

DISSENTING STATEMENT OF COMMISSIONER MICHAEL O'RIELLY

Re: *Improving 911 Reliability*, PS Docket No. 13-75; *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60.

I have been sincere in my comments that I want to find common ground with my colleagues so items can be approved unanimously. We have an obligation to try to work together for the greater good. Sadly, this is one of those instances where the gap was too wide to bridge. It didn't have to be this way.

The safety of our nation's citizens is not a partisan issue. I take a backseat to no one in trying to ensure Americans are protected in times of need. In fact, everyone supports a fully functioning and reliable 9-1-1 system, especially during major catastrophes. When people's lives are at stake – real life and death matters – our communications networks need to be ready and able to meet the challenges.

The question becomes what is the best way to make sure this happens. I proposed several edits and supported changes proposed by Commissioner Pai that would have narrowed the rules while still meeting that goal. While I appreciate that some small changes were made, the key suggestions of both of us were rejected.

One of my requests was to minimize the burdens on so-called good actors. Let's be clear: I am a strong proponent of strenuously enforcing the Commission's rules. However, we should try to find a way to lessen the burdens over time on the good actors – communications companies whose networks and services are continually operational and meet the Commission's requirements. In other words, do they have a clean checklist and are their alternative measures, if necessary, ensuring reliable 9-1-1 service year after year? This seems immensely reasonable in light of the requirement that certifications be filed annually, instead of biennially, as was the case in the original draft. After a couple certifications, we ought to know those companies that go the extra mile for compliance and probably don't need to be scrutinized under the item's rubric of a never-ending, yearly certification scheme. My idea of a simple waiver process to ease the burdens for good actors was rejected without much debate.

My support for a waiver process is not because I support the free-market and less regulation, which I do. It is because I know that the compliance costs are going to be passed on to consumers – including the struggling families deciding whether to keep phone service – that are going to pay more each month for unnecessary regulations. The Commission has found a way to drive up consumer costs by burdening truly good actors for no real benefit.

I am equally troubled that my simple proposal to replace the vague, non-committal review of the newly imposed rules in five years – a review that is not mandated to be completed – was also dismissed. For too many years and in too many situations, the Commission enacted rules with no mechanism to fully and faithfully determine, in the future, whether such rules should be retained or modified. Accordingly, I proposed a variety of sunset mechanisms to ensure that the Commission would have to revisit these 9-1-1 reliability rules in order to preserve them. I even went so far as to propose that the Commission or the Bureau could extend the rules if the certifications and other relevant data showed that there was still a need for the rules. As incredible as it may seem, this was rejected due to a view that the providers should have the burden to request a rulemaking to show that rules should be eliminated. I disagree. What became clear through this process is that there is great resistance to sunset Commission rules. For those that want to explore real FCC process reform, let's start there.

For these reasons, I dissent to this Order. Sadly, this was a missed opportunity. It was well within our grasp to produce a 5-0 vote. Despite my dissatisfaction, I thank the staff for all of their hard work. It's on to the next item for me.

**STATEMENT OF
CHAIRMAN THOMAS E. WHEELER**

Re: *Improving 911 Reliability*, PS Docket No. 13-75; *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60.

Since my first day, I've spoken about how the FCC's policies should be guided by what I call the Network Compact – the basic rights of consumers and the basic responsibilities of network operators. This item to improve 911 reliability advances one of the three key elements of the Network Compact – promoting public safety and security.

Today's item is the culmination of a significant amount of work, which began long before I arrived. The derecho storm that ripped through portions of the Midwest and Mid-Atlantic brought widespread 911 network failures across six states and left millions of Americans unable to call for help. The Commission immediately launched an inquiry to examine the major vulnerabilities in 911 network architecture, maintenance, and operations revealed by the storm.

Regrettably, many of the 911 outages could have been avoided if the wireline 911 service providers had implemented best practices – in fact, best practices that the industry had helped to develop – and other sound engineering principles.

I have spoken of the “regulatory see-saw.” When the marketplace works, the reasons for regulation are diminished. Part and parcel with that belief, I also have said that the Commission should encourage multi-stakeholder solutions to network responsibilities.

Inherent in the regulatory see-saw is the reality that if voluntary solutions don't work, we must be willing to pivot rapidly to a regulatory response. This is especially true when public safety is at stake.

The 2012 derecho demonstrated how the industry failed to take the proper steps to prevent these kinds of widespread outages. As such, we have an obligation and responsibility to act.

The result of the hard work put forth by the Bureau and my colleagues and predecessors is the necessary, sensible, and flexible set of rules we are adopting today, which will help assure that Americans can reach emergency assistance during disasters.

