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White Paper: Canvassing the Current and New Accessibility Issues Arising from 911's Transition to NG911

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Almost every American is taught from a young age that 9-1-1 is the "Universal Emergency Number" for requesting emergency assistance. When a person calls this number, they are automatically connected, through a system of triangulation unbeknownst to them, to the nearest Public Safety Answering Point (PSAP), where they are assisted by a Telecommunicator. The first call to 911 was placed in February of 1968, about 55 years ago. In the 55 years that have passed since the first call, the nation has grown, technology has advanced, but there is still an immense amount of work to be done to ensure that this life saving service is equitable and accessible to all.

People who are deaf, hard of hearing, or Deaf Blind (D/HH or DB)[1] access this emergency system through both similar and different means than others. Historically, people who are D/HH or DB have been able to access 911 through Teletypewriter (TTY) devices, as well as through video conferencing technology via Video Relay Services (VRS). These services also require the presence of a Communications Assistant (CA) to interpret American Sign Language (ASL) from the caller to verbal English for the 911 Telecommunicator. Additionally, with the new nationwide effort to phase 911 into Next Generation 911 (NG911), People who are not D/HH or DB will also be able to access 911 through real time exchange of texts, videos, photographs, and other communication modalities.

This white paper provide a preliminary landscape of some of the current accessibility issues with 911, especially with NG911 on the horizon. The issues in this white paper were compiled in conjunction with discussions with members of the 911 and accessibility advocacy communities. Part I discusses "pre- and on-call issues"—issues concerning the accessibility 911 calls that occur before 911 calls. In particular, this Part addresses how technological, legal, and judicial frameworks both do and do not consider accessibility for people who are D/HH or DB.

Part II discusses "post call" issues, which includes everything that happens after the 911 call has been made by someone who is D/HH or DB. In particular, this section discusses special privacy issues relating to the collection of video recordings and other new 911 data. Additionally, this section compares state laws that regulate access to 911 records, and the interests of people who are D/HH or DB in obtaining those records for purposes of investigating communication problems with public safety answering points.

I. Pre- and On-Call Issues

This Part proceeds in four Sections. Section A provides a historical layout of how people in the D/HH and DB community have interacted with 911, including use of TTY and VRS, and touches on the potential use and implications of Direct Video Calling (DVC). Section B discusses the new technology emerging under NG911 and some of the

[1] In this document the term "D/HH and DB" (deaf, hard of hearing, and DeafBlind) is used as shorthand to refer to people who are deaf, hard of hearing, DeafBlind, and who have other disabilities in addition to or relating to hearing loss.

difficulties and issues regarding the rollout of NG911, including funding issues across PSAPs and questions about how video data will be stored. Section C will focus on current DOJ regulations and policies concerning 911 accessibility. Finally, Section D will discuss some of the generational divide in accessibility technologies and the emergence of text-based services in the 911 landscape.

A. Understanding the Traditional Methods of Communicating with 911

Prior to mobile texting capabilities, people who are D/HH or DB mainly connected to 911 using TTYs. This technology essentially allowed users to communicate via an electronic device for text communication over a telephone line with Telecommunicators. The following are the main ways in which TTY calls can be received:

- Electronic tone. Though not required, a caller may alert you that you are receiving a TTY call by pressing the space bar on their machine. This electronic tone identifies the TTY/TDD call.[2]
- In most cases, a TTY call will be a silent call. All silent calls should be treated as potential TTY calls.
- Synthesized voice. May serve as an alert to the call taker that the call is coming from a TTY.
- A relay announcement may come in, which serves to notify the call taker that the call is coming from a person using TTY.

Emergency Telecommunicators are typically trained to recognize the Baudot tones or signals from TTY devices that indicate a call is coming in. Once the sound or signal is recognized, Telecommunicators are trained to transfer the call to a telephone that is equipped with a TTY where the same (or another) Telecommunicator can communicate with the caller and ask for information about the emergency.

Unfortunately, this system of alerts and transfer is not efficient, and in a life or death situation, can prevent timely medical assistance or treatment.[3] The answering speed of

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[2] Americans with Disabilities Act: Access for 9-1-1 and Telephone Emergency Services, Section. II(D): Procedures for Handling TTY Calls, Requiring Callers Using TTYs to Press a Key - https://archive.ada.gov/911ta.htm. ("[I]n the past, some PSAPs have required callers using TTYs to press the space bar or other keys after they call, to emit tones and notify call takers that it is a TTY call, this requirement violates the ADA. Requiring TTY callers to press keys repeatedly until recognized is unfamiliar to most TTY callers, and callers cannot be relied on to perform such unfamiliar tasks, especially in emergency situations. Further, in many emergency situations there may not be time or opportunity to press keys repeatedly until recognized.")

[3] *See* Janny Scott, *A Deadly Silence : 911 Calls Weren't the Answer for Mute Man Seeking Help for Dying Wife*, L.A. TIMES (Aug.. 25, 1986, 12:00 AM), https://www.latimes.com/archives/la-xpm-

many of these calls is not equivalent to the industry standard speed of 15 seconds for voice calls to 9-1-1; the response times can range from 1 to 10 minutes, especially when the user is on a mobile device.[4]

In addition to making calls directly with a TTY, people who are D/HH or DB can communicate with a traditional telephone user on the telephone network via Telecommunication Relay Services (TRS).[5] For this service, users are able to call a TRS relay center, which connects the user to a communication assistant (CA),[6] who then makes a voice telephone call to a 911 Telecommunicator. The TTY user then types their part of the conversation on a TTY, and the CA relays that call back and forth between the Telecommunicators and the original caller by typing what the 911 Telecommunicators says.[7]

Many people who sign in American Sign Language (ASL) connect via Video Relay Services (VRS), an Internet-based form of TRS that utilizes video conferencing equipment.[8] Callers who are deaf or hard of hearing who sign in American Sign Language (ASL) can dial a phone number to a VRS provider who will connect them with a CA.[9] The CA is also connected to a voice user at the PSAP.[10] As the ASL users signs with the CA, the CA can then relay information back and forth between the two parties.[11]

1986-08-25-me-16095-story.html (On July 17, 1986 in San Diego, California, Jay Shufeldt lost his wife Mary to an acute episode of chronic obstructive pulmonary disease that need not be fatal had emergency services been sent to his residence in a timely fashion. Lieutenant Curt Munro of the San Diego Police Department noted at the time, the city's 911 system received about 35,000 calls a month, and only 35, or one in 1,000 of those calls came from devices used by the deaf. Munro noted the average time until pickup on emergency and non-emergency calls was 6.7 seconds, whereas the transfer time from a Telecommunicator to a TTY terminal could take longer. In fact, Schufeldt's lawyer, Gregg Relyea, noted that instead of a few more seconds, the transfer can take up to three minutes).

[4] *Id.*

[5] *Telecommunications Relay Service—TRS*, FCC, https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

Both VRS and TRS providers must ensure user confidentiality and CAs may not keep records of the contents of any conversation.[12]

However, there is one significant drawback to this method: communication between both parties is not happening simultaneously. This means that once the ASL user signs to the CA, the CA must then interpret to the PSAP Telecommunicator, wait for the Telecommunicator's response, and sign back to the ASL user. Much like a game of "grapevine," information can become lost in the process of interpretation, especially if the interpreter is not experienced, or if the ASL user is in a difficult situation that makes it hard to sign with the CA (e.g., the ASL user is an automobile accident, and has difficulty using their arms and hands to sign). Additionally, the latency of interpretation can become extremely lengthy for what may be a life or death situation where one party must wait for the other to transmit information to the other.

One possible solution to the drawback with VRS communication is the introduction of Direct Video Calling (DVC), a type of video teleconferencing that allows conversations to occur between two callers using American Sign Language (ASL), without the need for interpretation services, to receive calls on behalf of PSAPs.[13] Under this method, there is no need to go through a third person, or a CA. By cutting out the third person, or middle person, there is less opportunity for communication errors, compared to TRS.

