

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

In the Matter of)	
)	
Implementing Kari’s Law and Section 506 of RAY BAUM’S Act)	PS Docket No. 18-261
)	
Inquiry Concerning 911 Access, Routing, and Locating in Enterprise Communications Systems)	PS Docket No. 17-239
)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” of “FCC”) *Notice of Proposed Rulemaking* seeking comment on how the Commission should implement the 911 improvements required by Kari’s Law Act of 2017 and Section 506 of RAY BAUM’S Act.¹

I. INTRODUCTION & SUMMARY

INCOMPAS, the internet and competitive networks association, represents members that provide communications services across a variety of technological platforms, like interconnected VoIP, and to a variety of customers, including enterprise customers with multi-line telephone systems (“MLTS”). The association also represents technology companies that provide solutions and products used in the emergency calling system, so amongst our membership there is a great deal of familiarity with and interest in this proceeding. While there is broad support for the Commission’s goals in this important proceeding, our members want to ensure that the agency

¹ *Implementing Kari’s Law and Section 506 of RAY BAUM’S Act, Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems*, PS Docket No. 18-261, 17-239, Notice of Proposed Rulemaking, DA 18-132 (rel. Sep. 28, 2017) (“NPRM”).

carefully considers and clarifies the responsibilities of each of the parties responsible for the provision and maintenance of MLTS, modifies the definition of “pre-configured” to reflect the role that the customer plays in installing and provisioning the MLTS, and develops a regulatory framework that embraces telecommunications providers use of commercially available location sources in conveying dispatchable location information with a 911 call. Furthermore, while there are encouraging innovations occurring in the emergency calling arena, INCOMPAS believes that it is premature to adopt mandatory 911 calling requirements for outbound-only calling applications to the public switched telephone network (“PSTN”) given that consumers do not expect the service to be a substitute for regular telephone service.

II. THE COMMISSION MUST CLARIFY THE ROLES AND RESPONSIBILITIES OF THE PARTIES PROVIDING MLTS SERVICE.

As the Commission endeavors to meet the statutory requirements of Kari’s Law and Section 506 of RAY BAUM’S Act, INCOMPAS recommends the agency use this rulemaking to provide as much clarity on the responsibilities of the various players involved in delivering MLTS while preserving the flexibility that has allowed these companies to bring innovative and life-saving solutions to their customers. Specifically, INCOMPAS encourages the Commission to ensure that the various responsibilities of manufacturers, installers, managers, and operators of MLTS are clearly delineated in the agency’s final definitions and rules. Moreover, the Commission must provide sufficient clarity on the actions that could expose MLTS installers, managers, and operators to liability for violations under the law. The Commission’s 2017 *Notice of Inquiry* on enterprise communications systems (“ECS”) provided significant insight into how complex the relationship and responsibilities can be between ECS and MLTS installers,

managers, and operators,² and the Commission should weigh the “great variation” in these arrangements carefully before settling on rules that will assign responsibility for violations of the law’s requirements.³

Currently, the relationships between the parties providing and maintaining MLTS are governed by the contractual terms and conditions that the parties agree to in advance of installation. These terms ensure that the responsibilities for the contract are clear and INCOMPAS generally agrees with commenters who conclude that “[c]lear rules for market participants are crucial for the [MLTS] to function effectively and efficiently.”⁴ INCOMPAS members share the concerns raised by others that the rules, as currently formulated, do not make it immediately clear what the responsibilities of the installers, managers, and operators of an MLTS are,⁵ raising concerns about potential liability for elements of the process over which some companies may have no control.

For example, USTelecom highlights Section 9.16(b)(3) of the proposed rules that holds installers, managers, and operators accountable for ensuring that a multi-line telephone system “is configured such that the dispatchable location of the caller is conveyed to the PSAP with 911

² See *Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems*, PS Docket No. 17-239, Notice of Inquiry, FCC 17-125 (rel. Sep. 26, 2017).

³ NPRM at ¶ 42 (quoting Comments of Verizon, PS Docket No. 17-239 (filed Nov. 15, 2017), at 4-5).

⁴ Comments of USTelecom, PS Docket No. 18-261, (filed Dec. 10, 2018), at 2 (“USTelecom Comments”).

