

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

<b>In the Matter of</b>	<b>:</b>
	<b>: PS Docket No. 10-255</b>
<b>Framework for Next Generation 911</b>	<b>:</b>
<b>Deployment</b>	<b>:</b>

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**COMMENTS  
SUBMITTED ON BEHALF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**Dated: February 25, 2011**

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**INTRODUCTION AND SUMMARY**

On December 21, 2010, the Federal Communications Commission (FCC) released a Notice of Inquiry (NOI) for the purpose of gaining a better understanding of ways in which the gap between the current 911 emergency communications system and an IP-based Next Generation 911 (NG911) system can be bridged. Comments are due by February 28, 2011, with reply comments due no later than March 14, 2011. While the NOI primarily addresses issues that directly pertain to the 911 community and are best addressed by those individuals and entities responsible for the effectiveness of our current 911 system, it also seeks comment in two particular areas – 911 competition and jurisdiction/regulatory roles – for which broader input is appropriate. Accordingly, the Public Utilities Commission of Ohio (Ohio Commission) is pleased to submit its comments regarding these matters to the FCC for its consideration.

## DISCUSSION

### I. 911 Competition

Through the NOI, the FCC explores the issues surrounding the advent of competition in emergency communications service offerings and the likelihood, in a NG911 environment, that there may be multiple 911 System Service Providers (SSPs).<sup>1</sup> Among its requests for comment, the FCC notes the National Emergency Numbering Association's observation that there are many state, local, and federal regulations that may inadvertently inhibit the transition to NG911 and the FCC asks what regulations it should implement or clarify in order to facilitate competition within the emergency communications service environment.<sup>2</sup> Additionally, the FCC seeks comment on whether today's 911 system is competitive in certain areas and whether incumbent 911 SSPs have sufficient incentives to upgrade their technology absent regulatory change that would encourage such incentives.<sup>3</sup> Furthermore, the FCC asks whether existing regulations, laws, or tariffs should be modified to ensure that new 911 SSPs are entitled to receive relevant routing, location, and other related 911 information at reasonable rates and terms.<sup>4</sup>

As the Ohio Commission stated in previous comments to the FCC regarding competition in 911 and ultimately a NG911 environment, the advent of competition in

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<sup>1</sup> See *In the Matter of Framework for Next Generation 911 Deployment*, PS Docket No. 10-255 (Notice of Inquiry at 23-24, ¶¶ 67-70) (rel. December 21, 2010) (NOI).

<sup>2</sup> *Id.* at 23-24, ¶¶ 67-68.

<sup>3</sup> *Id.* at 24, ¶ 69.

<sup>4</sup> *Id.*

this arena is inevitable.<sup>5</sup> With the passage of the 1996 Telecommunications Act (the Act), Congress initiated a transition from a monopoly environment to a competitive environment by enacting requirements in Sections 251 and 252 of the Act to remove regulatory barriers raised by incumbent local exchange carriers (ILECs). While this model has worked well furthering competition for the broad category of telecommunications services, it has fostered an environment in which competitors may serve niche markets by providing highly specialized telecommunications-related services, including public safety services. As the Ohio Commission has stated previously, “[t]he question is not whether competition will come in the market for 911 or E911 services, or even whether it should, the question is, as always, how best to balance the Congressional intent of furthering competition in an equitable manner, as expressed in the 1996 Telecommunications Act, with the need to maintain the integrity of the network.”<sup>6</sup>

Competition in the 911 marketplace is, in some regards, a two-edged sword with both potential benefits and potential drawbacks. While competition has spurred the evolution of legacy 911 to a NG911 system that integrates multiple media types into a single

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<sup>5</sup> See *In the Matter of Petition of Intrado Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq), In the Matter of Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for the Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia (collectively Verizon)*, WC Docket No. 08-33, WC Docket 08-185 (Comments of the Public Utilities Commission of Ohio at 3-4) (filed July 2, 2009).

