

**STATE OF VERMONT
ENHANCED 9-1-1 BOARD
General Meeting #4
5 November 2020**

FINAL
approved as written
approval date: 1/19/21

Location: Meeting held via Microsoft Teams due to the pandemic.

10:02 AM – Call to Order

Chair Marcoux brought the meeting to order. The following were in attendance via Microsoft Teams:

Board Members Present

Sheriff Roger Marcoux, Chair
Chief Steven Locke, Vice-Chair
Captain Lance Burnham
Dale Porter (arrived after roll call)*
Jerome Pettinga
Kelly Kennedy
Brian Keefe

Staff Members Present

Barbara Neal, Executive Director
Soni Johnson, Board Clerk

Others Present

Stephen Whitaker
Lee Krohn
Matt DeTura
Charles Storrow
Phillip Sisk
John Cummings
Nancy Malmquist
Michelle Painter Lama
James White

*Dale Porter had to leave the meeting @ 10:53 AM and rejoined at 11:43 AM. She was unavailable for the approval of minutes, but was present for all other motions & votes.

Approval of Minutes

- General Meeting #3 – 7/14/20 – Motion: Chief Locke made a motion to accept the minutes as written; 2nd by Jerome Pettinga. There was no discussion and the motion passed unanimously by roll call vote.
- Special Meeting #3 (sub-committee) – 7/23/20 – Motion: Chief Locke made a motion to accept the minutes as written; 2nd by Captain Burnham. There was no discussion and the motion passed unanimously by roll call vote.
- Special Meeting #4 – 7/28/20 – Motion: Chief Locke made a motion to accept the minutes as written; 2nd by Jerome Pettinga. There was no discussion and the motion passed unanimously by roll call vote.
- Special Meeting #5 – 7/30/20 – Chief Locke made a motion to accept the minutes as written; 2nd by Jerome Pettinga. There was no discussion and the motion passed unanimously by roll call vote.
- Special Meeting #6 (sub-committee) – 10/28/20 – Motion: Chief Locke made a motion to accept the minutes as written; 2nd by Jerome Pettinga. There was no discussion and the motion passed unanimously by roll call vote.

Outage Notification Rule

Executive Director Neal shared two documents with Board members/meeting attendees detailing public comments received concerning the draft rule and changes made (or not made) in response to those comments. Both documents (*CommentsandResponsesbyRuleSection_October2020_WithSubcommitteeNotes* and *E911-ProposedRule_OutageReportingRequirementsforOriginatingCarriersandElectricPowerCompanies_Revised102820*) have been incorporated into these meeting minutes.

Motion: A motion was made to accept the revised rule as written and submit it to LCAR. Moved by Jerome Pettinga; 2nd by Brian Keefe. There was no discussion and the motion passed unanimously by voice vote.

System Implementation and Operation

Executive Director Neal provided a status update on the E911 system switch to INdigital (cutover date was 10/13/20). The system is operating as expected. Carrier transitions are ongoing. The system IVV was completed prior to cutover; it determined that the INdigital system was provided in accordance with the contract, IVV testing was passed (i3 standards compliance was partial and work is ongoing to ensure

compliance moving forward). PSAP Administrators meeting was held to get feedback on the switch to the new system.

Captain Burnham provided a brief overview of the Department of Public Safety's perspective on the system switch (few small issues but very smooth transition overall).

Board Membership Discussion

Board currently has a vacancy (Chiefs of Police representative). Executive Director Neal detailed an email she received saying that no chiefs are currently available to fill the vacancy. Board members discussed whether an assistant chief should be accepted instead; members agreed that a chief is preferable. Chair Marcoux will contact the police chief's association to discuss the issue.

VUSF Revenue Declines/Impact on Budget

Executive Director Neal provided a summary of the ongoing issues with VUSF funding/shortfall and detailed the potential impact on E911's FY20 & FY21 budgets.

Executive Director Neal and Chair Marcoux will continue to have meetings/discussions with the Secretary of Administration, the Public Service Department, and Finance & Management on this issue.

Executive Director Neal also provided details of a discussion she had with Commissioner Schirling (Dept. of Public Safety). The commissioner was seeking input from the Board concerning the possibility of Public Safety changing to an Agency (rather than a department) and the possibility that the Enhanced 911 Board would become part of the new agency. Board members discussed: Would this be a benefit to the E911 Board? Would this be a benefit to DPS? Would the Board continue to exist? How could this impact the statewide 911 system?

Public Comment

- Board members & staff were commended on the work done on the Outage Notification rule and were reminded that other Board rules need to be updated.
- Wireless carrier coverage maps are unreliable. Coverage area information provided by wireless carriers should be independently verified.
- The E911 Board should remain independent from the Department of Public Safety.
- VUSF money currently set aside for broadband connectivity should be used to correct the shortfall in E911's funding.
- The E911 Board should take an active role in facilitating uniform regional consolidated dispatch.
- The E911 Board should recommend that the VUSF charge be extended to cover broadband as is allowed by the Internet Tax Freedom Act.

New Business – none

Next Meeting Date & Adjournment

The next quarterly board meeting will take place on January 12, 2021.

Motion: There being no further business, Chief Locke made a motion to adjourn; 2nd by Kelly Kennedy. There was no discussion and the motion passed unanimously by voice vote. The meeting adjourned at 11:49 AM.

