



March 29, 2005

VIA ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Revision of Commission's Rules to Ensure Compatibility with Enhanced 911
Emergency Calling Systems: CC Docket No. 94-102.

Dear Ms. Dortch:

Pursuant to the December 10, 2004 Public Notice in the above-referenced proceeding, enclosed please find the Reply Comments of the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). Ad Hoc's Reply Comments are being transmitted to the Federal Communications Commission via the Federal Communications Commission's Electronic Comment Filing System ("ECFS").

If you have any questions or concerns, please do not hesitate to contact me at (202) 857-2550.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew M. Brown'.

Andrew M. Brown
Counsel for
The Ad Hoc Telecommunications Users
Committee

**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)	
)	

**REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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**REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (“Ad Hoc”) hereby replies to the comments filed in response to the Commission’s December 10, 2004 Public Notice (“*Public Notice*”) in the above-captioned proceeding.¹ The Commission’s December 10, 2004 *Public Notice* solicited specific information about the progress made by the states in implementing solutions for multi-line telephone systems (“MLTS”). Several parties—either in addition to or in lieu of providing the information requested by the Commission—have ignored the narrow scope of the Public Notice’s inquiry. They call on the Commission to impose nationwide E911/MLTS regulations, despite the Commission’s previous statements that state and local governments are in a better position to devise rules for their jurisdictions. These Reply Comments, therefore, reiterate Ad Hoc’s long-standing position that the Commission does not have the adequate jurisdiction or subject-matter expertise to impose workplace safety regulations

¹ *Commission Seeks Comment About Status of State Actions to Achieve Effective Deployment of E911 Capabilities for Multi-Line Telephone Systems (MLTSs)*, CC Docket 94-102, Public Notice, 70 Fed. Reg. 2405 (Jan. 13, 2005) (“*Public Notice*”).

on owners/operators of MLTS in the form of E911/MLTS regulations, and further underscore that the record is bereft of any commenter providing an adequate legal basis for such jurisdiction.

I. THE COMMISSION DOES NOT HAVE ADEQUATE JURISDICTION OR EXPERTISE TO IMPOSE WORKPLACE SAFETY REGULATIONS ON MLTS OWNERS/OPERATORS IN THE FORM OF E911 MLTS REGULATIONS.

In numerous filings previously made in this proceeding, Ad Hoc has repeatedly stated that the Commission lacks jurisdiction to impose E911/MLTS regulations on owners/operators of MLTS used in places of employment,² and it has identified numerous other commenters that have voiced similar concerns about the Commission's jurisdiction over MLTS.³ Specifically, Ad Hoc has argued that neither the general provisions of the Communications Act nor subsequent legislation adopted by Congress to address 911 issues provide the Commission with an adequate legal basis upon which to regulate employer owners/operators of MLTS or to adopt regulations addressing issues of workplace safety.⁴ Consistent with Ad Hoc's position on this issue, Verizon's initial response to the *Public Notice* succinctly stated why the Commission lacks authority to impose E911 regulations on MLTS: "[T]his is a workplace safety and police

² See Comments of the Ad Hoc Telecommunications Users Committee, on *Further Notice of Proposed Rulemaking*, CC Docket 94-102, IB Docket 99-67 (Feb. 19, 2003), at 4-9 ("Ad Hoc FNPRM Comments"); Reply Comments of the Ad Hoc Telecommunications Users Committee, on *Further Notice of Proposed Rulemaking*, CC Docket 94-102, IB Docket 99-67 (Mar. 25, 2003) at 2-9 ("Ad Hoc FNPRM Reply Comments"); Comments of the Ad Hoc Telecommunications Users Committee, on *Second Further Notice of Proposed Rulemaking*, CC Docket 94-102, IB Docket 99-67 (Mar. 29, 2004), at 2-15 ("Ad Hoc Second FNPRM Comments"); Reply Comments of the Ad Hoc Telecommunications Users Committee, on *Second Further Notice of Proposed Rulemaking*, CC Docket 94-102, IB Docket 99-67 (Apr. 26, 2004), at 2-10 ("Ad Hoc Second FNPRM Reply Comments").

³ *Id.* at 2-3 n.4.