Our rules are flexible – they account for differences in 911 network architecture – but we do not sacrifice 911 service reliability. Consistent with the old axiom, ‘if you can't measure it, you can't manage it,’ we are putting such measurement and management tools in place. We require 911 service providers to take reasonable measures to provide reliable 911 service and to certify annually that they have done so. They can either follow certain industry-backed best practices or implement alternative measures that are reasonable and sufficient to achieve the necessary result in light of their particular circumstances. Our rules also provide greater clarity on how these critical industry-backed best practices should be implemented in the context of 911 networks.

Moreover, to accommodate evolving technology, these rules take into account the transition to Next Generation 911. To keep up with technology, we will re-evaluate the rules in five years.

In addition, today's Order will help ensure that 911 call centers get timely and useful information about 911 outages.

I recognize that 911 service providers may have made improvements since the derecho. But given the 911 failures of the past, and with public safety at stake, the Commission cannot simply trust - we must also verify. Or, as a wise man once taught me, “inspect what you expect.”

I am pleased to support this Order and thank the staff of the Public Safety and Homeland Bureau for their work on this important item.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Improving 911 Reliability*, PS Docket No. 13-75; *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60.

Congress made public safety a fundamental purpose for creating this agency almost 80 years ago. It also passed laws, in 1999 and 2008, that authorize us to promote emergency 9-1-1 services throughout the country. So, whenever the FCC identifies significant problems with these vital services, we should not hesitate to address them, and by adopting this Order, the Commission takes necessary action to improve the reliability of emergency networks.

The 9-1-1 problems which this Order addresses came to our attention at a time when we could least afford them -- during the June 2012 derecho -- one of the most disastrous storms our Nation has experienced. Even though it lasted less than a day, the storm resulted in 22 deaths, widespread damage, and millions of power outages across several Midwest and Mid-Atlantic states. The derecho also impaired the ability of millions of Americans to access 9-1-1 services and left certain areas without 9-1-1 for several days.

The Commission thoroughly investigated and reported on why these service outages occurred. The staff reviewed more than 500 network outage reports, and interviewed 28 PSAPs and representatives from eight communications providers. What the staff found was that with regard to a number of service providers, 9-1-1 service disruptions were due to companies failing to have adequate plans and systems in place during storms, and other inclement weather events. In other words, these failures could have been avoided if these providers had followed industry best practices developed by CSRIC -- our advisory committee on network security and reliability.

Because addressing these concerns should be a high priority, I circulated a draft Order to improve the reliability of these networks with four core requirements that our staff recommended in its report. 9-1-1 service providers must: audit the physical routes of their networks; ensure physical diversity of monitoring links; require a specific amount of backup power at central offices; and give PSAPs more information when and where service outages occur.

I wish to thank Chairman Wheeler for placing this Order on the agenda for today's Open Meeting and I am grateful to Lisa Fowlkes, Jeff Goldthorp, Eric Schmidt, and the other talented staff members who contributed to this excellent Order. I join others in welcoming Admiral David Simpson to the Commission, congratulate him on his appointment as Chief of the Public Safety and Homeland Security Bureau, and thank David Turetsky for his contributions to the item.

DISSENTING STATEMENT OF COMMISSIONER AJIT PAI

Re: *Improving 911 Reliability*, PS Docket No. 13-75; *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60.

When our citizens call 911, they expect and deserve to reach emergency personnel. Making that happen for each and every 911 call is not easy. Unlike normal calls, a consumer's provider—whether a traditional telephone carrier or a wireless operator, a cable company or an over-the-top, interconnected VoIP provider—cannot simply transmit a 911 call to a destination based on the number dialed. Instead, that provider must transmit the call to a selective router to determine which public safety answering point (PSAP) should receive the call. Then it must determine how to connect that caller to that PSAP. The PSAP in turn queries an automatic location information (ALI) database to determine the location of the caller so that emergency personnel can respond immediately. PSAPs themselves purchase communications services from 911 system service providers (SSPs), all under the oversight of state governments.

Notably absent from this arrangement is the FCC. We do not establish 911 service tariffs. We do not negotiate 911 service contracts. And we do not collect or distribute 911 funds. Instead, Congress has given us a supplementary role when it comes to 911 SSPs: We are charged with “work[ing] cooperatively with public safety organizations [and] industry participants . . . to develop best practices” for “network diversity requirements,” “call-handling in the event of call overflow or network outages,” and “certification and testing requirements” for service to PSAPs.¹

For years, the Commission has carried out this statutory duty through its Communications Security, Reliability, and Interoperability Council (CSRIC), and its predecessors. CSRIC has developed and maintained best practices for network reliability and disaster preparedness. Most 911 SSPs have claimed that they voluntarily follow these best practices. Unsurprisingly, many PSAPs have relied on these promises in evaluating the service of 911 SSPs.

The 2012 derecho storm that swept across the Mid-Atlantic states revealed a flaw in this voluntary scheme. Although some 911 SSPs claimed to follow best practices, their performance during and after the derecho confirmed that they did not do so consistently. And because these providers' claims of compliance were never formally made to the Commission, we had little authority to take action against those who had broken their promises.

