

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission’s Rules to	)	
Ensure Compatibility With Enhanced 911	)	
Emergency Calling Systems	)	
	)	CC Docket No. 94-102
Amendment of Parts 2 and 25 to Implement the	)	
Global Mobile Personal Communications by	)	
Satellite (GMPCS) Memorandum of	)	
Understanding and Arrangements; Petition of the	)	IB Docket No. 99-67
National Telecommunications and Information	)	
Administration to Amend Part 25 of the	)	
Commission’s Rules to Establish Emissions	)	
Limits for Mobile and Portable Earth Stations	)	
Operating in the 1610-1660.5 MHz Band	)	

**COMMENTS OF THE  
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (“TIA”) hereby submits comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> *Further Notice of Proposed Rulemaking*, FCC 02-326 (released Dec. 20, 2002) (“FNPRM”); Public Notice, DA 03-209 (released Jan. 27, 2003) (extending comment and reply comment filing deadlines).

## **I. INTRODUCTION**

TIA is the leading trade association representing the communications and information technology industry, with 1,000 member companies that manufacture or supply the products and services used in global communications. Among their numerous lines of business, TIA member companies design, produce and deploy terrestrial and satellite wireless network and terminal equipment (including telematics equipment) and multi-line telephone systems, areas in which the Federal Communications Commission (“Commission” or “FCC”) is reevaluating for the need to require compliance with its basic and enhanced 911 (“E911”) service rules. As a result, TIA has substantial interest in current and future Commission decisions related to the scope of communications services and devices that should be required to provide access to emergency services.

In the comments that follow, TIA urges the Commission to adopt a sense of extreme caution as it considers whether to extend E911 requirements to equipment manufacturers and to services not now contemplated by its rules. With current E911 implementation efforts continuing to prove time consuming and technically complex, TIA believes new Commission initiatives here would be premature and would divert scarce resources from the ongoing efforts of not only industry but the overburdened PSAPs as well.

TIA acknowledges that manufacturers play an important role in ensuring that E911 systems function properly and reliably. They seek to design and make available for purchase standards-based, interoperable equipment. However, while they are part of an end-to-end E911 system, manufacturers typically do not design the overall system nor exert control over its configuration. Rather, they design to service provider

specifications. Moreover, because manufacturers do not control the manner in which their equipment becomes deployed or the other legacy and new equipment also existing in the service provider network, the ultimate system configuration cannot be attributed to them. For this reason, TIA is not putting forth in these comments a notion that communications equipment manufacturers in any way seek to abandon their role in E911 implementation. Rather, TIA seeks to remind the Commission that a manufacturer alone does not have the independent ability to ensure that the E911 system in which its equipment is deployed complies fully with the Commission's rules. In addition to the legal constraints identified below to such an approach, therefore, very real practical obstacles make it impossible.

TIA believes that the lack of uniformity in state regulations and requirements for E911 systems presents a serious product design and development cost barrier for equipment manufacturers and is troubling to system operators, as well. A patchwork of system performance requirements threatens to increase equipment costs by fracturing production markets, destroying efficiencies as manufacturers seek to design products to meet varying state and local requirements. State coordination on system requirements thus is critical, and a Federal oversight role in some situations may deserve exploration.

## II. THE IMPLEMENTATION OF CURRENT E911 MANDATES SHOULD BE COMPLETED PRIOR TO THE IMPOSITION OF NEW ONES

The Commission's own independent consultant, the widely respected Dale Hatfield, noted in his report to the Commission late last year<sup>2</sup> that

Finally, during the course of my inquiry, I was exposed to a whole host of issues regarding the further evolution of wireless E911 services. These included such issues as adapting the systems to accommodate third generation (3G) systems and services, accepting emergency messages from devices other than ordinary voice handsets (e.g., PDAs with wireless connectivity), mass calling to cell phones in a particular area (sometimes popularly, but erroneously, referred to as "reverse E911"), and interfacing to Automatic Crash Notification ("ACN") systems and other telematic and intelligent highway systems.