Furthermore, NG911 might allow a Public Safety Telecommunicator to connect DVC to first responders[14] on the scene to facilitate communication to avoid erroneous delay in obtaining an onsite interpreter to render the service. Consequently, the quality of communication is improved since there is less likelihood for miscommunication across the grape vine, the speed of communication increases because dialogue can be interactive, and the stability of communication is enhanced as well since there no longer needs to be a connection between three lines. However, like VRS services, the quality of the substance of the communication is still dependent on the ASL competency of the PSAP-Telecommunicator. Though, if the person taking the call is Deaf or Hard of Hearing themselves, there is less likely to be an issue.

Additionally, when callers do use these TRS services, location information may not be properly relayed to the PSAP. Therefore, the onus is even greater on either the caller or the Communication Assistant to ensure that information about the caller's information is clearly communicated.

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[12] *Id.*

[13] *Direct Video Calling (DVC)*, FCC, https://www.fcc.gov/direct-video-calling-dvc.

[14] First Responder includes a firefighter, law enforcement officer, paramedic, and emergency medical technician.

B. New Technology and Challenges with NG911

In response to the rapid growth of evolving communication and telecommunications technologies across the nation and the government's efforts to deploy greater broadband access, 911 is evolving into Next Generation 911 (NG911), and will offer new technologies that have the potential to increase flow of information, improve quality of information, and develop better access to the service.

NG911 is a new system that allows for wireless, cloud-based technologies to integrate with current 911, and thus allow compatibility with GIS gathering devices, Bluetooth, WIFI, and GPS. The new generation of 911 enables callers to share multimedia with Telecommunicators, including sending real-time texts, videos, and photo messages to PSAP Telecommunicators. Consequently, these advancements can expand 911 access and reliability for callers who are D/HH or DB.

Despite the advantages offered by this new technology, the rollout from the current 911 system to NG911 has been slow.[15] Current data shows that most states have not made the transition from traditional 911 to NG911.[16] This is partially due to two specific issues: (1) lack of funding and staffing for PSAPs and (2) inconsistent interoperability infrastructures of PSAPs across the United States.

In regard to the first issue, there are varying types of oversight bodies that manage the deployment and funding of 911 at both the state and local level.[17] To pay for 911

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[15] Walt Magnusun, *The Status of NG911 Deployment in the US*, ICERT, https://www.911.gov/assets/iCERT-The_Status_of_NG911_Deployment_in_the_US.pdf (However, "the data shows that most of the states had not yet begun the transition to NG911. The time that the process takes, from planning through project completion, could be as much as eight to ten years. A number of the states have not yet authorized the appropriate agency or department to begin the transition process. A study completed by iCERT in 2007 (then the 911 Industry Alliance) entitled "Health of the US 911 System" noted that "One basic conclusion of our investigation is that states with effective oversight bodies are able to provide 911 services far more effectively than those without oversight. To be sure, merely having a state entity involved is not a panacea. As we explain, a state must offer incentives and effective guidance to spur PSAP technology upgrades. A state body without such tools will typically face considerable challenges with certain PSAPs that, for one reason or another, have failed to invest in technological upgrades.")

[16] *Id.*

[17] *Id.*; *see also* State and Territory 911 Authority Structures, National Association of State 911 Administrators and the National 911 Program (August 2020), https://www.911.gov/assets/State-and-Territory-911-Authority-Structures-Aug-2020.pdf. (This source contains a graphic and table that illustrates the different levels of authority that each state has concerning the funding and deployment of 911 services in their territory. For example, states

services, states and localities typically rely on multiple funding sources such as grants, state and local funds, 911 fees on phone bills, and other revenues like traffic tickets. While 911 fees are primarily intended to support current operations, some states have diverted a portion of these funds for other purposes.[18] Congress has called on states to stop diverting 911 fees and has also threatened to withhold grant funding, but for some states, the amount diverted is greater than the potential grants, making it challenging to provide an incentive.[19] The FCC urged states to cease diverting 911 fees and allocate the funds towards 911 upgrades, including NG911.[20] But even with grants and fee diversions, many states claim that they do not have enough to support both current 911 services and the deployment of NG911, which requires investments in infrastructure improvements, advanced IP networks, equipment, personnel, and training.[21]

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and territories that are shaded gray do not have a 911 authority, instead, 911 is governed at the local level. On the other hand, states that are shaded light green typically have a state-level 911 authority that owns or operates a single statewide system, and funds/supports PSAPs.)

[18] Andrea Noble, *Five States Diverted 911 Fees For Other Purposes, FCC Says*, ROUTE FIFTY (Jan. 10, 2020), https://www.route-fifty.com/public-safety/2020/01/five-states-diverted-911-fees-fcc-says/162381/. ("Five states used approximately $187 million in fees for expenditures not related to 911 systems in 2018.").

[19] Associated Press, *Federal agency says Montana needs to replenish 911 account*, NBC MONTANA (Sept. 18 2019, 4:50 PM), https://nbcmontana.com/news/local/federal-agency-says-montana-needs-to-replenish-911-account ("The Federal Communications Commission says Montana needs to return $2 million to the state's 911 account. The Missoulian reported Tuesday that the funds generated from 911 fees were placed in a state account holding $12 million in 2017. State lawmakers transferred $2 million from the account to pay for buyouts in the Montana University System. A Sept. 9 letter to Democratic Gov. Steve Bullock from FCC Commissioner Mike O'Rielly says 911 fee diversion "is unacceptable under any circumstances." O'Rielly's letter says the diversion makes Montana ineligible for federal "Next-Generation 911" grants to pay for new infrastructure installation.").

[20] The Ending 9-1-1 Fee Diversion Now Strike Force, FCC, https://www.fcc.gov/911strikeforce (On February 17, 2021, the FCC announced the establishment of the Ending 9-1-1 Fee Diversion Now Strike Force (911 Strike Force), a new federal advisory committee dedicated to studying and making recommendations to address 911 fee diversion. However, this project was short-lived; the task force disbanded 7 months later in September 2021).

[21] U.S. Government Accountability Office, Next Generation 911: National 911 Program Could Strengthen Efforts to Assist States, GAO-18-252, 2018, p. 14, https://www.gao.gov/assets/gao-18-252.pdf ("FCC, NHTSA, and industry reports noted that state and local financing strategies are generally insufficient to fully implement NG911. Specifically, these reports note that the need to provide new capital for NG911 implementation while simultaneously funding legacy operational costs during the transition can strain state and local funding.")

It is especially hard for more rural 911 call and dispatch centers to implement NG911, where there is less funding and less staff. Recently, one rural center in Washington state was forced to shut down.[22] The situation has become worse with COVID.[23] April Heinze of the National Emergency Number Association reported that before COVID, there was a 15- to 20% vacancy rate among emergency dispatchers, but now estimates it's over 30% nationally with areas where it's much higher.[24]

Second, the goal towards NG911 is equally frustrated by the lack of uniformity and interoperability of the current 911 system across the nation. PSAPs across the nation are working at different technological capabilities that impact their ability to integrate with NG911. In addition to funding issues, each state and locality has the power to decide what solutions, technologies, and vendors it would like to adopt in its approach to 911, especially NG911.[25] This makes interoperability more difficult to achieve.

However, this problem has been mitigated to some extent with the 2021 accreditation of the National Emergency Number Association (NENA) standards through the American National Standards Institute (ANSI) process. With this accreditation, states will be able to use additional federal funding to deploy i3-compliant solutions—the current standards for NG911—in their efforts to offer NG911 services.[26]

One issue that is sure to become more troublesome as states and localities shift to NG911 is how to maintain and store new types of digital data, given the disparities in

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[22] Austin Jenkins, *A rural Washington emergency dispatch center closes as 911 operator shortage persists*, NPR (Aug. 22, 2022, 5:09 PM), https://www.npr.org/2022/08/22/1118843624/a-rural-washington-emergency-dispatch-center-closes-as-911-operator-shortage-per.

