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**INTEREST OF THE *AMICUS CURIAE***

The *Amicus Curiae* is the Deaf Justice Coalition (“DJC”). The DJC is a coalition that aims to ensure equal access to law enforcement services for deaf and hard of hearing individuals (collectively, “the Deaf community”) in New York City. The DJC seeks to improve the interactions between the Deaf community and the New York City Police Department and to establish a network within the Deaf community to raise awareness of the underlying issues and legal rights. Members of the DJC signing onto this *amicus curiae* brief include Barrier Free Living, Inc.; Bronx Independent Living Services, Inc.; Harlem Independent Living Center; National Action Network House of Justice Deaf Club; National Lawyers’ Guild Chapter of Yeshiva University’s Benjamin N. Cardozo School of Law; New York Center for Law and Justice; New York City Metro RID, Inc.; and New York Lawyers for the Public Interest, Inc. The DJC’s member organizations provide a range of services to the Deaf community, including working directly and on a regular basis with deaf and hard of hearing victims of crime. Through the course of their work, DJC members witness the barriers that the Deaf community encounters when trying to access emergency services. Additionally, several representatives of the DJC’s member organizations are deaf or hard of hearing, and thus are themselves members of the Deaf community. The DJC, which formed in July 2010, seeks to address all facets of the Deaf community’s access to emergency services and police protection; it is therefore interested in ensuring that the City of New York does not prematurely remove its existing alarm boxes before first establishing an alternative system that is accessible to and effective for the Deaf community. The DJC certifies that none of the parties to this case wrote any portion of this brief.

### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1(a), *Amicus Curiae* the Deaf Justice Coalition certifies that it is not a corporation. The individual members of the Deaf Justice Coalition who have signed onto this *amicus curiae* brief are non-profit corporations. None of these organizations has a parent corporation and no publicly held corporation owns 10% or more of any of their stock.

### **SUMMARY OF THE ARGUMENT**

The Court should deny City Defendants' Motion to Modify or Vacate Permanent Injunction because Defendants fail to prove the necessary criteria set forth by the Court. First, Defendants have not established an accessible alternative to the alarm boxes. Payphones are fundamentally inaccessible to the Deaf community and thus cannot be relied upon as an alternative to the accessible alarm boxes. Payphones are also outmoded and out of sync with the Deaf community's methods of communicating, especially in light of recent technological developments in 9-1-1 systems that provide for effective alternatives. Second, Defendants have utterly failed to educate the Deaf community about the tapping protocol. The Deaf community communicates and obtains information through channels different from those used by the mainstream hearing community. However, Defendants have merely posted a summary of the tapping protocol on City government websites. Defendants evidently have given no thought to what methods of dissemination are effective for the Deaf community. Moreover, by any standard, Defendants' purported dissemination is far from sufficient.

Through their assertion that payphones are an accessible alternative and that they have sufficiently informed the Deaf community about the tapping protocol, Defendants show a clear disregard for the Deaf community's needs. Before taking any steps to remove the alarm boxes, Defendants should engage with the Deaf community to understand what is required to establish an effective system.

## ARGUMENT

In this case about deaf and hard of hearing individuals' (collectively, "the Deaf community") equal access to street emergency notification systems in New York City, City Defendants have failed to meet the requirements set forth by this Court to vacate or modify the permanent injunction. This Court's injunction specified that:

Defendants may apply at any time to dissolve or modify this injunction by *demonstrating that there exists an accessible notification alternative* to the existing accessible street alarm box system. Among the means by which defendants can meet this burden will be by demonstrating that defendant City's Enhanced 911 System ("E-911") is *in operation and effective* throughout the City, that a protocol has been developed *providing the deaf and hearing-impaired with the ability to use E-911* to report a fire, police or other emergency *from the streets* and that *the fact of such protocol has been disseminated to the deaf and hearing-impaired.*

*Civic Ass'n of the Deaf of N.Y.C., Inc. v. Giuliani*, No. 95 Civ. 8591, at 5-6 (S.D.N.Y. Jan. 19, 2000) (judgment) (emphasis added) (citations omitted). Defendants have not established an accessible alternative to the alarm boxes, nor have they apprised the Deaf community about the alternative they do propose.

