Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
911 Governance and Accountability	)	PS Docket No. 14-193
Improving 911 Reliability	)	PS Docket No. 13-75

COMMENTS OF VERIZON

Kathleen M. Grillo
Of Counsel

Gregory M. Romano
Robert G. Morse
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 515-2400

Attorneys for Verizon

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SUMMARY

The *NPRM*'s vague, expansive rules would undermine accountability among service providers in the 911 space and create regulatory uncertainty. First, the proposed restrictions on discontinuance and changes of 911 service and customer premises equipment ("CPE") maintenance would impose a new form of entry and exit regulation that would thwart NG911 innovation. It would create an additional layer of regulatory approval and uncertainty to states' and localities' NG911 projects and undermine their ability to invest limited financial and personnel resources in new NG911 technologies, and chill industry's support for such NG911 initiatives. It would decrease collaboration between industry and public safety organizations by creating potential conflict between the policy goals of state regulators/legislatures and state/local 911 authorities, leaving 911 service providers in an untenable position. And it would unnecessarily intervene in the competitive CPE marketplace.

The new, omnibus 911 monitoring function of the proposed "911 NOC Provider" would divert resources from NG911 innovation and overall 911 reliability toward compliance with vague and elaborate reporting and notification procedures. It would also require many originating service providers, such as wireless companies, to report competitively sensitive information to a competitor's wireline affiliate for even non-outage events – even though the 911 NOC Provider is not in a position to mitigate the effects of service disruption on third party networks and lacks the expertise to do so. And the vague standard for reporting non-outage events such as "high call volume" events would expand this regulatory burden even more.

The *NPRM*'s proposed expansion of the subject matter and applicability of the existing certification requirements – which only recently became effective – would reduce overall accountability in the evolving NG911 environment and be prohibitively costly and complex to implement. Applying the rules to entities that do not directly provide services to PSAPs, such as subcontractors and agents, would be confusing and undermine accountability. Rather, a prime contractor directly serving a PSAP should be responsible for compliance with all Commission rules and certifications, regardless of other parties' roles or responsibilities as a subcontractor. It is also unnecessary to apply the proposed rules to wireless facilities; they were not part of the outage events that led to this *NPRM*, and the proposed rule would cover core network functions that are only incidentally related to a wireless carrier's and over-the-top provider's 911 call delivery. It is also unnecessary to impose certification requirements on device-level OS capabilities as the *NPRM* suggests it would.

The proposed general "reasonable measures" standard for the annual certification is premised on a legacy 911 service model that is not adaptable to the services, applications and devices that would be subject to the new rules. Stakeholders should instead focus on using CSRIC V and the recently-convened Task Force on optimal PSAP architecture to develop practices and standards for different networks and services.

The proposed network monitoring certification also fails to account for network configuration differences among service providers, in particular differences between wireline 911 service providers and other newly-covered providers in the available aggregation points on their networks, if any. Again, stakeholders should focus attention on developing industry standards that account for service-specific distinctions. Also, applying the rule to a particular

911 service area likewise fails to account for different network configurations outside the wireline LEC context, where coverage areas and networks do not adhere to local political boundaries. Finally, Commission should not impose the proposed software and database performance and certification requirements, as those capabilities are dependent on PSAP resources and should be addressed between carriers and PSAPs.

The Commission can take appropriately targeted actions to address the *NPRM*'s objectives, including: encouraging stakeholders to develop and finalize NG 911 best practices at CSRIC V; collaborative workshops beginning with the recently-convened Task Force on Optimal Public Safety Answering Point Architecture; and encouraging finalization of the NENA i3 architecture, which will support competitive alternatives and service/network configurations. The Commission also could clarify that the agency will continue to hold a prime contractor directly providing service to a PSAP responsible for compliance with all Commission rules and certifications, regardless of what roles or responsibilities have been subcontracted to other parties. This will enable new players to enter the 911 space, ensure that 911 services increasingly benefit from new technological innovation, and ensure that a responsible party will be accountable for maintaining and improving the reliability of new and existing 911 networks.

