Federal Communications Commission
Washington, D.C. 20554

May 10, 2016

DA 16-525

Small Entity Compliance Guide

Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies

Order on Reconsideration
FCC 15-95
PS Docket Nos. 11-60 and 13-75
Released: July 30, 2015

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232

COMPLIANCE REQUIREMENTS

Objectives of the Proceeding

In this *Order on Reconsideration*, the Federal Communications Commission (FCC or Commission) amended Section 12.4 of its rules adopted in December 2013. This rule requires 911 service providers to take "reasonable measures" to provide reliable 911 service. Providers subject to the rules, including small entities, can comply with the reasonable measures requirement by either implementing certain specific industry "best practices," or in some circumstances by implementing alternative measures that are reasonably sufficient to ensure reliable 911 service.

The Commission originally adopted these rules in the wake of the devastating impact from the unanticipated "derecho" storm in June 2012. This storm swiftly struck the Midwest and Mid-Atlantic United States, leaving millions of Americans without 911 service and revealing significant, but avoidable, vulnerabilities in 911 network architecture, maintenance, and operation. After a comprehensive inquiry into the causes of 911 outages during the derecho, as well as 911 network reliability more generally, the FCC's Public Safety and Homeland Security Bureau (PSHSB or Bureau) determined that many of these failures could have been mitigated or avoided entirely through implementation of network-reliability best practices and other sound engineering principles.

The Commission's reliability rules apply to all "Covered 911 Service Providers," including any entity that (1) provides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number information (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority (as that term is defined elsewhere in the Commission's rules); or (2) operates one or more central offices that directly serve a PSAP. For purposes of these rules, a central office "directly serves a PSAP" if it (1) hosts a selective router or ALI/ANI database (2) provides functionally equivalent NG911 capabilities, or (3) is the last service-provider facility through which a 911 trunk or administrative line passes before connecting to a PSAP. This definition encompasses entities that provide capabilities to route 911 calls and associated data such as ALI and ANI to the appropriate PSAP, but not entities that merely provide the capability for customers to originate 911 calls. Thus, generally, the reliability rules will not apply to wireless providers, VoIP providers, Internet service providers (ISPs), or commercial data centers – unless they provide any of the foregoing functions.

Rules That the Commission Amended

The FCC requires all Covered 911 Service Providers to certify annually to certain basic measures in the three substantive areas (i.e., circuit auditing, central office backup power, and network monitoring). If a Covered 911 Service Provider believes that one or more requirements of the rule are not applicable to its network, it must provide a brief explanation of why it believes any such requirement does not apply. The Commission delegates to the Bureau the responsibility to review the certifications and take additional action as appropriate, and the authority and responsibility to develop the certification form and filing system. The reliability certifications are subject to penalties for false or misleading statements both under the United States Code and the Commission's rules. Certifications shall be accompanied by a statement explaining the basis for such certification and shall be subscribed to as true under penalty of perjury in the form set forth in section 1.16 of the Commission's rules.

Effect of Certification. Under the certification process, a Covered 911 Service Provider that performs all the certification elements in a substantive area identified specifically in the rule will be deemed to comply with the requirement to take reasonable measures in that area. This result is subject only to any determination the Commission or as delegated, the Bureau, may make afterward, based on complaints, outage reports or other information, that the Covered 911 Service Provider did not, in fact, perform as

claimed in its certification. If, however, a Covered 911 Service Provider certifies that it has taken alternative measures to mitigate the risk of failure, or that a certification element is not applicable to its network, its certification is subject to a more detailed Bureau review. In such cases, the Covered 911 Service Provider must provide an explanation of its alternative measures and why they are reasonable under the circumstances, or why the certification element is not applicable. The Bureau will consider a number of factors in determining whether the particular alternative measures are reasonably sufficient to ensure reliable 911 service. Such factors may include the technical characteristics of those measures, the location and geography of the service area, the level of service ordered by the PSAP, and state and local laws (such as zoning and noise ordinances). If the Bureau's review indicates that a provider's alternative measures are not reasonably sufficient to ensure reliable 911 service, the Bureau will engage with the provider and other interested stakeholders (*e.g.*, affected PSAPs) to address any shortcomings. To the extent that such a collaborative process does not yield satisfactory results, the Bureau may order remedial action consistent with its delegated authority.

