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 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 610-1660.5 MHz Band	)	IB Docket No. 99-67

REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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SUMMARY

The record in this proceeding confirms Ad Hoc's view that the Commission lacks the statutory jurisdiction to impose E911 obligations on operators of multi-line telephone systems or to regulate issues of workplace safety. As described by a number of commenters, such entities are not subject to the Commission's Title II jurisdiction over telecommunications carriers or the Commission's Title III jurisdiction over radio licensees. Moreover, the Commission's ancillary jurisdiction is not an independent grant of FCC authority but only allows the Commission to regulate the activities of entities over which it already has another basis for jurisdiction. Therefore, the Commission cannot use ancillary jurisdiction as a basis for regulating the activities of MLTS operators. The federal agency charged with regulating the workplace safety issues associated with E911 for MLTS operators is OSHA, not the FCC.

Commenters suggesting that the public's desire or expectation that MLTS operators comply with E911 regulations gives the Commission the authority to regulate such entities offer a flawed legal analysis. The Commission must first have statutory jurisdiction over MLTS operators. Absent such jurisdiction, the Commission cannot consider what role the public's expectations should play in whether and how the FCC chooses to exercise that regulatory authority. In the instant case, the issue of the public's desires or expectations is not relevant because the Commission lacks the requisite jurisdiction.

Assuming, *arguendo,* that the Commission does decide—despite the record evidence to the contrary—that it does have jurisdiction over E911 operators, it should gather evidence regarding the costs that the various MLTS E911 proposals would impose on the nation's businesses. In addition, the Commission should inquire as to the actual public safety benefits that would come from the various proposals. In assessing the benefits, the Commission must consider non-E911 MLTS issues (*e.g.*, limitations on PSAP or emergency response capabilities) that significantly reduce the alleged public safety impact of various E911 proposals. Only after conducting a factually rigorous cost benefit analysis justifying the imposition of costs relative to their public benefit should the Commission conclude that additional regulation is in the public interest—again, assuming that the Commission has the requisite jurisdiction.

Finally, should the Commission conclude that it has the statutory authority to impose E911 regulations on MLTS operators, and that a rigorous cost/benefit analysis justifies the exercise of such authority, the Commission should adopt the *Consensus Proposal* as a reasonable regulatory regime that balances the interests of businesses and the public safety community. One of the aspects of the *Consensus Proposal* that is particularly in the public interest is its preemptive effect, which prevents multistate businesses from being subject to numerous, contradictory state E911 MLTS requirements.

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REPLY COMMENTS OF THE
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The Ad Hoc Telecommunications Users Committee ("Ad Hoc" or "the Committee") hereby replies to the comments filed in response to the Commission's December 20, 2002 *Further Notice of Proposed Rulemaking* ("*E911 FNPRM*") in the above-captioned proceeding.[1] As described in greater detail below, the record in this proceeding demonstrates that the Commission lacks sufficient statutory authority to

[1] *Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326 (rel. December 20, 2002) *("E911 FNPRM")*. Pursuant to the Commission's Public Notice, DA 03-623 (rel. Mar. 5, 2003), these Reply Comments are being filed on March 25, 2003 rather than the original

impose regulations upon the operators of Multi-Line Telephone Systems ("MLTS"). In the event that the Commission disregards its jurisdictional limitations and nevertheless exercises jurisdiction over MLTS operators, it should ensure that such regulations provide a public safety benefit that outweighs the costs imposed upon the entities regulated by the Commission. Finally, should it decide to regulate MLTS operators, the FCC should preempt any additional or inconsistent state E911 regulations to facilitate nationwide compliance with the Commission's standards and minimize the costs imposed on those entities subject to such regulations.

