

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Revision of the Commission’s Rules to) CC Docket No. 94-102
Ensure Compatibility With Enhanced 911)
Emergency Calling Systems)

To: The Commission

REPLY COMMENTS OF NEC AMERICA, INC.

NEC America, Inc. (“NEC”) 1/ hereby submits these reply comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding. 2/ NEC was disappointed that, despite statements from four Commissioners acknowledging the significant gap in public safety caused by the failure to fully integrate multiline telephone systems (“MLTS”) into the enhanced 911 regime, 3/ the Commission’s most recent *Order* in this proceeding once again deferred taking any concrete action on improving E911 access for the tens of millions of Americans who spend a majority of their day relying on MLTS for communications. The longer the Commission delays in filling the gap, the more likely PSAPs will find it difficult to reach users of MLTS in emergencies.

1/ NEC, an affiliate of NEC Corporation, manufactures and markets a complete line of advanced communications products, including multiline telephone systems (“MLTS”).

2/ See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Further Notice of Proposed Rulemaking*, FCC 03-290 (rel. Dec. 1, 2003) (“*Order*” or “*Second Notice*”).

3/ See Separate Statements of Chairman Michael Powell and Commissioners Kevin Martin, Michael Copps and Jonathan Adelstein (FCC 03-290).

I. FEDERAL ACTION IS NEEDED TO ADDRESS THE PUBLIC SAFETY NEEDS OF MILLIONS OF AMERICANS

The Commission is well aware of the inherent danger to the nation’s emergency response and homeland security systems posed by the unavailability of accurate location and call back information.^{4/} As indicated above, four of the five Commissioners wrote separately to indicate that they were “particularly concerned” ^{5/} or “have lingering concerns” ^{6/} about the “unacceptable level of protection” ^{7/} available to many Americans, which constitutes one of the “top public safety issues” ^{8/} within the public safety community. Moreover, the Commission acknowledged that Congress has charged it with “promoting the safety of life and property” through the use of communications, and has long recognized the Commission’s role in ensuring that “the public safety needs of Americans are met to the extent that those needs must be transmitted by wire or radio communications to emergency service personnel.” ^{9/} Nevertheless, the *Order* determined that state and local governments “are in a better position” to devise MLTS E911 rules. NEC notes, however, that state and local governments have done little on this issue in the ten years since the first NPRM that

^{4/} See *Order* at ¶ 50.

^{5/} See Separate Statement of Chairman Michael Powell.

^{6/} See Separate Statement of Commissioner Jonathan Adelstein.

^{7/} See Separate Statement of Commissioner Kevin Martin.

^{8/} See Separate Statement of Commissioner Michael Copps.

^{9/} See *Order* at ¶ 14.

raised awareness of the problem. Thus far, only seven states have adopted E911 laws covering MLTS, and two sets of these laws only apply to residential facilities. [10/](#)

Despite the *Order's* conclusion, the record in this docket indicates that state and local government representatives – especially those from jurisdictions that have already passed some form of E911 requirement for MLTS – are among the strongest supporters for action at the federal level. As NEC previously noted in its reply comments to the *Further Notice* in describing the comments of others: [11/](#)

The Benton County, Washington PSAP stated that a “uniform, federal standard” requiring E911-compliant MLTS equipment would be in the best interest of the public, citing current limitations in the applicability of Washington state law on this issue. [12/](#) A similar attitude was reflected by the state-level E911 entity in Washington, which called for the Commission to implement the NENA recommendations “as rapidly as possible.” [13/](#) Likewise, in Colorado, both the Boulder Regional Emergency Telephone Service Authority (“BRETSA”) and the Colorado 911 Advisory Task Force (“Colorado Task Force”) recommended that the Commission adopt the NENA standards. [14/](#) Finally, the Association of Public-Safety Communications Officials (“APCO”), whose membership consists largely of local and state public safety personnel, also supports Commission action in this area, stating that “unless the Commission acts to move the matter forward, delay will pervade.” [15/](#)

[10/](#) See “State by State Status of Private Switch Enhanced 911,” available at <<http://www.nena.org/9-1-1TechStandards/state.htm>>, (visited Apr. 20, 2004) (cited by *Order* at n.192).

[11/](#) NEC Reply Comment to the Further Notice at 2-3.

[12/](#) See Benton County Emergency Services E911 Program Comments at 3 (“Benton County”).

[13/](#) See Washington State Enhanced 911 Program Comments at 8 (“Washington State”).

