

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the National Suicide) WC Docket No. 18-336
Hotline Improvement Act of 2018)
)

**COMMUNICATIONS EQUALITY ADVOCATES
PETITION FOR RECONSIDERATION**

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SUMMARY

The Commission should reconsider and revise its Order in this proceeding to mandate that, by July 16, 2022 – i.e., the same deadline that applies to the covered providers' implementation of voice calling to 988 – wireless carriers and “covered text providers,” as defined in the *Text-to-911* proceeding, also must implement text-to-988 capability to communicate with the National Suicide Prevention Lifeline (“Lifeline”) and its trained counselors, so that the benefits of the easy-to-remember and -dial 988 code will be equally available to deaf, hard-of-hearing, late-deafened, deafblind, speech-disabled, or deaf with other disabilities people in crisis and to others in crisis for whom texting is the predominant mode of mobile communication.

The Commission should also revise the Order to mandate that, by July 16, 2022, the Lifeline will be capable of receiving and responding to communications using Direct Video Calling (“DVC”) so that deaf, hard-of-hearing, late-deafened, speech-disabled or deaf people with other disabilities whose first language is American Sign Language (“ASL”) will be able to communicate directly with suicide counselors using ASL, rather than having to use third-party ASL interpreters, as is required when using Video Relay Services (“VRS”).

There is ample evidence both in this record and in the records of the Commission's proceedings regarding text-to-911 and DVC to support revising the Order in both these respects. Indeed, failure to make such revisions would represent an improper reversal of the policies, reasoning, and facts behind the Commission's conclusions in those proceedings without adequate explanation.

If the Commission determines that there is insufficient data in the record to properly assess the costs and benefits of either text-to-988 or DVC to reach the Lifeline,

notwithstanding findings and conclusions it has made in earlier, similar proceedings involving text-to-911 and the promotion of DVC, then it should seek public comment on such issues immediately, with the goal of adopting text and DVC requirements that would take effect by July 16, 2022.

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PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission’s rules,¹ the National Association of the Deaf (the “NAD”), through its undersigned counsel, Civil Rights Education and Enforcement Center (“CREEC”), Autistic Self Advocacy Network (“ASAN”), American Deafness and Rehabilitation Association (“ADARA”), CommunicationFIRST, Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (“NVRC”), Deaf Seniors of America (“DSA”), Association of Late-Deafened Adults (“ALDA”), National Association of State Agencies of the Deaf and Hard of Hearing (“NASADHH”), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (“DHH-RERC”), Cerebral Palsy and Deaf Organization (“CPADO”), Conference of Educational Administrators of Schools and Programs for the Deaf (“CEASD”), Disability Rights Education and Defense Fund (“DREDF”), National Organization of Nurses with Disabilities (“NOND”), National Coalition for MH Recovery (“NCMHR”), Association of Programs for Rural Independent Living (“APRIL”), Autistic Women & Nonbinary Network

¹ 47 C.F.R. § 1.429.

("AWN"), Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI"), Registry of Interpreters for the Deaf, Inc. ("RID"), Paralyzed Veterans of America ("PVA") California Coalition of Agencies Serving the Deaf and Hard of Hearing ("CCASDHH"), National Federation of the Blind, Not Dead Yet ("NDY"), Little People of America ("LPA"), American Association of People with Disabilities ("AAPD"), Hearing Loss Association of America ("HLAA"), National Disability Rights Network ("NDRN"), American Council of the Blind ("ACB") and Bazelon Center for Mental Health Law (collectively, "Communications Equality Advocates") respectfully submit this Petition for Reconsideration of the Report and Order adopted by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding on July 17, 2020 ("Order").²

INTRODUCTION

The NAD is the nation's premier civil rights organization of, by, and for deaf and hard-of-hearing individuals in the United States. Established in 1880, the NAD was shaped by deaf leaders who believed in the right of the American deaf community to use sign language, to congregate on issues important to them, and to have their interests represented at the national level. These beliefs remain true to this day, with American Sign Language ("ASL") as a core value. The NAD is a 501(c)(3) nonprofit organization supported by the generosity of individual and organizational donors, including corporations and foundations. Deaf or hard-of-hearing individuals – who are only some of the NAD's constituents – represent 48 million, or one out of every five, Americans over

² *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373 (2020), pub. 85 FR 57767 (Sept. 16, 2020).

the age of 12, according to the Johns Hopkins University School of Medicine.³ An additional 6-8 million Americans are speech-disabled.⁴

Communications Equality Advocates are a coalition of groups and organizations representing disability communities and other groups having special communications accessibility needs who would be unable to make, or would face severe obstacles in making, voice calls to 988, and therefore believe that the alternative modalities of text-to-988 and Direct Video Communication (“DVC”) are essential for equal access to the enormous benefits of 988 implementation. Additional information regarding the constituent organizations that make up Communications Equality Advocates may be found at the websites listed in the signature block of this Petition.

