

**Before the
Navajo Nation Telecommunications Regulatory Commission**

In the Matter of)	
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Navajo Nation 911 Service and Public Safety)	No. NNTRC-12-001
Answering Point (PSAP))	
)	
_____)	

COMMENTS OF SMITH BAGLEY, INC.

I. Introduction

Smith Bagley, Inc. (“SBI”) appreciates this opportunity to provide input to the Commission to help the Navajo Nation implement 911, E-911 and a state of the art Next Generation 911 (“NG911”) system to enhance the Nation’s ability to dispatch first responders to tribal members and visitors alike. SBI has been proud to serve the Navajo Nation for over twenty years as a licensed commercial mobile wireless carrier. In that time, SBI has invested millions of dollars in its infrastructure, going from just two cell sites to 83 on Navajo lands, plus a number of others on adjacent land that also serve the Nation.

SBI continues to invest in new towers and facilities, improving coverage and increasing data speeds throughout the Navajo Nation. Of course, getting telecommunications networks built to cover throughout the Nation is the first step to achieving 911 coverage. The other prerequisite is to get phones in the hands of the Nation’s residents. Having service available does no good if the populace does not have access to the service. To help achieve high levels of market penetration, SBI offers a “Lifeline” service that today reaches over 50,000 households on the Navajo Nation. The federal government’s Lifeline program allows SBI to offer discounted service to residents of the Navajo Nation at a price of one dollar per month.

With this brief background, SBI offers the following responses to the questions in the NNTRC's Notice of Inquiry issued on November 13, 2012:

16. How can the Navajo Nation ensure that the E911 model adopted by the Nation is the most advanced available, taking into consideration the current rule making regarding NG911 by the Federal Communications Commission in PS Docket No. 11-153 and 10-255?

On December 12, 2012, about a month after the NNTRC issued its NOPR, the FCC adopted a Further Notice of Proposed Rulemaking ("FNPRM") in Docket Nos. 11-153 and 10-255.¹ The FNPRM requests comments on proposals to develop the capability to contact 911 emergency services via text messaging. The FCC noted its action builds on prior FCC initiatives and a recent voluntary commitment by the four largest wireless carriers, Verizon Wireless, AT&T Mobility, Sprint and T-Mobile, with the support of public safety organizations, to make text-to-911 available to their customers by May 15, 2014, with significant deployments expected in 2013. Deadlines for Comments and Reply Comments regarding the FNPRM will be established once the FNPRM is published in the Federal Register.

Thus, while the longstanding delay in implementing E911 service on the Navajo Nation is unfortunate and needs to be remedied as soon as reasonably possible, going forward the timing could be fortuitous in the sense that implementation now will at the very least allow the Nation to consider how to implement text-to-911 at the same time as it

¹ See, Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, Further Notice of Proposed Rulemaking, FCC 12-149 (released December 13, 2012), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1213/FCC-12-149A1.pdf.

implements voice E911. And, it may even be feasible to implement NG911 at the outset, depending on how quickly the FCC adopts NG911 rules and how quickly the Navajo Nation implements 911 service. However, SBI also urges that the long-term objective of NG911 implementation should not delay intermediate and low-cost steps to improve Basic 911, such as the fundamental task of coordinating with carriers on call routing.

The FCC's FNPRM would not implement NG911. Rather, the FCC's goal is to provide valuable real-world operational experience that will help consumers, PSAPs and service providers plan for full NG911 deployment. Accordingly, true NG911 implementation and standards are likely still a few years away. For example, the FCC does not propose at this time to require provision of E911 Phase II location information in conjunction with 911 text messages. The NNTRC should carefully and continuously monitor the orders on the FNPRM and the FCC's subsequent work on NG911. The Navajo Nation will have to balance the potentially competing goals of implementing state-of-the-art PSAPs with the goal of implementing E911 as soon as possible. If efforts by the FCC, carriers, and NENA progress reasonably quickly, there may be good reason to delay E911 implementation slightly in order to ensure that the Navajo Nation's PSAPs are not obsolete on the day they are put into service.

Today, text-to-911 service is feasible and PSAPs and wireless carriers are voluntarily beginning to deploy the capability in their networks. The FCC's FNPRM proposes that providers deliver text messages to NG911-capable PSAPs using a standardized NG911 protocol, such as the NENA i3 protocol. SBI urges the Navajo Nation to adopt only

officially recognized or widely adopted protocols for E911 as well as NG911. In so doing the Nation will be able to get NG911 services more quickly from carriers.