I. THE RECORD CONFIRMS AD HOC'S VIEW THAT THE COMMISSION LACKS JURISDICTION TO IMPOSE REGULATIONS ON MLTS OPERATORS

As Ad Hoc stated in its opening round comments, the Commission lacks the requisite statutory jurisdiction to impose E911 regulations on employer operators of multi-line telephone systems. In the case of multi-line telephone systems operated by businesses and places of employment, the primary rationale for requiring such entities to transmit call back or location information to Public Safety Answering Points ("PSAPs") is to enhance the safety of workplaces. The determination of whether and how to regulate workplace safety, however, does not fall within the express statutory jurisdiction of the Commission. Rather only those federal and state agencies expressly designated by Congress (or, consistent with federal legislation, by state legislatures) to promulgate workplace safety regulations may do so.

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deadline for reply comments of March 11, 2003 that was listed in the *E911 FNPRM*.

A. Several Parties Have Raised Objections Regarding the Commission's Legal Authority to Impose E911 Regulations on Non-Wireless Services or Entities That Are Not Common Carriers.

Ad Hoc strongly supports the positions of other commenters that dispute the sufficiency of the Commission's jurisdiction to impose E911 regulations on non-Commission licensees that do not provide common carrier or telecommunications services when such jurisdiction is based upon a vague combination of Sections 1 and 4(i) of the Communications Act,[2] and the Wireless Communications and Public Safety Act of 1999 (the "911 Act").[3] In its comments, the Telecommunications Industry Association ("TIA") succinctly summarized the appropriate scope of the Commission's jurisdiction by stating, "[T]he 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."[4] TIA further correctly analyzed the limitations on the Commission's ancillary jurisdiction:

> Properly understood, the doctrine [of ancillary jurisdiction] 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. 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,

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[2] 47 U.S.C. §§ 151 and 154.

[3] *See* Comments of the Telecommunications Industry Association (Feb. 19, 2003) ("TIA Comments") at 5-15 (FCC has no jurisdiction over equipment manufacturers or the manufacturing process); Comments of Intrado Inc. (Feb. 19, 2003) ("Intrado Comments") at 10-11 (without legislative action, neither 911 Act nor Communications Act provide jurisdiction over [PBX] manufacturers or the manufacturing process); Comments of ATX Technologies, Inc., (Feb. 19, 2003) ("ATX Comments") at 19-26 (no jurisdiction over telematics); Comments of the Intelligent Transportation Society of America (Feb. 19, 2003) ("ITS America Comments") at 12 (911 Act and Communications Act grant Commission jurisdiction only over "telecommunications" and "common carriers").

[4] TIA Comments at 6.

> 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.[5]

Against this background, the record is clear that the Communications Act and the E911 Act nowhere grant the Commission personal jurisdiction over the owners or operators of MLTS; nor do they grant the Commission subject matter jurisdiction over workplace safety issues. Furthermore, the nation's employers do not fall within the Commission's Title II or Title III jurisdiction which allow the Commission to regulate common carriers and operators of radio facilities, respectively. Indeed, in the *E911 FNPRM*, the Commission relies exclusively on the general jurisdictional provisions found in Sections 1 and 4(i) of the Communications Act as the potential basis for its legal authority to impose regulations on MLTS.[6]

Section 1 and 4(i) do not support the sweeping expansion of the Commission's personal and subject matter jurisdiction that would occur were it to regulate MLTS operators or workplace safety issues. As Ad Hoc and at least one other commenter have noted, the Commission's general jurisdiction under Section 1 and 4(i) is insufficient to confer specific personal and subject matter jurisdiction not granted elsewhere in the Communications Act or other related legislation.[7] Further, subject matter jurisdiction

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[5] *Id.* at 9.

[6] *E911 FNPRM*, ¶ 91.