SPECIFIC REQUESTS FOR RECONSIDERATION

Communications Equality Advocates respectfully request that the Commission reconsider the Order in the following respects:

1. The Commission should revise the Order to mandate that, by July 16, 2022 – i.e., the same deadline that applies to the covered providers’ implementation of voice calling to 988 – wireless carriers and “covered text providers,” as defined in the *Text-to-911* Order,⁵ also must implement text-to-988 capability to

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3564588/>.

⁴ NIH, *National Institutes on Deafness and Other Communication Disorders (NIDCD): Statistics on Voice, Speech, and Language*, <https://www.nidcd.nih.gov/health/statistics/statistics-voice-speech-and-language#2> (Sept. 28, 2020).

⁵ *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Dkt. No. 11-153, Second Report and Order, 29 FCC Rcd 9846 (2014) (“*Text-to-911* Order”) ¶ 2, n.1 (“Covered text providers’ includes all CMRS providers, as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable

communicate with the National Suicide Prevention Lifeline (“Lifeline”) and its trained counselors, so that the benefits of the easy-to-remember and -dial 988 code will be equally available to deaf, hard-of-hearing, late-deafened, deafblind, speech-disabled, or deaf with other disabilities people in crisis and to others in crisis for whom texting is the most accessible or preferred mode of mobile communication.

2. The Commission should revise the Order to mandate that, by July 16, 2022, the Lifeline will be capable of receiving and responding to communications using Direct Video Calling (“DVC”) so that deaf, hard-of-hearing, late-deafened, speech-disabled or deaf people with other disabilities whose dominant or primary language is ASL will be able to communicate directly with suicide counselors using ASL, rather than having to use third-party ASL interpreters, as is required when using Video Relay Services (VRS).⁶
3. If the Commission determines that there is insufficient data in the record to properly assess the costs and benefits of either text-to-988 or DVC to reach the Lifeline, notwithstanding findings and conclusions it has made in earlier, similar proceedings involving text-to-911 and the promotion of DVC, then it should

U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.”)

⁶ In addition, counselors receiving DVC calls should be trained in augmentative and alternative communication (“AAC”). Many people choose to use high-tech speech-generating forms of AAC because they have difficulty with texting, but they are frequently hung up on when they attempt to make voice calls using AAC. Moreover, much of AAC uses visual cues as part of the communication process. For both reasons, a video interface could be extremely beneficial for these users. AAC training typically requires only an hour or two of a counselor’s time. See, e.g., American Speech-Language-Hearing Association (ASHA), “Augmentative and Alternative Communication (AAC),” <https://www.asha.org/public/speech/disorders/aac/>, retrieved Oct. 13, 2020.

seek public comment on such issues immediately, with the goal of adopting text and DVC requirements that would take effect by July 16, 2022.⁷

BACKGROUND

The Lifeline is a national network of approximately 170 crisis centers that operate 24 x 7, including 26 crisis centers that answer online chats. The Lifeline provides essential suicide-prevention services to the American public. As the Commission recognized, the deaf, hard-of-hearing, late-deafened, speech-disabled or deaf with other disabilities populations have at least as great, and likely a greater, proportion of people at risk for suicide.⁸

Today, the Lifeline can be reached only by dialing a full 10-digit telephone number (800-273-8255 (TALK)).⁹ In its Order, the Commission found that “Americans in crisis are in need of an easy-to-remember number to access the Lifeline’s potentially life-saving resources”¹⁰ and that adoption of a special-purpose three-digit dialing number “will undoubtedly help individuals in crisis get access to help and resources more efficiently and with less barriers than current systems.”¹¹ As the Commission noted, the three-digit code so adopted would have the potential to “become as ubiquitous as 911.”¹² After

⁷ If any carriers or other service providers demonstrate that they will require additional time to comply with either a text access requirement or DVC accessibility requirement, then the Commission should allow a reasonable extension of time for them to comply, rather than indefinitely delay text and DVC accessibility requirements across the board.

⁸ Order, ¶ 2. “[A] 2020 study showed that college students who are deaf or hard of hearing are twice as likely to consider or attempt suicide than students without hearing loss.”

⁹ *Id.*, ¶ 31.

¹⁰ *Id.*, ¶ 28.

¹¹ *Id.* & n.118 (quoting the Comments of LGBT Technology Partnership at 3).

¹² *Id.*, ¶ 28 (quoting the Comments of Enteron Communications Corp. at 2-3).

carefully considering other possible three-digit numbers, the Commission designated 988 as the three-digit code for the public to use to reach the Lifeline, and it ordered all telecom carriers, interconnected VoIP providers, and one-way VoIP providers (“covered providers”) to ensure that the public can make voice calls to the Lifeline by dialing 988 no later than July 16, 2022.¹³ In brief, the Commission found that “the benefits of implementing 988 far exceed the costs.”¹⁴

It is not currently possible to reach the Lifeline via text message or DVC.¹⁵ Although the Commission chose not to require the Lifeline to be reachable by either mode of communication, it noted that veterans can reach the Veterans Crisis Line via text, using a six-digit short code (838255), as well as by Internet-based online chat, and that all users can reach the Crisis Text Line via a separate six-digit short code (741741).¹⁶

In its report to the FCC,¹⁷ the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (“SAMHSA”), which partially funds the Lifeline, wrote that designating an NXX code for a national suicide prevention and mental health crisis hotline “has the potential to play a key role in improving national crisis intervention and suicide prevention efforts *if the launch of a new number is accompanied by efforts to develop a more coordinated crisis system with greater capacity and access to sophisticated data and technology systems, and an ongoing commitment to data driven quality improvement.*”¹⁸ Requiring carriers and

¹³ *Id.*, ¶ 27.

