

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

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

REPORT AND ORDER

Adopted: June 24, 2021

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By the Commission:

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I. INTRODUCTION

1. On December 27, 2020, the Don't Break Up the T-Band Act of 2020 became law as part of the Consolidated Appropriations Act, 2021.¹ Section 902 of the new legislation requires the Commission to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, it directs the Commission to issue final rules, not later than 180 days after the date of enactment of section 902 (i.e., June 25, 2021), designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. § 615a-1, as amended by section 902.² In this *Report and Order*, we adopt new rules implementing section 902 as proposed in our February 17, 2021 *Notice of Proposed Rulemaking (Notice)*,³ with minor modifications and clarifications.

II. BACKGROUND

2. As we noted in the *Notice*, “Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes.”⁴ Congress initially enacted measures to limit 911 fee diversion, codified in 47 U.S.C. § 615a-1 (section 615a-1).⁵ Specifically, section 615a-1(f)(1) provided that nothing in the NET 911 Act, the Communications Act of 1934,⁶ 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.”⁷

3. The NET 911 Act also required the Commission to report annually on the collection and distribution of fees in each state 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.”⁸ Pursuant to this provision, the Commission

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902).

² Section 902(c)(1)(C).

³ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Proposed Rulemaking, FCC 21-25 (Feb. 17, 2021) (*Notice*).

⁴ *Notice* at 2, para. 2; *see also, e.g.*, Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (*ENHANCE 911 Act*) (relevant grant provisions codified at 47 U.S.C. § 942). Congress provided another round of 911 grant funding, with similar non-diversion requirements, in the NG911 Act, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 237, Title VI, Subtitle E, Next Generation 9-1-1 Advancement Act of 2012 (*NG911 Act*) (relevant grant provisions codified at 47 U.S.C. § 942).

⁵ *See Notice* at 2, para. 2; *New and Emerging Technologies 911 Improvement Act of 2008*, Pub. L. No. 110-283, 122 Stat. 2620 (*NET 911 Act*). The NET 911 Act enacted 47 U.S.C. § 615a-1 and also amended 47 U.S.C. §§ 222, 615a, 615b, and 942. *See* 47 U.S.C. § 615a-1 Editorial Notes.

⁶ 47 U.S.C. § 151 *et seq.*

⁷ 47 U.S.C. § 615a-1(f)(1) (prior version).

⁸ 47 U.S.C. § 615a-1(f)(2) (prior version). Under the NET 911 Act, the agency's annual 911 fee report covers states, U.S. territories, and the District of Columbia. *See* 47 U.S.C. § 615a-1(f)(2) (directing the Commission to report on the status “in each State” of the collection and distribution of 911 fees and charges); *id.* § 615b(2) (definition of “State”). The Chair of the Federal Communications Commission submits the annual report to Congress, as mandated by the NET 911 Act and as prepared by the staff in the Public Safety and Homeland Security Bureau (Bureau). *See* 47 U.S.C. § 155(a) (stating, *inter alia*, that “[i]t shall be [the Chair's] duty . . . to represent the Commission in all matters relating to legislation and legislative reports”). Whether we refer to these reports as

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has reported annually to Congress on 911 fee diversion every year since 2009. In October 2020, the Commission released a *Notice of Inquiry* seeking comment on the effects of fee diversion and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911 fees.⁹ Shortly thereafter, Congress enacted section 902.

4. Section 902 requires the Commission to take additional action with respect to 911 fee diversion. Specifically, section 902(c)(1)(C) adds a new paragraph (3)(A) to section 615a-1(f) that directs the Commission to adopt rules “designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable” for purposes of section 902 and the Commission’s rules.¹⁰ The newly added section 615a-1(f)(3)(B) states that these purposes and functions shall be limited to “the support and implementation of 9-1-1 services” provided by or in the state or taxing jurisdiction imposing the fee or charge, and “operational expenses of public safety answering points” within such state or taxing jurisdiction.¹¹ The new section also states that, in designating such purposes and functions, the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as the intended purposes and functions for their 911 fees or charges, and “determine whether such purposes and functions directly support providing 9-1-1 services.”¹²

5. Section 902 also amends section 615a-1(f)(1) to provide that the rules adopted by the Commission for these purposes will apply to states and taxing jurisdictions that impose 911 fees or charges. Whereas the prior version of section 615a-1(f)(1) referred to fees or charges “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,”¹³ the amended version reads as follows:

Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, 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 serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) 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, *consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or*

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submitted by the Bureau, the agency, or the Commission, we mean the annual reports prepared by the Bureau staff and submitted by the Chair of the Commission. As we noted in the *Notice*, all 12 of the annual reports issued to date have identified some states that have diverted 911 fees to other uses. *Notice* at 3, para. 3. These annual reports can be viewed at <https://www.fcc.gov/general/911-fee-reports>.

⁹ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Inquiry, 35 FCC Rcd 11010, 11010, para. 1 (2020) (*Fee Diversion NOI*). Noting that publicly identifying diverting states in the agency’s annual reports has helped discourage the practice but has not eliminated fee diversion, the Commission sought comment on whether it could take other steps to discourage fee diversion, such as conditioning state and local eligibility for FCC licenses, programs, or other benefits on the absence of fee diversion. *Fee Diversion NOI*, 35 FCC Rcd at 11011, 11015, paras. 5, 16.

¹⁰ 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

¹¹ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

¹² 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

¹³ 47 U.S.C. § 615a-1(f)(1) (prior version).

*charge is acceptable.*¹⁴

6. In addition, section 902(c) establishes a process for states and taxing jurisdictions to seek a determination that a proposed use of 911 fees should be treated as acceptable even if it is for a purpose or function that has not been designated as such in the Commission's rules.¹⁵ Specifically, newly added section 615a-1(f)(5) provides that a state or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of a 911 fee or charge "for a purpose or function other than a purpose or function designated under [section 615a-1(f)(3)(A)] should be treated as such a purpose or function," i.e., as acceptable for purposes of this provision and the Commission's rules.¹⁶ The new section 615a-1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function "(i) supports public safety answering point functions or operations," or "(ii) has a direct impact on the ability of a public safety answering point to— (I) receive or respond to 9-1-1 calls; or (II) dispatch emergency responders."¹⁷

7. Section 902(d) requires the Commission to create the "Ending 9-1-1 Fee Diversion Now Strike Force" (911 Strike Force), which is tasked with studying "how the Federal Government can most expeditiously end diversion" by states and taxing jurisdictions and reporting to Congress on its findings within 270 days of the statute's enactment.¹⁸ In February, the agency announced the formation of the 911 Strike Force and solicited nominations.¹⁹ On May 21, 2021, the agency announced the 911 Strike Force membership, which includes a diverse array of experts from across the nation representing federal, state and local government agencies, state 911 administrators, a consumer group, and organizations representing 911 professionals.²⁰ The 911 Strike Force held its inaugural meeting on June 3, 2021,²¹ and has formed three working groups that will examine: (i) the effectiveness of any federal laws, including regulations, policies, and practices, and budgetary or jurisdictional constraints regarding how the federal government can most expeditiously end 911 fee diversion; (ii) whether criminal penalties would further prevent 911 fee diversion; and (iii) the impacts of 911 fee diversion. Consistent with section 902(d), the 911 Strike Force will complete its work and submit its final report to Congress by September 23, 2021.²²

¹⁴ 47 U.S.C. § 615a-1(f)(1) (as amended) (emphasis added); section 902(c)(1)(A).

¹⁵ 47 U.S.C. § 615a-1(f)(5) (as amended); section 902(c)(1)(C).

¹⁶ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

¹⁷ 47 U.S.C. § 615a-1(f)(5)(A)-(B) (as amended); section 902(c)(1)(C).

¹⁸ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(3).

¹⁹ *FCC Announces the Establishment of the Ending 9-1-1 Fee Diversion Now Strike Force and Seeks Nominations for Membership*, Public Notice, DA 21-182 (Feb. 17, 2021), <https://www.fcc.gov/document/fcc-announces-and-seeks-members-911-strike-force>.

²⁰ *FCC Announces the Membership and First Meeting of the Ending 9-1-1 Fee Diversion Now Strike Force*, Public Notice, DA 21-591 (May 21, 2021), <https://www.fcc.gov/document/fcc-announces-members-911-strike-force> (May 21, 2021 *Strike Force Public Notice*). Section 902 requires the 911 Strike Force to include such representatives of federal departments and agencies as the Commission considers appropriate, in addition to: (1) state attorneys general; (2) states or taxing jurisdictions found not to be engaging in diversion of 911 fees or charges; (3) states or taxing jurisdictions trying to stop the diversion of 911 fees or charges; (4) state 911 administrators; (5) public safety organizations; (6) groups representing the public and consumers; and (7) groups representing public safety answering point professionals. *See id.* at 2; 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(3)(C).

²¹ The video recording of the June 3, 2021 meeting of the 911 Strike Force is available at FCC, *The Ending 9-1-1 Fee Diversion Now Strike Force*, <https://www.fcc.gov/911strikeforce>, and recordings of future 911 Strike Force meetings will also be available at this site. *See May 21, 2021 Strike Force Public Notice* at 1; 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(3)(A), (B).

²² 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(3). September 23, 2021 is 270 days after the enactment date of section 902.

