



**U.S. Department of Justice**

**Civil Rights Division**

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*Counsel to the Assistant Attorney General  
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March 8, 2013

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington D.C. 20554

Re: In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, PS Docket No. 11-153, PS Docket 10-255, *Further Notice of Proposed Rulemaking*, FCC 11-134, 26 FCC Rcd 13615 (rel. Dec. 13, 2012); 78 Fed. Reg. 1799 (Jan. 9, 2013).

Dear Ms. Dortch:

The U.S. Department of Justice (Department) submits these comments in response to the Federal Communications Commission (FCC)'s *Further Notice of Proposed Rulemaking*, Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, PS Docket No. 11-153, PS Docket 10-255 (FNPRM). In particular, the Department is responding to the FCC's request in the FNPRM for comment on whether the default preference for a Public Safety Answering Point (PSAP) should be text-to-TTY delivery when the PSAP does not declare its text delivery option preference by a certain date.

Title II of the Americans with Disabilities Act (ADA) applies to State and local government entities and, in Subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local governments. *See* 42 U.S.C. §§ 12131-32. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29

U.S.C. § 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance. 42 U.S.C. §§ 12131-65. The ADA directs the Attorney General to promulgate regulations to implement the requirements of title II, except for certain provisions dealing specifically with transportation. 42 U.S.C. § 12134. *See* 28 C.F.R. part 35.

The Department's title II regulation requires that public entities—including PSAPs—that communicate by telephone with applicants and beneficiaries use TTYs or another equally effective telecommunications system to communicate with individuals who are deaf or hard of hearing or have speech impairments—unless the entity can demonstrate that doing so would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. §§ 35.161(a), 35.164. Accordingly, under § 35.161(a) of the current title II regulation, PSAPs must, *at a minimum*, use TTYs or other equally effective telecommunications systems to communicate with individuals with hearing and speech disabilities.<sup>1</sup>

The Department recognizes that many individuals with disabilities now use wireless text devices and the Internet, rather than analog-based TTYs, as their primary modes of telecommunications. Our understanding from the FNPRM is that PSAPs may use existing TTY-based telecommunications systems to process text (SMS)-to-TTY calls. Therefore, in fulfillment of their existing obligation to provide effective communication under title II of the ADA, PSAPs must accept a call from a person with a hearing or speech disability that originates as an SMS call, but reaches the PSAP as a TTY call. A title II entity's obligation under § 35.161(a) to communicate using a TTY or equally effective telecommunications system is not contingent on how the call originates. Accordingly, a PSAP that receives a TTY call must use a TTY (or equally effective telecommunications system) to communicate with individuals with hearing and speech disabilities regardless of how the communication originated, unless the entity can demonstrate that doing so would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. §§ 35.161(a), 35.164.

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<sup>1</sup>It is important to note, however, that PSAPs have a greater responsibility to individuals who use TTYs (cited as Telecommunications Devices for the Deaf (TDDs) in the regulation) or computer modems. For these users, § 35.162 requires PSAPs to provide direct access to 9-1-1 services and, thus, PSAPs may not require TTY or computer modem users to use relay services to call 9-1-1. In its *Advance Notice of Proposed Rulemaking on the Accessibility of Next Generation 9-1-1 services*, the Department made clear its intention to maintain the direct and equal access to 9-1-1 services requirement for individuals with disabilities in any revision to its title II regulation. *See* 75 FR 43446 (Jul. 26, 2010).

The Department also recognizes that some PSAPs have upgraded their emergency telephone systems to incorporate an Internet Protocol (IP) system. As such, some of these PSAPs may choose to use the upgraded IP system (or stand-alone IP-ready working station) to accept SMS-originated calls, but must still answer TTY-originated calls using a TTY. If title II entities choose to accept SMS calls from individuals with disabilities through an IP system, the Department would consider that as using an equally effective telecommunications system; thus, such entities would be in compliance with § 35.161(a).

As noted above, the FCC in paragraph 145 of the FNPRM asked, “Should there be a default preference to ensure that PSAPs that do not declare their text delivery option by a certain date are then assumed to prefer text-to-TTY delivery, since that option should be available without further PSAP action?” Based on the Department’s analysis above, PSAPs are required under the existing title II regulation to accept TTY calls from persons with disabilities, even if they originate as SMS calls, subject to the established defenses of fundamental alteration and undue financial and administrative burdens. The Department believes that the FCC’s proposed use by wireless carriers of a default preference for non-responding PSAPS of the SMS-to-TTY delivery option would further the goal of facilitating PSAPs’ compliance with the Department’s implementing regulation pursuant to title II of the ADA.

Respectfully submitted,

A handwritten signature in blue ink that reads "Eve Hill / by GPF".

Eve L. Hill  
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Civil Rights Division