¹⁴ *Id.*, ¶ 27.

¹⁵ *Id.*, ¶ 5.

¹⁶ *Id.*, ¶ 82.

¹⁷ Cited at Order, ¶ 5, n.24 (“SAMHSA Report”).

¹⁸ SAMHSA Report at 11-12 (quoted at Order, ¶ 9 & n.45) (emphasis added).

Internet service providers to provide access to the Lifeline via text messaging and DVC will advance SAMHSA's objectives of increasing capacity and access to counseling services using more sophisticated technologies.

In the proceedings below, the NAD and other parties (many of whom are among Petitioners) had proposed that the Commission require access to the Lifeline via text-to-988 and Direct Video Calling/ASL,¹⁹ but the Commission rejected both requests, notwithstanding broad support for at least the texting proposal.²⁰ It is this aspect of the Commission's decision that Petitioners urge the Commission to reconsider.

ARGUMENT

A. The Record Provides Ample Evidence That the Commission Erred in Not Mandating that Text-to-988 and Direct Video Calling/ASL be Implemented on the Same Timeline as Voice-to-988.

In the Order, the Commission quite correctly found that “[n]ow, more than ever, Americans need rapid access to suicide prevention and mental health crisis intervention services.”²¹ It found that Congress had been correct, when it adopted the National Suicide Hotline Improvement Act, in “recogniz[ing] the need to ease access to this potentially life-saving resource by designating a shorter, ‘easy-to-remember, 3-dialing code’ for the Lifeline.”²² Moreover, it found that “[s]uicide disproportionately impacts

¹⁹ Comments in Support of the Commission's Notice of Proposed Rulemaking of Telecommunications for the Deaf and Hard of Hearing, Inc., et al., filed in this proceeding on February 14, 2020.

²⁰ Order, ¶ 355.

²¹ *Id.*, ¶ 1.

²² *Id.*, ¶ 4 & n.20 (quoting Press Release, “Stewart and Hatch Introduce Bill to Improve National Suicide Prevention Hotline” (May 3, 2017), <https://stewart.house.gov/media-center/press-releases/stewart-and-hatch-introduce-bill-to-improve-national-suicide-prevention>).

various at-risk populations” and that among these at-risk populations are deaf and hard-of-hearing people.²³

Yet, despite these unequivocal findings, the Commission failed in the Order to take steps to assure that these same deaf and hard-of-hearing Americans, along with others for whom voice calls to the Lifeline are not an option, have equal access to the benefits of the 988 dialing code. If left uncorrected, this will result in second-class status for these populations. They will be deprived of the ability that others in crisis will have to quickly reach trained counselors to help them by dialing a single, well-publicized, easy-to-remember three-digit number. Instead, deaf, hard-of-hearing, late-deafened, speech-disabled, or deaf with other disabilities people will be forced into one of two inadequate scenarios: either (1) use VRS and be compelled to share private information through an untrained ASL interpreter (not a counselor) who may not be a reliable intermediary between the person in crisis and the trained counselors at the Lifeline crisis centers; or (2) text to a much-less memorable (and much-less publicized) six-digit code to reach the Crisis Text Line or (if they are veterans) the Veterans Crisis Line.

The Commission must remedy its failure to extend equal access to these citizens by requiring that text-to-988 be implemented, and that Direct Video Calling/ASL communications be made available at the Lifeline, on the same timetable that the 988 service is implemented for voice callers – i.e., by July 16, 2022.

²³ *Id.*, ¶ 2 & n.14.

1. The Commission Unequivocally Has – and Should Exercise Without Delay – the Power to Require Wireless Carriers and “Covered Text Providers” to Implement Text-to-988 and to Condition 988 on the Implementation of Text-to-988 and DVC Capabilities.

a. The Commission’s Notion of the Logical Sequence of Events is Reversed.

The Commission’s explanation for refusing to require carriers to implement text-to-988 was that such action would be “premature” to require carriers to provide this capability when the Lifeline crisis centers do not presently have the ability to receive texts.