In addition, Section 902(d)(1) provides that if the Commission obtains evidence that “suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges,” the Commission shall submit such information to the 911 Strike Force, “including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”²³

8. Section 902(d)(2) provides that the Commission shall also include evidence it obtains of diversion and underfunding in future annual fee reports, beginning with the first report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act.”²⁴ In addition, section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after the date of the enactment of the new legislation, “such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the [annual report to Congress on 911 fees].”²⁵ Finally, section 902(d)(4) prohibits any state or taxing jurisdiction identified as a fee diverter in the Commission’s annual report from participating or sending a representative to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) under 47 U.S.C. § 1425(a) or any advisory committee established by the Commission.²⁶

9. Section 902 does not require states or taxing jurisdictions to impose any fee in connection with the provision of 911 service. As revised, the proviso to section 615a-1 states that nothing in the Act or the Commission’s rules “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services” specifically designated by the taxing jurisdiction “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, consistent with the purposes and functions designated in [the Commission’s forthcoming rules] as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.”²⁷ In this regard, section 902 charges the Commission with adopting rules defining what relevant statutory provisions mean, a responsibility we fulfill in adopting the rules in this *Report and Order*. In this regard, when we define and describe “acceptable” expenditures in this *Report and Order* or in our rules, we mean to use that term as Congress did in section 902(c)(1)(C).

10. On February 17, 2021, we adopted the *Notice*, which proposed rules to implement section 902 and address 911 fee diversion.²⁸ The Commission received twenty-eight comments, nine reply comments, and five *ex parte* filings.²⁹

III. DISCUSSION

11. With this *Report and Order*, we adopt rules to implement the provisions of section 902 that require Commission action. Specifically, we amend part 9 of our rules to establish a new subpart I that addresses 911 fees and fee diversion in accordance with and for the purposes of the statute. The new subpart I rules (1) clarify what does and does not constitute the kind of diversion of 911 fees that has concerned Congress (and the Commission); (2) establish a declaratory ruling process for providing further

²³ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(1).

²⁴ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(2). Based on the December 27, 2020 enactment date of section 902, this requirement will apply beginning with the next annual fee report, due to Congress by December 31, 2021.

²⁵ 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C).

²⁶ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(4).

²⁷ 47 U.S.C. § 615a-1(f)(1) (as amended); section 902(c)(1)(A).

²⁸ *See Notice*.

²⁹ *See Appendix C* for a complete list of entities submitting comments, reply comments, and *ex parte* filings.

guidance to states and taxing jurisdictions on fee diversion issues; and (3) codify the specific obligations and restrictions that section 902 imposes on states and taxing jurisdictions, including those that engage in diversion as defined by our rules.

12. The record indicates that commenters are divided on whether expenditures of 911 fees for public safety radio systems and related infrastructure should be considered acceptable for Section 902 purposes. Our new rules provide additional guidance on this question. We also refer additional questions concerning the application of our new rules to the 911 Strike Force for the development of recommendations. We also note that the petition process established by section 902 provides a mechanism for further consideration of this issue in the context of specific fact patterns, after adoption of the initial rules in this proceeding. We conclude that these changes to part 9 will advance Congress's stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions. In sum, the rules we adopt today closely track the statutory language addressing 911 fee diversion, and seek to promote transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services, while providing stakeholders reasonable guidance as part of implementing section 902.

A. Definitions and Applicability

13. Section 902 defines certain terms relating to 911 fees and fee diversion. To promote consistency, the *Notice* proposed to codify these definitions with certain modifications.³⁰ As described below, we adopt these definitions as proposed.³¹

1. 911 Fee or Charge

14. *Background.* Section 902 defines “9-1-1 fee or charge” as “a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.”³² In the *Notice*, we proposed to codify this definition in the rules.³³ However, we also noted that the statutory definition in section 902 does not address services that may be subject to 911 fees other than Commercial Mobile Radio Services (CMRS) and IP-enabled voice services.³⁴ As we observed in the *Notice*, the reason for this omission is unclear. For example, virtually all states impose 911 fees on wireline telephone services and have provided information on such fees for inclusion in the agency’s annual fee reports. In addition, as 911 expands beyond voice to include text and other non-voice applications, states could choose to extend 911 fees to such services in the future.³⁵

³⁰ See *Notice* at 5-9, paras. 11-20.

³¹ We also clarify in the introductory language of this section of the rules that where the Commission uses the term “acceptable” in subpart I, it is for purposes of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, section 902(c)(1)(C). See Appendix A, section 9.22 (“Definitions”).

³² 47 U.S.C. § 615a-1(f)(3)(D)(i) (as amended); section 902(c)(1)(C).

³³ See *Notice* at 5, para. 12; *id.* at 17, Appx. A (proposed section 9.22).

³⁴ See *Notice* at 5, para. 12.

³⁵ See *Notice* at 6, para. 12. The Commission has extended 911 obligations to providers of text messaging services. See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 10-255 and 11-153, Report and Order, 28 FCC Rcd 7556 (2013) (*Bounce-Back Report and Order*) (requiring covered text providers to provide consumers attempting to send a text to 911 with an automatic bounce-back message when the service is unavailable); *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (*Text-to-911 Second Report and Order*) (requiring covered text providers to implement text-to-911 service no later than June 30, 2015 or six months from the date of a PSAP’s request, whichever is later). The

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15. To promote regulatory parity and avoid gaps that could inadvertently frustrate the rapid deployment of effective 911 services, including advanced Next Generation 911 (NG911) services, we proposed to define “911 fee or charge” in the rules to include fees or charges applicable to “other emergency communications services” as defined in section 201(b) of the NET 911 Act.³⁶ Under the NET 911 Act, the term “other emergency communications service” means “the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service.”³⁷ We noted that this proposed modification will make clear that the rules in subpart I extend to all communications services regulated by the Commission that provide emergency communications, including wireline services, and not just to CMRS and IP-enabled voice services.³⁸ We also proposed in the *Notice* to extend the definition of “911 fee or charge” to include fees or charges designated for the support of “public safety,” “emergency services,” or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services.³⁹

16. *Decision.* We adopt our *Notice* proposal. The Michigan 911 Entities support including “other emergency communications services” in the definition,⁴⁰ and no commenter opposes this proposal. We find that this expansion of the definition of “911 fee or charge” is reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities under section 902 and other federal 911-related statutes and Communications Act statutory provisions that, taken together, establish an overarching federal interest in ensuring the effectiveness of the 911 system.⁴¹ The

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text-to-911 rules are technology-neutral and include all texting options, such as SMS, MMS, or real-time text (RTT). 47 CFR § 9.10(q)(9) (defining a 911 text message to be a text message sent to 911 “by a covered text provider, regardless of the text messaging platform used”); *see also Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16-145, CN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13593, para. 45 (2016) (amending the Commission’s rules to require that “once a PSAP is so capable, the requested service provider must begin delivering RTT communications in an RTT format within six months after such request is made—to the extent the provider has selected RTT as it[s] accessible text communication method”). Further, in RAY BAUM’S Act, which directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls, Congress specifically defined the term “9-1-1 call” to include a voice call “or a message that is sent by other means of communication.” *See Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (*RAY BAUM’S Act*) § 506(c)(1) (codified at 47 U.S.C. § 615 Notes).

³⁶ *See Notice* at 6, para. 13.

³⁷ *NET 911 Act* § 201(b), codified at 47 U.S.C. § 615b(8).

³⁸ *See Notice* at 6, para. 13.

³⁹ *Notice* at 7-8, para. 16. The Commission also proposed a safe harbor in the rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. *See Notice* at 12, para. 28.

⁴⁰ Michigan 911 Entities Comments, PS Docket No. 20-291, at iii, 10 (rec. Mar. 23, 2021) (Michigan 911 Entities Mar. 23, 2021 Comments).

⁴¹ *See infra* para. 88. *See also, e.g., Nuvio Corp. v. FCC*, 473 F.3d 302, 311 (D.C. Cir. 2007) (Kavanaugh, J., concurring) (noting, in joining a decision upholding the Commission’s decision to impose 911 regulatory requirements on Voice over Internet Protocol service providers, that “the FCC possesses the statutory authority, which the Commission may reasonably choose to exercise, to address the public safety threat by banning providers from selling voice service until the providers can ensure adequate 911 connections. And the FCC’s greater authority to ban sales of voice service without adequate 911 capability necessarily includes the lesser power to ban such sales

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Commission's general jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to CMRS and IP-enabled voice services. Section 251(e)(3) of the Communications Act of 1934, which directs the Commission to designate 911 as the universal emergency telephone number, states that the designation of 911 "shall apply to both wireline and wireless telephone service," which evidences Congress's intent to grant the Commission broad authority over different types of communications services in the 911 context.⁴² Similarly, RAY BAUM'S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls "regardless of the technological platform used."⁴³ In addition, section 615a-1(e)(2) provides that the Commission "shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 et seq.]" and that "[f]or purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively."⁴⁴

17. Accordingly, we conclude that including "other emergency communications services" within the scope of the definition of 911 fees is also reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities for ensuring that the 911 system, including 911, E911, and NG911 calls and texts from any type of service, is available, that these 911 services function effectively, and that 911 fee diversion by states and other jurisdictions does not detract from these critical, statutorily recognized purposes.⁴⁵ As we stated in the *Notice*, diverting fees collected for 911 service of

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beginning in 120 days"); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 172-78, 180-81 (1968) (relying on sections 4(i) and 303(r) to impose restrictions on cable operators, together with Commission's broad authority under Title III, where the Commission concluded doing so was "imperative if it is to perform with appropriate effectiveness" its statutory responsibilities over Title III licensees); *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1406 (D.C. Cir. 1996) (citing *Southwestern Cable*).

⁴² 47 U.S.C. § 251(e)(3). Section 251(e)(3) was added as part of the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (*911 Act*), which established 911 as the national emergency number and required the Commission to provide for appropriate transition periods for areas in which 911 was not in use. Congress broadly stated the purpose of the 911 Act as "to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs." *911 Act* § 2(b), codified at 47 U.S.C. § 615 Notes.

