

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
E911 Requirements for IP-Enabled	)	WC Docket No. 05-196
Service Providers	)	
	)	

**COMMENTS OF THE  
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE**

INTRODUCTION AND SUMMARY

On June 3, 2005, the Commission issued a Notice of Proposed Rulemaking (NPRM) in the above-entitled proceeding, which was noticed in the Federal Register on June 29, 2005. In the NPRM, the Commission recognized the historic and important role of States in public safety matters and in creating and regulating 911 and enhanced 911 (E911) operations, and inquired, *inter alia*, what role States can and should play to help implement the Commission's E911 rules for interconnected voice over Internet protocol (VoIP) services. The New York State Department of Public Service (NYDPS) submits these comments in response to the NPRM.

States have a vital interest in the rapid and efficient deployment of IP-enabled E911 service. Historically, states have indeed played an important role in promoting the safety of their citizens through fostering improvements in communications systems that enable the public to summon local emergency services. In sum, these comments suggest that states should oversee local implementation of Commission-mandated technical solutions for IP-enabled E911 service because states have a long history of working with

local entities regarding 911 infrastructure and emergency response. Moreover, state jurisdiction over incumbent local exchange carriers (ILECs), which largely control access to the wireline 911 infrastructure, empowers states to ensure that IP-enabled service providers have reasonable access to that infrastructure. Finally, the statutory framework established by Congress contemplates state-federal cooperation in the area of 911 and E911 deployment as proposed herein.

## DISCUSSION

### States are best suited to manage local aspects of implementing IP-enabled E911 solutions.

The NYDPS commends the Commission for taking appropriate action, via its recent Order<sup>1</sup> released concurrently with the NPRM, to ensure that customers of VoIP services have access to E911 capabilities. We share the Commission's interest in promoting public safety and encouraging the deployment of ubiquitous and reliable communications infrastructure for emergency response. Consistent with our shared interest, we support the Commission's effort to develop national standards for technical solutions for the provision of E911 capabilities via IP-enabled services.

As a practical matter, States have been, and will continue to be, best suited to supervise and manage the local aspects of E911 service, regardless of whether a 911 call originates from IP-enabled or traditional telephone equipment. As the Commission noted in the VoIP E911 Order, the availability of 911 and E911 service is due largely to the

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<sup>1</sup> IP-Enabled Services, WC Docket No. 04-36, First Report and Order, FCC 05-116 (rel. June 3, 2005) ("VoIP E911 Order").

efforts of state and local authorities.<sup>2</sup> This is because it is beyond cavil that emergencies are local in nature. New York, just like all other states, has a strong and vital interest in protecting its citizenry, and consequently has exerted tremendous effort in coordinating and funding the development of E911 infrastructure throughout the state.<sup>3</sup>

The appropriate role for states on a going-forward basis has two major facets. First, it is important that ILECs provide access to services necessary for IP-enabled service providers to offer E911 calling to their customers. These services, which are utilized to complete calls to local emergency authorities, are within the scope of state utility commissions' traditional jurisdiction. With a long history of coordinating the development of E911 access services, states are in the best position to resolve access disputes and otherwise to ensure that IP-enabled service providers can also interconnect using the existing wireline 911 infrastructure.<sup>4</sup> In addition, the state role vis-à-vis the ILECs affords public safety answering points (PSAPs) and local emergency authorities with a convenient forum to resolve complaints concerning, e.g., database and routing errors.

Second, states should oversee local implementation of any Commission-mandated technical solutions for IP-enabled E911 capability. Efficient implementation of IP-enabled E911 service will require coordination among ILECs, third party database providers, IP-enabled service providers, local public safety authorities, and various levels

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<sup>2</sup> Id., ¶ 7.

<sup>3</sup> As a result, 61 of New York's 62 counties now utilize E911 dialing to access emergency services.

<sup>4</sup> In New York, Verizon New York, Inc. effectuates wireline 911 infrastructure access via tariffs filed with the New York State Public Service Commission. See Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 at 2 (filed May 11, 2005).

of local government. State utility commissions have typically formed longstanding relationships with local government entities with respect to telecommunications issues. Consequently, because of their unique relationships with the local players, states are in the best position to coordinate the implementation of IP-enabled E911 service at the local level.

Congress has provided for federal-state cooperation in the area of emergency communications, rather than exclusive Commission authority.

Based upon the Commission's statements in the Order acknowledging States' involvement in 911 and E911 calling, as well as its inquiry in the NPRM about States' role,<sup>5</sup> we would expect that the Commission does not intend to assert exclusive jurisdiction over E911 capabilities for IP-enabled services. As a legal matter, the Commission's conclusion is correct. The Commission would have legal authority to preempt state regulation only in the event that Congress has expressly preempted state law,<sup>6</sup> where Congress has so pervasively occupied the field of regulation as to reasonably imply preemption of state law,<sup>7</sup> or where state law conflicts with the Commission's

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<sup>5</sup> VoIP E911 Order, ¶¶ 7, 52; NPRM, ¶ 61.

<sup>6</sup> Hillsborough County v. Automated Medical Labs, 471 U.S. 707, 715-16 (1985) (in traditional areas of state authority such as public health and safety, there is a presumption that state authority is not preempted by federal law unless that is the "clear and manifest purpose of Congress.")

<sup>7</sup> Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (preemption permissible where the "scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.")

lawful exercise of its regulatory authority.<sup>8</sup> Congress' express statements in the area of 911 calling extend to authorizing the Commission to designate 911 as the national emergency number<sup>9</sup> and to "encourage and support state efforts to deploy comprehensive end-to-end emergency communications infrastructure and programs."<sup>10</sup> Neither of these statutory provisions contains preemptive language. Notably, rather than providing for pervasive federal regulation or reserving the field for Commission authority, § 615 recognizes state powers in the area of emergency communications, by requiring the Commission to "consult and cooperate with" State and local officials and to encourage States in the development of their own deployment plans.<sup>11</sup> Likewise, because the state role set forth in these Comments is consistent with § 615, that role cannot be in conflict with the Commission's legitimate regulatory authority. Finally, the Commission's authority under Title I of the Communications Act of 1934 ("Title I") cannot be utilized to preempt state law in the area of emergency communications.<sup>12</sup>

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<sup>8</sup> California v. ARC America Corp., 490 U.S. 93, 100-01 (1988) (state law may be preempted to the extent that "compliance with both state and federal law is (cont.) impossible ... or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (citations omitted)).

<sup>9</sup> 47 U.S.C. § 251 (e) (3).

<sup>10</sup> 47 U.S.C. § 615 ("§ 615").

<sup>11</sup> Id.

<sup>12</sup> The Supreme Court has clarified that the Commission's ancillary jurisdiction under Title I cannot be utilized to preempt regulation in an area of law reserved to the States, such as intrastate communication. AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 381 n.8 (1999). Likewise, because Section 615 acknowledges state authority over emergency communications, the Commission's Title I jurisdiction cannot override that authority.

In conclusion, it is clear that the Congress intended that the Commission and the States should work in a cooperative manner to ensure that E911 communications capabilities are universally available, in the interest of promoting public safety and welfare. This proposed rulemaking advances that objective.

Respectfully submitted,

Dawn Jablonski Ryman  
General Counsel  
By: John C. Graham  
Assistant Counsel  
Public Service Commission  
of the State of New York  
Three Empire State Plaza  
Albany, New York 12223-1350  
(518) 474-2510

Dated: August 15, 2005