Respectfully submitted:

Soni Johnson
Soni Johnson, Board Clerk

11/16/20
Date

Rule Section

Commenter:

Sally and Harrison Picard

Date

Comment

10/15/2020

There is no cell service in most of Andover...every year since Vtel removed the copper phone lines we have been without 911 access at some point during each year...unable to contact doctor, ambulance, police, report a fire, reach a neighbor for help. Our burglar alarm is non-functional...

In Andover, power goes out frequently and for long periods of time, leaving us vulnerable... When the power is out, we have no phone and no heat.

We are senior citizens...old and vulnerable. Following recent surgery, Mr Picard was trying to recuperate at home but we were forced to leave our home due to lack of 911 service on 9/17/2020. We tried to have it restored but were told no - they (assume GMP) would not restore 911 service for hospitals, seniors or those needing oxygen. Service not restored until 9/22/2020 - six days without 911 service.

Vtel refuses to maintain a list of vulnerable citizens who need O2, are elderly with other medical issues, are wheel-chair bound or post-op to restore their service ahead of others who are not as vulnerable.

No matter how many batteries we buy, when power is out for a week there is no 911. When their (Vtel) equipment is out, batteries don't help. Their equipment failed on 9/17/2020. They need to have enough technicians hired to restore 911 service immediately.

Vtel will not guarantee service appointment schedules.

Please make them (Vtel) accountable so that all Vermont citizens have access to 911. They should be made to maintain and pay for whatever is necessary for all Vermont citizens to always have access to 911.

Placing the burden of obtaining, maintaining, and paying for batteries to operate 911 service is unacceptable.

They should pay for cell towers for 911 access when their system is down.

When their system is down, they must be held accountable for a person's death, injury, loss of property etc.

Subject

ID

Other

155

Subcommittee Notes

The subcommittee is concerned about the multiple and serious issues outlined in this public comment and agrees that reliable access to 911 is critical for all Vermonters.

The legislatively defined purpose of this rule is to establish protocols for the Enhanced 911 Board to (CONTINUED NEXT PAGE)

Rule Section

Commenter:

Sally and Harrison Picard

Date

Comment

Subject

ID

(CONTINUED) "obtain information about or be apprised of" system outages for the various originating service providers and for electric companies. The recommendations provided in these public comments fall outside the scope of the Outage Notification Rule.

While the recommendations are outside the scope of this rule, the subcommittee agrees that the Executive Director should follow up with these commenters separately. The Executive Director will also ensure the Public Service Department is aware of these concerns.

Rule Section

3.4

Commenter:

Jonathon Gibson

Date

Comment

Subject

ID

10/16/2020

In Sec. 3.4, follow "(OC)" with a semi-colon rather than a dash.

Grammar/Formatting

177

Subcommittee Notes

Agreed. Change will be made and document reviewed for other similar formatting edits.

Rule Section

3.5.1 and 3.5.2

Commenter:

CTIA

Date

Comment

10/16/2020

The Board should ... clarify in the Proposed Rules the definition of “outage” to mean a “significant degradation in the ability of an end user to establish and maintain a channel of communications to make 9-1-1 calls or receive emergency notifications as a result of failure or degradation in the performance of a communications provider's network,” adding that one word to the proposed definition. As CalOES made a point of explaining when it proposed its rules, the modifier “significant” clarifies that an outage occurs only when the degradation affects the end user to such an extent that it causes an impairment or inability to establish and maintain a channel of communication.¹⁷ This important amendment, which mirrors federal standards, helps to ensure that carriers are not forced to unnecessarily report network conditions that may not prevent a consumer from completing a call to and communicate with the 9-11 system. Furthermore – and contrary to suggestions from some public commenters at the hearing – by clearly defining the term within its Rules, the Board will help to ensure clarity for all parties regarding what constitutes a reportable 9-1-1 outage.

Subject

ID

Definitions

181

Subcommittee Notes

The definitions of an outage in sections 3.5.1 and 3.5.2 are clear and straightforward. The addition of the word "significant" would create vagueness and may lend itself to different interpretations.

Rule Section

3.5.1 and 3.5.2

Commenter:

Jonathon Gibson

Date

Comment

Subject

ID

10/16/2020

In Sec. 3.5.1, second sentence, and in Sec. 3.5.2, second sentence, after the words “caused by”, insert the word “such” so as to tie these sentences to the preceding definition. It is important that the Board’s rule not imply that a provider’s entire “network” must fail before reporting is required. It must be crystal clear that any degradation, failure, or loss of any element, component, etc. of a network that causes loss of 911 connectivity must be reported.

Definitions

166

Note the definition of “outage” in the California OES regulation in Sec. 5001 (c) that says “.....result of failure or degradation in the performance of a communications provider’s network.” This wording clearly covers both conditions that would prevent 911 functions.

Subcommittee Notes

This recommendation is agreed to - adding the word "such" as described would provide clarity.

10/16/2020

Note also that the California definition includes “...and to receive emergency notifications” in the definition of outage. The Vermont rule should include receipt of 911 communication in its outage definitions in both 3.5.1 and 3.5.2

Definitions

167

Subcommittee Notes

Discussion of VT-Alert and its functionality, along with similarities to Amber Alert. Role of wireless emergency alert system. Concerned about the areas without cell phone coverage with customers who are reliant on wireline. Does it hurt to include it in the definition?