The tradeoff here between faster rollout of Phase II wireless E911 services and accommodating specialized and new requirements is apparent. While I am convinced that this is an issue worth mentioning because of the potential impact on the rollout of wireless E911 services in the short term, I am not convinced any formal Commission action is necessary. However, on balance, *I do recommend that the Commission (a) avoid the addition of new requirements during this critical stage of the rollout, (b) encourage coalescence around standardized interfaces as discussed in Section 3.3.4, and (c) work with the industry, in conjunction with the system engineering entity recommended in Section 3.3.2, to prioritize the future evolution of wireline and wireless E911 in such a way that short term and long term priorities are properly balanced.*<sup>3</sup>

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<sup>2</sup> Dale N. Hatfield, A Report on Technical and Operations Issues Impacting the Provision of Wireless Enhanced E911 Services, Public Notice, DA 02-2666 ("Hatfield Report").

<sup>3</sup> Hatfield Report, at 40 [emphasis added]. TIA observes that the Hatfield Report, which, as explained above, clearly describes the enormous complexity of E911 implementation and urges the Commission to proceed cautiously and to not add new requirements or reflexively apply existing requirements to new and emerging services,

The collective experience of industry and the Commission during the implementation of E911 proves that achieving a nationwide wireline and wireless program is a technically, operationally and economically complex and costly undertaking involving many players at many levels.<sup>4</sup> TIA believes the Commission ought to move cautiously in exploring the extension of E911 requirements, particularly in a way that diverts resources from or otherwise threatens full implementation of current efforts, such as Phase II wireless E911.

TIA shares the view that now is not the time to introduce new variables to the industry and local public safety officials. While the Commission, local government entities and industry of course legitimately may explore the implications of new communications technologies and their substitutability for current ones, a rulemaking at this time is premature and will be more disruptive than productive.<sup>5</sup>

### **III. NEITHER THE 911 ACT NOR THE COMMUNICATIONS ACT AUTHORIZE THE COMMISSION TO IMPOSE E911 REGULATIONS ON EQUIPMENT MANUFACTURERS**

In its FNPRM, the Commission requests comment on the nature and extent of its authority to require manufacturers of various types of equipment, including telematics

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was released on October 15, 2002, just over two months before the Commission released this FNPRM. The aggressive and overreaching suggestions of the FNPRM, coming so closely on the heels of the Hatfield Report, makes one wonder if the Commission read the full recommendations of the Report.

<sup>4</sup> See, e.g., Hatfield Report at 18 (“As a preliminary matter, I believe it is also important to stress that the deployment of wireless E911 services in the United States is an extremely complex matter.” )

<sup>5</sup> See fn. 3, *infra*.

equipment and multi-line systems, to comply with the Commission's E911 rules.<sup>6</sup> In this regard, the FNPRM cites Sections 151 and 154 of the Communications Act<sup>7</sup> as potential sources of authority to regulate manufacturers.<sup>8</sup> However, neither the Wireless Communications and Public Safety Act of 1999<sup>9</sup> itself nor the Communications Act provides a valid jurisdictional basis for the direct imposition of E911 regulations on manufacturers and the manufacturing process.

Rather, the Commission's authority to adopt E911 regulations arises solely from its jurisdiction over carrier-provided services and other activities and entities that fall within the personal and subject matter jurisdiction of the Commission, as defined in the Communications Act and related statutory provisions. While the proper exercise of the Commission's legitimate authority in this area inevitably has an impact on manufacturers, it is important that the Commission recognize and carefully adhere to the limits of its jurisdiction in this and other areas, in order to ensure that the innovative process, which is the lifeblood of the telecommunications industry, is not constrained by regulatory burdens that Congress has not specifically authorized the Commission to impose.

**A. The 911 Act Itself Does Not Provide Authority for Direct Regulation of Telecom Manufacturers**

A review of the text and legislative history of the 911 Act makes clear that Congress did not intend to authorize the Commission or any other governmental entity to impose E911 regulatory requirements directly on manufacturers of equipment used in or in conjunction with wireline or wireless communications networks. The statutory

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<sup>6</sup> See FNPRM, ¶¶ 76, 78, 91.