The Commission explained:

We do not have the authority to require the Lifeline and its crisis centers to develop the technical capability to accept and respond to texts. ... In the absence of integrated texting capability, we do not see how the benefits of imposing a mandate on covered providers would exceed the costs. We therefore defer consideration of mandating text-to-988 at this time so that we could revisit the issue promptly should Lifeline develop integrated texting.”²⁴

There are several fatal flaws in the Commission’s reasoning. First, the Commission need only mandate that carriers and covered text providers enable text-to-988, which it patently has the power to do – and which it did in regard to text-to-911 in the *Text-to-911* Order. Moreover, as the *Text-to-911* precedent shows, it is backwards to expect the Lifeline crisis centers to implement the capability to receive texts when there is no assurance that carriers and covered text providers will be able to *transmit* texts by a fixed date. When the FCC mandated the implementation of text-to-911, only 121 PSAPs – a tiny minority – had the capability of receiving texts.²⁵ But the Commission nevertheless required carriers and covered text providers to build the capability to transmit texts with

²⁴ *Id.*, ¶ 83.

²⁵ *Text-to-911* Order, ¶ 32, n.91. As Commissioner O’Rielly pointed out in his separate statement, this represented only about 1.8 percent of the then-existing PSAPs. *Id.*, Statement of Commissioner Michael O’Rielly Concurring in Part, Dissenting in Part.

the expectation that PSAPs would then implement the ability to receive them, and today more than 2700 have done so.²⁶ Similarly, Lifeline crisis centers might not have the ability to receive texts today, but the assurance that the carriers and covered text providers will have the ability to transmit these texts by a fixed date is likely to spur the Lifeline crisis centers to gain such ability. Thus, the proper sequence is to require the carriers to be able to deliver text-to-988 by July 16, 2022, giving the Lifeline crisis centers both the time and incentive to develop the capability at their end.

b. Texting is a (Perhaps *the*) Preferred Method of Communication Among Americans and is Indispensable for Deaf, Hard-Of-Hearing, Late-Deafened, Speech-Disabled or Deaf with Other Disabilities People.

The Commission's decision to forge ahead with requiring carriers and covered text providers to implement text-to-911 notwithstanding the PSAPs' then-lack of uniform ability to receive text messages was based on its conviction that such a step was necessary to make 911 truly "ubiquitous" as a way to reach emergency services quickly and reliably. First, as the Commission noted, even in 2014, more and more members of the public were using texting as their preferred mode of communication and text-to-911 was essential to provide the full benefit of 911 to these users:

People faced with the stress of emergency situations can communicate more quickly and effectively when they are able to use the same ubiquitous technologies that they use for everyday communications. This principle, which has long been applicable to voice calling, is increasingly true for text messaging communication as well. ... Thus, as the Commission has stated before, expanding existing text technology to support 911 will provide the public with a familiar mode of communication for emergency use, and we anticipate that subscribers will continue to use text messaging at the same or a greater rate than in the past.²⁷

²⁶ <https://www.fcc.gov/files/text-911-master-psap-registryxlsx> (retrieved Oct. 2, 2020).

²⁷ *Text-to-911 Order*, ¶ 12 (footnotes omitted).

And the trend toward texting has only accelerated in recent years. CTIA’s most recent survey showed that combined messaging (SMS + MMS) traffic had increased by 15.8% between 2017 and 2018 alone.²⁸ Another estimate shows U.S. monthly texting traffic for all platforms (not just SMS and MMS) rising from 634 billion to 781 billion messages between June 2016 and June 2017 – a rise of some 23 percent.²⁹

As with people trying to reach 911 in an emergency, persons in crisis who may be considering suicide are likely to first use their preferred, familiar mode of communication to reach out for help. As with 911, time is at a premium and the more obstacles an individual has to overcome to reach help, the less likely they will be able to do so in time to prevent catastrophe. Thus, for all users who normally use text for the bulk of their communications, the ability to reach trained mental health professionals using text-to-988 will be of paramount importance. This is especially true because, if consumer education succeeds – as we expect it will – in making 988 as familiar and “ubiquitous” as 911, text-preferring people will try that number first and will be frustrated when they are unable to connect with help.³⁰ They may not try an alternative communication mode.

²⁸ <https://www.ctia.org/news/2019-annual-survey-highlights> (retrieved Oct. 2, 2020).

²⁹ Text Request, Kenneth Burke, “How Many Texts Do People Send Every Day (2018)?,” <https://www.textrequest.com/blog/how-many-texts-people-send-per-day/> (retrieved Oct. 16, 2020).

³⁰ In the *Text-to-911* Order (¶ 18) the Commission also noted that there are instances where, for privacy or safety reasons, individuals who are not deaf, hard of hearing, late-deafened, speech-disabled or deaf with other disabilities may be in danger, or would compromise their much-needed privacy, if overheard, and therefore need to be able to access emergency services via text rather than voice. That reasoning applies with equal force here, since for obvious reasons such an individual may not wish to be overheard by family members, roommates, officemates or passersby.

Still more is this true for deaf, hard-of-hearing, late-deafened, speech-disabled or deaf with other disabilities people who, unlike individuals without these disabilities, will not have the option of a voice call to 988. In the *Text-to-911* Order, the Commission recognized the critical importance of assuring these individuals the same ability to reach help in emergencies that others have and to do so using their familiar devices and modalities:

[P]eople who are deaf, hard of hearing, or speech disabled have been consistently migrating away from specialized legacy devices, and towards more ubiquitous forms of text messaging communications because of the ease of access, wide availability, and practicability of modern text-capable devices. This migration has had the unique benefit of bringing these users into the mainstream of our nation’s communications systems, but it also has led some commenters to suggest that it leaves people who are deaf, hard of hearing, or speech disabled without an effective, reliable and direct means of accessing 911 services in the event of an emergency.