⁵ Comments of AT&T, PS Docket No. 18-261 (filed Dec. 10, 2018), at 6 (“AT&T Comments”) (“Any new MLTS rules should clearly delineate the roles and responsibilities of the various players in the MLTS ecosystem. Any single stakeholder may play multiple roles in the MLTS ecosystem depending on how an MLTS system is configured.”).

calls.”⁶ As USTelecom points out, providing dispatchable location information requires “configuring the system, inputting location information, and ensuring the accuracy of the location information” and the rule lacks clarity with respect to the individual responsibility of the companies installing, managing, and operating the MLTS.⁷ In situations where more than one entity is responsible for these separate actions, the Commission’s rules should provide sufficient clarity to prevent any confusion.

While INCOMPAS members are actively engaged in the provision of MLTS services, many of our members often have a limited role in their management or operations and contend that the Commission’s implementing rules must clarify that companies should not be held liable for aspects of the service that they do not administer. At the customer’s request, our members will routinely hand over control of the management and operations of an enterprise system, while maintaining oversight of the network to ensure that traffic is being delivered appropriately. In most circumstances, the customer or owner serves as the true operator of the system and exercises considerable control over enterprise multi-line telephone service provided by INCOMPAS members.

Once the system is installed and configured, the customer controls the amount of information that flows to managers and operators of these systems, including location information. Enterprise customers decide what the responsibilities will be for the parties involved and determine the interactions between the parties and the internal IT personnel. INCOMPAS members may only be minimally involved (serving in a support capacity should the manager have questions about the system’s configuration) or be asked to serve as a backup

⁶ NPRM at 67.

⁷ USTelecom Comments at 2.

platform for the system. Where enterprise customers have assumed primary operational roles with respect to the MLTS, the Commission needs to be careful not to attach liability for violations of the rules to providers that are only engaged in technical support or network oversight. For this reason, the INCOMPAS also supports the Commission's presumption that the MLTS manager bears ultimate responsibility for compliance with the proposed rules.

Because it is common for a company to install a multi-line telephone system and then cede control to a third party or to its enterprise customer, INCOMPAS supports USTelecom's proposal to separate Section 9.16(b)(3) into subsections that describe the obligations of the installer, manager, and operator of the MLTS with respect to ensuring that dispatchable location information is conveyed to PSAPs with 911 calls. In these scenarios, INCOMPAS concurs with commenters who argue that enterprise customers acting as MLTS managers should ultimately be responsible for maintaining updated and accurate dispatchable location information that their voice provider will transmit to PSAPs.⁸ Ensuring that the MLTS is capable of sending location information should alleviate any potential liability for installers under the rule, assuming that the installer has no further responsibilities according to its business agreement with the customer.

With respect to providing dispatchable location information, the Commission may also want to consider a safe harbor for manufacturers and installers of MLTS that have no role in the management or operation of these systems. NTCA correctly notes that service providers "lack visibility into any individual user's location to accurately . . . update" location information after

⁸ AT&T Comments at 8 ("Even after system installation, customers may have the ability to unilaterally move telephone stations to different locations, which may require updating the dispatchable location. Accordingly, customers acting as MLTS managers must be responsible for updating any dispatchable location information, if necessary.").

initial installation and configuration.⁹ Manufacturers and installers remain reliant on the voice service manager to provide location information, particularly if that provider is not actively involved in the system’s management or operation. The Commission should not assign liability to a provider for a system manager’s unwillingness to correctly configure or maintain a system. If a manufacturer furnishes a MLTS with the appropriate functionality and an installer configures a system capable of direct dialing PSAPs, alert notification, and sending dispatchable location information, then the Commission should provide safe harbor for these parties in the service chain from liability if and when properly installed MLTS are not ultimately used properly.

III. THE DEFINITION OF “PRE-CONFIGURED” SHOULD BE MODIFIED.

Based on the statutory requirements of Kari’s Law, the Commission proposes to prohibit the manufacture or sale of an MLTS “unless such system is *pre-configured* such that, when properly installed . . . a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit ‘9’, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.”¹⁰ In the NPRM, the Commission seeks comment on the statutory term “pre-configured” which it proposes to define “to mean that the MLTS comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules so long as the system is installed and operated properly.”¹¹

⁹ Comments of NTCA—The Rural Broadband Association, PS Docket No. 18-261 (filed Dec. 10, 2018), at 2.

