

Proposed Revision to Virginia “Good Samaritan” Statute Related to 911 Emergency Calls

Summary. Like most other states, Virginia law includes a “Good Samaritan” provision that exempts persons rendering emergency care from civil liability. As it relates to 911 services, Virginia specifically exempts “communications service providers” from liability for acts and omissions “related to emergency calls” and defines “communications service providers” as those who provide “electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals....” The problem with existing law is that the definition of “communications service providers” was developed back when the local telephone company provided most, if not all, of the services related to 911 calls. Those services include, for example, CPE/call handling equipment, peripherals, software and maintenance, in addition to the traditional “telephone line.” Today, however, those services are provided by a number of companies and organizations and, with the current definitions in the Code, many companies and organizations are providing services “related to emergency calls” arguably without the protections of Virginia’s “Good Samaritan” laws because they do not fit within the existing definition. As described below, this problem becomes even more complicated as Virginia moves to the NG911 environment. In sum, Virginia’s “Good Samaritan” law relating to emergency calls needs to be updated to address the current – and future – 911 and NG911 calling structures.

Existing Law

§ 8.01-225. *Persons rendering emergency care, obstetrical services exempt from liability.*

....

C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any provider of Voice-over-Internet Protocol service, in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

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§ 58.1-647. *Definitions.*

....

“Communications services provider” means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

....

“Communications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

The Proposed Resolution

The existing definitions of “communications service provider” and “communications services” come from the Virginia Communications Sales and Use Tax and were designed to address the taxation of communications services. The scope of entities providing 911 services (and future NG911 services) is beyond the existing definition. For example, the existing language probably does not include “Hosted CPE,” Customer Owned Selective IP Routers (NG911 Compliant), as well as geospatial database solutions and services and other products and services required to meet future i3 standards.

Amending the existing definitions to include other entities and services could also impact the taxation of other services that are part of the 911 calling system but are not traditional communications systems that should be subject to sales tax.

Rather than attempting to amend portions of the existing law, the better approach to address the liability issues related to 911 emergency calling is to rewrite the provision entirely, thereby addressing the existing and future 911 and NG911 structure in a technologically neutral approach. CenturyLink is recommending the existing language be stricken and replaced with the following:

8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

....

No person, service provider, equipment provider, public safety answering point (“PSAP”) or an underlying service or equipment vendor of the PSAP shall be liable for damages in any civil action for injuries, death, or loss to persons or property incurred by any person resulting from or caused by any act or omission in the provision, operation or maintenance of service or equipment, regardless of the technology platform, that receives, develops, collects or processes information for the location information databases that relays, transfers, operates, maintains or provides emergency notification services or system capabilities; or that provides emergency communications or services for ambulance, police and fire departments, or other public safety entities, except in the cases of wanton or willful misconduct.

....

The proposed language would cover all of the entities actually involved in processing emergency calls in today’s emergency call flow and in future systems as Virginia moves to NG911. It provides valuable protection to the PSAPs as they undertake new roles in the NG911 environment. It also provides this coverage in a technology-neutral manner.

The only other state that has recently addressed this issue is North Carolina, which passed 911 liability reform legislation in 2015, but even that statute does not fully address all of the issues related to liability in the future NG911 environment:

§ 62A-53. Limitation of liability.

(a) Except in cases of wanton or willful misconduct, a communications service provider, and a 911 system provider or next generation 911 system provider, and their employees, directors, officers, vendors, and agents are not liable for any damages in a civil action resulting from death or injury to any person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating the 911 system or in complying with emergency-related information requests from State or local government officials. This section does not apply to actions

arising out of the operation or ownership of a motor vehicle. The acts and omissions described in this section include, but are not limited to, the following:

- (1) The release of subscriber information related to emergency calls or emergency services.*
- (2) The use or provision of 911 service, E911 service, or next generation 911 service.*
- (3) Other matters related to 911 service, E911 service, or next generation 911 service.*

(b) In any civil action by a user of 911 services or next generation 911 services arising from an act or an omission by a PSAP, and the officers, directors, employees, vendors, agents, and authorizing government entity of the PSAP, in the performance of any lawful and prescribed actions pertaining to their assigned job duties as a 911 or public safety telecommunicator or dispatcher at a PSAP or at any public safety agency to which 911 calls are transferred from a primary PSAP for dispatch of appropriate public safety agencies, the plaintiff's burden of proof shall be by clear and convincing evidence.

The Requested Board Action

After the Board's consideration of the issue, the request is for the Board to take either one of two actions: (1) endorse the proposal and make it part of the Board's legislative proposals for submission to the Governor and General Assembly for the 2017 General Assembly Session or (2) not specifically include the proposal in the Board's legislative proposal but be prepared to favorably endorse the proposal were it to be offered by a member of the General Assembly in the 2017 General Assembly session.