup> Several commenters in this proceeding have pointed to the successes that private non-profit services like the Trevor Project have had in providing crisis counseling to at-risk communities through text messages, offering that their experiences demonstrate the need to provide text access to 988.<sup>60</sup> In addition, as one commenter to the *988 Notice of Proposed Rulemaking* argued, adding text access to 988 could allow the Lifeline and Veterans Crisis Line “to more efficiently route those in need to specialized services,” further leveraging the expertise of organizations like the Trevor Project, which provides mental health support and counseling specific to the needs of LGBTQ youth.<sup>61</sup> We preliminarily agree with this assessment and believe that establishing text access to 988 will complement the important work already being done by these and other private sector organizations, and further facilitate access to the lifesaving resources offered by the Lifeline and Veterans Crisis Line. We seek comment on these views and on the benefits of text-to-988 for at-risk groups. Are there additional at-risk communities that may benefit from texting as an option to access the Lifeline?

15. Likewise, we preliminarily believe that our tentative conclusion is further justified because implementing text-to-988 capability will provide substantial benefits for individuals with disabilities who uniquely rely on text-based media to communicate.<sup>62</sup> As the Communications Equality Advocates and others note, texting is an indispensable means of communication for individuals with disabilities.<sup>63</sup> These individuals have increasingly adopted widely available text messaging platforms such as those offered by CMRS providers and interconnected text messaging services in lieu of specialized legacy devices.<sup>64</sup> Further, texting may be the only means for such individuals to contact 988

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<sup>57</sup> Mental Health America Petition Comments at 1-2; *see also* Letter from American Foundation for Suicide Prevention, Mental Health America, National Alliance on Mental Illness, The Trevor Project and Vibrant Emotional Health to Acting Chairwoman Rosenworcel, FCC, WC Docket No. 18-336 at 1 (filed Apr. 15, 2021).

<sup>58</sup> *Id.* at 2.

<sup>59</sup> *See* Crisis Text Line *988 Notice* Comments at 2-3 (indicating that 75% of their texters are under 25 and 20% are from the poorest 10th percentile area codes); Pivotal Ventures *988 Notice* Comments at 1 (observing that Crisis Text Line users “skew young, poor, and diverse”).

<sup>60</sup> *See, e.g.*, American Association of Suicidology *988 Notice* Comments at 2, Mental Health America *988 Notice* Comments at 2-3; *see also* Madison Jacobs *988 Notice* Comments at 1 (“[O]nly 20% of conversations with texters on the [Crisis Text Line] who are thinking about suicide actually end up in an active rescue. That means four out of five times, their Crisis Counselors are able to help texters come up with a safety plan. This research indicates that there is a growing need for text-based suicide prevention and mental health crisis support and that texting helps those with suicidal thoughts de-escalate the situation without physical intervention.”).

<sup>61</sup> Madison Jacobs *988 Notice* Comments at 2.

<sup>62</sup> *See* Petition at 10-12 (arguing that texting is an indispensable means of communication for deaf and hard of hearing individuals); *see also* *Text-to-911 Order*, 29 FCC Rcd at 9853, para. 14.

<sup>63</sup> Petition at 10; Vibrant Emotional Health Petition Comments at 3.

<sup>64</sup> *Text-to-911 Order*, 29 FCC Rcd at 9853, paras. 14-16 (“[P]eople who are deaf, hard of hearing, or speech disabled have been consistently migrating away from specialized legacy devices, and towards more ubiquitous forms of text

(continued....)

directly and efficiently.<sup>65</sup> Access to telecommunications for individuals with disabilities is a longstanding Commission priority and statutory obligation,<sup>66</sup> and facilitating access to 988 for deaf and hard of hearing individuals is a particularly important policy objective in light of studies finding a significantly increased risk of suicide among deaf and hard of hearing people when compared to those without hearing loss.<sup>67</sup> We seek comment on these views and whether our proposal would ease access to lifesaving counseling for individuals with disabilities. Do commenters agree with the Communications Equality Advocates that the ability for individuals normally using text for the bulk of their communications, including people with disabilities, to access trained mental health professionals using text-to-988 will be of “paramount importance”?<sup>68</sup> Currently, how do people with disabilities reach the Lifeline? How would texting grant access or enhance their ability to communicate with the Lifeline? We seek comment on whether texting would be more accessible than the options currently available, including the Lifeline’s online chat portal.

16. We tentatively conclude that the potential lifesaving benefits of expanding access to suicide prevention and mental health crisis services for all Americans—and particularly the at-risk groups discussed above—justifies a text-to-988 mandate, and we seek comment on this view. The Commission’s designation of 988 as the 3-digit telephone number for the Lifeline reflected its expectation that a simple, easy-to-remember, 3-digit dialing code for suicide prevention and mental health crisis counseling would “help increase the effectiveness of suicide prevention efforts, ease access to crisis services, reduce the stigma surrounding suicide and mental health conditions, and ultimately save lives.”<sup>69</sup> We preliminarily believe that establishing text access to 988 will further advance these important objectives by providing mental health crisis counseling through a nationally available, easy-to-remember number that Americans will also associate with the telephonic Lifeline.<sup>70</sup> Do commenters agree with the Communications Equality Advocates that individuals in crisis “are likely to first use their preferred, familiar mode of communication to reach out for help?”<sup>71</sup> We seek comment on this analysis, and on our proposed conclusion that a text-to-988 mandate is likely to offer substantial, lifesaving benefits to all Americans affected by mental health crises, particularly for many members of at-risk communities. Is a text-to-988

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messaging communications because of the ease of access, wide availability, and practicability of modern text-capable devices.”).

<sup>65</sup> See Petition at 12-13 (discussing potential issues with using TRS to contact 988, including potential delays when time is of essence in suicidal crises, potential need for access to a network connection, equipment or specialized software that consumers may not have during a given time, and potential heightened risk of relayed information being mistranslated given the sensitive nature of Lifeline calls; and further asserting that given the very private and delicate nature of the topic, individuals considering suicide may find the presence of relay operators to be a disincentive to making Lifeline calls).

<sup>66</sup> See, e.g., Twenty-First Century Communications Video and Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 § 104 (2010) (CVAA) (directing the Commission to adopt rules requiring advanced communications services and product to be accessible by people with disabilities); see also Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

<sup>67</sup> See *988 Report and Order*, 35 FCC Rcd at 7374, para. 2 (citing Meghan L. Fox, Psy.D, Tyler G. James, MS, CHES, and Steven L. Barnett, MD, *Suicidal Behaviors and Help-Seeking Attitudes Among Deaf and Hard-of-Hearing College Students*, American Association of Suicidology Journal, Volume 50, Issue 2, pp. 387-396 (Apr. 2020)) (noting a 2020 study showing that college students who are deaf or hard of hearing “are twice as likely to consider or attempt suicide than students without hearing loss”); see also Center for Dignity in Healthcare for People with Disabilities Petition Comments at 1.

<sup>68</sup> Petition at 11.

<sup>69</sup> *988 Notice*, 34 FCC Rcd at 12572, para. 23.

<sup>70</sup> See T-Mobile Petition Comments at 2 (“If consumers cannot reach the Lifeline by texting 988, the Commission’s rationales for adopting short code calling to the Lifeline will be undermined.”).

<sup>71</sup> Petition at 11.

mandate likely to have a significant impact on the likelihood of Americans considering suicide or in a mental health crisis to contact the Lifeline? Would mandating text-to-988 amplify the benefits of promoting 988 as the telephone number for the Lifeline? What are the costs or drawbacks to our proposal?

17. In our preliminary view, the Lifeline’s soft launch of a texting capability is a significant changed circumstance that supports mandating text-to-988. When the Commission adopted the *988 Report and Order*, the Lifeline was not capable of receiving or responding to text messages.<sup>72</sup> The Commission, stating that it has no authority to require the Lifeline to develop texting capability, deferred “consideration of mandating text-to-988 at this time so that we could revisit the issue promptly should the Lifeline develop integrated texting.”<sup>73</sup> Now, the Lifeline is capable of responding to texts sent to the Lifeline. The Lifeline’s ability to respond to texts significantly strengthens the case for imposing a text-to-988 mandate on providers. We seek comment on this evaluation.

18. We preliminarily expect many of the same lifesaving benefits from texting to 911 to accrue from texting to 988. In its comments in support of adopting a text-to-988 requirement, CTIA notes that text-to-911 functionality “has saved countless lives and enabled public safety to keep pace with the modern communications preferences of consumers.”<sup>74</sup> Given the parallels between the Commission’s efforts to promote text access to 911 and our proposals in this Further Notice, are there lessons learned in the context of establishing text-to-911 capability that would be instructive here?<sup>75</sup> CTIA states that there are “significant technical and policy differences between the national 9-8-8 service that will be administered by the Lifeline and the local 9-1-1 services that are administered by thousands of PSAPs.”<sup>76</sup> For example, unlike calls to 911, which carriers route to one of thousands of local PSAPs across the country based on the caller’s geographic location, all calls to 988 are routed to a central toll free number, and are then directed within the Lifeline network to a local crisis center.<sup>77</sup> How might these or other differences between the 911 and 988 networks affect our proposal to adopt a text-to-988 requirement?

## **B. Proposed Implementation of Text-to-988**

### **1. Scope of Text-to-988 Requirement**

19. *Text Formats.* We seek comment on an appropriate scope of text messages that covered text providers must transmit to 988. At present, the Lifeline is capable of receiving text messages sent to the existing 10-digit number in “short message service” (SMS) format.<sup>78</sup> We recognize, however, that our federal partners may incorporate additional capabilities for receiving and responding to text messages in the future. We seek to adopt a forward-looking, flexible scope that can expand with the capabilities of the

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<sup>72</sup> *988 Report and Order*, 35 FCC Rcd at 7420, para. 83 n.356 (referencing the Suicide Prevention Lifeline’s Directory outlining ways to contact the Lifeline, which did not include texting).

<sup>73</sup> *Id.* at 7420, para. 83.

<sup>74</sup> CTIA Petition Reply at 3.

<sup>75</sup> See T-Mobile Petition Comments at 3 (stating that its belief that “lessons learned through implementation of text-to-911 will serve carriers and other stakeholders in implementing text-to-988”).

<sup>76</sup> CTIA Petition Reply at 4.

<sup>77</sup> See *988 Report and Order*, 35 FCC Rcd at 7395-97, paras. 41-45; *988 Notice*, 34 FCC Rcd at 12577-78, paras. 36-40.

<sup>78</sup> *Supra* n.32 (stating that the Lifeline currently receives all text messages in SMS format); see 47 CFR § 64.1600(m) (“The term ‘short message service’ or SMS refers to a wireless messaging service that enables users to send and receive short text messages, typically 160 characters or fewer, to or from mobile phones and can support a host of applications.”); see also *Implementing Section 503 of RAY BAUM’S Act; Rules and Regulation Implementing the Truth in Caller ID Act of 2009*, WC Docket Nos. 18-335 and 11-39, Second Report and Order, 34 FCC Rcd 7303, 7310, paras. 17-18 (2019) (*Truth in Caller ID Second Report and Order*).

Lifeline without unnecessarily burdening covered text providers by requiring support of formats that the Lifeline is not yet capable of receiving. To that end, we propose (1) establishing a definition that sets the outer bound of text messages sent to 988 that covered text providers may be required to support; and (2) directing the Wireline Competition Bureau (Bureau) to identify text formats within the scope of that definition that the Lifeline can receive and thus covered text providers must support by routing to the 10-digit Lifeline number. We seek comment on this proposal in detail below.

20. First, we propose to define the outer bound of text messages that covered text providers may be required to transmit to 988 based on the definition of “text message” that Congress enacted in 2018 in the context of Truth in Caller ID requirements:

The term “text message” (i) means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code; (ii) includes a [SMS] message and a multimedia message service (commonly referred to as ‘MMS’) message; and (iii) does not include—(I) a real-time, two-way voice or video communication; or (II) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (ii).<sup>79</sup>

We seek comment on this proposed scope. We believe this definition has several advantages—it incorporates multimedia messages; it is not limited to specific technologies; and it reflects a recent determination by Congress, albeit in a different policy context. For the purpose of our text-to-988 rules, we propose adding “or 988” to the phrase “10-digit telephone number or N11 service code” so that text messages from the Lifeline identified by the 3-digit code 988 are included within the scope of covered text providers’ obligations, and we seek comment on this proposal. We seek comment on whether using the Truth in Caller ID definition appropriately sets an outer bound that would achieve our goals of adopting a forward-looking, flexible scope that can expand with the capabilities of the Lifeline without unnecessarily burdening covered text providers.

21. We note that the Truth in Caller ID statutory definition of “text message” excludes “real-time, two-way voice or video communications,” as well as “messages sent over . . . IP-enabled messaging services to another user of the same messaging service.”<sup>80</sup> If we adopt the Truth in Caller ID definition, we seek comment on how we should interpret each of these two exclusions here. Is there any reason to adopt a different interpretation of the relevant exclusions in this context compared to the Truth in Caller ID context?<sup>81</sup> Would adopting the Truth in Caller ID definition of “text message,” with the exclusions specified above, prevent us from possibly adding “next-generation” text messages to our requirements in the future?