...
[A] significant number of people who are deaf, hard of hearing, or speech disabled will benefit from the ability to directly send a text message to 911 from any device that is text-capable. Moreover, enabling direct text messaging to 911 by the many people who are deaf, hard of hearing, or speech disabled will allow them to use mass market communication devices that have more advanced and increasingly evolving capabilities.³¹

In the Order, the Commission recognized that a key objective is to make 988 “as ubiquitous as 911”³² – and this will simply be impossible unless text-to-988 is established on the same footing as text-to-911.

c. Existing Services Are Inadequate Substitutes for Texting to 988.

The Commission notes that telecommunications relay services (“TRS”), VRS, Internet Protocol Relay, and Internet Protocol Captioned Telephone Services are able to

³¹ *Id.*, ¶¶ 14, 16.

³² Order, ¶ 28 & n.123 (quoting the Comments of Entercom Communications Corp. at 2-3).

reach the Lifeline today and that existing rules require TRS providers to ensure that users of these services will be able to do so using 988.³³ But using these services to connect with 988 would not be an adequate substitute for text-to-988 for several reasons. First, each of them requires additional time to set up and establish a connection through a third party – time that is scarce in the dire and urgent situations in which calls to the Lifeline are made.³⁴

Second, these services require that an individual have access to the equipment – or specialized software – needed to communicate via those services at the moment the individual is in crisis, whereas text-to-988 only requires use of the individual’s mobile phone, which today most people carry with them everywhere.³⁵ The Commission recognized this ubiquity in the *Text-to-911* Order:

The Commission’s Emergency Access Advisory Committee (EAAC) noted that individuals who are deaf, hard of hearing, or speech-disabled and need to communicate with 911 via voice currently have no direct means of accessing 911 while mobile other than through attaching a separate teletype (TTY) device to their cellphone. However, the vast majority of people who are deaf, hard of hearing, or speech-disabled has discarded TTYs or has never acquired or used a “mobile” TTY, and thus no longer has a practicable means of directly accessing 911.

³³ *Id.*, ¶ 43.

³⁴ In addition, given the COVID-19 pandemic, the Commission has recently waived speed of answer rules for relay services. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123 (rel. June 22, 2020). While we anticipate that eventually that waiver will be lifted, this underscores the issue of speed of answer if there is an emergency of any sort that could impact someone’s ability to get through to 988 using relay services.

³⁵ In addition, TRS and VRS may be unusable for consumers who are mobile users with data caps since they consume far more data than texting. Also, identity verification requirements for the User Registration Database (URD) pose barriers to accessing VRS. See, e.g., Public Notice, “Video Relay Service Providers May Begin Submitting Data to the TRS User Registration Database,” DA 17-1246, <https://docs.fcc.gov/public/attachments/DA-17-1246A1.pdf> (rel. Dec. 29, 2017). It is at best unrealistic to expect a suicidal person not already registered to jump through these hoops in their time of crisis.

Nevertheless, the EAAC found that many individuals who are deaf have service plans that include SMS. One key finding of the EAAC is that “individuals with disabilities should be able to call 9-1-1 using the same means they use for everyday telecommunication.”³⁶

Third, relay services require the interposition of a third-party ASL interpreter (“Communications Assistant” or “CA”) between caller and counselor, which delays transmission of messages in each direction, increasing the likelihood that the caller will succumb to frustration or despair and terminate the call without resolving the crisis. Moreover, in situations where a Lifeline call is being made, the use of a CA carries a significant risk of mistranslating the meaning – especially when the interpreter is untrained in mental health issues and crisis counseling, as are the vast majority of them. Petitioners’ experience with ASL interpreters has been that they are capable of translating and relaying relatively straightforward, everyday messages, but only a small minority are trained and able to relay accurately “technical,” nuanced or sensitive messages, such as those involving legal or health care advice, including mental health counseling. The great bulk of ASL interpreters within the relay industry will simply be unable to adequately convey to the mental health professional the nature of the individual’s crisis, or to communicate back to the individual in crisis the carefully phrased questions, responses, and advice of the Lifeline counselor. The serious potential for miscommunication using relay services is simply unacceptable for Lifeline calls, where there is no room for error. Moreover, when an individual who is considering suicide wants to reach out, they should not have to consider whether the relay operator is going to be listening in on this most private of conversations; indeed, this consideration may be a disincentive to making the call at all.

³⁶ *Text-to-911 Order*, ¶ 15.

Fourth, a Lifeline counselor need not understand ASL to communicate effectively with a troubled individual via text. While the availability of Lifeline counselors trained in ASL will be important for DVC, the pool of counselors available to a deaf or hard of hearing person in crisis will be vastly larger if those counselors can exchange text messages with that individual.