<sup>7</sup> 47 U.S.C. §§ 151, 154.

<sup>8</sup> FNPRM, ¶¶ 79, 91.

language itself makes no reference whatsoever to the regulation of telecom equipment manufacturers. Indeed, the only reference to manufacturers or manufacturing in the statute is found in Section 3(b) of the 911 Act, which directs the Commission, in fulfilling its statutory obligation to “encourage and support efforts by states to deploy comprehensive end-to-end emergency communications infrastructure and programs,” to “consult and cooperate with,” among others, “the *motor vehicle* manufacturing industry.”<sup>10</sup> The statute also identifies “the telecommunications industry” as another of the private sector groups to be involved in the Commission’s consultative activities, and specifically states that “cellular and other wireless telecommunications *service providers*” are to be included, but makes no mention of telecom manufacturers.<sup>11</sup> Moreover, Section 3(b) makes clear that whether or not telecom manufacturers fall within the scope of the Commission’s outreach efforts, “[n]othing in this subsection shall be construed to authorize or require the Commission to impose obligations or costs on any person.”<sup>12</sup>

The Commission appears to acknowledge that the 911 Act provides no basis for directly regulating manufacturers or manufacturing activities. The FNPRM conspicuously fails to mention it as a potential source of jurisdiction to impose such regulation. Moreover, the legislative history of the 911 Act lends further support for the view that it cannot serve as a valid source of authority to directly regulate manufacturers. In this regard, the Congressional Budget Office Cost Estimate included in the Senate Report on the Wireless Communications Cable Safety Act of 1999 notes that the

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<sup>9</sup> Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1256 (“911 Act”).

<sup>10</sup> 911 Act, Section 3(b), [emphasis added].

<sup>11</sup> *Id.* [emphasis added].

legislation “would impose a new private sector mandate on *local phone companies* and *wireless carriers* that provide telephone exchange service . . . to provide subscriber identification information (including unlisted and unpublished information) to providers of 911 emergency services and to providers of certain emergency support services . . . .”<sup>13</sup> The Senate Report also emphasizes that “*the FCC’s authority over 911 service is limited to private carriers,*” with no mention made of manufacturers.<sup>14</sup>

**B. The Direct Imposition of E911 Regulations on Manufacturers Does Not Fall Within the Scope of the Commission’s Jurisdiction, Including Its Title I “Ancillary” Jurisdiction**

The FNPRM notes that, in other circumstances, the Commission “has previously used the authority granted by Sections 151 and 154 of the Act to regulate telecommunications equipment manufacturers,” suggesting that the Commission has the authority under these provisions to directly impose E911 regulatory requirements on manufacturers.<sup>15</sup> The one judicial decision cited in the FNPRM,<sup>16</sup> the D.C. Circuit’s ruling in the *CCIA* case, involved the Commission’s successful assertion of “ancillary” jurisdiction over the provision of customer premises equipment by regulated carriers. As the discussion below indicates,<sup>17</sup> the fact that the regulation upheld in *CCIA* involved

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<sup>12</sup> *Id.* Similarly, the other substantive provisions of the 911 Act by their terms do not impose any regulatory obligations, or authorize the imposition of such obligations, on manufacturers. *See* 911 Act, Sections 3(a), 4-5.

<sup>13</sup> Report of the Committee on Commerce, Science and Transportation on S.800, Wireless Communications and Public Safety Act of 1999, S. Rpt. 106-138 (Aug. 4, 1999)(“Senate Report”) at 3-4 [emphasis added].

<sup>14</sup> *Id.* at 4.

<sup>15</sup> FNPRM, ¶¶ 79,91.

<sup>16</sup> *See* FNPRM, ¶ 91, n.221, *citing Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 213 (D.C. Cir. 1982), *cert. denied Louisiana Public Service Commission v. FCC*, 461 U.S. 938 (1983) (“*CCIA*”).

<sup>17</sup> *See* discussion at 8-9, *infra*.

