

**FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

Relating to the
Second Further Notice of Proposed Rulemaking
Issued April 26, 2024

Reply Comments of

Electronic Privacy Information Center

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Table of Contents

- I. Introduction and Summary 1**
- II. The Commission must protect 988 caller data. 2**
 - a. The Commission should demonstrate that it means what it says about georouting and geolocation by banning the use of geolocation in 988 contexts..... 3**
 - b. As likely the only regulator capable of doing so, the Commission should prohibit carriers from sharing 988-related data even if subscribers have opted in to sharing other CPNI..... 11**
 - c. The Commission should not require carriers to collect data they cannot protect, including 988 georouting data..... 13**
- III. If the Commission mandates georouting, it should do so using a system that cannot be used to surreptitiously erode a 988 caller’s privacy now or in the future. 14**
- IV. The Commission should acknowledge the harms of non-consensual interventions to reduce wariness about 988 georouting for would-be 988 callers..... 16**
- V. If Commission decides to convene stakeholders, it should explicitly include those who have opted out of participating in 988 out of concern for caller well-being..... 20**
- VI. Conclusion 21**

Comments

I. Introduction and Summary

The **Electronic Privacy Information Center (EPIC)**¹ files these reply comments on the Federal Communications Commission’s (FCC’s or the Commission’s) Second Further Notice of Proposed Rulemaking (2FNPRM) regarding “Implementation of the National Suicide Hotline Act of 2018” issued on April 26, 2024.² We applaud the Commission’s desire to better support individuals experiencing a mental health crisis by making help easier to reach; however, we urge the Commission to prioritize getting 988 right for the people it is meant to help. Our recommendations reflect the explicit goals of the 988 program and are intended to help to reassure would-be callers that the service is safe to use.

We cannot support the Commission mandating georouting for 988 if that is merely a step on the path to non-consensual geolocation of persons in distress. However, because the Commission has indicated that it understands why geolocation is unsuitable for 988, we support the Commission’s proposal to require carriers to use georouting for 988 calls—provided that the Commission puts commonsense safeguards in place to prevent non-consensual use of 988 caller data. These safeguards should include prohibiting the use of geolocation data, prohibiting carriers from sharing 988-related data even if the subscriber opted in to sharing their customer proprietary network information (CPNI), and ensuring small carriers and vendors have adequate cybersecurity protections for 988 data. Failure to implement these safeguards will have a chilling effect for people who would otherwise seek support by calling 988. In their time of need, would-

¹ The Electronic Privacy Information Center (EPIC) is a public interest research center established in 1994 to protect privacy, freedom of expression, and democratic values in the information age. EPIC has filed several comments with the Federal Communications Commission regarding the privacy and safety of individuals contacting emergency services, as well as regarding phone subscribers in particularly vulnerable situations experiencing heightened risks from violations of their privacy. *See, e.g.*, Comment of EPIC, *In re* Location-Based Routing for Wireless 911 Calls, PS Dkt. No. 18-64 (Feb. 16, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10216148603009>; Comment of EPIC, *In re* Facilitating Implementation of Next Generation 911 Services (NG911), PS Dkt. No. 21-479 (Aug. 9, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/108091404918126>; Reply Comments of EPIC, et al., *In re* Supporting Survivors of Domestic and Sexual Violence, Affordable Connectivity Program, Lifeline and Link Up Reform and Modernization, WC Dkt. Nos. 22-238, 21-450, 11-42 (May 12, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10512158610690>.

² Second Further Notice of Proposed Rulemaking, *In re* Implementation of the National Suicide Hotline Act of 2018, WC Dkt. No. 18-336 (Apr. 26, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-45A1.pdf> [hereinafter “2FNPRM”]. Pincites refer to the paragraph numbering in the Wireline Competition Bureau’s Notice, but for convenience, we also provide hyperlinks directly to the relevant paragraphs in the Federal Register where possible. National Suicide Hotline Act of 2018, Proposed Rule, 89 Fed. Reg. 46340 (May 29, 2024), <https://www.federalregister.gov/documents/2024/05/29/2024-11761/national-suicide-hotline-act-of-2018>.

be callers will not be able to trust that some of their most sensitive data will remain private or secure, even though 988 advertises itself as “confidential.”

If the Commission chooses to mandate georouting, we support using cell tower data or more general geographic data for this purpose rather than other types of data that might allow for collection and sharing of more precise location information. We urge the Commission to acknowledge the potential harms that can result from dispatching non-consensual interventions to 988 callers; such an acknowledgement would demonstrate to would-be callers that the Commission understands and respects their concerns. If the Commission decides to convene stakeholders to discuss 988 issues further, it should include representatives from hotlines that are not a part of 988 as well as individuals with lived experience.

II. The Commission must protect 988 caller data.

If the Commission wants people to feel comfortable dialing 988 while in distress, it should prohibit the use of geolocation data in the context of 988 (though this prohibition would not apply to 911 providers if a 988 call were transferred to 911). The Commission should also prohibit carriers from sharing 988-related data even if the subscriber has opted in to sharing their CPNI and ensure carriers and their vendors meet basic cybersecurity requirements.

Given the lack of effective privacy and cybersecurity safeguards and the practice of non-consensual interventions in the United States (see section IV), it is highly foreseeable that many people who would otherwise benefit from calling 988 will not do so because they are rightly concerned about the implications to their privacy, autonomy, and freedom. We urge the Commission to mitigate these chilling effects as much as possible by putting safeguards in place that will reassure would-be callers that 988 is safe to use. Our country still does not have a comprehensive federal privacy law and the Federal Communications Commission’s own cybersecurity authorities over telecoms is regularly challenged in rulemakings. And despite the obvious importance of protecting phone subscriber data, especially in the context of crisis hotlines, such protections are lacking. Not all hotlines are covered entities under the Health Information Portability and Accessibility Act (HIPAA); the fact that 988 is administered by a nonprofit (Vibrant Emotional Health) means the Federal Trade Commission (FTC) may lack jurisdiction in the event of privacy violations or security breaches; and 988’s affiliation with a government initiative suggests regulators may encounter heightened resistance to taking action.

Section II is offered in response to (1) commenter filings in this docket about the importance of preserving privacy, confidentiality, and anonymity,³ and (2) the Commission's requests for comment in the 2FNPRM about the costs and benefits of georouting,⁴ about what issues should be considered in assessing whether a proposed solution's system for matching a 988 caller to a crisis center achieves the public and mental health needs served by the 988 Lifeline,⁵ and about equity-related considerations.⁶

To ensure that the most people possible benefit from 988 and that 988 actually does benefit those people, we urge the Commission to implement safeguards to protect 988 caller data, including: banning the use of geolocation data, banning providers from using CPNI-related subscriber consents to justify sharing 988-related subscriber data, and requiring that basic cybersecurity practices be in place.

a. The Commission should demonstrate that it means what it says about georouting and geolocation by banning the use of geolocation in 988 contexts.

Banning the use of geolocation is both appropriate and beneficial for the successful implementation of georouting in 988; the needs and expectations of 988 callers are different from those of 911 callers. Prohibiting geolocation would also establish for would-be 988 callers that they can utilize the service without fear of unexpected repercussions. This, in turn, would increase the positive impact of the program by reducing the well-documented chilling effects resulting from the tragic history of violations of privacy, autonomy, and freedom that can result from calling a crisis line when in distress.