[7] TIA Comments at 11. TIA aptly cites a recent decision of the United States Court of Appeals for the District of Columbia Circuit in which the court rejected certain FCC rules based upon, *inter alia,* Sections 1, 2(a), and 4(i) of the Communications Act, holding that the FCC's authority under Title I is "broad but not without limits." *Motion Picture Ass'n of Am., Inc v. FCC,* 309 F.3d 796, 804 (D.C. Cir. 2002) ("MPAA"). The holding is directly apposite to the exercise of jurisdiction over MLTS operators and workplace safety issues where the FCC enjoys no independent statutory basis authorizing the exercise of

over workplace safety issues and personal jurisdiction over American employers has been expressly granted to another administrative agency, the Occupational Safety and Health Administration, not to the Commission.

Several public safety organizations have urged the Commission to promulgate and impose E911 regulations upon MLTS.[8] Notably, none of these commenters has provided a legal basis upon which the Commission could promulgate regulations over MTLS operators or workplace safety issues consistent with the FCC's statutory jurisdiction.[9] Ad Hoc supports the overall and important objective of these organizations to enhance public safety. This laudable objective, however, cannot be the sole basis upon which the Commission infers jurisdiction in the absence of explicit statutory authority. As Ad Hoc noted in its original comments, the Supreme Court has

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such jurisdiction other than that found in the aforementioned general provisions of Title I.

[8] Comments of the Association of Public-Safety Communications Officials-International, Inc. (Feb. 18, 2003) ("APCO Comments") at 9; Comments of National Emergency Number Association ("NENA") and the National Association of State Nine One One Administrators ("NASNA") (Feb. 19, 2003) ("NENA and NASNA Comments") at 11-13; Comments of Colorado 9-1-1 Advisory Task Force (Feb. 18, 2003) ("Colorado 9-1-1 Task Force Comments") at 6; Comments of the Boulder Regional Emergency Telephone Service Authority (Feb. 18, 2003) ("BRETSA Comments") at 8; Comments of the Washington State Enhanced 911 Program on Further Notice of Proposed Rulemaking (Feb. 18, 2003) ("Washington E911 Program Comments") at 8.

[9] For example, APCO asserts that "unless the Commission moves forward to require multi-line systems to provide fundamental emergency response information, there will be no progress." APCO Comments at 9. This questionable conclusion, even if true, clearly cannot substitute for jurisdiction granted by a legislative authority. Similarly, the Colorado 9-1-1 Task Force, without explanation or reference to a single statutory provision, concludes, "The FCC has jurisdiction to require equipment manufacturers to implement full E9-1-1 capability and to require, by a specific date, MLTS operators to meet the same E9-1-1 requirements as wireline and wireless phones." Colorado 9-1-1 Task Force Comments at 6. In discussing the legal authority of the FCC's jurisdiction over MLTS, NENA and NASNA note that certain industry participants in the E911 Consensus Group "*initially* were skeptical of the FCC's authority in a matter that involved workplace safety—suggesting that federal and state OSHA laws should prevail." NENA and NASNA Comments at 12 (emphasis added). At least one of those "industry participants," as evidenced by Ad Hoc's Comments in this proceeding, *continues* to question the existence of FCC jurisdiction over MLTS operators and workplace safety issues. Yet knowing Ad Hoc's position on this issue since 1997, NENA and NASNA fail to provide a single argument that either: (i) disputes the questions raised by Ad Hoc regarding the Commission's jurisdiction and the existence of separate regulatory regimes designed to regulate workplace safety; or (ii) establishes an independent

unambiguously rejected administrative agency action when justified upon the rationale currently urged by those public safety organizations that have commented in this proceeding.[10]

B. No Commenter Has Made a Colorable Case That the 911 Act Expanded the Commission's Jurisdiction to Permit the Regulation of MLTS Operators or Workplace Safety Issues

Some commenters argue that the 911 Act grants the FCC expansive jurisdiction over all entities and services affected by E911. For example, NENA expressed its belief that "the [911 Act] is both a statutory command and a policy framework for much of the inquiry in these proceedings."[11] The 911 Act provides no support—let alone a statutory command—for NENA's stated belief, and it falls well short of answering the preliminary inquiry currently before the Commission of whether the FCC has any legal authority to regulate MLTS operators or workplace safety issues.[12] APCO suggests that, in order to

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statutory basis upon which the FCC's jurisdiction over MLTS is proper.