[14/](#) See BRETSA Comments at 9 and the Colorado 911 Advisory Task Force at 4. Boulder, however, suggests that the Commission toughen the NENA ALI threshold, and require regular testing and verification of the MLTS ANI and ALI data and systems.

[15/](#) See APCO Comments at 9-10.

Given that the Commission decided to leave any action on this issue to “the competent decision-making of the states and localities,” [16/](#) it is surprising that it gave virtually no consideration to the advice offered by these entities. NEC urges the Commission in its next order to take greater cognizance of the continued cry for federal leadership to help close the “unacceptable gap” that currently leaves many Americans without adequate access to emergency services, and to make good on its pledge to implement national rules in the event states fail to take prompt action. [17/](#) At a bare minimum, the Commission should adopt default federal rules that would apply if a state fails to take action by a date certain. While this approach would not provide the same benefits that a true nationally uniform system could offer, [18/](#) it would send a strong message to states about the importance and urgency of providing for MLTS E911, while still taking into account the Commission’s obvious reluctance to impose uniform federal rules even where homeland security is at issue.

II. THE COMMISSION HAS ADEQUATE AUTHORITY TO IMPLEMENT EFFECTIVE E911 RULES FOR MLTS, AND SUCH RULES WOULD BE CONSISTENT WITH THE COMMISSION’S ESTABLISHED E911 CRITERIA

There should be no question that the Commission has adequate statutory authority to craft an effective, national E911 policy to benefit MLTS users. The *Second Notice* sought comment on the Commission’s authority to require compliance

[16/](#) Order at ¶ 55.

[17/](#) See Order at ¶¶ 53-54.

[18/](#) See TIA Comments at 2; NEC Comments to Further Notice at 3-4.

with E911 rules for all affected parties, with particular focus on MLTS operators.^{19/} NEC endorses the thorough analysis presented in the comments filed by NENA and NASNA in concluding that there are no jurisdictional barriers to the imposition of E911 obligations on any of the relevant parties.

By contrast, the Ad Hoc Telecommunications Users Committee (“Ad Hoc”) interprets the Commission’s authority as being extremely limited. Ad Hoc relies in large part on the argument that any Commission regulation of MLTS used in places of employment would impermissibly encroach upon the jurisdiction of the Occupational Safety and Health Administration (“OSHA”) over issues relating to workplace safety.^{20/} If true, Ad Hoc’s implicit suggestion that OSHA has exclusive federal jurisdiction over any safety issue, when applied to a place of employment, would lead to ludicrous results, such as preventing the FDA from regulating food served in a company cafeteria or medicine dispensed by a company infirmary.^{21/}

Even if the Commission determines that it does not have adequate authority over MLTS operators, it can still implement effective E911 regulations exercising its unquestionable Title II authority over local exchange carriers. By

^{19/} See *Second Notice* at ¶ 116.

^{20/} See *Ad Hoc Comments* at 8-9.

^{21/} As NENA & NASDA point out, it would also certainly have prevented the Commission’s special RF radiation exposure limits for “occupational/controlled” environments found in 47 C.F.R. § 1.1310. NENA & NASDA Comments at 12. NENA & NASDA also sensibly suggest that if there were any jurisdictional conflict, OSHA and the FCC could enter into a memorandum of understanding through which OSHA could accede to FCC expertise relating to public safety telecommunications. *Id.*

amending its Part 68 rules, [22/](#) the Commission can specify the requirements of equipment that is attached to a LEC's network. In other words, the Commission could determine that only E911 compliant MLTS equipment may be attached to a LEC's network. In short, there are a number of jurisdictional grounds upon which the Commission may base a decision to take action to ensure adequate public safety access by MLTS users.

Once having established a jurisdictional basis, the Commission should make MLTS subject to E911 obligations based on the fact that MLTS satisfy the four criteria the Commission uses to determine when E911 obligations should attach. [23/](#) The Commission correctly concluded in the *Order* that MLTS satisfy the first two criteria – (1) they interconnect to the public switched network and offer real-time, two-way switched voice service and (2) MLTS callers “generally expect to have access to E911.” [24/](#) Regarding the third criteria – whether MLTS compete with CMRS or wireline local exchange service – NEC believes it is clear that MLTS are used as a replacement for local exchange service. Without an MLTS, an organization would require additional “outside lines” to be provisioned by the LEC, especially given that even intra-organizational calls would have to be placed through the PSTN. Moreover, NEC produces a wireless PBX product that replaces the need for CMRS service for persons requiring communications mobility within a building or campus setting.

[22/](#) See generally Title 47 C.F.R., Part 68, “Connection of Terminal Equipment to the Telephone Network.”