⁴ *Id.* at 3-9; Ad Hoc Second FNPRM Comments at 2-14; Ad Hoc FNPRM Comments at 4-9; Ad Hoc FNPRM Reply Comments at 2-8.

power issue, not a communications law issue.”⁵

In light of the doubts cast on the Commission’s jurisdiction over MLTS owners/operators and workplace safety issues, the Commission wisely refrained from attempting to impose nationwide E911/MLTS workplace safety regulations on MLTS owners/operators.⁶ In the *Second FNPRM*, the Commission determined that “states are in the best position to establish what steps to take to promote E911 availability”⁷ and that “the unique needs and circumstances of various residential and business MLTS may be better addressed by the states.”⁸

At least two parties filing comments in response to the *Public Notice* ignore the narrow scope of the *Public Notice* and urge the Commission to impose E911 workplace safety regulations on MLTS owners/operators.⁹ These commenters, however, fail to justify why the Commission should abandon its conclusion that states are best positioned to consider the issue of E911/MLTS workplace safety regulations and that the states have broad powers to adopt E911 requirements.¹⁰

⁵ Comments of Verizon Communications, Inc., on *Public Notice*, CC Docket 94-102 (Feb. 28, 2005), at 7-8 (“Verizon Comments”). See also Reply Comments of Red Sky Technologies, Inc., on *FNPRM*, CC Docket No. 94-102, at 2 (Feb. 28, 2003) (agreeing that there are OSHA implications associated with the implementation of E911 rules for MLTS).

⁶ *Revision of Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, 25363, at ¶¶ 53-54 (Dec. 1, 2003) (“*Second FNPRM*”).

⁷ *Id.* at ¶ 53.

⁸ *Id.* at ¶ 54.

⁹ Comments of Enterprise Communications Association, on *Public Notice*, CC Docket 94-102 (Feb. 28, 2005), at 10 (“ECA Comments”); Comments of Avaya Inc. on *Public Notice*, CC Docket 94-102 (Feb. 28, 2005), at 5 (“Avaya Comments”).

¹⁰ *Second FNPRM*, 18 FCC Rcd at 25363, ¶ 54.

For example, the Enterprise Communications Association (“ECA”) urges the Commission “to abandon any attempt to rely solely on the states to effectively address the MLTS problem... [and to] adopt the NENA model legislation—in its entirety... .”¹¹ ECA does not cite a single statute or other source of jurisdiction upon which to base this unprecedented expansion of Commission jurisdiction to regulate MLTS owners/operators, entities not otherwise regulated under Title II or III of the Communications Act.

Similarly, Avaya urges the Commission “to adopt appropriate national standards to ensure the expeditious deployment of E911-capable MLTS services.”¹² Although not entirely clear about what specific national standards it supports, Avaya justifies the nationwide adoption of some version of the NENA model legislation or the legislation passed in Kentucky or Maine—and presumably the regulation of MLTS owners/operators—by citing to the general jurisdictional provisions found in Sections 1 and 4(i) of the Communications Act and to the Commission’s own citation of such provisions in the *Second FNPRM*.¹³

Ad Hoc has previously explained why reliance on such provisions does not justify expansion of the Commission’s jurisdiction to the regulation of MLTS owners/operators and, for the sake of brevity, will not reiterate those arguments here.¹⁴ Neither ECA nor

¹¹ ECA Comments at 10.

¹² Avaya Comments at 5.

¹³ *Id.* at 13-14.

¹⁴ *See* Ad Hoc NPRM Comments at 4-9; Ad Hoc NPRM Reply Comments at 3-6; Ad Hoc Second FNPRM Comments at 4-9; Ad Hoc FNPRM Reply Comments at 3-5.

Avaya, however, address the serious legal questions repeatedly raised by Ad Hoc about the scope of Commission jurisdiction under the general provisions of the Communications Act. Nor do any of the comments filed provide a sound legal or policy rationale for the Commission to usurp the role of state and local jurisdictions (not to mention other federal agencies) in developing workplace safety regulations.¹⁵

II. THE FAILURE OF STATES TO ADOPT REGULATIONS WITHIN AN ARBITRARY SCHEDULE OR THE ADOPTION OF REGULATIONS DIFFERENT FROM THOSE CONTAINED IN THE NENA MODEL LEGISLATION DOES NOT JUSTIFY IMPOSITION OF NATIONAL E911 WORKPLACE SAFETY STANDARDS ON MLTS OWNERS/OPERATORS.

