

Comments on E-911 Board Outage Reporting Rule  
to Senate Committee on Finance: February 6, 2020  
Jonathan Gibson, Shrewsbury, VT

Let me begin these comments with a few words of appreciation: first, to the Committee for including a provision in the 2019 broadband bill, H. 513, now Act 79, that in Section 25 requires the Enhanced 911 Board to adopt a rule to obtain data “to assess 911 service availability” during power outages, and second, to the E-911 Board for proposing a rule to put such reporting requirements in place.

In the transition from line-powered phone service to fiber-optic technology, our telecommunication systems, including access to E-911 service, have become ever more dependent on electric power. Consumers must have a backup power source on their premises to make their telephones function when there is a power outage. The Federal Power Commission recognized this fact and promulgated a rule requiring telecommunication companies to “offer” their customers a backup power option, most often a battery, initially of eight, now of 24-hour capacity. In an extended outage, like my town of Shrewsbury experienced for more than two days in November 2018 during an early winter storm, these batteries expire and 911 service is lost, with attendant public safety risks. For Vermont to have a robust and effective 911 system, public officials, agencies, and citizens must have as much data and knowledge as possible about how well the 911 system is functioning, its gaps and vulnerabilities, and the exact nature of problems that need to be fixed.

Utilities have transferred the burden for maintaining communication connectivity to their customers. Without debating the adequacy of utilities’ willingness, capacity, or actions to inform or provide technical or financial assistance to their consumers, one responsibility they cannot transfer and a function they must be required to perform is to collect and report fully and in a timely way whether the people on the service end of their networks, the customers who are paying them for telephone service, are in fact receiving that service – including what could literally be life-or-death access to 911 service to call for help (or receive incoming alerts) in an emergency. This is why the law you passed and wording of the 911 Board rule include “lack of function of subscribers’ back-up power equipment during a power outage.” This feature of the rule must be maintained and enforced.

We have heard objections from the utilities that “a significant amount of work” and “substantial network and information technology changes” will be required for them to implement the rule generally and that non-functioning of subscriber batteries should be removed from the definition of a reportable outage. However, we have testimony and documentary evidence that at least some of the telecoms have the capacity to ascertain, and do ascertain, the status of their subscribers’ back-up batteries. More important, to delete this cause of inability “to complete a call to, or communicate with 911” will eliminate the fundamental data collection purpose of the outage reporting requirement.

Finally, the Committee needs to focus its attention on the matter of confidentiality that is raised by Sec. 6.0 of the rule. The rule refers to exemptions from disclosure in the Vermont Public Records Act 1 V.S.A. Section 317(c) and in Sec. 6.1 asks utilities to “mark information they believe to be exempt from public disclosure.” There are avenues for utilities to contest disclosure of information that they can demonstrate is subject to exemption without the Board inviting them to do so; Section 6.1 is unnecessary and should be dropped. If anything, the Rule should state “The information required to be reported to the Board in Sections 4.0 and 5.0 of this Rule shall not be considered subject to the exemptions of 1 V.S.A. Sec. 315-320.” Utilities can challenge this provision in court if they like.

More broadly, members of this Committee should work with colleagues to enact clear legislative direction as to precisely what elements of utility information are properly and legitimately exempt from disclosure, so information collected by public agencies is available to the General Assembly and the general public. In this instance, the public benefits of outage reporting are to determine causes, undertake solutions, and set policy to minimize loss of 911 service. If the data reported under this rule is subject to whatever claim utilities make for not allowing it to be known and examined, this benefit will be non-existent. Please preserve the value of this reporting rule that you intended it to have.