

**Remarks of FCC Commissioner Michael O’Rielly  
Before the Pennsylvania Chapter of the National Emergency Number Association  
September 12, 2019**

Thank you, Mark, for that very kind introduction. It is an absolute pleasure to be with you today. Beyond the beautiful fall weather here at State College, I count my blessings any time I can escape the Washington, D.C. bubble to engage with those affected firsthand by our policy decisions. This leads to a more knowledgeable Commission and results in policies that better reflect the real world. There is an old saying along the lines of, “you don’t really know someone else if you haven’t walked a mile in their shoes,” and, in my view, while I don’t think this was intended literally, that sentiment is especially relevant when it comes to public policy. Travelling our great nation, listening intently to people, and then etching those experiences – at least the thoughtful ones – into the policies that help shape our future, is not only an incredibly uplifting experience, but results in far better decision making.

At the same time, this visit is not entirely cheerful. It is not lost on me that we come together at this event to discuss important public safety matters one day after the eighteenth anniversary of the horrific events of September 11, 2001. It is very poignant that the road I took today crossed near Shanksville, PA, and the memorial that commemorates the many brave American men and women who sacrificed their lives to disrupt, and ultimately stop, a terrorist-controlled airplane. The images of that day remain fresh in my mind and inform my views on related public safety and national security policy choices at the Commission. While the FCC works on ensuring the appropriate policies are in place to allow you to do your jobs, many of you are on the frontlines every day saving and protecting the lives and property of countless Americans. I could never thank you enough for your sacrifice and service.

Let me also take this opportunity to applaud the Pennsylvania chapter of NENA for all that it does to improve the safety of the American public. I am not telling this audience anything it doesn’t already know, but from the moment an emergency occurs, the heart and soul of our entire public safety system is the 9-1-1 network. It is the backbone for all of the other emergency response functions. The involvement of fire, rescue, ambulance, and police personnel, as well as the surrounding hospitals and so on, almost always starts with a call to 9-1-1. That’s why your efforts, along with those of your fellow 47 chapters to advance the 9-1-1 network is so critical, whether via research, planning, training, or education. And, your work is only going to increase and get more complex as Next Generation 9-1-1 (NG911) deployment intensifies nationwide.

With your indulgence, I would like to discuss three public policy issues that may be of interest to you. Afterward, I would be pleased to answer any questions you may have on these topics or others.

*State & Territory 9-1-1 Fee Diversion*

One of the reasons I was invited to join you today was to talk about what is tantamount to insidious criminal behavior perpetrated by a few select U.S. states and territories to divert 9-1-1 fees away from their intended purpose, thereby placing the safety of Americans at risk. Each year for the last decade, as required by law, the Commission has identified those states and territories that have imposed an obligation on wireless providers to collect fees from their subscribers to support the corresponding 9-1-1 network and related purposes. As part of this report, the Commission details how the money is spent and reveals those states that decided to divert a portion of the collected funds for some other purpose. If diversion involved entities other than state elected officials, the former would be in jail for such deception and thievery. And, we know this to be true because, if there is even a hint that a wireless provider hasn’t fully remitted every nickel of expected funds, states order extensive audits and instruct prosecutors to warm up the grand juries. Somehow, if a government body engages in similar behavior, it is treated as business as usual. Well, not if I have anything to say about it!

Let's explore a few lessons learned from past FCC reports and my discussions with interested parties. First, the annual diverters list generally includes a combination of repeat offenders with a few new ones thrown in. This results in an average of six to eight states and territories per year that have diverted 9-1-1 funds. There are three recalcitrant states — New Jersey, New York, and Rhode Island — that are habitual and intentional offenders. In other instances, a few states or territories engage in illegitimate conduct because of a tough budget year or a creative spending pursuit.

Second, out of the total sum of diverted monies, which amounted to \$285 million in 2017 alone, a portion goes to programs that, at best, can be considered tangentially-related to public safety, while the vast majority goes to state and territories' general funds, just like income or sales tax revenue. Regardless of how the money is spent, there is no acceptable reason to divert these funds: diversion is diversion, no matter how meritorious the spending.

Third, most diverting states and territories are woefully unprepared for the expected cost of migrating to NG911. Misappropriated fees represent needed money for this transition, and diverting states and territories are likely to be behind the curve nationwide in terms of deployment, implementation, training, and otherwise. Such underfunding is exacerbated because states and territories' diversionary practices render them ineligible for any of the recent federal 9-1-1 grants, totaling \$109 million.