[10] In *FDA v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 161 (2000), the Court stated: "no matter how 'important, conspicuous, and controversial' the issue … an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress." For further analysis of this opinion and application to the current rulemaking, *see* Ad Hoc Comments at 7.

[11] NENA and NASNA Comments at 2.

[12] As apparent support for its contention that the 911 Act is a statutory command and policy framework for much of the inquiry in these proceedings, NENA excerpts Section 3(a) of the 911 Act, which orders the Commission to designate 9-1-1 as the "universal emergency telephone number within the United States" and to use "appropriate transition periods for areas in which 9-1-1 is not in use... ." *Id*. From this provision, NENA asserts that "[T]ransitions are appropriate to bring *previously excluded* or *new services* within the rules." (emphasis added). *Id.* This assertion has no basis or support in the explicit language or legislative history of the 911 Act. *See* 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) at 1 ("This legislation promotes public safety by making 9-1-1 the universal emergency assistance number, by furthering deployment of *wireless* 9-1-1 capabilities and related functions, and by encouraging construction and operation of seamless, ubiquitous, and reliable networks for *wireless* services") (emphasis added). The Congressional mandate to establish 9-1-1 as the universal emergency telephone number cannot reasonably be construed to support the further action that NENA proposes be taken by the FCC to expand regulations to "previously excluded" or "new services," and the FCC should not attempt to make such a faulty inference.

demonstrate "fidelity" to the policy articulated in the 911 Act, the Commission must clearly establish that those services offering a "reasonable expectation" that they will connect to emergency services must provide that access.[13]

The 911 Act provides the Commission with far less authority to act than is suggested by the preceding commenters. Excepting the statutory directive to establish 9-1-1 as the universal emergency telephone number in the United States,[14] the 9-1-1 Act limits the Commission's authority to "encourage[ment] and support [of] efforts to deploy comprehensive, end-to-end emergency communications infrastructure and programs … including seamless, ubiquitous, reliable *wireless* telecommunications networks and enhanced *wireless* 9-1-1 service" through "consult[ation] and cooperat[ion] with State and local officials responsible for emergency services and public safety… ."[15] Nothing in the 911 Act supports the proposition that Congress explicitly or implicitly authorized the FCC to impose E911 regulations of any kind on wireline services or equipment, let alone to impose them upon MLTS operators or to regulate issues of workplace safety. Indeed, with the exception of the advisory role described in Section 3(b),[16] the Act specifically states "nothing in this subsection [3(b)] shall be construed to authorize or require the Commission to impose obligations or costs on any person."[17] Contrary to those commenters that cite the 911 Act as a

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[13] APCO Comments at 5.

[14] 47 U.S.C. § 251(e)(3). Moreover, given the Commission's plenary authority over numbering resources within the United States pursuant to Section 251(e)(1) of the Communications Act, it is unclear whether this additional jurisdictional grant is even necessary.

[15] 47 U.S.C. § 615 (emphasis added).

[16] *Id.*

[17] *Id.* *See* Letter from FCC Chairman Michael K. Powell to Sen. Ernest F. Hollings (Mar. 4, 2003) at 2

source of expanded Commission authority, the 911 Act provides the Commission with no additional jurisdiction.[18] Had Congress intended for the Commission's jurisdiction to expand to MLTS operators and workplace safety issues, it would have expressly granted the FCC such authority when it passed the 911 Act. It did not do so.

