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 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 1610-1660.5 MHz Band	)	IB Docket No. 99-67

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile," formerly VoiceStream Wireless Corporation) fully agrees that the Commission should remain attentive to the evolution of mobile voice services and, when appropriate, evaluate whether developments warrant a change in the scope of the Commission's Enhanced 911 ("E911") rules.[1] With the *Further Notice of Proposed Rulemaking*[2] issued last December, the Commission has begun to inform itself more fully about a variety of existing voice services that are not presently covered by the

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[1] 47 C.F.R. § 20.18.

[2] *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Further Notice of Proposed Rulemaking, FCC 02-326, CC Docket No. 94-102 (rel. Dec. 20, 2002) ("*Further Notice*").

Commission's rules. In addition, it has turned its eye toward emerging voice services and devices, which are still in their infancy.

In response to the comments filed on February 19, T-Mobile addresses three issues here: the importance and legal necessity of technical feasibility as a criterion for determining whether and how a particular voice service should be subject to the basic and enhanced E911 obligations; the complexities that arise when consumers can, with a simple change of software, modify data devices to provide voice capabilities; and the lack of any sound basis for excluding MSS operators from the same E911 obligations imposed on other CMRS operators.

One theme in the comments rises clear above the others: the Commission must proceed cautiously in this area. The public safety community, carriers, equipment vendors, and, indeed, the Commission itself must successfully complete implementation of Phase I and Phase II for existing services before the Commission reaches farther afield.[3] Furthermore, this was the conclusion of the Commission's independent expert, Dale Hatfield, who expressly cautioned the Commission to "avoid the addition of new requirements during this critical stage of the rollout."[4] With the Commission's recent announcement of a new "Enhanced 911 Coordination Initiative,"[5] T-Mobile is hopeful

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[3] *See, e.g.,* Comments of Motorola at 1 (arguing that the Commission should not consider new requirements "at a time when uncertainty and confusion still prevail with deploying the current set of requirements"); Comments of Nextel at i (arguing that the Commission "must first address current problems"); Comments of the Telecommunications Industry Association at 2 (stating that, "[w]ith current E911 implementation efforts continuing to prove time consuming and technically complex, TIA believes new Commission initiatives here would be premature"; Comments of Intrado at 3 (expressing concern that this rulemaking not "be used to inject undue delay or otherwise impede implementation of current rules").

[4] Dale N. Hatfield, *Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced Services*, WT Docket No. 02-46, at 40 (rel. Oct. 15, 2002) ("*Hatfield Report*").

[5] *FCC to Launch E911 Coordination Initiative*, News Release (March 5, 2003).

that the relevant stakeholders will maintain their attention and energies directed toward current implementation efforts.

I. Application of the E911 Rules Regardless of Technical Feasibility Would Be Arbitrary and Capricious

Most commenters support retention of the general criteria previously used by the Commission in determining whether and how a service should be required to comply with the basic and enhanced 911 rules. The Association of Public-Safety Communications Officials-International ("APCO"), however, argues that the technical feasibility of implementing E911 for a particular service should be disregarded.[6]

Such a suggestion, if adopted, would be contrary to law. The Commission cannot impose technologically or economically infeasible requirements without Congress enacting a specific, technology-forcing statute.[7] In this case, Congress has enacted no such statute requiring entities to meet the E911 benchmarks set by the Commission regardless of technical or economic feasibility. Instead, the Commission has relied principally on its general regulatory authority under section 303(r) of the Communications Act in adopting E911 rules. Needless to say, Congress' basic grant of

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6 *See* Comments of the Association of Public-Safety Communications Officials-International, Inc. at 4 ("APCO Comments") ("The Commission should eliminate its initial examination of whether the service is technically and operationally feasible to provide enhanced 911. Instead, the hallmark of any analysis should be whether its customers reasonably expect access to 911 service.").

7 *Compare Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1293-1301 (9th Cir. 1977) (reversing and remanding EPA Clean Air Act regulations because "the EPA cannot require … technology that is technologically and economically infeasible") *with Edison Electric Institute, et al. v. EPA*, 996 F.2d 326, 335-336 (D.C. Cir. 1993) (upholding EPA Resource Conservation and Recovery Act regulations "even though it may have been impossible" for companies to comply, where Congress spoke directly to the precise question at issue in "a highly prescriptive, technology-forcing statute" intended to be "draconian").

regulatory power in 1934 did not mandate the adoption of E911.[8] Thus, any assertion that the Commission can enforce its E911 benchmarks regardless of technological or economic infeasibility would not survive judicial review.

Such a suggestion would also be contrary to sound public policy. Technical feasibility alone may not be determinative of whether E911 obligations should apply to a particular product or service, but an understanding of the capabilities and limitations of a technology surely would assist the Commission in making a more reasoned regulatory judgments. Indeed, the Commission has the statutory responsibility to "encourage the larger and more effective use of radio in the public interest,"[9] as well as to foster "the provision of new technologies and services to the public."[10] The technical feasibility of regulatory mandates is clearly relevant to these charges, and failure to consider technical feasibility would be arbitrary and capricious.[11]

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8 In the *Fourth Memorandum Opinion & Order* in this proceeding, the Commission again cited its authority under section 303(r), and asserted that Congress had ratified the Commission's E911 decisions by enacting the 1999 Wireless Communications and Public Safety Act. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, 17445 (¶ 6) (2000) ("*Fourth Memorandum Opinion & Order*"). The Wireless Communications and Public Safety Act, however, merely directs the FCC to "encourage and support" E911 development. 47 U.S.C. § 615. Moreover, in that Act, Congress expressly disclaimed any intent to authorize the Commission to adopt a technology-forcing regulation, stating that "[n]othing in this subsection shall be construed to authorize or require the Commission to impose obligations or costs on any person." Id.

