

1 Asim Dietrich (Arizona Bar No. 027927)
2 Rose Daly-Rooney (Arizona Bar No. 015690)
3 Christian Carlsen (Arizona Bar No. 023608)
4 ARIZONA CENTER FOR DISABILITY LAW
5 5025 E. Washington Street, Suite 202
6 Phoenix, AZ 85034
7 Telephone: (602) 274-6287
8 Facsimile: (602) 274-6779
9 E-mail: adietrich@azdisabilitylaw.org
10 rdalyrooney@azdisabilitylaw.org

11 Michael Stein (Massachusetts Bar No. 668992)
12 Mary Vargas (Admitted to Maryland Bar)
13 STEIN & VARGAS, LLP
14 840 First Street NE, Third Floor
15 Washington, D.C. 20002
16 Telephone: (202) 248-5092
17 Facsimile: (888) 778-4620
18 E-mail: michael.stein@steinvargas.com
19 mary.vargas@steinvargas.com

20 *Attorneys for Plaintiffs*
21 *(Additional Counsel Information on last page)*

22 **IN THE UNITED STATES DISTRICT COURT**
23 **FOR THE DISTRICT OF ARIZONA**

24 Norbert Enos, *et al.*,

25 Plaintiffs,

26 vs.

State of Arizona,

Defendant.

No. CV-16-00384-PHX-JJT

**CASE RESOLUTION
STIPULATION (RE: STATE OF
ARIZONA)**

1 Plaintiffs and Defendant (individually, a “Party” and collectively, “the Parties”)
2 stipulate to the following terms to resolve this action (“Litigation”) as follows (to be
3 incorporated into a judicial order upon approval of these terms by the Court) (the
4 “Stipulation”):

5 **I. INTRODUCTION AND PROCEDURAL PROVISIONS.**

6 1. Plaintiff National Association of the Deaf (“NAD”) is a national non-profit
7 civil rights organization of, by, and for individuals who are deaf and hard of hearing,
8 including 82,224 deaf and hard of hearing individuals that live in Arizona.

9 2. Plaintiffs Norbert Enos and Julian Singleton are residents of Surprise,
10 Arizona and have been deaf since birth. Plaintiff Terri Guy is a resident of Tempe, Arizona
11 and has been hard of hearing since birth. Plaintiffs Enos, Singleton, and Guy have a
12 disability as defined by the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
13 (“ADA”) and Section 504 of the Rehabilitation Act, 29 U.S.C. § 701, et seq. (“Section
14 504”).

15 3. The State of Arizona (the “State”) is a public entity and recipient of federal
16 financial assistance and is a covered entity under Title II of the ADA and Section 504.

17 4. MAG administers the Maricopa Region 9-1-1 system (“Maricopa Region”)
18 and oversees the Maricopa Region’s integrated network of 26 Public Safety Answering
19 Points (“PSAPs”).

20 5. In a separate stipulation, MAG and Plaintiffs entered into an agreement to
21 settle the case with respect to implementation of Text to 9-1-1 in the Maricopa Region
22 (“MAG” Stipulation) (ECF 118). The intent of the MAG Stipulation is to ensure that
23 MAG, without admitting liability, takes the agreed upon steps to implement the web-based
24 method of accepting and sending Short Messaging Service text messages from the public
25 in Maricopa County. The MAG Stipulation does not resolve the Plaintiffs’ alleged ADA
26

1 and Section 504 claims against the State, as set forth in the Second Amended Complaint
2 (ECF 129).

3 6. The purpose of this Stipulation is to ensure the State, without admitting
4 liability, makes funds available that any 9-1-1 system administrator within the state can use
5 to implement a Text-to-9-1-1 Service (as defined below), for individuals who are deaf and
6 hard of hearing.

7 **DEFINITIONS**

8 7. **SMS Text to 9-1-1 Options:** Presently, there are three options for accepting
9 SMS text-to-9-1-1 calls: 1) Web Portal, 2) NG9-1-1 Interface, and 3) Text to TTY/TDD.

10 a. **Web Portal** – this option requires a PSAP to have internet access
11 through a private IP network or over the public internet. With this option, a
12 web portal is opened at the beginning of each shift and is monitored for
13 incoming text messages.

14 b. **ESInet/IP Network Service Interface** – this option requires IP
15 capable equipment and IP connectivity to the carrier or the carriers TCC
16 provider. With this option, the text message is delivered into the 9-1-1 PSAP
17 CPE interface. This option is compatible with an i3 compliant (full NG9-1-
18 1) solution.

19 c. **Text to TTY/TDD** – this option requires a TTY/TDD system. With
20 this option, a PSAP receives text messages via a TTY/TDD. The text
21 message is delivered over the existing 9-1-1 trunks and would display on the
22 9-1-1 equipment. This option ties up the 9-1-1 trunk during the text
23 conversation.