The Executive Director should solicit input from originating service before changing, even if it means the rule goes through as is and we consider this at a later date - after input from carriers.

Note: Executive Director reached out to the carriers and California rulemakers on 10/29/2020.

Rule Section **3.5.3**

Commenter: **Jonathon Gibson**

Date	Comment	Subject	ID
10/16/2020	In Sec. 3.5.3, after the word “failures”, insert the words “or circumstances” to cover external factors (as opposed to internal system malfunctions) which prevent an electric power company from distributing power, such as a weather event, a downed line or pole, or the like.	Definitions	168

Subcommittee Notes [Agree with the commenter, the word "circumstances" should be included in the definition.](#)

Rule Section **4.0**

Commenter: **Stephen Whitaker**

Date	Comment	Subject	ID
10/9/2020	We have jurisdiction over tower siting and we need to condition that – not the 911 Board, but the PUC – and we need to condition that on reliable networks and transparent reporting. And we have jurisdiction over 911. (Clarification provided on 10/28: including the requirement for transparent reporting in the Board's rule will give the Board standing as the PUC carries out its tower siting responsibilities).	Thresholds	164

Subcommittee Notes [Requirements related to tower siting and the role of the Public Utilities Commission are outside the scope of this rule.](#)

Rule Section**4.2****Committer:****Comcast and Charter Joint Comments****Date****Comment****Subject****ID**

10/16/2020

...generally support the Proposed Rule which has evolved significantly since the E-911 Board first circulated the initial “stakeholder” draft for comment in August 2019. Comcast and Charter have actively participated in the development of the Proposed Rule and appreciate the E-911 Board’s willingness to consider their comments and the Board’s responsiveness to Originating Carrier concerns about the original “stakeholder” draft and the recognition that having a patchwork of reporting requirements across the country would be administratively burdensome and not in the public interest

Thresholds

156

Subcommittee Notes

Acknowledge general support of current proposed rule. It appears the current version of the rule addresses the concerns about the potential for a patchwork of reporting requirements across the nation.

Rule Section**4.2****Committer:****Jonathon Gibson****Date****Comment****Subject****ID**

10/16/2020

In Sec. 4.2, apply the same reporting threshold as is used in Sec. 4.1. Act 79 as amended, in referencing the FCC reporting threshold “as it pertains to wireless service providers” specifically says that the E-911 board “...shall incorporate the lowest above-referenced reporting threshold applicable to wireless service providers...”. It does not direct the Board to apply the standard to facilities-based fixed voice service OC’s. Nor does it limit the Board’s discretion to apply what it deems an appropriate threshold for Vermont, such as an OCO lasting at least 30 minutes and affecting at least 25 subscribers that the Board has proposed for ILEC’s.

Thresholds

169

Subcommittee Notes

Acknowledge that Act 125 requires standards in line with California only as it pertains to wireless service providers; however previous public comments from national VoIP services providers indicated their concern regarding the potential for a patchwork of reporting requirements across the nation. Incorporating a threshold similar to that of California for these service providers will address that concern while also ensuring that the 911 Board receives notification of outages at a much more granular level than would be required by the FCC-established thresholds.

Rule Section

4.2

Committer:

VPIRG - Vermont Public Interest Research Group

Date

Comment

10/17/2020

VPIRG would encourage the Board to consider editing section 4.2 so that the reporting thresholds for other facilities-based fixed voice service match the thresholds for ILEC voice services referenced in section 4.1. Act 125 only requires that the Board to adopt standards in line with California as it pertains to wireless service providers. As such, we believe the Board would be well advised to apply a reporting threshold for facilities-based fixed voice service that mirrors the threshold for other traditional landline communications.

Subject

ID

Thresholds

151

Subcommittee Notes

Act 125 requires thresholds in line with California only as it pertains to wireless service providers; however previous public comments from national VoIP services providers indicated their concern about the potential for a patchwork of reporting requirements across the nation. Incorporating a threshold similar to that of California for these service providers will address that concern while also ensuring that the 911 Board receives notification of outages at a much more granular level than would be required by the FCC-established thresholds.

Rule Section

4.2 and 4.4

Committer:

Jonathon Gibson

Date

Comment

10/16/2020

I urge you to include a provision in the final rule that requires providers to provide to the Board whatever information the Board determines is necessary to calculate and verify the number of a provider’s subscribers within the applicable Zip Codes and service areas. Such a provision will establish the basis for conducting surveys or other information gathering exercises that will give the Board up-to-date mapping and verification of the coverage areas of cell towers and will ensure the accuracy of wireless reporting by Zip Codes.

Subject

ID

Zip Codes

174

Subcommittee Notes

The subcommittee defers to the Board staff expertise on this comment.

Board staff comments: Wireless carriers are already required to report the location of their towers to the 911 Board and provide an estimation of coverage area for each sector. The Board staff expects this information will be adequate for meeting the purpose of this rule. In addition, the rule requires wireless carriers report when there is a loss or degradation of 50% of the coverage in a ZIP code, not an impact to 50% of subscribers at any given time. Additional requirements to map and verify wireless coverage areas are outside the scope of the rule.

