

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153; *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255

The FCC has no higher purpose than promoting the safety of life and property through the use of communications. It's a goal Congress established for us in the very first section of the Communications Act.¹ And it's one I've taken seriously during my time on the Commission. It inspired my inquiry earlier this year to ensure that whenever someone calls 911, he or she reaches emergency personnel.² And thanks to the tireless efforts of Hank Hunt, Mark Fletcher, and many in our nation's lodging industry, we're starting to see real progress in connecting those in need with those who can help.

One of the things I've learned from this inquiry is that there can be tragic consequences when 911 technologies do not match up with consumer expectations. Unfortunately, that's the case with this *Order*. It encourages the public to dive into text-to-911 functionality when in reality there's hardly any water in the pool. Because I believe the *Order* is sure to result in massive consumer confusion, and therefore will endanger rather than advance public safety, I respectfully dissent.

The feel-good headlines following this decision will no doubt lead consumers to believe that they can now text 911. Just look at what has already happened. Jimmy Kimmel recently informed millions of viewers that, thanks to the FCC, text to 911 "should be accessible everywhere by the end of the year."³ And Jimmy Fallon recently told *Tonight Show* audiences that "the FCC rolled out a new service that lets people text 911 for help."⁴

There are countless reasons why all of this media coverage—and the coverage to follow today's action—is and will be horribly misleading at best. Let me start with a fact that is mentioned nowhere in this *Order*: Less than two percent of our nation's 911 call centers (known as Public Safety Answering Points or PSAPs) accept text messages. So in your moment of need, if you try texting 911 in over 98 percent of the country, you won't reach emergency personnel *no matter what application you use*.

Nothing in today's *Order* will change that fact anytime soon. The *Order* claims that PSAPs are not accepting texts because the FCC has not required carriers to deploy it, but this assertion does not stand up to scrutiny. Currently, the four largest wireless carriers make text-to-911 service available to over 90 percent of our nation's wireless consumers. So the bottleneck clearly isn't the private sector.

Even in the few areas where PSAPs are accepting texts, there's no guarantee. If your phone is roaming, text-to-911 won't work. If your device happens to be in Wi-Fi-only mode, our rules won't apply. If you have a data plan that allows you to text, but no SMS subscription, your text to 911 won't go through. If you haven't agreed to let a texting app access your phone's location information, your text will fail. And today's mandate doesn't even cover some of the most popular texting apps like WhatsApp. So if you try to text 911 using those apps, you won't reach first responders anywhere in the country, regardless of your phone's settings.

¹ See 47 U.S.C. § 151.

² See Statement of FCC Commissioner Ajit Pai on the Importance of Connecting Americans to Emergency Personnel Whenever They Dial 911 (Jan. 13, 2014), <http://go.usa.gov/9DxJ>; Remarks of Commissioner Ajit Pai at the 9-1-1 Goes to Washington Conference (Mar. 24, 2014), <http://go.usa.gov/9DjA>; Statement of FCC Commissioner Ajit Pai Regarding the Ongoing Inquiry into Consumers' Ability to Reach Emergency Personnel Whenever They Dial 911 (June 24, 2014), <http://go.usa.gov/NNj4>.

³ "Is Texting 911 A Good Idea?", available at <https://www.youtube.com/watch?v=nPD6AmpFQ5g>.

⁴ "Quotables from 'The Tonight Show Starring Jimmy Fallon' May 12-May 16," available at <https://www.nbcumv.com/quotables-tonight-show-starring-jimmy-fallon-may-12-may-16>.

Put simply, we're adopting a patchwork approach that exposes consumers to numerous pitfalls. When a domestic violence victim is desperate, when the deaf or hard-of-hearing need help, we can't expect them to navigate the intricacies of these rules—to somehow intuit the precise operating mode of their phone or know whether their app is “interconnected” as defined by the FCC. Indeed, the Commission itself has recognized that confusion about text-to-911 will harm consumers. That's why we adopted bounce-back rules just last year: to mitigate consumer confusion.⁵

To be sure, we need to ensure that our 911 rules keep pace with changes in technology and consumer usage. But we must do so guided by a fundamental principle that dates back to the days of Hippocrates—first, do no harm. This *Order* doesn't meet this standard. How many Americans will waste precious seconds during an emergency attempting in vain to text 911 because of it—seconds that could make all the difference? I fear that the answer will be too many.