Additionally, to the extent roamers need 911 services on the Navajo Nation, their phones will be compatible with the Nation's PSAPs. Likewise, when Tribal members roam to other parts of the U.S., their phones are more likely to work if the Nation is following established standards.

Finally, as the FCC acknowledges, carriers need protection from liability to incentivize them to pursue and deploy new technologies. Thus, the FNPRM seeks comment on whether providers of text-to-911 service have sufficient liability protection under current law to provide text-to-911 services to their customers, or whether additional protection may still be needed or desirable. The Navajo Nation should do likewise.

17. What is required for successful administration of a 911 system? The NNTRC envisions three main separate components in the administration of an E911 system. The three components are the PSAP, Master Street Addressing Guide (MSAG), and Rural Addressing. Can the three components be managed separately by independent agencies or departments, or should the entire E911 solution be managed by only one agency or department?

The Navajo Nation will need an experienced 911 administrator or director not only to administer, but also to help it implement 911 service. This should be a professional, full time position to ensure continuity. The administrator should be given sufficient authority, autonomy, and support to achieve the challenging goal of developing,

implementing, and operating a state of the art 911 system. The administrator will also need strong political skills and cultural sensitivity, as it is essential that the administrator achieve and maintain support from the governing elected body, as well as from the community at large.

SBI does not think the Navajo Nation's system will be so large or complex that the three components would need separate administrators. Additionally, the burden of additional salaries, coordination, and additional oversight of separate agencies could be significant.

A number of other tribes in the Southwest and elsewhere in the U.S. have implemented 911 systems. If the NNTRC has not already done so, a good starting point might be to review how other tribes have implemented and operate their systems.

18. Who should develop and negotiate the Service Plan(s)? Who should be the lead agency? How often does the service plan need to be modified and what aspects of service plan require agreements to be maintained and updated?

Again, an experienced, professional administrator is probably needed to ensure competence and continuity. See the response to 17, above. As far as a lead agency, this is a political question for the Nation, and there are many options. One option would be to appoint a special task force or working group of volunteers to work with the Council, the Administrator, the Chapters, and carriers. The task force should have a representative from the Office of President and Vice President, Council, NNTRC, Division of Public

Safety and its Office of Emergency Management; as well as some or all of the Chapters and perhaps from the leading wireless and wireline carriers serving the Nation. Ideally the task force would be a “working” group, not just a governance group, both to help obtain “buy-in” from all stakeholders, and to accomplish more work at much lower cost. Members of the task force should be appointed based on their expertise and willingness and ability to contribute meaningfully to the effort required for a significant amount of time.

19. Who should approve the Service Plan(s)? Is it acceptable that the NNTRC be designated as the entity that can adopt and approve modifications to the service plan? Does the adoption or modification of the service plan require additional approval by the Navajo Nation Council or one or more of its standing committees? Should the NNTRC consider chartering an advisory committee explicitly to review and make recommended modifications to the service plan?

Again, this is a political question that the Navajo Nation itself must answer. See the response to No. 18 for one possible option. SBI suggests that the effort be initiated by formal action of the Office of President and Vice President and the Council, for example by appointment or approval of the task force. This will help ensure broad-based support for the effort from the outset.

Additionally, to the extent that the Navajo 911 program participates in state 911 programs (Arizona, New Mexico, and Utah) the Nation should consider intergovernmental

discussions regarding special treatment of a Navajo service plan, as current state laws may require state 911 agencies to approve the Service Plan. Once the 911 program is up and running, then ongoing supervision may not require as much work and could be handed off to an existing agency, such as the Division of Public Safety or NNTRC. Around the country, 911 programs are usually administered by public safety agencies.

20. How should NNTRC oversee and fund PSAPs and E911 services? Should the NNTRC have direct operational control of the PSAP and other components of E911? How should collected funds be made available to localities or agencies providing any aspect of 911 services?

