

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

In the Matter of)	
)	
911 Fee Diversion)	PS Docket No. 20-291
)	
New and Emerging Technologies 911 Improvement Act of 2008)	PS Docket No. 09-14

NOTICE OF INQUIRY

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By the Commission: Chairman Pai and Commissioners O’Rielly and Rosenworcel issuing separate statements.

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I. INTRODUCTION

1. Between 2012 and 2018, American states and jurisdictions diverted a total of over \$1.275 billion in fees collected for 911 and Enhanced 911 (E911) services to non-911 purposes.¹ This diversion of funding directly undermines the public safety communications system. In this Notice of Inquiry, we seek comment on the effects of this fee diversion, and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911 fees.

¹ This total comes from the Commission’s annual reports to Congress on state collection and distribution of 911/E911 fees and charges. Copies of reports from all responding jurisdictions are available on the FCC website at <https://www.fcc.gov/general/911-fee-reports>. Herein, the term states, unless the context indicates otherwise, should be taken to include territories and the District of Columbia.

2. Each year in the United States, people in urgent need of assistance place over 200 million emergency calls to public safety answering points (PSAPs), either on their own behalf or on behalf of another who needs help.² To ensure that the 911 system provides Americans with the life-saving services they need in times of crisis, PSAPs must be adequately funded so that they can implement modern call-handling technology and maintain well-trained personnel. The 911 system also must modernize by migrating from legacy phone network-based 911 technology to advanced, IP-enabled next generation technology (NG911) that supports the services Americans increasingly use to communicate, such as text messaging and streaming video.³

3. One of the principal sources of funding for 911 is fees assessed by states on a per-line basis on wireless, wireline, and Voice over Internet Protocol (VoIP) services over which 911 calls are made. Service providers typically collect these fees via monthly subscriber bills, then remit the fees to the governmental authority assessing the fee.⁴ In 2018, 49 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands reported that their state or jurisdiction had established a funding mechanism for the support or implementation of 911.⁵

4. Despite the critical importance of funding for 911 services, some states use funds collected for 911 for other budgetary purposes, such as the state's general fund. This diversion of 911 fees could put lives at risk. Without full funding for 911 services in these states, citizens attempting to reach a PSAP could encounter busy signals or overwhelmed call takers, or they could be unable to reach 911 because of obsolete call-handling technology. Moreover, the demands on PSAPs typically increase during major emergencies such as hurricanes and wildfires.

5. Each year, the Commission provides a report to Congress on state 911 fee collection and use that identifies which states have improperly diverted 911 fees.⁶ While identifying states that divert 911 fees in these reports has arguably helped discourage the practice, this step alone has failed to eliminate it. Each year a number of states have been identified as diverters, and a few states persist in the practice year after year.

² See FCC, Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 10, para. 11 (2019) (Eleventh Report), <https://www.fcc.gov/files/11thannual911feereport2019pdf> (noting that states and other jurisdictions estimated receiving a total of 213,840,824 calls to 911 during 2018); see also NENA: The 9-1-1 Association (NENA), *9-1-1 Statistics*, <https://www.nena.org/page/911Statistics> (last visited Sept. 1, 2020) (stating that “[a]n estimated 240 million calls are made to 9-1-1 in the U.S. each year”).

³ NENA defines NG911 as “[a]n Internet Protocol (IP)-based system comprised of managed Emergency Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E9-1-1 features and functions and provide[] additional capabilities” and states that NG911 is “designed to provide access to emergency services from all connected communications sources, and provide multimedia data capabilities for [PSAPs] and other emergency service organizations.” NENA, Master Glossary of 9-1-1 Terminology at 118 (2020), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA-ADM-000.23-2020_FINAL_2.pdf. See also The National 911 Program et al., NG911 Roadmap, Pathways Toward Nationwide Interconnection of 911 Services at 7 (2019) (NG911 Roadmap), https://www.911.gov/pdf/NG911_Roadmap_Final.pdf (discussing “What We Mean by NG911”). For a description of the NG911 architecture, see FCC, Task Force on Optimal PSAP Architecture (TFOPA), Final Report (2016) (TFOPA Final Report), <https://www.fcc.gov/about-fcc/advisory-committees/general/task-force-optimal-public-safety-answering-point> (providing recommendations to the Commission regarding actions that PSAPs can take to optimize their security, operations, and funding as they implement NG911).

⁴ Funding for 911 may also come from partner agencies, such as police, fire, and EMS (which may, in turn, derive funding from sales and income taxes), or from local property taxes. See NENA, *How 9-1-1 Is Changing in a COVID-19 World, 9-1-1 & COVID-19 Report Series* at 3 n.7 (2020) (NENA COVID-19 Report), https://cdn.ymaws.com/www.nena.org/resource/resmgr/covid/COVID-19_Report_2.pdf.

⁵ See Eleventh Report at 16, para. 13.

⁶ See 47 U.S.C. § 615a-1(f)(2). The FCC Chairman submits the Annual Report to Congress on 911 Fees. For ease of reference, we refer herein to submission of these reports by the Commission. See, e.g., Eleventh Report at 2, para. 1 & n.1.

6. In this Notice of Inquiry, we seek comment on the effects of 911 fee diversion, including the specific impact that 911 fee diversion has had on the provision of 911 service in states that have diverted fees. In addition, we seek comment on additional steps the Commission or others could take to discourage states from diverting 911 fees, thereby ensuring that Americans are not misled into believing that the 911 fees they have paid are being used for 911-related services, and not being misdirected by the state to other uses. Finally, we seek comment on the sufficiency and accuracy of our annual fee reports.

II. BACKGROUND

7. *The NET 911 Act and State Authority Over Fees.* Congress enacted the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 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.”⁷ The NET 911 Act includes measures intended to ensure “efficiency, transparency, and accountability” in the collection and expenditure of fees for the support or implementation of 911 or E911 services.⁸ It provides that nothing in the NET 911 Act, the Communications Act of 1934,⁹ “or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation . . . for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.”¹⁰

8. While the NET 911 Act limits the Commission’s authority to regulate fees that are both collected and used for 911 purposes, the quoted language seems to expressly reserve any authority the Commission would otherwise have to regulate the collection of fees that are ostensibly collected for 911 purposes but that are in fact used for something else. The NET 911 Act also gives the Commission affirmative responsibilities; the Commission must report annually on the status in each state of the collection and distribution of fees for the support or implementation of 911 or E911 services, including findings on the amount of revenues obligated or expended by each state “for any purpose other than the purpose for which any such fees or charges are specified.”¹¹

9. Like the statutory language quoted above, the legislative history of the NET 911 Act demonstrates Congress’s concern with the diversion of 911 fees by states to non-911 uses. In its report on H.R. 3403 (the bill that was enacted as the NET 911 Act), the House Committee on Energy and Commerce noted that several states were known to be using 911 fees for “purposes other than 911 or emergency communications services.”¹² The Report also noted that under Section 6(f) of the proposed legislation, “[s]tates and their political subdivisions should use 911 or E-911 fees only for direct improvements to the 911 system. Such improvements could include improving the technical and operational aspects of PSAPs; establishing connections between PSAPs and other public safety operations, such as a poison control center; or implementing the migration of PSAPs to an IP-enabled

⁷ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008), Preamble (NET 911 Act). The NET 911 Act enacted 47 U.S.C. § 615a-1 and amended 47 U.S.C. §§ 222, 615a, 615b, and 942. See 47 U.S.C. § 615a-1 Editorial Notes.

⁸ 47 U.S.C. § 615a-1(f)(2).

⁹ 47 U.S.C. § 151 *et seq.*

¹⁰ 47 U.S.C. § 615a-1(f)(1). Under the NET 911 Act, the Commission’s annual 911 fee report covers states, as well as U.S. territories and the District of Columbia. See 47 U.S.C. § 615b(2).

¹¹ 47 U.S.C. § 615a-1(f)(2).

¹² See House of Representatives Committee on Energy and Commerce, Report on 911 Modernization and Public Safety Act of 2007 at 11 (Nov. 13, 2007), <https://www.congress.gov/110/crpt/hrpt442/CRPT-110hrpt442.pdf> (“The most recent data available indicate that four states use 911 fees, including wireless and wireline fees, for purposes other than 911 or emergency communications services.”).

emergency network.”¹³ Further, “[t]his provision is not intended to allow 911 or E-911 fees to be used for other public safety activities that, although potentially worthwhile, are not directly tied to the operation and provision of emergency services by the PSAPs.”¹⁴ Despite this concern, Congress did not directly prohibit the imposition and collection of fees or charges for 911 to be used for non-911 purposes, e.g., by stating that such practices “shall” or “must” not occur. In 2010, the National Broadband Plan recommended that Congress “consider steps to curtail Tribal, state and local use of 911 funds for purposes other than 911,”¹⁵ and in 2012 legislation, Congress authorized new funding for a grant program (described below) to upgrade PSAPs to NG911 capabilities without making other changes to how state, local, and Tribal 911 fees could be imposed and collected.¹⁶

10. *Annual Report to Congress on State Collection and Distribution of 911 and E911 Fees and Charges.* Pursuant to the NET 911 Act, the Commission has prepared an annual report to Congress on 911 fee diversion every year since 2009. To compile these reports, the Commission’s Public Safety and Homeland Security Bureau sends a questionnaire each year to the Governor of each state and territory and the Mayor of the District of Columbia, requesting information on 911 fee collection and expenditures for the preceding calendar year.¹⁷ All eleven of the annual reports issued to date have identified some states that have diverted 911 fees to other uses. A few states have diverted 911 fees repeatedly. For example, the Commission has found that two states—New York and Rhode Island—have diverted fees every year since 2009. It has found New Jersey to be a diverter in the last six annual reports, covering the years 2013-2018. Appendix A shows the states and other jurisdictions that have been identified as diverters in the eleven annual reports prepared by the Commission between 2009 and 2019.

