



**NUMBER:** Seven

**SUBJECT:** Next Generation 9-1-1 Liability Issues

**OBJECTIVE:** Ensuring that state/federal liability statutes cover all public and private entities who provide Next Generation 9-1-1 and emergency communications systems and services

**TARGET AUDIENCE:** 9-1-1 and Public Safety Authorities, Legislatures, Governors' Offices, Congress

**JURISDICTION:** State/Federal

**BACKGROUND AND DISCUSSION:**

Experience in the deployment of E9-1-1 has shown that a lack of legal clarity on the issue of liability can lead to delays in the provisioning of E9-1-1 service. NG9-1-1 will promote a more complex service delivery environment, with more types of services able to connect to NG9-1-1 systems, more external data sources available to PSAPs, and increased information sharing options among emergency response agencies. These technological possibilities will potentially complicate how liability protection is appropriately provided for new and future services. Service providers and emergency response agencies that are prepared to transition to NG9-1-1 systems will likely more rapidly do so with the legal certainty that their good faith efforts to improve 9-1-1 and emergency communications services will not expose them to further liability.

Recently passed federal legislation (the New and Emerging Technologies Improvement Act of 2008—PL 110-283<sup>1</sup>) provides liability protection for PSAPs, service providers, and their vendors consistent with existing state liability protection provided through statute, tariff or judicial decision.<sup>2</sup> This protection applies to all communications services that are required by the FCC to provide 9-1-1/E9-1-1 (today and in the future), as well as for services that voluntarily provide information to PSAPs, in the absence of an FCC requirement, with approval from the appropriate state or local 9-1-1 governing authority. Thus, where there is existing state 9-1-1 liability protection, federal law now covers communications to PSAPs from new types of services enabled by NG9-1-1. This should encourage the entry of new service providers and provision of innovative data solutions that could result in more effective emergency response.

It is important to note that in some states liability protection may not be provided through a statute, but rather through the tariff of a Local Exchange Carrier (LEC). In such states, if the LEC is permitted to withdraw its tariff (which includes liability protection), and that is the only source of liability protection in the state, then no liability protection will be in place for any providers or PSAPs. Therefore, it is increasingly important for states to ensure liability protection is provided through a statutory mechanism, particularly since NG9-1-1 will potentially be provisioned without the use of tariffs.

<sup>1</sup> Available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ283.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ283.110.pdf) (last accessed January 14, 2009).

<sup>2</sup> 47 U.S.C. 615a.

## NENA Next Generation Partner Program NG9-1-1 Transition Policy Brief

Even where current liability statutes are in place, other liability issues may still need to be addressed through state or federal statutes. For example, NG9-1-1 is designed to increase choices and opportunities to empower 9-1-1 governing authorities and PSAP Administrators to design 9-1-1 systems that enable the sharing and receipt of information consistent with local needs. One region may choose to receive all possible information (voice, text, images, and video) from all devices. Another area may choose to filter and limit receipt of certain information and to route calls differently based on unique local capabilities and needs. Differing 9-1-1 system policies and structures, enabled by standards-based NG9-1-1, is an advantage of NG9-1-1. However, it could also raise possible liability concerns if individual PSAPs choose not to receive all information (e.g., direct video communications) despite the technical availability of such information.

NG9-1-1 will also enable 9-1-1 call routing based on caller characteristics, not just the location of the call. For example, a 9-1-1 call might be made via a video-enabled device by a deaf caller whose native language is American Sign Language (ASL). Rather than route to the closest “geographically appropriate” PSAP that is not video enabled, it may be preferable to enable an intelligent 9-1-1 system to route the video 9-1-1 call to a PSAP that is video-enabled with a 9-1-1 telecommunicator prepared to respond to the caller using the caller’s native sign language.

NG9-1-1 will also enable informed dispatch decisions to be made based on information about the incident and caller available from external sources that is not possible with today’s E9-1-1 system. An example is a 9-1-1 call that arrives at a PSAP from a telematics equipped vehicle with information on the severity of a crash along with information from the vehicle occupant’s electronic health record. Based on that information, algorithms may be able to predict the probability of severe injury and suggest a certain type of response<sup>3</sup>. These capabilities are intended to result in the appropriate level of care quickly being sent to victims in need of assistance. This should lead to lives saved. However, it may also result in unintentional errors despite the best efforts of all parties involved in the response. Liability protection statutes should extend to intentional non-location-based routing capabilities and the use of incident and personal data for emergency dispatch.

Another example of a possibility created by NG9-1-1, with liability implications, is the ability to utilize a “virtual PSAP.” Today’s 9-1-1 system generally requires 9-1-1 telecommunicators to answer calls from within the walls of a physical PSAP. With a connection to a high-speed broadband network and access to the necessary software needed to connect to the NG9-1-1 system, a 9-1-1 telecommunicator can answer local 9-1-1 calls from virtually any location. This capability is particularly advantageous during disasters and high call volume situations. However, liability laws were not written with this capability in mind and may need to be updated to ensure that 9-1-1 calls being answered “virtually” in potentially non-local locations separate from the physical PSAP do not create liability exposure.

A final example of a potential liability issue is the ability to transfer calls and data among multiple national N-1-1/800 numbers (e.g. 2-1-1, 3-1-1, 8-1-1, 9-1-1, suicide hotline, poison control centers). The current ability to transfer calls/data among the multiple N-1-1 entities is

---

<sup>3</sup> See <http://www.comcare.org/urgency.html>.

NENA Next Generation Partner Program  
NG9-1-1 Transition Policy Brief

limited, but should not be as NG9-1-1 systems are deployed and N-1-1 calls are able to be routed over shared networks. This ability should not open these entities up to liability exposure when they are making good faith efforts to get information to the right people to enable an effective emergency response.

**ACTIONS PROPOSED TO RESOLVE ISSUE:**

- Congress and State legislatures should review liability protection statutes to ensure that existing liability protection for PSAPs, users of technology, communications service providers and third party vendors will continue to effectively apply as new services and technologies are enabled by NG9-1-1
- Modify current liability statutes, as necessary, to be technology neutral, rather than applying to any particular technology (e.g. CMRS wireless, VoIP, traditional landline), and ensure the liability protection extends to all forms of information pushed to a PSAP or pulled from external sources by a PSAP, regardless of the platform over which information travels
- Ensure that such liability protection extends beyond the PSAP to all entities appropriately involved in the emergency response
- Modify current liability statutes, as necessary, so that the protections apply to any entity playing the role of the 9-1-1 System Service Provider (SSP), and their third party vendors, regardless of whether that SSP is a traditional regulated local exchange carrier (LEC) or an unregulated IP-based SSP
- Ensure that liability protections apply to the acquisition and use of data from external sources that do not come with the call, but that are added to the 9-1-1 call record
- Review FCC requirements that 9-1-1 calls be routed to the “geographically appropriate” PSAP to assure they do not prevent 9-1-1 calls from being intelligently routed to the “situationally appropriate” PSAP, even if it is not the geographically closest PSAP
- Ensure that “functional equivalency” requirements of the Americans with Disabilities Act, in its current forms or as modifications to the statute are made, do not have the unintended consequences of requiring all 9-1-1 calls to be treated the same, when an NG9-1-1 system can uniquely route calls from identified individuals with disabilities in a different manner than a typical 9-1-1 call (e.g. call routing based on caller characteristics and needs, rather than location-based routing)