Rule Section

4.2 and 4.4

Committer:

Stephen Whitaker

Date

Comment

Subject

ID

10/9/2020

You'll often hear some of these carriers claim that the State is preempted, but I call your attention to the 2014 order of the FCC explicitly stated that when it comes to 911 they share jurisdiction with the States and localities that are more able to monitor and be aware of the weaknesses and failures of these 911 systems. So deferring to a national uniform standard is not in our interest at all. Our interest is getting accurate reporting as soon as possible and in compiling that reporting so it becomes a useful tool for the PUC to more effectively regulate conditions on tower permits and resilient architectures of fiber backhaul. Twenty-three Verizon towers went offline two years ago and the national monitoring center in Virginia responded in email that they weren't even aware there was a problem up here. So this idea that this is all handled most effectively at the national level is absolute bogus.

Thresholds

165

Subcommittee Notes

Agree that the FCC-defined thresholds for outage reporting are not appropriate for Vermont. We believe the rule as written demonstrates that while also complying with Act 125.

Rule Section

4.2 and 4.4

Commenter:

Stephen Whitaker

Date

Comment

Subject

ID

10/9/2020

... I believe there is an opportunity here. We know that especially with regards to wireless carriers that the mapped coverage of the cell towers has been notoriously inaccurate and I believe the opportunity here is to require accurate, either independently created with the carriers paying for the cell wireless coverage surveys incrementally, or provided certified coverage be filed with the PUC and the 911 Board, because the zip code elements that were adopted or incorporated from the California rule might not work very well in such a rural area as Vermont especially if it isn't verifiable.

So I believe that we need to strengthen this rule with not only transparency of reporting but transparency of claimed coverage and verified coverage. We have to know that if certain tower or a certain sector of a certain tower goes down that a defined or clearly near-accurate, approximate impact zone is known and made aware to the local first responders because many people have forfeited their landline phones and VoIP phones are very vulnerable over fiber and hybrid coax systems are very vulnerable to power outages even as local as a telephone pole being knocked out with a cable amplifier on it. That can eliminate a large zone of people being unable to complete a call to 911.

Thresholds

162

Subcommittee Notes

Similar to comments #174 (Gibson) and #161 (Betit).

The subcommittee defers to the Board staff expertise on this comment.

Board staff comments: Wireless carriers are already required to report the location of their towers to the 911 Board and provide an estimation of coverage area for each sector. The Board staff expects this information will be adequate for meeting the purpose of this rule. In addition, the rule requires wireless carriers report when there is a loss or degradation of 50% of the coverage in a ZIP code, not an impact to 50% of subscribers at any given time. Additional requirements to map and verify wireless coverage areas are outside the scope of the rule.

Rule Section

4.2 and 4.4

Commenter:

VPIRG - Vermont Public Interest Research Group

Date

Comment

Subject

ID

10/17/2020

VPIRG is broadly supportive of the rule as drafted – and feels that it incorporates reporting thresholds that are generally more appropriate for Vermont than federal reporting thresholds and therefore appropriate for advancing public safety in our state.

Thresholds

150

Subcommittee Notes

Acknowledge general support of rule and appropriateness of reporting thresholds in current version of the proposed rule.

Rule Section**4.2, 4.3 and 4.4****Commenter:****Cecile Betit****Date**

10/16/2020

Comment

As a small rural state, Vermont is very different from California and other states with large urban populations. Our outage rule must have reporting thresholds that quickly identify localized outages so as to safeguard telephone subscribers who must have reliable E-911 service.

The Enhanced 911 Board's priority must be on public safety and promptness in providing outage information for emergency responders even as it respects the profit-making and technological interests of Vermont's telecommunication companies.

The rule needs to include provisions to ensure accurate mapping and verification of coverage areas for cell towers and the accuracy of reporting by ZIP Codes in ways that make sense for Vermont.

Vermont needs to reconsider its directive to the Enhanced 911 Board rule to follow California provisions for reporting thresholds for wireless outages such as number of customers affected and reporting time. Given our population, Vermont's rule for reporting landline outages should reflect its rural and community-based nature with town-by-town reporting within an hour.

Public safety as a need must supersede ethically, any considerations of competitive interest.

Subject

Thresholds

ID

161

Subcommittee Notes

(First comment is similar to Gibson comment (#174)).

The subcommittee defers to the Board staff expertise on this comment.

Board staff comments: Wireless carriers are already required to report the location of their towers to the 911 Board and provide an estimation of coverage area for each sector. The Board staff expects this information will be adequate for meeting the purpose of this rule. In addition, the rule requires wireless carriers report when there is a loss or degradation of 50% of the coverage in a ZIP code, not an impact to 50% of subscribers at any given time. Additional requirements to map and verify wireless coverage areas are outside the scope of the rule.

Rule Section 4.2, 4.3 and 4.4

Committer: Cecile Betit

Date	Comment	Subject	ID
	Regarding reporting within the hour - the current proposed rule requires an initial report of outage within one hour followed by a second report within two hours.		