11. The Commission’s most recent annual fee report identified five states that diverted 911 fees to other purposes in 2018: Nevada, New Jersey, New York, Rhode Island, and West Virginia.¹⁸ These five states diverted a total of approximately \$187 million, or 7% of all 911 fees collected in all states in 2018.¹⁹

III. DISCUSSION

12. Diversion of 911 fees undermines public safety. Diversion of 911 fees also decreases the resources available for modernization of 911 operations, including advances such as text-to-911 and

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ FCC, *Connecting America: The National Broadband Plan* at 326 (2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

¹⁶ *See* Next Generation 911 Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, Subtitle E), 126 Stat. 237, codified at 47 U.S.C. § 942 (NG911 Advancement Act of 2012); *see also* FCC, *Legal and Regulatory Framework for Next Generation 911 Services*, Report to Congress and Recommendations at 36 (2013), <https://www.fcc.gov/document/legal-and-regulatory-framework-ng911-services-report-congress> (recommending that Congress consider “conditioning appropriate federal benefits on a requirement that states use fees collected for 911 and NG911 solely for 911/NG911 purposes, and provide for adequate auditing or enforcement of that obligation”).

¹⁷ *See* Appendix B, *Annual Collection of Information Related to the Collection and Use of 911 and E911 Fees by States and Other Jurisdictions* (FCC Questionnaire). The FCC Questionnaire incorporates recommendations made by the Government Accountability Office (GAO) in its April 2013 report on state collection and use of 911 funds. *See* Government Accountability Office, “Most States Used 911 Funds for Intended Purposes, but FCC Could Improve Its Reporting on States’ Use of Funds,” GAO-13-376 (Apr. 2013) (GAO Report). GAO prepared this report pursuant to a directive in the NG911 Advancement Act of 2012. *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 242 (2012).

¹⁸ Eleventh Report at 39, para. 27.

¹⁹ *Id.*

NG911 technologies.²⁰ In response to the Tenth Report,²¹ for example, the New Jersey Wireless Association has commented that instead of upgrading to new, more efficient NG911 technology, New Jersey is maintaining a 911 selective router system that “was installed in our state nearly 20 years ago, is past its useful life and is now costing more to maintain from previous years, due to its obsolescence.”²² The Nevada Chapter of the Association of Public-Safety Communications Officials (APCO) has noted in testimony before the Nevada legislature that a state law requiring peace officers to wear body cameras has led to the diversion of 911 fees at a time when “several counties and jurisdictions . . . are still not equipped with enhanced 9-1-1 services.”²³ This, in turn, means that when a 911 call is placed, these counties and jurisdictions “receive only extremely basic location information and no cellular locations.”²⁴

13. CTIA asserts that while it sympathizes with the fact that a number of states are dealing with budget shortfalls, “diverting hundreds of millions of dollars that wireless consumers pay each year to support 9-1-1 is a violation of the public’s trust and puts lives at significant risk by exacerbating the challenges for resource-strained local PSAPs.”²⁵ CTIA also states that the problem of 911 fee diversion may be greater than indicated in the Commission’s annual fee reports because the Commission has only “limited visibility” into 911 fee expenditures at the local level and is not able to assess the level of local 911 fee diversion.²⁶

14. The adverse consequences of 911 fee diversion could be exacerbated during the COVID-19 pandemic, which is creating additional, unanticipated challenges for 911 operations. NENA has been surveying PSAPs periodically during the pandemic and has documented some of these challenges. NENA reports that many PSAPs have quarantined or sent home staff members who showed signs of COVID-19 and that this “threatens to exacerbate an already significant PSAP-staffing shortage across the country.”²⁷ The Police Executive Research Forum notes some of the expenses PSAPs have incurred as a result of the pandemic, including the purchase of equipment that makes it possible for telecommunicators

²⁰ See, e.g., TFOPA Final Report at 165 (“Lack of adequate 9-1-1 funding to sustain the migration from legacy to NG9-1-1 will slow the overall transition time to fully functioning NG9-1-1 technologies.”).

²¹ FCC, Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges (2018) (Tenth Report), <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>. On December 19, 2018, the Commission issued a Public Notice seeking comment on the 2018 Tenth Annual Report and the sufficiency and accuracy of the reported information. *FCC Seeks Public Comment on Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, PS Docket No. 09-14, Public Notice, 33 FCC Rcd 12275 (PSHSB 2018), <https://www.fcc.gov/document/fcc-seeks-comment-tenth-annual-report-congress-state-911-fees>. The Commission received comments from APCO, the Colorado Public Utilities Commission (COPUC), and CTIA, and reply comments from the Boulder Regional Emergency Telephone Service Authority (BRETSA) and the New Jersey Wireless Association (NJWA).

²² NJWA Reply Comments, PS Docket No. 09-14, at 2 (rec. Feb. 12, 2019).

²³ Testimony of Nevada Chapter of APCO at 1 (Feb. 15, 2019), https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=36516&fileDownloadName=SB%2025_Testimony%20in%20Opposition_Matthew%20Grogan%20Nevada%20Fee%20Diversiion.pdf.

²⁴ *Id.*; see also CTIA Comments, PS Docket No. 09-14, at 4 (rec. Feb. 8, 2019) (stating that diversion of 911 funds drains resources away from efforts to modernize PSAPs, “such as by implementing Text-to-911 and NG911 technologies”).

²⁵ CTIA Comments, PS Docket No. 09-14, at 3 (rec. Feb. 8, 2019). See also Yakima Public Safety Communications Center Comments, PS Docket No. 09-14, at 1 (rec. Feb. 19, 2015) (noting that “the diversion of funds also erodes the credibility and trust of the local elected officials and creates greater skepticism of the public when it becomes necessary for elected officials to garner future public support of future public safety communications systems”); Pacific County Sheriff’s Office Comments, PS Docket No. 09-14, at 1 (rec. Mar. 20, 2015) (noting the diversion of funds “erodes the credibility and trust of both local elected officials and the public”).

²⁶ CTIA Comments, PS Docket No. 09-14, at 6-7 (rec. Feb. 8, 2019).

²⁷ NENA COVID-19 Report at 2.

to work remotely, moving 911 personnel to multiple locations to keep employees at a distance from one another, and increased cleaning and sanitizing of facilities.²⁸ NENA also reports that PSAPs are anticipating longer-term adverse consequences from COVID-19, with some anticipating significant budget shortfalls from falling tax revenues.²⁹

15. We seek comment on the specific effect that 911 fee diversion has had on the provision of 911 service and the transition to NG911 in states that have diverted fees. For example, have jurisdictions deferred 911 improvements or faced budgetary shortfalls because of 911 fee diversion? Have there been adverse impacts on staffing, training, or equipment maintenance? What effect is the COVID-19 pandemic having on PSAP funding and operations? Is the pandemic affecting 911 fee diversion and, if so, how?

A. Dissuading States from Instituting or Continuing 911 Fee Diversion

16. In this Notice of Inquiry, we seek comment on ways to discourage states from diverting 911 fees. We seek comment on whether particular mechanisms have been effective in deterring 911 fee diversion and whether those or similar mechanisms could be incorporated into programs administered by the Commission and/or interagency efforts in this area. In particular, we seek comment on restrictions on federal grant funding for states that divert 911 fees, as well as regulatory steps the Commission could take to discourage fee diversion, such as regulation of the description of 911 fees on consumer bills or conditioning state and local eligibility for FCC licenses, programs, or other benefits on the absence of fee diversion. We also seek comment on ways to encourage states to pass legislation or adopt rules that would end 911 fee diversion. In addition, we seek comment on any other means that commenters believe would be helpful in dissuading states from diverting 911 fees, including the potential costs and benefits of any such measures.

17. We also seek comment on the extent to which the Commission's legal authority and responsibilities may support taking the measures outlined below or other similar measures. As mentioned above, the NET 911 Act directs the Commission to report to Congress annually on the status of state collection and distribution of fees or charges "for the support or implementation of 9-1-1 or enhanced 9-1-1 services."³⁰ It also provides that nothing in the NET 911 Act, certain other federal statutes, or any Commission regulation or order shall prevent states or other jurisdictions from imposing and collecting fees or charges applicable to commercial mobile services or IP-enabled voice services "for the support or implementation of 9-1-1 or enhanced 9-1-1 services, *provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services . . . as specified in the provision of State or local law adopting the fee or charge.*"³¹ While this statutory provision clearly prohibits the Commission from imposing regulations that prevent states and local jurisdictions from imposing and collecting such 911 fees and charges to the extent the fee or charge is used only to support 911 or enhanced 911 services, it does not otherwise constrain the Commission from taking action to address the diversion by states and localities of fees and services they might impose in the name of 911 or E911 support. Moreover, we see nothing in this provision that implicitly or expressly reserves authority regarding 911 and E911 fees and charges to the states and localities, other than the expressly stated protection of state and local authority to impose and collect fees and charges that are obligated or expended only in support of 911 and E911 services. We seek comment on these conclusions and on the legal authority that would support the affirmative steps described below that the Commission might consider to address the problem of 911 fee diversion.

²⁸ Police Executive Research Forum, *PERF Daily COVID-19 Report* (Apr. 2, 2020), <https://www.policeforum.org/covidapril2>.

²⁹ NENA COVID-19 Report at 3 & n.7.

³⁰ 47 U.S.C. § 615a-1(f)(2).

³¹ 47 U.S.C. § 615a-1(f)(1) (emphasis added).

1. Restrictions on Federal Grant Funding for States that Divert 911 Fees

18. One approach for discouraging the diversion of 911 fees has been to condition the receipt of federal 911 grant funding on the elimination of 911 fee diversion by the state or other jurisdiction receiving funding. An example is the matching grant program for state 911, E911, and NG911 services that Congress funded pursuant to the NG911 Advancement Act of 2012.³² The NG911 Advancement Act provides for matching grants to eligible states for, among other things, “the implementation and operation of 9-1-1 services, E9-1-1 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 9-1-1 services and applications.”³³ The Act also provides that grant applicants must certify that they are not diverting any portion of the 911 fees collected in the state or other jurisdiction and must agree to return grant funds to the federal government if they divert 911 fees during the term of the grant.³⁴ The grant program is administered by the National Telecommunications and Information Administration (NTIA) and the National Highway Traffic Safety Administration (NHTSA), which developed implementing regulations for the grant program.³⁵ Consistent with the requirements of the Act, these regulations provide that applicants must certify that they have not diverted 911 fees in the 180 days preceding the date of their initial application and that they will not divert 911 fees during the time grant funds are available to them.³⁶ Grant recipients also must return any grant awarded on the basis of an invalid certification.³⁷ In 2019, NTIA and NHTSA awarded matching grants under this program totaling more than \$109 million to thirty-four states and two Tribal Nations.³⁸ The five states identified as diverters by the Eleventh Report, which would appear not to qualify for such grants, did not receive funding.