Another casualty of this *Order*, and an ironic one, is that it will delay, if not disrupt, the pro-consumer transition of public safety technology from SMS to NG911. NG911 is not based on SMS, but rather on the Internet Protocol, or IP. By allowing IP-based text messaging, NG911 will genuinely benefit consumers. NG911 systems are built with redundancy in mind, and the use of IP allows widespread interoperability. NG911 will have built-in capabilities that will allow all consumers, including those with speech or hearing disabilities, to have reliable, real-time text communication with emergency responders.

In short, NG911 is truly a life-saving advancement. That's why Congress,⁶ public safety organizations,⁷ and industry⁸ have all urged the Commission to focus its efforts on accelerating the deployment of NG911—the public safety component of the overall IP Transition.

By contrast, SMS has inherent limitations that, for 911 purposes, render it inappropriate for use as anything other than an interim, stop-gap measure. SMS messages can be delayed, lost, or delivered out of sequence. I've experienced that when I send SMS messages, and I'm sure many of you have as well.

These limitations might not matter for everyday communication. But they can have serious consequences in an emergency. Indeed, the FCC's own Communications Security, Reliability, and Interoperability Council (CSRIC) highlighted SMS's limitations in detail at the beginning of our rulemaking process. It stated back then that “there remains disagreement about whether this method of access should even be considered for 9-1-1 because of its unreliability and other factors.”⁹ Commenters have told us the same is true now.¹⁰

⁵ See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, Report and Order, 28 FCC Rcd 7556, 7626 (2013) (Concurring Statement of Commissioner Ajit Pai).

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6501–09, 126 Stat. 156, 237–45 (2012) (containing the Next Generation 9-1-1 Advancement Act of 2012).

⁷ See, e.g., NENA Reply at 5.

⁸ See, e.g., Microsoft Comments at 2; see also Bandwidth.com Comments at 4.

⁹ CSRIC 4B, Transition to Next Generation 9-1-1, Final Report at 9, 53–54, 107 (Mar. 14, 2011), <http://go.usa.gov/NmfB>; see also *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, Notice of Proposed Rulemaking, 26 FCC Rcd 13615, 13622, para. 20 (2011) (*2011 Notice*) (discussing the CSRIC report).

¹⁰ See, e.g., MediaFriends, Inc. (d/b/a HeyWire) Comments at 8 (“Text messages, in its current native form is a ‘lossy’ communications mechanism, meaning that there is no 100% guaranteed delivery of messages. In addition, a person may or may not receive an error message that their Text-to-911 did not successfully get delivered as the technology employed by the ecosystem . . . could span multiple entities that may or may not be aware of handoffs of messages between one another.”).

Small wonder, then, that when we launched this proceeding in 2011, we did so with the clear purpose of accelerating the deployment of NG911.¹¹ For we knew even then that SMS-based text-to-911 was an unsatisfactory legacy technology that would not be part of the NG911 world.

But where have we ended up? We've lost sight of the forest for the trees. The *Order* says little about the NG911 transition and does even less to advance it. Instead, it attempts to construct a detailed text-to-911 regime based entirely on the legacy SMS network. And the proposed rulemaking portion of the *Order* compounds this error by seeking comment on how we can graft additional and even more detailed requirements onto the SMS network.