Finally, the Commission lacks statutory authority to adopt the proposed regulations for entry and exit of 911 services, maintenance of 911 center customer premises equipment, and creation of a new, mandatory 911 monitoring function. None of the three 911-related statutes on which the Commission relies confers substantive authority on the Commission with respect to these areas. Sections 201(b) and 214(d) of the Act only apply insofar as service providers are common carriers, but the Commission does not claim that these proposed regulations would govern the activities of common carriers providing telecommunications services. CPE, which the proposed rules would regulate, is not a service at all, and none of these sections grants the Commission authority over marketplace entry or exit, which Congress provides only sparingly. Finally, none of the statutes the Commission cites provide the necessary statutory hook on which to hang the exercise of ancillary authority.

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The Commission, the states, localities, service providers, and vendors play important roles in ensuring the availability and reliability of new and existing 911 services. As communications technologies and consumer behavior evolve, those stakeholders can and should take measures to promote these objectives. In this proceeding, however, the Commission has proposed rules that will not advance these public policy goals, but instead will set back progress in the development and availability of new 911 solutions for consumers and PSAPs.

The proposals would impose expansive, prescriptive requirements in areas such as entry and exit of 911 services, maintenance of 911 center customer premises equipment, and creation of an entirely new 911 monitoring function. These are not "targeted actions" to address "new and different risks" inherent in evolving 911 technologies;[1] they would implement an expansive regulatory regime that would undermine accountability, discourage innovation and create regulatory uncertainty. Rather than adopt unnecessary rules, the Commission should take a

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[1] *See 911 Governance and Accountability, Improving 911 Reliability*, Policy Statement and Notice of Proposed Rulemaking, PS Docket Nos. 14-193 and 13-75, FCC 14-186, ¶ 20 (rel. Nov. 21, 2014) ("*NPRM*").

different approach, for example, by including the development of NG911 best practice recommendations through the CSRIC V and clarifying that its rules hold the entity providing 911 services directly to the PSAP responsible for all underlying reliability and reporting responsibilities.

Finally, the rules proposed in the *NPRM* would exceed the Commission's statutory authority. The Commission's authority is limited to defined, discrete actions related to 911 services. The expansive regulatory regime proposed in the *NPRM* goes well beyond that defined statutory authority.

DISCUSSION

I. THE PROPOSED RULES WOULD UNDERMINE THE COMMISSION'S ACCOUNTABILITY OBJECTIVES AND CREATE REGULATORY UNCERTAINTY.

By imposing a vague, expansive regulatory regime, the proposed rules would undermine the Commission's stated objective of improving accountability among service providers in the 911 space. They would also create regulatory uncertainty for new market entrants and existing service providers and divert resources from NG911 innovation.

A. Regulating Entry/Exit for 911 CPE and Services Will Undermine Congress's Goal of Promoting Innovation in Public Safety Services.

Proposed Section 12.5 of the rules would regulate entry and exit of 911 services and functions by requiring advance Commission approval to "discontinue, reduce or impair" any 911 service and to terminate or reduce technical support or maintenance of customer premises equipment ("CPE"). This expansive proposal would thwart NG911 innovation, decrease collaboration between industry and public safety organizations and deter competition in the CPE market.

Adverse Impact on Innovation. The proposed rules would undermine individual state and local government incentives to serve as early adopters of NG911 technologies and industry's incentives to develop new products to respond to those needs. Congress has consistently sought to promote innovation among 911 service providers and their vendors by, for example, affording broad liability protection for a range of different stakeholders, including voluntary initiatives.[2] Under the proposed regulatory regime in which companies would need Commission approval to discontinue and transition services to a new entity, a state or locality will be reluctant to commit taxpayer dollars and government resources to develop innovative solutions. The state or locality will face new uncertainty as to whether the service providers, equipment vendors, integrators, and other parties providing new 911 services are legally permitted to cease an existing service to implement new capabilities or to upgrade old ones. The *NPRM* would thus create an additional layer of regulatory approval and uncertainty to states' and localities' NG911 projects that will undermine their ability to invest limited financial and personnel resources in new NG911 technologies.

The proposed rules would also chill industry's support for such NG911 initiatives because companies would need Commission approval to make new service enhancements and other product changes. The proposed requirements are so broadly stated that approval would be required even for enhancements or changes that do not affect users' or PSAPs' experience. Indeed, the *NPRM* would even apply the new burdens to wireless application- and device-level products, areas in which the Commission has expressed particular concern about adopting policies that discourage innovation. This chilling effect is particularly ill-timed, as it would occur just as wireless carriers will be even more capable of offering new innovative services and

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[2] *See* 47 U.S.C. §§ 615a(a), 615b(9), 1472.

products to their customers through their LTE networks, and as wireline carriers are migrating their consumers and services to IP-enabled networks and platforms.