### **I. Payphones Are Inaccessible to the Deaf Community and Fall Behind Recent Advances in Technology That Are Both Effective and Preferred**

Payphones are both inherently inaccessible to the Deaf community and highly unreliable. Defendants' reliance on payphones also reveals a marked lack of progress, particularly in light of current developments in 9-1-1 systems, both at the federal level and in other cities and states. In making their assertion that payphones are the effective alternative for the Deaf community, Defendants show a clear disregard for the Deaf community's needs.



**A. Payphones Are Inherently Inaccessible to the Deaf Community**

Payphones are fundamentally inaccessible to the Deaf community, regardless of whether a tapping protocol exists. Two significant flaws make payphones inaccessible. First, the Deaf community has no way to know whether a payphone is broken or whether a call is successfully connected. Second and closely related, payphones are increasingly inoperative throughout New York City, making the Deaf community's inability to know whether a payphone is functioning particularly concerning.

As an initial matter, payphones are not equipped with the standard methods upon which the Deaf community relies to operate electronic devices, e.g., blinking lights or vibration; as a result, the Deaf community is unable to use them effectively and is left to assume that payphones are yet another resource designed only for the hearing community. For example, even if a deaf person is able to find a public payphone on the street in an emergency, "s/he can lift the phone from the hook and dial 9-1-1 but s/he will not know if the telephone is working." Expert Report of Alfred Sonnenstrahl, at 2, Doc. 106-9, May 27, 2011 [Sonnenstrahl Rep.]. Cf. LAURENT CLERC NAT'L DEAF EDUC. CENTER, GALLAUDET UNIV., ALERTING AND COMMUNICATING DEVICES FOR DEAF OR HARD OF HEARING PEOPLE, (Mar. 2007) [http://www.gallaudet.edu/Clerc\\_Center/Information\\_and\\_Resources/Info\\_to\\_Go/Hearing\\_and\\_Communication\\_Technology/Alerting\\_devices/Alerting\\_and\\_Comm\\_Dev\\_for\\_Deaf\\_and\\_HoH\\_Pl.html](http://www.gallaudet.edu/Clerc_Center/Information_and_Resources/Info_to_Go/Hearing_and_Communication_Technology/Alerting_devices/Alerting_and_Comm_Dev_for_Deaf_and_HoH_Pl.html) (providing examples of alert systems, such as lights and vibrating devices, upon which the Deaf community commonly relies when using electronic devices). Unlike the alarm boxes, which vibrate to indicate that they are operating and relaying the call, a broken payphone appears no different from a working payphone to the Deaf community. Livingston Dep. Tr. 13-14, Doc. 106-3, May 27, 2011 [Livingston Dep.]; Schroedel Decl., at ¶ 11, Doc. 98, May 19, 2011

[Schroedel Decl.]. The Deaf community expresses surprise at the thought that anyone would expect payphones to be the primary means for deaf and hard of hearing people to call for help. The common experience for the Deaf community is that services are typically designed for the hearing community, with little attention to what the Deaf community requires.

The Deaf community's inability to rely on payphones is exacerbated by the reality that *operative* payphones are becoming increasingly sparse throughout New York City. Shor Dep. Tr. 103, 121, Doc. 106-10, May 27, 2011 [Shor Dep.]. Given the privatization of payphones, Defendants have even less control over the maintenance of payphones. Shor Dep. Tr. 78. Notably, "the City has not conducted any analysis to determine whether working payphones are available in neighborhoods throughout the City." Stulberg Decl., at ¶ 36, Doc. 106-9, May 27, 2011 [Stulberg Decl.]. Defendants offer nothing to refute the generally accepted knowledge that payphones are unreliable.

**B. Defendants' Proposal Is Out of Sync With the Deaf Community's Needs and the Modern Age of 9-1-1**

Defendants' assertion that payphones are the solution to the question of how the Deaf community can access emergency services on the street also betrays two significant flaws—first, that Defendants have given little or no thought to the actual needs of the Deaf community, and second, that Defendants' approach to emergency notification planning is outmoded.

