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**Northern Onondaga Volunteer Ambulance, Inc.**  
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(315) 622-1443

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Warren Darby, Chairman  
CNYEMS Regional Council  
Jefferson Tower Suite LL1  
50 Presidential Plaza  
Syracuse, NY 13202

RE: NAVAC's Application for Expansion of CON

Dear Mr. Darby:

We have received NAVAC's letter of solicitation dated September 23, 2008. In that letter NAVAC is asking for our support for its application to expand its ambulance service primary operating territory.

NOVA strongly opposes the application for the following reasons:

- (1) There is no need for a third primary ambulance service in the proposed expanded territory;
- (2) The system has functioned significantly more efficiently in the proposed expanded territory ever since NAVAC was forced to abandon the territory;
- (3) NAVAC's fitness to serve the territory must be questioned;
- (4) NAVAC had not been adequately serving its own territory when it was the primary provider in the proposed territory; and
- (5) There is no legal precedent for awarding this territory.

The application is an expansion and not a correction

NAVAC seeks additional territory to be added to its operating certificate and is not simply "correcting" its certificate as it claims. NAVAC should be ashamed for making such a false statement to the public. The territory NAVAC seeks is not and has never been on its operating certificate. A judge of the State Supreme Court held that this territory has never been on NAVAC's Department of Health certificate and was never applied for by NAVAC. NAVAC again attempts to mislead this council and the public.

NAVAC must provide proof that there exists a need that cannot be met by the two existing lawful providers of ambulance service in the territory. There are no facts which establish any need for a third provider of services in the territory.

There is no need for a third ambulance service in the proposed expanded territory

The definition of “need” makes clear that there is no need in the proposed territory.

Both NOVA and Rural Metro hold operating certificates for the proposed expanded territory. NOVA (and its predecessor Moyers Corners Fire Department) has held that operating territory for decades. NOVA is currently functioning as the primary provider in the proposed territory and is doing so very successfully. Service in this territory has vastly improved since NOVA has taken over the role as primary ambulance provider from NAVAC.

Fact based statistics make it clear that there is no need for a third service in the proposed territory. In the next few weeks, NOVA will present statistics that unequivocally prove the following:

- (1) NOVA successfully responds to almost every call for service in the expanded territory in an expeditious manner;
- (2) Rural Metro, the other approved primary provider, has successfully met the small need for an additional ambulance in the few instances when necessary;
- (3) NOVA’s number of calls missed has substantially declined since NAVAC was removed from this territory, as NOVA has been financially able to staff an additional ambulance and additional crews to serve the proposed territory;
- (4) There is no unmet need for services in the proposed territory as NAVAC has responded to very few calls since NAVAC was removed from the territory by the Court;
- (5) NAVAC’s service to its own territory has improved and NAVAC has missed many fewer calls in its own primary territory since being removed from the proposed territory. This has relieved the burden on other ambulance services such as Rural Metro.

NAVAC has presented no facts or statistics to demonstrate any absence of services. NAVAC cannot demonstrate any inadequate level of care. Finally, ever since NAVAC was properly removed from serving this territory, resources were allocated which in fact reduced need for services and improved response to this territory. Contrary to NAVAC’s non-fact based allegations, “established response patterns” have significantly improved since NOVA has become the primary ambulance provider in the proposed territory.

The territory will be harmed if NAVAC’s application is granted

The council must examine the harm to the system which will occur if NAVAC is again permitted to serve the proposed territory. Ever since NOVA has been able to serve its rightful territory, NOVA has had the financial ability to staff an additional ambulance, has increased the hours of our second ambulance by an additional 7 hours per day, and added a third crew for twelve hours per day. NOVA required the additional call volume in order to afford increasing our staffing. If NAVAC becomes a primary provider, the system will return to its prior flawed state. NOVA will be forced to remove its newly

added ambulance, staff and staffed hours. As a result, NOVA's rate of missed calls will increase and the mutual aid system will be again burdened.