Lastly, some states and territories appeared on previous lists due to their shoddy filings to the Commission. For whatever reason, the submissions did not accurately represent how monies were being spent or reflect the seriousness of the FCC's request for this information. After much back and forth last year, we were able to remove a handful from the violator category, which in turn allows the Commission to focus its attention on those that actually divert.

As the public safety community knows so well, the diversion of 9-1-1 fees is incredibly harmful. At its best, it deceives the American public into believing that the money is going to public safety communications. Taking these dollars for other purposes undermines confidence in the 9-1-1 system and the willingness of consumers and voters to approve needed spending for maintenance and upgrades. At its worst, diversionary practices shortchange the budgets of critical 9-1-1 call centers, prevent needed fixes to address existing problems, and preclude investment in new technology. I have visited many emergency call answering centers, better known as PSAPs, and witnessed firsthand the hard work and stress experienced by emergency call takers. It's not a job for the faint of heart. That any state or territory would intentionally make the jobs of call takers and other first responders even harder through their shortsighted budgetary maneuvers is unconscionable.

So, what has the Commission done to address such diversion and what further steps can it take? I don't speak for the full FCC, but suffice it to say that my fellow colleagues are just as outraged and disgusted by fee diversion as I am. On multiple and separate occasions, Chairman Pai and I have joined together to strongly oppose diversion, and Commissioner Rosenworcel and I have collaborated on similar efforts. For my part, it has become a personal mission. Through letters to diverting states, numerous testimonies before Congress, blogs, speeches, press conferences, meetings, offering creative solutions, and more, I have attempted to apply whatever pressure I can to legally and rightfully end this unacceptable practice. Screaming from the rooftops that this must stop has had some positive effects, as a number of states and territories have changed their practices or committed to end this bad behavior. But, sadly, more work remains, and you can expect more action from my office.

Just this week, I wrote to Montana Governor Steve Bullock to challenge the 2017 diversion of \$2 million that reportedly went to cover buyouts for state university professors. What is most troubling is that a Montana statute *specifically authorized* the legislature to divert money from the 9-1-1 account for such

purposes. Someone will probably try to argue that the Governor is blameless since the legislature effectively legalized the theft pursuant to state law. But, it's hard to have sympathy for the Governor when he reportedly urged the legislature to take five times more than what was ultimately stolen from the fund. Outrageous. The remedy, of course, is fairly simple: repay the money and commit never to divert again. We'll see if the Governor is willing to side with public safety or against it.

The biggest problem in ending diversion completely is the previously mentioned recalcitrance of your neighboring and nearby states – New York, New Jersey, and Rhode Island. Thank goodness Pennsylvania has not joined them! But, what can be done to convince states that cannot be shamed into compliance to change their ways? Each of these three states is a bit different. New Jersey is by far the most brazen: it diverts over 90 percent of 9-1-1 fees to its general fund, and every attempt I've made to engage with its leaders has gone unanswered. New York has been playing games with its Commission filings, failing to file one year and now claiming that its activities don't amount to diversion due to a Byzantine fee structure. And, as for Rhode Island, it walled-off its 9-1-1 fees, but then created a new, separate "public safety" fee to be collected from wireless consumers to siphon money off for its general fund. Creative? Sure. Legal? To be determined. Sneaky and Deceptive? 100 percent. While I still have a few tricks up my sleeve, experience suggests it is going to be very hard to change the practices of these three states absent some new tools enacted by Congress or the Commission.

As you can tell, this issue is near and dear to my heart. My goal during my tenure at the Commission is to have at least one report that indicates no state or territory has diverted these critical funds. Is that too much to ask? Perhaps, but it won't happen just by wishful thinking. It is going to take a lot more effort to get Congress to enact a law banning such practices or for like-minded individuals to make offenders so uncomfortable that diverting isn't worth the hassle. It can most certainly be done, particularly if I can count on an army of supporters, including the members of NENA, to push their friends and acquaintances to do the right thing. Are you willing to step up your efforts to help me in this quest?

#### *AWARN*

Let me turn to an issue that is slightly out of your bailiwick, but, if you stay with me, I think you will see the connection to the overall theme of the day. Many of you may know that the Commission has been actively engaged in approving a framework by which broadcast television stations are able to transmit using a new television standard, known as ATSC 3.0. As migration to this new standard is completely voluntary, it serves as an opportunity for broadcasters to provide a new, advanced platform of services to the viewing public based on Internet Protocol, or IP, technology if they choose.

