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Dated at Rockville, Maryland, this 20th day of July 2010.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010-18223 Filed 7-23-10; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB-2010-0003; Notice No. 107; Re: Notice No. 105]

RIN 1513-AB41

#### Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area; Comment Period Extension

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** In response to a request from a viticulture industry group, we are extending the comment period for Notice No. 105, Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area, a notice of proposed rulemaking published in the **Federal Register** on May 27, 2010, for an additional 45 days.

**DATES:** Written comments on Notice No. 105 are now due or before September 9, 2010.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov>: Use the comment form for this notice as posted within Docket No. TTB-2010-0003 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the "Public Participation" section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, the original notice of proposed rulemaking (Notice No. 105), selected supporting materials, and any

comments we receive about the proposed establishment of the Pine Mountain-Mayacmas viticultural area within Docket No. TTB-2010-0003 at <http://www.regulations.gov>. A direct link to this docket is posted on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 105. You also may view copies of this notice, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415-271-1254.

**SUPPLEMENTARY INFORMATION:** TTB received a petition from Sara Schorske of Compliance Service of American, prepared and filed on her own behalf and that of local wine industry members to establish the 4,600-acre Pine Mountain-Mayacmas viticultural area in northern California. About two-thirds of the proposed viticultural area lies in the extreme southern portion of Mendocino County, with the remaining one-third located in the extreme northern portion of Sonoma County.

The proposed Pine Mountain-Mayacmas viticultural area is totally within the multicounty North Coast viticultural area (27 CFR 9.30) and it overlaps the northernmost portions of the established Alexander Valley viticultural area (27 CFR 9.53) and the Northern Sonoma viticultural area (27 CFR 9.70).

In Notice No. 105 published in the **Federal Register** (75 FR 29682) on Thursday, May 27, 2010, we described the petitioners' rationale for the proposed establishment of the Pine Mountain-Mayacmas viticultural area and requested comments on the proposal on or before July 26, 2010.

On July 16, 2010, we received a letter request from attorney Richard Mendelson on behalf of the Napa Valley Vintners (NVV), a wine industry trade association. The request explained that due to the periodic scheduling of the NVV's committee and board of directors meetings, the group would be unable to meet the original July 26, 2010, comment deadline for Notice No. 105. The letter therefore requested a 45-day extension to the comment period for Notice No. 105 to allow the NVV to complete and thoroughly vet its comments on the proposed viticultural area.

In response to this request we extend the comment period for Notice No. 105 an additional 45 days. Therefore, the comments on Notice No. 105 are now due on or before September 9, 2010.

#### Drafting Information

Michael Hoover of the Regulations and Rulings Division drafted this notice.

Signed: July 20, 2010.

John J. Manfreda,

Administrator.

[FR Doc. 2010-18177 Filed 7-23-10; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 35

[CRT Docket No. 111]

RIN 1190-AA62

#### Nondiscrimination on the Basis of Disability in State and Local Government Services; Accessibility of Next Generation 9-1-1

**AGENCY:** Department of Justice, Civil Rights Division.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of Justice (Department) is considering revising the regulation implementing title II of the Americans with Disabilities Act (ADA) to address in what manner public entities that operate 9-1-1 call-taking centers (also known as Public Safety Answering Points (PSAPs)) should be required to make changes in telecommunication technology to reflect developments that have occurred since the publication of the Department's 1991 regulation. Under its existing title II regulation, the Department requires that PSAPs provide direct, equal access to telephone emergency centers for individuals with disabilities who use analog text telephones (TTYs).<sup>1</sup> Many individuals with disabilities now use the Internet and wireless text devices as their primary modes of telecommunications. At the same time, PSAPs are considering and planning to shift from analog telecommunications technology to new Internet-Protocol (IP)-enabled Next Generation 9-1-1 services (NG 9-1-1) that will provide voice and data (such as text, pictures, and video) capabilities. This ANPRM seeks information on possible revisions to the Department's regulation to ensure

<sup>1</sup> TTYs are also known as "telecommunications devices for the deaf" (TDDs).

direct access to NG 9-1-1 services for individuals with disabilities.

**DATES:** The Department invites written comments from members of the public. Written comments must be postmarked and electronic comments must be submitted on or before January 24, 2011.

Commenters should be aware that the electronic Federal Docket Management System would not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** You may submit comments, identified by RIN 1190-AA62 (or Docket ID No. 111), by any one of the following methods:

- *Federal eRulemaking Web site:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments. The Regulations.gov Docket ID is DOJ-CRT-0111.