As an initial matter, the Deaf community has distinct communication needs and preferences and, in recent years, has experienced a technological boon. Advances in technology have provided the Deaf community with alternatives comparable in convenience to the devices used by the hearing community. For example, while the hearing community relies primarily on cellular phones, the Deaf community relies on wireless text devices. With developments in video-messaging or video-chatting, many members of the Deaf community are also finally able

to use their handheld devices to speak in their primary language—sign language. These technological advances are not only popular as a trend; for the Deaf community, they also mark a momentous shift in communication access. Notably, Defendants have neglected to take steps to understand what kinds of emergency notification options would actually be effective for the Deaf community. *Cf.* Shor Dep. Tr. 141-42 (demonstrating lack of consideration of the Deaf community’s ability to access payphones).

In line with the technological trends in both the Deaf and hearing communities, the federal government and several state and local governments have taken significant steps to modernize 9-1-1 under a system known as “Next Generation 911.” To date, federal agency actions include notices of inquiry and proposed rulemaking, research and development, and establishment of actual test sites that are successfully operating. *See, e.g.*, Framework for Next Generation 911 Deployment, 76 Fed. Reg. 2297, 2297 (Jan. 13, 2011) (notice of inquiry from Federal Communications Commission “seek[ing] to gain a better understanding of how the gap between the capabilities of modern networks and devices and today’s 911 system can be bridged”); U.S. DEP’T OF TRANSP., RESEARCH AND INNOVATIVE TECH. ADMIN., RESEARCH SUCCESS STORIES: NEXT GENERATION 911, <http://www.its.dot.gov/ng911/index.htm> (May 6, 2011) (explaining how the “Next Generation 9-1-1 [ ] Initiative has established the foundation for public emergency communications services in a wireless mobile society” by researching new technologies and launching test sites).

Some efforts have focused specifically on the applicability of NG911 to people with disabilities and the Deaf community. For example, the Twenty-First Century Act of 2010 prompted the establishment of the “Emergency Access Advisory Committee . . . for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our

nation's migration to NG911." 76 Fed. Reg. at 2299. The U.S. Department of Justice has also paid particular attention to how NG911 may inform forthcoming amendments to the Americans with Disabilities Act's Title II regulations. *See* Nondiscrimination on the Basis of Disability in State and Local Government Services; Accessibility of Next Generation 9-1-1, 75 Fed. Reg. 43,446, 43,446 (July 26, 2010) (advanced notice of proposed rulemaking) ("Many individuals with disabilities now use the Internet and wireless text devices as their primary modes of telecommunications. At the same time, [Public Safety Answering Points] are considering and planning to shift . . . to new Internet-Protocol (IP)-enabled [NG911] that will provide voice and data (such as text, pictures, and video) capabilities."). *See also id.* at 43,449 (summarizing "[o]ther federal efforts").

NG911 is projected to lead to greater efficiencies and value than existing 911 systems. For example, according to the U.S. Department of Transportation's ("DOT") value, cost, and risk analyses, NG911 "would deliver significantly more value (between 74 and 82 percent) than today's 9-1-1 environment." U.S. Dep't of Transp., *Intelligent Transp. Systems, Next Generation 9-1-1 (NG9-1-1) System Initiative: Final Analysis of Cost, Value and Risk Executive Summary*, at ES-1 (Mar. 5, 2009) (considering several factors such as accessibility, operational efficiency, and public safety in calculating value). At the same time, the DOT's analyses indicate that "[a]fter adjusting for the risks inherent in the upgrade . . . all NG9-1-1 deployment scenarios have total lifecycle costs that are within the range of the current 9-1-1 environment's lifecycle costs." *Id.* at ES-11. The calculations underlying these conclusions encompass high and low cost estimates, "segmented by planning, acquisition and implementation." *Id.* at ES-4 to ES-5. DOT concludes that the cost calculations "make[] choosing between NG9-1-1 and today's 9-1-1 largely a function of the value provided by each." *Id.* at ES-13.