19. To inform whether participation in Commission programs³⁹ should similarly be conditioned on the absence of 911 fee diversion, and to inform interagency efforts regarding administration of 911 programs, we seek comment on whether the eligibility restrictions in the 911 grant program have caused states to alter their 911 funding statutes to avoid losing eligibility for these grants. If so, which states have altered their practices to avoid losing grant eligibility? Does the risk of losing eligibility for future (but unspecified) 911 grant funding act as an incentive for additional states to discontinue, or for these thirty-four states and two Tribal Nations to continue to refrain from, fee diversion? Would it be more effective if the grant-related sanctions for fee diversion extended to other grant programs besides those directly related to 911? For example, should states that divert 911 funds be prohibited from receiving other public safety grants, even if such grants are not 911 related? Should the federal government condition non-public safety grant programs, such as grants for highways and other

³² See NG911 Advancement Act of 2012 (codified at 47 U.S.C. § 942).

³³ 47 U.S.C. § 942(b)(1)(A).

³⁴ *Id.* § 942(c)(2)-(3).

³⁵ See 47 CFR Part 400; *see also* Department of Commerce, NTIA, Department of Transportation, NHTSA, 911 Grant Program, Final Rule, 83 Fed. Reg. 38051 (Aug. 3, 2018) (adopting grant program regulations).

³⁶ 47 CFR § 400.4(a)(5), (b)(5). Grant recipients also must certify that they have not diverted 911 fees annually after the end of each fiscal year in which grant funds are available. 47 CFR § 400.8(a).

³⁷ 47 CFR § 400.8(b)(2).

³⁸ See Press Release, NTIA, Departments of Commerce and Transportation Announce \$109 Million in Grants to Modernize 911 Services for States and Tribal Nations (Aug. 9, 2019), <https://www.ntia.doc.gov/press-release/2019/departments-commerce-and-transportation-announce-109-million-grants-modernize>; *see also* 47 U.S.C. § 942(b)(2) (matching requirement).

³⁹ The Commission manages a range of licensing, technical assistance, and information programs, such as those discussed below. In addition, some federal grant programs may limit eligibility based on compliance with Commission requirements. *See, e.g.*, Cybersecurity and Infrastructure Security Agency, SAFECOM Guidance on Emergency Communications Grants, Fiscal Year 2020 (2020), https://www.cisa.gov/sites/default/files/publications/fy_2020_safecom_guidance_on_emergency_communications_grants_final.pdf.

infrastructure, on the absence of 911 fee diversion? If so, what principles should be used to make this determination? Do other factors, such as the amount of grants being awarded, have an impact on the effectiveness of grant restrictions as a deterrent? Are there any legal limitations that might impact such conditions?

2. Commission Regulatory Options

20. We seek comment on potential measures the Commission could take to discourage fee diversion, sources of authority for such measures, and the costs and benefits associated with such measures. We also seek comment on whether the NET 911 Act gives the Commission authority to take steps to eliminate 911 fee diversion, as well as reporting to Congress on 911 fee diversion issues.

21. *Regulation of 911 fee descriptions on consumer bills.* A possible approach for discouraging fee diversion would be for the Commission to require service providers to disclose on their bills that the state or other jurisdiction in which the consumer resides is a 911 fee diverter. Under the Commission's truth-in-billing rules, telecommunications common carriers must clearly organize consumer bills and must ensure that charges contained on such bills are accompanied by "a brief, clear, non-misleading, plain language description of the service or services rendered."⁴⁰ The diversion of 911 fees may result in inaccurate and misleading bills because consumers are unaware that the fees they are nominally paying for 911 services may actually be diverted to other uses once the state or other jurisdiction receives them.

22. Should the Commission consider requiring service providers to disclose 911 fee diversion on subscriber bills, for example through reliance on its truth-in-billing authority?⁴¹ What characteristics should an effective disclosure have if we were to consider imposing such a requirement? More specifically, what form and content should such disclosures have? Should the disclosure include contact information for the appropriate governmental authorities, so that consumers can voice opinions on the diversion? How effective would such a regulation be in discouraging 911 fee diversion? Would consumers reading a disclosure of fee diversion on their bills be likely to put pressure on the relevant governmental entity to stop the practice?

23. As a practical matter, how would service providers determine the current 911 fee expenditure practices of states in which they provide service? The Commission's annual 911 fee reports are based on information from the preceding calendar year and do not identify which states are *currently* diverting funds. Are there cost-effective ways for service providers to ascertain accurately whether a state or other jurisdiction is currently diverting 911 fees, given the reporting delay? If not, should a service provider's bills label a state as a 911 fee diverter if the Commission's most recent annual 911 fee report

⁴⁰ 47 CFR 64.2401(a)-(b); *see also Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170 and CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6457 para. 19 (2005) (*Second Truth-in-Billing Order*) ("The Commission already has concluded that the truth-in-billing principles, including the principle that billing descriptions be brief, clear, non-misleading and in plain language, apply to both wireline and wireless."), *vacated in part sub nom. Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006); *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7501, para. 13 (1999) (*First Truth-in-Billing Order*) ("Like wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices. Consumers deserve no less."), *corrected by* Errata, 15 FCC Rcd 16544 (CC Mar. 31, 2000).

⁴¹ The Commission's authority to adopt truth-in-billing rules for common carriers derives in part from section 201(b) of the Communications Act of 1934, as amended. Section 201(b) states that for common carriers, "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b). *See, e.g., First Truth-in-Billing Order*, 14 FCC Rcd at 7506, para. 24 (adopting certain truth-in-billing principles and guidelines to "deter carriers from engaging in unjust and unreasonable practices in violation of section 201(b)" and "emphasiz[ing] that a carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of section 201(b) of the Act").

designated the state as a diverter, perhaps with a notation in the bill that the state was designated a diverter during a given time period? Alternatively, rather than specifically labeling the state as a fee diverter, should the provider simply note on the consumer bill that the FCC, in an annual report to Congress, reported that during a certain year the state had expended fees collected as 911 fees for purposes other than to support 911 services? What are the costs to the service provider associated with implementing such a disclosure requirement? Would such costs be commensurate with the resulting benefits? In addition, would requiring service providers to disclose a state or other jurisdiction's diverter status on bills have First Amendment implications? We also invite commenters to address whether service providers should be required to identify, on their websites, states that divert 911 fees.⁴² What would be the costs, benefits, and appropriate schedules for making such information available to consumers on service providers' websites? Would this approach be preferable to requiring disclosure on consumer bills?

24. *Regulation of 911 fee collections by service providers.* Another possibility is for the Commission to direct service providers not to collect 911 fees for calls in a diverting state or other jurisdiction or to limit 911 fees to the amount that was not diverted in the prior year. Does the Commission have authority for such measures and, if so, what theory would support such approach? Would this effectively make service providers responsible for the actions of third parties (state or other jurisdiction's legislatures) over which they have no control? As noted above, the Commission's annual 911 fee reports are based on information from the preceding calendar year, so the reports' findings about which states divert 911 fees—and in what amounts—are not necessarily current. Do service providers have a cost-effective means of accurately identifying current 911 fee diversion practices? If not, should service providers be allowed to rely on information from the Commission's most recent annual 911 fee report to make such determinations, notwithstanding that the diversion information may not be current? What are the additional costs to the service provider of determining whether it must limit its collection of some or all 911 fees in a diverting state or other jurisdiction, and how would such a practice affect the state or other jurisdiction, its 911 system, and consumers? Would the derived benefits outweigh the costs?

25. *Conditioning eligibility for FCC licenses, programs, or advisory committees.* The Commission may impose public interest conditions on Commission licensees and applicants for Commission programs.⁴³ Are there licensing, funding, or other benefits administered by the Commission that could be conditioned on a state or other jurisdiction not being a diverter? For example, should a state or other jurisdiction seeking a spectrum license be required to certify that it is not diverting 911 fees?⁴⁴ Should the Commission bar representatives of diverting states from participating on FCC advisory committees? Given the inherent reporting delays for state 911 fee expenditures, what time period should the Commission use to determine if a state is an ineligible diverter? What principles should we use to determine whether it would be helpful to condition a particular program or benefit on a state's status as a 911 fee diverter? Are there some Commission programs that should not be conditioned on the basis of fee diversion?⁴⁵

⁴² For example, AT&T lists on its website some of the governmental taxes and fees it collects from subscribers and prepaid service customers. AT&T, *AT&T Mobility Fee Schedule*, <https://www.att.com/legal/terms.otherWirelessFeeSchedule.html> (last visited Sept. 3, 2020).

⁴³ See, e.g., 47 CFR § 1.945(e) (stating that the Commission may grant license applications “subject to conditions other than those normally applied to authorizations of the same type”).

⁴⁴ In the 4.9 GHz proceeding, we seek comment on whether or not fee diverting states should be permitted to benefit from our 4.9 GHz leasing framework as well as related issues. *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking, FCC 20-137, paras. 68-70 (rel. October 2, 2020). Commenters addressing the issue of fee diversion as a restriction on FCC-licensed services for all other bands or more generally should file their comments in this NOI's dockets.

⁴⁵ For example, in a Second Further Notice of Proposed Rulemaking proposing an information sharing framework with state and federal agencies for the Network Outage Reporting System (NORS) and Disaster Information

(continued....)

26. *Other regulatory options.* Should the Commission consider other regulatory options to discourage fee diversion? What other sources of authority might the Commission invoke to deter or prohibit 911 fee diversion? What are the costs and benefits of such measures, including costs that would be incurred by service providers or consumers?

3. Facilitating the Revision of State Funding Mechanisms to Eliminate Fee Diversion

27. Another possibility for eliminating fee diversion is for the Commission to encourage states to pass legislation or adopt rules that would end fee diversion.⁴⁶ In addition, the Commission could encourage states to leverage existing auditing mechanisms or similar financial controls to ensure accountability for the way 911 funds are spent or, in the event existing auditing mechanisms do not permit uncovering 911 fee diversion, states could be encouraged to take executive or legislative action to establish those mechanisms.