- *Regular U.S. mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031-0885.

- *Overnight, courier or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, NW., Suite 4039, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Robert Mather, Attorney, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

You may obtain copies of this ANPRM in large print or Braille or on audiotape or computer disk by calling the ADA Information Line at (800) 514-0301 (voice) and (800) 514-0383 (TTY). This ANPRM is also available on the ADA Home Page at <http://www.ada.gov>.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Electronic Submission of Comments and Posting of Public Comments**

You may submit electronic comments to <http://www.regulations.gov>. When submitting comments electronically, you must include DOJ-CRT 0111 in the search field, and you must include your full name and address. Electronic files should avoid the use of special characters or any form of encryption and should be free of any defects or viruses.

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Submission postings will include any personal identifying information (such as your name, address, *etc.*) included in the text

of your comment. If you include personal identifying information (such as your name, address, *etc.*) in the text your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also include all the personal identifying information you want redacted along with this phrase. Similarly, if you submit confidential business information as part of your comment but do not want it posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Comments on this ANPRM will also be made available for public viewing by appointment at the Disability Rights Section, located at 1425 New York Avenue, NW., Suite 4039, Washington, DC 20005, during normal business hours. To arrange an appointment to review the comments, please contact the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

The reason that the Civil Rights Division is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is because the inter-agency Regulations.gov/Federal Docket Management System (FDMS) which receives electronic comments terminates the public's ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments, which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

### **II. Public Hearing**

The Department will hold at least one public hearing to solicit comments on the issues presented in this notice. The Department plans to hold the public hearing during the 180-day public comment period. The date, time, and location of the public hearing will be announced to the public in the **Federal Register** and on the Department's ADA Home Page, <http://www.ada.gov/>.

### **III. Background**

#### *A. Statutory and Rulemaking History*

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability. The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life. The ADA also requires newly designed and constructed or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. 42 U.S.C. 12101 *et seq.* Section 204(a) of title II and section 306(b) of title III direct the Attorney General to promulgate regulations to carry out the provisions of titles II and III, other than certain provisions dealing specifically with transportation. 42 U.S.C. 12134; 42 U.S.C. 12186(b).

Title II applies to State and local government entities, and, in Subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (section 504), to all activities of State and local governments regardless of whether these entities receive Federal financial assistance. 42 U.S.C. 12131-65.

Title III prohibits discrimination on the basis of disability in the activities of places of public accommodation (private entities whose operations affect commerce and that fall into one of twelve categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181-89.

On July 26, 1991, the Department issued its final rules implementing title II and title III, which are codified at 28 CFR part 35 (title II) and part 36 (title III). Appendix A of the title III regulation, at 28 CFR part 36, app. A, contains the ADA Standards for Accessible Design. On September 30, 2004, the Department published an advance notice of proposed rulemaking

(2004 ANPRM) to begin the process of updating the 1991 regulations to adopt revised ADA Standards based on the relevant parts of the 2004 ADA/ABA Guidelines. 69 FR 58768. On June 17, 2008, the Department issued a Notice of Proposed Rulemaking (2008 NPRM) to adopt the revised ADA Standards and revise the title II and title III regulations. 73 FR 34466. The NPRM addressed the issues raised in the public's comments to the ANPRM and sought additional comment.

Although the Department did not propose to include NG 9-1-1 accessibility provisions in the 2008 NPRM, the Department received comments urging it to amend the title II rule to mandate that PSAPs move towards the implementation of NG 9-1-1 services that will provide voice and data (such as text, pictures, and video) capabilities so that they will be able to directly receive various kinds of voice-, text- and video-based "calls." Several commenters, including the National Emergency Number Association (NENA) and the National Association of the Deaf, requested the development of standards for direct access to NG 9-1-1. Based on these comments and the reasons detailed below, the Department has decided to begin the process of soliciting comments and suggestions with respect to what an NPRM regarding NG 9-1-1 access should contain.

