Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of

911 Governance and Accountability  PS Docket No. 14-193
Improving 911 Reliability  PS Docket No. 13-75

REPLY COMMENTS OF HYPERCUBE TELECOM, LLC

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HyperCube Telecom, LLC (“HyperCube”), by its attorneys, hereby respectfully submits these reply comments in response to the Policy Statement and Notice of Proposed Rulemaking (“Policy Statement” or “NPRM”) released by the Federal Communications Commission (“FCC” or the “Commission”) seeking comment on proposals aimed at ensuring that the Commission’s 911 rules keep pace with changing technology in the above-captioned proceedings.1 While HyperCube supports the Commission’s efforts to ensure nationwide 911 reliability, HyperCube is concerned that the proposed means to do so are too broad, and in many cases, unwarranted.

I. INTRODUCTION & SUMMARY

HyperCube is a premier provider of wholesale local and national tandem switching and transport services, using a next-generation infrastructure that HyperCube makes available to the entire spectrum of traditional and next-generation services, including wireless carriers, wireline

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1 In the Matters of 911 Governance and Accountability; Improving 911 Reliability, PS Docket Nos. 14-193; 13-75, Policy Statement and Notice of Proposed Rulemaking, FCC 14-186 (rel. Nov. 21, 2014). Hereinafter, the Policy Statement portion of the item will be referred to as “Policy Statement” and the Notice of Proposed Rulemaking portion of the item will be referred to as “NPRM.”
competitive local exchange carriers and incumbent local exchange carriers (“CLECs” and “ILECs,” respectively), interexchange carriers (“IXCs”), cable telephony providers, and Voice over Internet Protocol (“VoIP”) providers. In this role, HyperCube may be involved in several elements of call flow arrangements, including those calls involving 911 services. Accordingly, the decisions adopted in this proceeding may have a significant effect on the current and future operations of HyperCube.

HyperCube applauds the Commission both for its hard work and for its commitment to promoting the availability of 911 and E911 emergency services and to ensuring that appropriate steps are taken to achieve universal, reliable and resilient 911 services. While HyperCube recognizes the importance of ensuring 911 system reliability as technologies transition to next-generation 911 (NG911), HyperCube is also concerned that the proposals outlined in the NPRM are overbroad and risk resulting in confusion, reduced accountability, and negative effects on competition and innovation.

Specifically, HyperCube disagrees with the Commission’s proposal to expand the scope of the “Covered 911 Service Providers” definition to include all parties involved in the 911 call process and to expand the associated certification requirements for these providers. HyperCube shares the concerns of many commenting parties that such rules, if adopted, will chill competition and innovation in 911 and E911 services. HyperCube also urges the Commission to reconsider its proposals to impose additional public notification requirements for “major changes” to 911 systems and to require an approval processes for discontinuing, reducing, or impairing existing 911 systems. Both of these proposals are offered without any identification of the void they are seeking to fill in the current 911 regulatory ecosystem or of the benefits they
are intended to produce. HyperCube is thus concerned that the significant costs of implementing these proposals will yield few benefits.

Therefore, HyperCube recommends that the Commission seek additional information from workshops and existing industry working groups, such as CSRIC. As the record indicates, the NPRM’s proposals are, in many cases, premature and unjustified, and more information is necessary as to the need for these prescriptive measures. The Commission should therefore request that these collaborative working groups develop recommendations for “best practices” that, once implemented, could be expected to achieve 911, E911 and NG911 reliability and resiliency. Best practices, rather than regulation, will allow the 911 industry to continue to grow and innovate as technology evolves surrounding NG911 services, without the need for protracted regulatory proceedings that could impede rapid implementation of new and better methodologies.

II. EXPANDING THE SCOPE OF THE “COVERED 911 SERVICE PROVIDER” DEFINITION ALONG WITH THE CERTIFICATION REQUIREMENT IS PREMATURE AND MAY HAVE NEGATIVE EFFECTS ACROSS THE INDUSTRY.

The NPRM proposes to amend 47 C.F.R. § 12.4 to expand the definition of a Covered 911 Service Provider to include virtually all parties involved in a 911 call process. The NPRM also seeks to impose additional requirements with respect to the current certification required by covered entities. While HyperCube appreciates the Commission’s efforts to ensure that 911 services do not slip through the cracks as technology continues to evolve, premature Commission action may result in significant burdens yet little, if any, public benefit.