³ See, e.g., Comment of INCOMPAS, WC Dkt. No. 18-336, at 3-4 (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062859223541> (“Some callers of 988 could be discouraged from using the service if there is a perceived loss of anonymity or a perception that they are being tracked or could be tracked by virtue of their location. Indeed, this could have a lasting impact as 988 does not afford callers the same statutory protection for privacy as other health services, nor is it the same as an individual dialing 9-1-1 with an expectation for a response to their emergency.”); Comment of National Council for Mental Wellbeing at 2 (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10628123688172> (“[T]his legislation, similar to the action FCC is already taking, would help to eliminate delays to care by connecting callers with the nearest call center, so they can receive the care they need from mental health professionals as quickly and safely as possible, while still protecting user privacy. . . . National Council strongly urges that georouting technology, that protects caller confidentiality and in adherence with all applicable privacy laws, apply to callers who select specialized services. . . .while there are concerns across communities that identifying the caller's location could have unintended impacts, FCC and wireless carrier adherence to stringent privacy standards in hand with wide-reaching public awareness efforts on what georouting is will play an important role in allaying such concerns and ensuring an equitable impact in implementation.”).

⁴ 2FNPRM at ¶ 24; <https://www.federalregister.gov/d/2024-11761/p-38>.

⁵ 2FNPRM at ¶ 19; <https://www.federalregister.gov/d/2024-11761/p-33>.

⁶ 2FNPRM at ¶ 35; <https://www.federalregister.gov/d/2024-11761/p-49>.

The Commission has established by multiple methods that a person calling 988 does not have the same needs or expectations as a person calling 911. Part of the Commission’s justification for mandating georouting hinges upon distinguishing it from geolocation.⁷ The robust support in the record for georouting in conjunction with privacy protections signals that the Commission is on the right track with this balance.⁸ While 988 referring calls to 911 can itself be problematic, see section IV, the Commission should erect safeguards that give would-be 988 callers assurance that geolocation will not be used (except by 911 after a referral from 988). This would also ensure clear notice to would-be callers if that policy changes, as the Commission could only lift this prohibition through a public proceeding.

More important than the technological and legal considerations that distinguish calls to 988 from calls to 911⁹ are the distinctions in needs and expectations between those calling 988 and those calling 911. As the Wireline Competition Bureau itself acknowledged in its April 2021 report, callers to 988 may not seek an immediate, location-specific response and at-risk users may be reluctant to call 988 due to inadequate privacy protections:

In contrast to 911 callers, who are usually seeking an immediate, location-specific medical or police response, callers to the Lifeline may not want to reveal their physical location. As a result, some commenters have raised concerns that the conveyance of geolocation information with 988 calls could undermine the benefits of the Lifeline by dissuading at-risk and vulnerable populations from using the service in a time of need, out of fear of embarrassment, aversion to intervention by authorities, or other similar reasons. Other commenters who advocate for implementing geolocation capabilities for 988 believe that using callers’ geolocation information may be necessary for crisis response but still recognize the caller’s critical interest in maintaining privacy and thus support strong privacy protections./ Although we recognize that the use of geolocation information with 988 calls likely would result in some benefits, the record is not sufficiently developed with regard to the privacy expectations of callers to the Lifeline, how potential users of the Lifeline could or should be notified or educated about the privacy tradeoff if geolocation is implemented for 988 in the future, or the extent to which any increased hesitation by at-risk users could offset its benefits.¹⁰

The very next year this point was reiterated at the Commission’s 988 Geolocation Forum: “Many people, when they call the Lifeline, they are calling it because they believe it to be a

⁷ 2FNPRM at ¶ 9 n.41 (citing to FCC, 988 Geolocation Report – National Suicide Hotline Designation Act of 2020 at 14 (2021), <https://docs.fcc.gov/public/attachments/DOC-371709A1.pdf>) [hereinafter “988 Geolocation Report”]; <https://www.federalregister.gov/d/2024-11761/p-23>.

⁸ *See, e.g.*, n.23-32 *infra*.

⁹ 2FNPRM at ¶ 9; <https://www.federalregister.gov/d/2024-11761/p-23>.

¹⁰ 988 Geolocation Report at 11-12 (internal citations omitted).

confidential and safe place. Also, an alternative to 911. When you hear 911—when I hear 911—we think police.”¹¹ Research published earlier this year by Ad Council on how to influence people close to individuals in distress, to promote use of 988 by those in crisis, acknowledged concerns about calls to 988 resulting in law enforcement or other trouble at multiple points,¹² as well as general uncertainty about what happens as a result of calling the Lifeline.¹³ In comments cited to in the Commission’s 2021 988 Geolocation Report,¹⁴ the American Association of Suicidology stated that:

These scenarios [non-consensual interventions] can potentially increase the risk to the person reaching out for help for a number of reasons. Therefore, appropriate scrutiny and assessment of these procedures is absolutely necessary. Namely, crisis services should not act as a replication or “middle-man” approach to emergency services and 911.¹⁵

And the American Foundation for Suicide Prevention stated that:

All individuals in acute distress or experiencing a behavioral health crisis should receive equitable and appropriate responses and care wherever they are, separate from emergency medical or law enforcement interventions....Crisis response without the involvement of behavioral health professionals and paraprofessionals often places historically marginalized communities at disproportionate risk of harms and poor outcomes.”¹⁶

In short: if 988 is to achieve maximum benefit for those who need it, the Commission must not conflate what a 911 caller needs and expects with what a 988 caller needs and expects.

The Commission should convey clearly to would-be 988 callers that it intends to deploy georouting without geolocation by banning use of geolocation for 988 purposes (but explicitly without altering 911’s geolocation capabilities). As the 2FNPRM acknowledged of its 2021 988 Geolocation Report: “[t]he record lacks significant discussion of Commission legal authority to

¹¹ Keris Jän Myrick, Co-Director, The Mental Health Strategic Impact Initiative/ S2i, Forum on Geolocation for 988, available at @FCC, YouTube (uploaded May 25, 2022), <https://youtu.be/HjHXXPGEuus?t=11951> [hereinafter “988 Geolocation Forum”].

¹² See Ad Council Research Institute, 988 Suicide & Crisis Lifeline Messaging and Communications to Trusted Messengers of People Disproportionately Impacted by Suicide at 34, 38, 39-40 (May 2024), https://suicidepreventionmessaging.org/sites/default/files/2024-05/988%20FR_Trusted%20Messengers_Report_Final-508.pdf [hereinafter “Messaging to Trusted Messengers”].

¹³ See *id.* at 26, 39-40.

¹⁴ See 988 Geolocation Report at 8 n.86 (citing to Comment of American Association of Suicidology at 1 (Dec. 21, 2020), <https://www.fcc.gov/ecfs/search/search-filings/filing/1221756312530>; Comment of American Foundation for Suicide Prevention at 1-2 (Dec. 28, 2020), <https://www.fcc.gov/ecfs/search/search-filings/filing/1228889316969>).

¹⁵ Comment of American Association of Suicidology at 1 (2020).