[23] *Id.*

[24] *Id.*

[25] 911 State Oversight: A 50 State Survey, New Mexico Legislature (Office of Legislative Legal Services for the Task Force on 911 Oversight, Outage Reporting, and Reliability) (Sept. 13, 2016), https://www.nmlegis.gov/handouts/STTC%20073117%20Item%201%2050%20state%20survey%20chart%20E911.pdf (containing a chart that has compiled preliminary research, prepared using state statutes and state agency websites, on each state's level of agency and oversight over 911, relationship to local 911 agencies, the level or type of deregulation of telecommunication present, and it's NG911 planning/implementation. Information from both the National Conference of State Legislatures and National Emergency Number Association were used to prepare this chart).

[26] Donny Jackson, *NENA's latest version of i3 standard receives ANSI accreditation*, URGENT COMMUNICATIONS (Oct. 8, 2021), https://urgentcomm.com/2021/10/08/nenas-latest-version-of-i3-standard-receives-ansi-accreditation/.

technical capability and capacities of PSAPs across the nation. This issue is particularly complex in the context of video conferencing technology and 911 calls.

In the case of VRS communications, where there is a middle person between the caller and the Telecommunicator, it is unclear if federal rules currently in place by the FCC should be revised to allow the middle person (the VRS provider) to record and maintain records of the 911 call (or whether they should be prohibited from doing so). Nor is it clear what information should be recorded or maintained if they are tasked with that responsibility. For example, should the VRS provider only record voice dialogue between themselves and the Telecommunicator? Should the VRS provider also record video between themselves and the caller?.

The same issue of what data should be retained also appears in the case of DVC, as it still raises privacy issues and concerns for both the caller and the Telecommunicator.[27] Even within the D/HH and DB community, there are tensions associated with the extent to which the privacy of the callers and the Telecommunicators should be maintained, with some favoring total recordings of all parties involved, and others preferring limited recording.[28] The next Part of the paper includes more information on specific privacy interests and access to public 911 records that people who are D/HH or DB have when it comes to evaluating Telecommunicator and medical/ law enforcement responses to 911 calls.

C. Department of Justice Rules on 911 Calls and Accessibility

In addition to state and local rules and regulations, the federal government has particular rules and guidelines on the accessibility functions of 911, that, if further developed and revisited, could substantially aid the issue of funding seen across PSAPs. Title II of the Americans with Disabilities Act (ADA) requires that all PSAPs provide direct and equal access to 911 services to D/HH, and DB citizens who use TTY technology.[29] To that end, PSAPs are prohibited from "relying on an outside relay service

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[27] *Man Convicted Of Threatening To Kill 911 Dispatcher*, U.S. Attorney's Office Western District of Michigan (May 25, 2022), https://www.justice.gov/Usao-wdmi/pr/2022_0525_Munafo. (An individual called the Calhoun County, Michigan 911 dispatch line over 140 times on January 5, 2021, and threatened the 911 operator, saying to her, 'I'm gonna cut your throat. I'm gonna make you eat your f***ing nose… 'it's going to go way worse for your family.'").

[28] This insight was derived from a February 2023 meeting among both people and advocates of the D/ HH, and DB community.

[29] Title II of the ADA covers telephone emergency service providers and other State and local government entities and instrumentalities. For more information on how the DOJ's Title II requirements for TTY access to 911 came about, along with the initial implementation of that

or third-party service for providing access;" PSAPs must be able to directly receive TTY calls.[30]

The Department of Justice (DOJ) oversees compliance with these requirements, and has published some rules relating to this matter. For example, on September 15, 2010, the DOJ published a final rule relating to nondiscrimination on the basis of disability in State and local government services. This rule updated and amended certain provisions of Title II and III of the ADA in order to enforce non-discriminatory access to emergency services for individuals with disabilities, including people who are deaf and hard of hearing.[31]

However, the DOJ has largely abandoned both reviewing and updating accessibility guidelines for 911. In 2010, the DOJ released an advanced notice of proposed rulemaking on NG-911 along with three other issues, including web accessibility, to gather input from stakeholders.[32] According to the DOJ's notice, "the Department [sought] public comment on the benefits and challenges of applying specific accessibility requirements for NG-911 services, equipment, and networks." However, this proposed rulemaking was withdrawn in 2017 under the Trump administration.[33] The DOJ's Federal Register notice reporting on this reversal explained that "the Department has determined that the withdrawal of the four rulemakings is in keeping with the directives in Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs."[34]

While the DOJ has since reengaged on web accessibility under the Biden administration, for now, 911 accessibility is no longer on the agency's regulatory agenda.[35] As the DOJ's website states, "the Department is focused on strengthening its enforcement of website accessibility standards under the ADA," but there is no mention

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mandate, *see* KAREN P. STRAUSS, A NEW CIVIL RIGHT 172-182 (Gallaudet University Press, 2006)(accessible for free online at https://gupress.gallaudet.edu/A-New-Civil-Right.pdf).

[30] Americans with Disabilities Act: Access for 9-1-1 and Telephone Emergency Services, Section. B: TTYs & Telephone Relay Services - https://archive.ada.gov/911ta.htm.

[31] Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 178 (Sept. 15, 2010), https://www.govinfo.gov/content/pkg/FR-2010-09-15/html/2010-21821.htm.

[32] https://archive.ada.gov/anprm2010.htm.

[33] Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 28 CFR Parts 35 and 36 (2017), https://www.federalregister.gov/documents/2017/12/26/2017-27510/nondiscrimination-on-the-basis-of-disability-notice-of-withdrawal-of-four-previously-announced.

[34] *Id.*

[35] Laws, Regulations & Standards, DOJ C.R.DIV. https://www.ada.gov/law-and-regs.

of 911 accessibility.[36] Furthermore, while the DOJ has issued guidance on web accessibility under the ADA, there is currently no comparable guidance from the DOJ on 911 accessibility.[37] While the withdrawal of proposed regulations under the Trump administration has delayed progress in this area, the reengagement of the Biden administration on web accessibility provides some hope for future improvements in accessibility.

It is clear that that 911 accessibility needs to be put back on to the agenda. The DOJ could be doing more to close the gap in equitable access to these services utilizing synchronous telecommunication technologies[38] Additionally, with the ongoing roll out of NG911 services, new rules need to be implemented to ensure that PSAPs have 911 call systems that are compatible with IP-enabled networks, so that the general public can make a "911 'call' via voice, text, or video from wired and wireless devices and directly communicate with personnel at the PSAP."[39] As it stands, the original 911 system is based on "traditional telephone technology," which "cannot process text, image, or video data sent from handheld devices and computers (i.e. personal digital assistants (PDAs), cellular phones, portable media players, video phones or cameras)."[40]

D. The Problem of Outdated Tech and Accessing 911

Unfortunately, outdated DOJ rules are only compounding 911 accessibility issues as younger generations of D/HH and DB people rely less on traditional technology such as TTYs to access 911. The lack of updated and modern rules, which would recognize shifting technological attitudes, coupled with the decline in the use of traditional technologies also has serious implications for both the deployment of existing 911 and new NG911 technology.

While many PSAPs are continuing to rely on TTY technology, there is stark empirical data that demonstrates that TTY technology is becoming largely outdated and unused by

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[36] *Id.*

[37] https://www.justice.gov/opa/pr/justice-department-issues-web-accessibility-guidance-under-americans-disabilities-act

[38] Currently, Section II-7.3400 of the ADA regarding "voice amplification" states that "public entities are encouraged, but not required, to provide voice amplification for the operator's voice. In an emergency, a person who has a hearing loss may be using a telephone that does not have an amplification device. Installation of speech amplification devices on the handsets of operators would be one way to respond to this situation."