Currently, no one is quite sure how ATSC 3.0 will develop, if at all, or whether it will be a smashing success. While a number of the larger broadcast station groups have embraced the technology and see the benefits that it can bring, the technology remains in the testing phase and the business case still has to be made. In fact, there are multiple business cases that are being pursued. For instance, some broadcasters seem keen on using the technology to offer mobile television; others would like to offer better audience-targeted advertising; some see it as a way to distribute high-tech application upgrades in the middle of the night, or so-called datacasting; and still others want a better viewing experience with high-end audio capabilities.

Another technology that has been part of the ATSC 3.0 discussion is the ability to offer super-advanced emergency alerting. Many of you are familiar with the current Emergency Alert System – or EAS – for broadcast, cable, and satellite television and Wireless Emergency Alerts for wireless devices. However, ATSC 3.0 provides the possibility of inserting highly upgraded, geo-targeted messages into existing programming with increased viewer functionality and information. While I am not endorsing this technology, known as AWARN, by any means, it is worth exploring whether it can improve the overall

emergency notification system in times of need, and we would certainly benefit from receiving the input of the public safety community. Does more interactive warning information enhance public safety, the broadcast experience, or both? While this system is unlikely to generate much, if any, revenue, would it improve the stickiness of broadcast television, and thereby keep viewers from switching to the vast array of other video options? Can this technology be operated simultaneously with some of the other ATSC 3.0 market options?

I am interested to see what the market tests show and whether broadcasters ultimately decide to go down this route. It would be prudent for you to follow AWARN's development.

### *Unified Non-Emergency Wireless Number*

For my last issue, I would like to focus on a related numbering matter, which seems completely appropriate given the mission of this organization. Specifically, we need to consider the possibility of creating a unified non-emergency wireless number to be used throughout the nation. To clarify, I mean we would still keep 9-1-1 for emergencies, but also streamline the myriad of existing wireless numbers that are used in many parts of the country to report critical situations that do not rise to the level of true emergencies. These calls offload routine incidents and other non-emergencies, usually to the state police or highway patrol, while preserving 9-1-1 for more serious purposes.

To give some context, if you drive the Northeast corridor, you will see signs for multiple wireless numbers to dial if you witness dangerous situations, such as aggressive driving and possible DUIs. It's #77 in Virginia, Maryland and New Jersey; \*47 in North Carolina; \*77 in Massachusetts; and even \*11 on the nearby Pennsylvania Turnpike. There's also \*847 in Tennessee, #4357 in Wyoming, \*55 in Oklahoma, and \*482 for parts of Kansas, just to put a finer point on it. The reality is that, depending on where a person is located at the moment, the mobile telephone number to report these types of situations may be different. And if you live close to state lines, jurisdictional boundaries, or travel extensively, good luck remembering all of the different short codes.

In my mind, the system we have today of many individual numbers is a potential safety hazard. Travelers, unlikely to remember the correct wireless short code, have two options: either burden the 9-1-1 network and the call centers or don't make the calls. Let me paint a picture for you. Imagine driving by a person on the shoulder of I-95 with a flat tire. Would the average person call 9-1-1 to get help for the stranded driver or just let it go? Even if someone in a passing car is familiar with the many existing non-emergency wireless numbers, they may dial the wrong number for that particular jurisdiction. What is the end result? The person on I-95 with a flat tire is left to fend for themselves. And, who will the person with the flat tire call? Since no one is ever so fortunate to break down near the sign providing the appropriate wireless number, it will probably be 9-1-1. I think you can see my point.

We used to have a similar issue with public safety emergency numbers until Congress and the emergency communications community agreed to set 9-1-1 as the official emergency number in the late 1990s. Why wouldn't the same arguments that led to that decision apply here? The simple answer is that they should: we ought to have a unified wireless number for non-9-1-1 urgent calls.

Starting this process would simply require all of the requisite entities, including NENA, to agree on a common number. Doing so may take a little bit of time, but the result would be well worth the process and outweigh any disadvantages. After all, since most consumers don't know that non-emergency wireless numbers even exist, how can any state be so wedded to their particular number to be unwilling to switch over to a new common one? It is hard to believe that Pennsylvania is really *that* attached to \*11. Legislation to allocate such a number, the Non-Emergency Mobile Number Act, was introduced in the

previous Congress by Congresswomen Susan Brooks from Indiana and Anna Eshoo of California but hasn't been reintroduced yet.

I think this is exactly the type of issue where NENA can play an important role. And, so, I would humbly request that you consider expressing your support for action on this front to your national organization.

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So, there you have my thoughts on three public policy issues that should be relevant to your involvement with NENA. Perhaps these issues resonate sufficiently with you that you will want to engage with me and others to see the current status quo changed.

Thank you so very much.