The Commission expressly recognized the inadequacy of TRS as a substitute for texting in the *Text-to-911* Order, and its reasoning in that proceeding applies equally to this one:

Today, in the absence of text-to-911, individuals who are deaf, hard of hearing, or speech disabled and who do not use TTYs have no other feasible option but to rely on telecommunications relay services (TRS) to access 911 emergency services, unless they are with another individual who can make a voice call on their behalf. Text-based relay services usually transmit the emergency text message first to a communications assistant (CA), who then places a call to the PSAP. The CA then relays the conversation between the individual and the PSAP, by voicing all text that is typed by the person with a disability to the PSAP call taker and typing the call taker's responses to the caller. Many have criticized TRS as serving only as an indirect means of emergency access that can result in delays and translation errors.³⁷

d. An Assumed Lack of Crisis Center Readiness is Easily Overcome.

The Commission's finding that the Lifeline crisis centers are currently unready to receive texts is also not a sufficient reason to delay implementation of text-to-988 by wireless carriers and covered text providers.³⁸ The deadline for implementation of 988 service generally is July 16, 2022 – nearly two years away. This period is more than sufficient for the Lifeline crisis centers to establish the capability of receiving texts. But should it prove impracticable for all Lifeline crisis centers to implement text messaging by that date, the Lifeline could cause texts to be routed to those centers that *are* text-ready

³⁷ *Id.*, ¶¶ 16 - 17.

³⁸ *Order*, ¶ 82.

until all crisis centers have that ability. Alternatively, the Lifeline could contract with an entity that is capable of both receiving texts and ministering to the needs of people in crisis, such as the Crisis Text Line, to handle texts until Lifeline crisis centers are ready.

Yet another alternative would be for the Lifeline to leverage two existing national counseling services – National Deaf Therapy and Deaf Counseling Center – to handle communications (including text messages and DVC calls) from the deaf, hard of hearing, deafblind, and speech-disabled communities. These organizations are well-established, ubiquitous, experienced in counseling these communities, and already technology-enabled. Certainly, with some federal funding, both organizations could be prepared to expand their services to include suicide prevention and specialized mental health counseling within the next two years.

e. The Commission Has Already Examined the Costs and Benefits of Texting to Emergency Services and of DVC.

The Commission already has ample data on the costs to wireless carriers and covered text providers of implementing text-to-911 and of outfitting crisis centers with text reception and response capability, since these costs are likely to be of the same magnitude as those faced by providers and PSAPs in the context of text-to-911, which are fully documented in the record in the *Text-to-911* proceeding. Indeed, the costs to wireless carriers and covered text providers of implementing text-to-988 access to the Lifeline should be substantially *lower* than those of implementing text-to-911 for both crisis centers in the aggregate and wireless carriers and covered text providers. First, location information need not be passed by the provider (but can be if the Commission deems it a requirement just as in its *Text-to-911* Order). Second, there are far fewer Lifeline crisis centers (170) than there are PSAPs (more than 5,000), so the scale of effort (and

expense) involved here would be merely a fraction of that in the *Text-to-911* proceeding. Third, 988 texts need be delivered only to a single ten-digit toll-free number (such as but not necessarily 800-273-8255 (TALK)),³⁹ not to the thousands of separate ten-digit PSAP numbers required for text-to-911.

In a footnote in the Order, the Commission noted Crisis Text Line's argument that the Commission should "not prematurely include texting in its proposal, in the absence of a fuller record on the landscape, infrastructure required, and impact of doing so."⁴⁰ But such a record has already been fully developed in the *Text-to-911* proceeding, and the Commission can and should use that proceeding's record and the cost-benefit analysis performed there in this proceeding in considering whether to require text-to-988. The issues are essentially identical and the only differences, as noted above, show that the costs of implementing text message access to the Lifeline should be significantly *less* than those for text-to-911.

To be sure, the costs for DVC are not addressed in the *Text-to-911* proceeding. But there too the costs are already known to the Commission and a matter of public record. As the Commission has recognized in urging the broad implementation of DVC at call centers by public and private entities,⁴¹ the equipment costs for a crisis center to be able to handle DVC calls are nominal, as an ordinary personal computer or laptop with camera can serve as the crisis center's terminal for DVC calls, and the software required

³⁹ Order at App. B, ¶ 25.

⁴⁰ Order, ¶ 83, n.355 (quoting Crisis Text Line Comments at 1).

⁴¹ FCC, "Accessible Communications for Everyone – Connect & Communicate," <https://www.fcc.gov/ace> (retrieved Oct. 5, 2020).

to implement DVC is available free!⁴² And only a 1 Mbps connection is needed for each counselor handling DVC calls.⁴³ None of this information is new; the Commission itself has already acknowledged all of it in earlier proceedings and in its press releases about Direct Video Calling and ACE Direct.⁴⁴

Should the Commission nevertheless determine that it requires additional information in this record about the costs of implementing these services, it should ask interested parties – now, not in 2022 – to submit information on these costs. If it does so expeditiously, it can still order wireless carriers and covered text providers to deliver text-to-988 by the July 2022 deadline. If it should turn out that one or more wireless carriers and covered text providers are unable despite reasonable efforts to meet that deadline, the Commission has well-established waiver and extension-of-time application procedures they could pursue.

f. Other Existing Counseling Services Are Inadequate Substitutes for Calling 988.