[39] *Nondiscrimination on the Basis of Disability in State and Local Government Services; Accessibility of Next Generation 9-1-1*, DOJ (CRT Docket No.111; AG Order No.), https://archive.ada.gov/anprm2010/nextgen_9-1-1%20anprm_2010.htm.

[40] *Id.*

younger D/HH, and DB individuals. Thus, the decline in traditional technology has serious implications for both the deployment and use of new NG911 technology.

Landlines are increasingly becoming a relic of the past for many Americans. In 2004, more than 90% of U.S. households had an operational landline, but that number has now declined to less than 30%.[41] Instead, more households have switched to using Internet and mobile phone services, including those with a messaging service.[42] This general decline and switch in communication technology has also affected the mediums with which people who are D/HH or DB use to communicate with 911. Fewer and fewer people who are D/HH or DB are using TTY technology to access 911.[43]

In addition to new technology leading this decline, younger people are also driving the trend away from TTY use.[44] In fact, a study conducted by the Pew Research Center found that while TTY was once the primary way that deaf and hard of hearing people communicated over the phone, newer technologies like videophones and text messaging are becoming increasingly popular.[45] The study found that among deaf and hard of hearing adults, 87% use text messaging and 73% use video calling at least occasionally, compared to only 34% who use TTY.

Rolka Loube Saltzer Associates LLC (RL), a consulting firm that specializes in emergency management, homeland security, and public safety, is the Interstate TRS Fund Administrator, and submits proposed compensation rates, demand projections, projected fund size, and proposed carrier contribution factors to the FCC on a monthly

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[41] Felix Richter, *Landline Phones Are a Dying Breed*, STATISTA (Dec. 22, 2022), https://www.statista.com/chart/2072/landline-phones-in-the-united-states/.

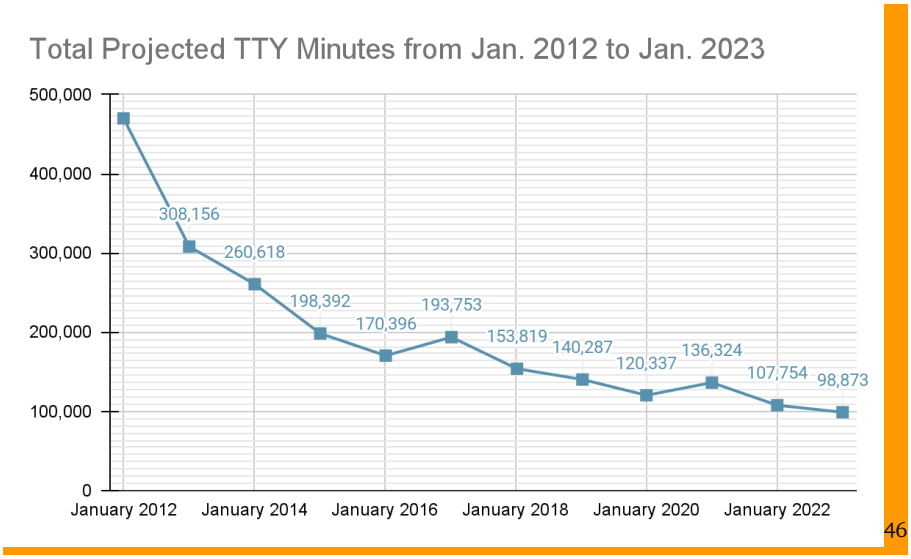
[42] Mike Vorhous, *Americans Use Their Mobile Phone To Replace Their Landline Phones*, FORBES (May 14, 2021, 12:34 PM), https://www.forbes.com/sites/mikevorhaus/2021/05/14/americans-use-their-mobile-phone-to-replace-their-landline-phones/?sh=3156e1a868cc.

[43] Ashley Dejean, *911 Is Practically Useless for Millions of People. Here's Why.*, MOTHERJONES (Mar. 16, 2017), https://www.motherjones.com/politics/2017/03/text-911-deaf-accessibility-ada-lawsuits-1/. ("Claude Stout, executive director of Telecommunications for the Deaf and the Hard of Hearing, explains through an interpreter. 'But the problem is, not many of us use TTYs anymore.'").

[44] Judy Harkins, The Changing Face of Text, The Univ. of Gallaudet, Slide 8 (June 27, 2005)(powerpoint presentation at the NENA Annual Conference, Long Beach, California), https://tap.gallaudet.edu/Presentations/NENA2005_files/textmostly/slide8.html (noting that in addition to the transition away from landlines, "some deaf children don't know about TTY," and therefore do not rely on that technology.).

[45] Lee Rainie & Kathryn Zickuhr, *Americans' Views on Mobile Etiquette*, PEW RSCH. CTR. (Aug. 26 2015), http://www.pewinternet.org/2015/08/26/americans-views-on-mobile-etiquette/.

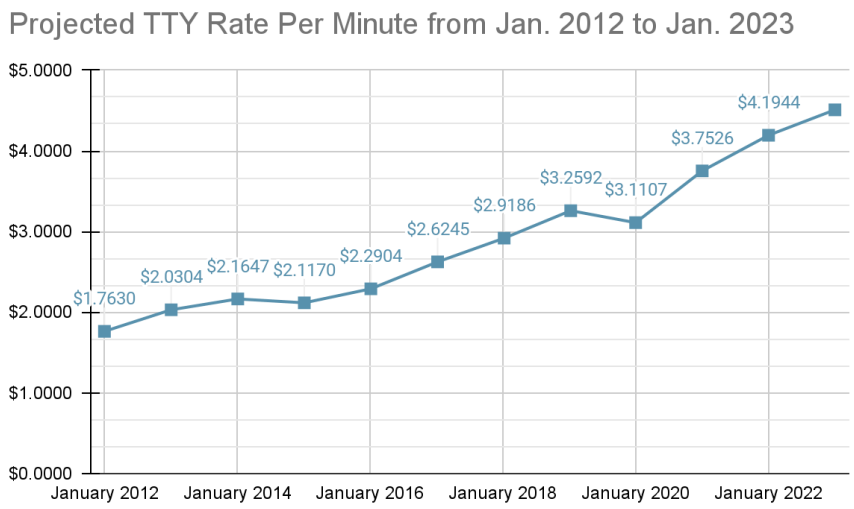
basis. To derive the estimated per minute rates for TRS, RL divides the totally projected payment amount by the total projected conversion minutes. The chart below follows the total projected TTY minutes for every January from 2012 to 2023. The downward slope on the graph supports the contention that individuals are using and relying less and less on TTY services.



[46]

The reimbursement rates for TRS providers offering TTY services are based on the actual costs of providing those services. Consequently, as the total projected minutes of TTY decreases, the amount per minute increases to support the cost of the service.

[46] The PDF reports from January 2012 to January 2023 can be found via Rolka Loube at the following location: https://rolkaloube.com/programs/federal-itrs/forms-reports/.



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Moreover, current DOJ rules do not reflect this shift away from TTY in their accessibility rules and guidelines when it comes to access to 911. Under Title II of the ADA, the DOJ is required to promulgate rules and regulations that ensure PSAP accessibility. However, the current DOJ regulations governing PSAP obligations under the ADA have not been updated in over 30 years. The 1991 language requires only that public entities use TTYs or an equally effective telecommunications system to communicate with people who are deaf, hard of hearing, or speech disabled. And in the case of 911, public entities are only required to provide direct access to individuals who use TTYs.

The 2007 guidance document issued by the DOJ further reiterates that direct access means that PSAPs must be able to directly receive TTY calls.[48] Other than the rescinded 2011 Advanced Notice of Proposed Rulemaking, there has been no effort by the DOJ to amend its Title II regulations to bring them up to date with current technological use and advancement, including NG911. Because it is not explicitly required, many PSAPs continue to have, train, and focus on TTY access, when they should instead be focusing on new and growing technologies, including those in NG911.

