

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
FCC Seeks Public Comment on Eighth)	PS Docket No. 09-14
Annual Report to Congress on)	
State Collection and Distribution of 911)	
and Enhanced 911 Fees and Charges)	

**REPLY COMMENTS OF THE
NEW JERSEY WIRELESS ASSOCIATION**

The New Jersey Wireless Association (“NJWA”)¹ hereby submits these reply comments in response to the above-captioned *Public Notice* regarding State collection and distribution of 911 and Enhanced 911 (collectively, “911”) related fees and charges.² For each of the past several years³, NJWA called to the Federal Communications Commission’s (“FCC” or “Commission”) attention the State of New Jersey’s 911 System and Emergency Response Trust Fund Account (“911 Trust Fund”).⁴ NJWA noted that the State of New Jersey (“State”) was

¹ NJWA is a volunteer member organization comprised of more than 1900 professionals from the wireless industry living and or working in the State of New Jersey. See www.newjerseywireless.org for more details.

² FCC Seeks Public Comment on Eighth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, *Public Notice*, DA 17-61 (Jan. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/0113073561060/DA-17-61A1.pdf>

³ NJWA has filed in this proceeding during the past 4 years, 2013, 2014, 2015 and 2016.

⁴ New Jersey Statutes, section 52:17C-19, establishes the 911 Trust Fund. In pertinent part, it reads:

- a) Funds credited to the "9-1-1 System and Emergency Response Trust Fund Account" shall be annually appropriated for the purposes of paying:
 - 1) eligible costs pursuant to the provisions of sections 13 and 14 of P.L.1989, c. 3 (C.52:17C-13 and 52:17C-14);
 - 2) the costs of funding the State's capital equipment (including debt service), facilities and operating expenses that arise from emergency response;
 - 3) the cost of emergency response training, including any related costs or expenses of the Office of Emergency Management in the Division of State Police in the Department of Law and Public Safety;
 - 4) the cost of operating the Office of Emergency Telecommunications Services created pursuant to section 3 of P.L.1989, c. 3 (C.52:17C-3); the cost of operating the 9-1-1 Commission created pursuant to section 2 of P.L.1989, c. 3 (C.52:17C-2);
 - 5) any costs associated with implementing any requirement of the Federal Communications Commission concerning 9-1-1 service that is not otherwise allocated to a carrier and not eligible for reimbursement under law or regulation;
 - 6) any costs associated with planning, designing or implementing an automatic location identification technology that is not otherwise allocated to a wireless carrier and not eligible for reimbursement under law or regulation; and any costs associated with planning, designing or acquiring replacement equipment or systems (including debt service) related to the

diverting expenditures of the 911 Trust Fund to non 911 system capital and operations. As the Commission noted in its Eighth Annual Report to Congress, the State of New Jersey has once again, diverted 911 fees. This year again⁵, the State of New Jersey has increased its fee diversion practice over last year's; an obvious step in the wrong direction. Diversion of 89.9% of the 911 Trust Fund's expenditures were appropriated to offset other operating budget items. NJWA has consistently noted these operating expenditures were inconsistent with the spirit and intent of the NET911 Improvement Act of 2008. We believe the spirit and intent of the Act was captured very clearly in the name given to it by Congress; "New and Emerging Technologies . . ."⁶ Specifically, the Act⁷ and its context is geared toward the implementation and operation of 911 networks and call processing⁸. Further, under the Act⁹, the continued reference is to "Emergency Communications" not specifically including other emergency services or operating budgets.

Upon review of comments filed this year by the Washington State E911 Coordination Office¹⁰, we note that the State of Washington is in a similar situation to that of the State of New Jersey. Washington does not agree with fees which are classified as "diverted", as these fees have been used for "other public safety purposes."¹¹ NJWA has filed Reply Comments beginning with the FCC NET911 2013 proceeding¹², which continue to highlight issues concerning the prioritization and the administration of expenditures from the NJ 911 Trust Fund, none of which have been remedied. We therefore agree with Washington State in its recommendation to the Commission, when requesting clarification, in an effort to help states better manage collected fees under this federal law. In fact, NJWA had suggested this same

enhanced 9-1-1 network as defined by subsection e. of section 1 of P.L.1989, c. 3 (C.52:17C-1). N.J.S.A. § 52:17C-19 (2013).