Adverse Impact on Industry-Public Safety Collaboration. The proposed rule would undermine, not promote, collaborative efforts among service providers and public safety stakeholders because it could create a potential conflict between state regulators/legislatures and state/local 911 authorities. For example, if a state emergency or regulatory agency directs 911 service providers in the state to adopt a technology change or solution after careful consideration, localities and other parties could use the proposed rule to second-guess the decision at the Commission by challenging approval of the discontinuance of the existing technology. Similarly, disputes between localities on wireless 911 call routing brought before the Commission would embroil the agency in matters of state and local governance. This would put 911 service providers in an untenable position, and interject regulatory uncertainty into NG911 and other technology upgrades. The proposed rules would thus disrupt, not improve, the accountability and collaboration that already exists between service providers, PSAPs, and the state and local governments and taxpayers that support these services and CPE.

Regulation of the Competitive CPE Market Is Counterproductive. The Commission should not impose any CPE-related requirements on service providers that supplement the existing contractual arrangements between individual PSAPs and state/local governments. The CPE market is very competitive and PSAPs and state and local governments have many options from which to choose. Indeed, Verizon is not the primary provider of CPE installation and maintenance business in the areas where it serves PSAPs – other companies have the majority of this business. There is no need for the Commission to intervene in this competitive marketplace to influence which companies provide this business and which do not.

B. The Proposed 911 Monitoring Function Is Too Expansive To Be Effective.

The *NPRM* (proposed Section 12.7) would create a new, omnibus 911 monitoring function to be performed by a newly designated "911 NOC Provider" so sweeping that it would render compliance difficult and divert attention away from restoring outages. It would require that the designated entity serve as a clearinghouse of information regarding all aspects of a 911 call, including the portions of call delivery on the originating network (from the 911 caller) and on the terminating network (for routing and delivery to the PSAP). Such a clearinghouse would be virtually impossible to implement in practice. And the resources spent to try to comply with such a requirement would be diverted from NG911 innovation and overall 911 reliability. For example, the designated entity required to provide this function would need to collect real-time information from originating service providers like wireless service providers, third party text-to-911 and interconnected VoIP providers and somehow notify not only affected PSAPs of outages in real time, but also a whole host of other companies and the Commission. Thus, rather than allowing companies to prioritize resolving any service restoration issues, they will instead be compelled to follow elaborate procedures to obtain varying details from different entities and notifying a myriad of parties with status reports to avoid the potential for large fines.

To provide the clearinghouse with relevant information, originating service providers such as wireless companies would be obligated to report competitively sensitive information, including non-outage service degradation events, to the wireline affiliate of a competitor. And they would be providing such proprietary information to a competitor for no perceptible public safety reason, as the "911 NOC Provider" will not be able to do anything constructive regarding problems on the network of the service provider originating the 911 traffic. Indeed, the 911 NOC Provider (typically the ILEC) will somehow be tasked with conveying "all information

reasonably available to mitigate the effects of the disruption and to restore service" even though it lacks the expertise to determine how best to respond to an outage affecting a third party provider's network. As a result, both the 911 NOC Provider and the third party network provider will need to spend time to get the 911 NOC Provider up to speed to develop and relay information to multiple parties when that time would be better spent having the third party network provider focus on how to restore the outage.

Moreover, the type of outage that would trigger this expansive reporting function is so vaguely defined that it would create confusion and require devotion of resources to even figure out whether a particular event was reportable. The *NPRM* would apply the reporting function to not just a total loss of 911 service but also to "events that substantially impair service quality … without a complete loss of service."[3] It is unclear what would meet this proposed "substantially impaired" threshold. The proposed rule even includes "emergencies resulting in unusually high call volume or cybersecurity events" that do not necessarily result in a service outage or even "degradation" or impairment per se.[4] Again, the relevant parties and the newly mandated 911 NOC Provider would be forced to expend significant resources to determine on a real time basis whether a particular event even met this vaguely defined standard. Trying to comply with such an ambiguous standard would divert attention from where it should be focused: service restoration.