One of those technologies is Real Time Text (RTT). Not only has the FCC publicly endorsed the transition to RTT technologies, but also, industry players such as Motorola have begun equipping PSAPs with equipment that allows mobile users to access 911

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[47] *Id.*

[48] ADA Best Practices Tool Kit for State and Local Governments, DOJ (2007), https://archive.ada.gov/pcatoolkit/chap4toolkit.htm.

PSAPs using RTT.[49] Unfortunately, due to current DOJ rules, and the general lack of funding available to PSAPs, many PSAPs do not have the requisite technology to enable connectivity with RTT.[50] Moreover, advocates have suggested that there is a general lack of education and public campaigning on the availability of this new technology in places where it does exist.[51] This education is especially important for those who are D/ HH or DB because most of these individuals, understandably, carry wireless phone plans that opt out of purchasing and activating voice wireless services, in favor of plans that have lower data costs. Unfortunately, in order to use RTT, individuals must have voice services activated on their wireless devices.[52]

Absent a uniform and accessible dispersion of RTT or text services for 911 calls, many people who are D/HH or DB still rely on neighbors, family members, and friends to contact 911. Anecdotal conversations have also suggested that younger generations

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[49] *911 Innovation for Next Generation*, MOTOROLA SOLUTIONS, https://www.motorolasolutions.com/content/dam/msi/docs/products/smart-public-safety-solutions/callworks/callWorks_callStation_bro_0520_mlw_7.pdf.

[50] Michael Scott & Nellie Foosaner, *Fact Sheet: What Public Safety Answering Points Should Know about Real-Time Text*, PSAP RTT Education Day Event (Oct. 2, 2018), https://www.fcc.gov/sites/default/files/documents/events/fact_sheet_about_real-time_text_for_public_safety_answering_points.pdf ("However, many PSAPs are not currently capable of supporting RTT-to-RTT and remain reliant on TTY technology to receive calls from people with disabilities. The Commission requires wireless carriers who choose to support RTT to make RTT backward-compatible with TTY devices. This will enable PSAPs without RTT-to-RTT capability to use their existing TTY terminals to handle RTT 911 calls.").

[51] *Creative Approaches to Telecommunicator Training and Public Education*, 911.GOV (Apr. 2023), https://www.911.gov/newsletters/issue-14/creative-approaches-to-telecommunicator-training-and-public-education/ (However, there are some efforts being made to educate individuals, especially those who are deaf or hard of hearing, on new NG911 technology, such as RTT and text to 911. Kristin McKinney, a 911 visual media coordinator for the North Central Texas Emergency Communications District has made an effort to improve the public's awareness of text-to-911. She found that around 60% of people in her region did not know what text-to-911 was available. By the end of her educational campaign, she was able to reach more than two million people in the Dallas-Fort Worth area; however, there is still a survey being conducted to assess whether the campaign actually helped improve the public's awareness and use of text-to-911).

[52] Ennica Jacob, *What is an RTT call? How the text accessibility feature lets you send real-time text messages*, BUSINESS INSIDER (May 7, 2021, 4:40 PM), https://www.businessinsider.com/guides/tech/what-is-rtt-call.

would both prefer, and currently are, turning to social media in order to facilitate communication with others, including with emergency services.[53]

In addition to the myriad of issues that come with the deployment, integration, and use of NG911 services among people who are D/HH or DB, there are also concerns about "post call" consequences. The next section of this paper deals primarily with the special privacy and access to public records interests of people who are D/HH or DB, especially as they pertain to the use of video conferencing technology.

II. Post-Call Issues

So far, this paper has outlined several means in which individuals can connect to 911, including using TTY, VRS, and Next Generation services such as RTT. While there seems to be a wide variety of means to connect with 911, some services are more or less effective than others.

Especially with video conferencing technology, there are two primary issues: 1) with VRS there is a possibility of a "grape-vine" effect, whereby communication is lost in translation and 2) only verbal communication is recorded and documented (so in VRS, it is only between the CA and Telecommunicator, and in DVC, it is only the Telecommunicator). Consequently, having access to 911 call records and transcripts is imperative for people who are D/HH or DB so that they can assess if emergency services and first responders have acted in a negligent, criminal, or liable manner.[54]

This part of the Paper will specifically address the importance, use, and privacy implications associated with video conferencing technology used people who are D/HH or DB when it comes to 911 communication and services. Section (A) will discuss the specific interests that people who are D/HH or DB have in access to 911 video conferencing calls, records, and transcripts in order to review and evaluate emergency

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[53] Hanna Kozlowska, *Please stop trying to use Facebook to call the police*, QUARTZ (Oct. 25, 2018), https://qz.com/1436276/please-stop-trying-to-use-facebook-to-call-the-police. ("Multiple police departments across the US, according to Facebook posts found by Quartz, have this year posted announcements asking their communities to refrain from messaging or calling them on Messenger when they should be calling 9-1-1, the national number for emergency services. One department, in Huber Heights, Ohio, even disabled Messenger on its page completely.").

[54] Sheri Ann Farinha, *Culture, Language, and Access: Key Considerations for Serving Deaf Survivors of Domestic and Sexual Violence*, THE VERA INST. OF JUST. (Jan. 2015), https://www.endabusepwd.org/wp-content/uploads/2015/01/Brief-Culture-Language-and-Access-Key-Considerations-for-Serving-Deaf-Survivors-of-Domestic-and-Sexual-Violence-English.txt ("law enforcement officers often have little knowledge of the world of sign language interpreting, including how to locate interpreters, how to contract with them for these services, and how to determine if interpreters are qualified for a given assignment.").

service responses. Section (B) will describe rulings made by the DOJ through the ADA to ensure non-discriminatory and accessible access to emergency services, like 911. Finally, section (C) will provide an overview of the different public record laws across the country, which serve as the vehicle for requesting general access to 911 calls, records, and transcripts. This section provides details on the varying storing mechanisms (or lack of) of call information, in addition to varying state requirements for accessing calls, records, and transcripts.

A. The Importance of Recordings & Transcripts

People who are D/HH or DB have several options when it comes to dialing 911. However, when it comes to services like VRS that involve a middle person, such as a Communications Assistant, callers face a unique challenge: engaging in what could feel like a game of telephone between themselves, the communications assistant, and the 911 Telecommunicator.[55] While communication assistants are meant to be trained professionals who should be able to accurately translate in ASL between the caller and the Telecommunicator, it is not impossible for a situation to arise (if it has not already arisen) where the communication assistant erroneously misinterprets the caller's signs to the 911 Telecommunicator. As such, having access to 911 recordings and transcripts is especially important when evaluating where a misinterpretation or misunderstanding occurred: these mistakes could mean the difference between life or death.

Moreover, access to these recordings and transcripts becomes especially important once law enforcement is deployed to the scene. Review of 911 records show that there often is a disconnect between the information received by Telecommunicators and transmitted to officers. This was the case for Lashonn White, who used a special video equipped phone to speak with a certified ASL interpreter, who then verbally relayed her pleas for help to a 911 dispatcher.[56] White had made it clear that she was deaf, and needed assistance in coordinating where to meet and communicate with officers who were being sent to her.[57] Despite this, the officers who were dispatched ended up tasering her with a two-barbed electric wire that went straight into her ribs and stomach before being handcuffed.[58] The police report from the officers read that they "yelled for

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[55] *See How Do I Call A Deaf Person?*, NORTHWEST AMERICAN SIGN LANGUAGE ASSOCIATES, INC., https://nwasla.com/how-do-i-call-a-deaf-person/. (The "Call Flow Diagram" depicts the flow of information between the caller, communications assistant, and 911 Telecommunicator).

[56] Chris Halsne, *Police use Taser on deaf crime victim*, KIRO 7 (Aug. 5, 2012, 5:35 PM), https://www.kiro7.com/news/crime-law/police-use-taser-deaf-crime-victim/246931400/.