Given this background, the Commission needed to take steps within its power to correct the situation. For example, we could have required 911 SSPs to formally certify whether or not they comply with industry best practices. This would let PSAPs know which providers do not conform to best practices and enable PSAPs to order corrective action. This would also make providers' promises enforceable and enable the Commission to sanction those filing false certifications. As a second step, we could have required an across-the-board audit of critical 911 circuits so that all 911 SSPs—and, crucially, their customers, the PSAPs—could identify weaknesses in today's 911 service infrastructure. Indeed, I would have supported today's item had we taken just these steps, and I proposed to align this order with that vision.

¹ Wireless Communications and Public Safety Act of 1999, Pub. L. 106-81, § 6(h), *as amended by* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, § 101(2).

But today's order goes a hop, skip, and a long jump further. For example, while the *Order* claims to adopt a certification scheme, it in fact adopts extremely prescriptive and mandatory standards. Take new rule 12.4(b). This rule requires 911 SSPs to "take reasonable measures to provide reliable 911 service." This sounds anodyne in theory. But in practice, it gives the Commission carte blanche to fine 911 SSPs that do not comply with whatever particular practices the Commission demands.² As such, a 911 SSP must comply with new federal rules, such as annual diversity audits. It must do so even if that information reveals nothing new to the providers or their PSAP customers. And it must do so even though across-the-board annual audits do not come cheap; they are likely to cost the industry anywhere from \$8.96 million to \$22.4 million each year.³

Another problem is that the *Order* claims to leave network design decisions to PSAPs and 911 SSPs but instead delegates freewheeling authority to the Public Safety and Homeland Security Bureau to "order remedial action on a case-by-case basis to ensure the reliability of 911 service."⁴ In other words, the Bureau now has the largely unconstrained authority to order a carrier to redesign its network, to purchase new equipment, or to deploy new facilities, if someone in Washington says so. This level of micromanagement, even if the Commission were equipped to carry it out, is neither appropriate nor effective. We at the Commission have not trenched fiber, have not tested back-up power facilities, and have not designed network monitoring facilities. The experience reviewing the performance of 911 networks after a single storm that affected barely one percent of the country's PSAPs does not qualify us to second-guess the negotiated agreements of thousands of PSAPs and their 911 SSPs nationwide.

A third and final problem with the *Order* is that it imposes burdensome regulations that stray far beyond CSRIC best practices. For example, best practices require only "periodic[]" diversity audits "when called for by network design"⁵ and advise providers, "where appropriate, to design networks . . . to minimize the impact of a single point of failure."⁶ Industry is implementing these practices with audits every two or three years,⁷ in part because other best practices, such as circuit tagging, help prevent the need for more frequent audits.⁸ Against this backdrop, the NPRM in this proceeding stated that circuit audits should occur every two years and were only "necessary for roughly half of these PSAPs because that is the portion likely to be served by more than one selective router."⁹ But what does the *Order* require? Annual audits of *every 911 circuit in the country*.

This will obviously burden 911 SSPs. But ultimately, our nation's PSAPs (and hence taxpayers) will bear these costs. For 911 SSPs, like most other businesses, generally pass on such costs to their customers. Shouldering these additional costs may make some PSAPs think twice before investing in innovative approaches to reliability, such as adopting Next-Generation 911. And ironically, it is not the PSAPs that serve large suburban areas that are most likely to suffer these costs, but those who serve rural areas and tribal lands, flood-prone bayous, soaring mountain communities, and the remote Alaska bush.

² See, e.g., *Order* at para. 63.

³ Audits are expected to take 16–40 man-hours, see *Order* at notes 244, 255, at a cost of \$80 per hour for each of 7,000 PSAPs.

⁴ Rule 0.392(j).

⁵ CSRIC Best Practice 8-7-0532.

⁶ CSRIC Best Practice 8-7-0402.

⁷ See, e.g., Frontier Comments at 9; Verizon *Ex Parte* Notice at 1 (July 3, 2013); CenturyLink *Ex Parte* Notice at 1 (Sept. 18, 2013).

⁸ See, e.g., Fairfax County Comments at 4; Frontier Comments at 9.

⁹ NPRM at para. 41.

Those PSAPs must confront how to allocate scarce resources every day. If a Commission-ordered network redesign costs so much that a PSAP must reduce the number of operators it employs—the consequences could be dire.

I understand the urge to take action. Some 911 SSPs did not live up to their commitments in the derecho, and accountability is necessary. But the people these providers failed are their customers, the PSAPs, and those Americans who could not reach emergency services in a time of need, not us in federal government. And it is the PSAPs, the states and municipalities that oversee them, and on-the-ground first responders, not those working in this building, who must be empowered to take the lead. I respectfully dissent.