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2 NPRM, ¶ 42.
3 Id. at ¶ 46.
A. **Expanded Scope of Definition of “Covered 911 Service Provider”**

HyperCube agrees with the many diverse commenters that oppose the broad expansion of the scope of entities included in the Covered 911 Service Providers definition and the expanded certification requirements for such providers. Under the NPRM’s proposal, the scope of covered entities would be expanded to include all entities that participate in a 911 call by providing 911 capabilities, not just to those entities that provide direct call service to the PSAP, as applied today. Including a greatly expanded range of participants in the 911 system under the definition of a “covered provider” will require these entities to divert resources from directly advancing NG911 technology, to ensuring compliance with multiple regulations – some of which may not be very applicable or necessary to the entity’s role in the 911 system.

If adopted, the new regulatory scheme would represent a major shift in FCC 911 regulation, a shift which many commenters view to be premature and unwarranted because the current system has not yet had the opportunity to be tested, or, if necessary, evolve on its own, including through industry-developed best-practices. Accordingly, HyperCube urges the Commission to refrain from adopting its proposed broad, expanded definition of “Covered 911

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4 See e.g., Comments of Airbus DS Communications (“Airbus”) (filed March 23, 2015); Comments of Alliance for Telecommunications Industry Solutions (“ATIS”) (filed March 23, 2015); Comments of AT&T Services, Inc. (“AT&T”) (filed March 23, 2015); Comments of Competitive Carriers Association (“CCA”) (filed March 23, 2015); Comments of CTIA – The Wireless Association (“CTIA”) (filed March 23, 2015); Comments of iCERT (filed March 23, 2015); Comments of Intrado (filed March 23, 2015); Comments of ITTA (filed March 23, 2015) Comments of Sprint Corporation (“Sprint”) (filed March 23, 2015); Comments of T-Mobile USA, Inc. (“T-Mobile”) (filed March 23, 2015); Comments of Texas 911 Alliance (filed March 23, 2015); Comments of Verizon (filed March 23, 2015).

5 Nevertheless HyperCube is pleased that the FCC recognizes the importance of excluding providers that “solely originate voice calls or text messages to 911 but do not provide any of the [911] capabilities or services” and supports this exclusion. NPRM, at ¶ 42, n.100; Appendix A, ¶ 2.

6 See e.g., Intrado Comments, 5; AT&T Comments, 3.
Service Provider” and instead to continue to include only those entities that provide 911, E911, or NG911 capabilities directly to a PSAP.7

B. Expanded Certification Requirement

Another measure offered in the NPRM is the proposal to expand the certification requirement to include certifications that a provider is taking “reasonable measures” to provide reliable 911 service.8 This proposed revision has also triggered industry concerns that, if adopted, this proposal too may have negative effects on competition and innovation. While the FCC contends that the proposed changes “would not change such providers’ substantive obligations under Part 4,”9 HyperCube agrees with Intrado that the certification requirement actually “proposes to impose many more, substantive 911 obligations on 911 service providers.”10 As Intrado explains, this proposed addition includes a “sweeping array” of network reliability practices that covered providers will be required to implement.11 Not only will providers need to implement formal compliance systems, but also they will need to implement additional recordkeeping and internal procedures to ensure collection of the proper information. Increasing the regulatory burdens on covered providers to implement such measures will require substantial resources, many of which may already be limited. Indeed, as AT&T suggested, the proposed expansion of the Part 12 rules would impose significant costs on covered 911 service providers already conducting audits of 911-related systems to meet the original deadline to certify compliance.12

7 See Intrado Comments, 20; Verizon Comments, 13; ATIS Comments, 4-5; see also 47 C.F.R. §12.4(a)(4).
8 NPRM, ¶ 44.
9 Id. at ¶ 46.
10 Intrado Comments, 22.
11 Id., 21.
12 AT&T Comments, 7. ITTA and US Telecom also separately highlight that it is premature for the FCC to adopt new additional reliability measures while industry stakeholders are still
Verizon also agrees and cautions the Commission that such regulations would be “prohibitively costly to implement.” If two industry powerhouses are concerned about the financial burden of these expanded requirements, it is not difficult to imagine how the smaller covered providers will fare with these increased burdens. Therefore, HyperCube urges the Commission to refrain from expanding the certification requirement and allow providers to continue to abide by the existing Rule 12(b), which was only recently updated.