Several parties responding to the *Public Notice* have criticized the actions or inactions of states and local jurisdictions with respect to the consideration and adoption of E911/MLTS regulations. These criticisms fall into two basic categories: first, the states and local jurisdictions have not acted quickly enough to impose E911 workplace safety obligations on MLTS owners/operators;¹⁶ and, second, the states and local jurisdictions that have considered and enacted E911 legislation/regulations have not

¹⁵ The absence of any justification for the vast expansion of Commission jurisdiction is deeply problematic given that other entities have unambiguous jurisdiction over workplace safety issues. As Ad Hoc has previously noted, the Occupational Safety and Health Administration (“OSHA”) has explicit jurisdiction over such matters. Ad Hoc NPRM Comments at 9; Ad Hoc Second FNPRM Comments at 3 n.5. Most importantly, the Commission has in the past explicitly acknowledged its lack of expertise and jurisdiction over the promulgation of workplace safety regulations and further declined to adopt such regulations, deferring to the expertise and jurisdiction of OSHA. See Ad Hoc Second FNPRM Reply Comments at 7-10, discussing the Commission’s decision in *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, Report and Order, 11 FCC Rcd 15123 (“*RF Radiation R&O*”), *recon.*, Second Memorandum Opinion and Order, 12 FCC Rcd 13494 (1997), *aff’d*, *Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001). In the event that states fail to adopt E911 workplace safety regulations, the Commission should defer to OSHA in determining whether such regulations should be adopted and, if so, the content of those regulations.

¹⁶ ECA Comments at 5, 9; Avaya Comments at 4, 6; Comments of the Association of Public Safety Officials International, on *Public Notice*, CC Docket 94-102 (Feb. 28, 2005), at 2-4 (“APCO Comments”).

adopted the NENA Model Legislation in its entirety.¹⁷

A. The Commission Should Not Demand that States Adopt Legislation on an Arbitrary Timetable.

With respect to the first criticism, Ad Hoc notes that the Commission began its initial inquiry into E911/MLTS issues eleven years ago. Although the Commission specified in the *Second FNPRM* that it expected the states to “work quickly to adopt legislation [for MLTS],”¹⁸ surely, based on its own experience dealing with the complexities of E911 issues, it could not seriously have expected every state legislature, or even a majority of state legislatures, to have proposed, debated, written and enacted complex legislation within the twelve month period following the issuance of the *Second FNPRM*. Progress, however, has been made as evidenced by the actions of a few states: for example, Verizon identified legislation in Minnesota, Florida, and Louisiana that was adopted subsequent to the Commission issuance of the *Second FNPRM*.¹⁹ Were the Commission to prematurely declare that the states have failed to act with sufficient speed it would rightly be perceived as institutionally arrogant and insensitive to basic concepts of federalism by imposing on the states a highly unrealistic vision of an appropriate legislative calendar.

B. Many States May Correctly Determine that the NENA Model Legislation Does Not Appropriately Balance the Costs and Benefits of Imposing E911 Workplace Safety Regulations on MLTS Owners/Operators.

Any E911/MLTS workplace safety regulations must appropriately balance the

¹⁷ See, e.g., ECA Comments at 5, 9; APCO Comments at 3-5.

¹⁸ *Second FNPRM*, 18 FCC Rcd 25365, at ¶ 59.

¹⁹ Verizon Comments at 5.

costs imposed by such regulations with the commensurate public and workplace safety benefits resulting from the regulations.²⁰ In its comments, ECA correctly observes that the burden of implementing proposed E911 ALI transmission requirements falls on the millions of MLTS end-users, “primarily large and small businesses.”²¹ Ad Hoc wholeheartedly agrees with ECA’s conclusion that, “neither the FCC nor state governments can craft successful 911 technical solutions without realistically evaluating, as a practical matter, the roles and burdens that million [sic] of end users reasonably can be expected to handle.”²² Ad Hoc disagrees, however, with ECA’s conclusion, that national adoption of the NENA Model Legislation appropriately balances these costs and benefits and best mitigates the burdens imposed on end-users or that such action by the Commission would in any way take into account the “roles and burdens” imposed on end-users.²³

In the *Second FNPRM*, the Commission made the important decision to defer to

²⁰ The Commission itself has acknowledged that “a consideration of both benefits and costs is inherent in conducting a public interest analysis.” *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4274, at ¶ 42 (Feb. 27, 2004).