Other jurisdictions have already begun implementing NG911 technologies into their emergency reporting systems, while City Defendants have shown no such indication. *See* NAT'L EMERGENCY NUMBER ASS'N, NG9-1-1 PROJECT: STATUS OF NG 9-1-1 RELATED STATE ACTIVITY (Feb. 14, 2011), <http://www.nena.org/ng911-project/state-status#bottom> (providing a link to a spreadsheet with information about various jurisdictions' efforts to implement NG911). *See also, e.g.*, 75 Fed. Reg. at 43,449 (noting that "in 2003, the police department in Sacramento, California began to accept '9-1-1' e-mails from individuals with disabilities"); THE COMMONWEALTH OF KENTUCKY NG9-1-1 STATE PLAN (Aug. 1, 2009), <http://cmrsboard.ky.gov/NR/rdonlyres/2BD23B5D-DE5C-421A-BE50-71990AC180C6/0/NG911StatePlan.pdf>. Although technologies that are effective for—and preferred by—the Deaf community are feasible and/or in existence, Defendants offer only an inaccessible, undesired, and outmoded system. Before taking any steps to remove the alarm boxes, Defendants should engage in a dialogue with the Deaf community in order to select and implement a truly accessible alternative.

## **II. The Deaf Community Is Unaware of the Tapping Protocol Because of Defendants' Failure to Perform Meaningful Outreach**

Defendants have taken no meaningful steps to educate the Deaf community about the tapping protocol. Thus, even if payphones were accessible to the Deaf community (which is not the case), Defendants have left the Deaf community unaware of how to access them. The Deaf community is isolated from mainstream sources of communication, largely because of communication barriers that pervade their lives in a predominantly hearing society. Especially in

light of this context,<sup>1</sup> Defendants' assertion that they have conducted enough outreach to satisfy this Court's injunction is not credible.

**A. The Deaf Community Is Isolated from Mainstream Sources of Information**

The Deaf community obtains information in a manner different from the hearing community because of communication barriers that obstruct mainstream channels. JENNIFER OBINNA ET AL., COUNCIL ON CRIME AND JUSTICE, UNDERSTANDING THE NEEDS OF THE VICTIMS OF SEXUAL ASSAULT IN THE DEAF COMMUNITY: A NEEDS ASSESSMENT AND AUDIT 11 (2005) (noting that "the Deaf community experiences significant barriers in communication with the general hearing population and has limited access to media information that hearing people take for granted") (citation omitted)). For example, information in mainstream sources is often inaccessible because a significant portion of the Deaf community lacks proficiency in English. McCay Vernon, Lawrence J. Raifman, & Sheldon F. Greenberg, *The Miranda Warnings and the Deaf Suspect*, 14 BEHAV. SCI. & L. 121, 122-23 (1996); Edward Dolnick, *Deafness as Culture*, THE ATLANTIC MONTHLY, Sept. 1993, at 37, 40. Because of the inaccessibility of most conventional sources of information, a considerable segment of the Deaf community relies on other deaf individuals for information, often through sign language. HARLAN LANE, ROBERT HOFFMEISTER & BEN BAHAN, A JOURNEY INTO THE DEAF-WORLD 270 (1996). This information may come through sources such as community groups, deaf schools, relatives, friends, or

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<sup>1</sup> Notably, the Deaf community is statistically more likely than the hearing community to require police assistance. For example, "[a]n often quoted 1987 study, one of the few of its type, indicated the level of sexual victimization prior to adulthood to be 50% of all Deaf individuals as compared to 25% of hearing females and 10% of hearing males." JENNIFER OBINNA ET AL., COUNCIL ON CRIME AND JUSTICE, UNDERSTANDING THE NEEDS OF THE VICTIMS OF SEXUAL ASSAULT IN THE DEAF COMMUNITY: A NEEDS ASSESSMENT AND AUDIT 11 (2005) (citation omitted). Additionally, with respect to women with disabilities, approximately 70%-85% of incidents of abuse go unreported. DEAF ABUSED WOMEN'S NETWORK, STATISTICS AND FACTS, <http://www.deafdawn.org/> (last visited May 22, 2011). While these statistics are not specific to street crimes, they nonetheless indicate a significant cause for concern, as many of the reasons for the Deaf community's high vulnerability remain consistent. Moreover, the Deaf community is left not only with a disproportionately high risk of victimization but also with the problem of how to seek and obtain accessible assistance. See, e.g., Plummer Decl., at ¶ 13, June 1, 2011.

advocates. Reliance on traditionally “hearing” channels of information is often insufficient. Unless the availability of an accessible format is publicized within the community, the Deaf community will likely not know to search for it.