28. *State Legislative Reforms.* Several states recently have acted to address fee diversion. For example, the Eleventh Report notes that Montana and the U.S. Virgin Islands passed 911 funding legislation to eliminate fee diversion.⁴⁷ In addition, following the release of the Eleventh Report, West Virginia reportedly amended its 911 fee mechanism.⁴⁸ We seek comment on which states have passed legislation to eliminate 911 fee diversion since the FCC began reporting on the practice. What provisions have these states included in their 911 fee legislation or regulations to ensure that 911 fees are not diverted? We ask commenters to discuss any state(s) that have enacted legislation defining valid 911 and E911 expenditures, including how they have defined diversion of funds for non-911/E911 purposes. What steps could the Commission take to encourage diverting states to revise their funding mechanisms to eliminate fee diversion?

29. It is also possible for a state or other jurisdiction that previously has not diverted 911 fees to change its funding mechanism to introduce fee diversion. For example, the Commission noted in the Tenth Report that Nevada had reported increasing the state's 911 fee "to help pay for body cameras for officers" and for "the purchase and maintenance of portable event recording devices and vehicular recording devices."⁴⁹ The Commission concluded in the Tenth Report that the expenditure of 911 fees for police body cameras and recording devices constituted diversion of 911 fees for non-911 public safety purposes.⁵⁰ Are there other examples of states that revised their 911 funding mechanism to authorize fee diversion? What steps could the Commission take to discourage states from revising their funding

Reporting System (DIRS), the Commission asked if criteria should be applied to determine whether local entities should be granted direct access to NORS and DIRS filings. Among the possible criteria, the Commission asked, "Should we exclude from eligibility agencies located in states that have diverted or transferred 911/Enhanced 911 (E911) fees for purposes other than 911/E911?" *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Petition of California Public Utilities Commission and the People of the State of California for Rulemaking on States' Access to the Network Outage Reporting System ("NORS") and a Ruling Granting California Access to NORS*, PS Docket No. 15-80 and RM No. 11588 (terminated), Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 2239, 2248, para. 26 (2020).

⁴⁶ For example, Commissioner O'Rielly has written publicly to the governors of some diverting states to urge them to end their diversion practices. See, e.g., Letter from Michael O'Rielly, Commissioner, FCC, to The Honorable Steve C. Bullock, Governor, Montana (Sept. 9, 2019), <https://docs.fcc.gov/public/attachments/DOC-359575A1.pdf>; Letter from Michael O'Rielly, Commissioner, FCC, to The Honorable Jim Justice, Governor, West Virginia (Nov. 28, 2018), <https://docs.fcc.gov/public/attachments/DOC-355305A1.pdf>.

⁴⁷ Eleventh Report at 44-45, paras. 38-40.

⁴⁸ See Bloomberg Tax, *West Virginia Governor Signs Law Amending Wireless Enhanced 911 Fee, Adding New Fees* (Mar. 26, 2020), <https://news.bloombergtax.com/daily-tax-report-state/west-virginia-governor-signs-law-amending-wireless-enhanced-911-fee-adding-new-fees>.

⁴⁹ Tenth Report at 45-46, para. 34.

⁵⁰ *Id.* at 46, para. 34.

mechanisms in such a manner? What steps could the Commission take to discourage states from adopting funding mechanisms that allow fee diversion?

30. In comments on the Tenth Report, the Colorado Public Utilities Commission (COPUC) suggests that the Commission consider asking NENA to publish model state 911 fee legislation, “using best practices from existing state statutes.”⁵¹ The National 911 Program has also noted the need for development of an “adequate and sustainable jurisdictional financial model that includes clear funding and spending guidelines,”⁵² and noted that model language from states such as Virginia, Pennsylvania, and Minnesota may provide useful models.⁵³ For states considering revisions to their 911 funding mechanisms, would model statutory/regulatory language or drafting guidelines be helpful? Should such model language or guidelines address both the collection and expenditure of 911 fees? What are best practices and suggested provisions for model 911 fee legislation or drafting guidelines? Is such guidance currently available?

31. As discussed more fully in Section III.B below, some commenters have urged the Commission to adopt guidelines for which expenditures qualify as “in support of” 911 and which do not.⁵⁴ The National 911 Program notes that the development of a “nationally adopted baseline taxonomy by which jurisdictions can develop effective legislative language” would help to prevent “state-level raiding of 911 fees.”⁵⁵ Do commenters agree that such guidance would be helpful to states considering revision of their 911 funding mechanisms? If so, what form should such guidance take? What criteria should apply to an expenditure or category of expenditures to give it a sufficient nexus to 911? Conversely, what expenditures would not have such a nexus to 911?

32. Finally, is there a concern that states that do not want to be identified as fee diverters could revise their funding mechanisms in an effort to make fee diversion more difficult to detect? For example, CTIA notes in its response to the Tenth Report that because the Commission collects 911 fee information at the state level, the Commission has limited visibility into 911 fee expenditures at the local level and is not able to assess the level of local 911 fee diversion.⁵⁶ What steps can the Commission take to discourage states from revising their funding mechanisms in a way that decreases transparency, either in terms of Commission review or fair notice to the consumer?

33. *State Audit Mechanisms.* As in previous years, the Eleventh Report finds that almost every state collects 911 fees from in-state subscribers, but that some states do not effectively oversee or audit whether collected funds have been used for the purposes designated by the funding mechanism or otherwise to implement or support 911.⁵⁷ We seek comment on any limitations in state program audit authority that should be addressed to mitigate or eliminate diversion of 911 fees. Do states and localities

⁵¹ COPUC Comments, PS Docket No. 09-14, at 2 (rec. Jan. 24, 2019). NENA has published model guidelines for drafting statutes or rules to assess 911 fees on prepaid wireless service. NENA, NENA Model Baseline Guidelines for Drafting Statutes or Rules Associated with Prepaid Wireless Service and 9-1-1 Emergency Service Fees, Regulatory/Legislative Information Document (RLID) (2008), https://cdn.ymaws.com/www.nena.org/resource/resmgr/govaffairs/model_guidelines_for_prepaid.pdf. The guidelines address the collection of 911 fees for prepaid wireless service and the remittance of such fees to the appropriate governmental entity, but they do not address the expenditure of such funds by the governmental entity.

⁵² NG911 Roadmap at 15; The National 911 Program et al., Next Generation 911 (NG911) Roadmap Progress Report at 10 (2020), https://www.911.gov/pdf/National_911_Program_NG911_Roadmap_Progress_Report.pdf (NG911 Roadmap Progress Report).

⁵³ NG911 Roadmap Progress Report at 10.

⁵⁴ See CTIA Comments, PS Docket No. 09-14, at 8 (rec. Feb. 8, 2019); APCO Comments, PS Docket No. 09-14, at 3 (rec. Jan. 18, 2019); NJWA Reply Comments, PS Docket No. 09-14, at 4 (rec. Feb. 12, 2019).

⁵⁵ NG911 Roadmap at 15.

⁵⁶ CTIA Comments, PS Docket No. 09-14, at 6-7 (rec. Feb. 8, 2019). The Eleventh Report notes that 22 states collect at least some of their 911 fees at the local level. Eleventh Report at 18, para. 14.

⁵⁷ Eleventh Report at 47-50, paras. 43-44 and Table 18.

that have auditing authority regularly audit their 911 fee programs? If not, why? Are there additional barriers to states' effective oversight of 911 fee collection and expenditures? What measures are available to improve state or other jurisdiction oversight of 911 fee programs?

B. Sufficiency and Accuracy of the Annual Reports to Congress on 911 Fees

34. As required by the NET 911 Act, the Commission will continue to report annually to Congress on 911 fee collections and expenditures. In addition to seeking comment on the alternatives discussed above, we seek comment on whether improvements to the Commission's data collection and reporting process could further discourage fee diversion.

35. *Commission Guidance on What Constitutes Fee Diversion.* The Eleventh Report and prior reports provide guidance on whether specific practices constitute fee diversion.⁵⁸ For example, the Commission has stated that the requisite nexus to 911 includes expenditures that (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 911 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders).⁵⁹ The Commission has also stated that funds used to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related but that expenses associated with integrating public safety dispatch and 911 systems (e.g., purchase of CAD hardware and software to support integrated 911 and dispatch operations) may be 911 related, provided the state or other jurisdiction can document a connection to 911.⁶⁰ Further, the Commission has found that transferring or otherwise using 911 fees for the state's general fund constitutes fee diversion,⁶¹ and that using 911 fees for non-911 purposes constitutes fee diversion even if expressly authorized by the state or other jurisdiction's funding mechanism.⁶²

36. Despite the guidance the Commission has given in its annual fee reports, commenters and other stakeholders have noted that disagreements persist over what constitutes diversion.⁶³ These entities

⁵⁸ See, e.g., Eleventh Report at 41, para. 30 (finding that, consistent with the Tenth Report, expenditure of 911 fees for police body cameras constituted fee diversion).

⁵⁹ See Tenth Report at 49, para. 40. Under this analysis, funding for 911 dispatcher salaries and training would have a sufficient nexus to 911, but equipment and infrastructure for law enforcement, firefighters, and other first responders generally would not.

⁶⁰ See Eleventh Report at 39, para. 26; Tenth Report at 42, para. 26. The Commission has explained that it does not consider the purchase or upgrade of public safety radio equipment to be 911 related because "radio networks used by first responders are technically and operationally distinct from the 911 call-handling system." See Eleventh Report at 42, para. 32; see also Eleventh Report at 44, para. 37 (finding that there was no 911 fee diversion where Virginia allocated a portion of its wireless E911 funding to the Virginia State Police for costs incurred for answering wireless 911 telephone calls and to support sheriff's 911 dispatchers).

⁶¹ See Eleventh Report at 39, para. 25; Tenth Report at 42, para. 25. In the Eleventh Report, the Commission found that Rhode Island and New York diverted 911 fees by transferring fees to their state general funds. Eleventh Report at 40, 42-44, paras. 28, 33-36. Conversely, the Commission found that Montana, which revised its 911 funding mechanism to eliminate the transfer of fees to the state's general fund, was no longer diverting fees. Eleventh Report at 44, para. 38.

⁶² See, e.g., Eleventh Report at 41-42, paras. 30, 32 (finding that certain expenditures authorized under Nevada's and West Virginia's funding mechanisms constituted diversion of fees). But see Washington State E911 Coordination Office Comments, PS Docket No. 09-14, at 2 (rec. Feb. 9, 2017) (asserting that "each state designates authorizations regarding 911 funds, so that if a state legislature writes into law an authorized expense, such 911 funds would subsequently not be considered 'diversion'").