¹⁶ Comment of American Foundation for Suicide Prevention at 1-2 (2020).

require transmission of dispatchable geolocation with 988 calls.”¹⁷ However the 2FNPRM also noted that “the proposals herein pertain to georouting solutions. We are not considering solutions to geolocation for the 988 Lifeline *at this time.*” (*emphasis added*)¹⁸ The 988 Geolocation Report stated that: “The record demonstrates that requiring covered providers to transmit dispatchable location (or other geolocation) information with 988 calls to the Lifeline could provide significant potential benefits for callers seeking life-saving assistance.”¹⁹ The Commission must reduce uncertainty about what would-be callers should expect if it wants 988 to achieve the greatest benefits in reducing suicidality, and an explicit prohibition on use of geolocation data for 988 calls—with clear disclosure about 911 referrals—can help to achieve that.

Unfortunately, callers to crisis hotlines have been burned by unexpected uses of their data in the past, and so greater procedural safeguards may be necessary to establish the trustworthiness of 988.²⁰ As one speaker at the 988 Geolocation Forum observed, in the context of text data and geolocation but expressing concerns that apply to caller privacy and autonomy generally:

[A] secure crisis text line service was found not only to have collected the text data but also sold that data without any knowledge or consent of the person texting. And that erodes our trust. That’s something that has to be put into this conversation as well. You know, trust has been eroded by the very systems that we expect to help us, and tools like geolocation can be life-saving in health emergencies. It becomes scary for us with mental health conditions to figure out: ‘do we feel safe calling 988?’ We want to feel safe. You want us to feel safe. You want us to call the number. But how do we do that when trust has been eroded for systems that are quite similar and have the same or similar intent. Especially for those of us who are black, indigenous, or people of color, or who are from other communities that experience disproportionate institutional discrimination, such as

¹⁷ 2FNPRM at ¶ 9 n.42 (citing to 988 Geolocation Report at 13).

¹⁸ 2FNPRM at ¶ 13 n.53; similarly at <https://www.federalregister.gov/d/2024-11761/p-27>.

¹⁹ 988 Geolocation Report at 8 (citing to Comment of American Association of Suicidology); Comment of American Association of Suicidology at 1 (“As we approach what the implementation of 988 will look like at individual crisis centers, AAS supports responsible usage of life-saving technologies such as geolocation We will continue to require AAS accredited centers to have appropriate policies and procedures in place for active rescue and intervention (use of police, authorities, or healthcare services during a crisis). This is especially important during the use of involuntary interventions, or the interventions not collaboratively agreed upon by the crisis counselor and the person in crisis.”).

²⁰ See, e.g., EPIC’s Response to Reports of Crisis Text Line’s Policies (Jan. 31, 2022), <https://epic.org/epics-response-to-reports-of-crisis-text-line-data-policies/> (recipients of services may feel betrayed to learn their data was used for other purposes, having a chilling effect on use of services); Letter from Tim Reiersen to Journal of Medical Internet Research at 6 (Nov. 24, 2021), available at https://reformcrisistextline.com/wp-content/uploads/2022/01/ltr_2019_Paper_to_JMIR_11-24-2021_share.pdf (“Are you selling this? Nope. Heck no. Not gonna happen. Yuck. Gross. (Read: no commercial use. Never ever ever.)”).

sexual orientation and gender identity, and LGBTQ+ folks. How do we trust these systems with geolocation that they are going to help us and not harm us?²¹

We agree with the Massachusetts Association for Mental Health [MAMH] that “[g]iven the public concerns about the potential for misuse and dispatch of law enforcement, we would recommend that the FCC specifically dispel the notion that geolocation would be considered in the future.”²²

It is significant and telling that dozens of other comments were filed in this docket calling for privacy protections that bolster 988 callers’ trust, stressing not just protection of precise location data but also more general concerns about caller privacy and confidentiality. These comments were filed by a variety of types of organizations, including NAMI staff²³ and volunteers;²⁴ the Reimagine Crisis Partner Organizations (filed by NAMI);²⁵ local crisis hotlines;²⁶ national hotlines;²⁷ state, local, and tribal health agencies;²⁸ the Mental Health Liaison

²¹ Keris Jän Myrick, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=12084>.

²² See Comment of Massachusetts Association for Mental Health, Inc. at 2 (June 21, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10621001331020>.

²³ See Comment of Holly Stevens, Director of Public Policy at NAMI NH (June 24, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10625026980189> (“NAMI NH also supports the decision to use georouting as opposed to geolocation, as this allows individuals in crisis to be connected to local resources while also protecting their exact location and privacy.”).

²⁴ See Comment of “Implementation of the National Suicide Hotline Improvement Act of 2018” (comment signed as Gwenda Booth Georgia) (June 25, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062590934082> (“That is why I fully support the proposed rule to require wireless carriers to implement georouting solutions for calls to the 988 Suicide & Crisis Lifeline, while protecting confidentiality.”).

²⁵ See Comment of National Alliance on Mental Illness, on behalf of Reimagine Crisis Partner Organizations (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10628228158413> (“We believe that routing calls, without personally identifiable information, to the nearest 988 call center will help us get closer to reaching the full potential of the 988 Lifeline.”).

²⁶ See Comment of Elicia Berryhill, Chief Program Officer (June 25, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10625586021425> (“Heartline appreciates the need to protect the privacy of individuals who may utilize the 988 Lifeline. I believe that this proposed mandate will ensure that callers’ trust remains paramount while ensuring that people in crisis are able to access localized support.”); similar comments were filed by Stephen Goins (June 25, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106251955425864>, and Goodwill of the Finger Lakes (June 26, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062645169425>.

²⁷ See Comment of Kasey Suffredini (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062810330558> (“If a georouting system is well-designed and protects the privacy of callers, it could play an important role in increasing the effectiveness of the general 988 line, which The Trevor Project supports....Collecting and utilizing georouting information is technically complicated, and it is vital that a georouting solution is adopted so that those reaching out to 988 can trust it will not jeopardize their privacy. This is particularly important for LGBTQ+ youth users of 988, who have unique concerns that could lead them to avoid contacting 988 if they think their location may be exposed.”).

²⁸ See Comment of Kristin Montini, Dutchess County Dep’t of Behavioral and Community Health (June 26, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062678230451> (similar to comments in n.26); Comment of Washington State Dep’t of Health (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062783043582> (“However, help seeker privacy must remain paramount, and safeguards must be in

Group (filed by Vibrant Emotional Health);²⁹ service providers in the emergency communications space;³⁰ VoIP lobbyists;³¹ researchers;³² and others. This overwhelming and consistent response suggests that the Commission must continue to prioritize the privacy and security of 988 caller data. This should include: caller anonymity, confidentiality of conversations, prohibitions on data sharing (see section II(b)), basic cybersecurity protections (see section II(c)), and a prohibition on the use of geolocation data for 988 purposes. As Chair Rosenworcel has noted recently, device location data can be used to determine not only where we are and have been, but also characteristics of our identity.³³ In implementing 988 the Commission must not allow data from which inferences can be made to undermine these

place to ensure that they are given opportunities to opt out of location sharing. Additionally, transparent communication to the public regarding precisely what georouting does and does not accomplish would be essential to avoiding any negative impacts on usage due to concerns about compromised confidentiality.”); <https://www.fcc.gov/ecfs/search/search-filings/filing/1062868341638> (“This proposed change will help us fully realize the potential of 988 to be the life-saving resource that people in crisis need by better connecting people to local resources, while protecting callers’ privacy. The proposal would keep calls to 988 confidential, ensuring that callers’ personal information and location are not shared – only that they reach the closest call center to their location.”); Comment of Northwest Portland Area Indian Health Board (May 26, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/105262875822047> (“We appreciate that the precise location of a caller will remain protected when a caller utilizes the 988 Lifeline.”).