A 911 system is best regarded as a public safety system that uses telecommunications, not as a telecommunications system that supports public safety. Accordingly, nearly all jurisdictions put control of PSAPs and E911 systems under public safety agencies. However, close coordination is often required, as the current FCC NG911 initiative illustrates. The NNTRC can play a critical role helping to initiate, support, and guide the Nation's E911 efforts. If the Navajo Nation follows this trend, then it might, for example, task the Office of Emergency Management to oversee the PSAPs and coordinate with the Division of Community Development on the other functions, such as the ongoing efforts on addressing.

Funding is always a challenge, but there are a number of potential sources from funding outside of the Navajo Nation's general fund. There are federal and state grants to fund

startup functions and equipment purchases. An example of this is the New Mexico E911 Program, which has already funded mapping software and training to the Navajo Nation to assist in efforts to get all areas properly addressed, so that E911 can be implemented.

Additional funding could be available from New Mexico's Tribal Infrastructure Board. The New Mexico Indian Affairs Department projects that Fiscal Year 2013 funding will be about \$16.7 million, which is up substantially from 2005, when the fund was created. Both Arizona and New Mexico provide ongoing funding to Tribal 911 programs, including Gila River, Fort McDowell Yavapai, Salt River Pima, White Mountain Apache, Isleta, Mescalero Apache, and Zuni.

SBI believes it is critically important that the Navajo Nation examine the feasibility of working within the existing state funding structures for 911. Spreading the cost of implementing 911 and NG911 services across the population of the Navajo Nation is likely to create a significant new tax burden on the Nation's citizens, many of whom cannot afford new taxes. If Navajo is able to work within the state's funding structure, the implementation and ongoing costs of maintaining 911 and NG911 services will be spread across millions of people and households, greatly reducing the burden on Navajo citizens. See also SBI's response to No. 21, below.

21. Should the Nation implement an E911 tax? If an E911 tax is implemented who should be exempt from such taxes? Should E911 tax be percentage or surcharge per line? How should the tax or surcharge be determined and how often should the tax or surcharge be adjusted?

The Nation should not implement a separate E911 tax comparable to state E911 taxes unless it is absolutely necessary. As set forth above, the costs of providing public safety should be spread across the largest possible number of users, especially when people living outside of Navajo will expect to have 911 services when they travel to, or through, Navajo lands.

For these reasons, SBI believes the Nation should participate in existing state-funded E911 programs and should allow carriers to collect and remit applicable state E911 taxes. While ordinarily it might be preferable for a Tribe to assert sovereignty over all aspects of a program such as 911, including taxing authority, here it will likely be more beneficial for the Nation to work with and through the states. If the Nation were to assess its own E911 taxes either in lieu of or in addition to state E911 taxes, it could jeopardize the Nation's ability to participate in the state 911 programs. It would be extremely burdensome on the Nation and telephone company customers (since E911 taxes are always passed through to customers) if the Nation had to fully fund its 911 program without support from the established state programs.

The economics of a stand-alone Navajo Nation E911 program will be challenging. Quite simply, the tax base of a stand-alone program would be much smaller than the millions of people using service throughout Arizona, New Mexico and Utah that are currently subject to the state E911 assessments. Compounding the difficulty is that the Navajo Nation's E911 system will have to cover parts of three states with much lower densities

of phone lines per square mile than the adjoining states. Accordingly, the per-customer cost of an independent Navajo Nation E911 system would be higher. The E911 tax would likely be measured in dollars, not cents as in the state programs.

In order to be successful, E911 assessments must be kept reasonable for the average customer. This is particularly true for the Navajo Nation, where both household incomes and telephone penetration are well below the national average. For E911 to be effective, the population must first have basic phone service. Particularly in economically challenged areas, if a Navajo-only 911 tax is imposed at several dollars per month, many residents and households on the Nation could forego basic phone service.

While SBI urges that the Navajo Nation not adopt its own E911 tax on phone service, if it were to do so it should exempt Lifeline service from any such tax. As stated above, the FCC's Lifeline program allows SBI to offer service to eligible Navajo households at a cost of \$1 a month. If tribal E911 taxes were \$2, \$3, or even \$4 or more, Lifeline customers would see their phone bills go up by double, triple, or even more. These low income customers are very price sensitive and many of them would no longer be able to afford to keep their phones. Telephone penetration rates on the Navajo Nation could drop measurably, and perhaps even significantly. The Nation must carefully weigh the benefit of better access to public safety for the majority against the risk of loss of all network access for a substantial minority. The best way to minimize this potential loss would be to participate in the state funding mechanism, to spread the costs as widely as

possible, and exempt Lifeline service from any new 911 taxes levied by the Navajo Nation.