⁶³ See, e.g., APCO Comments, PS Docket No. 09-14, at 3 (rec. Jan. 18, 2019) (noting that despite some Commission guidance, "disagreements over what constitutes diversion persist"); CTIA Comments, PS Docket No. 09-14, at 5-6 & n.16 (rec. Feb. 8, 2019) ("[S]ome states claim they are compliant, even while using 9-1-1 fees for expenditures that cannot properly be deemed in support of 9-1-1 activities under the NET 911 Act."); NJWA Reply Comments, PS Docket No. 09-14, at 4 (rec. Mar. 26, 2018) (stating that "clarification of eligible expenditures and definition of

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urge the Commission to go beyond the case-by-case approach of past fee reports and issue comprehensive guidelines. For example, CTIA states in its response to the Tenth Report that it supports the adoption of guidelines on which expenditures qualify as “in support of” 911 and which do not, noting that “[w]ith such specificity in place, it will be more difficult for states to claim they are compliant with the NET 9-1-1 Act even as they divert funds for non-9-1-1 purposes.”⁶⁴ APCO urges the Commission to provide additional guidance and asserts that “[s]tates need clear notice about what constitutes fee diversion in order to appropriately document and combat the practice.”⁶⁵ In addition, the National 911 Program has stated that there is no nationally accepted definition of what constitutes eligible spending of 911 funds and has called for the development of a “concrete” definition.⁶⁶

37. We seek comment on whether the Commission should provide additional guidance on what constitutes fee diversion beyond the guidance provided in the annual reports. If so, how should such guidance be developed, and what form should it take? Should the Commission propose binding rules governing the basis for the certifications in these reports, and the requirements for knowledge of the basis of the certification by the certifying official? Should any additional guidance be in the form of a list of allowable expenses, an overarching analytical framework, or a set of guidelines, or all three? Some states have already developed lists of allowable uses of 911 funds. For example, Minnesota’s 911 funding statute provides that 911 fees must be used “to fund implementation, operation, maintenance, enhancement, and expansion of enhanced 911 service, including acquisition of necessary equipment.”⁶⁷ The statute also provides that local jurisdictions may spend 911 funds for the following purposes:

to lease, purchase, lease-purchase, or maintain enhanced 911 equipment, including telephone equipment; recording equipment; computer hardware; computer software for database provisioning, addressing, mapping, and any other software necessary for automatic location identification or local location identification; trunk lines; selective routing equipment; the master street address guide; dispatcher public safety answering point equipment proficiency and operational skills; pay for long-distance charges incurred due to transferring 911 calls to other jurisdictions; and the equipment necessary within the public safety answering point for community alert systems and to notify and communicate with the emergency services requested by the 911 caller.⁶⁸

NG911 services would provide guidance to not only the state of New Jersey, but other repeat offending states”); Washington State E911 Coordination Office Comments, PS Docket No. 09-14, at 2 (rec. Feb. 9, 2017) (“Guidance from the [FCC] and clarification on what is considered ‘diversion’ or what constitutes ‘E911 purposes’ would be beneficial and timely.”).

⁶⁴ CTIA Comments, PS Docket No. 09-14, at 8 (rec. Feb. 8, 2019).

⁶⁵ APCO Comments, PS Docket No. 09-14, at 3 (rec. Jan. 18, 2019); *see also* Washington State Chapter APCO-NENA Comments, PS Docket No. 09-14, at 2 (rec. Feb. 17, 2016) (“Without a national standard definition for appropriate uses of 911 funds it is left to each state or jurisdiction to determine their own definition/boundaries and expenditure rules.”). NJWA agrees that “clarification is needed” and asserts that some states’ interpretation of eligibility requirements is “consistently illegitimate.” NJWA Reply Comments, PS Docket No. 09-14, at 3 (rec. Mar. 26, 2018). NJWA also asserts that “[o]ur state [New Jersey] continues to be a prime example of needed clarification (or just plain ignorance of the federal law), therefore further emphasizing the need for clarification of specific and eligible expenditures under the NET911 ACT.” *Id.*

⁶⁶ NG911 Roadmap Progress Report at 9-10; *see also* NG911 Roadmap at 15 (stating that “how ‘fee diversion’ is defined across jurisdictions is inconsistent, thus jeopardizing the integrity with which 911 funds are used and whether they are applied to NG911 maturation” and calling for a concrete definition of “what constitutes eligible spending of 911 funds”).

⁶⁷ Minn. Stat. § 403.113, Subd. 1 (2019), <https://www.revisor.mn.gov/statutes/cite/403.113>.

⁶⁸ *Id.* § 403.113, Subd. 3. In addition, the statute provides that 911 funds may not be spent on “(1) purchasing or leasing of real estate or cosmetic additions to or remodeling of communications centers; (2) mobile communications vehicles, fire engines, ambulances, law enforcement vehicles, or other emergency vehicles; (3) signs, posts, or other
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Pennsylvania’s 911 funding statute directs the Pennsylvania Emergency Management Agency to publish a list of eligible uses of 911 fees each year.⁶⁹ The list of eligible uses for 2020 includes multiple cost categories, such as call handling equipment, computer aided dispatch facilities, and specific uses within each category.⁷⁰ Similarly, the Virginia Department of Emergency Management’s PSAP Grant Program Guidelines include specific expenditures for NG911 that are eligible for grants from the state’s wireless E911 fund.⁷¹ We seek comment on whether such lists of eligible uses are appropriate, underinclusive, or overinclusive. Should any guidance prepared by the Commission include a list of acceptable expenditures, or are states in a better position to determine such lists?

38. If the Commission provides guidelines or an analytic framework for determining whether expenditures have a sufficient nexus to 911, what principles should it include? In comments on a proposed change by the District of Columbia on allowable uses for local 911 funds, CTIA asserted that 911 fees should not be a funding source for the administering agencies’ general budgets.⁷² According to CTIA, allowable 911 expenditures could include “the nonrecurring costs of establishing a 911 system, the cost of emergency telephone and dispatch equipment and costs for training for maintenance and operation of the 911 system,” but such costs should not include “the cost for leasing real estate, cosmetic remodeling of facilities, salaries or benefits or emergency vehicles.”⁷³ On the other hand, we have found in our 911 fee reports that some PSAP overhead costs, such as 911 telecommunicator salaries, are 911 related.⁷⁴ We seek comment on treating PSAP overhead and salary expenses as 911 related, and whether there are any circumstances in which use of 911 fees for recurring PSAP expenses could be considered diversion. Are there other principles the Commission should apply in determining whether an expenditure of 911 fees constitutes diversion? What criteria should be applied to determine whether there is a sufficient 911 nexus for public safety expenditures not directly targeted to the 911 system itself, such as expenditures associated with public safety/first responder radio systems?⁷⁵ Under what circumstances

markers related to addressing or any costs associated with the installation or maintenance of signs, posts, or markers.” *Id.*

⁶⁹ 35 Pa. Cons. Stat. § 5303(a)(10), <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/35/00.053.003.000..HTM>.

⁷⁰ See Pennsylvania Emergency Management Agency, 911 Program, Program Guidance, Calendar Year 2020 at Appx. B (2020 Eligibility Factors List) (undated), <https://www.pema.pa.gov/911-Program/Partners/Requirements-Resources/Documents/911-Program-Guidance-2020.pdf>.

⁷¹ Virginia Department of Emergency Management, NG9-1-1 Funding and PSAP Grant Program Guidelines, FY22 (undated), <https://www.vaemergency.gov/wp-content/uploads/2020/07/FY22Guidelines.pdf>.

⁷² Letter from Lisa McCabe, Director, State Legislative Affairs, CTIA, to Councilmember Charles Allen, Chair, Committee on Judiciary & Public Safety, Council of the District of Columbia, B22-0519, at 1 (Jan. 22, 2018), <https://api.ctia.org/docs/default-source/legislative-activity/ctia-letter-with-concerns-regarding-washington-dc-b22-0519----funding-personnel-through-911-fees.pdf>.

⁷³ *Id.*

⁷⁴ See, e.g., Eleventh Report at 21, para. 18; Tenth Report at 44-45, para. 33.

⁷⁵ The Nebraska Public Service Commission (PSC) recently sought comment on whether it should expand the eligible uses of PSAP funding to include radio equipment, among other uses. See *Nebraska Public Service Commission, on its own motion, to consider recommendations of the Service System Advisory Committee for creation of a new funding system for Next Generation 911*, Application Nos. 911-073/PI-232, Order Opening Docket and Seeking Public Comment at 3 (May 5, 2020), <https://www.nebraska.gov/psc/orders/state911/2020-05-05%20911-073%20PI-232%20Order%20Opening%20Docket%20And%20Seeking%20Public%20Comment.pdf>. While CTIA (citing the Commission’s Eleventh Report) commented that using 911 funding for public safety radio systems would constitute fee diversion, the Douglas County 911 Director asserted that “[t]he call, once answered must be processed in accordance with local guidance, necessary and appropriate help must be correctly determined and emergency response must be directed until they arrive at the citizen.” Accordingly, “Douglas County adamantly supports that funding be authorized for ALL the necessary components of the entire 911 System.” See CTIA Comments, Application Nos. 911-073/PI-232, at 1-3 (rec. June 5, 2020), <https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/CTIA%20Comments%20911-073%206-5-20.pdf>; Letter

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should expenditures for interoperability of networks be considered sufficiently 911 related? In order to help prevent fee diversion, should collected 911 fees be deposited in a special purpose fund or dedicated account?⁷⁶

39. *Multi-Purpose Public Safety Fees.* In some instances, states have argued that fees identified as supporting “public safety” or “emergency services” should not be classified as 911 fees for purposes of the Commission’s diversion analysis, even if such fees are used to fund 911 programs. In prior reports, the Commission has found that the labelling of the fee is not dispositive, and has looked at the underlying purpose of the fee to determine whether it is a 911 fee within the meaning of the NET 911 Act.⁷⁷ For example, in its filing for the Eleventh Report, New York contended that its Public Safety Communications Surcharge was outside the scope of the NET 911 Act because it supports a wider set of purposes than 911/E911.⁷⁸ However, the Commission noted that the designated purposes for the surcharge clearly include the support or implementation of 911/E911 services and that the surcharge is assessed on wireless services that “provide[] access to emergency communications services.”⁷⁹ Accordingly, the Commission stated that the New York statute “expressly links the Public Safety Communications Surcharge to services that provide access to emergency communications services, or 911.”⁸⁰ The Commission concluded that the surcharge was a fee or charge “for the support or implementation of 9-1-1 or enhanced 9-1-1 services” under Section 6(f)(1) of the NET 911 Act.⁸¹ Thus, the Commission found that the surcharge was a 911 fee despite its public safety label and performed a fee diversion analysis on the funds collected, concluding that New York had diverted 911 funds.⁸²