<sup>6</sup> *Id.* at 4.

advanced emergency communications network, competition in a NG911 environment could also potentially affect the level of immediate oversight traditionally exercised by state and local authorities over emergency communications service because the SSP, the equipment, and perhaps even the public service answering points (PSAPs) could be located outside of the local jurisdiction or possibly the state. This is significant since NG911 will be implemented at the state and local level. Technical as well as non-technical requirements will vary from state-to-state and locality-to-locality requiring the continuing involvement of state and local authorities. As such, the Ohio Commission believes that in any regulatory framework adopted by the FCC, it is imperative that state and local governments have the ability to adopt regulations that allow them to maintain an element of local oversight in this changing environment. At the same time, such a framework should provide NG911 SSPs with the flexibility necessary to continue developing competitive offerings to respond to the unique needs of each local community. The Ohio Commission believes that a prescriptive set of one-size-fits-all rules will not accomplish this goal. Rather, as discussed in greater detail later in these comments, a dual federal-state approach to emergency communications service where the FCC establishes national NG911 policies and parameters and state and local governments oversee the details of implementation is the better approach to accomplish this important objective.

As alluded to in the NOI, competitive 911 SSPs that use non-traditional technologies do not easily fit into the existing paradigm of federal and/or state laws and regulations, including the

Act itself.<sup>7</sup> In fact, it has been argued that since the transmission technology utilized by an IP-based 911 SSP as well as 911 systems in general are heavily database dependent, IP-based competitive SSPs like Intrado should be considered to be an information service provider rather than a telecommunications carrier under the Act.<sup>8</sup> The FCC, however, has already established that IP transmission technologies embedded within a carrier's network do not change the essential nature of a telecommunications service.<sup>9</sup> While changes by the FCC to implement new or clarify existing regulations to better facilitate competition in the 911/NG911 marketplace may be helpful, the Ohio Commission believes that it has successfully addressed competition in its existing rules and regulations. Almost three years ago, the Ohio Commission certified its first competitive emergency services telecommunications carrier (CESTC), Intrado Communications Inc.<sup>10</sup> In its certification order, the Ohio Commission found that Intrado is a telecommunications carrier pursuant to 47 U.S.C. 153 and, as such, is entitled to the rights and obligations of a telecommunications carrier pursuant to the Act, includ-

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<sup>7</sup> See NOI at 24, ¶ 68.

<sup>8</sup> See *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act, as Amended, to Establish an Interconnection Agreement with United Telephone Company of Ohio and United Telephone Company of Indiana (collectively, "Embarq")*, Case No. 07-1216-TP-ARB (Reply Brief of United Telephone Company of Ohio and United Telephone Company of Indiana, Inc., at 7-10) (filed June 20, 2008) (*Embarq Arbitration*).

<sup>9</sup> See, e.g., *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket 02-361 (Order) (issued April 21, 2004).

<sup>10</sup> See *In the Matter of the Petition of the Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE (Finding and Order) (issued February 5, 2008) (*Intrado Certification Order*).

ing the right to request interconnection and arbitration under Section 252.<sup>11</sup> The Ohio Commission then proceeded to address the specifics of those interconnection agreements in company-specific arbitrations with four large Ohio ILECs.<sup>12</sup> Of those, only AT&T Ohio appealed the Ohio Commission decision.<sup>13</sup>

In addition to addressing interconnection disputes, the Ohio Commission has exercised its jurisdiction over emergency communications services to ensure the provisioning of seamless and interoperable 911 service regardless of the carrier chosen by a particular county to serve its PSAP(s), or the technology utilized by the carrier.<sup>14</sup> Seamless, interoperable competitive 911 SSPs provide local authorities with the opportunity to contract with entities that provide the most advanced emergency communications ser-

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<sup>11</sup> *Intrado Certification Order* at 4-6, ¶ 7.