22. We also seek comment on alternative outer scopes of required texts. For instance, should we adopt the scope of our text-to-911 rules, which require providers to route “a message, consisting of text characters, sent to the short code ‘911’ and intended to be delivered to a PSAP by a covered text provider, regardless of the text messaging platform used”?<sup>82</sup> We seek comment on whether the Truth in

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<sup>79</sup> 47 U.S.C. § 227(e)(8)(C); *see also Truth in Caller ID Second Report and Order*, 34 FCC Rcd at 7309-10, paras. 15-16. The Commission’s Truth in Caller ID rules define MMS as “a wireless messaging service that is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels.” 47 CFR § 64.1600(m).

<sup>80</sup> 47 U.S.C. § 227(e)(8)(C).

<sup>81</sup> *See Truth in Caller ID Second Report and Order*, 34 FCC Rcd at 7311-12, paras. 20-21.

<sup>82</sup> 47 CFR § 9.10(q)(9), (10); *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9851, para. 10. In the *Text-to-911 Second Report and Order*, the Commission identified SMS and MMS messages as examples of text messages included within the scope of this rule. *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9847-48, para. 1 n.1.

Caller ID definition, the text-to-911 definition, or another definition offers the best model here. We note that the Truth in Caller ID model is newer than the text-to-911 definition, originates with Congress rather than the Commission, and unlike the text-to-911 definition explicitly includes images, sounds, and other non-textual information.<sup>83</sup> On the other hand, the Commission developed the text-to-911 definition in a more analogous policy context than the Truth in Caller ID definition. Do these or other considerations suggest that one or the other model is superior?

23. Should we ensure that any definition we adopt encompasses next-generation forms of text messaging, such as MMS, Rich Communications Services (RCS), and/or real-time text (RTT), and what modifications—if any—would we need to make to the definitions we are considering to ensure that such forms are within our proposed scope? RCS has been described as a “successor protocol” to SMS, or as “next-generation” SMS.<sup>84</sup> What are the fundamental differences between SMS, MMS, and RCS? How would the costs to implement SMS, MMS, and RCS differ? The Commission has previously concluded that “messages sent over other IP-enabled messaging services that are not SMS or MMS—such as [RCS]—are excluded from” the Truth in Caller ID definition of text message “to the extent such messages are sent to other users of the same messaging service.”<sup>85</sup> Would it be necessary to modify the Truth in Caller ID definition for our purposes to ensure that it includes RCS or other next-generation services?

24. We also seek comment on whether we should ensure that our proposed outer bound definition of text message encompasses RTT. Telecommunications for the Deaf and Hard of Hearing, Inc., et al. have urged us to mandate the ability to reach 988 by RTT, noting that the Commission “has acknowledged the benefits of RTT in crisis situations such as ‘allow[ing] for interruption and reduc[ing] the risk of crossed messages because the . . . call taker is able to read the caller’s message as it is being typed, rather than waiting until the caller presses the ‘send’ key.”<sup>86</sup> We seek comment on this assertion and other potential benefits and drawbacks of RTT to 988. We note that pursuant to the *2016 RTT Order*, all wireless service providers are permitted to support RTT on their IP networks for purposes of 911 compliance (and for purposes of complying with the general accessibility requirements of Parts 6, 7, and 14 of the Commission’s rules) as an alternative to supporting TTY communications over IP.<sup>87</sup> In light of the deployment of such RTT capabilities in wireless IP networks, are there any impediments to wireless service providers routing RTT texts to the 988 number, in the event that Lifeline chooses to support RTT? Do newer text messaging protocols like RTT and RCS represent a significant portion of the text messaging ecosystem, or are they likely to in the near future? Are consumers likely to expect the ability to use these kinds of platforms to send text messages to 988? Do these texting solutions make texting more accessible for individuals with disabilities? Are there other reasons to include, or exclude, these types of applications from our definition?<sup>88</sup> Are there any text message formats that we should

<sup>83</sup> See 47 U.S.C. § 227(e)(8)(C); *Truth in Caller ID Second Report and Order*, 34 FCC Rcd at 7309-10, paras. 15-16; see also *Text-to-911 Third FNPRM*, 29 FCC Rcd at 9901, para. 131 & n.355 (seeking comment on delivery of multimedia messages to PSAPs, and noting that “[t]he text portion of text-to-911 message initiated using an MMS or other text messaging platform must be transmitted to the PSAP pursuant to our [text-to-911] requirements”).

<sup>84</sup> See *Truth in Caller ID Second Report and Order*, 34 FCC Rcd at 7310, para. 21.

<sup>85</sup> *Id.*

<sup>86</sup> See Telecommunications for the Deaf and Hard of Hearing, Inc. et al. *988 Notice Comments* at 8, 9 n.39 (quoting *Text-to-911 Second Report and Order*, 29 FC Rcd at 9855, para. 18).

<sup>87</sup> See *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16-145, GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13572-74, paras. 6-7 (2016) (*2016 RTT Order*).

<sup>88</sup> See CTIA Petition Reply at 4 (stating that its member companies “are optimistic about the technical feasibility of supporting text-to-988” provided that text-to-988 is implemented “consistent with the existing capabilities of native SMS”).



specifically exclude from the definition we adopt? For example, in crafting the text-to-911 rules, the Commission chose to exclude from its requirements a variety of services, including “relay service . . . , mobile satellite service (MSS), and in-flight text messaging services,” as well as “text messages that originate from Wi-Fi only locations or that are transmitted from devices that cannot access the CMRS network.”<sup>89</sup> Should we adopt any similar exclusions here?

25. Second, we seek comment on how to structure our delegation to the Bureau to ensure that covered text providers support formats within the scope of the definition we adopt that the Lifeline can receive. We propose, as an initial matter, requiring covered text providers to support transmission of SMS messages to 988, since that is what the Lifeline can presently receive. We further propose directing the Bureau, after consultation with our federal partners at SAMHSA and the VA, to issue a Public Notice no less frequently than annually proposing and seeking comment on requiring covered text providers to transmit any new message formats to 988 that the Lifeline can receive and that are within the scope of the definition we adopt. If the Bureau proposes requiring implementation of a new message format, we further propose directing the Bureau, after notice and comment, to issue a second Public Notice, requiring covered text providers to transmit the new message format to 988 by a fixed deadline that we specify unless the record demonstrates that implementation is not technically feasible.<sup>90</sup> We seek comment on this proposal. Does it appropriately balance the need for expedient implementation with avoiding unduly burdening covered text providers with implementing formats that the Lifeline cannot receive? Should we require the Bureau to issue a Public Notice more or less often than annually? Or is there another mechanism, such as one similar to the Commission’s Text-to-911 PSAP registry, whereby PSAPs issue a valid request for texting service from covered text providers, that we should consider?<sup>91</sup> Is technical feasibility an appropriate standard for exclusion, or do commenters recommend a different standard? Should we have a standard for exclusion by the Bureau at all? If we do not have a standard for excluding certain technologies, is notice and comment necessary? What is an appropriate implementation deadline for us to specify after the Bureau issues its Public Notice requiring implementation? For instance, would six months be sufficient? Should we instead allow the Bureau flexibility to set an appropriate deadline? Should we provide any further direction to the Bureau regarding the evaluation we propose to require?

26. We also seek comment on structuring the scope of covered text messages differently. For instance, should we simply adopt a definition of “text message” and require covered text providers to support all such formats, regardless of whether the Lifeline can support that format presently? Should we adopt a narrower definition of “text message” that conforms to what the Lifeline can support at present? While we appreciate the simplicity of either of these approaches compared to our proposal, how would commenters address our concern that the former is unnecessarily burdensome, and the latter is not adequately future-proofed?

27. *Covered Text Providers.* We propose to apply our text-to-988 requirement to “covered text providers” as that term is defined in the text-to-911 rules, to “include[] all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including

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<sup>89</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9862, para. 35 n.96 (finding that “disability groups oppose[ed] incorporating relay services into a text-to-911 mandate,” that airborne text-to-911 communications presented “particular challenges . . . due to the unique nature of in-flight service,” and that MSS “is a specialized offering with a focus on enterprise and government users”).

<sup>90</sup> See *infra* Appendix A (proposing to define “covered 988 text message” as “a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers” in the Commission’s rules).

<sup>91</sup> FCC, *PSAP Text-to-911 Readiness and Certification Registry (Text-to-911 Registry)* (Mar. 19, 2021), <https://www.fcc.gov/general/psap-text-911-readiness-and-certification-form>.

through the use of applications downloaded or otherwise installed on mobile phones.”<sup>92</sup> We seek comment on this proposal, and on any alternative approaches to the scope of entities that must establish text-to-988 transmission capability. For example, if we can apply the definition of “text message” in the Truth in Caller ID rules to texting to 988, should we apply our text-to-988 rules to providers of “text messaging services,” as defined in section 227 of the Act and our Truth in Caller ID rules?<sup>93</sup> In that context, we define “text messaging service” as “a service that enables the transmission or receipt of a text message.”<sup>94</sup> Is the Truth in Caller ID model preferable, for instance because it may incorporate a broader range of providers that support text messaging service, or is our proposal preferable, for instance because it is more specific? We also seek comment on other possible models and scopes of covered providers. Would using “CMRS providers” exclude services over certain spectrum bands or non-switched wireless services that transmit text messages to 988, and should we instead include “wireless carriers,” or a different term, in our definition of “covered text providers?”

28. *Interconnected Text Messaging Services.* In adopting the text-to-911 rules, the Commission observed that there are a variety of widely available text messaging services and platforms with different technological capabilities, including SMS, MMS, and “over-the-top” (OTT) applications delivered over Internet protocol (IP)-based mobile data networks.<sup>95</sup> For purposes of the Commission’s text-to-911 rules, interconnected text messaging applications enable consumers to “send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same,”<sup>96</sup> while non-interconnected applications “only support communication with a defined set of users of compatible applications but do not support general communication with text-capable telephone numbers.”<sup>97</sup> The Commission’s text-to-911 rules include interconnected text messaging services but exclude non-interconnected applications because they do not provide the ability to communicate with text-capable U.S. telephone numbers.<sup>98</sup>

29. As in the text-to-911 rules, we propose to apply our text-to-988 requirements to interconnected text messaging services, thereby excluding non-interconnected applications from the requirements.<sup>99</sup> We seek comment on this approach. We note that the Commission’s Truth in Caller ID

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<sup>92</sup> 47 CFR § 9.10(q)(1). We note that the term “covered text provider” used in this *Notice* differs from the term “covered providers” used in the rules the Commission adopted in the *988 Order*, which refers to all telecommunications carriers, interconnected VoIP providers, and one-way VoIP providers. See 47 CFR § 52.200(e).

<sup>93</sup> 47 U.S.C. § 227(e)(8)(D); 47 CFR § 64.1600(p); *Truth in Caller ID Second Report and Order*, 34 FCC Rcd at 7313, para. 23.

<sup>94</sup> 47 U.S.C. § 227(e)(8)(D); 47 CFR § 64.1600(p); *Truth in Caller ID Second Report and Order*, 34 FCC at 7313, para. 23.

<sup>95</sup> As the Commission explained in the *Text-to-911 Second Report and Order*, “SMS requires use of an underlying carrier’s SMS Center (SMSC) to send and receive messages from other users” while “[MMS]-based messaging makes use of the SMSC but also involves the use of different functional elements to enable transport of the message over IP networks.” *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9860, para. 28 n.85. A third category, “over-the-top” (OTT) applications, may be offered by CMRS providers or third parties and allow consumers “to send text messages using SMS, MMS or directly via IP over a data connection to dedicated messaging servers and gateways.” *Id.* These OTT services, which are often downloaded through mobile app stores, are increasingly popular with consumers and may be interconnected with the PSTN or not. *Id.*

<sup>96</sup> *Bounce-Back Order*, 28 FCC Rcd at 7570, para. 41.

<sup>97</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9847, para. 1 n.1.

<sup>98</sup> *Id.*

<sup>99</sup> This is also analogous to the Commission’s decision in the *988 Report and Order* to apply to “providers that access the public switched telephone network (PSTN) on an interconnected basis to reach all Americans.” *988 Report and Order*, 35 FCC Rcd at 7392, para. 37. The Commission designed its rules to apply to any “providers

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rules provide an exemption for messages “sent over an IP-enabled messaging service to another user of the same messaging service, except [for an SMS or MMS message],” which similarly operates to exclude non-interconnected text messaging services.<sup>100</sup> Since the services provided by the Lifeline require two-way communication and, by definition, non-interconnected text messaging applications cannot support two-way texting with “all or substantially all text-capable U.S. telephone numbers,” we believe it is unlikely that these services would be technically capable of supporting text-to-988 functionality. We seek comment on this view. Are there any tools available to the Commission to mitigate the potential for consumer confusion regarding the availability of text-to-988 across different text messaging platforms and technologies, particularly with respect to non-interconnected text messaging applications?

## 2. Routing Texts to 988

30. We propose to require that covered text providers route covered 988 text messages to the Lifeline’s current 10-digit number, 1-800-273-8255 (TALK), and we seek comment on this proposal. This proposal is consistent with the Commission’s decision for routing calls to 988 in the *988 Report and Order*. In the *988 Report and Order*, the Commission required “that service providers transmit all calls initiated by an end user dialing 988 to the current toll free access number for the Lifeline,”<sup>101</sup> finding that a centralized routing solution will allow for faster implementation of the 988 3-digit dialing code, lower costs to maintain 988 routing, and provide continued easy access to Lifeline by callers with disabilities.<sup>102</sup> We preliminarily believe that there are similar benefits to routing texts to 988 to a single, centralized number and seek comment on this view.