²¹ ECA Comments at 3.

²² *Id.* at 5.

²³ *Id.* at 9-10. The Commission should review ECA’s proposal with great caution. ECA urges the Commission to adopt the NENA Model Legislation on a nationwide basis, ostensibly to ease the burden of end-users having to comply with multiple state E911 regulations. ECA’s request of the FCC to, in effect, heavily regulate end-users would have greater credibility if ECA actually represented end-users. According to its own description, however, ECA’s membership is comprised of “manufacturers, distributors, network service providers, sales channel companies, systems integrators, applications developers, and consultants.” ECA Comments at 1. It does not appear to represent any end-users even though it urges extensive regulation of end-users, purportedly for their own benefit. Notably, ECA does not urge significant action by the Commission that would impose similarly intrusive regulations on its own members. In contrast, Ad Hoc is comprised exclusively of corporate end-users; its membership does not include any service providers, nor does it accept any funding from them. As an organization solely representing the interests of end-users, Ad Hoc opposes Commission imposition of E911/MLTS workplace safety regulations on employers/owners of MLTS.

state legislation on E911 workplace safety regulations²⁴ and justified this decision based on the belief that the “unique needs and circumstances of ... MLTS may be better addressed by the states.”²⁵ The Commission referred to the Model Legislation as “a valuable template”²⁶ and recommended that legislatures “consider the proposals contained in the Model Legislation.”²⁷ Inherent in these comments, coupled with the observation that the states have better insight into local emergency needs and capabilities,²⁸ is the implicit conclusion that individual states could adopt legislation that differed, perhaps significantly, from the Model Legislation or that the states, in their reasoned judgment, could choose not to adopt legislation at all.²⁹

The Commission did not—indeed, could not—mandate that the states adopt the Model Legislation without revision or modification. Yet it is the failure of the states to adopt the Model Legislation without such revision or modification that leads ECA to conclude that the “current patchwork of state regulation does not serve the interests of any party, nor does it serve the public interest.”³⁰ The Commission cannot on the one hand uphold the unique role states have to play in devising E911 workplace safety regulations for MLTS owners/operators and applaud those states that had already

²⁴ 18 FCC Rcd 25340, 25363-64, at ¶¶ 53-56.

²⁵ *Id.* at ¶ 53.

²⁶ *Id.* at ¶ 53.

²⁷ *Id.* at 25365, ¶ 58.

²⁸ *Id.* at 25361-62, ¶ 50 n.178.

²⁹ Verizon Comments at 6 (lack of new state E911 requirements does not necessarily suggest inaction but rather consideration and rejection of E911 proposals based on potentially significant costs to businesses and chilling effects on innovation).

³⁰ ECA Comments at 9.

passed legislation to require MLTS implementation of E911 prior to the release of the *Second NPRM*³¹ then turn around and seek to re-write the final product of the states' legislative processes so that they meet a standard favored by the Commission. Inherent in the Commission's acknowledgment that the states will take the lead role in determining what, if any, workplace safety regulations should be imposed on MLTS owners/operators, is acknowledgement of the probability that states will come to different conclusions, adopt regulations that differ from other states, and, in some cases, adopt no regulations at all.

III. CONCLUSION

In the *Second FNPRM*, the Commission correctly decided not to adopt E911 rules for MLTS owners/operators, instead allowing state and local authorities with clear jurisdiction and expertise to consider what, if any, MLTS regulations are appropriate for their jurisdictions. Having deferred to the states on the issue of MLTS regulation, the Commission should not now undermine that policy by attempting to impose nationwide E911/MLTS workplace safety standards. In the event the states fail to act, the Commission should follow its own precedent by allowing the federal agency with expertise in regulating workplace safety, OSHA, to determine whether E911 obligations are appropriate for MLTS owners/operators and, if so, the regulations that should apply.

³¹ *Second FNPRM*, 18 FCC Rcd at 25340, 25361-62, ¶ 50.

Respectfully submitted,

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