⁵ In its Sixth Annual Report to Congress, the FCC had noted, and NJWA had detailed in its 2015 filing, New Jersey diverted 88% of its collected fees to non-eligible expenses under the NET911 Act of 2008. In its Seventh Annual Report to Congress, the FCC had noted, and NJWA again detailed in its 2016 filing that New Jersey increased the fee diversion to 89%. In this current year of the proceeding, the FCC reports and NJWA again notes New Jersey has continued its trend of increased fee diversion. This year 89.9% of collected 911 fees have been diverted, nearly another point over last year.

⁶ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 Act).

⁷ *id.* Page 1 "An Act to promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services, encourage the nation's transition to a national IP-enabled emergency network, and improve 911 and E-911 access to those with disabilities"

⁸ *id.* Sec 6 (h) Development of Standards – This section outlines the promotion of standards for call delivery, call handling, overflow, PSAP certification and testing and procedures; all network related implementation and operational issues.

⁹ *id.* Sec 6 (d) Delegation of Enforcement to State Commissions.

¹⁰ See Comments of the Washington State E911 Coordination Office dated February 9, 2017

¹¹ *id.* page 2 ". . . all collected excise tax funds were used for purposes designated by the funding mechanism (RCW)."

¹² See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fourth Annual FCC Report to Congress, dated March 15, 2013.

recommendation in its 2014 filing.¹³ Additionally, NJWA notes the comments of APCO in this regard.¹⁴ In its comments, APCO specifically suggests “the Commission should clearly define NG9-1-1 as part of the information collected on NG9-1-1 expenditures.”¹⁵ APCO further suggests that NG9-1-1 should be defined as end-to-end in order for future multimedia technologies to allow information to ultimately flow from the caller to the first responder.¹⁶ NJWA agrees with APCO in that any definition or clarification should include end-to-end IP connectivity. All new generation 911 communications systems being implemented today are based upon IP technology. Even push-to-talk radios, currently in the hands of our first responders, now have IP addresses associated with them. The ultimate ability for dispatchers or telecommunicators to pass needed information to first responders is just around the corner. If the fees collected to promote this technological transition are used otherwise, as pointed out during the years of this proceeding, this will always remain a future vision and not a current reality.

NJWA agrees with the comments of Commissioner O’Rielly in his recent blog on this issue¹⁷. The Commissioner points out the issues we have raised in this proceeding over the past four years, and again in these Reply Comments; namely fee diversion and no accountability toward the governments that collect and divert these 911 fees under their own guise. Further, the Commissioner points out that several states remain repeat offenders despite continued specific mention in the FCC’s annual reports, again with no accountability. In contrast, we point out that wireless carriers and related entities have been quickly assessed and paid record fines for system outages which have caused the inability to make 911 calls.¹⁸ The FCC fined T-Mobile, Verizon Wireless, CenturyLink and Intrado, all typically within about 12 months of the time of the outages, yet 10 years of repeat offense have gone by for several states, with no accountability enforcement. The underlying issue at stake is the public safety of all US constituents, regardless of the offending entity, government or commercial. The state of New Jersey is positioned between two major metropolitan areas, New York City and the City of Philadelphia. We have nuclear power plants, joint defense logistics military bases, a long coastline, and major northeast corridor infrastructure (rail, highway, airports) that keeps our country moving. Our first responders need access to the latest technologies in an effort to keep our constituents safe in this

¹³ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual Report to Congress, dated March 25, 2014, page 3, “NJWA believes the FCC and Congress should clarify the definitions within or related to the NET911 Act of what expenditures are intended under the Act as originally contemplated and subsequently adopted. These clarifications will help New Jersey and other states modify and adopt legislation which is consistent with the spirit and intent of the NET911 Act as put forth by Congress.”

¹⁴ See Comments of APCO, dated February 13, 2017.

¹⁵ *id.* page 2

¹⁶ *id.* page 2; “Full implementation of NG9-1-1 should be defined as end-to-end (from the caller to the telecommunicator) IP connectivity enabling current voice communications, future multimedia, and other data capabilities to flow from the 9-1-1 caller to the PSAP and be properly reported, archived, and further transmitted between the PSAP and first responders.”