Rule Section 4.3 and 4.4

Committer: Jonathon Gibson

Date	Comment	Subject	ID
10/16/2020	<p>Use of Zip Codes for outage location reporting (for wireless service providers) - general comments:</p> <p>Before approving a final rule, please be sure the aggregate number of a carrier’s subscribers whose loss of 911 service must be reported does not exceed what public safety requires in a rural state like Vermont. As now proposed, the rule will allow carriers to avoid reporting in cases where many people in multiple Zip Codes are affected, but the number in each Zip Code is less than 100. Throughout Vermont, towns large and small may have multiple carriers and multiple Zip Codes. A town with one Zip Code and two providers could have 95 people out for each carrier, but no report of the 190 residents without 911. To take another example, a town with three Zip Codes could have 99 people in each Zip Code without service, but no outage report would be filed nor would emergency management personnel be informed of the outage.</p>	Zip Codes	172

Subcommittee Notes Act 125 requires thresholds in line with California only as it pertains to wireless service providers; however previous public comments from national VoIP services providers indicated their concern about the potential for a patchwork of reporting requirements across the nation. Incorporating a threshold similar to that of California for these service providers will address that concern while also ensuring that the 911 Board receives notification of outages at a much more granular level than would be required by the FCC-established thresholds.

Rule Section 4.3 and 4.4.1

Committer: Jonathon Gibson

Date 10/16/2020
Comment
The one-hour and two-hour time frames for initial and second outage reports (“notifications”) should be maintained in the final rule. The statute expressly directs the Board to adopt a rule “to obtain information about or be apprised of, in a timely manner, system outages...” and the one and two-hour requirement is both appropriate and necessary to ensure public safety and reliable 911 connectivity in our rural state

Subject Thresholds
ID 170

Subcommittee Notes Agree, one hour and two hour requirement will be maintained in proposed rule.

Rule Section 4.3.1 and 4.4.2

Committer: Comcast and Charter Joint Comments

Date 10/16/2020
Comment
Comcast and Charter also recommend one minor change regarding reported outage information. Specifically, for consistency the first sentences of §§4.3.1 and 4.4.2 should add the phrase “to the extent known” before “the following information”. This will align those sections with §§4.3.2, 4.3.3, 4.4.3, and 4.4.4. Correspondingly, the phrase “to the extent known” can be removed from the third bullets in §§4.3.1 and 4.4.2.5

Subject Other
ID 160

Subcommittee Notes This is reasonable request - changes should be made.

Rule Section**4.4****Committer:****Jonathon Gibson****Date****Comment****Subject****ID**

10/16/2020

...the number of residents with cellphones in a given Zip Code is not really the proper rubric for measuring wireless service or loss of service. Visitors to an area - of which Vermont has many - or people traveling through an area (including Vermonters in transit) are every bit as at risk from a loss of 911 connectivity as a resident subscriber. Can the Board include a more relevant rubric by which to measure and report the actual real-time human impact of a carrier's outage in an affected area on all wireless users in the area, even if some users are subscribers of another carrier? This would supplement the Zip Code data.

Zip Codes

173

Subcommittee Notes

Board staff input: Wireless carriers are not required to report the number of subscribers without service in any given ZIP code, but rather the loss of 50% coverage in that ZIP code. The loss of 50% coverage in a ZIP code does not differentiate between their subscribers and/or roaming subscribers, but focuses on a significant loss of available service in the given geographic area.

Rule Section

4.4.1 and 4.4.2

Commenter:

Jonathon Gibson

Date

10/16/2020

Comment

Sec. 4.4.1 (and 4.4.2 and 4.4.3) are confusing. Sec. 3 defines CMRS's and OC's and distinguishes between two types of outages as OCO's and WSO's. But 4.4.1 refers to OC's reporting an WSO, and the following two subsections refer only to WSO's and not OCO's. Maybe I'm missing something, but please give this your attention and clarify as needed.

Subject

Other

ID

171

Subcommittee Notes

Agree that clarification would be helpful in these sections. Changes recommended by Board staff have been made as follows:

4.4.1 CMRS providers shall make an initial notification as required under subsections 4.4 within one hour of discovery of the WSO; a second notification within two hours of discovery, and shall provide additional updates as they become available, or at the request of the Board.

Also - section 4.4.2, first bullet: change OC to CMRS provider

Rule Section**6****Commenter:****CTIA****Date****Comment****Subject****ID**

10/16/2020

An approach that treats carrier reports as inherently confidential is wholly appropriate under the Vermont Public Records Act (“VPRA”),⁸ which, as CTIA noted in previous comments before the Board, contains explicit protections for trade secrets.⁹ CTIA also noted that the U.S. Department of Homeland Security has declared that information regarding wireless network outages is “Protected Critical Infrastructure Information” (“PCII”) that should be closely guarded from disclosure for reasons of national security.¹⁰ The Federal Communications Commission (“FCC”) has mirrored these national security concerns and also indicated that there potentially are serious adverse competitive consequences that may result from the disclosure of this information.¹¹ Reflecting those reasons, federal law contains an exemption from Freedom of Information Act (“FOIA”) requests for such information.¹² Furthermore, the FOIA exemption for PCII has an analogue under the VPRA, ¹³ which references FOIA as guidance for its interpretation, ¹⁴ and Vermont courts have looked to the way federal courts have interpreted FOIA for guidance in interpreting the exemptions to the VPRA.¹⁵

Confidentiality

179

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Rule Section**6****Commenter:**

CTIA

Date**Comment****Subject****ID**

10/16/2020

At the Board’s October 9, 2020 public hearing, some public commenters expressed concern that an inherent designation of confidentiality for submitted reports would harm public safety by denying information to consumers. CTIA disagrees. Keeping the reports confidential would not in any way compromise the ability of the Board to notify affected consumers of 9-1-1 outages, which CTIA agrees is an appropriate role for the Board to play. But it is decidedly not in the public interest to make the individual reports widely available, because those reports include sensitive and proprietary information such as the addresses and locations of specific pieces of carrier network infrastructure. While that information has no value to consumers, that is precisely the sort of information that could be leveraged by bad actors, whether terrorists who seek to damage communications networks or carriers seeking a competitive advantage by mapping their competitors’ networks, which is why such information is protected both under federal law and in the VPRA.