31. There is support in the record thus far for routing to the Lifeline. CTIA supports directing texts sent to 988 to the Lifeline as a “central point for receiving such communications,” consistent with the Commission’s mandate for routing 988 voice calls.<sup>103</sup> Vibrant Emotional Health, the administrator of the Lifeline, argues in support of text-to-988 functionality integrated into the current Lifeline structure for routing voice and chat services, with oversight squarely within the role of the Lifeline’s administrator.<sup>104</sup> We seek comment on these assessments.

32. We anticipate that requiring covered text providers to route to a single destination provides SAMHSA and the VA with flexibility to develop their own routing solutions among the local crisis centers, including adding new crisis centers in the future, as compared to requiring covered text providers to implement additional updates or routing changes as more centers are added.<sup>105</sup> We seek comment on this preliminary analysis. Do the current obligations to route voice calls to 988 to the

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that access the public switched telephone network (PSTN) on an interconnected basis to reach all Americans.” *Id.* at 7392, para. 37.

<sup>100</sup> See *Truth in Caller ID Second Report and Order*; 34 FCC Rcd at 7310, para. 21.

<sup>101</sup> *988 Report and Order*, 35 FCC Rcd at 7387, para. 29.

<sup>102</sup> *Id.* at 7395-96, paras. 42-43.

<sup>103</sup> CTIA Petition Reply at 5.

<sup>104</sup> Vibrant Emotional Health Petition Comments at 3-4.

<sup>105</sup> Callers to 1-800-273-8255 (TALK) can reach the Veterans Crisis Line by pressing option 1 to connect with one of three linked call centers in New York, Georgia, or Kansas. For other calls, calls to the Lifeline from anywhere in the United States are routed to the closest certified local crisis center according to the caller’s area code or, should the closest center be overwhelmed by call volume, experience a disruption of service, or if the call is placed from part of a state not covered by Lifeline’s network, the system automatically routes calls to a backup center. *988 Report and Order*, 35 FCC Rcd at 7376-77, paras. 5-6 (citing SAMHSA Report at 3, 5; VA Report at 4); see also National Suicide Prevention Lifeline, *About*, <https://suicidepreventionlifeline.org/about/> (last visited Feb. 26, 2021) (providing updated number of local crisis centers to over 180 across the United States).

Lifeline 10-digit number offer any opportunities for streamlining implementation or reducing costs associated with routing texts to 988 to the same number?

33. In the alternative, we seek comment on whether instead to follow a model more comparable to the text-to-911 architecture, whereby covered text providers route directly to a PSAP by requiring routing directly to a Lifeline local crisis center or to a Veterans Crisis Line crisis center. We anticipate that this approach would be significantly more costly than centralized routing and seek comment on this preliminary view. Is it easier to route texts to a single number than to individual crisis centers? As the Veterans Crisis Line is not currently set up for geographic distribution, would this architecture be appropriate for messages by Veterans or Service Members? Are covered text providers able to leverage existing text-to-911 systems to reduce costs if required to route texts to 988 directly to local crisis centers? In the *988 Report and Order*, the Commission recognized that some commenters expressed there may be benefits to routing voice calls to individual crisis centers, such as familiarity with a caller's area and potentially easier coordination with local emergency services, but ultimately concluded that the advantages associated with routing to a single number outweighed the benefits of localized routing.<sup>106</sup> Does that rationale apply here? Are there benefits to routing texts to the individual crisis centers that are unique to text messages, such as providing localized support to the public in the vicinity of the crisis center? What are the costs or drawbacks to covered text providers to route texts to the Lifeline 10-digit number versus the local crisis centers? Which approach will lead to speedier implementation, and how should that impact our analysis? Is there another alternative approach, other than centralized routing or routing by crisis center, that we should consider?

34. Currently, Veterans and Service Members may dial the Lifeline to reach the Veterans Crisis Line via voice call, but the Lifeline texting service and the VA's short code texting service require contacting separate numbers. How should we account for this distinction in evaluating what rules to adopt to ensure that Veterans, Service Members, and their families are able to reach the Veterans Crisis Line directly and promptly? We seek comment on whether and how we can act to facilitate integration of the Veterans Crisis Line's separate short code-based texting service into text-to-988 routing. Are there specific actions that the Commission should take to allow users to text 988 and reach both the Lifeline and Veteran-specific assistance? For instance, should we require covered text providers to provide an automated inquiry as to whether the texter is a Veteran or Service Member and route the text to either the existing Lifeline number or the existing short code for Veterans depending on the response? Alternatively, would it be feasible to immediately prompt individuals texting to 988 to reply with the number "1" or "Vet" to be routed to the Veterans Crisis Line, similar to the experience for voice callers? Are other prompts preferable? We seek comment on possible solutions to ensure that texts are routed to the proper counseling services via the Lifeline or the Veterans Crisis Line, including input on technical feasibility, ways to minimize consumer confusion, and implementation costs. Should other text or chat services be integrated into 988 text routing, and if so, how?

35. We seek comment on whether we should require covered text providers to enable text-to-988 messages to include location information.<sup>107</sup> As required by the National Suicide Hotline Designation Act of 2020, the Bureau will report to Congress on the costs and feasibility of providing location information with 988 calls on April 17, 2021.<sup>108</sup> In our preliminary view, given that we have not adopted a location mandate in the context of calls to 988, we believe it would be premature to adopt a mandate

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<sup>106</sup> *988 Report and Order*, 35 FCC Rcd at 7396-97, para. 44.

<sup>107</sup> See Petition at 16 ("location information need not be passed by the provider (but can be if the Commission deems it a requirement just as in its *Text-to-911 Order*").

<sup>108</sup> See National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 § 5 (2020); see also *Wireline Competition Bureau Invites Comment on Costs and Feasibility of Providing Location Information for 988 Calls and Clarifies 988 Implementation Date*, Public Notice, WC Docket No. 18-336, 36 FCC Rcd 13043 (WCB 2021).

here, and we seek comment on this view. Does someone who sends a text message to 988 expect that their location will be transmitted to the Lifeline? If consumers generally are aware that calls and texts to 911 include their location,<sup>109</sup> would the same expectation apply to texts to 988? Would including location information deter at-risk individuals from texting to 988? We seek comment on any complications inherent in this plan and on ways for covered text providers to work with SAMHSA and the VA to limit misrouting of texts.

### 3. Implementation Timeframe for Text-to-988

36. *Uniform Nationwide Deadline.* We seek comment on an appropriate implementation timeframe for requiring covered text providers to support texting to 988 on a nationwide basis. We preliminarily propose adopting a uniform nationwide deadline for implementation for all covered text providers and for all covered 988 text messages, as determined by the Bureau.<sup>110</sup> In the *988 Report and Order*, the Commission determined that the “rollout of 988 will be most effective if [it] set a single implementation deadline so that stakeholders can clearly and consistently communicate to the American public when 988 will be universally available.”<sup>111</sup> We preliminarily believe that the same holds true here, and we seek comment on this view. Are there other benefits to a uniform nationwide implementation deadline? What drawbacks, if any, exist?

37. Although we propose adopting a uniform nationwide deadline, we seek comment on whether we should adopt any extensions or exemptions for certain classes of providers or categories of text messages. Should we adopt any extensions or exemptions for smaller, rural, or regional covered text providers? If so, under what circumstances would such exemptions be appropriate? Are there unique technical considerations that necessitate different implementation timelines for certain covered text providers? If so, what are they and why? Are there any other considerations, such as any existing contractual obligations between our federal partners and other entities, that we should take into account in setting a deadline or deadlines?

38. *Appropriate Deadline.* We observe that CTIA and other commenters have previously argued that the Commission should not mandate text-to-988 before the Lifeline is capable of receiving and responding to texts, in part because the Lifeline’s readiness to receive and respond to text messages is crucial to implementing text-to-988 successfully.<sup>112</sup> We seek comment on this assertion. We also seek comment on CTIA’s proposal to require covered text providers to “deliver text-to-988 to the Lifeline by July 16, 2022, or six months after the Lifeline demonstrates its readiness to accept text messages, whichever is later.”<sup>113</sup> Is the Lifeline’s pilot program sufficient to demonstrate that it is ready to accept text messages? If not, how should we determine that the Lifeline has demonstrated readiness to accept text messages, both from a technical and operational standpoint? How should we take into account the capabilities of the Veterans Crisis Line in establishing a deadline? Understanding that the Lifeline and Veterans Crisis Line successfully accepting and responding to text messages to 988 will require coordination between several stakeholders, we emphasize that the Commission will continue to coordinate closely with our federal partners, SAMHSA and the VA, in their efforts to enable crisis centers

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<sup>109</sup> See 47 CFR § 9.10(d)-(i) (requiring licensees to provide certain location information with calls to 911); § 9.10(q)(10)(v) (requiring covered text providers to provide certain location information with 911 text messages routed to a PSAP).

<sup>110</sup> See *supra* paras. 19, 25 (proposing to direct the Bureau to identify text formats within the scope of that definition through a public notice process).

<sup>111</sup> *988 Report and Order*, 35 FCC Rcd at 7409, para. 63.

<sup>112</sup> Crisis Text Line *988 Notice* Comments at 1; CTIA *988 Notice* Comments at 4-5; Crisis Text Line *988 Notice* Reply at 2; CTIA Petition Reply at 5.

<sup>113</sup> CTIA Petition Reply at 5.



to respond to text messages to 988 and establish a reasonable implementation timeframe for text-to-988.<sup>114</sup>

39. We seek comment on whether the Commission should require all covered text providers to support text-to-988 by July 16, 2022, the same implementation deadline for telecommunications carriers, interconnected VoIP providers, and one-way VoIP providers to support voice calls to 988.<sup>115</sup> Is this technically, economically and operationally feasible? Are there benefits to requiring a uniform implementation timeline for all voice and text communications to 988? We observe that some covered text providers have already implemented voice calling to 988.<sup>116</sup> For those providers, will requiring covered text providers to implement text-to-988 on the same timeline as voice calling to 988 create any efficiencies, such as reducing fixed costs? Is there an expectation that once 988 is deployed nationwide for voice communications that texting to 988 will be similarly available? Will a uniform implementation deadline discourage covered text providers from potentially supporting text to 988 before July 16, 2022? Are there other potential benefits or drawbacks to uniform implementation deadlines for providers supporting voice calling and texting to 988?

40. Alternatively, we seek comment on whether we should separate the timeline for implementing text-to-988 from the implementation timeline for voice-to-988. Is a phased-in approach preferable? Would it be beneficial to consider balance of telecommunications activation needs and organizational response needs by SAMHSA and the VA? Would it be less burdensome on providers working to implement 988 for voice calls in accordance with the *988 Report and Order*? Would a phased-in implementation timeline create consumer confusion regarding the availability of texting to 988? If phased-in implementation deadlines would create consumer confusion, would requiring certain covered text providers to implement text-to-988 more quickly minimize consumer confusion? For example, if a covered text provider has already implemented voice calling to 988 and is advertising the availability of 988 to its customers, should the provider be required to implement text-to-988 before other covered text providers? Are there other risks associated with a phased-in approach to an implementation timeline for voice and text communications to 988 as compared to uniform implementation timeline? What, if any, phased-in deadlines should the Commission consider?

41. We also seek comment on whether we should we adopt the same timeline for all covered text providers, regardless of the text messaging technology they use. Are there other preparedness concerns that we should take into consideration when determining an implementation timeframe?

#### 4. Technical Considerations

42. We seek comment on the specific technical considerations for covered text providers and equipment and software vendors—including those providers who are rural or small businesses—necessary to implement text-to-988. We propose to allow covered text providers to use any reliable

<sup>114</sup> See *infra* Part III.B.7 (seeking comment on our proposal to “direct the Bureau to continue to coordinate the implementation of 988 with SAMHSA and the VA, including any issues pertaining to the delivery of text messages to 988”). We reiterate that the Commission does not wish to determine for SAMHSA how it allocates the Lifeline’s resources, nor do we have the authority to require the Lifeline and its crisis centers to be capable of receiving and responding to text messages to 988. *988 Report and Order*, 35 FCC Rcd at 7420, para. 83.

<sup>115</sup> See *988 Report and Order*, 35 FCC Rcd at 7375, para. 4; 47 CFR § 52.200(c), (d).

<sup>116</sup> See, e.g., T-Mobile, *T-Mobile Makes 988 Emergency Lifeline’s Critical Mental Health Support Services Immediately Available to Customers* (Nov. 20, 2020), <https://www.t-mobile.com/news/community/t-mobile-makes-988-emergency-lifeline-available-to-customers>; Verizon, *Verizon reaches milestone with new connection to National Suicide Prevention Hotline* (Dec. 21, 2020), <https://www.verizon.com/about/news/verizon-milestone-national-suicide-prevention-hotline>.

<sup>117</sup> An entirely IP-based, or “over-the-top,” method generally refers to applications that operate on IP-based mobile data networks which consumers can install on data-capable mobile devices. These over-the-top applications allow

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method or methods (e.g., mobile-switched, IP-based<sup>117</sup>) to support text routing and transmission to 988, similar to text-to-911 implementation.<sup>118</sup> We seek comment on this proposal.