¹⁰ NPRM at ¶ 13, *citing* Kari’s Law, 47 U.S.C. § 623(a) (emphasis added).

¹¹ *Id.* at ¶ 31 (adding that manufacturers “must ensure that the default, ‘out-of-the-box’ configuration allows users to reach 911 directly”).

Several INCOMPAS members that manufacture and develop multi-line telephone systems and products have indicated that the proposed definition of “pre-configured” misses an important component of the way that they design and market their MLTS solutions. Rather than provide a solution with an “out-of-the-box” default configuration, MLTS providers design their products with the intention of giving their customers as much flexibility and control over the system as possible. In fact, many MLTS products are already developed with all of safety features that the Commission envisions in the NPRM (direct dial, call notification, and dispatchable location), and these features are available system-wide once they have been installed and provisioned by the customer. Microsoft provides the clearest example of this flexibility by noting that most MLTS are “ready for a customer to configure the system’s numerous capabilities, including the direct dialing functionality.”¹² Simply put, these systems are not “pre-configured” as they require IT personnel or an MLTS manager to enable different setting in order for the system to direct dial, notify, and provide dispatchable location information to PSAPs. Preserving this flexibility is attractive to customers who can design the MLTS to meet the specific needs of their company or circumstances, and also allows providers to market systems to clients that may be required to comply with safety laws and regulations in other countries.

Given the ubiquity of customer-provisioned MLTS solutions in the market, INCOMPAS agrees that the Commission should modify its proposed definition of “pre-configured” “in a manner that recognizes the responsibilities of the customer with respect to implementation and

¹² Comments of Microsoft, PS Docket No. 18-261 (filed Dec. 10, 2018), at 6 (“Microsoft Comments”).

provision of the service.”¹³ INCOMPAS urges the Commission to adopt Microsoft’s proposed language that would further define “pre-configured” to mean:

“that the MLTS comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the system is installed and operated properly *or, where no default exists, such as when customer provisioning of the system is required, enables the customer to configure the system to dial 911 directly as required under the statute and rules.*”¹⁴

IV. WHEN CONVEYING LOCATION INFORMATION TO PSAPs AND FIRST RESPONDERS, MLTS PROVIDERS SHOULD BE PERMITTED TO USE THE BEST AVAILABLE LOCATION SOURCES.

Today, tens of millions of telecommunications services and apps users regularly rely on real-time location services to provide accurate and reliable location information. As the Commission endeavors to apply the requirements of Section 506 of RAY BAUM’S Act and convey dispatchable location information with calls to 911, INCOMPAS encourages the Commission to allow regulated voice providers and technology companies to use the best available location sources when providing life-saving information to PSAPs and emergency officials.

After the Commission released the draft NPRM, INCOMPAS urged the agency to seek comment regarding other potential sources of information that could be used to provide accurate and reliable location information to emergency services.¹⁵ Originally, the Commission had proposed solely to employ the National Emergency Address Database (“NEAD”) to assist providers in determining the dispatchable location of end users, regardless of the

¹³ *Id.*

¹⁴ *Id.* (emphasis added).

¹⁵ See Letter from INCOMPAS to Marlene H. Dortch, PS Docket Nos. 18-261, 17-239 (filed Sep. 19, 2018), at 1-2.

communications service used by the end user.¹⁶ INCOMPAS posited that there were other, commercially available location information sources—like GPS, WiFi, and other mapping technologies, that could provide accurate and reliable dispatchable location information. And while the feasibility of providing specific and accurate location data for each 911-capable service by the proposed deadline is still uncertain, other commenters have sought regulatory flexibility from the Commission in this proceeding in order provide this dispatchable location information using these other sources.¹⁷

In relying on the other commercially-available sources of location information, commenters point to the increasingly nomadic nature of MLTS and VoIP systems¹⁸ and note that databases, like NEAD, that record registered address information could be ineffectual for a nomadic MLTS user seeking to connect with the closest PSAP in an emergency. Furthermore, relying on a “superset of location information” such as a wireless carrier’s cell site, GPS, the Wi-Fi hotspots, and commercial location information gives regulated voice providers several opportunities to provide accurate dispatchable location data rather than relying on a static

¹⁶ See Draft NPRM at ¶ 65 (seeking comment on whether the NEAD could assist in determining the dispatchable location of MLTS end users), ¶ 68 (in the context of fixed telephony), ¶ 76 (in the context of interconnected VoIP), and ¶ 81 (in the context of telecommunications relay services).