C. The New Certification Rules Are Premature and Overly Broad.

The proposed amendments to Section 12.4 of the rules would change and expand existing certification requirements to a broad range of entities and functions in ways that reduce overall

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[3] *See NPRM* ¶ 66 n.131.

[4] *See id.* ¶ 73.

accountability and that would be confusing to implement in a newly developing NG911 environment. And the proposed rules also would be prohibitively costly to implement. Indeed, an attempt to adopt them would likely trigger OMB and congressional scrutiny under the Congressional Review Act.[5] The Commission's understated estimate of the original proposed 911 reliability rules as proposed in 2013 was up to $44.1 million,[6] but those rules were principally limited to local exchange carriers. And most of those costs would be borne by PSAPs, and the state and local governments and taxpayers that support them.

1. *Certification Requirements Should Not Be Expanded.*

The Commission should not expand the applicability and the subject matter of the annual certification regime under the 911 reliability rules. Those rules only recently went into effect and the Commission and other stakeholders would benefit from CSRIC V and other recommendations in this area that could alleviate any need for new regulations.

Moreover, applying new certification rules to entities that do not directly provide services to PSAPs would be confusing and undermine accountability. For example, the proposal to expand the certification requirement to any entity that provides 911 service "indirectly as a contractor or agent" is overly broad, vague and unnecessary. In many NG911 architecture designs under development, network providers play a secondary role vis-à-vis a system integrator. That integrator will ultimately determine (jointly with the state or local government entity procuring its services) whether there is a diversity requirement from one carrier or whether they intend to obtain that diversity through multiple carriers. The network providers may not

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[5] *See* 5 U.S.C. §§ 801 et seq.

[6] *See In the Matter of Improving 911 Reliability, Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Report and Order, 28 FCC Rcd 17476, ¶ 78 (2013) ("*911 Reliability Order*").

have visibility to uses or users of their networks. A prime contractor directly serving a PSAP (whether an incumbent provider, integrator, or another entity responsible for the PSAP's routing and re-routing capabilities) should be responsible for compliance with all Commission rules and certifications. That should be so regardless of any roles or responsibilities that fall to other parties on a subcontracting basis.

2. *The Impact of the Proposed Certification Rules On Wireless Services, Devices, and Over-the-Top Providers and Applications Is Uncertain.*

The extent to which wireless network architecture and devices are subject to the proposed certification rules is unclear. While the *NPRM* purports to exclude functions for providers that "solely originate voice calls or text messages to 911," this exemption is meaningless for wireless service providers because the new certification requirements would apply to a Mobile Positioning Center, Text-to-911 Control Center, and dedicated 911 trunks or connections between the mobile switching center ("MSC") or IP Multimedia Subsystem ("IMS") Core and the PSAP's selective router.[7] It is unnecessary to subject these functions to the existing certification requirements; they were not part of the certification regime adopted in the *911 Reliability Order* and the outage events that led to this *NPRM* were not related to wireless providers' 911-related network components. Broadening the scope of the certification requirements in this way for the sake of it would be costly with no perceptible public safety benefit.

Moreover, the proposed certification rule would cover "any other capability required for delivery" of 911 calls and data. If applied expansively, this vague standard risks covering basic call-routing functions in the wireless MSC and IMS Core that are only incidentally related to 911

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[7] *See NPRM* ¶ 42.

call delivery. Changes or upgrades to wireless service providers' core commercial network facilities should not be dragged into a certification regime designed to address 911 issues.

Similarly, the *NPRM* suggests that the proposed certification requirements could apply to wireless providers insofar as they operate networks "necessary for [over-the-top] services to connect consumers to PSAPs when they dial 911 or send text messages or other data."[8] That describes all wireless networks, including both digital and IP-enabled networks, so the proposal would inappropriately hold wireless or wireline providers responsible for the performance of over-the-top VoIP and text messaging providers. Network service provider facilities may be used to route third party over-the-top providers' 911 communications, but the network provider will not have visibility to the over-the-top provider service or application's use of the network. Network and over-the-top providers do not maintain the same type of contractual and service arrangements as interconnecting carriers that would facilitate the degree of coordination and monitoring necessary to meet the proposed rule. Yet as drafted, the proposed rule would arguably cover those arrangements.