9 47 U.S.C. § 303(g).

10 47 C.F.R. § 157(a).

11 *Motor Vehicle Manufacturers Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem.").

II. The Commission Should Not Extend E911 Rules to Subscriber-Initiated Applications Running on Data Devices

The Commission, most appropriately, has limited the application of E911 to services providing real-time, two–way *voice* capabilities,[12] in part because consumers do not expect to be able to reach 911 over anything but a public wireline or wireless phone. The evolution of data devices (such as laptops or PDAs), however, is allowing users to run a variety of applications simply by selecting different software.

T-Mobile, for example, offers high-speed wireless Internet access to subscribers at over 2200 "HotSpots" nationwide. Using T-Mobile's 802.11 Wi-Fi network, laptop users with network access cards can wirelessly connect to the Internet at high speeds. (Subscribers with network access cards can also use T-Mobile's GSM/GPRS networks in locations other than HotSpots to access the Internet from their laptop or PDA.) "Typical" HotSpot applications (e-mail, web surfing, etc.) plainly involve data services, as do data services provided over other T-Mobile technologies. Such applications are not "real-time, two way switched voice service," nor are they "interconnected with the public switched network."[13] The Commission is not now proposing to extend the E911 rules to data services,[14] and, accordingly, such applications should not now be covered by E911 requirements.

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[12] *See* 47 C.F.R. § 20.18(a); *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Report & Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 18676, 18716-18 (1996).

[13] 47 C.F.R. § 20.18(a).

[14] *See Further Notice* at ¶ 13 (proposing to analyze application of E911 requirements to services and products based on, *inter alia*, "whether . . . it offer[s] real-time, two-way voice service that is interconnected with the public switched network . . . .").

APCO, the National Emergency Number Association ("NENA"), and the National Association of State Nine-One-One Administrators ("NASNA") suggest that voice applications over data devices should be subject to E911 requirements.[15] But such applications, known as Voice-over-Internet Protocol ("VoIP"), are not voice services *provided by T-Mobile*. T-Mobile has no control over (and, indeed, no knowledge of) whether subscribers attach Simple Internet Protocol ("SIP") phones or download enabling software to their laptops or PDAs. The Commission should in no way now extend the E911 requirements on carriers to applications not provided by the wireless carrier itself.

Moreover, any attempt to apply E911 rules to VoIP would be beyond the scope of this proceeding. VoIP is not just a wireless application. It is, indeed, found much more frequently on wireline networks. As NENA and NASNA themselves admit,[16] the question of whether and how 911 rules should apply to VoIP is extraordinarily complicated. It must be examined, if at all, across *all* communications technologies.

III. The Commission Should Extend E911 Requirements to MSS Providers

T-Mobile agrees with CTIA, AT&T Wireless, and Sprint PCS that, for reasons of public safety and competitive neutrality, the Commission's 911 and E911 rules should be extended to Mobile Satellite Service ("MSS") providers.[17] There is no sound basis to

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[15] *See* APCO Comments at 11 ("The Commission needs to explore whether there are existing legal tools to address IP services, and if not, whether statutory or regulatory changes are needed."); Comments of NENA and NASNA at 16 ("If a device is capable of dialing 9-1-1 or reaching an emergency assistance call center, it should be fitted with the capability to pass a call-back number and a location.").

[16] Comments of NENA and NASNA at 16 ("The application of the principle [extending E911 requirements to emerging technologies] admittedly is more difficult.").

[17] *See* CTIA Comments at 5-6; Sprint Comments at 2-4; AT&T Wireless Comments at 2-5. *See also* Nextel Comments at 14 ("Permitting discriminatory treatment among providers of competing

exempt MSS services from these requirements, particularly in light of the Commission's recent decision to permit MSS licensees to provide Ancillary Terrestrial Component services that will allow them to compete directly with other CMRS operators. T-Mobile acknowledges that MSS providers will face technical and operational challenges in deploying E911 services in their networks. T-Mobile is not convinced, however, that these challenges are any greater than those faced by traditional CMRS operators as they have worked to develop and deploy wireless E911 services in their networks.[18] Just as T-Mobile has advocated previously in this docket with respect to other CMRS operators, some regulatory flexibility for MSS licensees may be warranted in this technically complicated area. However, the wholesale exclusion of MSS operators from the Commission's 911 and E911 requirements would be unjustifiably discriminatory and contrary to public safety and the reasonable expectations of consumers.

IV. Conclusion

As the overwhelming majority of comments in this proceeding have urged, the Commission should proceed cautiously in proposing E911 requirements for new services. Extending requirements to new services without regard to technical feasibility would be contrary to law, and would be poor public policy. Moreover, the Commission should not extend E911 requirements to subscriber-initiated applications running on data devices. T-Mobile believes, however, that the technical and operational impediments facing MSS

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services . . . is a violation of Congress' regulatory parity requirements and, thus, cannot be upheld.").

operators with respect to E911 services are not any greater than those faced by traditional CMRS operators, and the exclusion of MSS licensees from these requirements would violate core principles of competitive parity and public safety.

Respectfully submitted,

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[18] *See* AT&T Wireless Comments at 4 ("There is no evidence in the record, however, of administrative problems or technical difficulties that are significantly distinct from those faced by nationwide CMRS providers with respect to 911.").