40. In the Eleventh Report, the Commission also analyzed the U.S. Virgin Islands’ “Emergency Service” surcharge and concluded that it did not constitute 911 fee diversion.⁸³ The Commission noted that by statute the surcharge funds were deposited in an Emergency Service Fund (ESF), with ESF funds allocated 40% to the Virgin Islands Emergency Management Agency (VITEMA) and the other 60% allocated to other specific public safety, non-911 uses.⁸⁴ The Commission also noted that the 40% of ESF funds allocated to VITEMA was to be used entirely for 911/E911 support of

from Kathy Allen, Douglas County 911 Director, to Nebraska Public Service Commission, Application Nos. 911-073/PI-232, at 1 (filed June 4, 2020), <https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/Douglas%20County%20911%20Comments%20filed%206-4-2020%20on%20Application%20911-073PI232%20%281%29.pdf>; *see also* Letter from Ken Moody, Dawson County Sheriff, to Nebraska Public Service Commission, Application Nos. 911-073/PI-232, at 1 (filed May 26, 2020), <https://psc.nebraska.gov/sites/psc.nebraska.gov/files/doc/Dawson%20County%20Sheriff%20comments%205-27-2020.pdf>. (stating that allowable uses of 911 funding should include “radio equipment or any other expense to run a 9-1-1 Center”).

⁷⁶ *See, e.g., TFOPA Final Report* at 155 (“9-1-1 funds should be collected and deposited in special purpose dedicated fund/accounts held outside the legislative appropriations process and not subject to restrictions beyond the scope of the authorizing 9-1-1 legislation.”).

⁷⁷ *E.g., Eleventh Report* at 43, para. 34 (“We do not agree that a fee or charge must be exclusively designated for 911 or E911 purposes in order to constitute a fee or charge ‘for the support or implementation of 9-1-1 or enhanced 9-1-1 services’ under Section 6(f)(1) of the NET 911 Act.”).

⁷⁸ *Eleventh Report* at 42-43, para. 34 & nn.61, 63 (citing New York tax statute and New York Response at 4).

⁷⁹ *Eleventh Report* at 43, para. 34 & n.65 (citing N.Y. Tax Law § 186-f 1(d) (McKinney 2017)).

⁸⁰ *Eleventh Report* at 43, para. 34.

⁸¹ *Eleventh Report* at 43, paras. 34-35.

⁸² *Eleventh Report* at 42-44, paras. 33-36.

⁸³ *Eleventh Report* at 44-45, paras. 39-40.

⁸⁴ *Eleventh Report* at 45, para. 40.

PSAPs.⁸⁵ Further, the Commission stated that “[t]hese percentages are set by statute and cannot be altered. In addition, by statute, the ESF is separate from all other U.S. Virgin Islands accounts, and ESF funds cannot be commingled with or redirected to the general fund or any other account. As a practical matter, this means that of every \$2.00 fee collected, \$0.80 is obligated for 911/E911 uses.”⁸⁶ The Commission concluded that “per the U.S. Virgin Islands statute, the fees collected for 911/E911 uses are entirely severable and traceable to the 911/E911 uses for which they are intended, and the U.S. Virgin Islands is obligated to spend the funds on these 911/E911 uses.”⁸⁷ Thus, the Commission found that the U.S. Virgin Islands had not diverted funds.⁸⁸

41. Should the Commission provide further guidance on determining whether fees labeled for “public safety,” “emergency services,” or similar purposes are 911 fees within the meaning of the NET 911 Act? In addition, should the Commission provide additional guidance on determining circumstances in which a state’s use of such fees constitutes 911 fee diversion? What criteria should the Commission use to make such determinations? Could we expand the analytical framework used for the U.S. Virgin Islands surcharge to other public safety fees that are not exclusively labeled or intended for 911 support?

42. Are there other areas where guidance from the Commission would help to prevent 911 fee diversion? Should the Commission provide additional guidance on which expenditures specifically related to NG911 are sufficiently related to 911?⁸⁹ Would it be helpful for the Commission to provide guidance on which expenditures related to the COVID-19 pandemic have a sufficient nexus to 911? If so, which specific expenditures for these purposes should be considered sufficiently related to 911, and which should constitute a diversion of funds? Is there an appropriate analytical framework for making this distinction?

43. *Improving the Accuracy and Granularity of Reports.* Diversion of funds can be more readily detected where end use of 911 and E911 funds is being monitored and verified periodically. We seek comment on the sufficiency and accuracy of the information in the Commission’s annual 911 fee reports for identifying 911 fee diversion. Should the Commission revise the 911 fee report questionnaire to improve the accuracy and granularity of the annual fee reports and, if so, how? Should states be required to provide additional documentation to demonstrate that they have not diverted 911 fees? For example, should the Commission require states to detail internal controls in place for ensuring that 911/E911 fees are used for their intended purpose and, if so, should the absence of such controls trigger heightened scrutiny? Have there been instances of fee diversion by states or local jurisdictions that were not identified in the Eleventh Report or prior reports, including by counties or other jurisdictions in states that have local or hybrid fee collection programs? If so, what steps can the Commission take to improve the quality of reporting and data collection in such states and jurisdictions? What would be the additional burden on states of filing more detailed reports (e.g., the costs of gathering more detailed information from each county in the state), and would any resulting benefits in accuracy and granularity outweigh any such additional burden? For diverting states, should the Commission increase the frequency of the current annual data collection, e.g., should the Commission collect data from diverting states on a quarterly basis?

IV. PROCEDURAL MATTERS

44. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Eleventh Report at 44-45, paras. 39-40.

⁸⁹ *See, e.g.*, APCO Comments, PS Docket No. 09-14, at 4-5 (rec. Jan. 18, 2019) (urging the Commission to clearly define NG911 and provide more information about NG911 expenditures); NJWA Reply Comments, PS Docket No. 09-14, at 3 (rec. Feb. 12, 2019) (agreeing with APCO on the need for clarification of NG911 expenditures).

accordance with the Commission's *ex parte* rules.⁹⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

45. *Comment Filing Procedures.* Pursuant to Sections 1.415, 1.419 and 1.430 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

46. *Contact Person.* For further information about this proceeding, please contact Brenda Boykin, Attorney-Advisor, Public Safety and Homeland Security Bureau, Policy and Licensing Division,

⁹⁰ 47 CFR §§ 1.1200 *et seq.*

(202) 418-2062, Brenda.Boykin@fcc.gov, and Jill Coogan, Attorney-Advisor, Public Safety and Homeland Security Bureau, Policy and Licensing Division, (202) 418-1499, Jill.Coogan@fcc.gov.

V. ORDERING CLAUSE

47. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 4(n), 201(b), 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(n), 201(b), 251(e), and 403, and Sections 101(1)-(3) and 201(b) of the New and Emerging Technologies 911 Improvement Act of 2008, 47 U.S.C. §§ 615a-1 and 615b, this Notice of Inquiry **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

States/Jurisdictions Identified as Diverting 911/E911 Funds (2009-2019)¹

Report Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
States	RI	RI	RI	RI	RI	RI	RI	RI	RI	RI	RI	
	NY	NY	NY	NY	NY	NY	NY	NY	NY	NY	NY	
	IL	IL	IL	IL	IL	IL	IL	IL	IL			
						NJ	NJ	NJ	NJ	NJ	NJ	
		AZ	AZ	AZ								
		GA	GA	GA								
	ME		ME	ME								
	OR	OR	OR									
							WA		WA			
								WV	WV	WV	WV	
								NH	NH			
	WI	WI										
											NV	NV ²
							CA					
		DE										
		HI										
									IA			
						KS						
	MT										MT	
		NE										
									NM			
TN												
Other Jurisdictions						PR		PR				
Total	8	10	7	6	4	7	6	9	6	6	5	

¹ This Table is derived from Table 17 of the Eleventh Report, as corrected. Eleventh Report at 45-46, Table 17. As explained by the Eleventh Report, the Commission has determined that the U.S. Virgin Islands was not a 911 fee diverter for report year 2018 (i.e., calendar year 2017). Eleventh Report at 44, para. 39. Thus, the U.S. Virgin Islands entry has been removed from this Appendix A for the 2018 report year.

² The Commission did not find that Nevada diverted 911 fees at the state level in CY 2018. However, the Commission concluded that one local Nevada jurisdiction diverted 911 fees in 2018.

APPENDIX B

Approved by OMB
 3060-1122
 Expires: March 31, 2021
 Estimated time per response: 10-55
 hours

Annual Collection of InformationRelated to the Collection and Use of 911 and E911 Fees by States and Other Jurisdictions

Pursuant to OMB authorization 3060-1122, the FCC's Public Safety and Homeland Security Bureau seeks the following specific information in order to fulfill the Commission's obligations under Section 6(f)(2) of the NET 911 Act:

A. Filing Information**1. Name of State or Jurisdiction**

State or Jurisdiction

2. Name, Title and Organization of Individual Filing Report

Name	Title	Organization

Addendum Section A

B. Overview of State or Jurisdiction 911 System

- 1. Please provide the total number of active Public Safety Answering Points (PSAPs) in your state or jurisdiction that receive funding derived from the collection of 911/E911 fees during the annual period ending December 31, 2019:**

PSAP Type ¹	Total
Primary	
Secondary	
Total	

Addendum Section B1

2. Please provide the total number of active telecommunicators² in your state or jurisdiction that were funded through the collection of 911 and E911 fees during the annual period ending December 31, 2019:

Number of Active Telecommunicators	Total
Full-Time	
Part-time	

Addendum Section B2

3. For the annual period ending December 31, 2019, please provide an estimate of the total cost to provide 911/E911 service in your state or jurisdiction.

¹ A Primary PSAP is one to which 911 calls are routed directly from the 911 Control office. A secondary PSAP is one to which 911 calls are transferred from a Primary PSAP. See National Emergency Number Association, Master Glossary of 9-1-1 Terminology (*Master Glossary*), Apr. 13, 2018, at 162, available at https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA-ADM-000.22-2018_FINAL_2.pdf.

