



August 1, 2018

Sent Via Electronic Mail

Re: Text-to-9-1-1 Implementation in Your County

Dear County Attorney:

On July 12, 2018, U.S. District Judge John J. Tuchi approved a settlement in which the State of Arizona agreed to make available a Text-to-9-1-1 Services Fund (“the Fund”) in the amount of nearly \$1.36 million to resolve a lawsuit alleging violations of the Americans with Disabilities Act (ADA). The settlement is good news for counties who have not implemented Text-to-9-1-1 to date. The Fund is now available to each county 9-1-1 system administrator within Arizona to apply for funds to cover eligible implementation costs for either a Web-Portal Text-to-9-1-1 solution, or an ESInet/IP Network Text-to-9-1-1 solution. Under the settlement, the State will make a single payment from the Fund to each county 9-1-1 administrator who applies for the funds for the initial deployment costs and five years of recurring costs for Public Safety Answering Points (“PSAP”) to implement Text-to-9-1-1. The \$1.36 million dollar fund eliminates any excuse by a county for further delaying Text-to-9-1-1 implementation.

For reasons outlined below, the Arizona Center for Disability Law (ACDL), the National Association of the Deaf, and Stein and Vargas request that your county take steps to join Maricopa County and Lake Havasu City in providing Text-to-9-1-1 services for effective communication or provide a statement explaining the basis of your county’s determination that such an action is not required.

Introduction

Text-to-9-1-1 provides meaningful access to individuals who are deaf, hard of hearing or have speech disabilities to first responders through the use of any phone with texting capabilities. It is also a great addition in improving public safety in your 9-1-1 region. Since April 2018, all of the PSAPs throughout Maricopa County have been able to receive and send text messages from the public. Lake Havasu City’s PSAP has been able to receive and send text messages from the public since April 2017.

The technological advance of text messaging now offers deaf, hard of hearing, and speech challenged individuals the ability to gain meaningful access to emergency telecommunications services through Text-to-9-1-1. This allows persons with disabilities to enjoy the essential safety benefits of constant smartphone access to 9-1-1 that individuals without disabilities can take for granted.

The ADA’s Effective Communication Mandate

Title II of the ADA provides: “[N]o qualified individual with a disability shall, by reason of such

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disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act similarly prohibits recipients of federal financial assistance from discriminating on the basis of disability. 29 U.S.C. § 794; see also *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002). The County and its PSAPs are public entities that receive federal financial assistance and so are subject to both statutes.

Additionally, the Title II effective communication regulations require that public entities, such as the County:

- “[E]nsure that communication with . . . members of the public . . . with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a); see generally 28 C.F.R. §§ 35.160-164;
- “[F]urnish appropriate auxiliary aids and services where necessary to afford individuals with a disability . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. § 35.160(b)(1); and
- Give “primary consideration” to the requests of the individual with a disability. 28 § 35.160(b)(2).

The effective communication regulations further state that “[i]n order to be effective, auxiliary aids must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy of the individual with a disability.” 28 C.F.R. § 35.160(b)(2). Auxiliary aids and services include but are not limited to “voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices” and “other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.” 28 § 35.104; 42 U.S.C. § 12103.

ADA Mandate to Keep Pace With Technological Advancement

The implementation of Text-to-9-1-1 in your 9-1-1 region, now that the technology exists, is required under the ADA because Congress intended that “the types of accommodation and services provided should keep pace with the rapidly changing technology of the times.” H.R. Rep. 101-485(II), at 108 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 391. More specifically, at the ADA’s passage in 1990, Congress stated that it expected PSAPs to be equipped with technology that will give deaf, hard of hearing, and speech-challenged individuals’ direct access to 9-1-1 services. H.R. REP. 101-485, 84-85, 1990 U.S.C.C.A.N. 303, 367-68.

In recognition of the need to give deaf, hard of hearing, and speech challenged citizens life-saving access to emergency services, the Lake Havasu City PSAP and each PSAP within Maricopa County have implemented Text-to-9-1-1 to keep pace with the mandates of the ADA. We are requesting that your county 9-1-1 region PSAPs do the same, and take the steps necessary to receive and send text messages from the public.