*carrier-provided* equipment is highly significant and critical to any analysis of whether and to what extent the doctrine of ancillary jurisdiction can be invoked in this instance to justify the imposition of E911 requirements on manufacturers.

Properly understood, the doctrine requires the existence of genuine jurisdiction over communications by wire or communications by radio, as set forth in Sections 1 and 2(a) of the Communications Act of 1934, as amended.<sup>18</sup> Ancillary jurisdiction is not a device that permits the Commission to reach beyond the personal and subject matter jurisdiction found in the statute. It is real, not penumbral, jurisdiction, although it is sometimes misunderstood to permit the assertion of jurisdiction over entities and activities that impinge upon or otherwise affect regulated enterprises or regulatory goals, *i.e.*, activities “in the neighborhood” of communications by wire or radio.

The general jurisdictional grant contained in Section 2(a) of the Communications Act provides the Commission subject matter and in personam jurisdiction over all interstate and foreign communication by wire and radio, and to all persons engaged within the United States in such communication or such transmission of energy by radio.<sup>19</sup> While the sweeping language of Section 2(a) suggests a broad jurisdictional mandate, and the definitions of “radio communication”<sup>20</sup> and “wire communication”<sup>21</sup> in Section 3 are potentially quite expansive, the Commission’s power is not unlimited.

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<sup>18</sup> 47 U.S.C. §§ 151,152(a).

<sup>19</sup> 47 U.S.C. § 152(a) (“The provisions of this act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio . . .”).

<sup>20</sup> 47 U.S.C. § 153(33) (“The term ‘radio communication’ or ‘communication by radio’ means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other

The focus of the Commission’s general subject matter jurisdiction under Title I clearly is on “transmission” by wire and/or radio, with personal jurisdiction extending to all persons engaged in such activities. As the Commission notes in its FNPRM, the definitions of a “wire communication” and “radio communication” include “all instrumentalities, facilities, apparatus, and services. . . incidental to such transmission.”<sup>22</sup> However, it is at best unclear whether this definitional language extends the scope of the Commission’s general jurisdiction to include manufacturers of equipment that can be used to generate, or to access, wire or radio communications, particularly where the manufacturer is not also engaged in the actual transmission or communication by wire or radio.

Moreover, even where the activity and entity in question falls within the scope of the Commission’s general jurisdictional grant under Section 2(a), the Commission’s authority under Title I is limited only to that which is “reasonably ancillary” to the effective performance of regulatory responsibilities specifically assigned to the Commission elsewhere in the Communications Act.<sup>23</sup> In essence, ancillary jurisdiction is a principle of limitation, which allows the Commission to regulate only activities and entities over which it has actual jurisdiction, in circumstances where specific statutory

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things, the receipt, forwarding, and delivery of communications) incidental to such transmission”).

<sup>21</sup> 47 U.S.C. § 153(52) (“The term ‘wire communication’ or ‘communication by wire’ means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission”).

<sup>22</sup> See FNPRM, ¶ 91, n.221, citing 47 U.S.C. §§ 153(33) and 153(52).

<sup>23</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 175-176, 178 (1968) (“*Southwestern Cable*”).

instructions are lacking, and then only to the extent necessary to enable the Commission to fulfill the responsibilities delegated by Congress in the governing statute.<sup>24</sup>

Accordingly, Commission rules that either exceed the agency's personal and/or subject matter jurisdiction under Section 152(a), or that are not sufficiently related to the fulfillment of Commission's specific regulatory responsibilities under Titles II or III of the Communications Act have been invalidated by the courts. In *GTE Service Corp. v. FCC*,<sup>25</sup> for example, several of the Commission's Computer Inquiry rules, which the Commission argued fell within the scope of its ancillary jurisdiction, were stricken by the Court, on the basis that they sought to address an activity ("data processing") that lay "beyond its charge" and was not adequately related to fulfillment of the Commission's legitimate regulatory responsibilities under Title II.<sup>26</sup>