<sup>12</sup> *See Embraq Arbitration; In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with The Ohio Bell Telephone Company d/b/a AT&T Ohio*, Case No. 07-1280-TP-ARB (Petition for Arbitration) (filed Dec. 21, 2007); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Verizon North, Inc.*, Case No. 08-198-TP-ARB (Petition for Arbitration) (filed March 5, 2008); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08-537-TP-ARB (Petition for Arbitration) (filed April 21, 2008). Copies of the Ohio Commission decisions have been previously provided to the FCC in WC Docket Nos. 08-33 and 08-185.

<sup>13</sup> *See The Ohio Bell Telephone Co. v. Pub. Util. Comm'n of Ohio, et al.*, Case 2:09-CV-00918-ALM-MRA (S.D. Ohio 2009). The Ohio Commission notes that a federal district court in North Carolina recently upheld an interconnection agreement between AT&T and Intrado under the Telecommunications Act. *See BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina v. Finley*, Case 5:09-CV-00517-BR (E.D.N.C. 2010).

<sup>14</sup> *See Intrado Certification Order* at 9, ¶ 12.



vices available, including those with next generation technology. Ohio's counties and PSAPs may also be afforded the opportunity to obtain service tailored more specifically to each county's or PSAP's needs. Ultimately, the Ohio Commission believes that a competitive environment for 911 and NG911 will encourage the further development of emergency communications technologies by both the incumbent and new 911 SSPs to the benefit of consumers.

Consistent with determinations by both the FCC and the Ohio Commission, and in response to the high level of public interest in and need for effective emergency communications services, the Ohio General Assembly recently passed new telecommunications legislation that includes 911 service within the definition of basic local exchange service and specifically retains jurisdiction in the Ohio Commission to approve the tariffed rates, terms and conditions of 911 service provided by a telephone company or a telecommunications carrier.<sup>15</sup> As a result, the Ohio Commission adopted rules under authority granted in the new statute, which reflect that competitive 911 SSPs must obtain certification from the state as a CESTC and must provide tariffs for approval by the Ohio Commission.<sup>16</sup>

State and local governments currently exercise jurisdiction over emergency communications service, as part of their inherent police power. Because of their responsibility to ensure the health, welfare and safety of their citizens through an efficient, reliable

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<sup>15</sup> See Sub. S.B. No. 162 (2009), §§ 4927.01(A)(1)((b)(iv), 4927.15(A) (West 2010).

<sup>16</sup> Ohio Admin. Code § 4901:1-6-10(A) (West 2010) (eff. January 20, 2011).

and effective 911 system, state and local governments must have the ability to determine within the context of state and local laws that competitive 911 services, however provided, interact and interface with the existing 911 services offered over the public switched network. The Ohio Commission recognizes, however, that competition for such services must also comply with the Act as well as the FCC’s 911 rules. While competitive emergency communications service may not have been completely envisioned at the time of the Act, the Ohio Commission believes that Sections 251 and 252 of the Act provide sufficient flexibility to balance the interests of emerging 911 SSPs with those of the incumbent 911 SSPs.

## **II. Jurisdiction and Regulation**

The NOI seeks comment as to whether states can “effectively coordinate the transition to NG911” given the “variation in state-level approaches to legacy 911.”<sup>17</sup> Additionally, the FCC asks whether there should be federal oversight over governance of state NG911 deployment.<sup>18</sup> Historically, state and local governments have exercised significant authority with regard to emergency communications service due to the inherent local nature of the service being provided. Over the last 20-plus years, emergency communications service has evolved from a basic landline 911 service to an enhanced 911 service that includes wireless and IP-enabled technologies. NG911 represents the next stage in this ongoing evolution of emergency communications service as telecommunica-

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<sup>17</sup> NOI at 28, ¶ 84.