²⁹ See Reply Comment of Vibrant Emotional Health (filing on behalf of Mental Health Liaison Group) (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106271484105143> (similar to comments in n.26).

³⁰ See Comment of Vibrant Emotional Health (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106281418503473> (“By adhering to stringent privacy standards, we ensure that callers’ trust remains paramount while ensuring people in crisis reach local support in the general area they are calling from.”); Comment of Intrado Life & Safety, Inc. (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10628748409936> (“The [Proof of Concept] demonstrated that accurate georouting for 988 wireless calls is possible without revealing a caller’s precise location to *protect caller expectations of privacy.*”) (emphasis added); Comment of CX360, Inc. aka Mosaicx (June 30, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10629848114375> (“CX360 agrees with the National Alliance on Mental Illness that “[f]ailure to ensure the privacy of callers may damage trust in 988 and discourage help-seeking.” (citing to Comments of the National Alliance on Mental Illness, WC Docket No. 18-336, p. 2 (Dec. 21, 2020)).

³¹ See Comment of Voice on the Net Coalition (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062844953305> (“988 is a trusted service and the Commission should not require service providers to track location as it could discourage those in crisis from calling or texting 988 if they thought their location was being tracked. 988 has a mental health focus, which may result in exigent circumstances, but not always. This is different than 911, which is deemed an emergency from the moment of the call and it is expected that a first responder (whether police, fire or medical) will be dispatched to the location. The Commission should be careful when it makes information compulsory, where that information is highly sensitive and not afforded the same protections as other health information, such as HIPAA.”).

³² See Comment of The Pew Charitable Trusts (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106272724810566> (“A 2023 Pew survey of U.S. adults indicated that 37%6 of respondents were concerned that their call to 988 may not remain private.”).

³³ See, e.g., Press Release, Fed. Comm’n Comm’n, Chair Rosenworcel Shares Mobile Carrier Responses to Data Privacy Probe and Announces Next Steps (Aug. 25, 2022), <https://docs.fcc.gov/public/attachments/DOC-386596A1.pdf> (“Our mobile phones know a lot about us. That means carriers know who we are, who we call, and where we are at any given moment. This information and geolocation data is really sensitive. It’s a record of where we’ve been and who we are.”).

principles. This is certainly true in the case of dispatchable location data, but may also be true of georouting (see section III).

A decision to implement georouting without a prohibition on geolocation would represent a weak procedural safeguard. This especially true in light of an imminent change in Presidential administration (regardless of party) and polling which shows that uncertainty about the consequences of calling 988 acts as a barrier to using or recommending the service.³⁴

Although georouting may have a positive impact on 988 callers, the Commission should enact policies to give callers confidence that they can trust the service. Chairwoman Rosenworcel expressed a commitment to this in Congressional testimony last year:

Rep. Dingell (D-MI): I think we can all agree that anyone reaching out to these services [988] for help wants to remain anonymous and should be able to remain anonymous. Madame Chairwoman [FCC Chairwoman Jessica Rosenworcel], how is the FCC working with the Substance Abuse and Mental Health Services Administration [(SAMHSA)] and other organizations associated with the national 988 suicide and crisis lifeline to ensure that personal information of Americans utilizing this service remains anonymous and protected through whatever medium they use to seek aid?

Chairwoman Rosenworcel: We have developed a very close relationship with [SAMHSA] because I want to make sure that privacy and confidentiality are part of all of our policies.³⁵

Commissioner Carr has called attention to the undesirable chilling effects that will predictably result from callers who fear losing their anonymity.³⁶ Additionally, at the 988 Geolocation Forum, speakers noted that:

³⁴ See, e.g., The Trevor Project, 2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People, <https://www.thetrevorproject.org/survey-2024/>; Comment of The Pew Charitable Trusts at 2 (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106272724810566> (citing to Tracy Velázquez, Most U.S. Adults Remain Unaware of 988 Suicide and Crisis Lifeline (May 23, 2023), <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/05/23/most-us-adults-remain-unaware-of-988-suicide-and-crisis-lifeline>) [hereinafter “Pew 988 Study”].

³⁵ “Oversight of the Federal Communications Commission”: Hearing Before the Subcomm. on Commc’ns and Tech. (June 21, 2023), <https://www.youtube.com/watch?v=Y4FWwEYCHxs&t=8161s>. This discussion occurred in the context of Meta pixels on click-to-call 988 websites, but the testimony about privacy and confidentiality being a part of “all of [the FCC’s 988] policies” applies more broadly.

³⁶ See @BrendanCarrFCC (Jan. 31, 2022, 9:21 PM), <https://twitter.com/BrendanCarrFCC/status/1488336797449007111> (“The success of the Lifeline, and other mental health hotlines, is directly tied to the public’s trust that conversations will remain confidential. In fact, one of the reasons people in crisis do not call the Lifeline or otherwise seek help is because they are worried that they might lose their anonymity.”).

- “If people fear how this [988] location data is being used, it will have the impact of deterring individuals from reaching out for help when they need it. It must be a number that people trust, so people use it.”³⁷
- “Finally, there is a public trust issue in 988. If it was 100% anonymous and confidentiality was assured, people would not worry about being tracked down. . . . Will consumers know what they are getting when they call 988? This is a watershed moment. Never before in history have we had a chance to fix the system and make it right.”³⁸
- “We want to acknowledge the potential unintended consequences of people becoming aware of geolocation capability and deployment, which could potentially lead to not making a call in the time of emergency.”³⁹

The FCC’s 2021 988 Geolocation Report cited to the American Foundation for Suicide Prevention, explaining that “Failure to guarantee the privacy of callers may damage public trust in 988 and discourage help-seeking.”⁴⁰

The Ad Council’s recent “Trusted Messengers” 988 marketing report similarly emphasized the privacy equities at stake in utilization of 988.⁴¹ It noted that surveyed individuals reported that the most important ways to increase the value of 988 related to knowing what the consequences of calling 988 actually are and knowing that information shared is confidential.⁴² Survey respondents also reported worrying that calling 988 on their loved one’s behalf would be overstepping that loved one’s privacy, would damage their relationship, or would result in a law enforcement response.⁴³ The Commission should help to allay these fears by enacting policies that address them and maximize participation in 988. Failing that, the Commission must acknowledge that the benefits of georouting for 988 will be diminished due to would-be callers feeling too unsafe to call.

The Commission’s policies must address these chilling effects or else concede that 988 will remain out of grasp for those who may be most in need of the service. As such, we urge the

³⁷ Hannah Wesolowski, Chief Advocacy Officer, National Alliance on Mental Illness, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=13269>.

³⁸ David Jobs, American Foundation for Suicide Prevention Board of Directors and Chair of the National Public Policy Council, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=11703>.

³⁹ Madhuri Jha, Director, Kennedy-Satcher Center for Mental Health Equity, Satcher Health Leadership Institute, Morehouse School of Medicine, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=12828>.

⁴⁰ 988 Geolocation Report at 11 n.109 (citing to Comment of American Foundation for Suicide Prevention at 2).

⁴¹ See Messaging to Trusted Messengers, *supra* note 12 at 24.

⁴² See *id.* at 26.

⁴³ See *id.* at 34.