⁴³ See *RAY BAUM'S Act* § 506(a).

⁴⁴ 47 U.S.C. § 615a-1(e)(2).

⁴⁵ See, e.g., 47 U.S.C. § 151 et seq.; 47 U.S.C. § 601; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996); *911 Act* § 3(a), and as codified at 47 U.S.C. §§ 222, 251, 615, 615a, 615b; 47 CFR § 64.3000 et seq., renumbered as 47 CFR § 9.4 et seq.; 47 CFR § 20.18, renumbered as 47 CFR § 9.10; 47 CFR § 9.1 et seq., renumbered as 47 CFR § 9.11 et seq.; *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Nuvio Corp.*, 473 F.3d at 312 (D.C. Cir. 2007) (Kavanaugh, J., concurring); *NET 911 Act*, as codified at §§ 222, 615a, 615a-1, 615b, 942; *Twenty-First Century Communications and Video Accessibility Act*, Pub. L. No. 111-260, 124 Stat. 2751 (2010) § 106, as codified in part at 47 U.S.C. § 615c(a), (g); *Bounce-Back Report and Order; Text-to-911 Second Report and Order; NG911 Act* §§ 6503-6509, and as codified at 47 U.S.C. §§ 942, 1471-1473; *Kari's Law Act of 2017*, Pub. L. No. 115-127, 132 Stat. 326 (2018), codified at 47 U.S.C. § 623; *RAY BAUM'S Act*, codified at 47 U.S.C. § 615 Notes; *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607 (2019), corrected by Erratum, 34 FCC Rcd 11073 (PSHSB Dec. 2, 2019).

any type, whether it be wireline, wireless, IP based, or text, undermines the purpose of these federal statutes by depriving the 911 system of the funds it needs to function effectively and to modernize 911 operations.⁴⁶

18. We also adopt our proposal in the *Notice* to extend the definition of “911 fee or charge” to include multi-purpose fees or charges designated for the support of “public safety,” “emergency services,” or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services.⁴⁷ We find that this aspect of the definition is consistent with the purpose of section 902 with respect to 911 fees and charges, which is to discourage states and taxing jurisdictions from diverting these fees and charges for purposes that do not directly benefit the 911 system.⁴⁸ Moreover, as we noted in the *Notice*, this aspect of the definition is consistent with the approach taken in the agency’s annual fee reports, which have found that the mere labelling of a fee is not dispositive and that the underlying purpose of the fee is relevant in determining whether it is (or includes) a 911 fee within the meaning of the NET 911 Act.⁴⁹

19. Some commenters oppose the proposal to extend the definition of “911 fee or charge” to include multi-purpose fees.⁵⁰ The New York State Division of Homeland Security and Emergency Services (NYS DHSES) asserts that the Commission’s statutory authority is limited to “specifically designated” 911 fees or charges,⁵¹ and that the Commission lacks authority to regulate fees and charges

⁴⁶ See *Notice* at 7, para. 15. The 2016 report of the Task Force on Optimal PSAP Architecture (TFOPA) recounted how fee diversion practices have “delayed plans in several states to meet the deployment schedule for the transition to an NG9-1-1 system.” See FCC, Task Force on Optimal PSAP Architecture, Adopted Final Report at 154 (2016) (*TFOPA Report*), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf; see generally FCC, Legal and Regulatory Framework for Next Generation 911 Services, Report and Recommendations, at Sec. 4.1.4 (2013), https://www.911.gov/pdf/FCC_Report_Legal_Regulatory_Framework_NG911_Services_2013.pdf. Other commenters have noted instances of fee diversion resulting in the delay of 911 improvements. See New Jersey Wireless Association Reply Comments to Tenth Report, PS Docket No. 09-14, at 2 (rec. Feb. 12, 2019) (noting that instead of upgrading to NG911 technology, New Jersey is maintaining a 911 selective router system that is “past its useful life and is now costing more to maintain from previous years, due to its obsolescence”); Letter from Matthew Grogan, 1st Vice President, Nevada 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%20Diverison.pdf (noting that Nevada 911 funds have been used to purchase police body cameras at a time when “several counties and jurisdictions . . . are still not equipped with enhanced 9-1-1 services”).

⁴⁷ *Notice* at 7-8, para. 16.

⁴⁸ See, e.g., 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

⁴⁹ See *Notice* at 8, para. 16. The *Notice* cited the agency’s Eleventh and Twelfth Annual Fee Reports, which noted that “[w]e 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.” FCC, Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 51-52, para. 31 (2020) (Twelfth Report), <https://www.fcc.gov/files/12thannual911feereport2020pdf>; FCC, Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 43, para. 34 (2019) (Eleventh Report), <https://www.fcc.gov/files/11thannual911feereport2019pdf>.

⁵⁰ New York State Division of Homeland Security and Emergency Services Comments, PS Docket Nos. 20-291 and 09-14, at 1, 3 (rec. Mar. 23, 2021) (NYS DHSES Mar. 23, 2021 Comments); Cindy Barbera-Brelle Comments, PS Docket No. 20-291, at 1 (rec. Mar. 23, 2021) (filed on behalf of Illinois State Police Office of the Statewide 911 Administrator) (IL State Police Mar. 23, 2021 Comments); Boulder Regional Emergency Telephone Service Authority Comments, PS Docket Nos. 20-291 and 09-14, at 2 (rec. Mar. 23, 2021) (BRETSA Mar. 23, 2021 Comments).

⁵¹ NYS DHSES Mar. 23, 2021 Comments at 2.

designated for other purposes.⁵² The Boulder Regional Emergency Telephone Service Authority (BRETSA) argues that extending the definition as proposed will limit 911 funding because some states (including Colorado) have a constitutional prohibition on incurring debt and therefore must establish contingency or sinking funds for unpredictable 911 expenditures.⁵³ BRETSA asserts that if using the proceeds of such a fee to support 911 will mean that those proceeds cannot thereafter be used for more general purposes, the PSAP may be denied funding when needed.⁵⁴

20. We disagree that our authority under the NET 911 Act extends only to “specifically designated” 911 fees or charges. The legislative history of the NET 911 Act indicates Congress’s broad intention to discourage or eliminate the diversion of 911 fees by states and political subdivisions. 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 Congress’s intent that “[s]tates and their political subdivisions should use 911 or E911 fees only for direct improvements to the 911 system” and that the Act “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 PSAPs.”⁵⁵ A narrow interpretation covering only “specifically designated” 911 fees or charges would frustrate this congressional purpose by creating an opportunity for states to divert the 911 portion of a multi-purpose fee.⁵⁶ Moreover, there is no language in the NET 911 Act (or in the amendments made by section 902) that limits the scope of that Act to fees designated exclusively for 911/E911. Finally, in its annual fee reports, the agency has found that multi-purpose fees that support 911/E911 and other purposes fall within the Commission’s authority under the NET 911 Act.⁵⁷

21. With respect to BRETSA’s argument that extending the definition of “911 fee or charge” as proposed would prevent the establishment of sinking or contingency funds for 911 expenditures, we disagree that this would be prohibited under our rules. As discussed below, we also adopt a safe harbor under which a multi-purpose fee would not be deemed to be diverting 911 fees, and we note that sinking or contingency funds could fall within the safe harbor, provided that they meet the relevant criteria.⁵⁸

2. Diversion

22. *Background.* Section 902(f) defines “diversion” as follows:

The term “diversion” means, with respect to a 9-1-1 fee or charge, the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.⁵⁹

⁵² NYS DHSES Mar. 23, 2021 Comments at 2.

⁵³ BRETSA Mar. 23, 2021 Comments at 2-3.

⁵⁴ BRETSA Mar. 23, 2021 Comments at 3.

⁵⁵ House of Representatives Committee on Energy and Commerce, Report on 911 Modernization and Public Safety Act of 2007, H.R. Rep. 110-442, at 11 (2007) (*H.R. Rep. 110-442*), <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”).

⁵⁶ In the Twelfth Report, the agency found that New York diverted \$97,282,231.07 in 911 fees from its Public Safety Communications Surcharge to non-911 uses. Twelfth Report at 52, para. 32.

⁵⁷ See Twelfth Report at 51-52, para. 31; Eleventh Report at 42-43, para. 34.

⁵⁸ See *infra* section B.4.

⁵⁹ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(f)(4).

23. In the *Notice*, we proposed to codify this definition with minor changes to streamline it.⁶⁰ Specifically, we proposed to define diversion as “[t]he obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to [the applicable rule section in subpart I].”⁶¹ In addition, we proposed to clarify that the definition of diversion includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated by the Commission.⁶²

24. *Decision.* We adopt this definition as proposed. We find that it will encourage states and taxing jurisdictions to take proactive steps to address the conditions that enable diversion of 911 fees by political subdivisions, such as counties, that may receive 911 fees.⁶³

25. Several commenters raise concerns with our proposal to specify that diversion includes distribution of 911 fees to a locality that diverts them. NENA states that it is concerned that the administrative burden of local surveillance and potential lack of state-level capacity for diversion enforcement could add to the already significant burden on state-level 911 officials.⁶⁴ NENA also expresses concern that states “may lack the logistical capability to prevent this diversion of funds, especially in a timely manner.”⁶⁵ The National Association of State 911 Administrators (NASNA) notes that in some states, service providers remit fees directly to political subdivisions, such as counties, for 911 use and that due to limits in their statutes or constitutions, these states have limited authority over the local use of those funds.⁶⁶ NASNA adds that states “would have no visibility over how these funds are spent at the local level.”⁶⁷ NASNA suggests that in states where there is limited authority over local 911 fee collection or use, the Commission should require that local units report directly to the Commission, and “the state should not be held accountable for any finding of diversion occurring at the local level of which it does not have authority.”⁶⁸ Further, NASNA requests that the Commission “notify the state in a timely manner of any diversion to ensure the state can restrict or require repayment of any grant funds or other restrictions that the local diverter would be subject to under the FCC’s rules on 911 fee diversion.”⁶⁹

⁶⁰ See *Notice* at 8, para. 18; *id.* at 17, Appx. A (proposed section 9.22).