[57] *Id.*

[58] *Id.*

White to 'stop'" but she had not.[59] Reports from neighbors also indicated that the officers only used verbal communication with White and did not use any physical gestures to at least try and communicate with her.[60]

In another similar instance, Quindale Holmes and Jashida Ramos, people who are both deaf, were involved in a domestic dispute that led to a 911 call.[61] But despite informing the 911 Telecommunicator that they were both deaf, and only use ASL, Gainesville Police Department officers arrived at the scene with no interpreters, and ended up arresting Holmes, who made the call in the first place.[62] This seems to be a consistent theme in several cases where deaf individuals have used 911 services, only to be met with either hostility or confusion by law enforcement, that ultimately ends up in an arrest.[63] In addition to issues with law enforcements' response to callers, there have been repeated instances of callers receiving less than immediate responses by emergency services. This is due in part to the fact that some Telecommunicators do not recognize that 911 calls are being made with TTY technology.

B. DOJ Rules Specific to Accessibility and Law Enforcement

Part I addressed some of the DOJ rules (or lack of) that address the technological accessibility of 911. The DOJ has also supplied guidance for response personnel, including law enforcement, following a 911 call.

Under Section 504 of the Rehabilitation Act, recipients of federal financial assistance, including police departments, are prohibited from discriminating against

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[59] *Id.*

[60] Id.

[61] Katie Hyson, *Gainesville police never called an interpreter for the questioning and arrest of a deaf man. He was found guilty this week*, WUFT NEWS (Mar. 24, 2022), https://www.wuft.org/news/2022/03/24/gainesville-police-never-called-an-interpreter-for-the-questioning-and-arrest-of-a-deaf-man-he-was-found-guilty-this-week/.

[62] *Id.*

[63] *See e.g., Salinas v. City of New Braunfels*, 557 F. Supp. 2d 771 (W.D. Tex. 2006)(Plaintiff Maria Salinas "returned home to her apartment after work and found her boyfriend, Ed Spencer, lying motionless on her couch. It was later determined that Mr. Spencer was deceased. Unable to rouse him, Plaintiff went to her neighbor's apartment for assistance, who returned with her to her apartment and called 911 to request emergency assistance and the services of a qualified ASL interpreter. Plaintiff alleges that although the police knew from the 911 call that Plaintiff was deaf and needed interpreter services, the police did not attempt to locate an interpreter and failed to assign this task to another City employee.").

individuals on the basis of disability.[64] Second, under Title II of the ADA, "all state and local police departments, regardless of receipt of federal funds, are prohibited from discrimination based on disability."[65] Both Section 504 and the ADA require that law enforcement agencies and personnel take measures to ensure effective communication with people who are D/HH or DB; this includes consulting with people who are D/HH or DB about their choice of auxiliary aid or service, including the use of qualified interpreters.[66]

But where there is inconsistent or incomplete communication between 911 Telecommunicators and law enforcement, people who are D/HH or DB may not receive the services they require. For example, police officers sometimes show up to a scene "completely unaware that they are working with a person who is deaf," which can be in part because they were not properly informed by Telecommunicators.[67] This situation leads some officers to rely on "unqualified third parties -- including children, and even alleged abusers -- to facilitate communication during these interactions."

While Title II of the ADA provides for equal opportunity, it "does not guarantee equality of results."[68] This policy ignores the fact that some of the results can be especially detrimental for people who are D/HH or DB who are seeking 911 services to address what could be life or death situations. Consequently, it is imperative that people who are D/HH or DB have access to 911 calls, records, and transcripts, particularly of relayed conversations that occur on text or video conferencing platforms where the possibility of miscommunication is even greater because the communication is conveyed through a third person.

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[64] 29 U.S.C. § 794.

[65] 42 U.S.C. §§ 12131-12134; *see also* 28 C.F.R. part 35, 56 Fed. Reg. 35694 (July 26,1991) (U.S. Department of Justice Final Rule: Nondiscrimination on the Basis of Disability in State and Local Government Services).

[66] 28 C.F.R. § 35.160(b)(2). *See also GUIDE FOR LAW ENFORCEMENT OFFICERS: When In Contact With People Who Are Deaf or Hard of Hearing*, DOJ, https://archive.ada.gov/humbolt_pca/humboldtattD.htm.

[67] Lydia Callis, *How the Criminal Justice System Fails the Deaf Community*, HUFFINGTON POST (Nov. 10, 2014, 12:30 PM), https://www.huffpost.com/entry/post_b_6127898.

[68] ADA II-3.3000 ("The ADA provides for equality of opportunity, but does not guarantee equality of results.").

C. How Individuals Can Access 911 Calls, Transcripts, and Records

But how are people able to access these important 911 calls, records, and transcripts? The results are largely varying and incongruent across the country as each state and locality sets its own policies and rules on the matter.

The 1967 Freedom of Information Act (FOIA) provides the public the right to request access to records from any federal agency.[69] Federal agencies are required to disclose any information requested under the FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy,[70] national security, and law enforcement.

Most states have their own version of FOIA that allows citizens to request a release of public records.[71] Additionally, each city department is considered its own separate agency responsible for maintaining its own records; therefore, requests can be submitted to the local department that maintains 911 records. Each state's version of its own FOIA-type law clarifies who can have access to public records and information, how they can access that information, and for what purpose.[72] In most states, 911 calls are considered to be public records that can be requested by anyone.

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[69] *What is FOIA?*, FOIA.GOV, https://www.foia.gov/faq.html.

[70] Exemption (b)(6) permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

[71] *See* Jennifer Jasutis, *FOIA 101: Demystifying Public Records Laws in Each State*, GRANICUS, https://granicus.com/blog/foia-101-public-record-laws-in-each-state/. ("In New York, the state public records law is known as the Freedom of Information Law (FOIL)...The laws guiding open records are referred to as the Open Records Act in several states, including Colorado (CORA), Georgia, Iowa, Kansas, Kentucky, Nevada, North Dakota, Ohio, Oklahoma, Tennessee, and Wisconsin…Public records in Maryland and Texas fall under each state's Public Information Act (PIA)...One of the more upbeat terms for public records regulations is the Sunshine Law, which is used in Florida, Missouri, South Dakota, and Wyoming…[and] the Hawaii Uniform Information Practices Act (UIPA) governs access to public records.").

[72] *See 3. 911 tapes,* REPORTERS COMMITTEE, https://www.rcfp.org/open-government-sections/3-911-tapes/#:~:text=Tapes%20containing%20records%20of%20911,upon%20order%20of%20the%20court. (For example, in Alabama, an "audio recording of a 911 telephone call may not be released to the public absent a court order finding that the right of the public to the access the recording outweighs the privacy interests of the individual who made the 911 call or any person involved in the facts or circumstances relating to the 911 call." On the other hand, in states like Oklahoma, 911 calls are generally accessible as public record under 51 O.S. § 24A.8(A)(4).).

However, there are certain exemptions, varying state by state, that prevent either certain parties from accessing calls or exempt the release of calls based on specific privacy interests. Generally, states have a provision in their public records acts that prevents the following information from being released (or at a minimum, require a redaction of this information): medical information (or information that can be implicated via the Health Insurance Portability and Accountability Act), financial information (information about an individual's bank account, etc.), and personally identifiable information (such as an individual's name, address, or phone number, including phone numbers of PSAP operators).[73] In most of these state public record acts, there are also specific provisions that withhold release of information that could be potentially relevant to an ongoing investigation with law enforcement.[74]

Some, but not all states, have explicit language that addresses the privacy concerns and interests of individuals implicated in or making 911 calls. For example, Illinois law states that public records, such as 911 calls, may be exempt from disclosure if the disclosure would "constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information."[75] Additionally, "unwarranted invasion of personal privacy" is described as "information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."[76]

Kansas has similar language that prevents disclosure if the information would constitute a clearly unwarranted invasion of personal privacy, and describes an "unwarranted invasion of personal privacy" to be information that "would be highly offensive to a reasonable person including information that may pose a risk to a person or property and is not a legitimate concern to the public."[77] The Kansas Court of Appeals

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[73] *See How open record laws are applied in state legislatures*, AP (March 13, 2016), https://apnews.com/article/b263e6c347db41628c010e040c62adfa; *Open Government Guide*, Reporters Committee For Freedom of the Press, https://www.rcfp.org/open-government-guide/.