III. THE PROPOSED NOTIFICATION AND APPROVAL REQUIREMENTS ARE UNWARRANTED AND WILL RESULT IN SIGNIFICANT COSTS TO PROVIDERS AND THE 911 INDUSTRY.

HyperCube also opposes adoption of the Commission’s proposed notification and approval requirements for, respectively, (a) major changes in service providers’ network architectures, and (b) the scope of 911 services offered and any service discontinuance events.

A. No Justification for Additional Rules

As a threshold matter, the FCC does not justify why adoption of these additional rules is necessary at this time. While the NPRM recognizes that the Commission “must ensure that the transition process is open and transparent” it neither identifies “a problem to be solved or a gap to be filled by these proposals,” nor demonstrates that the Commission’s goals cannot be achieved through alternative, less burdensome measures. Recognizing the significant lack of working hard to implement measures that the FCC adopted in late 2013. ITTA Comments, 3-4; Comments of United States Telecom Association (“US Telecom”), 2 (filed March 23, 2015).

13 Verizon Comments, 7. For instance, further costs may include “significant IT, personnel, equipment and software and network services costs.”

14 See NPRM ¶¶ 48-49.

15 Id. at ¶ 48.

16 ITTA Comments, 8.
evidence of the necessity for these proposals, previous commenters concluded that, “this new rule is a solution in search of a problem.”17

While HyperCube appreciates the importance of transparency, especially with respect to 911 services, under the proposals in the NPRM, this transparency will come at an excessive price, and the proposed rule will likely not produce any tangible benefits or useful information, as AT&T has explained.18 For instance, with respect to the notification proposal, a “major change” will be difficult to define, especially as technology evolves, with many parties offering differing opinions.19 Such discrepancies may cause confusion, not only to covered providers attempting to comply with the rule, but also to PSAPs and the public. Furthermore, in efforts to be compliant with the broad rule, covered providers will be submitting numerous notifications to PSAPs, especially if they are unsure of whether the change is considered “major” or not. As Intrado points out, “there is a risk of overwhelming PSAPs with multiple notices, some of which will have questionable value to the PSAP or the public.”20 Such over-notification not only is burdensome for covered providers, but, more significantly, also carries substantial risk that, faced with the large volume of notices, PSAPs and the public will fail to recognize the truly important notifications requiring action on their part. Rather than promoting transparency, the proposed rule may in fact reduce it. HyperCube also concurs in the view that this expanded notification rule is not only unnecessary but is also likely to “introduce[] delays and increase[]

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17 AT&T Comments, 13; see e.g. ITTA Comments, 8; 18 AT&T Comments, 12-13. 19 For instance, Intrado asks: “would the Commission consider it a major change to move from facsimiles used for “ALI No Record Found” reports to electronic means via secure web access? The ALI system is a critical part of 911 service and for some number of years will be integral to NG911, so would this change to the way ALI service is provided require Intrado to notify the FCC and the public?” Intrado Comments, 48. 20 Id., 47.
overall costs for those [notification] services, which are likely to be passed along to public safety agencies.”\textsuperscript{21} These consequences are certainly not the results the FCC has anticipated.

B. Approval Process May Impede Competition and Innovation

The same concerns hold true for the NPRM’s proposal to require an FCC approval process for discontinuing, reducing, or impairing existing 911 services. The most significant concern with this proposal is the effect that it may have on competition and innovation. As commenters point out, this proposal may discourage providers from participating in this important market segment,\textsuperscript{22} because this proposal essentially allows the FCC to dictate how an entity runs its business by requiring Commission approval before any business decisions are made. HyperCube agrees that entities involved in 911 services must have “the necessary flexibility to protect and foster their business goals,”\textsuperscript{23} but this proposed approval process will remove any flexibility once afforded to these participants. Such a measure may reduce market entry incentives and/or may force participating entities to leave the market altogether, thus reducing competition for 911 services.