C. Contrary to the Suggestion of a Few Commenters, a User's "Reasonable Expectation" of Access to Emergency Services Does Not Justify Commission Regulation of MLTS Operators or Workplace Safety Issues in the Absence of Legislatively Conferred Jurisdiction

In the *E911 FNPRM,* the Commission requested comment on the criteria that the FCC should use in analyzing whether a particular class of providers should be required to comply with the basic and enhanced 911 requirements.[19] Among the criteria listed was whether a customer using a particular service or device has a "reasonable expectation" of access to 911 and E911 services.[20] It is important to clarify in light of the position taken by several commenters in this proceeding, that the criteria listed—including that regarding users' reasonable expectations—are not legal standards for establishing the Commission's jurisdiction over particular services, persons, or subject matter. Rather, they are criteria promulgated by the Commission to determine the desirability of exercising jurisdiction, but only *after* such jurisdiction has been properly conveyed by a duly constituted legislative authority.

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n.1 (stating that Section 3(b) prohibits the Commission from imposing obligations or costs on any person).

[18] *See* TIA Comments at 7.

[19] E911 FNPRM at ¶ 12.

[20] *Id.* at ¶ 13.

In its comments, NENA attempts to reverse the order of this determination by stating that "[a] guiding principle should be: If a device creates a reasonable expectation that the user can reach emergency services, the question must be *how* to provide the assistance, not *whether* to do so."[21] Ad Hoc strongly disagrees with this legally unsupported statement. Only after a determination of whether the Commission is legally authorized to promulgate regulations over a particular person or subject matter should it then apply the criteria listed in the *E911 FNPRM* to further determine whether the exercise of its jurisdiction is worthwhile.

In its comments, APCO adopts the same faulty logic, urging the Commission to act in an unspecified manner with regard to MLTS so as to avoid further delay because "APCO believes that multi-line systems fit within the parameters of those devices where there is a reasonable expectation that emergency response is available."[22] Essentially, APCO urges the Commission to take action for action's sake, going so far as to suggest that "the Commission should eliminate its initial examination of whether the service is technically and operationally feasible to provide enhanced 911." [23] Given the absurdity of promulgating regulations simply for the purpose of avoiding future delay in promulgating regulations and without regard to whether compliance with those regulations is even feasible, the Commission should resist APCO's entreaties to such unauthorized and hasty regulatory activity.

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[21] NENA and NASNA Comments at 2.

[22] APCO Comments at 10

[23] APCO Comments at 4. *See also id.* at 9-10 ("APCO believes that unless the Commission moves forward to require multi-line systems to provide fundamental emergency response information, there will be no progress. … Unless the Commission acts to move the matter forward, delay will pervade.").

II. THE COMMISSION SHOULD SUPPLEMENT THE RECORD IN THIS PROCEEDING WITH AN APPROPRIATE COST/BENEFIT ANALYSIS OF ANY PROPOSED REGULATIONS FOR THE COMPATIBILITY OF MULTI-LINE TELEPHONE SYSTEM EQUIPMENT OR NETWORK CAPABILITIES WITH E911 SERVICES

In the event that the Commission determines that it has adequate jurisdiction to impose regulations upon operators of multi-line telephone systems, it must undertake a cost/benefit analysis to determine whether the costs associated with complying with any Commission regulations are reasonable.[24] At this juncture, the current record does not contain adequate information about the actual costs that the Commission's initial list of capability requirements[25] and those of many commenters would impose upon the purchasers/operators of multi-line telephone systems, and, ultimately, on the economy. To that end, Ad Hoc agrees with the comments of the United Telecom Council urging the Commission to "closely examine" the costs associated with the implementation of any E911 requirements on MLTS.[26]

Several commenters have urged the Commission to impose regulations without any regard for or explanation of the cost of such regulations to manufacturers or end-users. For example, the Colorado 911 Task Force urges the Commission to set forth minimum federal requirements that "require equipment manufacturers to implement full E9-1-1 capability and require, by a specific date, MLTS operators to meet the same E9-1-1 requirements as wireline and wireless phones."[27] Curiously, the Task Force addresses the issue of cost by stating that implementing MLTS systems can be done in

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[24] Section 1 of the Communications Act requires that the Commission regulate wire and radio communication so as to make available "adequate facilities at reasonable charges." 47 U.S.C. § 151.