43. *Network Upgrades.* We seek comment on possible upgrades covered text providers would have to make to their networks to support text-to-988 capability. Since we propose to allow covered text providers to use any reliable method or methods to support text routing and delivery to 988, are any necessary network hardware or software upgrades small in scope? What specific components would require upgrading? Can the current solutions to enable text-to-911 capability be leveraged to support text-to-988, or are the implementation options for covered text providers to support text-to-988 significantly different? CTIA notes “there are significant technical and policy differences between national 9-8-8 service that will be administered by the Lifeline and the local 9-1-1 services that are administered by thousands of PSAPs.”<sup>119</sup> We seek comment on CTIA’s view, especially with regard to any “significant” technical differences. Conversely, do commenters agree with Communications Equality Advocates that the costs to covered text providers for implementation of text-to-988 should be substantially lower than those associated with implementing text-to-911?<sup>120</sup> We seek further comment on the potential integration of text-to-988 solutions with existing systems, as well as other network considerations specific to covered text providers to support text-to-988.

44. We also seek comment on whether there are unique network considerations for different text messaging service technologies within the proposed outer bound scope of text-to-988 service that impact implementation. CTIA comments that its member companies are “optimistic about the technical feasibility of supporting text-to-988,” provided that implementation is consistent with existing capabilities of native SMS messaging.<sup>121</sup> Do commenters agree? Are there fewer network upgrades necessary to support SMS-only texts to 988? What specific network upgrades would be required should we obligate covered text providers to support other text messaging formats, such as MMS, RTT, or RCS? Given that the Commission has recognized MMS as “an extension of the SMS protocol,” would support for MMS messaging be comparably feasible to support for SMS?<sup>122</sup> How does the evolution of texting services to new or future formats affect network upgrade options and implementation, and how should our rules account for such evolution? Would requiring support for certain text messaging formats be more feasible for covered text providers to implement than others?

45. We specifically seek comment on the technical implementation capability and network upgrades necessary for interconnected text messaging service providers. Similar to the Commission’s conclusion in the *Text-to-911* proceeding, we anticipate that many interconnected text messaging service providers may choose to use a CMRS network-based solution to deliver texts to 988 and seek comment

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consumers to send text messages without using SMS or MMS, which are mobile switched over the wireless network. See *Text-to-911 Further Notice*, 27 FCC Rcd at 15674, para. 42 n.92; see also *Text-to-911 Notice*, 26 FCC Rcd at 13623-28, paras. 22-32 (technical background on text-based mechanisms for delivery to PSAPs, including text telephones (TTY), telecommunications relay services (TRS), SMS-based, IP-based, and real-time text (RTT) messaging).

<sup>118</sup> *Text-to-911 Further Notice*, 27 FCC Rcd at 15683, para. 60; see also *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9867-68, para. 44 (declining to mandate any particular model for implementing text-to-911 and allowing CMRS providers to select any reliable method or methods for text routing and delivery).

<sup>119</sup> CTIA Petition Reply at 4.

<sup>120</sup> Petition at 16.

<sup>121</sup> CTIA Petition Reply at 4 (indicating that the technical feasibility of supporting text-to-988 is contingent upon implementation consistent with existing capabilities of native SMS messaging and the Lifeline demonstrating readiness to receive and respond to texts sent to 988).

<sup>122</sup> 47 CFR § 64.1600(k) (“The term ‘multimedia message service’ or MMS refers to a wireless messaging service that is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels.”).

on this expectation.<sup>123</sup> Have there been developments in text-to-911 delivery by interconnected text messaging service providers that such providers can use in text-to-988 implementation? In the text-to-911 context, the Commission's rules state:

To the extent that CMRS providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 911 text messages originating on such other covered text providers' application services. Covered text providers using the CMRS network to deliver 911 text messages must clearly inform consumers that, absent an SMS plan with the consumer's underlying CMRS provider, the covered text provider may be unable to deliver 911 text messages. CMRS providers may migrate to other technologies and need not retain SMS networks solely for other covered text providers' 911 use, but must notify the affected covered text providers not less than 90 days before the migration is to occur.<sup>124</sup>

We seek comment on adopting this or a comparable requirement here. We recognize that text-to-911 network integration is necessary to facilitate a CMRS network-based solution, and we seek comment on whether the same integration is necessary for transmission of text-to-988 communications by other covered text providers using that solution.<sup>125</sup> We seek comment on the relationship between CMRS providers and interconnected text messaging service providers to maintain support and capability for text-to-988 service based on the technical solutions available.<sup>126</sup> We emphasize that, as in the text-to-911 proceeding, even if we were to adopt a rule comparable to the text-to-911 rule above, we do not intend to establish an open-ended obligation for CMRS providers to maintain underlying SMS network support merely for the use of other providers.<sup>127</sup> Further, similar to the Commission's position in the *Text-to-911 Second Report and Order*, if we adopt a rule comparable to the text-to-911 rule above, we propose concluding that it is the responsibility of the covered text provider using the CMRS-based solution to ensure that its text messaging service is technically compatible with the CMRS providers' SMS-based network and devices, and in conformance with any applicable technical standards.<sup>128</sup> We seek comment on this proposal. Finally, as in the text-to-911 context, if we adopt a rule comparable to the text-to-911 rule above, we propose requiring CMRS providers to make any necessary specifications for accessing their SMS networks available to other covered text providers upon request, and to inform such covered text providers in advance of any changes to these specifications.<sup>129</sup> We seek comment on this proposal.

46. We also seek comment on specific technical considerations for covered text providers that are rural or regional providers, or small businesses. Are there unique impediments or challenges to implementation that these types of providers face that warrant further consideration?

47. *Equipment Upgrades.* We seek comment on possible equipment or software upgrades required for covered text providers to implement text-to-988. What challenges will equipment (e.g., handsets, network infrastructure) and software vendors face with respect to the implementation and deployment of text-to-988? For example, are upgrades required for operating systems, firmware, or other software on mobile devices to support text-to-988 capability? Are there upgrades necessary by vendors

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<sup>123</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9868-70, para. 45.

<sup>124</sup> 47 CFR § 9.10(q)(11).

<sup>125</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9868-70, para. 45.

<sup>126</sup> *Id.* at 9868-70, para. 45 & n.138.

<sup>127</sup> *Id.* at 9868-70, para. 45.

<sup>128</sup> *Id.* at 9868-70, para. 45 & n.138.

<sup>129</sup> *Id.*

that are beyond the covered text providers' control that require additional coordination? Will new standards need to be defined to ensure interoperability?

48. In the *Text-to-911* proceeding, the Commission clarified that legacy devices that are incapable of sending texts via 3-digit codes are not subject to the text-to-911 requirements, provided the software for these devices cannot be upgraded over the air to allow text-to-911.<sup>130</sup> If the device's text messaging software can be upgraded over the air to support a text to 911, however, then the Commission required the covered text provider to make the necessary software upgrade available.<sup>131</sup> Should we include a similar exemption for legacy devices under any text-to-988 requirements we may adopt? Have circumstances changed in the past seven years such that we should adopt a different approach here?

## 5. Cost Recovery

49. Consistent with the Commission's decision in the *988 Report and Order*,<sup>132</sup> we propose to require that all covered text providers bear their own costs to implement text-to-988 capability to the Lifeline 10-digit number. As with call routing to 988, we do not anticipate any shared industry costs are necessary to implement text-to-988, in contrast to previous non-988 numbering proceedings where the Commission established a cost recovery mechanism.<sup>133</sup> As proposed, costs to support text-to-988 would be borne by each provider, specific to the solutions each has adopted to route texts to 988 ultimately to the Lifeline's current toll free access number, presently 1-800-273-8255 (TALK). We seek comment on this proposal.

50. We believe this approach promotes efficiency in implementation and avoids unnecessary administrative costs. Section 251(e)(2) of the Act states that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis."<sup>134</sup> The Commission typically applies cost recovery mechanisms in situations involving some type of numbering administration arrangement, such as when the Commission hires a third party to develop a database for industry use, to ensure that the statutory cost neutrality requirements are met.<sup>135</sup> Here, as with implementation of voice calls to 988, circumstances do not require establishment of a numbering administration arrangement as there will not be shared costs. Therefore, we believe the section 251(e)(2) requirements do not apply.<sup>136</sup> Furthermore, even if section 251(e)(2) applies, we believe it is satisfied if we require each provider to bear its own costs because each provider's costs will be proportional to the size and quality of its network. We seek comment on this analysis.

## 6. Bounce-back Messages

51. We seek comment on whether and in what circumstances to require covered text providers to send automatic bounce-back messages where text-to-988 service is unavailable. Throughout the ongoing roll-out of text-to-911 services across the U.S., the Commission has required covered text

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<sup>130</sup> See *Bounce-Back Order*, 28 FCC Rcd at 7582-83, paras. 73-76; *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9851, para. 10 n.26.

<sup>131</sup> See *id.*

<sup>132</sup> *988 Report and Order*, 35 FCC Rcd at 7413, para. 69.

<sup>133</sup> See, e.g., *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11738-78, paras. 68-146 (1998) (*Telephone Number Portability Order*).

<sup>134</sup> 47 U.S.C. § 251(e)(2).

<sup>135</sup> See, e.g., *Telephone Number Portability Order*, 13 FCC Rcd at 11745-46, paras. 87-92 (implementing number portability administration arrangements); *Toll Free Assignment Modernization; Toll Free Service Access Codes*, WC Docket No. 17-192, CC Docket No. 95-155, Report and Order, 33 FCC Rcd 9274, 9298, para. 70 (2018) (establishing an administrator for an auction for certain toll free numbers).

<sup>136</sup> See *988 Report and Order*, 35 FCC Rcd at 7413, para. 69 n.305.

providers to send an automatic reply, or bounce-back, text message when a consumer attempts to send a text message to a PSAP by means of the 3-digit code “911” and the covered text provider cannot deliver the text because (1) the consumer is located in an area where text-to-911 is not available, or (2) the covered text provider either does not support text-to-911 generally or does not support it in the particular area at the time of the consumer’s attempted text.<sup>137</sup> Unlike in the text-to-911 context, where availability varies by geography and is based on whether the local PSAP can receive texts, our proposals herein would require covered text providers to support nationwide texting to the Lifeline via the 988 3-digit code on a uniform nationwide deadline. If we were to adopt our proposal, should we nonetheless require bounce-back messages? If so, when and under what circumstances? Should we require covered text providers to make available bounce-back messages sooner than we require implementation of text-to-988? Would requiring bounce-back messages be appropriate if we adopt a uniform nationwide deadline for text-to-988 capability later than July 16, 2022—the uniform nationwide deadline for covered providers to support calls to 988? Would requiring bounce-back messages be appropriate if we adopt exemptions or extensions for some providers?

52. We seek comment on the potential benefits and costs of a bounce-back requirement. In the text-to-911 context, the Commission determined that “there is a clear benefit and present need for persons who attempt to send emergency text messages to know immediately if their text cannot be delivered to the proper authorities,”<sup>138</sup> noting that feedback where text-to-911 is not available may be lifesaving by directing a person to seek out an alternative means of communicating with emergency services.<sup>139</sup> Is that the case here as well? Because some individuals with disabilities may rely exclusively on texting for communicating, are there unique benefits of a bounce-back requirement for these individuals? Since the Commission designated 988 as the 3-digit dialing code to access the Lifeline, efforts have been underway to educate the public about using this 3-digit code to reach help by telephone in times of mental health crisis, including its availability for routing voice calls to the Lifeline by July 16, 2022.<sup>140</sup> In the absence of a bounce-back, might such advertising confuse the public about the availability of texting to 988? Would an automated bounce-back help to prevent such confusion? Are there other advantages to requiring covered text providers to send bounce-back messages for attempts to text 988 where service is unavailable? Are any providers included under the proposed “covered text providers” definition currently sending bounce-back messages to texts sent to 988?

53. What are the costs of requiring a bounce-back message? What work or upgrades would be necessary for text service providers to implement an automatic bounce-back reply? Given that covered text providers must provide a bounce-back in circumstances in which text-to-911 is unavailable,<sup>141</sup> would adding a comparable bounce-back message for 988 be easier than if that existing infrastructure were not in place? Would requiring text service providers to build bounce-back capabilities deter resources from more rapid deployment of text-to-988?

54. We seek comment on how requiring bounce-back messages may impact the public’s ability to seek help from the Lifeline in times of mental crisis. What are the potential benefits to receiving an automatic bounce-back message when text-to-988 service is unavailable? Are there any drawbacks to the public of requiring covered text providers to send bounce-back messages when text-to-988 is not

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<sup>137</sup> 47 CFR § 9.10(q)(1)-(3); *Bounce-Back Order*, 28 FCC Rcd at 7573, para. 49.

<sup>138</sup> *Bounce-Back Order*, 28 FCC Rcd at 7561, para. 13.

<sup>139</sup> *Id.* at 7562, para. 16.

<sup>140</sup> See, e.g., Helpline Center, *988 Information and Update*, <https://www.helplinecenter.org/2-1-1-community-resources/helpsheets/988-information-and-update/> (last visited Mar. 3, 2021); Network for Public Health Law, *What to Know about “988,” A New National Suicide Prevention Lifeline Number*, <https://www.networkforphl.org/wp-content/uploads/2020/10/What-to-Know-About-%E2%80%9C9C988%E2%80%9D-A-New-National-Suicide-Prevention-Lifeline-Number-.pdf> (last visited Mar. 3, 2021).