24 8. **National Emergency Number Association (“NENA”):** A not-for-profit
25 corporation established in 1982 to further the goal of “One Nation-One Number.” NENA
26

1 is a networking source and promotes research, planning and training. NENA strives to
2 educate, set standards and provide certification programs, legislative representation and
3 technical assistance for implementing and managing 9-1-1 systems.

4 9. **NENA Master Glossary:** A guide for readers of NENA publications,
5 providing consistent definitions for all terms, and acronyms associated with the 9-1-1
6 industry and identified within NENA Standards documents.

7 10. **NENA Standard:** A NENA Standard, as defined by the NENA Master
8 Glossary, is intended to describe methods, processes, and specifications that, if
9 implemented as specified, should result in successful operation of the 9-1-1 emergency
10 calls and allow for seamless 9-1-1 emergency calls and incident processing within a
11 jurisdiction using multiple vendors and between jurisdictions that use different vendors.

12 11. **Preferred Provider:** The Preferred Provider, for the purposes of the
13 Stipulation, is the contractor identified by the State to provide Text-to-9-1-1 services.

14 12. **Public Safety Answering Point (“PSAP”):** A communications facility
15 operated on a 24-hour basis that is assigned the responsibility to receive 9-1-1 calls and, as
16 appropriate, notifies or dispatches public or private safety services or extends, transfers, or
17 relays 9-1-1 calls to an appropriate public or private safety agency., including any and all
18 of the following:

- 19 a. **Primary PSAP:** A PSAP to which 9-1-1 calls are routed directly from
20 the 9-1-1 Control Office.
- 21 b. **Secondary PSAP:** A PSAP to which 9-1-1 calls are transferred from a
22 Primary PSAP.
- 23 c. **Alternate PSAP:** A PSAP designated to receive calls when the
24 Primary PSAP is unable to do so.

25
26

1 d. Consolidated PSAP: A facility where multiple PSAPs choose to
2 operate as a single 9-1-1 entity.

3 13. **Short Messaging Service (“SMS”)**: A service typically provided by mobile
4 carriers that send short (160 characters or fewer) messages to an endpoint that is often fast
5 but not in “real time,” as defined by the NENA Master Glossary.

6 14. **Stipulation’s Effective Date**: The date that the Court signs the Order
7 approving the Case Resolution Stipulation.

8 15. **Text-to-9-1-1 Service**: A service available 24 hours a day, seven days a
9 week through which a PSAP is capable of receiving and replying to text messages that will
10 allow deaf, hard of hearing, and speech-challenged citizens to effectively and directly
11 communicate with PSAPs. For purposes of this Stipulation, a qualifying Text-to-9-1-1
12 Service includes either the ESInet/i3 Internet Service Interface option or the Web Portal
13 option, but does not include the TTY option.

14 **II. SUBSTANTIVE PROVISIONS**

15 **A. TEXT-TO-9-1-1**

16 16. The State affirms it has created a Text-to-9-1-1 Services Fund (the “Fund”)
17 with monies from the Emergency Telecommunication Services Revolving Fund
18 established pursuant to A.R.S. § 41-704(B) and funded the Fund in the amount of
19 \$1,362,964.85. These funds will be made available to each 9-1-1 system administrator
20 within the state to apply for funds to cover eligible costs, as set forth in the Text-to-9-1-1
21 Implementation Plan (attached hereto as Exhibit A), to implement either a Web-Portal or
22 an ESInet/IP Network solution. Subject to paragraph 24, the State agrees the funds in the
23 Fund will be available from the Stipulation’s Effective Date for the duration of the
24 Stipulation unless fully expended prior to that date. The State agrees to negotiate and enter
25 into agreements with each PSAP that applies for funds from the Fund. The State will
26

1 make a single payment to the Preferred Provider for the initial deployment costs and five
2 years of recurring costs for each PSAP. Nothing in this Stipulation prevents the State
3 from applying for grants to fund Text-to-9-1-1 service and thereby reduce the amount of
4 the State's contribution to the Fund, as long as the grants funds do not place any
5 restrictions greater than those listed in this paragraph. Within fourteen (14) days of the
6 Stipulation's Effective Date, the State agrees to provide notice by email to each PSAP
7 regarding the existence of the funds and to publish the notice on the Arizona 9-1-1
8 Program Office's website. The notice will, at a minimum, include a description of the
9 process for applying for funds, the State's goal of implementing Text-to-9-1-1 on a state-
10 wide basis, a brief summary of the effective communication requirements in Title II of the
11 ADA and Section 504 of the Rehabilitation Act, and a template of the PSAP agreement.

12 17. Subject to paragraph 24, if the actual costs of initial deployment and the
13 recurring costs for five years, using the Preferred Provider, exceed the estimated amount in
14 Paragraph 15 of the Stipulation, the State agrees to pay the difference in an amount up to
15 \$68,148.24.