22. What should be fundable with an E911 tax? E.g. Facility Management (Environment Services, Construction, Rental, Improvements), Call Center Equipment (Purchase, Support Contracts, Chairs, Desks, Filing & Office Supplies), Call Center Network (Monitoring Devices, Interface Equipment, Backup & Disaster Recovery, Compliance Equipment, Software Licensing), Administrative costs.

For the reasons discussed in response to Nos. 20 and 21, above, it would be beneficial for the Nation to establish its 911 program in conjunction with existing state programs. To the extent the state 911 programs do not cover all the costs necessary to establish and operate PSAPs, there may be other state and federal grants and programs available, as discussed in No. 20, above. To the extent the Navajo Nation needs to rely on its own resources for certain elements of its 911 program, it should turn to its general fund.

While finding new dollars in a general fund is always a challenge, the overall benefits to the Nation of funding the majority of its 911 program out of the much larger state funds should outweigh incremental burden on the general fund.

23. Who should operate and administer PSAPs? Should any other entity be involved in the operation besides the Navajo DPS? Can portions of the PSAP operations be outsourced to private entities as a cost savings or risk management mitigation solution?

See responses to Nos. 19 and 20, above. As discussed in No. 19, usually 911 programs are administered by public safety agencies, such as the Division of Public Safety, in coordination with utility regulators such as the NNTRC.

25. Who are the stakeholders, including governmental agencies? The NNTRC seeks comments on listing of stakeholder to ensure the service plan stakeholder listing is complete.

SBI is very interested in working with the NNTRC and the Navajo Nation on this critical public safety infrastructure initiative and would like to be included on the list of stakeholders. Additionally, an invitation to participate should be sent to all communication providers serving the Navajo Nation; to state and local governments overlapping or adjacent to the Navajo Nation, especially 911 administrators and public safety agencies, and to Federal offices and agencies that might be interested, such as BIA. Internally, the Council, Chapters, and the following Navajo Nation departments and agencies should be listed: NNTRC, Division of Public Safety, GIS/Rural Addressing Group; Navajo Nation Telecommunication & Utilities, Division of Community Development; Division of Health; Information Technology, Office of Management and Budget; Department of Transportation; Navajo Tax Division; and the Navajo Nation Executive Branch. This list is not exhaustive and there may be other departments and agencies that should be listed as well.

26. What entity should be responsible for collecting and maintaining contact information of stakeholder agencies (state, county, municipal, tribal, federal)?

The same agency selected or created to administer the Nation's E911 program. See responses to Nos. 17-19, above.

27. What information from stakeholders should be shared? What information should be maintained as confidential information from stakeholders?

During the adoption phase, all comments and submissions that are not designated confidential should be shared. Stakeholders should have the option to submit data supporting their comments under a "confidential" designation. Confidential information should be reasonably protected from disclosure. After E911 is operational there should be much less need to share any information among stakeholders. This question can be addressed in greater detail as the Nation develops the service plan.

28. How can coordination among stakeholders be best facilitated?

As discussed in No. 18, above, the task force or working group created to establish the 911 program should have representatives from the major stakeholder groups. If the task force maintains a public and open process that all stakeholders can monitor—and provide input as needed—that would facilitate stakeholder coordination. See also the response to

No. 19, above, regarding the need for Executive or Council action to support the initiative.

29. What is the current status of the Service Plan? How can the development of a Service Plan be best accomplished?

SBI understands that the Navajo Nation has drafted or started to draft a service plan, but SBI has not seen a copy of the draft. Going forward, SBI suggests appointment of a task force or working group, as discussed in No. 18, above.

30. How many PSAPs should there be and where should they be located?

Theoretically, SBI believes that a single PSAP could handle the entire Navajo Nation efficiently, as many PSAPs nationwide are responsible for several hundred thousand citizens. In practice, more may be needed due to state requirements for backup and possible jurisdictional issues. Details such as this are best left to the task force, but they should be encouraged to seek the most efficient solutions possible.

31. What data should be kept on first response statistics?

This appears to be an issue for public safety, not carriers. SBI has no comment on this question at this time.

Respectfully submitted this 4th day of January, 2013.

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