⁶¹ The new rules also provide that “[a]cceptable purposes and functions for the obligation or expenditure of 911 fees or charges for purposes of section 902 are limited to: (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.” See Appendix A, final rule § 9.23(a).

⁶² See *Notice* at 8, para. 18; *id.* at 17, Appx. A (proposed section 9.22).

⁶³ The Illinois State Police support extending the definition of diversion but argue that the Commission should clarify that any local public agency that receives 911 fees from the 911 authority serving its jurisdiction is also responsible for the diversion of 911 fees. IL State Police Mar. 23, 2021 Comments at 2. Section 902 directs us to designate acceptable purposes and functions for the obligation or expenditure of 911 fees by “any State or taxing jurisdiction.” 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C). Consistent with this, we clarify that taxing jurisdictions would be responsible for fee diversion occurring at the level of the taxing jurisdiction.

⁶⁴ NENA: The 9-1-1 Association Comments, PS Docket Nos. 20-291 and 09-14, at 2, (rec. Mar. 23, 2021) (NENA Mar. 19, 2021 Comments). NENA notes that these state-level officials “are already occupied with the baseline requirements of running a state 9-1-1 program and managing their state’s part in the nationwide transition to NG9-1-1.” *Id.*

⁶⁵ NENA Mar. 19, 2021 Comments at 2.

⁶⁶ National Association of State 911 Administrators Comments, PS Docket Nos. 20-291 and 09-14, at 5 (rec. Mar. 22, 2021) (NASNA Mar. 22, 2021 Comments).

⁶⁷ NASNA Mar. 22, 2021 Comments at 5.

⁶⁸ NASNA Mar. 22, 2021 Comments at 5.

⁶⁹ NASNA Mar. 22, 2021 Comments at 5.

26. We find that it is consistent with the intent of section 902 to hold states responsible for fee diversion by localities within their boundaries. Absent such a policy, states or taxing jurisdictions could have an incentive to avoid oversight or accountability for expenditures by political subdivisions. We also decline to require that local units report directly to the Commission, as NASNA requests. The NET 911 Act requires the Commission to report on the “status in each State” of the collection and distribution of 911 fees or charges,⁷⁰ and the agency’s annual 911 fee report questionnaire is consistent with this directive. We note that states may disclose limitations on their authority over local 911 fee collection or use in their responses to the fee report questionnaire and that these questionnaires are publicly available on the Commission’s website.⁷¹ We also note that the petition for determination process established by section 902 provides a mechanism for further consideration of this issue in the context of specific fact patterns.⁷² In response to concerns that defining diversion in this way could result in the denial of grant funding for states or local jurisdictions on the basis of the actions of localities over which they have no control, we note that decisions with respect to grant eligibility will be made by the agencies managing the grant program, not the Commission. If states and localities seek flexibility under these circumstances with respect to eligibility for grant funding, they must request it from the agencies managing the grant program.⁷³ We provide additional guidance below on how fee diversion at the local level would affect eligibility for Commission advisory panels.⁷⁴

3. State or Taxing Jurisdiction

27. *Background.* Section 902 defines a state or taxing jurisdiction as “a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”⁷⁵ We proposed in the *Notice* to codify this definition in our rules.⁷⁶ We also proposed to add the definition of “State” from 47 U.S.C. § 615b to the subpart I rules. Under section 615b, the term “State” means “any of the several States, the District of Columbia, or any territory or possession of the United States.”⁷⁷ Accordingly, provisions in subpart I that apply to any “State or taxing jurisdiction” would apply to the District of Columbia and any United States territory or possession as well.

28. *Decision.* We adopt these definitions as proposed. We find that these definitions will be helpful to users of the subpart I regulations, and no commenter opposes them. With respect to the scope of subpart I, we proposed in the *Notice* that the rules would apply to states or taxing jurisdictions that collect 911 fees or charges (as defined in that subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.⁷⁸ We believe this provision will help to clarify application of the subpart I rules, and no commenter opposes this proposal. Accordingly, we adopt this rule as proposed.

⁷⁰ 47 U.S.C. § 615a-1(f)(2).

⁷¹ See Federal Communications Commission, *911 Fee Reports and Reporting*, <https://www.fcc.gov/general/911-fee-reports> (last visited May 21, 2021).

⁷² See 47 U.S.C. § 615a-1(f)(5) (as amended); section 902(c)(1)(C).

⁷³ Consistent with this, the agencies administering the grant program would decide eligibility in the situation posed by the Illinois State Police of a locality that has diverted. See IL State Police Mar. 23, 2021 Comments at 2.

⁷⁴ See *infra* paras. 75-76.

⁷⁵ 47 U.S.C. § 615a-1(f)(3)(D)(iii) (as amended); section 902(c)(1)(C).

⁷⁶ See *Notice* at 8, para. 19; *id.* at 17, Appx. A (proposed section 9.22).

⁷⁷ See *Notice* at 9, para. 19 (citing 47 U.S.C. § 615b(2)).

⁷⁸ See *Notice* at 9, para. 20; *id.* at 17, Appx. A (proposed section 9.21).

B. Designation of Obligations or Expenditures Acceptable for Purposes of Section 902

29. Section 902 requires the Commission to issue rules “designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable” for purposes of the statute.⁷⁹ In addition, section 902 provides that the purposes and functions designated as acceptable for such purposes “shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction.”⁸⁰ Section 902 also provides that the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and “determine whether such purposes and functions directly support providing 9-1-1 services.”⁸¹ Moreover, section 902 provides states and taxing authorities with the right to file a petition with the Commission for a determination that an obligation or expenditure of a 911 fee or charge that is imposed for a purpose or function other than those designated as acceptable for purposes of the statute in the Commission rules should nevertheless be treated as having an acceptable purpose or function for such purposes.⁸²

1. Standard for Determining Acceptable Purposes and Functions for 911 Fees

30. *Background.* In the *Notice*, we proposed to codify the statutory standard for acceptable purposes and functions for the obligation or expenditure of 911 fees or charges by providing that acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of PSAPs within such state or taxing jurisdiction.⁸³ We also noted that this language tracks the language in section 902.⁸⁴

31. *Decision.* We adopt the general standard for designating acceptable purposes and functions for expenditures of 911 fees as proposed in the *Notice*, with minor modifications to clarify that

⁷⁹ 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

⁸⁰ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

⁸¹ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C). Section 902 also provides that the Commission “shall consult with public safety organizations and States and taxing jurisdictions as part of any proceeding under this paragraph.” 47 U.S.C. § 615a-1(f)(3)(C) (as amended); section 902(c)(1)(C). The legislative history of section 902 states that “[a]s part of any proceeding to designate purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges is acceptable, the FCC is required to *consider the input* of public safety organizations and States and taxing jurisdictions.” House of Representatives Committee on Energy and Commerce, Report on Don’t Break Up the T-Band Act of 2020, H.R. Rep. No. 116-521, at 8 (2020) (emphasis added). We received one comment on this specific issue. See NYS DHSES Mar. 23, 2021 Comments at 9 (arguing that “the consultation must be in addition to the comments made in response to the Proposed Rule”). We note that to satisfy the consultation requirements of section 902, the Public Safety and Homeland Security Bureau staff conducted outreach to a diverse representative sample of public safety organizations, states, and taxing jurisdictions that expressed an interest in fee diversion issues generally prior to the release of this *Report and Order*; we solicited public comments on the proposed rules implementing section 902; and we released a public draft prior to adoption of the *Notice* so that further input on it could help to inform the Commission’s decision.

⁸² 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C). Such a petition must be granted if the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to demonstrate that the purpose or function in question supports PSAP functions or operations, or that the purpose or function has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. *Id.*

⁸³ See *Notice* at 9, para. 22; *id.* at 18, Appx. A (proposed section 9.23(a)).

⁸⁴ See *Notice* at 9, para. 22 (citing 47 U.S.C. § 615a-1(f)(3)(B) (as amended) and section 902(c)(1)(C)).

these designations of acceptable obligations or expenditures are for purposes of section 902.⁸⁵ Commenters are generally supportive of this proposal,⁸⁶ and the proposed language tracks the language of section 902.⁸⁷

32. Several commenters urge the Commission to clarify the term “911 services” or “911 systems” in the proposed rule.⁸⁸ The City of Aurora asserts that as proposed, the term would be narrowly limited to receipt of the call at the PSAP and processing the call through CAD 911, and that 911 services should include “all technology, staff, training, and administration necessary to effectively provide emergency response to the caller.”⁸⁹ The Colorado Public Utilities Commission (CoPUC) comments that what constitutes 911 services “may mean different things to different people, particularly as technological advances in emergency communications technology blur the lines between what may be considered ‘911 service’ and what may be just part of the emergency communications ecosystem.”⁹⁰

33. State and local 911 authorities also urge the Commission to adopt broad rules that would provide flexibility at the state and local level and to defer to states and local authorities in determining what constitutes fee diversion.⁹¹ NASNA argues that “[t]hese rules must be implemented in a manner that does not create conflict with existing state statutes and guidelines.”⁹² NASNA adds that it believes the proposed rules “do not consider each state’s current legislative and regulatory processes that 1) involve their citizen knowledge and involvement, 2) have longstanding systems in place, and 3) have evolved through consensus-based processes that involve both the public safety community and the communication industry.”⁹³ The Oklahoma 911 Management Authority (Oklahoma 911) similarly urges the Commission to make the rules “broad and allow for flexibility within the State and region to narrow the requirements

⁸⁵ In particular, we revise the title of section 9.23 to read, “Designation of acceptable obligations or expenditures for purposes of section 902 of Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, section 902(c)(1)(C).” We also add a reference to “for purposes of section 902” in the introductory language of sections 9.23(a) and 9.23(c). See Appendix A (final rules).