More recently, the U.S. Court of Appeal for the District of Columbia Circuit struck down "video description" rules which the Commission had sought to justify on the basis of a combination of Sections 1, 2(a), 4(i), and 303(r) of the Communications Act, noting that the FCC's authority under Title I is "broad, but not without limits."<sup>27</sup> In reaching its decision, the court further noted that Congress had declined to authorize the Commission to adopt such rules in the Telecommunications Act of 1996, while directing

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<sup>24</sup> See e.g., *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 612 (D.C. Cir. 1976) ("*NARUC*") (noting that *Southwestern Cable* and other relevant case law establish that the Commission's pre-Cable Act jurisdiction over the cable industry "is really incidental to, and contingent upon, specifically delegated powers under the Act," so that "each and every assertion of jurisdiction must be independently justified as reasonably ancillary to the Commission's [Title III] power over broadcasting").

<sup>25</sup> 474 F.2d 724 (2<sup>nd</sup> Cir. 1973) ("*GTE Service Corp.*").

<sup>26</sup> *Id.* at 733-736.

<sup>27</sup> *Motion Picture Association of America, Inc. v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) ("*MPAA*").

the Commission to adopt rules on closed captioning.<sup>28</sup> The court also observed that Section 2(a) “does not, on its own, support the regulations.”<sup>29</sup>

In discussing the other provisions cited by the Commission (which are also cited in the FNPRM in this proceeding as potential bases for regulation of manufacturers), the Court of Appeals made clear that, as Chairman Powell observed, Section 4(i) “is not a stand-alone basis of authority.”<sup>30</sup> The court went on to cite with approval Chairman Powell’s further recognition that “Section 4(i)’s authority must be ‘reasonably ancillary’ to other express provisions” of the statute.<sup>31</sup> Similarly, the court emphasized that “[t]he FCC must act pursuant to *delegated authority* before any ‘public interest’ inquiry is made under Section 303(r).”<sup>32</sup>

In this instance, as in *MPAA*, it is evident that there is no statutory provision that specifically authorizes the Commission to impose E911 rules directly on manufacturers, and the legislative history of the 911 Act makes clear that while Congress had the opportunity to provide such authority, it declined to do so. In the absence of an express delegation of authority in the Communications Act which empowers it to take such action, the Commission should decline to impose direct regulation in this area on manufacturers.

To the extent that the Commission has authority to impose E911 requirements on wireless and wireline carriers, as well as any other wire and radio communications

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<sup>28</sup> *Id.* at 798.

<sup>29</sup> *Id.* at 806.

<sup>30</sup> *Id.*, citing *Implementation of Video Description of Video Programming, Report and Order*, 15 FCC Rcd 15230, 15276 (2000) (Statement of Commissioner Powell, dissenting).

<sup>31</sup> *Id.*

service providers and system operators that fall within the scope of the Commission's personal and subject matter jurisdiction under Section 2(a), equipment manufacturers clearly will be affected by whatever regulations may be applied to such entities.<sup>33</sup> However, in the absence of an express Congressional delegation of authority to directly regulate manufacturers, the Commission need not and indeed cannot impose such regulation, under the doctrine of ancillary jurisdiction or otherwise.

The Commission generally has recognized the limits of its jurisdiction, and has refrained from exercising direct regulatory authority over manufacturers, except where it has been explicitly authorized by Congress to do so. In the *CCIA* case cited in the FNPRM, for example, the D.C. Circuit approved Commission rules addressing the provision of CPE by regulated carriers, noting that “[i]nstead of regulating charges for CPE, the Commission has . . . exercised its ancillary jurisdiction to forbid carriers from offering CPE as part of a transmission service and to require AT&T to provide CPE only through a separate subsidiary.”<sup>34</sup> The court found that “[i]t was . . . reasonable for the Commission to exercise jurisdiction . . . over *carrier-provided* CPE to ensure that rates for carrier transmission services are not based upon costs associated with the provision of CPE,” and concluded that “the Commission’s exertion of jurisdiction over *carrier-*

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<sup>32</sup> *Id.* [emphasis in original]. As the court in *MPAA* went on to observe, “the FCC cannot act in the public interest if it does not otherwise have the authority to promulgate the regulations at issue.” *Id.*

<sup>33</sup> As the discussion below indicates, regulation of carriers or other communications providers and/or network operators may in appropriate circumstances include the imposition of technical requirements, applicable to equipment used in or connected to the provider’s network and/or service, which are necessary to the fulfillment of the statutory duties (*e.g.*, protection of the public switched telephone network, prevention of harmful RF interference) specifically assigned to the Commission by Congress.