The proposed certification regime would also potentially apply to a wireless device's operating system and internal capabilities to the extent they are "part of a 911 service relationship between consumers and PSAPs."[9] It is unclear how this phrase would apply to the different players in the wireless ecosystem, but it suggests that certification and other regulations would apply to device-level capabilities, not just network components. But a wireless provider should not be required to certify device-level features and applications that facilitate text-to-911 features or device-level location determination capability as doing so would apply an

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[8] *Id.* ¶ 7.

[9] *Id.* ¶ 7, n. 10.

unprecedented degree of regulatory scrutiny to consumer device capabilities that would unnecessarily delay the availability of new products to consumers. The proposed rule is particularly problematic for third party applications, as wireless providers have only limited (if any) ability to preclude third party application providers from accessing such information.

D. The Proposed "Reliable 911 Service" Obligation Is Too Vague and Uncertain to Facilitate Compliance.

The proposed general "reasonable measures" standard for the annual certification would impose costly new performance and deployment requirements with no perceptible benefit. New Section 12.4(b) of the proposed rules would require that a Covered 911 Service Provider certify either that it "take[s] reasonable measures to provide reliable 911 service," that it is taking adequate alternative measures, or that the certification does not apply to its network. The proposed rule is premised on the legacy 911 service model in which PSAPs and service providers can discuss expectations and the associated trade-offs between cost and complexity and agree on practices that meet both PSAP and carrier needs. That model is not adaptable to the broad range of services, applications and devices that would be subject to the new rules.

Rather than being "flexible" as described in the *NPRM*, this proposal would function as a network performance rule that would impose significant IT, personnel, equipment and software, and network services costs on service providers that would go well beyond the internal paperwork costs of preparing the annual certification. For these reasons as well, stakeholders should focus on using CSRIC V and the recently-convened Task Force on optimal PSAP architecture to develop the practices and standards that are achievable and make sense for different networks and services.

E. The Proposed Expansion of the Network Diversity and Monitoring Certification Rule Ignores Network Differences.

The proposed expansion of the existing certification requirement for network monitoring to all "Covered 911 Service Providers" fails to account for network configuration differences among providers. The existing standards for network monitoring certifications focus on "aggregation points" within a "911 Service Area" that were developed based on the structure of an ILEC wireline network. But the aggregation points are different in wireline and wireless networks. For example, an appropriate aggregation point in a wireline network could be at an edge router while in a wireless network, it could be at a physical meet point for a data circuit at the edge of the wireless network. And third party vendors, as well as over-the-top and device operating system providers may have differing aggregation points or no such points at all. Thus, expanding existing network monitoring certifications beyond service providers that offer 911 services to PSAPs would not work in practice. To improve network monitoring in the changing NG911 environment, stakeholders should focus their attention on developing industry standards that can account for service-specific distinctions.

The scope of the network monitoring certification would also be expanded to include alarming for network failures that would be "reasonably likely to result in a disruption of 911 service" within a 911 service area. That sounds like a laudable goal, but ignores practical complexities given the myriad of potential entities that would have to make such a certification. Unlike a wireline selective router, which is homed to the individual PSAPs that it serves, wireless networks have coverage areas not configured to adhere to county- or city-level jurisdictional boundaries. And geographic areas served by VoIP providers often are determined more by user behavior than by the providers' facilities. Thus, the impact of an outage or other service disruption cannot be readily tied to its impact on a particular wireline-based 911 service

area, and best practices that address differences between service provider networks are more appropriate than rules in this area.

F. Software and Database Performance Requirements Should Be Left to PSAPs.

The Commission should not impose the proposed software and database performance requirements (proposed Section 12.4(c)(4)) as part of an expanded certification regime because they infringe on purchasing decisions that should be left to PSAPs. The Commission has traditionally deferred these matters to arrangements between carriers and PSAPs. This makes sense because PSAPs' needs and resources, not regulatory fiat, have driven the routing, software and database standards that are in place. For example, wireless carriers have reliably delivered 911 calls to PSAP selective routers operated by wireline carriers via Signaling System 7 (SS7) and Centralized Automatic Message Accounting (CAMA) trunking connections for years through a system of coordination developed with the PSAPs. It would be counterproductive for the Commission to now require that both the wireline and wireless carriers using such architecture to certify to vague new "reliability" standards regarding geographic distribution and routing disconnected from the actual needs and requirements of particular PSAPs.