#### *B. Legal Foundation for Access to NG 9-1-1*

The Department's current title II regulation, as interpreted and administered by the Department, requires that PSAPs provide direct access to individuals with disabilities who use TTYs. 28 CFR 35.162. The Department has interpreted title II so as to require that PSAPs provide "direct, equal access" to 9-1-1 for individuals with disabilities who use TTYs. Direct access means that PSAPs must be able to directly receive TTY calls without relying on an outside relay service or third-party services, i.e., the PSAP must be able to engage in TTY-to-TTY calls. Equal access requires that 9-1-1 services provided for individuals who use TTYs be as effective as those provided for individuals who make voice calls, in terms of response time, response quality, hours of operation, and all other features offered (e.g., automatic number identification, automatic location identification, automatic call distribution). PSAPs also must follow proper procedures and practices when TTY calls are received, including Voice-

Carry Over (VCO) and Hearing-Carry Over (HCO).<sup>2</sup>

The Department recognizes that many individuals with disabilities now rely on Internet Protocol (IP)-based and digital wireless devices, rather than analog-based TTYs, as their primary modes of telecommunications and 9-1-1 call-taking centers are shifting from existing traditional telephone emergency services to new IP-enabled NG 9-1-1 services. Therefore, this ANPRM seeks comments from members of the public and covered entities on possible revisions to the title II rule to establish new requirements and guidance to ensure that NG 9-1-1 services are made accessible to, and usable by, individuals with disabilities.

This ANPRM identifies specific issues on which the Department solicits comment. The Department is also interested in comments on any other issues that affect access to NG 9-1-1 services. The Department will consider all comments before deciding whether to propose revisions to the title II regulation.

The Department requests comments regarding appropriate steps to provide individuals with disabilities with access to NG 9-1-1 technology at 9-1-1 emergency call-taking centers, including converging<sup>3</sup> IP 9-1-1 technologies that are as effective as those provided for individuals without disabilities. In this ANPRM, the Department is asking two key questions: (1) What devices and modes of communication (voice, text, video, and data) are individuals with disabilities using to make "calls," including emergency calls?, and (2) what steps should the Department take to ensure that any new IP-based PSAP platforms can receive direct calls from these devices?

<sup>2</sup> Many persons who became deaf or hard of hearing later in life prefer to speak instead of type. They use what is called voice carryover (VCO). With VCO, the caller speaks directly into the phone, and the call taker types back via TTY to the caller. VCO can be accomplished with standard stand-alone TTY equipment simply by having the call taker alternate between listening on the handset when the caller is speaking and placing the handset in the TTY couplers to type a response. People with speech impairments who are not deaf or hard of hearing often prefer HCO. HCO allows them to type their words on a TTY to call takers and hear call takers' spoken responses through their handset. HCO can be accomplished by a call taker using standard stand-alone TTY equipment by alternating speaking into the handset and placing the handset in the TTY when the caller types a response. For more information about the title II requirements for PSAPs, you may consult the Department's ADA technical assistance manual, <http://www.usdoj.gov/crt/ada/911ta.pdf> (last visited July 12, 2010).

<sup>3</sup> "Convergence" is the integration of traditional telecommunications and newer information technology services.

#### *C. Major Migration in Communications Devices and 9-1-1 Services*

As communication technologies are developing, individuals with disabilities are transitioning from analog or legacy devices to digital and IP-based devices. Among these devices are both wired and mobile videophones, text messaging wireless devices, including "smart" phones, as well as computers (including computers with Web cams) and captioned telephones. Many PSAPs or emergency 9-1-1 call-taking centers are not yet equipped to directly receive video calls or text calls over the Internet. As a result, individuals who have to call 9-1-1 using their IP-based videophone or texting device must call through third-party telecommunications relay services (TRS). TRS uses a relay operator called a communication assistant (CA) who relays the call between the caller using text or video and the PSAP.<sup>4</sup> In most IP-based video- or text-relay services, the CA receives the call from the person originating the call, places the call to the PSAP, and then relays the conversation between the caller and the PSAP.<sup>5</sup> Relay services are under the jurisdiction of the Federal Communications Commission (FCC).<sup>6</sup>

The 9-1-1 number has been designated for public use throughout the United States to report an emergency, request emergency assistance, or both. The original 9-1-1 system is based on traditional telephone technology, which cannot process text, data, image, and video sent from handheld devices and computers (e.g., personal digital assistant (PDA), cellular phone, portable media player, video phone, or camera). To address the changing technology, State and local governments are working to improve their 9-1-1 emergency communications systems and are moving towards an IP-enabled network. The ultimate goal is to have an emergency network that will enable the general public to make a 9-1-1 "call" via voice, text, or video from wired and wireless devices and directly communicate with personnel at the

<sup>4</sup> See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-1123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (June 24, 2008) (adopting new emergency call handling requirements).

<sup>5</sup> Captioned telephone relay calls are set up somewhat differently, with the caller placing the call directly to the party being called (the PSAP) at the same time that the call is connected to the CA. The CA does not need to place the call separately to the PSAP.