<sup>18</sup> *Id.* at 28, ¶ 85.

tions service shifts away from the public-switched network to both fixed and mobile IP-based networks. Like the other innovations in emergency communications service that came before it, NG911 bears directly on the ability of each local authority to protect the health, welfare and safety of the community and requires the continued coordinated effort of many entities at the local and state level. Even so, the FCC recognized in its First Report and Order regarding E911 requirements for IP-enabled services (VoIP Order) that new communications technologies may necessitate a “uniform national approach to ensure that the quality and reliability of 911 service is not damaged by the introduction of such communications technologies.”<sup>19</sup> Recognizing the need for active state and local involvement, as well as the need for national uniformity, the Ohio Commission believes that both state and federal participation are essential to the successful deployment and

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*In the Matter of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36, WC Docket No. 05-196 (First Report and Order and Notice of Proposed Rulemaking at 5, ¶ 8) (rel. June 3, 2005) (*VoIP Order*).

maintenance of an effective emergency communications system and, accordingly, supports a dual state-federal regulatory framework that maintains a high level of state and local oversight as the transition to NG911 is made.<sup>20</sup>

As previous innovations in emergency communications were introduced, the ability of the states to coordinate the implementation of the new technologies was clearly recognized. Congress found in the Wireless Communications and Public Safety Act of 1999 (911 Act) that “the rapid, efficient deployment of emergency telecommunications service requires statewide coordination of the efforts of local public safety, fire service and law enforcement officials, emergency dispatch providers, and transportation officials....”<sup>21</sup> To achieve this, Congress required the FCC to “encourage and support efforts by the States to deploy comprehensive end-to-end communications infrastructure and

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Such an approach is not new to the regulation of emergency communications service. For the deployment of wireless 911 emergency communication service, the FCC established rules under which commercial mobile radio service (CMRS) providers must make available Phase I and Phase II wireless 911 services. *See* 47 C.F.R. § 20.18 (2010). In doing so, the FCC established a national timeframe under which CMRS providers are obligated to offer wireless 911 technologies as well as benchmarks to determine CMRS compliance. The states, however, retained oversight of the actual deployment within each respective state. In Ohio, state law provides, among other things, for the establishment of countywide 911 systems, the adoption of county-specific 911 plans, the amendment of county-specific 911 plans to add wireless 911 service to the countywide 911 systems, the imposition of a wireless 911 funding surcharge on wireless service subscribers, the requirement of wireless service providers to collect the surcharge, the establishment of a wireless 911 administrative fund, and the disbursement of fund remittances to the counties. *See* Ohio Rev. Code Ann. § 4931.40, *et seq.* (West 2010). Additionally, Ohio law authorizes the Ohio Commission to adopt rules necessary to carry the state law provisions pertaining to wireless 911 service. *See* Ohio Rev. Code Ann. § 4931.67 (West 2010).

<sup>21</sup>

Wireless Communications and Public Safety Act, Pub.L. 106-81, §2(a)(1), Oct. 26, 1999, 113 Stat. 1286, codified at 47 U.S.C. § 615 (911 Act).

programs, based on coordinated statewide plans....”<sup>22</sup> In its VoIP Order, the FCC recognized that the “availability of [emergency communications service] is due largely to the efforts of state and local authorities and telecommunications carriers” without whose action “there can be no effective 911 service.”<sup>23</sup> The actions necessary to implement effective 911 service “falls squarely on the shoulders of states and localities.”<sup>24</sup> The Ohio Commission believes that the transition to NG911 should not be viewed any differently.

State and local officials and entities will be the “feet on the ground” during the transition to NG911. As such, they are in the best position to determine how this transition should take place, how it should be funded, what technologies should be supported and how the system should be managed once the transition is complete. Those at the state and local levels have intimate knowledge of the time, cost, funding options, training and personnel needs and experience necessary to best coordinate the transition to NG911. Nonetheless, the FCC’s point in its VoIP order regarding the need for a “uniform national approach” to protect the integrity of 911 during and following the transition is, in the opinion of the Ohio Commission, well taken.<sup>25</sup> It was this need for national uniformity that led the FCC to establish uniform rules requiring CMRS carriers to implement basic

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<sup>22</sup> 911 Act at §3(b).

<sup>23</sup> *VoIP Order* at 5, ¶ 7.

<sup>24</sup> *Id.* These actions include “establishing and designating PSAPs or appropriate answering points, purchasing customer premises equipment (CPE), retaining and training PSAP personnel, purchasing 911 network services, and implementing a cost recovery mechanism to fund all of the foregoing.”