Confidentiality

180

CTIA re-emphasizes that its proposed language would not preclude the Board from providing situational awareness of outages, which CTIA understands to be the main purpose of the Proposed Rule, nor would the presumption of confidentiality for submitted information deprive members of the public of the ability or right to contest that presumption for individual cases under the appeals provisions within the VPRA. 16

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Rule Section**Commenter:****Date****Comment****Subject****ID**

Sec. 6 as proposed is a testament to the Board’s commitment to transparency and the public’s right to know. I urge you to retain it as written and not to be distracted by carrier claims that the information required to be reported should be considered “inherently confidential”. Honest to goodness, look at what information Sec. 4.4.2 and 4.4.3 require to be submitted. By what stretch of the imagination can that be considered a “trade secret” or an invitation to so-called “bad actors” intent on bringing down the telecommunications infrastructure. This rhetoric is self-serving at best or fear-mongering at worst, and must be rejected.

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Rule Section

6.0

Commenter:

Comcast and Charter Joint Comments

Date

Comment

Subject

ID

10/16/2020

As stated in previous comments, the entirety of Originating Carrier initial outage and restoration reports to the 911 Board should be presumptively confidential.

Confidentiality

157

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Rule Section

6.0

Commenter:

Stephen Whitaker

Date

Comment

Subject

ID

10/9/2020

... with regards to trade secrets, if the trade if you're trading in unreliable networks then there may be a trade secret, but it's the State's obligation to expose the unreliable networks and allow the customer to make an informed choice to switch to a more reliable network. So I dispute the assertion that a trade secret is how often our network fails. That's fundamentally at odds with the concept of doing business in the public good. All of these carriers are required to be certified by the PUC as doing business for the public good and an unreliable network is not for the public good. So the claims about bad actors out in the wild and information out in the wild – we're asking, I believe what we are asking for is as soon as you know you've got an outage give us knowledge that there's an outage we need to be aware of, give us the approximate boundaries of that outage, where are the customers we need to be heightened aware of who might be on telecommunications monitored blood sugar or dialysis or might in the middle of a remote telemedicine cardiogram or something. So we need to insist on as soon as you know tell us how far approximately how big it is and as soon as you know how big it is, but don't create caveats where obfuscation and intentional minimization of the impacts are an option for the carriers

Confidentiality

163

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Note: See also section 6.2

Rule Section**6.0****Commenter:****VPIRG - Vermont Public Interest Research Group****Date****Comment****Subject****ID**

10/17/2020

We would also echo the feedback you've heard from other individual Vermonters that Section 6 – the section pertaining to confidentiality – remain as drafted. We believe the current language ensures maximum consumer transparency, while allowing for the protection of any information that is truly sensitive

Confidentiality

152

Subcommittee Notes

The subcommittee discussed the information that is required in the initial, secondary and restoration of service reports (Sections 4.3.1, 4.3.2, 4.3.3, 4.4.2, 4.4.3, and 4.4.4) and determined that they do not consider any of the information that is not already marked "presumed non-public" to be confidential, proprietary, or system security related.

Subcommittee confirmed that this information should be released in response to public records requests.

Rule Section**6.2****Commenter:****Comcast and Charter Joint Comments****Date****Comment****Subject****ID**

10/16/2020

Comcast and Charter reiterate their support for the addition of a "reverse FOIA" provision of the proposed rule that would require the 911 Board to provide notice to an originating carrier prior to public release of an outage report.

Confidentiality

158

Subcommittee Notes

Subcommittee supports adding language that formalizes the Board's practice of notifying carriers when a public records request is received for their outage reports.

(See new section 6.1.1)

Rule Section

7

Commenter:

CTIA

Date

Comment

10/16/2020

Finally, the Board should adopt any outage reporting rules on a provisional basis, with a required review after a year’s time to revisit any potential issues. Because, unlike the California process, the Board’s approach has yet to be tested in the real world, it is important to revisit the rules and ensure that any issues that arise be addressed. In particular, and as noted previously to the Board, CTIA remains concerned that the one-hour threshold for filing of outage and restoration reports may not be workable in light of the information carriers are required to submit and the fact that current FCC standards for reporting allow for significantly more time to file reports.

As noted previously, the CalOES rules were adopted on an interim basis, and carriers are continuing to operationalize them, potentially discovering issues related to those regulations. Such issues could be raised with CalOES when it begins the final rulemaking process later this year. And because Act 125 requires a Board rulemaking based on the adoption of rules in another state, it is reasonable for the Board to follow up with a review of its rules to incorporate any feedback on the other state’s rules as well.

Subcommittee Notes

(See also comment #159 -Comcast/Charter). Subcommittee does not agree with the proposal for a required review after one year. Board staff will monitor the effectiveness of the reporting required by this rule and will report to the Board any changes that may be needed in the future.