<sup>6</sup> See generally 47 CFR 64.601 *et seq.* (the TRS regulations).

PSAP. Several States, regions, and counties, including Indiana, Montana, Vermont, Texas, Florida, Minnesota, Allegheny County, Pennsylvania and the District of Columbia, are either considering or implementing an IP network or next generation related components in preparation for NG 9-1-1. <http://www.nena.org/ng911-project/state-status> (last visited July 12, 2010).

The Department is aware of two PSAPs' efforts to provide access to individuals with disabilities who use smart phones as texting devices. For example, in 2003, the police department in Sacramento, California began to accept "9-1-1" e-mails from individuals with disabilities. That police department also has accepted e-mails from as far away as Los Angeles and Texas asking Sacramento police to relay emergency information to their local authorities. <http://www.helpkidshear.org/news/media/2003/2003-11-21-cbs.htm> (last visited July 12, 2010). Another PSAP, Black Hawk County, Iowa, recently started to receive and respond to short message service (SMS) messages from cell phones or pagers. See Enforcing the ADA, Update April, September 2009, page 12, available at <http://www.ada.gov/aprsep09.pdf> (last visited July 12, 2010). With these additional services, individuals with disabilities are able to report an accident or other emergency quickly using their PDAs, without the necessity of locating and using a TTY or relying on another person to report the incident

#### D. Other Federal Efforts

The Department is familiar with ongoing efforts by other Federal agencies to ensure that advances in telecommunications systems, including NG 9-1-1 services, are accessible for all Americans, including individuals with disabilities. The National E-911 Implementation Coordination Office (National 9-1-1 Office) issued in September 2009, a national plan (Plan) for migrating to IP-enabled 9-1-1 Systems. See National Plan for Migrating to IP-Enabled 9-1-1 Systems, available at <http://www.ntis.gov/search/product.aspx?ABBR=PB2010102716> (last visited June 5, 2010). As required by the NET 911 Improvement Act, 47 U.S.C. 942(d), the Plan identified and analyzed 9-1-1 system migration issues and assessed potential options to resolve them. The Plan drew heavily from the United States Department of Transportation's (DOT) NG 9-1-1 Initiative work and findings. DOT had concluded that IP-enabled systems provide the optimal technical solution

for future 9-1-1 networks. One of the requirements of the NET 9-1-1 Improvement Act is to identify solutions for providing 9-1-1 and enhanced 9-1-1 access to individuals with disabilities and needed steps to implement such solutions. 47 U.S.C. 942(d)(I). In addressing policy barriers and issues, the National 9-1-1 Office stated that "to foster the migration to IP-enabled 9-1-1, Federal \* \* \* regulatory agencies will need to review current \* \* \* regulations to keep pace with the rapidly changing 9-1-1 marketplace." Plan, at 5-10.

Last year, DOT's National Highway Traffic Safety Administration and the United States Department of Commerce's National Telecommunications and Information Administration announced more than \$40 million in grants to help PSAPs nationwide implement next-generation technologies.

Another Federal agency has called for action to ensure that IP technology is accessible to individuals with disabilities. The National Council on Disability, in its 2006 report, *The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination*,<sup>7</sup> calls for such Federal action because experience has shown that market forces are not sufficient to ensure individuals with disabilities equal access to emerging technologies. As the responsible agency for writing regulations to ensure that 9-1-1 services are accessible to individuals with disabilities,<sup>8</sup> in this ANPRM the Department is seeking comments from the public, including 9-1-1 stakeholders, in addressing barriers to NG 9-1-1 and ensuring access to NG 9-1-1 services.

The FCC has recently undertaken a number of broadband<sup>9</sup> initiatives. One of these initiatives seeks to improve the nation's current 9-1-1 system by establishing the foundation for the transmission of voice, data, or video to PSAPs during emergency calls. Broadband & Public Safety and Homeland Security, <http://www.fcc.gov/pshs/broadband.html> (last visited July 12, 2010). In another NG 9-1-1 matter, the FCC's Communications Security, Reliability and Interoperability Council's working group is considering ways that NG 9-1-1 architectures and technologies can provide access for individuals with disabilities. See <http://www.fcc.gov/pshs/advisory/csric/>

<sup>7</sup> <http://www.ncd.gov/newsroom/publications/2006/discrimination.htm> (last visited June 5, 2010).

<sup>8</sup> See 42 U.S.C. 12134(a).