¹⁷ See “States Must Stop Raiding 9-1-1 Fees” <https://www.fcc.gov/news-events/blog/2017/03/01/states-must-stop-raiding-9-1-1-fees>

¹⁸ See Fortune Magazine Online “T-Mobile will pay this record fine for preventing 911 calls” <http://fortune.com/2015/07/17/tmobile-911-calls-fine/>

densely populated environment. The repeat raiding of fees by our state and that of our neighbor New York, will eventually prove to be devastating in the event of a major catastrophe.

NJWA therefore recommends again to the Commission, in agreement with Washington State, APCO and in support of Commissioner O’Rielly’s comments, that clarification of eligible expenditures and definition of NG911 services would provide guidance to not only the states of New Jersey and Washington, but other repeat offending states¹⁹. This clarification, definition and guidance will ultimately help the nationwide 911 community implement the technologies as appropriately envisioned by Congress under the “**New and Emerging Technologies** 911 Improvement Act of 2008” (emphasis added).

NJWA also notes that another year has gone by and the State has allocated virtually no funding to the planning or implementation of a statewide NG911 network²⁰. While hiring consulting services to begin the process of NG911 implementation is certainly a step in the right direction, this project will progress no further as it is an unfunded project, with nearly 90% of fees being diverted to cover other budget gaps. In our many meetings over the years with state legislators, we have consistently heard comments such as “we can’t pay our bills now” and, “that money’s already been appropriated this year”. This is of great concern as the status quo seems to be the easy road in this situation, thus the basis of the State’s NG911 initiative being an unfunded project. Unfortunately, a future catastrophic situation, wherein a lack of technology advancement which would have helped our first responders save lives lost during that catastrophe is uncovered after the fact, will be the likely catalyst for our lawmakers to make these necessary changes.

Accordingly, NJWA has continued its initiatives as part of our educational mission to inform responsible law makers of the issues over the years of this proceeding. We continue to meet with key members of the New Jersey Legislature, in both the State Senate and Assembly, who have jurisdiction and oversight on the 911 Trust Fund, and have provided testimony before committees in Trenton, including the Homeland Security Committee and the Telecommunications and Utilities Committee. Additionally, we have met with members of the US House of Representatives from various New Jersey Congressional districts, US senators and several FCC Commissioners. Unfortunately, our educational efforts to date have resulted in New Jersey Assembly legislation²¹ to increase 911 fees by 10% (approximately \$12 million) in an effort to address NG911 funding shortfalls, with no mechanism to address the ongoing diversion of existing collected fees (\$122 million). Naturally, this legislation has stalled in the Assembly

¹⁹ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Seventh Annual Report to Congress, dated March 7, 2016, page 4, “The states of New York, Illinois, and Rhode Island have been a repeat offenders throughout the time period of the chart and the current trend of this chart shows an increase in the diversion of funds by states, not the inverse.”

²⁰ New Jersey has indicated in its submission to the FCC that \$75,871 of its \$122,632,000 of collected fees, has been appropriated to consulting services for NG911. This amounts to 0.06% of fees collected.

²¹ New Jersey Assembly Bill A-1821 see <http://www.njleg.state.nj.us/bills/BillView.asp?billnumber=A1821>

and Senate as there is no support for increased taxes in our state, especially when the “fees”, which have been collected for this very purpose, are not distributed to the PSAPs that process the majority of the 911 calls, thereby increasing the burden on local property taxes, already the highest in the nation²². We have worked closely with the New Jersey Association of Counties (“NJAC”), who filed in this proceeding last year²³. NJAC has met with the State Administration about this topic, and subsequently, the Governor had indicated during a New Jersey based talk-radio station NJ101.5 show “Ask the Governor” when confronted with the issue, that something would be announced by year end. This was last year and to date, nothing has been announced.