Subject

ID

Other

182

Rule Section**Commenter:****Date****Comment****Subject****ID**

10/16/2020

Sec. 7 provides for an effective date six months after adoption of the final rule, which will occur months after the rulemaking began on August 25 and substantially more than a year after initial passage of Act 79 and the Board's first rulemaking on outage reporting. Any claim that telecom providers need more time to prepare and make a "real world test" of the reporting protocol is unfounded, and 911 outage reporting should be put in place without delay.

Subcommittee Notes

The language in Section 7 requires originating carriers and electric companies to begin reporting as soon as they are technically capable of doing so, but no later than six months after adoption of the rule. The subcommittee believes this language will be adequate for ensuring a timely implementation of the rule requirements.

Rule Section**Commenter:****Date****Comment****Subject****ID**

10/16/2020

CTIA's proposal during the October 9th public hearing for the E-911 Board to revisit the rule after one year and consider how the rule is functioning based on actual experience and whether it needs to be modified has merit and should be adopted.

Subcommittee Notes

(See also comment #182 from CTIA) Subcommittee does not agree with the proposal for a required review after one year. Board staff will monitor the effectiveness of the reporting required by this rule and will report to the Board any changes that may be needed in the future.

Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

1.0 Authority

This rule is adopted pursuant to Vt. Act 125 (2020) and 30 V.S.A. § 7053.

2.0 Purpose

The purpose of this rule is to establish protocols for the Enhanced 911 Board (the Board) to obtain information about or be apprised of, in a timely manner, system outages applicable to wireless service providers, to providers of facilities-based, fixed voice service that is not line-powered, and to electric companies for the purpose of enabling the Board to assess 911 service availability during such outages. This rule also updates and incorporates existing protocols for the Board to obtain information about or be apprised of, in a timely manner, system outages applicable to facilities-based, fixed voice service that is line-powered.

3.0 Definitions

3.1 Commercial Mobile Radio Service (CMRS): A Federal Communications Commission (FCC) designation for any carrier or licensee whose wireless network is connected to the public switched telephone network.

3.2 Electric Power Company: A company that provides distribution of electricity to residential and/or business customers.

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3.3 Incumbent Local Exchange Carrier (ILEC): A class of carriers as defined in 47 U.S.C. § 251(h) which includes, but is not limited to, Rural Local Exchange Carriers (RLECs).

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3.4 Originating Carrier (OC): —Also known as originating service provider, an entity that provides voice services to a subscriber. An OC includes ILECs operating in Vermont.

3.5 Outages

3.5.1 Originating Carrier Outage (OCO): Any known degradation or loss of network elements, systems, services and/or transport facilities that prevent the OC's subscribers from being able to complete a call to, or communicate with, 911. An OCO includes any loss of 911 calling capacity caused by [such](#) an OC's network failure.

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3.5.2 Wireless Service Outage (WSO): Any known degradation or loss of network elements, systems, services and/or transport facilities that prevent the subscribers of a wireless service, also known as cellular service, from being able to complete a call to, or communicate with, 911. A WSO

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Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

includes any loss of 911 calling capacity caused by such a wireless service network failure.

3.5.3 Electric Power Outage: Any known failure, ~~or~~ failures, or circumstances that prevent the electric power company from distributing electricity to residential and/or business customers.

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3.6 System Provider: - An entity that provides the systems and support necessary to enable 911 calling for one or more Public Safety Answering Points (PSAPs) in a specific geographic area.

3.7 Voice Service: -A service that provides voice transmission services. These services are provided over a network that transmits any combination of voice, video and/or data between users. Voice service is provided by an OC that could be a facilities-based fixed voice service that is line powered, a facilities-based fixed voice service that is not line powered, or a Commercial Mobile Radio Service provider.

3.8 ZIP code: -~~T~~he five-digit postal code established by the United States Postal Service. For purposes of this rule, a ZIP code associated only with (A) a Post Office box, or (B) a single physical address, shall be deemed part of the nearest ZIP code not meeting the descriptions of (A) or (B) of this definition for determining thresholds and reporting purposes.

4.0 Notification Requirements for Originating Carriers

4.1 An ILEC providing voice service in the State of Vermont shall report to the 911 system provider and the Board any known OCO lasting at least 30 minutes that limits or prevents 25 or more subscribers in a served geographic area within Vermont, such as a town or community, from completing calls to, or communicating with, 911.

4.2 All other facilities-based fixed voice service OC's providing voice service in the State of Vermont shall report to the 911 system provider and the Board any known OCO that lasts at least 30 minutes and limits or prevents (A) 100 or more subscribers in a single ZIP code or (B) at least 50% of subscribers in a ZIP code with fewer than 100 subscribers, from completing calls to, or communicating with, 911.

4.3 OC's shall make an initial notification as required under subsections 4.1 or 4.2 within one hour of discovery of the OCO; a second notification within two hours of discovery, and shall provide additional updates as they become available, or at the request of the Board.