⁸⁶ See, e.g., CTIA – The Wireless Association Comments, PS Docket Nos. 20-291 and 09-14, at 5 (rec. Mar. 23, 2021) (CTIA Mar. 23, 2021 Comments); North Carolina 911 Board Reply, PS Docket Nos. 20-291 and 09-14, at 2 (rec. Mar. 31, 2021) (NC 911 Board Mar. 31, 2021 Reply); Intrado Life & Safety, Inc. Reply, PS Docket No. 20-291, at 4-5 (rec. Apr. 1, 2021) (Intrado Apr. 1, 2021 Reply); NCTA – The Internet & Television Association Comments, PS Docket Nos. 20-291 and 09-14, at 3 (rec. Mar. 23, 2021) (NCTA Mar. 23, 2021 Comments).

⁸⁷ See 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C) (stating that “[t]he purposes and functions designated [by the Commission] shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction”).

⁸⁸ See City of Aurora Emergency Telephone Service Authority Comments, PS Docket Nos. 20-291 and 09-14, at 5 (rec. Mar. 22, 2021) (City of Aurora, CO Mar. 22, 2021 Comments); NTCA–The Rural Broadband Association Reply, PS Docket Nos. 20-291 and 09-14, at 3 (rec. Apr. 2, 2021) (NTCA Apr. 2, 2021 Reply); Colorado Public Utilities Commission Comments, PS Docket Nos. 20-291 and 09-14, at 2-3 (rec. Mar. 10, 2021) (CoPUC Mar. 10, 2021 Comments).

⁸⁹ City of Aurora, CO Mar. 22, 2021 Comments at 2, 5.

⁹⁰ CoPUC Mar. 10, 2021 Comments at 2-3; see also NTCA Apr. 2, 2021 Reply at 3 (urging the Commission to confirm that “911 services” and “911 systems” relate “specifically and directly to the PSAP functions as compared to any other activities”).

⁹¹ See NASNA Mar. 22, 2021 Comments at 4, 8.

⁹² NASNA Mar. 22, 2021 Comments at 4.

⁹³ NASNA Mar. 22, 2021 Comments at 8.

to fit local need.”⁹⁴ Adams County, CO et. al. encourage the FCC to include a safe harbor for 911 entities that utilize funds from 911 fees in compliance with state laws substantially equivalent to the Colorado statute.⁹⁵ BRETSA and the National Public Safety Telecommunications Council (NPSTC) also raise

⁹⁴ Oklahoma 9-1-1 Management Authority Comments, PS Docket No. 20-291, at 1 (Oklahoma 911 Mar. 19, 2021 Comments); *see also* National Public Safety Telecommunications Council Comments, PS Docket No. 20-291, at 4 (NPSTC Mar. 23, 2021 Comments) (asserting that the Commission should consider the enabling legislation and statutes in each state); International Association of Fire Chiefs Reply, PS Docket Nos. 20-291 and 09-14, at 2 (IAFC Apr. 2, 2021 Reply) (agreeing with NPSTC); Letter from Ryan Woodward, Government Relations Manager, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 20-291, 09-14 et al., at 2 (filed May 20, 2021), Letter from Ryan Woodward, Government Relations Manager, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 20-291, 09-14 et al., at 3 (filed Mar. 24, 2021) (IAFC March 24, 2021 *Ex Parte*), and Letter from Ryan Woodward, Government Relations Manager, International Association of Fire Chiefs, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 20-291, 09-14 et al., at 3 (filed Mar. 5, 2021) (IAFC March 5, 2021 *Ex Parte*) (all asserting that the proposed rule may ignore the nuanced 911-related needs of localities throughout the country); Pennsylvania Emergency Management Agency Comments, PS Docket No. 20-291, at 3 (rec. Mar. 16, 2021) (PEMA Mar. 16, 2021 Comments) (suggesting an implementation period where the FCC works with each state to review its laws and eligibility requirements to make an initial compliance determination and that efforts to implement these rules be “collaborative between the Commission and states rather than reactive or punitive in nature”); BRETSA Mar. 23, 2021 Comments at 14 (commenting that the Commission should defer to the states on permissible uses of 911 fees); Adams County E-911 Emergency Telephone Service Authority, Arapahoe County 911 Authority, Jefferson County Emergency Communications Authority Reply, PS Docket Nos. 20-291 and 09-14, at 1 (rec. Apr. 2, 2021) (AAJ Authorities Apr. 2, 2021 Reply) (asserting that “any expenditure of 911 fees permitted under Colorado law should be an acceptable expenditure under the Commission’s rules”); Adams County E-911 Emergency Telephone Service Authority et al., PS Docket No. 20-291, at 4 (rec. Mar. 19, 2021) (Adams County, CO et al. Mar. 19, 2021 Comments) (asserting that the FCC rules should defer to existing state legislation if that legislation does not allow for sweeping 911 fees into the general fund of the state or local governments without restrictions on use); City of Aurora, CO Mar. 22, 2021 Comments at 5 (asserting that “[t]he FCC must acknowledge and consider the will expressed by public and private interests in developing [Colorado’s 911 fee legislation]”); Michigan Chapter of the National Emergency Number Association Comments, PS Docket No. 20-291, at 2 (rec. Mar. 19, 2021) (Michigan NENA Mar. 19, 2021 Comments) (urging the Commission to “reconsider the use of a blanket-approach for all states due to varying 9-1-1 system capabilities and funding mechanisms”); Mission Critical Partners, LLC Comments, PS Docket Nos. 20-291 and 09-14, at 5 (rec. Mar. 23, 2021) (MCP Mar. 23, 2021 Comments) (supporting NASNA’s position “against federal oversight of eligible uses of 911 funds at the state level”); Groveland Township Comments, PS Docket Nos. 20-291 and 09-14, at 1 (rec. Apr. 5, 2021; postmarked Mar. 23, 2021) (Groveland Township, MI Apr. 5, 2021 Comments) (“Responsible state and local leaders must maintain the flexibility to address evolving emergency service needs, especially as we work to protect the health and safety of residents from the threat of the COVID19 virus”). In addition, several local 911 authorities in Michigan adopted resolutions stating that “local decision making and local control regarding the utilization of 911 fees is paramount.” *See* Livingston County 911 Central Dispatch Comments, PS Docket No. 20-291 (rec. Mar. 18, 2021) (Livingston County, MI Mar. 18, 2021 Comments), containing a Resolution dated March 8, 2021 at 1; Pamela A. Woodbury Comments, PS Docket No. 20-291 (rec. Mar. 19, 2021) (filed on behalf of Charlevoix, Cheboygan, Emmet Central Dispatch Authority) (CCE Dispatch, MI Mar. 19, 2021 Comments), containing a Resolution of the County of Emmet dated Mar. 18, 2021 at 1; Newaygo County 9-1-1 Authority Board Comments, PS Docket Nos. 20-291 and 09-14 (rec. Mar. 23, 2021) (Newaygo County, MI Mar. 23, 2021 Comments), containing a 911 Authority Board Resolution, at 1.

⁹⁵ Adams County, CO et al. Mar. 19, 2021 Comments at 2. Colorado revised its 911 statute in 2020. The statute provides for the assessment of 911 fees at the local level, as well as at the state level. *See* C.R.S. §§ 29-11-102(1)(a), 102.3(1)(a). Fees assessed at the state level are held in trust in the 911 surcharge trust cash fund and then passed through to local governing bodies. C.R.S. § 29-11-102.3(3)(c)(I). The statute provides that governing bodies must spend 911 funds solely for allowable uses, which include costs associated with equipment, facilities, hardware, software, and databases used to receive and dispatch 911 calls; costs for programming, emergency medical services provided by telephone, radio equipment within the PSAP, and training for PSAP personnel; costs for recordkeeping, administrative, and facilities costs; and “[o]ther costs directly related to the continued operation of the emergency telephone service and the emergency notification service.” C.R.S. § 29-11-104(2)(a)(I). If any money is available

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concerns that state fees and taxes are “matters of state interest,”⁹⁶ or that the Commission should consider whether federal rules defining how state funds can be used encompass any states’ rights issues.⁹⁷ Some commenters note that funding priorities and needs may evolve over time, and contend that it is not apparent that the proposed rules provide sufficient flexibility for the future.⁹⁸ CTIA, on the other hand, responds that the Commission may not defer to state laws regarding the permissible uses of 911 fees, as some commenters suggest, because section 902 charges the Commission with the responsibility to determine the appropriate purposes and functions for which 911 fees may be used.⁹⁹ CTIA asserts that “[i]t is well settled that federal agencies may not subdelegate such authority to outside entities (including state sovereign entities) absent express authority to do so, and nothing in the statute permits the Commission to subdelegate this responsibility.”¹⁰⁰

34. We agree that our rules should be reasonably broad given the diverse and evolving nature of the 911 ecosystem. Consistent with this approach, our rules identify broad categories of acceptable purposes and functions for 911 fees and provide examples within each category to guide states and localities.¹⁰¹ As the rules make clear, the examples of acceptable expenditures for purposes of section 902 are non-exclusive and are meant to be illustrative; they are not intended to anticipate every possible use of 911 fees at the state and local level. State and local jurisdictions thus have discretion to make reasonable, good faith determinations whether specific expenditures of 911 fees are acceptable under our rules. In light of this, we do not believe additional clarification of the terms “911 services” or “911 systems” is necessary. We also note that the petition for determination process afforded by section 902 provides a mechanism for states and taxing jurisdictions that seek additional guidance on whether a particular expenditure would be an acceptable use of 911 fees.