<sup>9</sup> The term "broadband" refers to advanced communications systems capable of providing high-speed transmission of services such as data, voice, and video over the Internet and other networks.

[wg-4b.pdf](#) (last visited July 12, 2010). With respect to emergency calls made via TRS (*i.e.*, through a relay operator), the FCC has implemented new numbering and E9-1-1 requirements for Video Relay Services and IP-Relay Services. New Numbering and E911 Requirements for VRS and IP Relay Video In American Sign Language (ASL), [http://www.fcc.gov/cgb/dro/numbering\\_and\\_e911\\_for\\_vrs\\_ip.html](http://www.fcc.gov/cgb/dro/numbering_and_e911_for_vrs_ip.html) (last visited June 5, 2010). Access to PSAPs via TRS is not addressed in this ANPRM.

#### IV. Request for Public Comments

The Department is seeking public comment on the issues discussed below. In addition to seeking comments in response to the specific questions raised in this ANPRM, the Department is particularly interested in receiving comments from all of those who have a stake in ensuring that NG 9-1-1 is accessible to individual people with disabilities, advocacy groups, representatives from Tribal, local, State, and Federal governments, public safety organizations, and industry professionals, about the potential application of the new requirements to plans for migration to, and deployment of, NG 9-1-1 services.

The prospect of developing new title II requirements for access to NG 9-1-1 raises a number of general issues, including determining which performance-based standards or technical specifications would better ensure access to NG 9-1-1 to determining the effective date for the application of the new provisions. Responses should clearly identify the specific question being addressed according to the numbered questions in this document.

##### A. Direct, Equal Access to NG 9-1-1

*Question 1.* What modes of communication (*e.g.*, voice, text, video, or data) do (or will) individuals with disabilities use to make direct calls to a PSAP, and from what types of devices would the calls be made?

##### i. Text Communications

IP allows several formats of text communications, divided into two types: real-time, and non-real-time. Real-time text communications refer to those that are sent and received on a character-by-character basis; the characters are sent immediately once typed and also displayed immediately to the receiving person. In an emergency, sending text communications to a PSAP in real-time may save valuable time that is needed to effectively respond to the emergency.

Non-real-time communications rely on messaging capabilities where users “type-enter-wait-read-respond-reply”—e.g., short message service (SMS) texts, multimedia messaging service (MMS), instant messaging (IM), text chat, and e-mail. When this type of messaging is used, messages can overlap one another. In an emergency, this could result in the caller or PSAP personnel responding to each other out of the order in which their communications were sent, creating some confusion or delay. The agenda for the FCC’s National Broadband Plan states that this year, the FCC will open a proceeding to identify a reliable, interoperable, real-time text standard to enable consumers to communicate in a digital and IP-based environment. Broadband Action Agenda, <http://www.broadband.gov/plan/national-broadband-plan-action-agenda.pdf> at 4.10 (last visited July 12, 2010).<sup>10</sup>

Currently, telephone 9-1-1 technologies support TTYs, which provide text communications in an analog environment. Using IP-based devices, PSAPs would require a text gateway in order to converse with individuals using analog-based devices.

*Question 2.* Should the Department issue a requirement for NG 9-1-1 technologies to support text communications along with analog-based TTY communications? If so, should NG 9-1-1 text technologies be backward compatible with analog-based TTYs or should the two communication methods be available side by side?

*Question 3.* Which, if any, of the following text options should the Department designate as essential accessibility features of NG 9-1-1 to be incorporated into the initial deployment of an NG 9-1-1 system to assure equal access to emergency call-taking centers for individuals with disabilities?

- a. Real-time text.
- b. Short message service (SMS).
- c. Instant messaging (IM).
- d. E-mail.
- e. Analog gateway.
- f. Other modes of text communication.

The Department recognizes that all of these text options will benefit not only individuals who are deaf or hard of hearing, but also individuals with other disabilities who require an alternative mean to making a voiced 9-1-1 call due to their disabilities. The Department

recognizes that a State or local government’s NG 9-1-1 system may eventually provide all of these options in the future. However, the Department is interested in learning how each of the options would benefit individuals with disabilities in order to determine whether they should be designated as “essential” to providing access to NG 9-1-1.

Individuals with disabilities are increasingly using smart phones since they are currently the only accessible mobile devices available for text messaging (e.g., e-mail, SMS, or IM). Until NG 9-1-1 services are implemented, PSAPs will not be able to receive text messages sent directly to 9-1-1 from these devices.