More importantly, the record shows that diving down this rabbit hole will only impede the NG911 transition. As one commenter put it, "this approach takes industry off the path to NG911."¹² Another stated that "[r]equiring carriers to divert resources in this manner will only serve to delay the deployment of next generation emergency services, including robust text-to-911 service."¹³ The National Emergency Number Association (NENA) echoed these concerns, observing that "solutions premised on legacy network elements and concepts . . . will not form part of the long-term NG9-1-1 ecosystem."¹⁴ In short, this *Order* will serve to frustrate, not further, the deployment of NG911—a 21st century public safety technology that actually *will* enable reliable text and multimedia messaging.

Consumer confusion and delay of NG911 aren't the only flaws in the *Order*. The cost-benefit analysis is another. It overstates the benefits by assuming that text-to-911 is available nationwide, even though we know the reality is quite the opposite. On the other side of the ledger, the analysis does not account for the tragic costs that will result from consumer confusion. Nor does it contain any discussion of the costs interconnected app providers will incur as a result of the *Order*'s approach, which requires them to use—and pay for access to—other company's software and networks.¹⁵

Additionally, this *Order* leaves far too many technical questions—some of them quite fundamental—unanswered. Who is responsible for transmitting bounce-back messages to consumers now that over-the-top (OTT) apps will be invoking the device's native SMS software—the OTT provider or the wireless carrier? Will any reply messages from a PSAP be delivered to the OTT app or will it go instead to the device's native text messaging app? Will consumers sending a 911 text from their OTT app really need to press send twice—once when they use their OTT app and then a second time when that app invokes the native SMS—as the item suggests? Will the FCC allow a migration from SMS to IP-based messaging if the only feasible method for delivering OTT texts relies on the SMS network? This decision offers no guidance at all on these and many other technical issues.

Moreover, the *Order*'s legal foundation is flawed. To highlight just one issue, it nowhere explains the statutory basis for the mandate that third-party apps be given access to a phone's SMS-API. The SMS-API is the set of instructions that tells the phone how software components should interact with

¹¹ See *2011 Notice*, 26 FCC Rcd 13642–55, paras. 68–103.

¹² Bandwidth.com Comments at 4.

¹³ T-Mobile Comments at 3.

¹⁴ NENA Reply at 5.

¹⁵ See *Order* at App. A, Rule 20.18(n)(11) (adopting an "Access to SMS networks" rule which requires CMRS providers that offer SMS to "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"). On this point, the item claims that "CMRS providers need not play an active role in the routing of" interconnected app providers' texts. *Order* at para. 50. But this statement can't be squared with the *Order* itself, which requires CMRS providers to carry those texts over their own SMS networks, process them at their own Text Control Centers, and then deliver them to PSAPs.

each other. It's installed by phone manufacturers, not wireless carriers. How do we have the authority to mandate that an app developer obtain access to a manufacturer's software?¹⁶

Finally, the *Order* penalizes the four nationwide wireless operators who volunteered to develop a text-to-911 solution without a mandate. This decision rewards those voluntary efforts—efforts that we should be encouraging—with strict regulatory mandates and the cold comfort that those new rules are “generally consistent” with their existing, voluntary deployments. In this, as in other areas, the message to the companies under our purview is clear: It doesn't matter how well you behave or what commitments you voluntarily undertake. There will be no escape from the FCC's regulatory playground.

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When it comes to public safety, we all share the goal of making 911 more effective, responsive, and accessible to every American. And I do not for a minute question the sincerity of those supporting this *Order*. But adopting new rules that will confuse consumers during emergencies, that will delay the NG911 transition, and that will leave many key questions unanswered, undermines that goal. For all these reasons, I respectfully dissent.

I would like to conclude with a point that I hope will unite supporters and opponents of this item. It's a message I've heard from public safety officials all across the country—from Fairfax County, Virginia, to Sioux Falls, South Dakota, to Anchorage, Alaska. And it's one the American people need to hear: *If you need to reach emergency personnel, call 911 if you can.* Calling 911 is the most reliable means to reach someone who can help. Calling 911 is the best way to supply first responders with accurate information about your location. Calling 911 is the method most likely to give first responders the situational awareness that can help to save your life.

¹⁶ *Cf. American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).