<sup>141</sup> 47 CFR § 9.10(q)(1)-(5).



available? One commenter contends that if at-risk texters receive a bounce-back message regarding the unavailability of services, “the risks of disengagement and adverse outcomes increase.”<sup>142</sup> Do commenters agree with the assessment that an automatic bounce-back message will negatively impact individuals seeking help during a crisis? Would a bounce-back message have the effect of making the sender more discouraged, such that it that could increase, not decrease, the likelihood of suicide? Alternatively, if there is no automatic reply, and the sender is left wondering whether the Lifeline received the text message, would that uncertainty also increase sender’s likelihood of suicide? We seek comment on whether the benefits of receiving an automatic bounce-back message outweigh the potential risk of disengagement.

55. If we were to adopt a bounce-back requirement, we seek comment on the specific requirement we should adopt. To align with the scope of the proposed outer bound text-to-988 capability requirements, we propose that if we were to adopt a bounce-back requirement, we would require all covered text providers to provide automatic bounce-back messages to text messages, as defined by our outer bound proposal herein, sent to 988 where text-to-988 service is unavailable. We seek comment on this approach. Are there unique considerations for different technologies within the outer bound scope of text message that we should consider under our bounce-back message proposal, including such impact on technical implementation or costs? Should we consider requiring covered text providers to send automatic bounce-back messages in reply to messages outside the scope of the outer bound definition? Are there additional text or chat service providers that offer services beyond the proposed outer bound definition that we should include within the scope of our proposed bounce-back requirement? Should we limit any bounce-back requirement to covered text providers, as proposed, or should the requirement sweep more broadly? CTIA asserts that text-to-988 implementation should be consistent with existing SMS capabilities.<sup>143</sup> Should any bounce-back requirement we may explore likewise remain consistent with SMS? Is sending a bounce-back message in response to texts to 988 feasible on legacy SMS systems? We seek comment on the impact including other text or chat service providers, or other forms of messages, may have on the implementation costs, technical feasibility, and timeframe for our proposed bounce-back message requirements.<sup>144</sup>

56. Should we adopt a bounce-back requirement, we seek comment on whether and how to expand on the circumstances in which a covered text provider must provide a bounce-back message due to unavailability of text-to-988. In the text-to-911 context, when a customer is roaming away from his or her “home network” (i.e., the network of the customer’s mobile carrier), the CMRS provider operating the customer’s home network is nonetheless responsible for providing a bounce-back message when required; and the provider operating the network on which the customer is roaming must not impede the bounce-back response by the home network operator.<sup>145</sup> We seek comment on adopting a similar requirement here. Additionally, we anticipate that there may be circumstances in which the Lifeline is unable to receive and respond to texts, including where demand may exceed its capacity to respond. In instances amounting essentially to a “busy signal” for text delivery, are covered text providers capable of determining that the text cannot be delivered to 988? Would covered text providers be able to determine if a text to 988 is undeliverable due to the Lifeline’s inability, whether temporary or sustained, to receive and respond to the texts? Or should we establish a mechanism whereby the Lifeline may inform

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<sup>142</sup> Crisis Text Line Petition Comments at 3 (citing *988 Report and Order*, 35 FCC Rcd at 7373, para. 1); *see also* Crisis Text Line Reply at 3.

<sup>143</sup> CTIA Petition Reply at 1-2.

<sup>144</sup> We seek comment on the legal authority to mandate bounce-back messages for these additional providers in Part IV *infra*.

<sup>145</sup> *See* 47 CFR § 9.10(q)(7); *Bounce-Back Order*, 28 FCC Rcd at 7581-82, paras. 70-72; *Facilitating the Deployment of Text-to-911 and other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*; PS Docket Nos. 11-153 and 10-255, Order on Reconsideration, 28 FCC Rcd 14422, 14425-26, paras. 8-10 (2013).

providers of a temporary suspension of text-to-988 service, and should the bounce-back requirement apply until the suspension is lifted?<sup>146</sup> Lastly, we seek comment on considerations, either within the control of the covered text provider or the Lifeline's administrators, in which a message from an individual in crisis attempting to reach 988 may not be delivered, and therefore may benefit from receipt of a bounce-back message directing the individual to contact 988 by alternative means. Are there additional circumstances where we should require covered text providers to send bounce-back messages in response to 988 texts?

57. If we were to adopt a bounce-back requirement, we propose to adopt the same exceptions to our bounce-back notification requirement for text-to-988 as currently exist for the Commission's text-to-911 rules.<sup>147</sup> If we adopt that same approach, a covered text provider would not be required to provide an automatic bounce-back message when: (1) transmission of the text message is not controlled by the provider; (2) a consumer is attempting to text 988, through a text messaging application that requires CMRS service, from a non-service initialized handset; (3) the text-to-988 message cannot be delivered due to a failure in the Lifeline's routing network that has not been reported to the provider; or (4) a consumer is attempting to text 988 through a device that is incapable of sending texts via 3-digit codes, provided that the software for the device cannot be upgraded over the air to allow text-to-988. We seek comment on this approach. Are there other situations where a covered text provider should not be required to send bounce-back messages to consumers attempting to text to 988? Furthermore, we seek comment on the circumstances in which the provider of a pre-installed or downloaded interconnected text application would be considered to have "control" over the transmission of text messages for the purposes of any requirements we adopt. If a user or third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back messaging, should the application provider be presumed not to have control?

58. If we adopt a bounce-back requirement, should we specify or provide guidance regarding the content of the bounce-back message, and if so, what should we specify or encourage? Similar to automatic messages sent in response to undeliverable texts to 911,<sup>148</sup> we propose that any bounce-back messages to consumers attempting to text 988 would not require all covered text providers to use identical wording for their automatic responses. Rather, if we were to adopt a bounce-back requirement, we propose that a covered text provider would be deemed to have met its obligation so long as the bounce-back message to 988 includes, at a minimum, two essential points of information: (1) that text-to-988 is not available; and (2) identify other means to reach the Lifeline, such as by telephone. We seek comment on this approach and on alternatives. We seek comment on what role our federal partners and non-governmental mental health organizations could play in developing best practices regarding the content of messages.

## **7. Role of the Substance Abuse and Mental Health Services Administration and the Department of Veterans Affairs**

59. Although the Commission has an important role to play in expanding access to crisis counseling through its implementation of 988, SAMHSA and the VA are ultimately responsible for ensuring the continued success of these lifesaving resources. As such, we propose to direct the Bureau to continue to coordinate the implementation of 988 with SAMHSA and the VA, including any issues pertaining to the delivery of text messages to 988.

60. We seek comment on this proposal. How we can best support the work of our federal

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<sup>146</sup> See *Bounce-Back Order*, 28 FCC Rcd at 7574-75, para. 54 (requiring covered text providers that are supporting text-to-911 delivery to PSAPs "to provide a mechanism for the PSAP to request temporary suspension of text for any reason, including but not limited to network congestion, call-taker overload, PSAP failure, or security breach").

<sup>147</sup> 47 CFR § 9.10(q)(4).

<sup>148</sup> See 47 CFR § 9.10(q)(5); *Bounce-Back Order*, 28 FCC Rcd at 7578-81, paras. 63-69.

partners in administering the Lifeline and Veterans Crisis Line? We recognize that many commenters have stressed the importance of ensuring adequate funding and staffing for the Lifeline and the Veterans Crisis Line over the course of this proceeding.<sup>149</sup> Although these issues are beyond our jurisdiction,<sup>150</sup> are there unique considerations pertaining to staffing, funding, or the availability of other resources at the Lifeline or Veterans Crisis Line that we should be aware of as we consider adopting rules to require the delivery of text messages to 988? How should we account for the possibility that text-to-988 may be popular and increase demands on the Lifeline and Veterans Crisis Line? What resources will be needed for the Lifeline and Veterans Crisis Line to ensure that text-to-988 is a success? How should we account for our federal partners' budget cycles? We are cognizant of the potential burdens our proposals may impose upon our federal partners, including personnel, equipment, and resource allocation, and we seek comment on the impact the possible implementation solutions may have on SAMHSA and the VA when supporting text-to-988 service. To that end, we intend to coordinate with SAMHSA and the VA, and we encourage other industry stakeholders in the wireless and texting service industry to coordinate with these agencies as well. Assuming that our adoption of rules implementing text-to-988 capability will require expenditure of additional resources by SAMHSA and the VA, are there ways that we can structure our rules to minimize the burden on our federal partners? Are there any steps we should take to deter misuse of text-to-988, so as to limit the unnecessary expenditure of resources by our federal partners? Are there any solutions that have been employed in other contexts, such as text-to-911, that we or others should adapt here to deter misuse of text-to-988?

61. In addition, we encourage SAMHSA and the VA to coordinate with outside organizations that have expertise in providing crisis counseling via text message as they develop the infrastructure to receive and respond to text messages which may one day be delivered to the Lifeline and Veterans Crisis Line via 988. Many commenters in this proceeding have urged collaboration between private entities like the Trevor Project and federal agencies providing similar services.<sup>151</sup> We therefore seek comment on how to facilitate such coordination across federal agencies and the private sector, as we work towards our shared goal of ensuring that all Americans have ready access to mental health counseling and support services.

#### IV. LEGAL AUTHORITY

62. We propose concluding that we have the authority to adopt the rules proposed and for which we seek comment in this Further Notice under Title III of the Act and the Twenty-First Century Communications and Video Accessibility Act (CVAA).<sup>152</sup> We seek comment on these and any other sources of authority available to us. In particular, we seek comment on whether, and if so, to what extent, our numbering authority under section 251(e) of the Act provides an additional source of authority for the rules proposed and for which we seek comment in this Further Notice.<sup>153</sup> Finally, we also seek comment on whether we should employ our ancillary authority.

63. The rules we propose and for which we seek comment in this Further Notice are analogous to those the Commission has adopted to facilitate text-to-911 communications, which relied, in

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<sup>149</sup> See, e.g., T-Mobile Petition Comments at 3; see also *988 Report and Order*, 35 FCC Rcd at 7421, para. 85.

<sup>150</sup> See *988 Report and Order*, 35 FCC Rcd at 7421, para. 85.

<sup>151</sup> See, e.g., Danah Boyd *988 Notice* Comments at 1; Jennifer Battle *988 Notice* Comments at 1; National Alliance on Mental Illness *988 Notice* Comments at 4.

<sup>152</sup> 47 U.S.C. §§ 301, 303(b), 307, 309(a), 316(a); Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751; see also 47 U.S.C. § 615c(a), (g). We note that, in our preliminary review, the National Suicide Hotline Designation Act of 2020 does not provide additional support for—nor does it hinder—the actions proposed in this Further Notice. We seek comment on these views.

<sup>153</sup> 47 U.S.C. § 251(e).

part, on the Commission's Title III authority over wireless carriers, including sections 301,<sup>154</sup> 303,<sup>155</sup> 307,<sup>156</sup> 309,<sup>157</sup> and 316.<sup>158</sup> We propose concluding that, with respect to CMRS providers, Title III provides us with appropriate authority to require wireless carriers to support text-to-988 service and to require delivery of a bounce-back message to consumers in cases where delivery of a text to 988 cannot be completed.<sup>159</sup> As the Supreme Court has long recognized, Title III grants the Commission a “comprehensive mandate” regarding regulation of spectrum usage, and courts have routinely found that Title III provides the Commission with “broad authority to manage spectrum . . . in the public interest.”<sup>160</sup> As we explain, we believe the rules we propose in this Further Notice are likely to have significant public interest benefits.<sup>161</sup> And, the Commission has previously found that its Title III licensing authority supported adoption of a similar set of obligations in the text-to-911 context.<sup>162</sup> Therefore, we believe that with respect to CMRS providers, Title III provides sufficient authority here.<sup>163</sup> We seek comment on this analysis.

64. With respect to interconnected text messaging service providers, we propose to find that the CVAA provides us with authority to adopt the proposals in this Further Notice, as some commenters in this proceeding suggest.<sup>164</sup> Congress enacted the CVAA to increase the accessibility of modern

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<sup>154</sup> 47 U.S.C. § 301 (“It is the purpose of this [Act], among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority.”).

<sup>155</sup> 47 U.S.C. § 303(b) (authorizing the FCC to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class”); 47 U.S.C. § 303(g) (the Commission shall “encourage the larger and more effective use of radio in the public interest”); 47 U.S.C. § 303(r) (the Commission may “prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this [Act]”).

<sup>156</sup> 47 U.S.C. § 307 (authorizing the FCC to grant station licenses).

<sup>157</sup> 47 U.S.C. § 309(a) (authorizing the Commission, in acting on certain license applications, to determine “whether the public interest, convenience, and necessity will be served by granting such application”).

<sup>158</sup> 47 U.S.C. § 316(a) (authorizing the FCC to modify existing licenses to impose new license conditions if, in the judgment of the Commission, such action will promote the public interest, convenience and necessity).

<sup>159</sup> See *Nat’l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943); see also *Cellco Partnership v. FCC*, 700 F.3d 534, 537 (D.C. Cir. 2012) (upholding the FCC’s authority to rely on Title III provisions to impose data roaming rules).

<sup>160</sup> *Cellco*, 700 F.3d at 541 (quotation marks omitted).

<sup>161</sup> See *supra* Part III.A (explaining that the Commission tentatively concludes that text-to-988 can save lives); *infra* Part V (explaining that we expect that the benefits of text-to-988 will exceed its costs).