Commission to explicitly prohibit the collection of geolocation data for 988-related calls but also to disclose clearly that 988 referrals to 911 can result in 911 obtaining geolocation data.

b. As likely the only regulator capable of doing so, the Commission should prohibit carriers from sharing 988-related data even if subscribers have opted in to sharing other CPNI.

Crisis hotline information is shockingly lacking in regulatory protections, but customer proprietary network information (CPNI) is squarely under the Commission’s jurisdiction. The FCC should use that authority to protect 988-related data. As speakers during the FCC’s 988 Geolocation Forum noted, 988-related data can have serious implications for callers and their families, especially members of the LGBTQ+ community.⁴⁴

In terms of gaps in existing regulations: if a hotline is not a medical provider, it is unlikely to be covered by HIPAA.⁴⁵ Because Vibrant is a nonprofit, it’s beyond the normal scope

⁴⁴ Hannah Wesolowski, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=13204> (“There are many people within the NAMI community who are fearful about how their geolocation information could be used because of their past experience. We've been asked could this data be used to force someone into involuntary treatment? Also how could a geolocation policy impact people experiencing other types of mental health crises including symptoms of paranoia? How will the use of location data impact LGBTQ+ youth who are already at high risk for suicidal ideation? For example what happens if a young person who is trans calls a lifeline in a state where gender affirming care is criminalized. Will something happen to their parents? Or in a situation where they haven't come out to their parents and they fear the ramifications of their parents finding out. There's a lot to dig into here could this data be accessed in the future and used against a person who simply called for help like in a future custody hearing or with future employment opportunities. We can't forget that there's still significant stigma around mental health conditions it's also important to recognize the historic harms perpetrated by the medical mental health and criminal justice systems that have really instilled a distrust in communities who are high risk.”).

⁴⁵ See, e.g., U.S. Dep’t of Health and Human Servs (U.S. DHHS), Covered Entities and Business Associates, <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (discussion of covered entities); Reform Crisis Text Line, <https://reformcrisistextline.com/> (“Crisis Text Line claims that it’s not subject to current HIPAA regulations”); Rob Wipond, “Confidential” 988 Conversation Records Shared with Corporations, Mad in America (June 8, 2024), <https://www.madinamerica.com/2024/06/988-records-shared/> (“Yet many call centers had no visible privacy policies at all, while others were operated by health care companies that outlined their Health Insurance Portability and Accountability Act (HIPAA) privacy obligations but didn’t mention 988 data. Vibrant’s less prominent Terms of Service—copied by many 988 call centers—emphasized in large capital letters that talking to a 988 counselor “DOES NOT CONSTITUTE” either “MENTAL HEALTH CARE” or “CONFIDENTIAL” communication.”) (hyperlinks omitted). *But see, e.g.*, Vibrant Emotional Health Ensures the Continuity of Mental Health Services with Help from Hitachi Vantara, <https://www.hitachivantara.com/en-us/company/customer-stories/vibrant-emotional-health-case-study> (“Much of Vibrant Emotional Health’s data is sensitive and regulated under the [HIPAA Privacy Rule].”). Moreover, even if HIPAA does apply, a health care provider can disclose a patient’s private health information for treatment purposes without having to obtain the authorization of the individual. See, e.g., U.S. DHHS Office for Civil Rights, HIPAA Privacy Rule and Sharing Information Related to Mental Health, <https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf> (“Thus, health care providers who believe that disclosures to certain social service entities are a necessary component of, or may help further, the individual’s health or mental health care may disclose the minimum necessary PHI to such entities without the individual’s authorization.”).

of the FTC’s jurisdiction⁴⁶ (though it might be subject to the FTC’s Health Breach Notification Rule if it maintains a personal health record on callers and that information is accessed without authorization).⁴⁷ At a fundamental level, it is unclear to what extent hotline callers are even “patients” or “consumers” under the go-to privacy laws that one might think would apply here. State privacy laws, such as Washington State’s My Health My Data may or may not apply, depending on what purposes the data is collected and used for, and what exceptions for emergencies look like.⁴⁸ Regardless, a national suicide prevention hotline should have a consistent policy on data collection and usage that actually protects the privacy of all callers, not one that may be diminished in whatever state ultimately receives the call. It is also unclear to what extent participating in a government-funded program might further complicate jurisdictional and enforcement questions. This uncertainty, in turn, makes it difficult educate the public about what their expectations should be, what their rights are as a 988 caller,⁴⁹ and what mechanisms for redress are available if the caller suspect those rights have been violated.

Yet the Commission has well-established authority under Section 222 to hold carriers responsible for safeguarding customer proprietary network information (CPNI). This includes “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service . . . and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.”⁵⁰ It also includes more generally the obligation to protect any and all “proprietary information of and relating to . . . customers.”⁵¹ Finally, on numerous occasions the Commission has invoked Section 47 U.S.C. § 201(b), which prohibits unjust or unreasonable practices, for the unauthorized

⁴⁶ See, e.g., Letter from FTC Chairwoman Edith Ramirez to Federal Councillor Johann N. Schneider-Ammann at 2 (Jan. 9, 2017),

https://www.ftc.gov/system/files/documents/public_statements/1049563/ramirez_swiss_privacy_shield_letter.pdf (“The FTC also does not have jurisdiction over most non-profit organizations, but it does have jurisdiction over sham charities or other non-profits that in actuality operate for profit.”).

⁴⁷ 16 C.F.R. § 318, available at <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-318>.

⁴⁸ See, e.g., Washington State Office of the Attorney General, Protecting Washingtonians’ Personal Health and Data Privacy, <https://www.atg.wa.gov/protecting-washingtonians-personal-health-data-and-privacy>.

⁴⁹ See, e.g., Trans Lifeline, Safe Hotlines: Crisis Callers’ Bill of Rights, <https://translifeline.org/safe-hotlines/crisis-callers-bill-of-rights/>. These prioritize caller privacy and autonomy, but act more as guiding principles rather than as standards.

⁵⁰ 47 U.S.C. § 222(h)(A).

⁵¹ 47 U.S.C. § 222(a).

disclosure of sensitive subscriber information.⁵² The Commission is likely the only entity capable of safeguarding this data at present.

We urge the Commission to protect CPNI related to 988 by prohibiting carriers from giving others access to it (be it by selling, sharing, licensing, disclosing, etc.⁵³), including their own affiliates and subsidiaries, outside the context of what is strictly necessary to connect a call. In letters responding to an inquiry from Chairwoman Rosenworcel, some telecom providers clarified what types of data they collect unless the subscriber opts-out and what types of data they do not collect unless the subscriber opts-in.⁵⁴ As the Commission’s implementation of the Safe Connections Act prohibited calls made by survivors of intimate partner violence to be used to inform marketing programs,⁵⁵ so too should the Commission’s implementation of the National Suicide Hotline Act of 2018 prohibit calls made to 988 from being used for any purposes other than connecting the call to the appropriate local crisis hotline.

c. The Commission should not require carriers to collect data they cannot protect, including 988 georouting data.