The final substantive reason the Commission gave for its inaction in this proceeding is that those seeking suicide counseling via text have other options available today, including the Veterans Crisis Line and the Crisis Text Line,⁴⁵ but these capabilities require remembering (or looking up) and dialing twice as many digits. And the specific

⁴² *Id.*, <https://www.fcc.gov/ace/direct> (retrieved Oct. 5, 2020). Indeed, the Commission spearheaded the development of the free, open-source DVC software. *Id.*, <https://www.fcc.gov/dvc> (retrieved Oct. 5, 2020).

⁴³ The Essentials in Adopting Direct Videoconferencing Telecommunications, <https://www.fcc.gov/file/13007/download> (retrieved Oct. 5, 2020).

⁴⁴ “ACE” is the Commission’s “Accessible Communications for Everyone” initiative. Accessible Communications for Everyone – Connect & Communicate, <https://www.fcc.gov/ace> (retrieved Oct. 5, 2020).

⁴⁵ Order, ¶¶ 82-83.

codes used – 838255 and 741741⁴⁶ – are not nearly as memorable as the simple 988. The *raison-d'être* for the implementation of 988 is to provide a single, short, easy-to-remember number for those in crisis. If existing capabilities were an adequate substitute, there would be no need to implement 988 at all. Implementing 988 should be done in a way so that it is available and accessible to all.

g. The Commission's Claimed Lack of Authority is Unconvincing.

With respect to the proposal for DVC to the Lifeline, the Commission concluded that it lacks the authority to mandate that the Lifeline and its crisis centers implement that capability.⁴⁷ But the Commission can and frequently does condition its orders on actions that it may not be empowered to require directly. For example, in the merger context, it is commonplace for the Commission to impose conditions on its approval to protect the public interest:

[O]ur extensive regulatory and enforcement experience enables us, under this public interest authority, to impose and enforce conditions to ensure that the transaction will yield net public interest benefits. In exercising this authority to carry out our responsibilities under the Act and related statutes, we have imposed conditions to confirm specific benefits or remedy harms likely to arise from transactions.⁴⁸

⁴⁶ *Id.*, ¶ 82.

⁴⁷ *Id.*, ¶ 84.

⁴⁸ *Applications of Charter Commc'ns, Inc., Time Warner Cable, Inc., and Advance/Newhouse P'ship*, 31 FCC Rcd. 6327, ¶ 30 (2016), *rev'd in part on other grounds, Competitive Enterprise Institute v. FCC*, No. 18-1281 (D.C. Cir. Aug. 14, 2020). In its Order approving the merger, the Commission cited various other precedents, including *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9141, ¶ 22 (2015); *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4249, ¶ 25 (2011); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transfers) and EchoStar Communications Corp. (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20575, ¶ 27 (2002);

Here, given the minimal costs of implementing DVC, the Commission's expressed belief that many entities should take advantage of the DVC/ACE platform and free software, the clear benefits of doing so, and the fact that the period between now and July 2022 is far more than sufficient for Lifeline crisis centers to implement this capability, there is every reason for the Commission to condition the implementation of 988 on the extension of its considerable benefits to *all* Americans, including those who cannot effectively communicate via voice calling. It did so in the *Text-to-911* proceeding, and it should do so here.

2. Reconsideration of the Aspects of the Order Discussed Above Is Warranted Under Section 1.429.

The Commission based its rejection of text and DVC access to the Lifeline largely on its position that the record in this proceeding lacks sufficient data regarding the costs and benefits of implementing these capabilities;⁴⁹ however, the Commission can and should look to the record in the *Text-to-911* proceeding – as well as the record cited above with respect to DVC access – for such cost/benefit data. The subjects of those proceedings and the instant proceeding are virtually identical; thus, the Commission's wholehearted endorsement of text messaging as a means to access emergency services via 911 and of DVC as a means to communicate with call centers of all varieties should apply with equal or greater force to access to suicide prevention and mental health counseling. There is no need for the Commission to consider facts that have not been

Application of WorldCom, Inc. and MCI Commc'ns Corp. for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, ¶ 10 (1998) (stating that the Commission may attach conditions to the transfer).

⁴⁹ Order, ¶ 82 (“In the absence of integrated texting capability, we do not see how the benefits of imposing a mandate on covered providers would exceed the costs”).

previously presented to it, and no basis for rejecting the instant request for reconsideration on the basis of insufficient or new information. If the Commission feels that the record in the *Text-to-911* proceeding and the record underlying its public statements on DVC access would not be useful or sufficient here, it should reopen this record to request information concerning the costs and benefits of texting and DVC to access the Lifeline.