16 **B. TECHNICAL AND OPERATIONAL GUIDANCE**

17 18. Within 30 days of the Stipulation's Effective Date, the State of Arizona
18 agrees to publish a revised Text-to-9-1-1 Implementation Plan that includes the changes
19 identified in Exhibit A of this Stipulation. The State of Arizona further agrees to review
20 other technical and operational guidance, if any, to be consistent with the changes in
21 Exhibit A. Nothing in this paragraph prevents the State from making revisions to this
22 Text-to-9-1-1 Implementation Plan as long as those changes do not materially change the
23 goal of state-wide implementation of Text-to-9-1-1.

24
25
26

1 **III. RESERVATION OF JURISDICTION**

2 22. The Parties by this Stipulation consent to the reservation and exercise of
3 continued jurisdiction by the District Court over all disputes between and among the
4 parties arising out of the Stipulation and Order.

5 **IV. TERMINATION OF THE STIPULATION**

6 23. To allow time for the affirmative measures as proposed in this Stipulation to
7 be fully implemented, the Parties shall not seek to terminate the Stipulation for a period of
8 three (3) years unless the State has expended all of the funds in the Text-to-9-1-1 Services
9 Fund, and complied with paragraphs 18 and 29 (“Early Compliance”). At the conclusion
10 of this three-year period or completion of Early Compliance, if no reasonable, unresolved
11 disputes are outstanding, Plaintiffs shall provide Defendant with a Release of Claims.

12 **V. MISCELLANEOUS PROVISIONS**

13 24. Pursuant to A.R.S. § 35-154, every payment obligation under this Stipulation
14 is conditioned upon the availability of funds appropriated or allocated for the payment of
15 such obligation.

16 25. Each Party agrees to refrain from any publication, oral or written, of a
17 defamatory, disparaging, or otherwise derogatory matter pertaining to the other Party with
18 regards to this Litigation and Stipulation. A publication, oral or written, does not violate
19 this term of the Stipulation because it states the fact or terms of settlement, the importance
20 of Text-to-9-1-1 to the deaf and hard of hearing community, and Plaintiffs’ experiences
21 with 9-1-1.

22 26. This Stipulation constitutes the entire agreement among the Parties as to all
23 claims raised by Plaintiffs in this Litigation.

24 ///

25 ///

26

1 27. Each Party represents, warrants, and covenants that it has the full legal
2 authority necessary to enter into this Stipulation and to perform the duties and obligations
3 arising thereunder.

4 28. The Stipulation is an integrated agreement and may not be altered or
5 modified, except by a writing signed by all Parties at the time of the modification or by the
6 Court's Order for purposes of enforcing the action.

7 29. Within forty-five (45) days of the Court's order approving the Stipulation,
8 Defendant agrees to pay \$75,000 in reasonable attorneys' fees to Plaintiffs' counsel, in the
9 amounts and to the law firms or attorneys directed by Plaintiffs' counsel in a letter to
10 Defendant's counsel.

11 30. This Stipulation shall be binding on all successors, assigns, employees,
12 agents, and all others working for or on behalf of Defendants and Plaintiffs.

13 31. In the event that any Party moves to enforce any aspect of this Stipulation
14 and prevails, such Party shall be awarded its reasonable attorneys' fees and costs,
15 including expert costs, to be determined by the Court. In the event that either party moves
16 for a declaration of its rights or responsibilities under the Stipulation, each Party will bear
17 its own attorneys' fees and costs.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26

1 DATED this 3rd day of July, 2018.

2 APPROVED:

3 **ARIZONA CENTER FOR**
4 **DISABILITY**
5 **LAW**

By s/Asim Dietrich

6 Asim Dietrich
7 Rose A. Daly-Rooney
8 Christian Carlsen
9 Arizona Center for Disability Law
10 5025 E. Washington St., Suite 202
11 Phoenix, Arizona 85034
12 *Attorneys for Plaintiffs*

13 **STEIN & VARGAS, LLP**

14 By s/Michael Stein

15 Michael S. Stein
16 Mary C. Vargas
17 840 First Street NE, Third Floor
18 Washington, D.C. 20002
19 *Attorneys for Plaintiffs*

NATIONAL ASSOCIATION OF
THE DEAF LAW AND
ADVOCACY CENTER

By s/Marc Charmatz

Marc Charmatz
8630 Fenton Street, Suite 820
Silver Spring, Maryland 20910
Attorneys for Plaintiffs

OFFICE OF THE ARIZONA
ATTORNEY GENERAL

By s/Karen Hartman-Tellez

Karen J. Hartman-Tellez
2005 North Central Avenue
Phoenix, AZ 85004
Attorneys for State of Arizona

20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Honorable John J. Tuchi
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 525
401 West Washington Street, SPC 83
Phoenix, AZ 85003-2161

Karen J. Hartman-Tellez
Office of the Attorney General
2005 North Central Avenue
Phoenix, AZ 85004
Attorneys for State of Arizona

D. Samuel Coffman
Dickinson Wright, PLLC
1850 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Attorneys for Defendants Maricopa Association of Governments

Christina Gutierrez