II. THE COMMISSION SHOULD TAKE A MORE MEASURED APPROACH TO ADDRESS 911 NETWORK RELIABILITY AND ACCOUNTABILITY.

The Commission can take appropriately targeted actions to address the *NPRM*'s stated concern about accountability in a multi-provider 911 and NG911 ecosystem. For example, the Commission should encourage public safety and industry stakeholders to develop and finalize

NG911 best practices in the soon-to-be-convened CSRIC V.[10] The Commission should convene workshops to assist in these efforts and to solicit collaborative input from state and local authorities, including the recently-convened Task Force on Optimal Public Safety Answering Point Architecture.[11] Finally, the Commission should encourage stakeholder efforts to finalize the standards for the NENA i3 architecture to support NG911 implementation. Those standards are designed to accommodate the entry of a range of competitive alternatives and service/network configurations for state and local governments and the service and equipment vendors that support them.

The Commission also could clarify that the agency will continue to hold a prime contractor directly providing service to a PSAP responsible for compliance with all Commission rules and certifications. The Commission could make clear that such responsibility exists regardless of what roles or responsibilities have been subcontracted to other parties. This entity may be an incumbent provider, integrator, or another entity directly responsible to the PSAP for routing and delivery of 911 calls.

Clarifying its rules in this straightforward manner would have two principal public safety benefits. First, this will enable new players to enter the 911 space. New players will bring more competition in this space, which leads to innovation and new and different products and services. 911 services increasingly benefit from the types of technological innovations that characterize commercial services and networks. This clarification will help state and local governments meet

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[10] *See FCC Intends to Recharter the Communications Security, Reliability and Interoperability Council for a Fifth Two-Year Term; Seeks Nominations by March 31, 2015 for Membership*, Public Notice, DA 15-203 (PSHSB rel. Feb. 12, 2015).

[11] *See* Public Notice, DA 14-1481 (PSHSB Rel. Oct. 10, 2014) (Task Force's duties include findings and recommendations on "[o]ptimal PSAP system and network configuration in terms of emergency communications efficiency, performance, and operations functionality….").

their needs by enabling service providers and other vendors to bring their products to market quickly and efficiently. Second, this action will ensure that the Commission and state authorities continue to have a responsible party to hold accountable for maintaining and improving the reliability of new and existing 911 networks.

III. THE PROPOSED RULES EXCEED THE SCOPE OF THE COMMISSION'S STATUTORY AUTHORITY.

Even aside from the sound public policy reasons to reject the proposed regulations in favor of a more measured approach, the Commission lacks statutory authority to adopt the proposed regulations for entry and exit of 911 services, maintenance of 911 center customer premises equipment, and creation of a new, mandatory 911 monitoring function. Each proposed regulation goes well beyond the Commission's authority over 911 service, and none of the statutes the Commission cites grants it such authority.

First, the Commission cites three statutes that address aspects of 911 service, which the Commission asserts give the Commission "a leadership role . . . in promoting the continued availability and reliability of 911 services nationwide."[12] None confers substantive authority on the Commission with respect to marketplace entry and exit, maintenance of 911 center CPE, or creating a 911 monitoring function. On the contrary, the 911 Act expressly states that "[n]othing in" it "shall be construed to authorize or require the Commission to impose obligations or costs on any person."[13] The NET 911 Act similarly states that "[n]othing in" it "shall be construed to

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[12] *NPRM* ¶ 76 (citing Wireless Communications and Public Safety Act of 1999, PL 106–81, 113 Stat 1286 (1999) ("911 Act"); New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. 110–283, 122 Stat 2620 (2008) ("NET 911 Act"); Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat 2751, § 106(g) (2010) ("CVAA")).

[13] 911 Act § 3(b) (limiting the Commission to "consult[ing] and cooperat[ing]" with state actors and providing "encourage[ment]" to those actors).

permit the Commission to issue regulations that require or impose a specific technology or technological standard."[14] Finally, the CVAA authorizes the Commission to promulgate regulations in order to "ensure[] access by individuals with disabilities to an Internet protocol-enabled emergency network."[15] Nowhere in the *NPRM* does the Commission even suggest, much less demonstrate, that the rules it proposes ensure such access by individuals with disabilities.