Another issue we highlighted in past filings was transparency to the decision process for the expenditures and an opportunity for the public or affected stakeholders to address the expenditure process. While the Act²⁴ specifies nothing within the Act shall prevent States from collecting 911 fees, “provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services”, the State collects these fees under the pretense of the Act, however, its statute governing the appropriation of these collected fees can and has been broadly interpreted to include expenditures which are beyond the definition of communications²⁵ as defined above. NJWA also notes that the State continues to ignore the Act’s²⁶ encouragement in seeking to ensure efficiency, transparency and accountability in the collection of a fee or charge for the support or implementation of 9-1-1 or enhanced 9-1-1 services. The State has not made changes since NJWA was denied information as requested through the Open Public Records Act (“OPRA”) ²⁷ as to information used for determining the fee allocation methodology and appropriation²⁸ in order to better understand how and why 911 fee monies are administered. Further, NJWA believes Congress has already mandated that the process and organizations with jurisdiction over the expenditures of 911 fees are subject to OPRA and other such state open records laws with the transparency clauses in the Act. NJWA continues to advocate for a more open process that includes all of the stakeholders vested in the collection and allocation of the Trust Fund. These stakeholders include the counties and municipalities that fund and operate the almost 200 PSAPs in the state and telephone customers forced to pay in excess of \$120 million annually. This E911 tax is in addition to the 6.875% sales tax collected on the customer bills. NJWA notes from the Eighth Annual Report, that it appears New Jersey is the only state that does not share the revenue collected for 911 or E911 with county and municipal PSAPs.

²² See wallethub.com <https://wallethub.com/edu/states-with-the-highest-and-lowest-property-taxes/11585/>

²³ See New Jersey Association of Counties Comments in NET911 proceeding, Seventh Annual Report to Congress, dated March 8, 2016 <https://ecfsapi.fcc.gov/file/60001530429.pdf>

²⁴ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 Act), Sec 6 (f) (1) – State Authority Over Fees

²⁵ *id.*, Sec 6 (d) - Delegation of Enforcement to State Commissions.

²⁶ *id.*, Sec 6 (f) (2) - Fee Accountability Report

²⁷ See State of New Jersey Government Records Council P.L. 2001 <http://www.state.nj.us/grc/act.html>

²⁸ See NJWA’s 2014 Filing, dated March 24, 2014, in this proceeding with attached NJWA OPRA request C76177, C76179, and C76180 responses from the State of New Jersey

We applaud the FCC and Congress for this ongoing proceeding and report request and continuing to make this a priority. We also agree with APCO in that the Commission's Report provides valuable insight in this process.²⁹ **NJWA still believes the implementation of the NET911 Act is best done by the states.** However, we have presented consensus opinions pertaining to the need for greater clarification and definition by the Commission. New Jersey's statutes have been broadly interpreted in a manner NJWA believes is inconsistent with the Act. This interpretation transcends all administrations in our state since the inception of the statute. Washington State has laws which permit expenditures not specifically defined by the Act. Several states are known and documented repeat offenders. The lack of transparency, again inconsistent with the Act does not afford the general public within the State of New Jersey, or other states, the ability to understand how and if their fees are being properly allocated as directed by the Act. NJWA believes the FCC and Congress should clarify the definitions within or related to the Act of what expenditures are intended under the Act as originally contemplated and subsequently adopted. Further, NJWA believes Congress has already mandated that the process and organizations with jurisdiction over the expenditures of 911 Fees be subject to OPRA, however, accountability seems to be an issue. While the State of New Jersey appears to be delinquent in the adoption of NG911 for its residents at a statewide level, many of the PSAPs in the State have already or are in the process of upgrading their dispatch and communications facilities to be "NG911 ready", as these PSAPs and the lawmakers accountable for them, realize they answer to and are responsible for the public safety of their constituents. A significant underlying issue here is that these upgrades are being paid for using normal taxpayer revenues³⁰, not the 911 fees specifically collected for this purpose, effectively "double dipping" our residents. We respectfully request Congress and the FCC provide the clarification and definition needed to correct this situation and promote public safety as intended under the Act.

²⁹ See Comments of APCO, dated February 13, 2017, page 2. "The Commission's fee diversion reports provide valuable insight into the 9-1-1 funding environment, as well as areas such as technology deployment and cybersecurity."

³⁰ See NJWA's 2014 Filing, dated March 24, 2014, in this proceeding with attached letters of support from several county public safety officials.

Respectfully submitted,

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