4.3.1 The initial OCO notification shall include, to the extent that it is known, the following information:

Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

- OC name
- Affected geographic area identified by ZIP code, town, county, or community name
- Brief description of the limitation of 911 calling capability, ~~to the extent known~~
- Contact Name (presumed non-public)
- Contact Phone (presumed non-public)
- 24/7 contact if different from above contact (presumed non-public)

4.3.2 The second OCO notification shall further include, to the extent that it is known, the following information:

- Affected ZIP code and associated readily identifiable descriptive term that would enable validation of the ZIP code, such as the name of a town, county, community name, or similar term
- Approximate subscriber physical locations – including town or community name
- Approximate number of affected subscribers
- Date and time outage began
- Estimated date and time for restoration of service
- General cause (for example – fiber cut, equipment failure, or similar general description)
- Description of the limitation of 911 calling capability: (for example - subscribers are receiving dial-tone and can make calls to other local subscribers but cannot complete calls to 911).

4.3.3 A restoration of service report shall be provided to the 911 system provider and the Board within two hours of resolution of the outage and shall include, to the extent it is known, the following information:

- Actual restoration time
- The call back number(s) of any subscribers that attempted to reach 911, but were unable to do so, due to the outage, if available. (exempt from public disclosure)
- Any other information requested in the initial and second notifications that was previously unavailable or unverified such as general cause, or number of affected subscribers.

4.4 All Commercial Mobile Radio Service (CMRS) OC's providing voice service in the State of Vermont shall report to the 911 system provider and the Board any known WSO that lasts at least 30 minutes and limits or prevents the OC's

Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

subscribers in at least 50% of the OC's coverage area within a single ZIP code from completing calls to, or communicating with, 911.

4.4.1 CMRS providers~~OC's~~ shall make an initial notification as required under subsections 4.4 within one hour of discovery of the WSO; a second notification within two hours of discovery, and shall provide additional updates as they become available, or at the request of the Board.

4.4.2 The initial WSO notification shall include, to the extent that it is known, the following information:

- ~~OC~~ CMRS provider name
- Affected geographic area identified by ZIP code, town, county, or community name
- Brief description of the limitation of 911 calling capability, ~~to the extent known~~
- Contact Name (presumed non-public)
- Contact Phone (presumed non-public)
- 24/7 contact if different from above contact (presumed non-public)

4.4.3 The second WSO notification shall further include, to the extent that it is known, the following information:

- Affected ZIP code and associated readily identifiable descriptive term that would enable validation of the ZIP code, such as the name of a town, county, community name, or similar term
- Approximate subscriber physical locations – including town or community name
- Approximate number of affected subscribers
- Date and time outage began
- Estimated date and time for restoration of service
- General cause (for example – fiber cut, equipment failure, or similar general description)
- Description of the limitation of 911 calling capability: (for example - subscribers are receiving dial-tone and can make calls to other local subscribers but cannot complete calls to 911).

4.4.4 A restoration of service report shall be provided to the 911 system provider and the Board within two hours of resolution of the outage and shall include, to the extent it is known, the following information:

- Actual restoration time
- The call back number(s) of any subscribers that attempted to reach 911, but were unable to do so, due to the outage, if available. (exempt from public disclosure)

Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

- Any other information requested in the initial and second notification that was previously unavailable or unverified such as general cause, or number of affected subscribers.

4.5 The Board may request additional details about the cause of an OCO or WSO and any mitigating steps taken to prevent future outages of a similar nature. All OCS shall work cooperatively with the Board to provide the level of detail needed to assist the Board in its assessment of an OCO or WSO and its impact on access to 911 for the affected subscribers.

5.0 Notification Requirements for Electric Power Companies

5.1 Electric power companies shall provide a detailed monthly report on all outages affecting 25 or more customers and lasting 8 or more hours to the Board by the 15th of each month.

5.1.1 Quarterly reporting may be allowed if, in the judgment of the Board, that frequency will allow for sufficient and timely information gathering.

5.2 The monthly reports will be provided in CSV, XML, Excel, or other importable dataset accepted by the Board, and will include, at a minimum:

- Date and time of outage
- Date/time of restoration of service
- Approximate number of affected customers
- Location of outage and approximate subscriber physical locations including identification of street or section of road, if available, and town or community name.
- Cause of the outage

6.0 Confidentiality

6.1 Information submitted as required by subsections 4.3.1, 4.3.2, 4.3.3, 4.4.1, 4.4.2, 4.4.3 and 4.4.4 is presumed to be public information unless otherwise noted in each section.

6.1.1 Submitters of information required by subsections 4.3.1, 4.3.2, 4.3.3, 4.4.1, 4.4.2, 4.4.3 and 4.4.4 will be notified of all public records requests for the information.

6.2 Submitters of information that may be required by Section 4.5 will be notified of all public records requests for the information and provided an opportunity to mark information they believe to be exempt from public disclosure under Vermont Public Records Law.

Vermont Enhanced 911 Board

**Proposed Rule Governing Outage Reporting Requirements
for
Originating Carriers and Electric Power Companies**

6.2.1 When requesting that material be considered exempt from disclosure, the submitter shall identify the specific information they request not be disclosed and provide an explanation of why the subsection of 1 V.S.A. §§ 315-320 upon which they rely applies. Such requests may be considered but are not binding on the Board in responding to public requests.

7.0 Effective Date

7.1 Mandatory outage reporting will begin as soon as originating carriers and electric power companies are technically capable of providing the information but no later than six months after adoption of the final rule.

8.0 Enforcement

8.1 Pursuant to 30 V.S.A. § 7061(a), the Enhanced 911 Board may file a civil action for injunctive relief in Washington County Superior Court to enforce this rule, and recover its costs and reasonable attorneys' fees in the event that the Board prevails in the action.