[23/](#) See *Second Notice* at ¶ 115 and n.351.

[24/](#) *Order* at ¶ 51.

Finally, NEC knows for a fact that the fourth criteria – whether it is technically and operationally feasible to support E911 – is also satisfied, given that NEC already produces E911-capable MLTS.

III. COMMISSION ACTION IS NEEDED TO PROVIDE FOR MORE PRO-COMPETITIVE, INNOVATIVE AND COST EFFECTIVE E911 SOLUTIONS FOR MLTS

The Second Notice sought comment on whether E911 features represent an opportunity for MLTS manufacturers to improve the value of their equipment, and whether the value added would be worth the increased costs to their customers. ^{25/} Based on its experience producing E911-capable MLTS, NEC can unquestionably answer these questions in the affirmative. However, NEC submits that an MLTS operator's decision to offer E911 capabilities is likely to be influenced much more by the *recurring costs* of E911 than by the modest additional cost of purchasing an E911-capable MLTS over a non-E911-capable MLTS. As explained in its comments and reply comments to the *Further Notice*, NEC believes the Commission can substantially promote the adoption of E911 MLTS by taking steps to reduce the unnecessarily high recurring costs faced by MLTS operators in providing E911 capabilities. Thus, NEC proposed that the Commission make it possible for MLTS operators to take advantage of the ISDN network interface standard, ANSI T1.628-2000, that can reduce the costs MLTS operators face in providing E911. Before the benefits of this new interface standard can be recognized, however, central office switches must be updated to

^{25/} See *Second Notice* at ¶ 115.

accommodate the standard. The Telecommunications Industry Association (“TIA”) endorsed NEC’s proposal in its comments to the *Second Notice*. [26/](#)

NEC’s specific proposal can hardly be deemed too “vague” or “ambiguous,” nor would it “impose a particular technical solution” that would “stifle technological innovation.”[27/](#) NEC never suggested that ANSI T1.628-2000 should be the *only* technical solution available. It was proposed in the context of the NENA’s recommended Part 64 rule amendments, which would require central offices to be provisioned to permit the connection of MLTS equipment to an E911 system “in any accepted industry standard format, *as defined by the FCC.*” [28/](#) Thus, more than one industry format could be proposed and adopted. The Commission is familiar with such a process. For example, Section 22.921 of the Commission’s rules requires that analog handsets incorporate “one or more of the 911 call system selection processes endorsed or approved by the FCC.” The Commission established three such options in an initial rulemaking, and later approved additional methods upon request. [29/](#) A similar procedure could be used here.

[26/](#) TIA Comments at 6.

[27/](#) See *Order* at ¶¶ 50, 61-62 (citing these concerns in declining to adopt rules proposed by commenters).

[28/](#) See proposed Section 64.2101. Verizon mischaracterizes the proposal by omitting any reference to the “as defined by the FCC” language. Thus, Verizon’s comments leave the wrong impression that, under the proposal, an MLTS operator could select any of a potentially large number of “accepted industry standards.” See Verizon Comments at 6-7.

[29/](#) See, e.g., Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling systems, *Second Report and Order*, 14 FCC Rcd 10954 (1999); 911 Call Processing Modes, *Order*, 15 FCC Rcd 1911 (2000); 911 Call Processing Modes, *Order*, 18 FCC Rcd 2500 (2003).

NEC is surprised that the *Order* expressed concern that the proposed technical solutions would “stifle innovation”^{30/} and would run contrary to “pro-competitive goals,”^{31/} when that is precisely what is happening currently as a result of the LECs’ apparent unwillingness to upgrade their switches to permit newer, more efficient methods for the provisioning of MLTS E911. Not surprisingly, the only comments filed in opposition to NEC’s proposal came from LECs, which stand to lose revenue if MLTS operators obtain a more efficient means of provisioning E911.

Verizon argues that additional rules are unnecessary as it already provides MLTS operators “with their choice of E-911 solutions *available* in the applicable central office.”^{32/} Yet Verizon goes on to admit that the choice consists of two solutions – CAMA and ISDN PRI – and that, in fact, ISDN PRI is not available in many central offices,^{33/} thereby leaving MLTS operators with a “choice” of one solution.^{34/} Verizon asserts, without any supporting factual evidence, that the proposals in the record to provide MLTS operators with more

^{30/} *Order* at ¶ 62. Although it is certainly not clear that the *Order* was referring specifically to NEC’s proposal, the *Second Notice* implied as much by stating that the *Order* “raised a number of concerns about” NEC’s proposal. See *Second Notice* at ¶ 117.

^{31/} *Id.* at ¶ 50.