Given the sensitivity of 988 data—including the fact that a subscriber contacted 988 in the first place—the Commission should not require entities that cannot protect that data to collect it. The Commission asks this question in the context of small providers, but it applies just as

⁵² See, e.g., *In re TerraCom Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, File No.: EB-TCD-13-00009175, at ¶ 12 (Oct. 24, 2014), <https://docs.fcc.gov/public/attachments/FCC-14-173A1.pdf> (provider failed to “employ reasonable data security practices to protect consumers’ [Proprietary Information] PI” in violation of 201(b)); *In re Data Breach Reporting Requirements*, Report and Order, WC Docket No. 22-21, FCC 23-111 at ¶ 124 (rel. Dec. 21, 2023), <https://www.fcc.gov/document/fcc-adopts-updated-data-breach-notification-rules-protect-consumers-0>.

⁵³ See, e.g., Jasmine Hicks and Richard Lawler, Crisis Text Line stops sharing conversation data with AI company, *The Verge* (updated Feb. 1, 2022), <https://www.theverge.com/2022/1/31/22906979/crisis-text-line-loris-ai-epic-privacy-mental-health> (describing a hotline that made a public statement that it did not “sell” data but made data available in other ways).

⁵⁴ See, e.g., Letter from Joan Marsh, Exec. VP Fed. Regulatory Relations, AT&T Services Inc., to Hon. Jessica Rosenworcel at 3 (Aug. 3, 2022) (differentiating between opt-in and opt-out advertising programs), <https://docs.fcc.gov/public/attachments/DOC-386581A1.pdf>. Some other carriers responded similarly. See Fed. Comm’n’s Comm’n, Rosenworcel Shares Mobile Carrier Responses to Data Privacy Probe (Aug. 25, 2022), <https://www.fcc.gov/document/rosenworcel-shares-mobile-carrier-responses-data-privacy-probe>.

⁵⁵ See *in re Supporting Survivors of Domestic and Sexual Violence, Affordable Connectivity Program, Lifeline and Link Up Reform and Modernization*, Report and Order, WC Dkt. Nos. 22-238, 21-450, 11-42, FCC 23-96 at ¶¶ 39, 46 (Rel. Nov. 16, 2023), <https://www.fcc.gov/document/fcc-approves-rules-safeguard-domestic-violence-survivors-0>.

much to the vendors relied upon by large carriers.⁵⁶ As noted above,⁵⁷ there is a lack of clear regulatory protection for this data. One ex parte presentation seems to address certain safeguards that might help to prevent misuse of this data;⁵⁸ we do not necessarily endorse these recommendations, but mention them here as indicative of the relevance of cybersecurity to the rollout of 988 georouting capabilities. This is especially concerning in light of Vibrant’s own Terms of Service statement:

Security controls, including encryption and authentication, are in place to ensure the protection of your information. Any information provided by you or collected on you will not be shared or disclosed with any third party. We do, however, reserve the right to disclose any personal information to the authorities at our sole discretion and as required by law. Despite these protections, the Internet remains an imperfectly secure environment, and Vibrant Emotional Health cannot guarantee protection from intruders or interceptors. You agree to use this service and submit information at your own risk. You agree that Vibrant Emotional Health have no liability regarding unauthorized access to this service by a third party.⁵⁹

III. If the Commission mandates georouting, it should do so using a system that cannot be used to surreptitiously erode a 988 caller’s privacy now or in the future.

The Commission seeks comment on whether georouting is necessary for specialized services,⁶⁰ on the Commission’s belief that a georouting solution based on cell tower information would best identify a caller’s location and thus enable routing the call to the appropriate crisis center;⁶¹ whether any geographic boundaries would be too granular in a manner that implicates privacy or other concerns;⁶² what the benefits are of utilizing a particular routing solution;⁶³ and whether there may be alternative georouting solutions that could be implemented by wireless carriers, including any concepts that have not yet been tested or developed.⁶⁴ If the Commission

⁵⁶ See, e.g., Zack Whittaker, AT&T says criminals stole phone records of ‘nearly all’ customers in new data breach, TechCrunch (July 12, 2024), <https://techcrunch.com/2024/07/12/att-phone-records-stolen-data-breach/>.

⁵⁷ See subsection II(b) *supra*.

⁵⁸ Ex parte filing of Comtech Telecommunications Corp. at 11 (PDF pg 13/14) (Nov. 8, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/11082965210581>.

⁵⁹ 988 Suicide & Crisis Lifeline, Chat and SMS Texting Terms of Service, <https://988lifeline.org/chat-terms-of-service/> (“Privacy & Security”).

⁶⁰ 2FNPRM at ¶ 17; <https://www.federalregister.gov/d/2024-11761/p-31>.

⁶¹ 2FNPRM at ¶ 18; <https://www.federalregister.gov/d/2024-11761/p-32>.

⁶² 2FNPRM at ¶ 19; <https://www.federalregister.gov/d/2024-11761/p-33>.

⁶³ 2FNPRM at ¶ 24; <https://www.federalregister.gov/d/2024-11761/p-38>.

⁶⁴ 2FNPRM at ¶ 27; <https://www.federalregister.gov/d/2024-11761/p-41>.

decides to mandate georouting, it should do so in a way that does not now nor could easily in the future be used to collect more precise location information.

Suggestions such as coarse GPS by which more precise metrics are merely truncated⁶⁵ are inappropriate to use for georouting, if only because it is unclear to the would-be 988 caller how precise the location data being gathered about them is (especially if those metrics are subsequently made more precise). Similarly, methods that rely on more precise data without truncation must be rejected out of hand.⁶⁶ Methods that rely on data that is less precise but still locally relevant do not seem to suffer from these problems.⁶⁷

The Commission should consider not merely the level of granularity in the context of a single call, but also what inferences could be made about a caller—especially if there have been multiple calls made from different locations. Similarly, calls made to a specialized service from a sparsely populated location could also pose greater privacy risk, which can quickly turn into a physical safety risk⁶⁸ or other harm to a caller or their loved ones. For example, during its 988 Geolocation Forum, one speaker noted in the context of geolocation that:

988 is not occurring in a political vacuum. We have several areas across the country that are passing laws that are quite harmful to the health of trans youth. If you are a trans girl of color in certain states, and you are fifteen years old and you are reaching out for help, will that geolocation data be used to turn your parents in to child protective services? Or will it be used for the life-saving help that it was intended [for]?⁶⁹

These concerns about geolocation also apply to inferences that can be made from georouting data.

⁶⁵ See, e.g., Comment of Comtech Telecommunications Corp. at 6 (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106282011914765>.

⁶⁶ See, e.g., Comment of California Office of Emergency Services at 4-5 (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106270526024388> (discussing location-based routing).

⁶⁷ See, e.g., Comment of T-Mobile at 4-5 (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10628866924657>.

⁶⁸ See, e.g., Amelia Hansford, Mother explains how nine-year-old trans kid was ‘doxxed’ by vile hate forum Kiwi Farms, PinkNews (Sept. 7, 2022), <https://www.thepinknews.com/2022/09/07/kiwi-farms-harassed-nine-year-old/> (“She explained she received a Google alert notification about the information leak and described her fear of watching several cars stop in front of her house during an ice storm when her city ‘was essentially shut down.’”); Ahmar Khan and Amy Simon, Twitch streamer and transgender activist doxed in Northern Ireland after leaving Canada, Global News (updated Aug. 31, 2022), <https://globalnews.ca/news/9097654/twitch-streamer-and-transgender-activist-doxed-in-northern-ireland/> (“Earlier this month, Sorrenti was at the centre of a previous swatting attack after being doxxed by harassers who sent false death threats with her name and address to London city councillors, leading to her being arrested at gunpoint.”).