[25] *E911 FNPRM*, ¶ 83.

[26] Comments of United Telecom Council (Feb. 19, 2003) ("UTC Comments") at 3.

conjunction with "full telecommunications resource management" and will, therefore, not be considered "a stand alone cost."[28] As the representative organization of some of this country's largest users of telecom services and purchasers of telecommunications equipment, Ad Hoc fails to see any value in the distinction made by the Colorado Task Force. Costs are costs. They will be assumed by the end-users who are required to purchase more expensive MLTS equipment and comply with any operational directives from the FCC. Prior to implementing any such regulations, the Commission should, at a minimum, determine the amount of such costs and consider ways to reduce them.

The Boulder Regional Emergency Telephone Service Authority ("BRETSA") has proposed requiring all carriers, service providers, and users for MLTS to undertake annual testing and verification of their ANI/ALI databases and semi-annual testing of their emergency call processing systems. These entities would be required to make informational filings at the Commission that certify the completion of these tests.[29] Again, BRETSA makes no estimate and expresses no concern regarding the costs imposed upon users to undertake these tests and those imposed upon the Commission to establish the organization required to review, accept and audit such filings.

The Washington State Enhanced 911 Program further urges the Commission to assure that all MLTS systems sold have a basic set of capabilities that support E911 interconnection.[30] Similarly, APCO urges the Commission to place proponents and

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[27] Colorado 9-1-1 Task Force Comments at 6.

[28] *Id.*

[29] BRETSA Comments at 8.

[30] Washington E911 Program Comments at 7.

developers of services on "full notice" that compliance with E911 must be a "fundamental element" of any service.[31]

In each of the aforementioned proposals, significant costs could be imposed, yet the record is bereft of any estimate as to what these costs might be. Prior to promulgating any regulations, or adopting any equipment or network standards, the Commission should, therefore, further develop the record in this proceeding by seeking comments on the actual costs that any proposed regulations or standards would impose. The Commission should then conduct an appropriate analysis to determine whether the imposition of such costs would confer a commensurate benefit of increased access to E911 and overall enhancement of public safety.

A significant component of this cost/benefit analysis must include an assessment of the actual E911 capabilities of the PSAPs and emergency response agencies (*i.e.,* police, fire, rescue) in numerous local jurisdictions that would receive calls requesting emergency assistance. If an insufficient number of PSAPs are able to receive and process ANI/ALI from multi-line telephone systems, or there are reasons unrelated to E-911 why police, fire, and rescue personnel cannot react to a distress call in a timely fashion (*e.g.,* lack of people or equipment), a nationwide standard imposing a requirement that equipment be capable of transmitting such information would not be justified.

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[31] APCO Comments at 4.

III. IF THE FCC PROMULGATES STANDARDS FOR THE TYPE OF INFORMATION MLTS OPERATORS MUST TRANSMIT, THE COMMISSION SHOULD ADOPT THE E911 CONSENSUS GROUP PROPOSAL AND PREEMPT ALL STATE REGULATIONS ADDRESSING WORKPLACE REQUIREMENTS FOR THE TRANSMISSION OF E911 INFORMATION

If the Commission were to conclude that it has the jurisdiction to impose E911 MLTS requirements on operators of MLTS and chooses to exercise such jurisdiction, Ad Hoc, as a member of the group that jointly developed the *Consensus Proposal,* supports the implementation of the standards set forth therein.[32] The *Consensus Proposal* reflects a reasoned compromise regarding public safety considerations and the various types of information that different types of users of multi-line telephone systems can reasonably be expected to transmit to PSAPs.[33]

In particular, the *Consensus Proposal's* standard that a business be required to transmit a single ANI/ALI for each location with a single street address of no greater than 40,000 square feet or, in the case of any location with a single street address that is greater than 40,000 square feet in total, a unique ANI/ALI for each 40,000 square feet of space, strikes an appropriate compromise between the needs of emergency services personnel to have adequate information to locate an emergency site with the needs of businesses to maximize flexibility to arrange and rearrange personnel behind their multi-line telephone systems and minimize the costs associated with regularly updating ANI/ALI databases.