*Question 4.* For this period, should a PSAP develop and implement an interim plan to receive text messages directly or via a third party? How should a PSAP develop an interim plan? What solutions should PSAPs consider as part of their interim plan?

*Question 5.* Are there significant issues related to the interoperability of messages sent by text that need to be addressed in any final regulation?

#### ii. Video Communications

A technology that has emerged since publication of the original title II rule allows individuals who use sign language to communicate by video. An individual who communicates by American Sign Language (ASL) may use a videophone or other video device (e.g., a Web cam connector to a computer) to directly communicate in sign language with either another videophone user or a voice telephone user. In the latter case, videophones can be used to make TRS calls (Video Relay Service) or to use remote sign language interpreting services (video remote interpreting or VRI) when an in-person interpreter is not available. VRI is generally a fee-based service. NG 9-1-1 technologies will allow video phone users to make direct video calls to a PSAP and allow the callers and the emergency personnel to engage in virtual face-to-face communication.

The Department is seeking comments on what steps a PSAP, in providing video services, should take to ensure effective communication with a 9-1-1 caller who uses sign language for communication. One possible method of communication for handling a direct video-to-video call between the individual with disabilities and the PSAP would be through the use of VRI. Upon receipt of a request for sign language services, the PSAP would make a call to a VRI service center and connect the interpreter so that the

interpreter appears on both the caller’s and PSAP’s video phone screens. The call would then become a 3-way video call between the caller and PSAP, both using the interpreter. The PSAP would see both the interpreter and caller on the PSAP’s screen, and both the interpreter and the caller would see each other on their screens. Using this method, the PSAP would have the ability to “conference in” (virtually instantaneously) a qualified interpreter (in-house or in a remote facility)

*Question 6.* In implementing NG 9-1-1, should the Department amend its title II regulation to require each PSAP to provide VRI service? If so, should the Department regulate how to provide such service?

With NG 9-1-1, call routing allows the sharing of networks to route calls for multiple numbers (e.g., 2-1-1, 3-1-1, 8-1-1, suicide hotline, poison control). Also, NG 9-1-1 enables call access, transfer, and backup between and among 9-1-1 call-taking centers and between these centers and specialized emergency services.

*Question 7.* Should a center also be allowed to transfer a caller’s call to a particular center where call takers are trained and fluent in oral/sign language interpreting services or where call takers are trained in working with individuals with speech impairments? If so, should a final rule address call routing policies that restrict or prohibit such transfers?

The title II rule requires that when an oral or sign language interpreter is necessary for effective communication, the interpreter must be “qualified.” The rule has defined “qualified interpreter” as “an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.” 28 CFR 35.104. Although the definition does not require “certified” interpreters, it does require interpreters with the necessary skills to interpret accurately in the particular context.

*Question 8.* In the context of NG 9-1-1, the Department is asking for public views on whether PSAPs should use only those interpreters who are specifically trained to handle emergency calls in using interpreting services on-site or via VRI.

*Question 9.* The Department also seeks comments on any other methods for ensuring equal access to NG 9-1-1 for individuals with disabilities. Should the Department issue standards for other methods to provide accessible NG 9-1-1 services? Should the Department require specialized training to ensure that these services can effectively

<sup>10</sup>In addition, the United States Access Board recently proposed draft guidelines for real-time text functionality for adoption by Federal agencies. Draft Information and Communication technology (ICT) Standards and Guidelines <http://www.access-board.gov/sec508/refresh/draft-rule.htm> at Section 902 (last visited July 12, 2010).

respond to the needs of people with disabilities in an NG 9-1-1 environment?

*B. Performance Standards as Opposed to Technical Standards*

The Department is aware of ongoing efforts by both the National Emergency Number Association (NENA) and the Association of Public-Safety Communications Officials International to develop technical standards for guidance to service providers, equipment manufacturers, and industry-related standard setting bodies. The Department has used the performance standard of “direct access” for PSAPs in enforcing title II.

Consistent with the Department’s existing approach, the Department is considering the use of performance standards, as opposed to technical standards, as new title II requirements for access to NG 9-1-1. Two primary considerations support this approach. First, in light of evolving 9-1-1 technologies, it may not be feasible to have identical scoping and technical specifications nationwide to ensure disability access to NG 9-1-1. Second, performance standards would contain flexibility to allow operational standards, protocols, and best practices to be adopted and implemented to meet unique State and local circumstances and needs.