Existing Methods Do Not Provide Effective Communication With 9-1-1

Without the availability of Text-to-9-1-1, the only options for persons who are deaf, hard of hearing, and speech challenged to access 9-1-1 emergency services is to use either TTY or video relay service (VRS). However, VRS does not provide the direct access to 9-1-1 that is required by Department of Justice (DOJ) regulations. See 28 C.F.R. § 35.162. In many

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situations, VRS does not provide effective communication with a PSAP because VRS depends on a high-speed Internet connection, which is often unavailable during an emergency.

For most deaf people, TTYs no longer provide effective communication with a PSAP because advances in technology over the last 25 years have rendered TTYs largely obsolete. As of 2013, there were less than 100,000 remaining TTY users in the entire United States, with a 10% decline each year. With such a decline of TTYs, deaf and hard of hearing individuals in your County are left “without an effective, reliable and direct means of accessing 911 services in the event of an emergency.” *In re Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Application*, 79 Fed. Reg. 55,367, 55,369, ¶ 14 (Sept. 16, 2014).

Even where some deaf individuals still own or have access to TTYs, such TTYs must be connected to a landline. As a result, deaf individuals could only use TTY to access 9-1-1 emergency services if such individuals’ emergency occurs in their home.

As such, neither TTYs nor VRS provide meaningful access or effective communication for deaf people who are in need of 9-1-1 emergency services.

No Excuses

There are no legal excuses for failing to take the necessary steps to provide Text-to-9-1-1 in your region. Although fundamental alteration is a defense for failure to comply with the mandates of the ADA, (28 C.F.R. § 35.134), no such defense applies here. Hundreds of PSAPs in many states already offer Text-to-9-1-1 as an option to their citizens.¹ The National Association of Emergency Numbers (NENA) states that SMS Text-to-9-1-1 “can be easily adapted to fit the size, budget, and political nature of individual regions.” Law enforcement officials in regions that implemented Text-to-9-1-1 embrace it as a means to enhance public safety.²

Any determination that providing Text-to-9-1-1 would result in an undue burden must be based on all resources available for use in the program, including outside funds such as the Text-to-9-1-1 Fund. 28 C.F.R. § 35.164. Only the head of the public entity or his or her designee may make this determination for the county. *Id.* If a public entity believes that it would be an undue burden to make Text-to-9-1-1 available, then the determination must be accompanied by a written statement of the reasons for reaching that conclusion. *Id.*

The only way for deaf, hard of hearing and speech challenged individuals to have effective, reliable and direct access to PSAPs’ 9-1-1 emergency services is if PSAPs have implemented Text-to-9-1-1 services to send and receive text messages. For this reason, the County cannot

¹ See the FCC’s Master PSAP Registry, available at this link: <https://www.fcc.gov/files/text-911-master-psap-registryxlsx>.

²See e.g. CNN Cronkite News Arizona PBS (June 13, 2017):<https://cronkitenews.azpbs.org/2017/06/13/new-911-text-service-helps-people-with-disabilities-get-faster-emergency-response/>; Press Conference sponsored by Maricopa County (April 2, 2018): <https://www.azdisabilitylaw.org/texting-911-capability-now-available-maricopa-county/>; Richmond Magazine (June 4, 2018): <http://richmondmagazine.com/news/news/text-to-911-service/>; Delaware Online (March 5, 2018): <https://www.delawareonline.com/videos/news/2018/03/05/sending-text-911-now-available-delaware/111114432/>; North Dakota Public Service Announcement: <https://911.nd.gov/text-9-1-1-videos>.

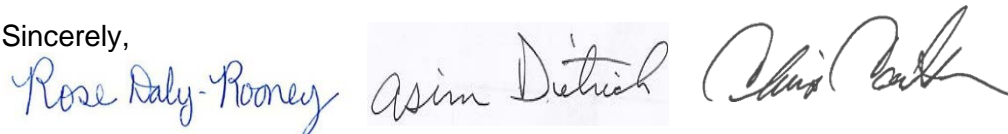
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comply with Title II of the ADA or Section 504 of the Rehabilitation Act unless its PSAPs are able to send and receive Text-to-9-1-1 messages.

Please confirm no later than September 30, 2018 that your county (or region) has agreed to implement Text-to-9-1-1 or provide us with a written statement from the Chair Person for the County Board of Supervisors or his or her designee outlining the basis for its decision not to do so.

Sincerely,



Rose Daly-Rooney, Asim Dietrich, and Chris Carlsen
ARIZONA CENTER FOR DISABILITY LAW

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NATIONAL ASSOCIATION OF THE DEAF

On behalf of Michael Stein
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