[74] Statement by Attorney General Tom Miller, *A Bulletin on Iowa Open Meetings and Public Records Laws* (2006), IOWA.GOV., http://publications.iowa.gov/3753/1/2006_Feb_911_info.html. (For example, in Iowa's Attorney General in 2006, Tom Miller, clarified that "part or all" of a 911 call could be made confidential "when release of information in a 911 audio tape 'would plainly and seriously jeopardize an investigation or pose a clear and present danger' to a person's safety, the 'date, time, specific location, and immediate facts and circumstances' about a crime or incident should be kept confidential. Iowa Code sec. 22.7(5)).

[75] 116 Ill. Comp. Stat. 5 ILCS 140/ 7(C). https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2.

[76] *Id.*

[77] Kan. Stat. Ann. §45-217 (2022).

provided an example of this in *Cape Publ'n v. City of Louisville*, where it concluded that the victims of a sex crime have a substantial privacy interest in the nondisclosure of their identities from a 911 call.[78] Particularly, the court noted that there was a compelling public interest in not disclosing this information, in order to insure the "physical safety of the victims and encourage them to report sexual offenses without fear of exposure."[79]

The Supreme Judicial Court of Maine used a public interest versus private harm balancing test seen in other states, including Arizona and Illinois[80] But in addition to a balancing test that considers the public interest and privacy interests, states like Arizona have also considered the available format of 911 calls when it comes to disclosure.[81] Arizona generally imposes a presumption of favor when it comes to disclosure under the Public Records Act.[82] Instead of including both transcripts and audio recordings of 911 calls, the state's Supreme Court has ruled that agencies do not have to provide both where one format is acceptable.[83] This is demonstrated in *A.H. Belo Corp. v. Mesa Police Dep't*, where the court ruled that release of a transcript from a 911 call was sufficient because "the public interest increases when there is no other available way to obtain the information," it "correspondingly decreases when 'alternative means' of receiving the information exist."[84]

In addition to balancing individual's privacy rights, some states have additional stringent standards that only allow specific parties to request and access 911 calls and transcripts. Alabama has some of the strictest requirements. Whereas in other states an individual simply needs to put in a request via their states' public records act, in Alabama, an individual must first obtain a "court order" which finds that "the release of the recording outweighs the privacy interests of the individual who made the 911 call or any person involved in the facts or circumstances relating to the 911 call."[85] Additionally, an audio recording may be released without a court order, but only to "the caller whose

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[78] *Cape Publ'n v. City of Louisville*, 147 S.W.3d 731 (Ky. Ct. App. 2003).

[79] *Id.*

[80] *Blethen Maine Newspapers Inc. v. State*, 2005 ME 56 ¶ 14, 871 A.2d 523. ("This requires balancing (1) the personal privacy interests of the individuals involved and (2) the public interest supporting disclosure).

[81] *Scottsdale Unified Sch. Dist.*, 955 P.2d 534, 540.

[82] *A.H. Belo Corp. v. Mesa Police Dep't*, 42 P.3d 615 (Ariz. Ct. App. 2002).

[83] Me. Stat. tit. 25, §2929. ("Audio recordings of 9-1-1 calls are confidential and may not be disclosed except as provided in this subsection. Except as provided in subsection 2, information contained in the audio recordings is public information and must be disclosed in transcript form in accordance with subsection 3.").

[84] *Scottsdale Unified Sch. Dist.*, 955 P.2d 534, 540.

[85] Ala. Code § 11-98-12 (1975).

voice is on the 911 audio recording or, in the event that the caller is deceased or incapacitated, to the legal representative of the caller or the caller's estate."[86] The legal representative must prove that 1) the "caller is deceased or incapacitated and the person signing the affidavit is the legal representative of the caller or the caller's estate" and that 2) the "release of the 911 audio recording is pertinent to the investigation of a legal matter resulting from the events necessitating the making of the 911 call at issue."[87]

Perhaps more perplexing however, is the restriction on felons when it comes to access to public records. This is the case in two states: Arkansas and Louisiana. In Arkansas, state law says that access to inspect and copy public records shall be denied to "A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility."[88] In Louisiana, any person can access public records for purposes of the Public Records Law, so long as that person is not an individual who has been convicted of a felony or "in custody pursuant to the sentence for that felony."[89]

These requirements, generally, are to fend off "tabloid journalism." Despite this intention, some callers themselves have difficulty accessing their own calls, or calls relating to their family members. Rhode Island resident Troy Phillips came across this issue when he tried to inquire about the 911 call made for his brother Scott, who according to his death certificate, died of hypertensive cardiovascular disease.[90] Similar to Alabama, in Rhode Island, 911 recordings and transcripts can only be retrieved

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[86] Ala. Code § 11-98-12(b) (1975).

[87] *Id.*

[88] Ark. Code Ann. § 25-19-105(a)(1)(A)-(B). /https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2021R%2FPublic%2F&file=310.pdf&ddBienniumSession=2021%2F2021R.

[89] *Muhammad v. Office of Dist. Attorney for Parish of St. James*, 16-9, p. 12 (La. App. 5 Cir. 4/27/16), 191 So.3d 1149, 1157. (LA Rev Stat § 44:31 states that "any person of the age of majority" may make a public records request. By statute, certain individuals have been excluded from the definition of a "person" under the Public Records Law. La. R.S. 44:31.1.10 Under this statutory exception, a "person," for purposes of the Public Records Law, is defined to exclude an individual: "(1) who is a convicted felon; (2) who is in custody pursuant to the sentence for that felony; (3) who has exhausted his appellate remedies; and (4) who is not limiting the grounds for his request to those items to be used to file for post-conviction relief under La.C.Cr.P. art. 930.3.").

[90] Lynn Arditi, *Going Quiet: More States Are Hiding 911 Recordings From Families, Lawyers and the General Public*, PROPUBLICA (Jul. 16, 2019, 5:00 AM), https://www.propublica.org/article/more-states-are-hiding-911-recordings-from-families-lawyers-and-the-general-public.

through written consent of the caller or by court order.[91] Consequently, Phillips could not access information that would show what happened during the 6 minutes between when the call was made and when EMTs arrived on the scene, and whether or not the 911 Telecommunicator instructed personnel to perform CPR.[92]

Unfortunately, this restriction on access to 911 records and transcripts keeps the public in the dark when it comes to the efficient working of public safety systems, and hides instances of critical failures. For example, the 911 call recordings on the night of the 2016 Pulse nightclub shooting revealed that 911 operator's lines were so flooded, that many of them had to disconnect with victims inside the club so they could answer other calls.[93] In this instance, the recordings showed an overwhelmed system that needed to update how it responded to an overflow of calls during critical events like a mass shooting.

Although some state laws are generally open when it comes to requests for and access to 911 calls and transcripts, in practice, they are actually far from it, or simply lack the ability to respond efficiently to these requests. For example, the state of Massachusetts, like other states, has some type of "investigatory exemption," when 911 calls contain information that is being used in the course of an ongoing investigation by law enforcement.[94] And while some recordings can be withheld for "investigative reasons, there is no blanket exemption to stop authorities from releasing the public record."[95]

Despite this, MassLive, a media and marketing reporting agency in New England, submitted several public records requests for 911 recordings and transcripts, and was denied access on several occasions: in one case, they were denied access to a 911 call "that was not connected to an ongoing investigation." In several incidents, MassLive found that the state's 911 department frequently used Exemption F as a blanket reason

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[91] *Id.*

[92] *Id.*

[93] Staff Reports, *First 911 calls from inside Pulse nightclub released*, ORLANDO SENTINEL (Sep. 21, 2016 at 7:37 PM), https://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/os-pulse-shooting-paid-call-911-release-20160915-story.html.