¹⁷ Microsoft Comments at 9 (asking the Commission to create a regulatory framework that “embraces the realities of 21st Century interconnected communications apps and services . . . [and] permits flexibility and innovation to ensure that service providers can readily achieve our collective public interest objective of accurately locating callers and connecting them to the most appropriate PSAP”).

¹⁸ See Comments of Bandwidth Inc., PS Docket No. 18-261 (filed Dec. 10, 2018), at 5 (“[M]odern VOIP offerings make it increasingly unlikely that MLTS end-users will be tied to a single device that remains static at an assigned physical location in a building at all times. Thus, legacy methodologies that require use of static address information as the dispatchable location presentation are less and less effective all the time.”).

address.¹⁹ Technology companies are now capable of knowing when location information is not good enough, and can then seek other sources to identify emergency callers' location. These other sources of location information also benefit from the network effect of being used by tens of millions of customers, thereby refining the information and making it reliable and accurate. Finally, location service providers are constantly innovating and reviewing the data from these sources in order to keep themselves competitive in the marketplace. Rather than mandate something like NEAD, the Commission should continue to allow MLTS providers to use commercial location service products that accurately and reliably identify that location of an emergency caller.

V. 911 RULES SHOULD NOT BE EXTENDED TO OUTBOUND-ONLY CALLING APPLICATIONS.

Any decision to extend 911 rules to other communications services should be based on the presumption that consumers using a service expect to be connected to emergency services and that the application of rules to new services would be in the public interest. Based on these guiding principles, it would be premature of the Commission to mandate 911 for outbound-only calling applications because consumers do not expect to use these services to reach first responders and doing so may harm the public interest by materially increasing the number of nuisance calls to PSAPs.

Consumers overwhelmingly rely on fixed and mobile voice options to contact emergency services, and outbound-only calling applications are not considered a replacement for these services given the differences in features and capabilities. Using two-way, regulated voice service, consumers expect to receive a call-back from a PSAP in the event their emergency calls are disconnected. Outbound-only VoIP service, by definition, cannot provide that capability

¹⁹ *Id.* at 10.

making it less likely that consumers would choose this service to make an emergency call. In addition, data provided for the record shows that consumers are still choosing traditional fixed and mobile voice services to make their emergency calls.²⁰ While the growing marketplace for “smart speakers” or “hub” devices may eventually condition consumers to use applications in these devices to make an emergency call,²¹ INCOMPAS contends that consumers are still more likely to choose a traditional, fixed or mobile voice service to call their nearest PSAP.

Furthermore, evidence has been submitted that suggests that calls made from outbound-only PSTN calling applications can overwhelmingly consist of “accidental or nefarious calls to emergency services” that might disrupt PSAP operations and threaten the public interest.²² This data indicates that extending 911 rules to out-bound VoIP services may have the unintended consequence of “increasing the number of nuisance calls to emergency call centers.”²³

Accidental or prank calls take valuable time and resources away from genuine emergency calls, and the public interest would not be served by extending 911 obligations to a communications service where calls are five times more likely to be a nuisance than an actual emergency.

Notwithstanding the empirical data demonstrating that emergency calling is rare when consumers don’t have an expectation that a service will be used in such manner, there are a

²⁰ See Microsoft Comments at 18-19 (showing that consumers made only 1,788 calls over a two year period and across four *countries*—Australia, the UK, Denmark, and Finland—after the company voluntarily activated emergency calling using Microsoft’s outbound-only calling application, SkypeOut).

²¹ See Comments of the National Emergency Number Association, PS Docket No. 18-261 (filed Dec. 10, 2018), at 8.

²² See Microsoft Comments at 19 (reporting that “there were five times as many less-than-a-minute calls as there were calls lasting over one minute” leading Microsoft engineers to conclude that the calls were likely “hang-ups, calls that were dialed incorrectly or mistakenly, or prank calls”).

²³ *Id.*

growing number of innovative non-interconnected VoIP services that are specifically aimed at supporting emergency calling. Thus, INCOMPAS would encourage the Commission to expressly support such marketplace innovations that are consistent with its consumer-protection objectives.

VI. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its reply comment, as it considers the issues raised in the *Notice of Proposed Rulemaking*.

Respectfully submitted,

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