C. Proposals May Lead to Conflicts Between Federal and State Regulations

These proposals also raise concerns about conflicting regulations for covered providers. As the record highlights, many of the proposals in the NPRM may conflict with state regulations.\textsuperscript{24} The Commission must explore this issue further before any regulations are adopted. It will be burdensome and difficult for entities to attempt to comply with differing state

\textsuperscript{21} Intrado Comments, 47.
\textsuperscript{22} AT&T Comments, 19.
\textsuperscript{23} Id.
\textsuperscript{24} See e.g., Intrado Comments, 11, n.29 (noting that “most states continue to have certification procedures for communications service providers. Not all are easily applicable to the NG911environment); AT&T Comments, 6 (recognizing that “the Commission suggests that preemption of state law might be necessary if they prove inconsistent or “frustrate the implementation of Commission rules.”

and federal requirements, and the required excessive compliance activity may result in badly-needed resources being diverted from directly ensuring 911 reliability and NG911 innovation and instead directed towards ensuring unnecessary, and sometimes redundant, compliance.

Accordingly, HyperCube urges the Commission to weigh the costs and benefits of the proposed notification and approval requirements carefully before implementing any changes.

IV. RATHER THAN IMPLEMENT PRESCRIPTIVE MEASURES, THE COMMISSION SHOULD SEEK INFORMATION FROM COLLABORATIVE INDUSTRY WORKSHOPS AND WORKING GROUPS TO DEVELOP BEST PRACTICES.

As the record highlights, the NPRM’s proposed approach to updating the 911 rules to ensure reliability and resiliency is vague and raises multiple questions that still need to be answered before any regulations are adopted. In previous proceedings where rule proposals raised both technical and procedural questions, HyperCube has advocated for development of collaborative industry solutions. This proceeding is no different.

HyperCube urges the Commission to follow the suggestions in the record to develop workshops, establish advisory committees, and seek additional information from groups such as CSRIC and TFOPA in order to gain a better understanding of the current 911 and E911 ecosystem. These workshops will provide invaluable real-world data that will be useful to the Commission in developing the appropriate regulatory policy, if any, concerning 911 reliability and resiliency. Furthermore, this process may also foster development of guidelines for operational best practices. Implementation of a best practices approach, rather than of

25 See e.g., Comments of Texas 911 Alliance, Texas CSEC & MEDCA, 3.
26 See e.g., Comments of HyperCube in WT Docket No. 13-5, 3 (filed July 8, 2013).
27 See e.g. Intrado Comments, 19; Airbus Comments, 18; iCERT Comments, 1; Verizon Comments 12-13; US Telecom Comments, 2-4; Comments of NENA-The 911 Association, 3 (filed March 23, 2015) (urging the Commission to consider an alternative, consensus proposal, if such an outcome is not reached in this proceeding).
premature, prescriptive mandatory regulations, may allow 911 efforts to evolve concurrently with technology developments, as well as allow for exploration of alternative options for improving reliability and resiliency.  

A collaborative approach will result in greater benefits than would result from broad and confusing regulatory requirements. For instance, a collaborative approach could focus continuing attention on new remedies for reliability issues as technology allows for them, whereas the implementation of new and broader filing requirements may lead to a false sense of security that steps have been taken to remedy a problem, when that may not be the case. Moreover, in contrast to the NPRM’s proposals’ potential to lead to conflicting federal and state regulations, a collaborative approach is likely to achieve a unified approach.

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28 See iCERT Comments, 1; Comments of Telecommunications Industry Association (‘‘TIA’’), 4-5 (filed March 23, 2015) (recognizing that the most efficient means of improving 911 system reliability is through voluntary consensus-based standards); see also Comments of Motorola Solutions, 10-11 (filed March 23, 2015) (supporting the promotion of new best practices and methodologies tailored to new technologies rather than adopting regulatory systems based on legacy technologies).
V. CONCLUSION

For the foregoing reasons, HyperCube urges the Commission to refrain from adopting the broad and unwarranted proposals put forward in the NPRM. These proposals would impose significant costs on all entities participating in the 911 system, and risk chilling innovation and competition, without evidence they will effectively achieve their goal of improved reliability and resiliency of 911 services. Instead of adopting prescriptive regulatory measures, the Commission should convene working groups and seek assistance from established groups such as CSRIC to develop a more informed record on the current state of 911 reliability.

Respectfully Submitted,

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