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[32] *E911 FNPRM*, ¶ 90. Ad Hoc's position that the Commission lacks jurisdiction to regulate workplace safety issues, *see supra* Section I, remains unchanged. Although Ad Hoc considers the exercise of such jurisdiction by the Commission to be ill-advised, in the event that the Commission attempts to exercise such jurisdiction, the *Consensus Proposal* provides a more balanced consideration of the many interests that would be affected by E911 MLTS regulations than the other E911 proposals currently before the Commission.

[33] *Consensus Proposal* at 2-4.

Furthermore, in the event that the affected location had an adequate and alternative method of signaling and responding to emergencies, the *Consensus Proposal* would waive the aforementioned signaling requirement. The determination of what constitutes an adequate and alternative method of signaling would be determined by an appropriate workplace safety authority. This important exception to the default 40,000 square feet ANI/ALI requirement would ensure that businesses that have adopted alternative, but effective methods of signaling emergency response personnel would not be burdened with additional and unnecessary responsibilities. The involvement of appropriate workplace safety authorities to determine whether the alternative system is sufficient to opt out of the agreed upon ANI/ALI default would further ensure that the safety of employees at the workplace and the effectiveness of emergency services personnel were not compromised.

NENA, which originally participated in the development of the *Consensus Proposal*, has urged against adoption of the *Consensus Proposal*, stating that is out of date.[34] Ad Hoc disagrees that the *Consensus Proposal* lacks currency. In the absence of any record evidence to support NENA's assertion, Ad Hoc urges the Commission to judge the *Consensus Proposal* on its merits, without regard to its date of submission.

Finally, the *Consensus Proposal* would require preemption of any inconsistent state or local regulations addressing E911 issues.[35] Preemption is a key feature of the *Consensus Proposal* because it allows equipment manufacturers, businesses, and other locations affected by the E911 requirements to comply with a single, nationwide

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[34] NENA Comments at 11.

[35] *Consensus Proposal* at 5, § 2.

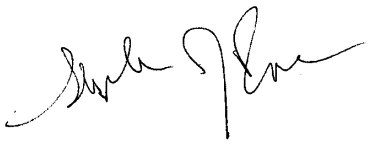
standard. The single standard will minimize the costs imposed on entities that might have to comply with multiple state and local standards, which could be widely different, and, in some cases, inconsistent with one another. A single standard will also provide PSAPs and emergency services personnel across the country with a predictable set of information each time they receive a call for emergency services. As the Commission has previously stated, the Commission has authority to preempt state regulation when such regulation thwarts or impedes a federal policy over which the FCC has jurisdiction.[36] In this case, the important objective of establishing a nationwide emergency telecommunications infrastructure supports such preemption—assuming, of course, the Commission has adequate jurisdiction.

[36] *See Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Notice of Proposed Rulemaking, 9 FCC Rcd 6171, 6181 at ¶ 59 (rel. Oct. 9, 1995), citing, *inter alia, Louisiana Public Service Commission v. FCC,* 476 U.S. 355, 375 n.4 (1986).

IV. CONCLUSION

The record in this proceeding indicates that the Commission lacks jurisdiction to impose E911 obligations on MLTS owners and operators. Should the Commission unwisely ignore this jurisdictional bar to regulating such entities, it should, at minimum, gather evidence on the costs and benefits of such regulation, and conduct a cost benefit analysis prior to imposing regulatory obligations. Finally, if the Commission determines that the benefits of regulating MLTS owners and operators outweigh its costs, the Commission should institute the *Consensus Proposal*.

Respectfully submitted,



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