#### NAVAC's fitness to serve the territory is questionable

NAVAC has been well aware that it has never had the operating authority for the proposed territory. NAVAC knowingly and illegally served that area since the 1970s without the requisite authority. The only reason NAVAC ever applied for legal authority to serve the territory was because NOVA instructed NAVAC to vacate service, which NAVAC subsequently refused to do. It was not a judge of the New York State Supreme Court removed NAVAC from serving the proposed territory that NAVAC vacated the territory. The court held that NAVAC had no right to serve that territory and never even applied to serve that territory. NAVAC illegally deprived the two other approved services of their rightful service territory.

Operating illegally in a territory should never serve as a basis for need. NAVAC stole the opportunity to provide those services from the agencies which were lawfully entitled to provide the services. NAVAC's insinuation that no one else "displayed any interest" in being the primary provider for the territory until 2006 is erroneous. The truth is that NOVA continuously attempted to serve as the primary provider in the proposed territory but was told that NAVAC was the primary and that NOVA could act as second-up or back up. NOVA was forced to sue the Department of Health in order to be placed into this position.

We cannot help but believe that every municipality, agency, facility and the like *assumed* that NAVAC was a lawful provider in the territory since its agency entered into agreements to provide the services, billed government and private insurance companies for those services, and signed biennial certifications that its agency was operating in accordance with Public Health Law Article 30 and the applicable laws, rules and regulations. Even NOVA believed that NAVAC was properly certificated for the areas in which it was operating. It was not until 2006 that we learned that NAVAC did not have the proper operating authority.

We question if NAVAC has violated Medicare regulations by billing for services in this territory (though we make no accusation in this regard). Medicare requires proof of operating authority in a territory before it will permit regular billing. How did NAVAC continuously bill Medicare and other government insurance programs when NAVAC never had operating authority for these territories.

#### NAVAC's service has improved in other territories in recent months

NAVAC had not adequately served its primary territories prior to NOVA taking over as primary ambulance in the proposed territory. However, since NOVA took over as primary ambulance, NAVAC has been free to respond to own territories and has improved services significantly. One must question why NAVAC would want to return to the past system of missing too many calls in its own territory. The answer is simple.

NAVAC desires the revenue from responding to North Medical Center, even if that means it will not be able to respond to even more emergencies in its own territory. Granting this application will further burden the EMS system. The system is now appropriately balanced and should remain that way. NAVAC's improved response to its own territories has eased the burden on other services such as Rural Metro. Why would we now return to a system that failed?

The *Dryden* decision does not serve as legal authority for the application

Some council members might be misled to believe that the *Dryden* application many years ago serves as legal authority to grant NAVAC's application. The facts in *Dryden*, as found by the CNY REMSCo and as recited by the Administrative Law Judge in its decision, were as follows:

- Dryden Ambulance had received and held operating authority for the territory in question, but the territory was mistakenly omitted during a transfer from its predecessor in interest;
- Dryden Ambulance recognized the omission on its own and made application for the territory without anyone else recognizing the omission;
- Dryden Ambulance was the only ambulance service serving the territory in question;
- No other provider had operating authority for that territory;
- Without Dryden Ambulance serving the territory, a need for ambulance services will arise.

(Citing In The Matter of the Application for Expanded Operating Territory by Dryden Ambulance, pp 3-4). None of these factors are present in this application. Instead, even though NAVAC was always aware of its lack of operating authority, it took NOVA and a supreme court judge to get NAVAC out of the territory it illegally served. Only after NAVAC was forced out of the territory did NAVAC apply for services. Moreover, there are two other primary ambulances adequately serving the territory. Most importantly, NAVAC never even applied for services, whereas Dryden Ambulance presented proof at the public hearing that it had received the authority via a transfer from its predecessors in interest.

Based upon the above, NOVA unequivocally declines to support NAVAC's application for an expansion of its territory.

Sincerely,

Northern Onondaga Volunteer Ambulance, Inc.

Russ Ziskind, President



John Marko, Director of Operations