Particularly in light of these dynamics, Defendants’ assertions that the tapping protocol—as it currently exists and as poorly-advertised as it has been—is an effective alternative for the Deaf community are far more theoretical than they are realistic. Again, Defendants demonstrate a lack of attention to what is actually required to constitute an *effective* system and *effective* outreach for the Deaf community.

**B. Defendants Have Performed Vastly Inadequate Outreach to the Deaf Community About the Tapping Protocol**

Defendants have failed to sufficiently disseminate information about the tapping protocol to the Deaf community. Not surprisingly, Defendants’ conspicuous omission of facts to support that they have sufficiently educated the Deaf community aligns with the truth—Defendants’ purported outreach has been meager at best and has left the Deaf community unaware of the tapping protocol. Indeed, Defendants list only one limited way in which they have publicized the tapping protocol, and they offer no information to indicate that they have measured the success of their supposed outreach efforts.

By their own admission in their memorandum to the Court, the only effort Defendants have made to disseminate information to the Deaf community about the tapping protocol is to post instructions on the websites for the Mayor’s Office for People with Disabilities, New York City Police Department, and the New York City Fire Department. City Defendants’ Mem. of Law in Support of Motion to Modify or Vacate Permanent Injunction, at 8, 13, June 23, 2010 [Def. Mem. of Law]. Despite the existence of other obvious and more practical ways to reach the Deaf community, Defendants have done none of these. For example, Defendants have



conducted no outreach to places where the Deaf community would be more likely to obtain information, such as advocacy and support programs or educational programs geared toward the Deaf community. Sonnenstrahl Rep. 3; Schroedel Decl. at ¶ 7. *See also, e.g.*, Galvin Dep. at 47, 86, Doc. 106-8, May 27, 2011 [Galvin Dep.] (describing the New York City Fire Department's outreach efforts to the Deaf community "prior to 2010" as "minimal to nonexistent," and since 2010 as preliminary); Plummer Decl. at ¶¶ 2-3, 4, 10-11. Defendants have not even posted any notices about the tapping protocol on the payphones. Thus, without sufficient education on the tapping protocol, the Deaf community is left to assume what is typically the case—that standard telephones are not meant for the Deaf community to use. Particularly in light of the Deaf community's isolation, difficulty in obtaining information, and default assumption that mainstream resources are designed for the hearing community, Defendants' purported "dissemination" to the community about the tapping protocol is utterly inadequate. *See e.g.*, Plummer Decl. at ¶¶ 10-11.

Notably, Defendants also fail to mention any other basis for supporting the idea that its supposed outreach efforts have been successful. Defendants' omissions are telling. For example, although Defendants provide details about the decreased proportion of tapping calls received through the alarm boxes, they fail to mention whether there has been an increase in tapping calls via payphones. Def. Mem. of Law, at 21-22. Defendants even fail to mention what proportion of "telephone calls" they have received were generally from payphones, regardless of whether via voice or tapping. Def. Mem. of Law, at 19. *See also* Stulberg Decl. at ¶ 45 ("The City does not maintain any statistics regarding the number of calls made to 911 using public payphones." (citation omitted)). Indeed, neither the New York City Police Department nor the Fire Department has tested the tapping protocol on payphones. Guerriera Dep. 98, Doc. 106-4,



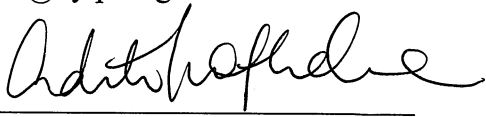
May 27, 2011; Dingman Dep. 56, Doc. 106-2, May 27, 2011. Defendants have no basis to support their claim that the E-911 system has actually been “operative” with respect to the Deaf community. Def. Mem. of Law, at 13.

### CONCLUSION

For the foregoing reasons, this Court should DENY City Defendants’ Motion to Modify or Vacate Permanent Injunction.

Dated: New York, New York  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this **1st** day of **June, 2011**, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all parties of record.



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