⁶⁹ Shelby Rowe, Director, Suicide Prevention Resource Center, University of Oklahoma Health Sciences Center, 988 Geolocation Forum, <https://www.youtube.com/watch?v=HjHXXPGEuus&t=11070s>.

As such, we urge the Commission not to require the collection of georouting data from callers seeking to be connected with specialized services. Even apart from the potential for harm, the Commission’s justification for georouting is largely premised on connecting 988 callers to hotlines that can best serve their needs, which is satisfied by connecting a caller with a specialized service without any further need to additionally incorporate georouting data.

IV. The Commission should acknowledge the harms of non-consensual interventions to reduce wariness about 988 georouting for would-be 988 callers.

We urge the Commission to elevate the trustworthiness of 988 by acknowledging the tragic consequences that can result from non-consensual interventions (NCI), which unfortunately many past callers to crisis hotlines have already experienced. This is relevant to the Commission’s requests for comment about the costs and benefits of georouting,⁷⁰ about how a match produced by georouting can best achieve the public and mental health needs of people served by the 988 Lifeline,⁷¹ and about equity-related considerations.⁷² Additionally, as noted above,⁷³ many commenters in the docket have emphasized the importance of preserving privacy, confidentiality, and anonymity for 988 callers. The Commission would establish greater credibility for 988—and therefore help the program to achieve a greater impact—if it candidly and explicitly acknowledged what fears might deter callers from contacting 988 rather than ignoring the reality that many crisis hotline callers have personally encountered or else heard horror stories about. This includes being transparent about what happens when a 988 call is transferred to 911. In fact, there is reason to believe that respecting callers by being transparent with them may even result in their willingness to share data for the purpose of helping others.

In the 988 Geolocation Forum, one speaker noted that this emphasis on transparency and consent regarding how data is shared with law enforcement and others would be key:

So we do want that someone to talk to, someone to respond, and somewhere to go. But we also want to have it contextualized in the frame of confidentiality, consent, collaboration, and we also need to know who owns the data and how it is being shared?⁷⁴

⁷⁰ 2FNPRM at ¶ 24; <https://www.federalregister.gov/d/2024-11761/p-38>.

⁷¹ 2FNPRM at ¶ 19; <https://www.federalregister.gov/d/2024-11761/p-33>.

⁷² 2FNPRM at ¶ 35; <https://www.federalregister.gov/d/2024-11761/p-49>.

⁷³ See, e.g., n.23-32 *supra*.

⁷⁴ Keris Jän Myrick, 988 Geolocation Forum, <https://www.youtube.com/watch?v=HjHXXPGEuus&t=11951s>.

Similarly, Mental Health America noted the need for clarity and transparency in their comments:

Notably, it is very important that users also clearly understand their rights to privacy and confidentiality, and what the Administrator’s privacy policies are. Concerns were raised by consumers during the initial transition to 988 about personally identifiable information and how it is collected and shared with partners or third parties. There continues to be a lack of clarity around the differences between privacy, and confidentiality, and what these terms mean with respect to data collection and sharing, including when connecting users to law enforcement agencies.⁷⁵

The National Association of State 911 Administrators also noted the importance of caller consent in a 2023 comment:

Due to the confidential nature of a behavioral health call, there has been discussion in the planning phases of 988 that improved location routing would compromise the 988 Lifeline system because the general location of the caller would be known. This issue could be resolved by using the location information solely for routing the call, *and not providing the location to the 988 Lifeline Center, unless the caller grants permission for access of their location*, or the location is needed to provide the emergent services to the help seeker.”⁷⁶

We emphasize that a scenario in which “location is needed to provide the emergent services to the help seeker” should only be understood to exist when the caller is *unable* to communicate their consent⁷⁷—not in the context of NCI. Acknowledging the harms of NCI in a transparent manner can help to mitigate the chilling effects of implementing mandated georouting on would-be 988 callers.

Harms that can result from NCI include the immediate and direct harm of a caller’s loss of autonomy and possibly their freedom (not to mention the bill for the unwanted emergency services),⁷⁸ the longer-lasting effects from the caller experiencing such trauma, and the

⁷⁵ Comment of Mental Health America at 3 (June 28, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062811496952>.

⁷⁶ Comment of National Association of State 911 Administrators (NASNA) at 3 (Mar. 28, 2023) (emphasis added), <https://www.fcc.gov/ecfs/search/search-filings/filing/10328215936963>,

⁷⁷ E.g. in instances of cardiovascular comorbidities, *see* Keris Jän Myrick, 988 Geolocation Forum, <https://www.youtube.com/watch?v=HjHXXPGEuus&t=12275s>.

⁷⁸ *See, e.g.*, Rob Wipond, Dramatic Rise in Police Interventions on 988 Callers, Mad in America (June 1, 2024), <https://www.madinamerica.com/2024/06/dramatic-rise-in-police-interventions-on-988-callers/> (“While pouring her feelings out to the 988 call-attendant—including without filter mentioning exactly where she was—paramedics arrived. Truong was taken to a noisy emergency room, forced into scrubs, monitored in the bathroom, put in solitary confinement, restrained in a gurney for transfer, and then detained in a psychiatric hospital. The experience, she

predictable chilling effects that may result for that caller or other callers.⁷⁹ Because the Commission is unlikely to prevent 988 calls from being transferred to 911, its ability to prevent NCIs itself is limited. However, to maximize the positive impact of 988, the FCC should be transparent in its reports and orders about what harms may deter a would-be 988 caller from reaching out for help and demonstrate that georouting will not exacerbate those harms. Speaking generally about “privacy concerns” or a “law enforcement” response does not adequately convey understanding about the realities of involuntary civil commitment (which sometimes takes the form of a coerced “voluntary” commitment).⁸⁰ The Trevor Project has reported that among LGBTQ+ young people who wanted mental health care but were unable to get it, nearly a third said that they were “scared someone would call the police or involuntarily hospitalize” them.⁸¹ This is consistent with reporting by The Pew Charitable Trusts, which reported numbers closer to 40%.⁸² Crisis hotlines like TransLifeline put these concerns front and center in a ‘Bill of Rights’-style set of principles precisely because callers have been harmed by NCI practices before.⁸³

MAMH argues for similar transparency, and we support their proposal:

We further urge that the final rule require 988 websites to indicate that georouting is used and to explain the existing privacy protections. The website should also provide information on how to access the national backup center for individuals who do not wish to have their call georouted.⁸⁴

said, felt like she wasn’t in a helping setting but ‘in a jail.’ She was offered drugs but no therapy, and after two days of stress wondering why she couldn’t leave, she was sent home with \$4,500 in medical bills.”)

⁷⁹ *See id.* (“ ‘How does this promote healing?’ Truong said, furious that a few people ‘overreacting’ to her open emotions led to her psychiatric incarceration. ‘It’s traumatizing. It’s a living nightmare.’ ”); Rob Wipond, *Suicide Hotlines Bill Themselves as Confidential—Even as Some Trace Your Call*, *Mad in America* (Nov. 29, 2020), <https://www.madinamerica.com/2020/11/suicide-hotlines-trace-your-call/> (“Many callers describe their experiences as terrifying and traumatizing, and say the betrayal has made them feel more isolated than ever.”).