35. We do not agree, however, with commenters who contend that the Commission should defer to state and local law on what constitutes fee diversion for purposes of section 902. As CTIA points out, section 902 charges the Commission with responsibility for determining appropriate purposes and functions for expenditure of 911 funds. A policy of deferring to states or localities on what constitutes fee

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after the enumerated costs and charges are fully paid in a given year, the money may be expended for public safety radio equipment outside the PSAP or personnel expenses necessarily incurred for a PSAP or the governing body in the provision of emergency telephone service. C.R.S. § 29-11-104(2)(a)(II). Any money remaining in the relevant fund at the end of a fiscal year remains in that fund unless emergency telephone service is discontinued, at which point the money will be transferred to the general fund of the public agency. C.R.S. § 29-11-104(3).

⁹⁶ BRETSA Mar. 23, 2021 Comments at 14.

⁹⁷ NPSTC Mar. 23, 2021 Comments at 4.

⁹⁸ NPSTC Mar. 23, 2021 Comments at 4, NASNA Mar. 22, 2021 Comments at 9, NENA Mar. 23, 2021 Comments at 2, PEMA Mar. 16, 2021 Comments at 3, IAFC Apr. 2, 2021 Reply at 3.

⁹⁹ CTIA Reply, PS Docket Nos. 20-291 and 09-14, at 6-7 (rec. Apr. 2, 2021) (CTIA Apr. 2, 2021 Reply).

¹⁰⁰ CTIA Apr. 2, 2021 Reply at 7.

¹⁰¹ NYS DHSES contends that the statutory standard for granting a petition for determination under section 902(c)(1)(C) is broader than the standard for defining “acceptable” 911 expenditures in the rules, and asserts that the Commission’s proposed rules for designating the “acceptable” purposes and functions should be consistent with, and not narrower than, the petition standards. NYS DHSES Mar. 23, 2021 Comments at 5-6. *See similarly* City of Aurora, CO Mar. 22, 2021 Comments at 2-3 (arguing language of petition standard supports broader definition of “acceptable” 911 use). However, we interpret these two provisions of section 902 as balancing each other, and we reject any argument that Congress intended inconsistent standards for the two provisions. In section 902(c)(1)(C), Congress set forth the standard for the Commission to use in adopting rules by the statutory June 25, 2021 deadline, and then separately set forth the complementary standard for the Commission to use in deciding petitions for determination going forward, to address yet to be identified acceptable 911 purposes or functions in the face of a diverse and evolving 911 ecosystem.

diversion would negate one of the principal aspects for these purposes of section 902, which is that it revises the language in 47 U.S.C. § 615a-1 to make clear that fee diversion *is not* whatever state or local law says it is.¹⁰² Accordingly, we decline to create a safe harbor for 911 entities that use 911 fees in compliance with their state statute, as this would essentially make the categories of acceptable purposes and functions we establish herein meaningless. We also disagree that our rules encroach in any way on states' rights. Following the congressional directive given to the Commission in section 902, and in furtherance of a nationwide 911 and E911 service, the rules identify and define categories of expenditures that are, or are not, acceptable for 911 fees for the specific purposes of section 902 and, consistent with the statute, provide consequences for states or taxing jurisdictions found to be diverting (such as ineligibility to serve on certain advisory panels). The rules do not, however, prohibit or require collection or expenditure of 911 fees by any state or taxing jurisdiction.

36. Finally, we clarify the phrase “support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge,” under new section 9.23(a). Some commenters contend that, as proposed in the *Notice*, section 9.23(a) would prohibit states or other taxing jurisdictions from spending 911 fees outside of the originating jurisdiction (i.e., cross-subsidization) and urge the Commission to permit such expenditures.¹⁰³ We believe that Congress did not intend to address all 911 fund cross-subsidization with this language, and this is not the meaning of section 9.23(a). Indeed, many cross-subsidization situations across local or state lines may be necessary for the benefit of a state or taxing jurisdiction's own 911 system. For example, Oklahoma 911 argues that it should be deemed acceptable for purposes of section 902 for the landline fees collected at a very granular level locally to be used to “pay for valid 9-1-1 expenses outside of the originating taxing jurisdiction when municipalities and counties regionalize or consolidate.”¹⁰⁴ BRETSA argues, e.g., that there are large or sparsely populated areas that have insufficient PSAP coverage and need subsidies from other taxing jurisdictions within the state. Providing such subsidies from another taxing locality might benefit the taxing locality not only by, e.g., providing mutual redundancy and backup, but also by reducing the load on the taxing locality's 911 system because it no longer has to step in regularly to provide 911 service and support for the underserved area, potentially also at much greater expense and difficulty due to the lack of interconnectivity.¹⁰⁵ In sum, we do not believe that Congress in section 902(c)(1)(C) intended to prohibit cross-subsidization from one taxing state or jurisdiction to another to the detriment of a robust, efficient, and reliable 911 system that serves the public.¹⁰⁶

¹⁰² See, e.g., section 902(f)(4) (codified at 47 U.S.C. § 615a-1 Statutory Notes (as amended) and providing that the term “diversion” for purposes of section 902 means the obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated as acceptable by the Commission in its final rules in this proceeding); section 902(c)(1) (revising 47 U.S.C. § 615a-1(f)(2) to direct the agency in its annual fee reports to include information on the amount of revenues expended for any purpose or function “other than the purposes and functions designated in the final rules [issued in this proceeding] as purposes and functions for which the obligation or expenditure of any such fees or charges is acceptable”).

¹⁰³ BRETSA Mar. 23, 2021 Comments at 4-7 (asserting that such cross-subsidization occurs in Colorado, and it is necessary to fund 911 in sparsely populated and mountainous areas, e.g., leveraging the population of the entire state to meet costs in a particular area); Oklahoma 911 Mar. 19, 2021 Comments at 2 (stating that in Oklahoma, landline 911 fees are “collected at a very granular level, such as county and even municipal jurisdictions,” and that there are circumstances under which 911 fees should be used to pay for expenses outside of the originating jurisdiction).

¹⁰⁴ Oklahoma 911 Mar. 19, 2021 Comments at 2.

¹⁰⁵ BRETSA Mar. 23, 2021 Comments at 29.

¹⁰⁶ We note that the petition for determination process provides a mechanism for states and taxing jurisdictions to seek additional guidance in applying section 9.23(a) to a particular proposal for use of 911 fees for cross-subsidization to meet local needs.

2. Designation of Acceptable Purposes and Functions for 911 Expenditures

37. *Background.* We proposed in the *Notice* that examples of acceptable purposes and functions include, but not be limited to, the following, provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

- (1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
- (2) PSAP personnel costs, including telecommunicators' salaries and training;
- (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
- (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and
- (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.¹⁰⁷

38. We noted in the *Notice* that we believe these purposes and functions are consistent with the general standard for designating acceptable uses of 911 fees and charges set out in section 902.¹⁰⁸ In addition, we noted that these purposes and functions are consistent with the agency's past analysis of 911 fee diversion in its annual fee reports,¹⁰⁹ as well as the legislative history of the NET 911 Act.¹¹⁰ We sought comment in the *Notice* on our proposed designation of acceptable and unacceptable purposes and functions under the statute, including whether our proposals were underinclusive or overinclusive.¹¹¹ In

¹⁰⁷ See *Notice* at 9-10, para. 22; see also *Notice* at 18, Appx. A (proposed section 9.23(b)(1)-(5)).

¹⁰⁸ See *Notice* at 10, para. 23.

¹⁰⁹ See *Notice* at 10, para. 23. In particular, the agency has stated in its annual fee reports 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). 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. See FCC, Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, at 49, para. 40 (2018) (Tenth Report), <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>. The agency also has stated 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. See *Notice* at 10, para. 23 & n.50 (citing Twelfth Report at 48-49, para. 26; Eleventh Report at 39, para. 26; and Tenth Report at 42, para. 26).

¹¹⁰ See *Notice* at 11, para. 26. The House Committee on Energy and Commerce (Committee) noted that several states were known to be using 911 fees for "purposes other than 911 or emergency communications services." *H.R. Rep. 110-442* at 11. The Committee also noted that under subsection 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 emergency network." *Id.* at 15. 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." *Id.*

¹¹¹ See *Notice* at 11, para. 27.

addition, we sought comment on the purposes and functions that states and taxing jurisdictions have specified as the intended functions for 911 fees and charges and how we should take these specifications into account as we designate acceptable purposes and functions under section 902.¹¹²

39. *Decision.* We revise one of the categories of acceptable purposes and functions in response to commenters' requests for additional examples of expenditures that fall within the category. We adopt the other categories as proposed in the *Notice*.