Nature of the Amendments Made in the *Order on Reconsideration*

The *Order on Reconsideration* clarified that the rules are intended to provide flexibility for Covered 911 Service Providers to rely on alternative measures as to all aspects of addressing circuit diversity, central office backup power, and network monitoring, where they can demonstrate that such alternative measures are reasonable under the circumstances to mitigate the risk of failure. With respect to circuit diversity, the order also provided additional guidance with respect to the adequacy of alternative measures. First, providers should include an assessment of the technical feasibility of circuit audits and tagging in light of the provider's network architecture. Second, it will not be considered sufficient or reasonable to respond that no circuit diversity measures are necessary. Third, the order recognized that there has been a shift in 911 network architecture from facilities owned and operated by a single provider to a combination of network transport and data processing elements that may be provided by multiple entities. However, it emphsized that contracting out certain functions does not absolve individual entities of their respective obligations for reliable 911 service. In these situations, the Commission's assessment of alternative measures will be informed, in part, by responses identifying the parties involved, as well as details about the contractual provisions – or lack thereof – governing such relationships (e.g., service level agreements).

Certification Phase-In. The rules, including the underlying obligation to take reasonable measures to provide reliable 911 service, became effective on Feb. 18, 2014. The Order on Reconsideration was released on July 30, 2015 and became effective on Oct. 7, 2015. The first certifications were due to the Commission on Oct. 15, 2015.

Impact on Small Business

The rules' certification requirement applies to *all* "Covered 911 Service Providers," without exception. In developing the rules, the Commission declined to create a specific waiver procedure for entities, including small and/or rural entities, to seek exemption from the rules. While the Commission acknowledged that small or rural service providers may have limited resources or operate in remote areas, the Commission declined to establish two tiers of 911 reliability based on economics or geography. Moreover, the rules allow flexibility for small or rural providers to comply with those rules in the manner most appropriate for their networks, and certain requirements will, by their nature, only apply to larger providers. For example, some small service providers monitor their networks directly from a central office and may not have separate NOCs; in such cases, the provider could certify that, while it does not have diverse aggregation points supplying telemetry data to diverse NOCs, it has taken reasonable alternative measures to ensure that the monitoring network in its central office is diverse. The certification approach allows flexibility for small or rural providers to comply with the rules in the

manner most appropriate for their networks, and certain requirements will, by their nature, only apply to larger providers.

Recordkeeping and Other Compliance Requirements

The Commission requires Covered 911 Service Providers to maintain for two years the records supporting each annual certification and to make relevant records available to the Commission upon request. For providers with existing electronic recordkeeping capabilities, these records must be maintained in an electronic format for ease of access and review. While certifications require only a brief description of alternative measures, the Commission reserves the right to request additional information, at the time of certification or thereafter, to verify the accuracy of a certification or determine whether alternative measures are reasonable. Examples of such records include diagrams of network routing, records of circuit audits, backup power deployment and maintenance records, and documentation of network monitoring routes and capabilities.

Weblink

Improving 911 Reliability, *Order on Reconsideration*, FCC 15-95 (adopted July 29, 2015; released July 30, 2015)

https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A1.docx
https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A1.pdf
https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A1.txt

Statement by Commissioner Michael O'Rielly (released July 30, 2015)

https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A2.docx
https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A2.pdf
https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-95A2.txt

Improving 911 Reliability, *Erratum*, FCC 15-95 (adopted and released Sept. 11, 2015)

https://apps.fcc.gov/edocs_public/attachmatch/DOC-335208A1_Erratum.docx