[94] "Exemption (f) - the investigatory exemption, provides custodians a basis for withholding: investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."

[95] Melissa Hanson, *911 calls are supposed to be public records, but these Massachusetts agencies are keeping them secret*, MASSLIVE (May 19, 2019, 7:38 AM), https://www.masslive.com/boston/2019/05/911-calls-are-supposed-to-be-public-records-but-these-massachusetts-agencies-are-keeping-them-secret.html.

to deny access to recordings, even those that had no activity that would warrant an investigation implicating law enforcement. In one instance, the state's 911 department claimed in its denial to a request that "'a person's voice and the corresponding audio recording of a 911 call is identifying. Accordingly, the information . . . . is exempt from public disclosure,'" and cited Exemption F. Unfortunately, Massachusetts is not the only state to have this issue. A 2015 report from the Center of Public Integrity found that when it comes to public records law, Wyoming had the worst reputation when it came to acting on its citizens' requests.[96]

In addition to the access of 911 calls being dependent on state and local law, the storage of 911 calls is also variable across state and local agencies. For example, in Anne Arundel County, Maryland, 911 call audio is maintained for a period of one year.[97] Meanwhile in Minnesota, state law states that 911 call records are retained for a period of at least 31 days, and must include specific information, including the data and time the call was received, the nature of the problem, and the action taken by the dispatcher.[98]

However, the data retention of these calls, records, and transcripts is described generally. There are no apparent or specific guidelines for the storage and retention of multimedia information, such as video. And since many PSAPs operate at different functional capacities, it is unclear if the retention of video data would even be possible for some localities.[99] This is extremely problematic for people who are D/HH or DB who

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[96] *See Wyoming Public Records Guide*, MUCKROCK (2002), https://www.muckrock.com/place/united-states-of-america/wyoming/?gclid=Cj0KCQiAjbagBhD3ARIsANRrqEscq9sSEm6_StBteGcLfcAwL3Vc2egetCZKOe-tAmhftkycSIG749gaAq75EALw_wcB; *See also* Yue Qiu, Chris Zubak-Skees, and Erik Lincoln, *How does your state rank for integrity?*, THE CTR. FOR PUBLIC INTEGRITY (Nov. 9, 2015), https://publicintegrity.org/politics/state-politics/state-integrity-investigation/how-does-your-state-rank-for-integrity/ (ranking Wyoming at the bottom of its public records rankings in 2015).

[97] Obtaining 911 Call Records, aacounty.org, https://www.aacounty.org/services-and-programs/obtaining-911-call-records.

[98] Minn. Stat. § 7580.0600, subparagraph 5 (Recording calls). https://www.revisor.mn.gov/rules/7580.0600/.

[99] *See* Tony Bardo, *Under 911 Standardization, Would Capability Divide Remain? (Industry Perspective)*, GOVERNMENT TECH. (Sept. 26, 2016), https://www.govtech.com/opinion/under-911-standardization-would-capability-divide-remain.html. ("As it currently stands, PSAP capabilities can vary widely based on their levels of funding. PSAP funding is drawn primarily from taxes and fees at the state and local levels typically in the form of a small surcharge added onto consumer phone bills, which vary depending on state, county and city. Unfortunately, in some cases, states and counties have diverted revenue from these taxes and fees to pay for other budget shortfalls, leaving their PSAPs without funding for critical upgrades. This landscape

request access specifically for video information; a transcript of a call will only reveal so much, especially a call done through VRS, which federal law currently requires must be kept confidential.

III. Recommendations

While the roll out to NG911 promises to provide better and more efficient access to 911 and emergency services, there are still several issues in its path. Some of these are structural and systemic, including the overall lack of uniform funding and interoperability among PSAPs. Both current and new upgrades to PSAP operability must also consider how new data from NG911 should be stored in order to ensure privacy. Additionally, some of these challenges are also the result of generational differences; as technology advances, younger generations are relying less on TTY technology. Exacerbating these issues are institutional lags. This particularly includes the outdated language in the DOJ's current guidelines[100] and rules when it comes to 911 accessibility and mandatory technologies for PSAPs. Finally, in addition to "pre-" and "on-call" considerations are "post-call" ones, including how accessible actual 911 records are to the general public, but especially for those who are D/HH or DB, who might need those

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creates a divide between PSAPs in more populous regions, which are generally better funded and those with smaller taxpayer bases in rural areas. As a result, urban PSAPs are generally in a much better position to implement network upgrades.")

[100] *911 Minimum Standards and Best Practices*, Utah Communications Authority (Last Amended June 23, 2021), https://www.uca911.org/file/3994ab12-a9b3-46b3-9f78-5480e97aa7db. In the Utah 911 Minimum Standards and Best Practices of 2021, Utah advises that "For each medical call processed, the PSAP shall utilize EMD caller interrogation protocols that contain, at a minimum, the following: a) The specific pieces of information that must be gathered for each type of call; and b) Pre-arrival instructions/post-dispatch instructions designed to address caller or patient/victim safety and/or to preserve evidence;2 and c) PSAPs should dispatch high-priority medical, fire and law enforcement calls as soon as location and call-type are verified." Additionally, current NENA standards require that "the agency will obtain and document basic information for emergency calls. At a minimum, this information SHOULD include, when available: the location of the incident, callback number, nature of the emergency and caller identity." One recommendation is to higher the bar when it comes to the minimum amount of information required; instead, operators should also be required to document as best they can whether the individual calling has any specific abilities and/or disabilities so that emergency services and law enforcement are well informed before they arrive on scene; *See NENA Standard for 9-1-1 Call Processing*, NENA (April 16, 2020), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/nena-sta-020.1-2020_911_call.pdf.

records to assess negligent, criminal, or liable behavior by emergency responders and personnel.

While comprehensive proposals and solutions are beyond the scope and focus of this paper, several actions may be helpful in resolving some of the issues presented:

1. It is imperative that the DOJ put 911 accessibility back on its agenda. There is both a serious interest and demand from those in the D/HH, and DB community for this issue to be re-addressed since the failed ANPRM.
2. The current legislative language does not reflect the new and transforming technological environment that we live in.[101] Language could be amended to require the following: Public entities that provide emergency call services (9-1-1 and next generation 9-1-1), alerts, and notifications must make them readily accessible to and usable by individuals with disabilities via equally effective telecommunications technologies (voice, video, text, or data).
3. The legislature should also update Title II ADA rules to require people who are D/HH or DB to have the ability to specifically request and receive video information from video-conferencing calls made through 911. By denying these specific guarantees, D/HH or DB are not receiving equitable access to information.
4. Current ADA rules should also be amended to enable or mandate video-conferencing CAs to continue to provide interpreting services when first responders and law enforcement arrive at the scene. By doing this, there is no break in the chain of communication between players who are already involved in the situation, and no need for newly deployed interpreters to catch up on the context of the situation. This also decreases the wait time for a new interpreter to arrive on the scene or connect with the caller and ensures that there are still interpreting services even where local government agencies fail to provide one.
5. In either a judicial or legislative framework, there should be a concerted effort to require PSAPs to hire and train people who are fluent in sign language to handle 911 calls via DVC, to eliminate the need for a third party via TRS on emergency calls. Such direct communication will considerably reduce the opportunity for miscommunication and allow calls to be handled faster and more efficiency because both people will be communicating in the same language (ASL). Of course, such efforts will need to be financially supported.
6. Congress and the FCC should put more pressure on states to properly spend and allocate fees specifically meant for the maintenance and expansion of 911, or face serious consequences.

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[101] The DOJ's regulations require that "Telephone emergency services, including 911 services, shall provide direct access to individuals who use T[TY]ss and computer modems." 28 C.F.R. § 35.162.

These proposals are obviously not exhaustive, but are a starting point. Above all, any path forward will require the input and insight of those in the D/HH and DB community to create and promote effective policies and changes to the current 911 and NG911 systems.