<sup>34</sup> *CCIA*, *supra* n. 11, 693 F.2d at 211.

*provided* CPE was ‘reasonably ancillary’ under the *Southwestern Cable* standard.’<sup>35</sup>

Thus, in *CCIA*, the Commission’s authority was appropriately limited to the *provision* (not the manufacture) of CPE by *carriers*, and then only to the extent necessary to fulfill the Commission’s responsibilities under Title II with respect to the affected carriers’ provision of regulated services.

Similarly, the Part 68 regulatory regime,<sup>36</sup> which the FNPRM also cites as a precedent for Commission regulation of manufacturers,<sup>37</sup> was established as a vehicle for fulfilling the Commission’s regulatory responsibilities under Title II, by providing a mechanism that would both ensure that the regulated telephone network was protected from harms caused by the connection of terminal equipment and at the same time prevent regulated carriers from inhibiting the attachment of CPE provided by non-carriers that would *not* cause harm to the network.<sup>38</sup> In recognition of the limits of the Commission’s jurisdiction in this area, compliance with the Part 68 rules is required as a condition precedent to the *connection of terminal equipment to the public switched network*,<sup>39</sup> rather than as a precondition to the *manufacture* of such equipment. In fact, unregistered equipment was allowed to be connected to the network behind registered protective couplers under Part 68.

Additional equipment authorization requirements have been imposed under Part 15<sup>40</sup> and elsewhere in the FCC rules, in order to fulfill the Commission’s statutory duty under Title III of the Communications Act to ensure that equipment which emits RF

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<sup>35</sup> *Id.* at 213 [emphasis added].

<sup>36</sup> 47 C.F.R. §68.1 et seq.

<sup>37</sup> FNPRM, ¶ 79 n. 195, ¶ 91 n. 220.

<sup>38</sup> *See CCIA, supra* n. 11, 693 F.2d at 204, n. 14.

<sup>39</sup> *See* 47 C.F.R. § 68.201.

<sup>40</sup> 47 C.F.R. § 15.1 et seq.

radiation does not cause harmful interference to radio communications.<sup>41</sup> However, the Commission’s jurisdiction in this area includes an express statutory provision directing that regulations adopted by the Commission to prevent harmful interference “shall be applicable to the *manufacture*, import, sale, offer for sale, or shipment of such devices ... and to the use of such devices.”<sup>42</sup> In contrast, there is no comparable provision specifically requiring or authorizing the Commission to impose E911 regulatory requirements directly on telecom manufacturers or manufacturing.<sup>43</sup> Other examples of explicit Congressional authority to impose regulations directly applicable to manufacturers and/or the manufacturing process include the accessibility requirements

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<sup>41</sup> See 47 U.S.C. § 302(a).

<sup>42</sup> *Id.* [emphasis added]

<sup>43</sup> The FNPRM cites the “strongest signal” rule adopted by the Commission as an example of the use of Sections 151 and 154 of the Communications Act to “regulate telecommunications equipment manufacturers.” See *FNPRM*, ¶ 91, n.220, citing *Second Report and Order*, CC Docket No. 94-102, 14 FCC Rcd 10954 (1999) (*codified* at 47 C.F.R. § 22.921). However, the reference in Section 151 to “promoting safety of life and property” is part of the statutory description of the *purposes* of the Communications Act, rather than a source of personal and/or subject matter *jurisdiction* to directly regulate manufacturers in this area. See 47 U.S.C. § 151. Similarly, as the D.C. Court’s opinion in *MPAA* confirms, the “necessary and proper” clause contained in Section 154(i) “is *not* a stand-alone basis of authority.” See *MPAA*, *supra* n. 22, 309 F.3d at 806 [emphasis added].