⁸⁰ *See, e.g.,* Wipond “Dramatic Rise” *supra* note 78 (“The admissions coordinator told Elle that if she didn’t sign in voluntarily, the detention would last much longer.”); Wipond “Suicide Hotlines Bill Themselves” *supra* note 79 (quoting a law student as saying “I knew that I had to avoid going to court at all costs, and my only way to do that was to sign myself in voluntarily... There was [nothing] that was voluntary about this.”).

⁸¹ The Trevor Project, *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People*, <https://www.thetrevorproject.org/survey-2024/>.

⁸² *See* Comment of The Pew Charitable Trusts at 2 (June 27, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/106272724810566> (citing to Pew 988 Study (“Possibly dampening this impact, though, are concerns people have about potential negative consequences of calling: About 2 in 5 expressed concern that calling 988 might result in law enforcement being sent, being forced to go to the hospital, being charged for services they couldn’t afford to pay, or other people finding out they’d called.”)).

⁸³ *See* Trans Lifeline, *Safe Hotlines: Crisis Callers’ Bill of Rights*, <https://translifeline.org/safe-hotlines/crisis-callers-bill-of-rights/> (emphasizing values such as safety, transparency, and agency, and acknowledging harms that can result from NCI and how to mitigate them).

⁸⁴ Comment of Massachusetts Association for Mental Health, Inc. at 2 (June 21, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10621001331020>.

EPIC notes that the disclosure about georouting and non-georouted alternatives needs to occur during a call and not merely on a website that a caller might never visit before calling. We also recommend that disclosures about privacy protections include actual meaningful information and not just uninformative boilerplate (e.g., “[t]he network system has several safeguards to address concerns about privacy”)⁸⁵ or best practices guidance and values documents that have little to no actual accountability behind them.⁸⁶

There are additional benefits that can be realized from transparency and caller consent, beyond convincing callers that this time calling a hotline will be safe. In the 988 Geolocation Forum, one speaker noted that:

There are many people who, when they understand the power of data to help their community, are willing to share [geolocation] data. So could there initially be a toggle on and off, so it’s toggled off, you [the hotline] ask...’your sharing of information can help us better serve particular communities.’... I think there still needs to be that communication about the power of collecting the data and then the consent and decision in the hands of the caller to be able to say yes or no to toggling on and off.⁸⁷

That remark was offered in the context of geolocation, but it applies in the context of any data that could potentially be used for research or analysis to improve the effectiveness of 988 in the future.

As a sidenote, the Commission also asks about other sources of authority.⁸⁸ As we observed in our Comments in the Commission’s FNPRM for the Safe Connections Act⁸⁹ and our Reply Comments in the FNPRM on cybersecurity for the Internet of Things,⁹⁰ we believe the Commission could invoke its “safety of life” mandate.⁹¹ However, it would be a particularly

⁸⁵ Substance Abuse and Mental Health Services Administration (SAMHSA), 988 Frequently Asked Questions, <https://www.samhsa.gov/find-help/988/faqs> “What is in place to protect data privacy of people who use 988?”.

⁸⁶ See, e.g., SAMHSA, National Guidelines for Behavioral Health Crisis Care (2020), <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>; National Suicide Prevention Lifeline, Policy for Helping Callers at Imminent Risk of Suicide (Dec. 2010), <https://988lifeline.org/wp-content/uploads/2016/08/Lifeline-Policy-for-Helping-Callers-at-Imminent-Risk-of-Suicide.pdf>.

⁸⁷ Keris Jän Myrick, 988 Geolocation Forum, <https://www.youtube.com/watch?v=HjHXXPGEuus&t=13905s>.

⁸⁸ 2FNPRM at ¶ 34; <https://www.federalregister.gov/d/2024-11761/p-48>.

⁸⁹ See Comment of EPIC and Public Knowledge, *In re* Supporting Survivors of Domestic and Sexual Violence, WC 22-238 at 25-26 (May 23, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/105242630421222>.

⁹⁰ See Reply Comment of EPIC, *In re* Cybersecurity Labeling for Internet of Things, PS 23-239 at 6 (May 24, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/1052456289771>.

⁹¹ 47 U.S.C. § 151.

cruel distortion of that authority for the Commission to use it to dispatch unwanted assistance to someone who may actually be significantly worse off as a result of the dispatched “help.”

The Commission should do everything it can to ensure that individuals in distress feel comfortable calling 988, or else the expected benefits of requiring georouting will be diminished. This includes transparency about the uncomfortable realities of NCI and about how callers can avoid that outcome, so would-be callers do not choose to go without life-saving services and instead feel safe enough to actually call 988 when they need help.

V. If Commission decides to convene stakeholders, it should explicitly include those who have opted out of participating in 988 out of concern for caller well-being.

Although the Commission does not mention a convening of stakeholders in its 2FNPRM, the National Association of Counties (NACo)⁹² and the National Alliance on Mental Illness⁹³ each filed ex partes calling for a stakeholder convening to discuss the implementation of georouting, with NACo specifically calling for this in the context of privacy.⁹⁴ At least one speaker, from NAMI, called for this as well during the 988 Geolocation Forum.⁹⁵ NAMI noted that such a committee must include the perspectives of those who have been impacted by existing response systems.⁹⁶ Another speaker at the Forum noted that stakeholder involvement should include co-design.⁹⁷

Additionally, in a June 2022 webinar hosted by MindFreedom International Media, at least one speaker noted that there were only a few peers with lived experience at the table in 988 discussions, and that the SAMHSA-convened group in general was not listening to those voices even to the limited extent that they even had a seat at the table.⁹⁸

⁹² Ex parte filing of National Association of Counties (NACo) (June 12, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10612027419126>.

⁹³ Ex parte filing of National Alliance on Mental Illness at 2 (Jan. 12, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/101120807807969>.

⁹⁴ NACo filing *supra* note 92.

⁹⁵ Although troublingly this was in the context of making dispatchable location feasible for 988. Hannah Wesolowski, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=13300>.

⁹⁶ Hannah Wesolowski, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=13345> (“...those who have historically been impacted by our existing response including black, indigenous, and people of color, people with disabilities and serious mental illness, and the LGBTQ+ community. These conversations also need to include the young people from underserved communities who could face safety concerns if their location is shared stakeholders need engagement confidence and trust from and in the system that is being built to meet their needs.”).

⁹⁷ Keris Jän Myrick, 988 Geolocation Forum, <https://youtu.be/HjHXXPGEuus?t=12238> (“how can we continue with stakeholder involvement in co-design implementation and providing for the national suicide prevention lifeline”).

⁹⁸ Viewing the Suicide Prevention Industry Through a Critical Lens, Judi’s Room (June 11, 2022), available at @MindFreedomMedia, <https://youtu.be/KtuRcGneUjM?t=7773>.

If the Commission decides to move forward with a convening, we urge the Commission to include the perspectives of those who might otherwise be excluded from 988 discussions. For example, the Commission should include crisis hotlines that have opted not to participate in the 988 program as their perspectives may better reflect concerns of would-be 988 callers.

VI. Conclusion

We appreciate the Commission's efforts to improve crisis hotlines, and we urge greater emphasis on transparency, consent, and protecting sensitive data that otherwise seems to fall through the cracks of regulatory protection. We want 988 to be successful both in terms of utilization rates and in terms of actual outcomes for callers, and we believe that the Commission has the power to help make that a reality.

Respectfully submitted, July 29, 2024.

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