*Question 10.* Should any regulatory provision on NG 9-1-1 requirements under title II be performance-based, or should a final rule provide technical specifications for call-taking technology and equipment? Please provide as much detail as possible in support of your view.

*Question 11.* What are the technical issues that the Department should address in developing minimum standards?

NENA, a leading professional, nonprofit organization on 9-1-1 services, has actively worked with public safety, industry, and government groups, to develop technical and operational standards for NG 9-1-1 systems and services.

*Question 12.* Should the Department adopt any of NENA’s standards as the minimum standards for direct access to NG 9-1-1 services for individuals with disabilities?

Speech-to-speech service (STS) is a form of TRS that involves the use of relay operators for people with speech disabilities who have difficulty being understood on the phone. STS relay operators are trained individuals familiar with many different speech patterns and language recognition skills. The relay operator makes the call and repeats the words exactly. Individuals

using STS include those with cerebral palsy, Parkinson’s disease, a laryngectomy, ALS, stuttering, muscular dystrophy, stroke, and other conditions affecting clarity of speech.<sup>11</sup>

*Question 13.* Should the title II regulation be amended to require that PSAPs directly receive calls from individuals with speech disabilities?

*C. Emergency Alerts*

Public entities in many communities now send pre-recorded emergency alert messages to homes and businesses automatically by phone. For instance, emergency personnel can use emergency alerts to notify residents in the path of approaching wildfires, hurricanes, or tornadoes to seek immediate shelter or evacuate their homes. Emergency alert systems can also be set up to send emergency alert text messages to smart phones, TTYs, PDAs, and e-mail accounts. Many colleges and universities now use this kind of emergency alert system for their students, parents and staff.

Converging 9-1-1 technologies will make it possible to send automatic emergency alerts to any communication device—wired or mobile—via Internet networks. For instance, vehicles approaching a motor vehicle accident involving hazardous materials could be notified of the danger, thereby preventing other vehicles from further complicating the accident or hindering emergency personnel. The Department will not address any other emergency mass notifications, such as Federal efforts for a Common Alerting Protocol, a next generation alerting delivery system by which standardized alerts will be gathered from various alerting sources and distributed to the public (in text, audio and video) via information outlets, public safety alerting systems and personal communication devices.

*Question 14.* Should the regulation be amended to address sending emergency alerts to text, video, and other devices used by individuals with disabilities?

*D. State and Local Plans To Ensure Access to NG 9-1-1 for Individuals with Disabilities*

Title II of the ADA and the Department’s implementing regulation provide that State and local government agencies must make reasonable modifications to their policies, practices, and procedures whenever necessary to avoid discrimination against individuals with disabilities unless making the modification would fundamentally alter the nature of the

service, program or activity, or would result in undue financial and administrative burdens. 28 CFR 35.130(b)(7) (reasonable modifications in policies); 28 CFR 35.164 (undue burdens). A growing number of State and local governments have studied options for IP-based 9-1-1 networks in preparation for moving to NG 9-1-1 and have developed NG 9-1-1 migration/transition plans. The Department believes that in developing new or reviewing current NG 9-1-1 plans, State and local 9-1-1 agencies must include specific plans for equal access to NG 9-1-1 for individuals with disabilities.

*Question 15.* In their NG 9-1-1 plans, how should PSAPs address issues related to access for individuals with disabilities?

*E. Effective Date*

Any regulation in this area needs to address an effective date for the application of any proposed new title II requirements to upgrades to 9-1-1 networks with emerging IP technologies or existing NG 9-1-1 services. When the ADA was enacted, the effective dates for various provisions were delayed in order to provide time for public entities to become familiar with their new obligations. Title II of the ADA generally became effective on January 26, 1992, six months after the regulation was published.

*Question 16.* Should the effective date of any new title II requirements be modeled on the effective date used to implement the title II requirements and commence six months after publication of the final rule, or a longer period? If you favor a longer period, please indicate what period you favor and provide as much detail as possible in support of your view.

The term “triggering event” identifies the event or action that compels compliance with title II requirements. The Department’s regulation implementing title II of the ADA (28 CFR Part 35) does not establish any separate triggering events for access to emergency telephone services. Many PSAPs are making transitions to new IP networks; it is expected that some may not be completed until after the effective date of the new requirements.

*Question 17.* If you favor a triggering event definition that looks to the date of deployment or upgrade, please provide as much detail as possible about what should constitute an IP deployment or upgrade.

*Question 18.* If you favor triggering events other than an IP deployment/upgrade, please state what event you favor and provide as much detail as possible to support your proposal.