Given the absence of any independent statutory authority for the direct imposition of E911 regulations on manufacturers, it is clear that the “strongest signal” rule can only be justified as an exercise of the Commission’s jurisdiction over cellular licensees, their licensed facilities and the services they provide, which the Commission has employed in this instance to adopt requirements applicable to mobile units manufactured after a specified date (*i.e.*, February 13, 2000) that are capable of operating in an analog mode to receive and transmit communications over Commission-licensed cellular networks. Under the Commission’s rules, these mobile units are not individually licensed, but are deemed to be operating under the authorization of the cellular system licensee providing service to the particular mobile unit. See 47 C.F.R. § 22.927. While the Commission has chosen to employ the equipment authorization process as a mechanism to implement the “strongest signal” requirement, (*see Second Report and Order, supra*, ¶ 88), it is ultimately the cellular licensee’s responsibility to ensure that mobile units receiving service through its system operate in compliance with the technical specifications and other requirements, including E911 requirements, imposed by the Commission.

imposed under Section 255 of the Communications Act,<sup>44</sup> the 1962 All Channel Receiver Act,<sup>45</sup> the 1990 Television Decoder Circuitry Act,<sup>46</sup> and the Parental Choice in Television Programming provisions of the Telecommunications Act of 1996 (the so-called “V-Chip” requirement).<sup>47</sup>

Collectively, these statutory provisions reflect a long-standing pattern of Congressional behavior, which serves to demonstrate that in areas where Congress intends to authorize the Commission to directly regulate manufacturers and the manufacturing process, it can and will make its intentions explicit. In light of these provisions, and given the absence of any comparable statutory language mandating or authorizing the direct imposition of E911 requirements on manufacturers, there is clearly no statutory basis for such regulation.

Moreover, to impose such regulations on manufacturers under these circumstances would not only exceed the Commission’s statutory authority, inevitably, it would invite additional unauthorized direct regulation of the telecom manufacturing industry and the innovation process which drives it, thereby imposing additional costs that could well have the unintended effect of reducing the competitiveness and

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<sup>44</sup> See 47 U.S.C. § 255(b) and (d). The Commission’s FNPRM cites the accessibility requirements imposed under Section 255 in requesting comment on the jurisdictional basis for imposing E911 rules on manufacturers. See FNPRM, ¶ 79, n. 197. However, it is clear that Section 255 does not provide authority for the wholesale exercise of direct jurisdiction over manufacturers in the area of E911. Indeed, as the discussion below indicates, Section 255 serves only to illustrate that when Congress wants to empower the Commission to impose regulations on manufacturers directly in a particular area, it has done so explicitly.

<sup>45</sup> Pub. L. No. 87-529, 76 Stat. 150 (codified at 47 U.S.C. §§ 303(s), 330(a)).

<sup>46</sup> Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

<sup>47</sup> Pub. L. No. 104-104, sec. 51, 110 Stat. 56, 139-42 (1996) (codified at 47 U.S.C. §§ 303(x), 330(c)).

technological dynamism of this critical sector of our economy, without offsetting benefits.<sup>48</sup>

#### IV. CONCLUSION

TIA member companies design, develop and manufacture communications equipment, including equipment used as part of systems that are or may be affected by the Commission's oversight authority. TIA therefore has a direct and substantial interest in the emergency services related activities of the Commission, including the subject matter of this E911 FNPRM. TIA requests that the Commission take into consideration the views expressed above, which support a cautious approach to extending the reach of its E911 rules.

Respectfully submitted,

**Telecommunications Industry Association**

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<sup>48</sup> As Chairman Powell has appropriately observed, in discussing the possible imposition of regulation on another highly-dynamic industry sector (*i.e.*, the Internet marketplace), “anyone advocating the extension or intrusion of regulation into such a vibrant market bears a heavy burden of proving that the ‘public’ will be harmed, absent doing so.” Remarks of Michael K. Powell, Commissioner, Federal Communications Commission, before the Federal Communications Bar Association (Chicago Chapter), Chicago, IL, at 7 (June 15, 1999).