² A telecommunicator, also known as a call taker or a dispatcher, is a person employed by a PSAP who is qualified to answer incoming emergency telephone calls and/or who provides for the appropriate emergency response either directly or through communication with the appropriate PSAP. See *Master Glossary* at 192.

Amount (\$)	[Redacted]
----------------	------------

3a. If an amount cannot be provided, please explain why.

Addendum Section B3

4. Please provide the total number of 911 calls your state or jurisdiction received during the period January 1, 2019 to December 31, 2019.

Type of Service	Total 911 Calls
Wireline	[Redacted]
Wireless	[Redacted]
VoIP	[Redacted]
Other	[Redacted]
Total	[Redacted]

Addendum Section B4

C. Description of Authority Enabling Establishment of 911/E911 Funding Mechanisms

1. Has your State, or any political subdivision, Indian tribe, village or regional corporation therein as defined by Section 6(f)(1) of the NET 911 Act, established a funding mechanism designated for or imposed for the purposes of 911 or E911 support or implementation (please include a citation to the legal authority for such mechanism)? *Check one.*

- Yes
- No

1a. If YES, provide a citation to the legal authority for such a mechanism.

1b. If YES, during the annual period January 1, 2019 to December 31, 2019, did your state or jurisdiction amend, enlarge, or in any way alter the funding mechanism.

Addendum Section C1

2. Which of the following best describes the type of authority arrangement for the collection of 911/E911 fees? Check one.

- The State collects the fees
- A Local Authority collects the fees
- A hybrid approach where two or more governing bodies
(e.g., state and local authority) collect the fees

Addendum Section C2

3. Describe how the funds collected are made available to localities.

D. Description of State or Jurisdictional Authority That Determines How 911/E911 Fees are Spent

1. Indicate which entities in your state have the authority to approve the expenditure of funds collected for 911 or E911 purposes.		
Jurisdiction	Authority to Approve Expenditure of Funds <i>(Check one)</i>	
	Yes	No
State	<input type="checkbox"/>	<input type="checkbox"/>
Local <i>(e.g., county, city, municipality)</i>	<input type="checkbox"/>	<input type="checkbox"/>
1b. Please briefly describe any limitations on the approval authority per jurisdiction (e.g., limited to fees collected by the entity, limited to wireline or wireless service, etc.)		

Addendum Section D1

2. Has your state established a funding mechanism that mandates *how* collected funds can be used? *Check one.*

- Yes
- No

2a. If you checked YES, provide a legal citation to the funding mechanism of any such criteria.

2b. If you checked NO, describe how your state or jurisdiction decides how collected funds can be used.

E. Description of Uses of Collected 911/E911 Fees

1. Provide a statement identifying with specificity all activities, programs, and organizations for whose benefit your state, or political subdivision thereof, has obligated or expended funds collected for 911 or E911 purposes and how these activities, programs, and organizations support 911 and E911 services or enhancements of such services.

2. Please identify the allowed uses of the collected funds. <i>Check all that apply.</i>			
Type of Cost		Yes	No
Operating Costs	Lease, purchase, maintenance of customer premises equipment (CPE) (hardware and software)	<input type="checkbox"/>	<input type="checkbox"/>
	Lease, purchase, maintenance of computer aided dispatch (CAD) equipment (hardware and software)	<input type="checkbox"/>	<input type="checkbox"/>
	Lease, purchase, maintenance of	<input type="checkbox"/>	<input type="checkbox"/>

	building/facility		
Personnel Costs	Telecommunicators' Salaries	<input type="checkbox"/>	<input type="checkbox"/>
	Training of Telecommunicators	<input type="checkbox"/>	<input type="checkbox"/>
Administrative Costs	Program Administration	<input type="checkbox"/>	<input type="checkbox"/>
	Travel Expenses	<input type="checkbox"/>	<input type="checkbox"/>
Dispatch Costs	Reimbursement to other law enforcement entities providing dispatch	<input type="checkbox"/>	<input type="checkbox"/>
	Lease, purchase, maintenance of Radio Dispatch Networks	<input type="checkbox"/>	<input type="checkbox"/>
Grant Programs		<input type="checkbox"/> If YES, see 2a.	<input type="checkbox"/>
2a. During the annual period ending December 31, 2019, describe the grants that your state paid for through the use of collected 911/E911 fees and the purpose of the grant.			
<div style="background-color: #cccccc; height: 20px; width: 40px; margin-bottom: 5px;"></div>			

Addendum Section E2
<div style="background-color: #cccccc; height: 20px; width: 40px; margin-bottom: 5px;"></div>

F. Description of 911/E911 Fees Collected

1. Please describe the amount of the fees or charges imposed for the implementation and support of 911 and E911 services. Please distinguish between state and local fees for each service type.		
Service Type	Fee/Charge Imposed	Jurisdiction Receiving Remittance (e.g., state, county, local authority, or a

		combination)
Wireline		
Wireless		
Prepaid Wireless		
Voice Over Internet Protocol (VoIP)		
Other		

Addendum Section F1
<div style="border: 1px solid black; height: 150px; width: 100%;"></div>

2. For the annual period ending December 31, 2019, please report the total amount collected pursuant to the assessed fees or charges described in Question F 1.

Service Type	Total Amount Collected (\$)
Wireline	
Wireless	
Prepaid Wireless	
Voice Over Internet Protocol (VoIP)	
Other	

Total	█
-------	---

2a. If an amount cannot be provided, please explain why.

█

Addendum Section F2
█

3. Please identify any other sources of 911/E911 funding.

█

Question	Yes	No
4. For the annual period ending December 31, 2019, were any 911/E911 fees that were collected by your state or jurisdiction combined with any federal, state or local funds, grants, special collections, or general budget appropriations that were designated to support 911/E911/NG911 services? Check one.	<input type="checkbox"/>	<input type="checkbox"/>
4a. If YES, please describe the federal, state or local funds and amounts that were combined with 911/E911 fees.		
█		

Addendum Section F4

--

5. Please provide an estimate of the proportional contribution from each funding source towards the total cost to support 911 in your state or jurisdiction.	Percent
State 911 Fees	█
Local 911 Fees	█
General Fund – State	█
General Fund – County	█
Federal Grants	█
State Grants	█

Addendum Section F5

G. Description of Diversion or Transfer of 911/E911 Fees for Other Uses

Question	Yes	No
1. In the annual period ending December 31, 2019, were funds collected for 911 or E911 purposes in your state or jurisdiction made available or used solely for the purposes designated by the funding mechanism? <i>Check one.</i>	<input type="checkbox"/>	<input type="checkbox"/>
1a. If NO, please identify what amount of funds collected for 911 or E911 purposes were made available or used for any purposes other than the ones designated by the funding mechanism or used for purposes otherwise unrelated to 911 or E911 implementation or support, including any funds transferred, loaned, or otherwise used for the state's general fund. Along with identifying the amount, please include a statement identifying the non-related purposes for which the collected 911 or E911 funds were made available or used.		
Amount of Funds (\$)	Identify the non-related purpose(s) for which the 911/E911 funds were used. <i>(Add lines as necessary)</i>	
█	█	
█	█	
█	█	
█	█	
█	█	

Addendum Section G1
<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>

H. Oversight and Auditing of Collection and Use of 911/E911 Fees

Question	Yes	No
1. Has your state established any oversight or auditing mechanisms or procedures to determine whether collected funds have been made available or used for the purposes designated by the funding mechanism or otherwise used to implement or support 911? <i>Check one.</i>	<input type="checkbox"/>	<input type="checkbox"/>
1a. If YES, provide a description of the mechanisms or procedures and any enforcement or other corrective actions undertaken in connection with such auditing authority, for the annual period ending December 31, 2019. (Enter "None" if no actions were taken.)		
<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>		

Question	Yes	No
2. Does your state have the authority to audit service providers to ensure that the amount of 911/E911 fees collected from subscribers matches the service provider's number of subscribers? <i>Check one.</i>	<input type="checkbox"/>	<input type="checkbox"/>
2a. If YES, provide a description of any auditing or enforcement or other corrective actions undertaken in connection with such auditing authority, for the annual period ending December 31, 2019. (Enter "None" if no actions were taken.)		

<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>

I. Description of Next Generation 911 Services and Expenditures

Question	Yes	No
1. Does your state or jurisdiction classify expenditures on Next Generation 911 as within the scope of permissible expenditures of funds for 911 or E911 purposes? <i>Check one.</i>	<input type="checkbox"/>	<input type="checkbox"/>
1a. If YES, in the space below, please cite any specific legal authority:		
<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>		

Question	Yes	No
2. In the annual period ending December 31, 2019, has your state or jurisdiction expended funds on Next Generation 911 programs? <i>Check one.</i>	<input type="checkbox"/>	<input type="checkbox"/>
2a. If YES, in the space below, please enter the dollar amount that has been expended.		
Amount (\$)	<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>	

Addendum Section I2
<div style="background-color: #cccccc; width: 40px; height: 15px; margin-bottom: 5px;"></div>

3. For the annual period ending December 31, 2019, please describe the type and number of NG911 Emergency Service IP Network(s) (ESInets) that operated within your state.					
Type of ESInet	Yes	No	If Yes, Enter Total PSAPs Operating on the ESInet	If Yes, does the type of ESInet interconnect with other state, regional or local ESInets?	
				Yes	No
a. A single, state-wide ESInet	<input type="checkbox"/>	<input type="checkbox"/>	█	<input type="checkbox"/>	<input type="checkbox"/>
b. Local (e.g., county) ESInet	<input type="checkbox"/>	<input type="checkbox"/>	█	<input type="checkbox"/>	<input type="checkbox"/>
c. Regional ESInets	<input type="checkbox"/>	<input type="checkbox"/>	[If more than one Regional ESInet is in operation, in the space below, provide the total PSAPs operating on each ESInet] █	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 1: █			█	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 2: █			█	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 3: █			█	<input type="checkbox"/>	<input type="checkbox"/>

Name of Regional ESInet 4: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 5: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 6: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 7: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 8: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 9: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 10: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 11: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 12: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 13: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 14: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>

Name of Regional ESInet 15: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 16: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 17: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 18: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 19: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 20: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 21: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 22: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 23: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 24: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 25: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>

Name of Regional ESInet 26: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 27: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 28: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 29: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 30: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 31: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 32: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 33: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 34: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>
Name of Regional ESInet 35: [REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>

Addendum Section I3

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4. Please provide a description of any NG911 projects completed or underway during the annual period ending December 31, 2019.