<sup>162</sup> See *Bounce-Back Order*, 28 FCC Rcd at 7587-92, paras. 89-99 (finding that several provisions of Title III provide the Commission with direct authority to impose text-to-911 bounce-back requirements on CMRS providers).

<sup>163</sup> We note that, following the release of the *Text-to-911 Order*, the Commission released a Declaratory Ruling classifying SMS and MMS services as “information services” under the Act. See *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, Declaratory Ruling, 33 FCC Rcd 12075, 12082, para. 17 (2018) (*Wireless Messaging Service Declaratory Ruling*). However, as the Commission explicitly noted in the *Declaratory Ruling*, this determination “does not affect the general applicability of the spectrum allocation and licensing provisions of Title III and the Commission’s rules” to SMS and MMS services, nor does it affect the specific application of sections 301, 303, 307, 309, and 316 to the Commission’s text-to-911 rules. *Id.* at 12101, paras. 50-51.

<sup>164</sup> See CTIA Petition Reply at 5; Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-338 at 1-2 (filed Apr. 14, 2021); see also Center for Dignity in Healthcare for People with Disabilities Petition Comments at 2.

communications technologies to people with disabilities, including access related to emergency services, and the Commission relied, in part, on this authority when it adopted similar text-to-911 requirements.<sup>165</sup> The CVAA provides the Commission with authority to “achiev[e] equal access to emergency services by individuals with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network.”<sup>166</sup> In particular, the CVAA granted the Commission the authority to adopt regulations to implement recommendations proposed by the Emergency Access Advisory Committee established by the CVAA, which concern access to 911 and NG911 services, and to adopt “other regulations” as are necessary to achieve reliable, interoperable communication that ensures access by persons with disabilities to an IP-enabled emergency services network.<sup>167</sup> We tentatively conclude that the CVAA provides authority for our proposals because access to 988 is similar to 911 access for the purposes of our CVAA authority. We seek comment on this tentative conclusion.<sup>168</sup> Do commenters agree that access to the Lifeline or Veterans Crisis Line through 988 constitute “access to emergency services” under the CVAA? Do commenters agree that text-to-988 is necessary to achieve reliable, interoperable communication that ensures access by persons with disabilities to an IP-enabled emergency services network? More generally, does the CVAA provide us with authority to adopt the rules proposed in this Further Notice?

65. We seek comment on any other sources of authority available to the Commission to adopt the proposals detailed in this Further Notice. In particular, we seek comment on whether our section 251(e) authority over numbering provides authority to require support for text-to-988 service. Section 251(e)(1) of the Act grants us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” and provides that numbers must be made “available on an equitable basis.”<sup>169</sup> This provision gives the Commission “authority to set policy with respect to all facets of numbering administration in the United States.”<sup>170</sup> The Commission found in the *988 Report and Order* that section 251(e) provides us with the ability to regulate interconnected and one-way VoIP providers that make use of numbering resources when they connect with the PSTN.<sup>171</sup> We seek comment on whether our numbering authority provides an additional, independent basis to adopt rules with respect to CMRS providers and interconnected text messaging services.

66. We also seek comment on the Commission’s authority to mandate location information with text-to-988 service. Section 222 of the Communications Act, as amended, provides strong legal protections for customer proprietary network information (CPNI), including geolocation information.<sup>172</sup>

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<sup>165</sup> See *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9878, para. 71; *Bounce-Back Order*, 28 FCC Rcd at 7592, para. 100.

<sup>166</sup> 47 U.S.C. § 615c(c)(1).

<sup>167</sup> 47 U.S.C. § 615c(g).

<sup>168</sup> See Center for Dignity in Healthcare for People with Disabilities Petition Comments at 2 (noting that the CVAA includes “provisions to ensure that people with disabilities have access to emergency information such as the next generation of 911 services” and that “[b]oth 911 and 988 services are envisioned as nationwide, three-digit points of access for all Americans in times of emergency” which should be accessible to everyone).

<sup>169</sup> 47 U.S.C. § 251(e)(1).

<sup>170</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-98 et al., Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996).

<sup>171</sup> See *988 Report and Order*, 35 FCC Rcd at 7394, para. 40; see also *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6878, para. 78 (2015) (explaining that section 251(e)(1) allows the Commission “to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers”).

<sup>172</sup> 47 U.S.C. § 222; see also § 222(a) (imposing a duty on all telecommunications carriers, among other things, to protect the confidentiality of proprietary information of customers).

Section 222(d) provides exceptions to allow CPNI and call location data to be shared for “emergency services.” We seek comment on whether this could encompass the transmission of geolocation information with 988 calls.<sup>173</sup> Should we choose to require covered text providers to include location information with texts to 988, does section 222 authorize the disclosure of location information with texts to 988? Are there other privacy concerns that we should consider with regard to texts to 988?

67. Finally, we seek comment on whether exercise of our ancillary authority would be necessary or appropriate to support any of our proposed rules. The Commission relied in part on ancillary authority to apply the bounce-back notification requirement to providers of interconnected text messaging services when it adopted text-to-911 requirements.<sup>174</sup> Would a similar finding be appropriate with respect to any aspect of our text-to-988 rules?

## V. BENEFITS AND COSTS OF TEXT-TO-988

68. We expect to find that the benefits of requiring service providers to support text-to-988 service will exceed the costs of implementation. We seek comment on this proposal, and any specific data regarding both the benefits of facilitating access to the Lifeline via texts to 988 and on the costs or burdens implementation of text-to-988 may impose upon covered text providers.

69. Suicide causes shock, anguish, grief, and guilt among victims’ families and friends. Suicide attempts exact a similarly heavy toll on the community and the victim. The long-lasting damage from mental distress and suicide can extend deep into communities. As outlined above, we preliminarily believe that enabling text-to-988 service will improve access to lifesaving resources for individuals contemplating suicide or experiencing mental health crises, especially for members of at-risk communities such as young people, LGBTQ, people of color, and individuals with disabilities, thereby saving lives.<sup>175</sup> By expanding access to counseling, text-to-988 may help break the cycle of pain, suffering, and suicide. We seek comment generally on these and other important benefits that may follow from increased access to mental health resources via texting to 988.

70. We further seek comment on ways to quantify these benefits. Of course, the benefits to individuals who the Lifeline or Veterans Crisis Line places on a path to recovery, much less to their families and friends, cannot be reduced to dollars and cents. That being said, even if text-to-988 service could annually place just one-per-one-thousand suicide victims on a path to long-term recovery, the economic gain would be \$19.2 million in any single year, for a present-value of \$78.7 million over five years and \$134.9 million over ten years.<sup>176</sup> We seek comment on this analysis.

<sup>173</sup> 47 U.S.C. § 222(d)(4).

<sup>174</sup> See *Bounce-Back Order*, 28 FCC Rcd at 7600, paras. 128-40 (finding that applying bounce-back rules to these providers is “reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities and thus ‘necessary in the execution of its functions’”).

<sup>175</sup> See *supra* Part III.A.

<sup>176</sup> See *988 Report and Order*, 35 FCC Rcd at 7374, para. 75 (“For every expected life saved, the [Value of a Statistical Life (VSL)] is equal to \$9.6 million”); see also *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-91 and 15-94, Second Report and Order, 33 FCC Rcd 1320, 1345-46, para. 43, nn.177-78 (2018); Memorandum from Molly J. Moran, Acting General Counsel, and Carlos Monje, Assistant Secretary for Transportation Policy, Office of the Secretary of Transportation, Department of Transportation, Guidance on Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2016 Adjustment (Aug. 8, 2016) (Department of Transportation 2016 VSL Memorandum), <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20a%20Statistical%20Life%20Guidance.pdf>.

In estimating benefits, we focus on teens and individuals with disabilities, as individuals in these groups are more likely to use a text-to-988 capability. Based on the most recent CDC data from 2015-2019, 11,283 youth (ages 15-19) and an estimated 13,101 individuals who are deaf, hard of hearing, deafblind or speech disabled committed suicide (using an estimated incidence among adults of 6%), or an average of more than 2,000 per year for each

(continued...)

71. Our proposed analysis does not examine certain categories of benefits. For example, we have not estimated the cost savings from medical expenses and loss-of-work avoided through reduced suicides and suicide attempts. We also have not estimated the cost savings of reduced burdens on PSAPs, police, ambulance, and fire and rescue services, which currently respond to some 911 texts that will be routed to the Lifeline, where they will be more effectively and efficiently de-escalated or otherwise resolved. Moreover, we have not examined the benefits of text-to-988 usage by every demographic group. For example, smartphone ownership and suicide are particularly common in younger age groups.<sup>177</sup> To accurately estimate these benefits, we seek comment on how broadly we should define youth who may text to 988.<sup>178</sup> Relatedly, there is the possibility that adults without hearing or speech disabilities may rely exclusively on text-to-988 for added privacy or convenience, meriting inclusion in our benefit estimates. We also seek comment on ways to better assess the long-term impact of text-to-988 service. Without longitudinal studies evaluating the long-term effectiveness of suicide call centers, we cannot pinpoint how many suicides text-to-988 will prevent in the long run. Available survey-based studies, however, reveal call centers can substantially reduce suicides during the initial call and follow-up periods.<sup>179</sup> We seek comment on the types and magnitudes of these and other benefits not covered in this Further Notice, as well as any overlooked categories of costs.

72. In the *Text-to-911* proceeding, the Commission estimated that the total cost for covered providers to implement text-to-911 service amounted to less than \$21 million.<sup>180</sup> The costs of nationwide deployment of text-to-911 fell into three categories: CMRS and PSAP system cost components; interconnected text providers' software upgrades; and bounce-back messaging application alterations and server platform modifications. Assuming that all or most of the software and equipment necessary to receive and transmit 911 texts will again be needed to deploy text-to-988, we expect that the

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group. Centers for Disease Control and Prevention, *Fatal Injury Reports, National, Regional and State, 1981-2019*, WISQARS – Web-based Injury Statistics Query and Reporting System, (Feb. 20, 2020), <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>; Ross E. Mitchell, *How Many Deaf People Are There in the United States? Estimates from the Survey of Income and Program Participation*, 11 *Journal of Deaf Studies and Deaf Education*, no. 1, 112 (2006), <https://academic.oup.com/jdsde/article/11/1/112/410800> (estimating that 3.7% of Americans are deaf or hard of hearing); Statistics on Voice, Speech, and Language, National Institute on Deafness and Communication Disorders (NIDCD), <https://www.nidcd.nih.gov/health/statistics/statistics-voice-speech-and-language> (estimating that 7.5 million Americans have trouble using their voices).

To calculate the estimated benefits for a single year, we multiply the annual average by 0.1% and the VSL (2,000\*0.001\*\$9.6 million = \$19.2 million). We discount over five years and ten years at a 7% discount rate. See OMB, Circular A-4, Regulatory Analysis, Section E(8) Discount Rates, Real Discount Rates of 3 Percent and 7 Percent, (Sept. 17, 2003), [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

<sup>177</sup> According to the *Common Sense Census: Media Use by Tweens and Teens, 2019*, 53% of children have their own smartphone by age 11, and 69% have one at age 12. Common Sense Media, *The Common Sense Census: Media Use by Tweens and Teens, 2019* (Oct. 28, 2019), <https://www.common sense media.org/Media-use-by-tweens-and-teens-2019-infographic>. CDC data indicate that between 2015-2019, there were a total of 2,492 suicides among children 10-14 year-olds, an average annual rate of 2.40 per 100,000 in this age group. Centers for Disease Control and Prevention, *Fatal Injury Reports, National, Regional and State, 1981-2019*, WISQARS – Web-based Injury Statistics Query and Reporting System, (Feb. 20, 2020), <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html>.

<sup>178</sup> Currently, our estimated benefits analysis looks at youth ages 15-19. See *supra* n.176.

<sup>179</sup> For example, Tyson et al. find a 25% percent reduction in callers' self-harming thoughts and a 17% reduction in callers' suicidal thoughts between the beginning and end of helpline calls. Philip Tyson et al., *Preventing Suicide and Self-Harm: Evaluating the Efficacy of a Helpline From a Service User and Helpline Worker Perspective*, *Crisis* (2016), Vol. 37, Issue 5, 353-360, p. 355-356, <https://econtent.hogrefe.com/doi/full/10.1027/0227-5910/a000390>.

<sup>180</sup> *Text-to-911 Second Report and Order*, 29 FCC Rcd at 9857-61, paras. 23-31 (finding a total implementation cost of \$20 million for CMRS providers over five years and noting record support for the Commission's estimate of \$555,000 in implementation costs for interconnected text messaging service providers to support text-to-911 capability).



implementation costs for text-to-988 service will be comparable to the costs for text-to-911 service. Therefore, we preliminarily estimate that total costs for implementing text-to-988 will be approximately \$27 million.<sup>181</sup> We seek comment on this analysis, including our preliminary assumption that text-to-911 software and equipment can be leveraged for texting to 988. Do commenters agree with CTIA that there are “significant technical and policy differences” between 988 and 911 service,<sup>182</sup> and if so, how might those differences impact our evaluation? Furthermore, we seek comment on whether cost estimates for PSAPs from the *Text-to-911* proceeding reflect an appropriate estimate for costs to the Lifeline or Veterans Crisis Line. Are there other costs borne by the Lifeline or Veterans Crisis Line needed to implement text-to-988 service?