40. Commenters generally support the proposed framework of general categories of acceptable and unacceptable expenditures for purposes of section 902, with examples within each category. CTIA states that it supports the proposed standard for determining acceptable purposes and functions and notes that section 902 directs the Commission, in considering expenditures, to "determine whether such purposes and functions directly support providing 9-1-1 services."¹¹³ Intrado states that "the basic framework proposed by the Commission of providing a list of acceptable and unacceptable expenditures and obligations for 911 fees is sound. Addressing fee diversion through a non-exhaustive list of acceptable and unacceptable purposes and functions will invariably produce objections from affected parties. What matters most, however, is the Commission sets a clear demarcation line for compliance that public safety organizations can internalize, which the Commission can accomplish using the proposed rule's framework with an acceptable/unacceptable list of expenditures and obligations."¹¹⁴

41. Other commenters request additions or changes to the categories of acceptable expenditures. CoPUC contends that more clarity is needed regarding what constitutes "operational expenses of PSAPs" in proposed section 9.23(b)(1) because a wide range of different service models exist.¹¹⁵ Commenters also ask the Commission to clarify the term "interoperability" in proposed section 9.23(b)(5).¹¹⁶ In addition, commenters request a variety of additions to the list of examples within each category, including expenditures for pre-arrival instructions and associated training;¹¹⁷ maintenance and replacement costs;¹¹⁸ 911 cybersecurity;¹¹⁹ budgeting and forecasting;¹²⁰ hiring, retention, and training of

¹¹² See *Notice* at 11, para. 27.

¹¹³ CTIA Mar. 23, 2021 Comments at 5.

¹¹⁴ Intrado Apr. 1, 2021 Reply at 4-5; see also NCTA Mar. 23, 2021 Comments at 3 (stating that "we agree with Congress and the Commission that stronger action needs to be taken to stop [the practice of fee diversion] and support the proposed rules").

¹¹⁵ CoPUC Mar. 10, 2021 Comments at 3; see also Intrado Apr. 1, 2021 Reply at 5 (suggesting that refinement may be necessary to further define the boundaries of certain terms, such as "operational expenses of PSAPs").

¹¹⁶ See NTCA Apr. 2, 2021 Reply at 4 ("Without further clarification, this provision may be read to allow 911 fees for any public safety costs so long as the locality can claim the costs will promote 911 interoperability"); BRETSA Mar. 23, 2021 Comments at 22-23 (suggesting that the Commission revise section 9.23(b)(5) to read "Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems, including without limitation system interfaces, network facilities or services, and cybersecurity measures").

¹¹⁷ Shinar Haynes Reply, PS Docket No. 20-291, at 1 (rec. Apr. 2, 2021) (filed on behalf of Tarrant County 9-1-1 District) (Tarrant County, TX Apr. 2, 2021 Reply); see also NC 911 Board Mar. 31, 2021 Reply at 2, n.12 (asserting that the Commission should clarify that expenses for this are allowed); NASNA Mar. 22, 2021 Comments at 9 (noting the absence of emergency dispatch pre-arrival instructions, which is a "very functional component[] of 911," from the list).

¹¹⁸ Jeffery Troyer, Joni Harvey Comments, PS Docket Nos. 20-291 and 09-14, at 4 (rec. Mar. 12, 2021) (filed on behalf of the Michigan State 9-1-1 Committee) (Michigan State 911 Mar. 12, 2021 Comments); Michigan Chapter of the Association of Public-Safety Communications Officials Comments, PS Docket Nos. 20-291 and 09-14, at 3 (rec. Mar. 19, 2021) (Michigan APCO Mar. 19, 2021 Comments); Michigan NENA Mar. 19, 2021 Comments at 3.

¹¹⁹ NPSTC Mar. 23, 2021 Comments at 4; IAFC Apr. 2, 2021 Reply at 3-4; BRETSA Mar. 23, 2021 Comments at 18; Michigan 911 Entities Mar. 23, 2021 Comments at 13; Intrado Apr. 1, 2021 Reply at 5.

staff;¹²¹ industry-specific training through organizations such as NENA and the Association of Public-Safety Communications Officials-International, Inc. (APCO);¹²² mental health services for 911 professionals;¹²³ administrative expenses for overseeing 911 programs;¹²⁴ compliance costs;¹²⁵ 911 call processing systems;¹²⁶ CAD systems;¹²⁷ mobile data computers (MDCs);¹²⁸ GIS call routing, WANs, ESInets, and other NG911 technologies;¹²⁹ emergency notification systems (ENS);¹³⁰ and platforms such as Smart911 and RapidSOS.¹³¹ BRETSA provides an extensive list of requested additions,¹³² as does the

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¹²⁰ City of Aurora, CO Mar. 22, 2021 Comments at 4.

¹²¹ City of Aurora, CO Mar. 22, 2021 Comments at 4; BRETSA Mar. 23, 2021 Comments at 20 (suggesting that the Commission revise section 9.23(b)(2) to read, “PSAP personnel costs, including telecommunicator recruitment or hiring costs, fully-loaded salaries and training”).

¹²² City of Aurora, CO Mar. 22, 2021 Comments at 4; CoPUC Mar. 10, 2021 Comments at 4.

¹²³ City of Aurora, CO Mar. 22, 2021 Comments at 4.

¹²⁴ CoPUC Mar. 10, 2021 Comments at 3; NASNA Mar. 22, 2021 Comments at 8; Adams County, CO et al. Mar. 19, 2021 Comments at 4.

¹²⁵ BRETSA Mar. 23, 2021 Comments at 21 (suggesting that the Commission revise section 9.23(b)(3) to read, “PSAP administration, including costs for administration of 911 services, compliance costs, and travel expenses associated with the provision of 911 services”).

¹²⁶ PEMA Mar. 16, 2021 Comments at 3.

¹²⁷ BRETSA Mar. 23, 2021 Comments at 21-22 (suggesting revising section 9.23(b)(4) to read, “Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD, Mobile CAD, and station alerting hardware, software and interfaces to support integrated 911 and public safety dispatch operations”).

¹²⁸ City of Aurora, CO Mar. 22, 2021 Comments at 2-3; Michigan APCO Mar. 19, 2021 Comments at 3; Michigan NENA Mar. 19, 2021 Comments at 3; Megan Erickson Comments, PS Docket No. 20-291, at 1 (rec. Mar. 12, 2021) (filed on behalf of Meceola Consolidated Central Dispatch Authority) (Meceola, MI Mar. 12, 2021 Comments).

¹²⁹ PEMA Mar. 16, 2021 Comments at 3; NASNA Comments at 2, 9; NC 911 Board Mar. 31, 2021 Reply at 3-4; IL State Police Mar. 23, 2021 Comments at 2; BRETSA Mar. 23, 2021 Comments at 22.

¹³⁰ City of Aurora, CO Mar. 22, 2021 Comments at 3 (“The ENS allows a PSAP to proactively contact the community, rather than simply reacting to calls after the fact”); CoPUC Mar. 10, 2021 Comments at 4.

¹³¹ City of Aurora, CO Mar. 22, 2021 Comments at 3. Commenters also request that the Commission add professional certification and/or training programs (MCP Mar. 23, 2021 Comments at 5, City of Aurora, CO Mar. 22, 2021 Comments at 4); management (City of Aurora, CO Mar. 22, 2021 Comments at 4); quality assurance initiatives (City of Aurora, CO Mar. 22, 2021 Comments at 4, MCP Mar. 23, 2021 Comments at 5); membership fees for public safety/911 organizations (CoPUC Mar. 10, 2021 Comments at 4); and professional services (NASNA Mar. 22, 2021 Comments at 9). CoPUC notes that its state law allows telecommunications providers to retain 1% of what has been collected to offset their administrative expenses related to collection and remittance of surcharges and asks whether that would be an acceptable use of the 911 fees. CoPUC Mar. 10, 2021 Comments at 4-5. NTCA argues that 911 fees should be permitted to cover the costs of interoperability functions that are, or will be, performed by FirstNet, and not interoperability expenses for states that opted out of FirstNet and elected to create their own Radio Access Network (RAN). NTCA Apr. 2, 2021 Reply at 4-5.

¹³² BRETSA suggests revising section 9.23(b)(1) to read, “PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) such as 9-1-1 and administrative phone systems, and TTY and text-to-911 capabilities (hardware and software), PSAP systems, including hosted systems, typically found in a PSAP, including without limitation computer aided dispatch (CAD) systems (hardware and software including, for example, data storage systems, LANs, and remote backup systems, GIS data including and aerial photography, and Mobile CAD), Services such as EMD, ENS, third-party 9-1-1 caller location and data services, on-call language translation services, and facilities for transfer of 9-1-1 calls to nurse, telehealth and mental health

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Illinois State Police.¹³³

42. We agree with commenters that it would be helpful to add some of these examples to the language of the rule. Specifically, we revise section 9.23(b)(1) to read as follows:

PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG911, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs include technological innovation that supports 911.

This revision to the proposed rule makes clear that replacement of 911 systems is an acceptable expenditure for purposes of Section 902 and that 911 includes pre-arrival instructions and ENS. We also add a reference to cybersecurity. As NPSTC and BRETSA note, CSRIC VII recently recommended that spending on cybersecurity improvements be “explicitly authorized as an eligible use of 9-1-1 funds.”¹³⁴ We also add a reference to NG911, and we revise the language to make clear that acceptable expenditures for these purposes include funding not just for existing systems, but also for innovation that will support 911 in the future.¹³⁵ We find that these additions to the rule will help to clarify the scope of acceptable expenditures for PSAP operating costs in the implementation of section 902.

43. With respect to additional suggestions from commenters for identifying specified uses of 911 funds as acceptable for purposes of Section 902, we do not believe it is necessary to add every specific example to the text of the rules or to attempt further clarification of terms such as “operating

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counseling and poison control services, and PSAP building/facility costs including UPS and standby generators, IT facilities including mounting racks, grounding systems, HVAC systems with capacity required by IT systems, and consoles and seating appropriate for 24/7 PSAP operations.” BRETSA Mar. 23, 2021 Comments at 20.