<sup>25</sup> *VOIP Order* at 5, ¶ 8.

911 and E911 services, to designate 911 as the universal emergency assistance number for both wireline and wireless services and to apply its E911 rules to interconnected IP-enabled services.<sup>26</sup> The Ohio Commission believes that through these actions the FCC has advanced the quality of our emergency communications system nationally. In each case, the FCC established national parameters in which the state and local governments can effectively oversee the implementation and operation of the emergency communications system at the state and local level. This approach has yielded national uniformity while recognizing a proper deference for state and local oversight. This tandem approach has worked well.

The Ohio Commission believes that to effectively deploy NG911 nationally, each state should designate an organization with responsibility for planning, coordinating and implementing the NG911 system; however, the structure of such an organization should be left to the discretion of each individual state. Such an approach was envisioned by Congress for the deployment of wireless 911 in the 911 Act<sup>27</sup> and was successfully carried out in Ohio for the deployment of wireless 911. Consistent with the Congressional intent of the 911 Act, the state of Ohio established a wireless 911 assistance fund as well

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<sup>26</sup> NOI at 27-28, ¶ 83.

<sup>27</sup> See 911 Act at §3(b). “The Commission shall encourage each State to develop and implement coordinated statewide deployment plans, through an entity designated by the governor, and to include representatives of the [telecommunications industry, the motor vehicle manufacturing industry, emergency medical services providers and emergency dispatch providers, transportation officials, special 9-1-1 districts, public safety, fire service and law enforcement officials, consumer groups and hospital emergency and trauma care personnel] in development and implementation of such plans.”

as the position of the 911 coordinator, a wireless 911 advisory board and a 911 council.<sup>28</sup> Through this organizational structure, Ohio has effectively deployed and funded wireless 911 within the state. While amendments to Ohio's 911 statutes would likely be necessary, the Ohio Commission believes that the organizational structure that has been established in Ohio for wireless 911 implementation could be used to coordinate the state's transition to NG911. Likewise, other states may have established their own 911 organizational structures that would likely allow them to also effectively implement NG911. As such, the Ohio Commission urges the FCC to allow the states to continue to use the organizational infrastructures that they have established for existing emergency communications service for the deployment of NG911.

As discussed above, the Ohio Commission supports a dual state-federal regulatory framework for NG911 in which the FCC establishes broad, national objectives, standards and benchmarks, but leaves coordinating the implementation and transition to the states. To the extent that it is necessary for a federal entity to ensure compliance under such a regulatory scheme, the Ohio Commission believes that the FCC should assume this role. Furthermore, the Ohio Commission sees merit in the FCC establishing a national policy that sets forth a "uniform national approach" to NG911 just as it has done in the past to establish national emergency communications parameters. As before, this should be done with a recognition of the important role that state and local governments play in an effective emergency communications system. In other words, the FCC should establish

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<sup>28</sup> See Am. Sub. H.B. 361 (2007), Ohio Rev. Code Ann. §§ 4931.60, 4931.68, 4931.69 (West 2010).

the destination, but allow the state and local governments to determine the means of transportation. In reaching this destination, some will take a plane, others a car, while others yet may even arrive on a bicycle; however, so long as they arrive at the destination, the decision regarding how to arrive should be left to the state and local governments.

## **CONCLUSION**

Effective emergency communications systems are essential to the security of our communities. The innovations promised by NG911 offer exciting possibilities for guarding the safety of our families and friends. In the Ohio Commission's opinion, competition has been a catalyst for development and advancement of emergency communications services. To our benefit, this will only continue with NG911. Within this changing environment, the Ohio Commission urges the FCC to adopt a regulatory framework for NG911 that will continue to foster innovation while preserving the state and local oversight that is vital to ensuring an efficient emergency communications system. The Ohio Commission appreciates this opportunity to comment and the FCC's consideration of the same.



Respectfully submitted,

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Dated: February 25, 2011

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