The Commission fares no better with its passing reliance on sections 201(b) and 214(d).[16] As an initial matter, as the Commission notes, these provisions only apply "[t]o the extent that 911 service providers are common carriers."[17] The Commission does not claim that these

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[14] NET 911 Act § 101 (adding 47 U.S.C. § 615a-1(e)(1)). Therefore, the Commission errs in pointing to the directive in § 615a-1(c)(1)(B) to "take into account technical" issues that are "specific to IP-enabled voice services" as a grant of substantive authority. *See NPRM* ¶ 76 n.144. Moreover, the Commission is supposed to take those technical issues into account in promulgating regulations that "ensure that IP-enabled voice service providers have the ability to exercise" the parity rights Congress granted. 47 U.S.C. § 615a-1(c)(1)(A). The regulations the Commission proposed in the *NPRM* have nothing to do with ensuring the exercise of those rights.

[15] CVAA § 106(g); *see also Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications Framework for Next Generation 911 Deployment*, Report and Order, 28 FCC Rcd 7556, ¶ 124 (2013) ("the CVAA appropriately cabins the Commission's authority to adopting reasonable regulations focused on ensuring that consumers with disabilities can reach emergency services."). The Commission does not rely on its authority to "promulgate regulations to implement the recommendations proposed by the Advisory Committee," *id.*, nor could it. The Advisory Committee found that capabilities and requirements for PSAPs' NG911 services and networks are a state and local government matter and that authority at the federal level concerning accessibility for those entities fell under the U.S. Department of Justice's Americans with Disabilities Act authority, not the CVAA. Emergency Access Advisory Committee, Report and Recommendations, §§ 4.1, 4.2 (2011), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-312161A1.pdf.

[16] *See NPRM* ¶ 77. The Commission also cites various other provisions relating to its spectrum management authority and that authorize it to "gather and disseminate information." *Id.* ¶ 77-78. Those provisions do not support the proposed substantive regulations on marketplace entry and exit, maintenance of 911 center CPE, or creating a 911 monitoring function.

[17] *Id.* ¶ 77.

proposed regulations would govern the activities of common carriers providing telecommunications services. For example, the offering and maintenance of CPE, which the proposed rules would regulate, is not a common carrier service.[18] Moreover, none of these sections grants the Commission authority over marketplace entry or exit — Congress provides authority to the Commission to interfere with these core commercial functions very rarely and very explicitly.[19]

Finally, the Commission asserts that it can adopt these rules pursuant to its ancillary authority, even where no "specific statutory authority" authorizes the rules.[20] But it is well-settled that the Commission must "tie its assertion of ancillary authority . . . to a[] 'statutorily mandated responsibility.'"[21] As shown above, none of the statutes the Commission cites provide the necessary statutory hook on which to hang the exercise of ancillary authority. Moreover, the D.C. Circuit recently reiterated that it will not "interpret ancillary authority as a proxy for omnibus powers limited only by the FCC's creativity in linking its regulatory actions to" a public policy "goal."[22]

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[18] *See, e.g., NARUC v. FCC*, 880 F.2d 422, 431 (D.C. Cir. 1989) (court refers to CPE as "equipment" rather than service); *Computer Communications Industry Ass'n v. FCC*. 693 F.2d 198 (D.C. Cir. 1982) (same); *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 13 FCC Rcd 8061, ¶ 45 (1998). When Congress intends to authorize the Commission to regulate CPE, it does so expressly. *See, e.g.*, 47 U.S.C. §§ 255(b) (accessibility), 302 (RF), 610(b) (HAC), 617(a) (accessibility).

[19] *See* 47 U.S.C. §§ 214(a), 253, 310, 332(c)(3), 573; *City of Dallas v. FCC*, 165 F.3d 341, 347 (5th Cir. 1999).

[20] *See NPRM* ¶ 80.

[21] *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010).

[22] *Echostar Satellite LLC v. FCC*, 704 F.3d 992, 999 (D.C. Cir. 2013).

CONCLUSION

The proposed rules will not achieve the *NPRM*'s stated objectives, exceed the Commission's authority and will create disruption and uncertainty for the entire industry.

Respectfully submitted,

/s/ Robert G. Morse

Kathleen M. Grillo
Of Counsel

Gregory M. Romano
Robert G. Morse
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 515-2400

Attorneys for Verizon

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