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Question	Total PSAPs Accepting Texts
5. During the annual period ending December 31, 2019, how many PSAPs within your state implemented text-to-911 and are accepting texts?	<table border="1" style="width: 100px; height: 20px; background-color: #cccccc;"></table>
Question	Estimated Number of PSAPs that will Become Text Capable
6. In the next annual period ending December 31, 2020, how many PSAPs do you anticipate will become text capable?	<table border="1" style="width: 100px; height: 20px; background-color: #cccccc;"></table>

Addendum Section I5
<table border="1" style="width: 50px; height: 20px; background-color: #cccccc;"></table>

Addendum Section I6
<table border="1" style="width: 50px; height: 20px; background-color: #cccccc;"></table>

J. Description of Cybersecurity Expenditures

Question	Check the appropriate box	If Yes, Amount Expended (\$)

<p>1. During the annual period ending December 31, 2019, did your state expend funds on cybersecurity programs for PSAPs?</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p></p>
---	---	--	---------

<p>Addendum Section J1</p>
<p></p>

Question	Total PSAPs
<p>2. During the annual period ending December 31, 2019, how many PSAPs in your state either implemented a cybersecurity program or participated in a regional or state-run cybersecurity program?</p>	<p></p>

<p>Addendum Section J2</p>
<p></p>

Question	Yes	No	Unknown
<p>3. Does your state or jurisdiction adhere to the National Institute of Standards and Technology <i>Framework for Improving Critical Infrastructure Cybersecurity</i> (February 2014) for networks supporting one or more PSAPs in your state or jurisdiction?</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>

<p>Addendum Section J3</p>
<p></p>

K. Measuring Effective Utilization of 911/E911 Fees

1. Please provide an assessment of the effects achieved from the expenditure of state 911/E911 or NG911 funds, including any criteria your state or jurisdiction uses to measure the effectiveness

of the use of 911/E911 fees and charges. If your state conducts annual or other periodic assessments, please provide an electronic copy (*e.g.*, Word, PDF) of the latest such report upon submission of this questionnaire to the FCC or provide links to online versions of such reports in the space below.

We have estimated that your response to this collection of information will take an average of 10 to 55 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, Office of Managing Director, AMD-PERM, Washington, DC 20554, Paperwork Reduction Act Project (3060-1122). We will also accept your PRA comments via the Internet if you send an e-mail to PRA@fcc.gov.

Please **DO NOT SEND COMPLETED FORMS TO THIS ADDRESS**. You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number and/or we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-1122.

THIS NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *911 Fee Diversion*, PS Docket No. 20-291; *New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 09-14.

In 2020, we have been reminded many times of the life-saving work performed by our nation's first responders. While there are still three months left in the year, it seems we've already had enough disasters to last a lifetime, from the COVID-19 pandemic to raging wildfires in the West, and from Hurricanes Laura and Sally to the Iowa Derecho. But whenever disaster has struck, our first responders have answered the call and put their lives on the line to serve the American people. And more times than not, that call has come through our nation's 911 system.

That's why it is so important that our 911 system receives the funding it needs. And that's why it is outrageous that some money earmarked for 911 is being diverted for other purposes. Indeed, our latest annual report to Congress on states' collection and use of 911 fees found that between 2012 and 2018, states diverted over \$1.275 billion in fees collected for 911 services to non-911 purposes. I'll be blunt: 911 fee diversion is fraud. The government takes money from consumers with the promise it'll be spent on improving our 911 system and spends it on something else. And this fraudulent practice has real-life consequences. 911 fee diversion makes it harder for legacy 911 systems to transition to next-generation IP-enabled emergency networks. It makes it harder for 911 dispatchers to do their jobs. And it jeopardizes the safety of the American people.

The diversion of 911 fees must stop, and today's Notice of Inquiry is an important step toward achieving that goal. We seek comment on the effects of 911 fee diversion and explore additional steps the Commission and or others could take to discourage states from diverting 911 fees. We're examining all options, such as placing restrictions on grant funding, conditioning state eligibility for FCC licenses, and leveraging our truth-in-billing authority to address the description of 911 fees on consumer bills when diversion occurs.

Of course, the problem of 911 fee diversion is not new. And thanks to the leadership of FCC Commissioner Mike O'Rielly, this problem in recent years has been getting the scrutiny it deserves. Indeed, just last week the U.S. House of Representatives overwhelmingly approved legislation¹ by a 410-5 vote that would, among other things, help prevent 911 fee diversion by states and other taxing jurisdictions by requiring the Commission to establish rules specifying acceptable purposes and functions for which 911 fees may be used.

With today's Notice of Inquiry, we are continuing to do our part to address the problem of 911 fee diversion. And if we can find a way to end this practice once and for all, we will improve our 911 system, keep Americans safe, and do right by our nation's first responders.

For their hard work, I would like to thank the dedicated staff who worked on this Notice of Inquiry: Brenda Boykin, Rochelle Cohen, Jill Coogan, John Evanoff, Lisa Fowlkes, David Furth, Erika Olsen, and Michael Wilhelm from the Public Safety and Homeland Security Bureau; Zac Champ, Gregory Cooke, and Gregory Haledjian from the Consumer and Governmental Affairs Bureau; Becky Tangren and Matthew Warner from the Wireless Telecommunications Bureau; Justin Faulb from the Wireline Competition Bureau; Chana Wilkerson and Sanford Williams from the Office of Communications Business Opportunities; Alex Espinoza, Chuck Needy, and Emily Talaga from the Office of Economics and Analytics; and David Horowitz, Bill Richardson, and Anjali Singh from the Office of General Counsel.

¹ See Don't Break Up the T-Band Act of 2020, H.R. 451, 115th Cong. § 4 (2020).

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *911 Fee Diversion*, PS Docket No. 20-291; *New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 09-14.

There is no question that consumers expect states to use 9-1-1 fees only for purposes directly related to the building and operating of 9-1-1 systems and not for filling state coffers, stealing the money and diverting funds toward other projects and programs unrelated to essential 9-1-1 services. No matter how meritorious that other spending may be in a few limited cases, we all know the fungible nature of state taxes and fees means that these state diverters could otherwise cut spending elsewhere or raise taxes to meet their funding needs for their non-9-1-1 programs. What is unconscionable, even shameful, is that certain states hide behind labels like “public safety” to dupe consumers and shortchange 9-1-1 call centers. Yet, despite public reprimands and cajoling, these states simply refuse to change their diverting ways, and, unfortunately, the preliminary review of calendar year 2019 data suggests that four states are likely to remain unapologetically on the list: New Jersey, New York, Rhode Island, and Nevada. In New York, I heard firsthand how local property taxes had to be increased at the county level to pay for 9-1-1 call answering centers to make up for the huge shortfalls in funds that were supposed to be sent by the New York State government. Similar stories can be told of the other states.

Despite these few remaining outliers, it is worth noting that the vast majority of states have taken steps over the last decade to rectify their behavior and remove their names from this odious list. While we have had some success shrinking the number of diverters, more work remains. This undertaking has been one of my top priorities during my time at the Commission, and I thank the Chairman and dedicated staff for finalizing today’s Notice of Inquiry (NOI), which is an effort to explore every creative idea and tactic the Commission can use under its *existing* authority to end these diversions once and for all. Diverters are already statutorily barred from receiving federal NextGen911 grants, and I expect that Congress may need to provide even stronger statutory tools for the Commission to finally address the remaining diverters and prevent this horrendous practice in the future.

In any case, I am heartened by the overwhelming support for reform shown in Congress, as recently as last week, and throughout the Commission, and I am hopeful that today’s NOI will continue the positive momentum needed to finish the project and reduce the number of diverters to zero. I also want to thank Chairman Pai and Commissioner Rosenworcel for joining me on this crusade over the years, and Chief Lisa Fowlkes and Deputy Chief David Furth of PSHSB, along with all of the members of their team, for the hard work that goes into the annual report and for supporting the broader effort to rein in rogue states. Thank you all.

I approve.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *911 Fee Diversion*, PS Docket No. 20-291, *New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 09-14, Notice of Inquiry (September 30, 2020)

As the saying goes, you may only call 911 once in your life, but it will be the most important call you ever make. Chances are that when you make that call, you won't put much thought into the system that's behind it. So let's take a moment to praise the people behind our 911 system and recognize the folks who keep us connected when the unthinkable occurs. We can start with Betty Wafer.

I first saw her in action at the 911 call center in Dallas, Texas. She was born and raised in the Big D and knows the city inside and out. It makes a difference. Because when people cry out for help, she knows the ins and outs of how to deploy in the city she loves and has always called home. Over the course of three decades she rose to the top of its public safety ranks. Today she is in charge of all 911 communications for the Dallas Police Department.

There is not a lot Betty Wafer hasn't seen. Like most people who work on the 911 front lines, she has a preternatural calm. After all, these are people who listen to us at our most troubled and then help ensure that help is on the way. As we walked through her call center, she spoke with authority about how technology has changed, how essential it was to be able to keep up, and how important it was to ensure that funding for 911 makes it to its intended destination.

I was so inspired by that trip that we partnered to write an editorial that was published over four years ago. We wrote about the need for a national funding plan for 911 and tops on our list was ending 911 fee diversion. It's not acceptable when states allow a line item on communications bills that expressly says it is for 911 service but then turn around and send those fees elsewhere.

It was the first time anyone from this agency had written on this subject. I then testified before Congress about it. Later I shared the pen with Commissioner O'Rielly who shares my concern about this practice. He deserves credit for pressing this issue in a big way. I'm glad to see that some of the ideas we put forward—including efforts to incentivize fee-diverting states to do the right things—are included in today's notice of inquiry. It also asks appropriate questions about the boundaries of this agency's authority and seeks ideas regarding the steps we can take to improve our annual fee diversion reports and put the pressure on to end this ugly practice altogether.

All good ideas are welcome. They can make a meaningful difference across the country as we navigate the transition to next-generation 911. They are especially important for states wrestling with funding challenges in the here and now that have been brought on by this pandemic. And they matter for our nation's 911 operators, like Betty Wafer and the thousands of others who run our 911 centers across the country. They deserve the support intended for them; fee diversion needs to stop.

I fully support this inquiry and look forward to the record that will develop.