<sup>11</sup> <http://www.fcc.gov/cgb/dro/sts.html> (last visited July 8, 2010).

### F. Defenses

The title II rule does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. 28 CFR 35.164. The Department has taken a long-standing position that, because of the essential nature of 9-1-1 services, that limitation would rarely be applied to the obligation to ensure effective communication in the context of 9-1-1.

*Question 19.* The Department seeks comments on whether there are certain circumstances where providing direct access to emerging NG 9-1-1 would be considered a fundamental alteration to the nature of the 9-1-1 service or be an undue financial or administrative burden on the PSAP. Please provide as much detail as possible.

### G. Cost and Benefits of NG 9-1-1 Regulations

Because this is an ANPRM, the Department is not required, at this time, to conduct certain economic analyses or written assessments that otherwise may be required for other more formal types of agency regulatory actions (*e.g.*, notices of proposed rulemaking or final rules) that, for example, are deemed to be economically “significant” regulatory actions with an annual economic impact of \$100 million or more or that are expected to have a significant economic effect on a substantial number of small entities or non-Federal governmental jurisdictions (such as State, local, or Tribal governments). *See, e.g.*, Regulatory Flexibility Act of 1980, 5 U.S.C. 603–04 (2006); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 12866, 58 FR 51735 (Sept. 30, 1993), as amended by E.O. 13497, 74 FR 6113 (Jan. 30, 2009); OMB Budget Circular A–4, <http://www.whitehouse.gov/OMB/circulars/a004/a-4.pdf> (last visited June 5, 2010). The Department does not currently believe that any future proposed rules relating to the accessibility of NG 9-1-1 services will likely meet the economic threshold for these types of formal economic analyses and written assessments.

Nonetheless, one of the purposes of this ANPRM is to seek public comment on various topics relating to NG 9-1-1 services, including perspectives from stakeholders concerning the benefits and costs of revising the Department’s title II regulation to ensure the accessibility of NG 9-1-1 services (from both a quantitative and qualitative perspective), particularly from members of the disability community,

governmental entities, and public safety organizations. The Department thus asks for information so that the Department can determine whether such a proposed rule (1) should be deemed an economically “significant regulatory action” as defined in section 3(f) of E.O. 12866; or (2) would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA) and, if so, suggested alternative regulatory approaches to minimize any such impact. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

*Question 20.* The Department encourages commenters, whenever possible, to submit detailed quantitative or qualitative information along with their respective comments relating to: the cost of NG 9-1-1 technology or services; the incremental impact on covered governmental entities to transition from current requirements for accessible analog 9-1-1 services to proposed accessible NG 9-1-1 services, including but not limited to training PSAP employees and updating 9-1-1 plans and operating procedures; personal anecdotes or experiences of individuals with disabilities illustrating the potential benefits of accessible NG 9-1-1 services; and any other information that would assist the Department in assessing the benefits and costs of proposed regulatory revisions for NG 9-1-1.

### H. Other Issues

*Question 21.* Are there additional issues or information not addressed by the Department’s questions that are important for the Department to consider? Please provide as much detail as possible in your response.

Dated: July 21, 2010.

**Thomas E. Perez,**

*Assistant Attorney General, Civil Rights Division.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Parts 35 and 36

[CRT Docket No. 113]

RIN 1190–AA64

### Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture

**AGENCY:** Department of Justice, Civil Rights Division.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Department of Justice (Department) is considering possible changes to requirements under titles II and III of the Americans with Disabilities Act (ADA) to ensure that equipment and furniture used in programs and services provided by public entities and public accommodations are accessible to individuals with disabilities. In this Advance Notice of Proposed Rulemaking (ANPRM), the Department is seeking public input on issues relating to possible revisions of ADA regulations to ensure the accessibility of equipment and furniture in such programs and services and also is seeking background information for the regulatory assessment that the Department may need to prepare if it revises its regulations.

**DATES:** The Department invites written comments from members of the public. Written comments must be postmarked and electronic comments must be submitted on or before January 24, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** You may submit comments, identified by RIN 1190–AA64 (or Docket ID No. 113), by any one of the following methods:

- *Federal eRulemaking Web site:* [www.regulations.gov](http://www.regulations.gov). Follow the Web site instructions for submitting comments.

- *Regular U.S. mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885.

- *Overnight, courier, or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, NW., Suite 4039, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:**

Sarah DeCosse, Attorney Advisor, Disability Rights Section, Civil Rights