73. We preliminarily assume that some costs may be streamlined or reduced due to the previous implementation of text-to-911, which may be leveraged to facilitate text-to-988 capability and seek comment on this assumption.<sup>183</sup> As a result, we anticipate that costs for covered text providers to implement text-to-988 may be less than what we estimate above and seek comment on this finding. We further seek comment on what extent covered text providers may rely upon existing text-to-911 services and how to quantify the costs needed to upgrade such systems to support text-to-988.

74. Deterring suicide has benefits that simply cannot be reduced to numbers—saving lives has value beyond measure. While recognizing this fact, to illustrate how the benefits of our proposal relate to the more aptly quantified costs, we attempt to estimate the quantifiable value of suicide prevention using a measure of collective willingness to pay. We propose calculating that the level of suicide prevention needed to generate benefits exceeding our preliminary estimate of \$27 million in text-to-988 costs is a total of four suicides avoided over five years. Specifically, the level of teen suicide prevention needed to generate benefits exceeding \$27 million is one per 2,821, and the level of suicide prevention among individuals with disabilities to generate benefits exceeding \$27 million is one per 3,275.<sup>184</sup> Even assuming that text-to-988 prevented no suicides in its inaugural year as the service rolled out but prevented one suicide in each of the ensuing four years, measured in terms of the public’s willingness to pay for that mortality reduction, the present value of the benefit would be \$30.39 million,<sup>185</sup>

<sup>181</sup>  $\$26,948,530 = \$19,024,916 + \$613,274 + \$7,310,340$ . Using cost estimates from the *Text-to-911* proceeding as a model, we estimate it will cost \$19,024,916 for CMRS providers to implement text-to-988, \$613,275 for interconnected text messaging service providers to implement text-to-988, and \$7,310,340 for Lifeline to route texts to local crisis centers. *Text to 911 Second Further Notice*, 29 FCC Rcd at 1561, para. 35 (estimating interconnected text provider costs of \$555,000); Intrado, Inc., Comments, PS Docket Nos. 11-153 and 10-255, at 14 (rec. Dec. 12, 2011) (estimating costs of \$20 million to wireless service providers, PSAP system minimum positions of \$277 million, and PSAP software costs of \$6 million over five years in 2011 dollars). We convert Intrado’s 2011 dollar figures to 2021 dollars by multiplying by a Consumer Price Index (CPI) factor of 1.16, then discounting over five years at a 7% discount rate. Similarly, we convert the 2014 dollar text message figure into 2021 dollars by using a CPI factor of 1.105. Bureau of Labor Statistics, *CPI Inflation Calculator*, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Mar. 30, 2021). To soberly assess Lifeline capability, we assume that 100% of Lifeline call centers may require SMS upgrades and thus multiply PSAP software estimates by 2.22. To estimate the costs to equip the more than 180 Lifeline crisis centers, we calculate an average cost based on an estimated per PSAP cost of \$40,613 ( $= (\$263,277,595 + \$12,891,283) / 6,800$ ), for a total of \$7,310,340 ( $= 180 * \$40,613$ ).

<sup>182</sup> CTIA Petition Reply at 4.

<sup>183</sup> See CTIA Petition Reply at 4, n.12 (The “ATIS J-STD-110 [standard] should serve as a starting point for technical and operational implementation for text-to-988, which should be consistent with the existing capabilities of native short message service (SMS) capabilities. However, as 9-8-8 will operate on a nationwide basis and routing on the coarse location of the message sender should not be necessary, there will be some technical and operational differences between text-to-988 and text-to-911.”).

<sup>184</sup> See *supra* n. 176 (“In estimating benefits, we focus on teens and individuals with disabilities, as individuals in these groups are more likely to use a text-to-988 capability.”).

<sup>185</sup> Present value of an uneven stream of payments of \$9.6 million (\$0 in Year 1 + \$9.6 million per year in Year 2 through Year 5) at a 7% discount rate.

more than three million dollars greater than the total cost. We seek comment on our analysis.

75. Using break-even points and highly attainable suicide reductions that are well below those suggested by survey studies, we estimate that the benefits of text-to-988 will far exceed the costs. Pooling teenagers and individuals with disabilities, we estimate that text-to-988 would need to prevent one suicide out of every six thousand in order to break-even in the first five years of deployment. Slightly raising the bar to preventing one suicide per one thousand, we further estimate that the more than \$157.5 million estimated benefit from modestly reducing suicides in two vulnerable populations far exceeds the text-to-988 deployment costs of \$19.6 million incurred by CMRS and interconnected text providers. Even if sizable Lifeline deployment costs are added, increasing estimated total cost to nearly \$27 million, the estimated benefits of text-to-988 remain greater by a multiple of nearly six.<sup>186</sup> We seek comment on these estimates. We also seek comment on the methods and underlying benefits and costs estimates, including those submitted by third parties, used to arrive at our overall proposed conclusion.

## VI. PROCEDURAL MATTERS

76. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>187</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

77. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act (RFA),<sup>188</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Further Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>189</sup>

78. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the

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<sup>186</sup> Over ten years, the benefits rise to \$269.8 million, exceeding costs by a multiple of nearly ten.

<sup>187</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>188</sup> *See* 5 U.S.C. § 603.

<sup>189</sup> *See* 5 U.S.C. § 603(a).

dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

79. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

80. *Paperwork Reduction Act of 1995 Analysis.* This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>190</sup>

81. *Contact Person.* For further information about this rulemaking proceeding, please contact Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0388 or [michelle.sclater@fcc.gov](mailto:michelle.sclater@fcc.gov).

## VII. ORDERING CLAUSES

82. IT IS ORDERED, pursuant to sections 201, 251, 301, 303, 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 251, 301, 303, 307, 309, 316, that the Further Notice of Proposed Rulemaking in WC Docket No. 18-336 IS ADOPTED.

83. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Communications Equality Advocates IS GRANTED IN PART to the extent described herein.

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<sup>190</sup> See 44 U.S.C. § 3506(c)(4).

84. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## PROPOSED RULES

The Federal Communications Commission amends part 52 of Title 47 of the Code of Federal Regulations as follows:

## PART 52 – NUMBERING

1. The legal authority citation for part 52 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201-205, 207-209, 218, 225-227, 251-252, 271, 301, 303, 307, 309, 316, 332, unless otherwise noted.

\* \* \* \* \*

**Subpart E –Universal Dialing Code for National Suicide Prevention and Mental Health Crisis Hotline System**

2. Section 52.201 to read as follows:

**§ 52.201 Texting to the National Suicide Prevention and Mental Health Crisis Hotline.**

(a) *Support for 988 text message service.* Beginning [[DATE]], all covered text providers must have the capability to route a covered 988 text message to the current toll free access number for the National Suicide Prevention Lifeline, presently 1-800-273-8255 (TALK).

(b) *Definitions.* For purposes of this section:

- (1) *988 text message (A)* means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number, N11 service code, or 988; (B) includes a SMS message and a MMS message; and (C) does not include—(i) a real-time, two-way voice or video communication; or (ii) a message sent over an IP-enabled messaging service to another user of the same messaging service, except a message described in clause (B).
- (2) *Covered 988 text message* means a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.
- (3) *Covered text provider* shall mean all Commercial Mobile Radio Services (CMRS) providers and providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.
- (4) *Multimedia message service (MMS)* shall have the same definition as the term in § 64.1600(k) of the Commission’s rules.
- (5) *Short message service (SMS)* shall have the same definition as the term in § 64.1600(m) of the Commission’s rules.

**APPENDIX B****INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Implementation of the National Suicide Hotline Improvement Act of 2018 Further Notice of Proposed Rulemaking (Further Notice). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In this Further Notice, the Commission proposes and seeks comment on requiring CMRS providers and providers of interconnected text messaging services that enable consumers to send text messages to, and receive text messages from, the PSTN (covered text providers) to enable delivery of text messages to 988. The Commission proposes to require that covered text providers route 988 text messages to the National Suicide Prevention Lifeline's (Lifeline) 10-digit number, currently 1-800-273-8255 (TALK). The Commission believes these proposed rules will expand the availability of mental health and crisis counseling resources to Americans who suffer from depressive or suicidal thoughts, by allowing individuals in crisis to reach the Lifeline by texting 988.

**B. Legal Basis**

3. The legal basis for any action that may be taken pursuant to this Further Notice is contained in sections 201, 251, 301, 303, 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 251, 301, 303, 307, 309, 316.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.<sup>6</sup> A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 845 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> See 5 U.S.C. § 601(6).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.<sup>10</sup>

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were

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<sup>7</sup> See 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

<sup>9</sup> See U.S. Small Business Administration, Office of Advocacy, *What's New With Small Business?* (Sept. 2019), <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), Who May File Form 990-N to Satisfy Their Annual Reporting Requirement*, <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> (last visited Mar. 30, 201). We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also U.S. Census Bureau, *About* (Apr. 25, 2019), <https://www.census.gov/programs-surveys/cog/about.html>

<sup>16</sup> See U.S. Census Bureau, *2017 Census of Governments – Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]* (Feb. 12, 2020), <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *Id.*



36,931 general purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>22</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>23</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>24</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>25</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

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<sup>17</sup> See U.S. Census Bureau, *2017 Census of Governments – Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]* (Feb. 12, 2020) <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments. *Id.*

<sup>18</sup> See U.S. Census Bureau, *2017 Census of Governments – Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]* (Feb. 12, 2020), <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000. *Id.*

<sup>19</sup> See U.S. Census Bureau, *2017 Census of Governments – Organization, https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]* (Feb. 12, 2020), <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also U.S. Census Bureau, *2017 Census of Governments – Organization, Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04]* (Feb. 12, 2020). <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments – Organizations Tables 5, 6, and 10. See *supra* nn.17-19.

<sup>22</sup> See U.S. Census Bureau, *2017 NAICS Definition, 517311 Wired Telecommunications Carriers*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311> (last visited Mar. 30, 2021).

<sup>23</sup> See 13 CFR § 121.201; see also U.S. Census Bureau, *2017 NAICS Definition, 517311 Wired Telecommunications Carriers*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311> (last visited Mar. 30, 2021).

<sup>24</sup> See U.S. Census Bureau, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false> (last visited Mar. 30, 2021)

9. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>26</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.<sup>28</sup> Of that total, 3,083 operated with fewer than 1,000 employees.<sup>29</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

10. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>30</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>32</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>33</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>34</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>35</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

11. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers<sup>36</sup> and under that

(Continued from previous page) \_\_\_\_\_

<sup>25</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>26</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>27</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>28</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>29</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>31</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>32</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>33</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>34</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>35</sup> *Id.*

<sup>36</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

size standard, such a business is small if it has 1,500 or fewer employees.<sup>37</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.<sup>38</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>39</sup> Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>40</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>41</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>42</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>43</sup> Of this total, 70 have 1,500 or fewer employees.<sup>44</sup> Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.<sup>45</sup>

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>46</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>47</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a

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<sup>37</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>38</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>39</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>40</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

<sup>46</sup> 5 U.S.C. § 601(3).

<sup>47</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>48</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>49</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>50</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>51</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>52</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>53</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

14. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>54</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>55</sup> U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year.<sup>56</sup> Of that number, all operated with fewer than 1,000 employees.<sup>57</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>58</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than

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<sup>48</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>49</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>50</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>51</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>52</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*). [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>53</sup> *Id.*

<sup>54</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

<sup>55</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>56</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>57</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

<sup>58</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

1,500 employees.<sup>59</sup> Consequently, the Commission estimates that the majority of local resellers are small entities.

15. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>60</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>61</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>62</sup> 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year.<sup>63</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>64</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>65</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>66</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers.<sup>67</sup> The applicable SBA size standard consists of all such companies having 1,500 or fewer employees.<sup>68</sup> U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year.<sup>69</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>70</sup>

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<sup>59</sup> See *id.*

<sup>60</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

<sup>61</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>62</sup> *Id.*

<sup>63</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>64</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA’s size standard.

<sup>65</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>66</sup> See *id.*

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>68</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>69</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>70</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.



Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>71</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>72</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers.<sup>73</sup> This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>74</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>75</sup> U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.<sup>76</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>77</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to the Commission's Form 499 Filer Database, 86 active companies reported that they were engaged in the provision of prepaid calling cards.<sup>78</sup> The Commission does not have data regarding how many of these companies have 1,500 or fewer employees, however, the Commission estimates that the majority of the 86 active prepaid calling card providers that may be affected by these rules are likely small entities.

18. *Wireless Telecommunications Carriers (except Satellite).* Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable is Wireless Telecommunications Carriers (except Satellite)<sup>79</sup>, which the SBA small business size standard is such a business is small if it 1,500 persons or less.<sup>80</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>81</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of

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<sup>71</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>72</sup> *Id.*

<sup>73</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

<sup>74</sup> *Id.*

<sup>75</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>76</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>77</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

<sup>78</sup> See Federal Communications Commission, *FCC Form 499 Filer Database*, <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited July 10, 2020).

<sup>79</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

<sup>80</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

1000 employees or more.<sup>82</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

19. According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services.<sup>83</sup> Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees.<sup>84</sup> Thus, using available data, we estimate that the majority of Wireless Carriers and Service Providers can be considered small.

20. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>85</sup> The SBA size standard for this industry establishes as small any company in this category with annual receipts less than \$41.5 million.<sup>86</sup> Based on U.S. Census Bureau data for 2012, 367 firms operated for the entire year.<sup>87</sup> Of that number, 319 firms operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more.<sup>88</sup> Based on this data, the Commission estimates that a majority of firms in this industry are small.

21. *Cable Companies and Systems (Rate Regulation).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>89</sup> Industry data indicate that there are 4,600 active cable systems in the United States.<sup>90</sup> Of this total, all but five cable

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<sup>81</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>82</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>83</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>84</sup> See *id.*

<sup>85</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "515210 Cable and Other Subscription Programming," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515210&search=2017%20NAICS%20Search>.

<sup>86</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>87</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515210&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>88</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>89</sup> 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>90</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Oct. 25, 2016).



operators nationwide are small under the 400,000-subscriber size standard.<sup>91</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>92</sup> Commission records show 4,600 cable systems nationwide.<sup>93</sup> Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>94</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

22. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>95</sup> As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.<sup>96</sup> Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>97</sup> Based on available data, we find that all but five cable operators are small entities under this size standard.<sup>98</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>99</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. *All Other Telecommunications*. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>100</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>101</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>102</sup> The SBA has developed a small business size standard for "All Other

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<sup>91</sup> S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com/> (Dec 2019). The five cable operators all had more than 400,000 basic cable subscribers.

<sup>92</sup> 47 CFR § 76.901(c).

<sup>93</sup> See *supra* n.90.

<sup>94</sup> *Id.*

<sup>95</sup> 47 U.S.C. § 543(m)(2); see also 47 CFR § 76.901(e).

<sup>96</sup> S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019, U.S. Cable MSO Industry Total, see also U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y*, <https://platform.marketintelligence.spglobal.com>.

<sup>97</sup> 47 CFR § 76.901(e).

<sup>98</sup> S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com>. The five cable operators all had more than 486,460 basic cable subscribers.

<sup>99</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

<sup>100</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>101</sup> *Id.*

Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less.<sup>103</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>104</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.<sup>105</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.<sup>106</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>107</sup> The SBA has established a small business size standard for this industry of 1,250 or fewer employees.<sup>108</sup> U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.<sup>109</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.<sup>110</sup> Based on this data, we conclude that a majority of manufacturers in this industry are small.

25. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.<sup>111</sup> Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.<sup>112</sup> The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees.<sup>113</sup> U.S. Census Bureau data for 2012

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<sup>102</sup> *Id.*

<sup>103</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>104</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>105</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>106</sup> See U.S. Census Bureau, *2017 NAICS Definitions*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2017>.

<sup>107</sup> *Id.*

<sup>108</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>109</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

<sup>110</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>111</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334413 Semiconductor and Related Device Manufacturing,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334413&search=2017>.

<sup>112</sup> *Id.*

<sup>113</sup> See 13 CFR § 121.201, NAICS Code 334413.

show that there were 862 establishments that operated that year.<sup>114</sup> Of this total, 843 operated with fewer than 1,000 employees.<sup>115</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

26. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.<sup>116</sup> Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.<sup>117</sup> These establishments may design, develop, and publish, or publish only.<sup>118</sup> The SBA has established a size standard for this industry of annual receipts of \$41.5 million or less per year.<sup>119</sup> U.S. Census data for 2012 indicates that 5,079 firms operated for the entire year.<sup>120</sup> Of that number 4,691 firms had annual receipts of less than \$25 million and 166 firms had annual receipts of \$25,000,000 to \$49,999,999.<sup>121</sup> Based on this data, we conclude that a majority of firms in this industry are small.

27. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>122</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>123</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>124</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>125</sup> Of this total, 3,083 operated with fewer than

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<sup>114</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334413, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334413&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

<sup>115</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>116</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “511210 Software Publishers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=511210&search=2017>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> See 13 CFR § 121.201, NAICS Code 511210.

<sup>120</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 511210, <https://data.census.gov/cedsci/table?y=2012&n=511210&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>121</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>122</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>123</sup> *Id.*

<sup>124</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>125</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

1,000 employees.<sup>126</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

28. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.<sup>127</sup> The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.<sup>128</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>129</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>130</sup> Consequently, under this size standard a majority of firms in this industry can be considered small

29. *All Other Information Services*. The U.S. Census Bureau has determined that this category “comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).”<sup>131</sup> The SBA has developed a small business size standard for this category, which consists of all such firms with annual receipts of \$30 million or less.<sup>132</sup> U.S. Census Bureau data for 2012 show that there were 512 firms that operated for the entire year.<sup>133</sup> Of those firms, a total of 498 had annual receipts less than \$25 million and 7 firms had annual receipts of \$25 million to \$49, 999,999.<sup>134</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

30. The Further Notice proposes and seeks comment on rules to require covered text providers to support text messaging to 988. It tentatively concludes that text-to-988 functionality will greatly improve consumer access to the Lifeline, particularly for at-risk populations, and thereby save lives. The proposed rules would require CMRS providers and interconnected text messaging service providers to route texts sent to 988 to the 10-digit Lifeline number, presently 1-800-273-8255 (TALK).

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<sup>126</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>127</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>128</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>129</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>130</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>131</sup> See U.S. Census Bureau, *2017 NAICS Definition, “519190 All Other Information Services”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=519190&search=2017+NAICS+Search&search=2017>.

<sup>132</sup> See 13 CFR § 121.201, NAICS Code 519190.

<sup>133</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 519190, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>134</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

The Further Notice proposes (1) establishing a definition that sets the outer bound of text messages sent to 988 that covered text providers may be required to support; and (2) directing the Wireline Competition Bureau (Bureau) to identify text formats within the scope of that definition that the Lifeline can receive and thus covered text providers must support by routing to the 10-digit Lifeline number. The Further Notice seeks comment on this proposal. The Commission preliminarily believes that applying the same rules equally to all entities in this context is necessary to alleviate potential consumer confusion from adopting different rules for different covered text providers. The Commission proposes that the costs and/or administrative burdens associated with the rules will not unduly burden small entities.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.<sup>135</sup>

32. In the Further Notice, the Commission seeks comment from all entities, including small entities, regarding the impact of these proposed rules on small entities. The Commission seeks comment on the impact, cost or otherwise, that requiring text messaging to 988 capability will impose on regional and rural carriers and small businesses.<sup>136</sup> The Commission also seeks comment on whether to adopt any exemptions for small businesses and if so, under what circumstances. The Commission asks and will consider alternatives to the proposals and on alternative ways of implementing the proposals.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

33. None.

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<sup>135</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>136</sup> See *supra* paras. 37, 42, 46.

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Further Notice of Proposed Rulemaking (April 22, 2021).

This has been a year like no other. The pandemic-era pressures on our well-being are real. The consequences of closed-down businesses, shuttered classrooms, and distancing from family and friends are palpable. We're only starting to understand the mental toll this period has taken on all of us. But as we emerge from this time, I hope we can be mindful that there are those around us who may need a helping hand.

Today's rulemaking is all about how we provide that help. Suicide is now the second most common cause of death among teenagers and young adults. The rate of suicide for young girls has tripled over the last twenty years. For Black teens, we've seen similarly devastating increases. Lesbian, gay, bisexual, transgender, and queer young adults contemplate suicide at a rate more than four times higher than their cisgender peers. Plus, young people who are deaf or hard of hearing are more likely to consider suicide than those without hearing disabilities. Now consider this pandemic and the associated economic challenges and you have the potential for a whole new level of crisis.

Let's all remind these young people that they are not alone. Family and friends can lend their ear and support. There is also the National Suicide Prevention Lifeline—1-800-273-TALK—a hotline that is available every hour of every day. Even better, last year the Federal Communications Commission set up a way to make this hotline easier to reach by simply dialing 988, a three-digit code. My predecessor in this role, Chairman Ajit Pai, deserves real kudos for making this a priority and ensuring that the 988 hotline will be available to all next year.

Now let's go one step further. While a voice hotline has its benefits, traditional telephone calls are no longer native communications for many young people. Texting is where they turn first. That's especially true for many at-risk communities, including LGBTQ youth and people with disabilities. So it's time to make the suicide prevention hotline text accessible with 988. Because it shouldn't make a difference how you reach out in an emergency. We should connect people to mental health resources no matter how they communicate in crisis.

Of course, making this happen will take some work. So we start that process with our rulemaking today. We seek input from the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration and the Department of Veterans Affairs who have been our partners in developing the 988 system. We seek guidance from those who helped support 988 for the hotline, as well as all others with insights into how a texting system might work. We also seek comment on the technical and legal issues associated with this approach—how to define covered text messages, how to make sure that carriers properly direct texts to 988, what network and equipment upgrades may be necessary to support this system, and how quickly to require carriers to implement our proposal.

I want to specifically thank our partners at SAMHSA and the VA, who oversee the existing National Suicide Prevention Lifeline and the Veterans Crisis Line. We can't get to text to 988 without you, and I pledge that we will work with you every step of the way.

A big thank you also goes to the agency staff who have worked tirelessly on this effort, including Pamela Arluk, Allison Baker, Emily Caditz, Elizabeth Cuttner, Justin Faulb, Jesse Goodwin, Heather Hendrickson, Lisa Hone, Daniel Kahn, Melissa Droller Kirkel, Kris Monteith, Zachary Ross, and Michelle Sclater of the Wireline Competition Bureau; Garnet Hanley, Charles Mathias, Susan Mort, Wesley Platt, Jessica Quinley, and Catherine Schroder of the Wireless Telecommunications Bureau; Terry Cavanaugh, Richard Mallen, and Linda Oliver of the Office of General Counsel; Patrick Brogan, Stacy Jordan, Eugene Kiselev, Eric Ralph, and Emily Talaga of the Office of Economics and Analytics; Diane Burstein, Eliot Greenwald, Debra Patkin, and Suzy Rosen Singleton of the Consumer and

Governmental Affairs Bureau; and Brenda Boykin, Kenneth Carlberg, John Evanoff, David Furth, Rasoul Safavian, and Rachel Wehr of the Public Safety and Homeland Security Bureau.



**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Further Notice of Proposed Rulemaking (April 22, 2021).

Ensuring Americans have access to mental health resources during times of crisis is imperative, especially as the pandemic continues. Today's Further Notice of Proposed Rulemaking starts the process of supporting text messaging to 988, the three-digit dialing code for the National Suicide Prevention Lifeline. Texting is a vital communications medium for many of the populations most at risk for suicide, including young people, minority communities, and individuals with disabilities. Throughout the pandemic, texting has been essential for mental health support. At the onset of the pandemic in April 2020, the Substance Abuse and Mental Health Services Administration reported a one thousand percent spike in text messages from Americans seeking crisis counseling compared to the previous year.<sup>327</sup>

Expanding access to mental health resources is critical for communities of color. Suicide remains the second most common cause of death among teenagers and young adults,<sup>328</sup> and suicide rates are rising at an alarming rate among Black youth in particular. According to the National Institute of Mental Health, suicide is the second leading cause of death for Black children between the ages of 10 and 14 and the third leading cause of death for Black children between the ages of 15 and 19.<sup>329</sup> Research indicates that Black children 12 years old and younger are more likely to die by suicide than their white peers and suggests that a lack of access to mental health resources may explain the disparity.<sup>330</sup> Moreover, preliminary studies in Illinois, Maryland, and Connecticut determined suicide rates among Black Americans and other people of color rose during the pandemic despite the overall suicide rate decreasing.<sup>331</sup>

This moment presents the opportunity to elevate an accurate narrative about mental health in communities of color and save lives. I am pleased to approve this FNPRM because text-to-988 can ensure our most vulnerable populations can more readily access the National Suicide Prevention Lifeline's life-saving resources. I thank the staff of the Wireline Competition Bureau for their hard work preparing this FNPRM.

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<sup>327</sup> Paige Winfield Cunningham & Paulina Firozi, *The Health 202: Texts to Federal Government Mental Health Hotline Up Roughly 1,000 Percent*, The Washington Post (May 4, 2020), <https://www.washingtonpost.com/news/powerpost/paloma/the-health-202/2020/05/04/the-health-202-texts-to-federal-government-mental-health-hotline-up-roughly-1-000-percent/5eaae16c602ff15fb0021568/>.

<sup>328</sup> Angela Liang & Paul Nestadt, *Suicide Risk in the COVID-19 Pandemic*, John Hopkins Medicine (Feb. 13, 2021), [https://www.hopkinsguides.com/hopkins/view/Johns\\_Hopkins\\_Psychiatry\\_Guide/787393/all/Suicide\\_Risk\\_in\\_the\\_COVID\\_19\\_Pandemic](https://www.hopkinsguides.com/hopkins/view/Johns_Hopkins_Psychiatry_Guide/787393/all/Suicide_Risk_in_the_COVID_19_Pandemic).

<sup>329</sup> Joshua Gordon, *Addressing the Crisis of Black Youth Suicide*, National Institute of Mental Health (Sept. 22, 2020), <https://www.nimh.nih.gov/about/director/messages/2020/addressing-the-crisis-of-black-youth-suicide.shtml>.

<sup>330</sup> *Id.*

<sup>331</sup> Roni Caryn Rabin, *U.S. Suicide Declined Over All in 2020 but May Have Risen Among People of Color*, The New York Times (Apr. 15, 2021), <https://www.nytimes.com/2021/04/15/health/coronavirus-suicide-cdc.html?referringSource=articleShare>.