^{32/} Verizon Comments at 5 (emphasis added).

^{33/} Verizon Comments at 7 (asserting that upgrading all central offices to offer ISDN PRI “would take many years to plan and implement”).

^{34/} With regard to CAMA, the Commission’s *Order* stated that “CAMA is an older solution that we do not wish to impose as the default solution for MLTS compatibility.” *Order* at n.211. In practice, CAMA currently *is* the default solution for most MLTS operators. Thus, NEC fails to understand how allowing LECs to continue to dictate the (in many cases) *only* E911 interface solution available to MLTS operators, can promote the Commission’s goal of encouraging “innovative” and “pro-competitive” solutions. See *Order* at ¶¶ 62, 50.

than this one option would require “hundreds of millions of dollars of unnecessary investments.” [35/](#) NEC acknowledges that *some* costs will have to be incurred in upgrading central office switches. However, the Commission has experience in this docket in weighing the public safety benefits of E911 versus the increased costs to carriers and has repeatedly found the public safety benefits to be worth the cost. [36/](#) Moreover, other actions in this docket make clear that a scheme for carrier cost recovery should not be a prerequisite for imposing E911 obligations on LECs. [37/](#) Thus, LECs should, at a minimum, upgrade their ISDN PRI-capable central office switches to allow their customers to take advantage of the full range of benefits offered by this technology. [38/](#)

In its comments, Verizon also attempted to justify a rationale for rejecting NEC’s proposal that MLTS operators be permitted direct access to the Automatic Location Information (“ALI”) database to reduce the costs and time

[35/](#) Verizon Comments at 2.

[36/](#) For example, the Commission’s rules regarding the E911 obligations of wireless carriers resulted in significant costs to the industry.

[37/](#) See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20, 850 (1999) (eliminating the cost recovery prerequisite for wireless carrier Phase II implementation).

[38/](#) Verizon’s argument that the proposed ANSI standard is not widely used in the industry was already addressed by NEC in its earlier comments, in which NEC explained that:

LECs currently have no incentive to [upgrade their switches], as they would lose the revenue stream generated by the sale of number blocks to MLTS operators. Accordingly, switch manufacturers have not incorporated the interface standard into their new switches, as there has been no demand from their customers (the LECs) to do so.

NEC Comments to the Further Notice at 6.

typically involved in paying a LEC (or a LEC's third party vendor) to enter database changes. [39/](#) NEC's point, as previously expressed, is that:

The update fees paid to the LEC (or LEC-chosen vendor) can be significant, especially when calculated over the course of the year for a large MLTS operator. These fees are unconstrained by competitive forces, as the dominant LEC still maintains a bottleneck on this service in most jurisdictions. As the recent Hatfield Report correctly indicated, "ILECs still have significant market power in the provision of 911 call routing, transport, and *data base management*." [40/](#)

Verizon does not address this point. Verizon argued that it performs important data validation functions, but nowhere suggested that such functions could not be properly performed by another entity, including MLTS operators themselves. Verizon went on to state that without its interface software, MLTS operators "would have to self-provide a mechanism to connect to the E-911 database or seek out third-party solutions." [41/](#) NEC does not challenge this statement. Indeed, it is this very opportunity to "self-provide" or to obtain a third-party solution (*i.e.*, to purchase services in a competitive marketplace) that NEC proposes should be available to MLTS operators. [42/](#)

[39/](#) See NEC Comments to the Further Notice at 8-10.

[40/](#) See NEC Comment to the Further Notice at 9 (citing Dale N. Hatfield, "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services" (2002) at 20. See also *id.* at 32-34, discussing the potentially problematic effects of LEC pricing of essential E911 call components, including the ALI database.).

[41/](#) Verizon Comments at 10.

[42/](#) Verizon's argument that FCC rules already require carriers to provide to competing LECs the "same accuracy and reliability" that it provides to its own customers misses the point, which is not about non-discriminatory treatment, but is about competitive pricing and efficiency.

Finally, it should be emphasized that MLTS operators would have the highest incentive to maintain the most accurate ALI database information available regarding their employees. Verizon presents nothing in its filing to contradict this point, or to establish the ability of LECs to maintain more superior MLTS ALI database records than the MLTS operators themselves.

CONCLUSION

For the foregoing reasons, the Commission should not continue to rely solely on state and local governments to adopt E911 MLTS rules, but should itself take action to promote E911 MLTS by reducing unnecessary recurring costs faced by MLTS operators that result from the unavailability of updated, cost-effective network interfaces and ALI database management methods.

Respectfully submitted,

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