The Commission's consideration of the extensive record in the *Text-to-911* proceeding and the record on DVC access would be in the public interest, given the strong public interest in making suicide prevention counseling readily available to the widest possible population. Reference to the earlier record would therefore satisfy the objectives of Subsection 1.429(b)(3) of the Commission's Rules, which would allow consideration of "new" material to the extent it is in the public interest.

Because, as noted above, a large and growing number of Americans use text rather than voice as their primary mode of communication, the public interest demands that the Commission consider all relevant data and arguments for requiring text message access to the Lifeline *now*, rather than kicking the can down the road.

3. The Commission's Rejection of Texting and DVC Accessibility in the Proceeding Below is a Reversal of Prior Policy without a Rational Explanation.

In the *Text-to-911* proceeding, as described in detail above, the Commission reached four conclusions regarding text access to emergency response lines that are directly contrary to its conclusions on the same issues in this proceeding. Those conclusions are:

- (1) the predominance and importance of texting in modern society as the preferred means of communication;

- (2) the absolute necessity of implementing text-to-911 to include those who are unable to make voice calls in 911's protections and benefits;
- (3) the relatively modest cost of implementing text-based access to PSAPs (which would apply *a fortiori* to Lifeline crisis centers); and
- (4) the need to require wireless carriers and covered text providers to make the first move in enabling text-to-911, notwithstanding the likelihood, and acceptability, of a staggered adoption by PSAPs (in that case, and crisis centers in this) of text-based access, as opposed to needing simultaneous adoption by all answering points in the name of "integration."

With respect to the first issue, in the *Text-to-911* Order, the Commission wrote⁵⁰:

The Commission's rules must evolve as legacy networks and services transition to next generation technologies, and as consumer expectations and needs evolve. *Current trends in mobile wireless usage show the continued evolution from a predominantly voice-driven medium of communication to one based more on text and data transmissions.* The need to provide text-to-911 service in a timely manner is made more pressing . . . because of the unique value of text-to-911 for the millions of Americans with hearing or speech disabilities, and because of the crucial role it can play in protecting life and property when making a voice call would be dangerous, impractical, or impossible due to transmission problems.

Moreover, with respect to cost issues, the Commission's dismissal of cost-based concerns with respect to text access to 911 applies with greater force to the Lifeline. In that earlier proceeding, the Commission found that the costs of implementing text-to-988 access to the Lifeline would be manageable by involved entities and that they far outweighed by the benefits of implementing it.⁵¹ The Commission should reach a parallel conclusion here.

⁵⁰ *Text-to-911* Order, ¶ 1 (emphasis added).

⁵¹ *Text-to-911* Order, ¶ 11. Similarly, the Commission can and should take administrative notice of its own statements with regard to the implementation of DVC/ACE. <https://www.fcc.gov/ace> (retrieved Oct. 5, 2020).

In addition, in the *Text-to-911* proceeding, the Commission dismissed the argument that all PSAPs may not be prepared simultaneously to receive text messages, requiring wireless carriers and covered text providers to create comprehensive systems for delivering text-to-911, so that they would be able to provide it to each PSAP as soon as the PSAP was ready, i.e., within six months of receiving the PSAP's request that delivery begin.⁵² But in this proceeding, without explanation for the difference, the Commission reached the exact opposite conclusion, and decided that since the Lifeline is not ready to receive texts today, wireless carriers and covered text providers need do absolutely nothing in the next two years – or ever – to prepare their systems to deliver text-to-988.

Similarly, in adopting and propagating its policy encouraging the deployment of DVC, the Commission stressed both the great benefits and the minimal costs of implementing this service:

Direct video calling increases the efficiency and effectiveness of communications for individuals with disabilities, and helps to ensure the accessibility of call centers. This technology – which is readily obtainable, affordable and easy to implement – can help ensure the accuracy of communications, enhance caller privacy, and expedite call handling. Agencies and businesses can use high-speed broadband and their own internal networks to set up direct video without compromising security.⁵³

Here, too, when presented with the opportunity to require interested parties to roll out this capability as a condition of 988 implementation, the Commission has backed away from the public interest objectives served by DVC implementation.

⁵² *Text-to-911* Order, ¶¶ 10, 32, 34.

⁵³ Public Notice, "FCC to Hold Direct Video Calling Showcase," DA 16-1126, Sept. 30, 2016.

These about-faces on the important policy choices, reasoning and records found in the *Text-to-911* and DVC proceedings are unexplained and unexplainable. The Commission should reconsider the Order and revise it to ensure that both these critical means are available for people in crisis who are deaf, hard-of-hearing, late-deafened, deafblind, speech-disabled, or deaf with other disabilities to reach help fast and effectively on an equal basis with others.

CONCLUSION

For the above-stated reasons, the Commission should reconsider the Order by requiring that (1) wireless carriers and covered text providers be able to deliver text-to-988 no later than July 16, 2022; and (2) provision of 988 service be conditioned on the implementation of a DVC capability by the Lifeline.

Respectfully submitted,



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