¹³³ The Illinois State Police assert that acceptable purposes and functions should include “call taking protocols/quality assurance, interpretation services, headsets, time synchronization equipment, professional services procured from a vendor to include, but not limited to: procurement assistance, system integration/implementation support, system design and planning, PSAP operational policy development, fund and program management and professional services attributable to support the 911 system for attorneys, consultants, insurance brokers, architects, auditors, accountants, HR and payroll services, building access control/security systems, emergency generator, UPS and fire suppression systems, GIS systems, internet access, office equipment and furniture, association memberships, costs associated with the recruitment, hiring and screening of new hire candidates, including physicals and other required tests, employee wellness programs, random drug testing, medical release/return to work physicals, fitness for duty evaluations, public education and voice/data recording systems.” IL State Police Mar. 23, 2021 Comments at 2.

¹³⁴ See CSRIC VII, Report Measuring Risk Magnitude and Remediation Costs in 9-1-1 and Next Generation 9-1-1 (NG911) Networks at 40 (2021), <https://www.fcc.gov/file/20607/download>; see also NPSTC Mar. 23, 2021 Comments at 4; BRETSA Mar. 23, 2021 Comments at 18.

¹³⁵ The NC 911 Board suggests clarifying the proposed rules to “specifically identify” NG911 services in a manner consistent with 47 U.S.C. § 942(e)(1), which defines next generation 911 services as “an IP-based system comprised of hardware, software, data, and operational policies and procedures that -- (A) provides standardized interfaces from emergency call and message services to support emergency communications; (B) processes all types of emergency calls, including voice, data, and multimedia information; (C) acquires and integrates additional emergency call data useful to call routing and handling; (D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities; (E) supports data or video communications needs for coordinated incident response and management; and (F) provides broadband service to public safety answering points or other first responder entities.” NC 911 Board Mar. 31, 2021 Reply at 2; 47 U.S.C. § 942(e)(5). States and taxing jurisdictions should use this definition if they find it is helpful, but we decline to add it to our rules. We believe NG911 technology is still evolving and that we lack an adequate record to define it at this time.

expenses” or “interoperability.” As we note above, we intend to keep these rules general so that states and taxing jurisdictions have reasonable flexibility to use their good faith judgment in applying the rules to particular circumstances. In addition (and as the rules explicitly state), the categories and examples are non-exclusive and are not intended to specify every possible use of 911 fees that would be acceptable. We also note that the petition for determination process provides a mechanism for states and taxing jurisdictions that seek additional guidance in applying the rules to a particular proposal for use of 911 fees.

3. Designation of Unacceptable Purposes and Functions for 911 Expenditures

44. *Background.* We sought comment in the *Notice* on specifying examples of purposes and functions that are *not* acceptable for the obligation or expenditure of 911 fees or charges for purposes of the statute.¹³⁶ We proposed in section 9.23(c) of the rules that such examples would include, but not be limited to, the following:

- (1) Transfer of 911 fees into a state or other jurisdiction’s general fund or other fund for non-911 purposes;
- (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
- (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.¹³⁷

We noted that identifying these examples as unacceptable expenditures for purposes of the statute is consistent with the manner in which such expenditures have been analyzed in the agency’s annual 911 fee reports and sought comment on whether these examples should be codified.¹³⁸

45. *Decision.* We adopt these provisions as proposed in the *Notice*, with two minor modifications to section 9.23(c)(3), as detailed below. In light of the divided record on using 911 fees for public safety radio systems, we provide additional guidance on when such use of 911 fees will be deemed to have purposes or functions that “directly support providing 9-1-1 services” and so qualifies as “acceptable” for purposes of avoiding section 902 consequences.¹³⁹ We also seek recommendations from the 911 Strike Force on developing additional specific examples in these regards.

¹³⁶ See *Notice* at 10, para. 24.

¹³⁷ See *Notice* at 10, para. 24; *id.* at 18, Appx. A (proposed section 9.23(c)(1)-(3)).

¹³⁸ See *Notice* at 10, paras. 24-25. For example, the annual fee reports have repeatedly found that transferring 911 fees to the state’s general fund or using 911 fees for the expansion of commercial cellular networks constitutes fee diversion. See *Notice* at 11, para. 25 (citing Twelfth Report at 52-54, paras. 32, 35, 37; Eleventh Report at 40, 42-43, paras. 28, 32, 35; Tenth Report at 43-44, 46-47, paras. 30, 32, 35, 37). The fee reports also have found that expenditures to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related. See *Notice* at 11, para. 25 (citing Twelfth Report at 48-49, para. 26; Eleventh Report at 39, para. 26; Tenth Report at 42, para. 26). In addition, the agency has found that radio networks used by first responders are “technically and operationally distinct from the 911 call-handling system.” See *Notice* at 11, para. 25 (citing Eleventh Report at 42, para. 32). Given our request for comment in the *Notice* on such examples in the annual fee reports, we reject contentions such as those raised by Michigan 911 Entities, who argue that the statements in the agency’s fee reports on public safety radios were never part of a notice and comment rulemaking and therefore cannot be used as a rationale for adopting rules in this proceeding. Michigan 911 Entities Mar. 23, 2021 Comments at 11-12 & n.6.

¹³⁹ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

46. We adopt our proposal to classify as unacceptable for Section 902 purposes the transfer of 911 fees into a general fund or other fund for non-911 purposes. The agency's annual fee reports consistently have found that transferring 911 fees to a state's general fund constitutes fee diversion.¹⁴⁰ In addition, no commenter opposes this provision.

47. We also adopt our proposal that expenditures of 911 fees for constructing or expanding non-public safety communications networks, such as commercial cellular networks, are not acceptable for Section 902 purposes. This finding is consistent with our approach in the agency's annual 911 fee reports, where the agency has concluded, for example, that construction of commercial cellular towers to expand cellular coverage is not 911 related within the meaning of the NET 911 Act.¹⁴¹ In the Twelfth Report, the agency explained that, although expanding cellular coverage "enhances the public's ability to call 911," the NET 911 Act focuses on funding the elements of the 911 call-handling system that are operated and paid for by state and local 911 authorities.¹⁴²

48. Some commenters recommend a more "nuanced" approach that would allow 911 spending on non-public safety communications networks in certain circumstances.¹⁴³ For example, BRETSA agrees that "wireless providers should not require 9-1-1 Authorities to subsidize expansion of their coverage with 9-1-1 Fees,"¹⁴⁴ but expresses concern that section 9.23(c)(2) could prevent Colorado from providing "diverse paths" to "currently unprotected Central Offices [] serving PSAPs" due to "incidental benefits to wireless providers."¹⁴⁵ Oklahoma 911 contends that expenditures to provide for PSAP backup during outages should be looked at on a "case by case basis" at the state and local level, to

¹⁴⁰ See, e.g., Twelfth Report at 52, 54, paras. 32, 37; Eleventh Report at 40, 43, paras. 28, 35; Tenth Report at 43-44, 46, paras. 30, 32, 35.

¹⁴¹ See, e.g., Twelfth Report at 53, paras. 34-35.

¹⁴² Twelfth Report at 53, para. 35.

¹⁴³ See, e.g., Michigan 911 Entities Mar. 23, 2021 Comments at 12 (stating a "more nuanced view" must be taken with the proposed provision on "non-public safety networks (e.g., commercial cellular networks)"; stating "the Michigan 911 Entities agree that 911 funds should not be used to build (for example) FirstNet infrastructure," but describing other situations where such 911 spending should be allowed; and noting "[t]here can be specific provisions drafted that require such devices to be tied to the PSAP").

¹⁴⁴ BRETSA Mar. 23, 2021 Comments at 27. BRETSA also urges the Commission to focus on the wireless providers, rather than the 911 Authority, when the Commission finds diversion of 911 fees to subsidize commercial wireless towers. BRETSA notes, for example, that the Bureau has labeled West Virginia a fee diverter for "subsidizing construction of wireless towers to extend 9-1-1 calling capabilities to areas wireless providers have found or represented are not financially viable or only marginally financially viable to serve," that wireless providers require 911 Authorities to "subsidize with 9-1-1 Fees their own commercial wireless services within their licensed service areas," and that 911 service is "an exception to the rule that providers bear the cost of delivering their customers [sic] calls." Boulder Regional Emergency Telephone Service Authority Reply, PS Docket Nos. 20-291 and 09-14, at 16-17 (rec. Apr. 2, 2021) (BRETSA Apr. 2, 2021 Reply); see also BRETSA Mar. 23, 2021 Comments at 27-28 ("focus should be on the Commission's coverage rules and the actions of the wireless providers rather than on the 9-1-1 Authorities who must pay these subsidies for the providers to expand coverage"). We refer to the 911 Strike Force for further consideration the issue of whether, and how much, the Commission should focus on wireless providers, rather than 911 authorities, when finding fee diversion for subsidization of commercial wireless towers.

¹⁴⁵ BRETSA Mar. 23, 2021 Comments at 27. See generally NASNA Mar. 22, 2021 Comments at 8 (stating as a general matter, without distinguishing public safety versus commercial infrastructure, "the NPRM is vague and contradictory on acceptable uses related to communications infrastructure that connects PSAPs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders)").

ensure 911 calls are delivered “quickly and appropriately.”¹⁴⁶ We agree that expenditures to provide redundancy, backup, or resiliency in components of the 911 network (e.g., components that provide path diversity to PSAPs or support rerouting of 911 traffic in the event of an outage) would not be deemed unacceptable under this rule. We also note that the petition for determination process provides a mechanism for states and taxing jurisdictions to seek additional guidance in applying section 9.23(c)(2) to a particular proposal for use of 911 fees to meet local needs.

49. We also adopt with minor modifications our proposal to classify as unacceptable, for purposes of section 902, expenditures of 911 fees on equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that do not directly support 911 services. We revise the language of this section slightly to provide that examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of section 902 include, but are not limited to, “Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.”¹⁴⁷ The reference to whether such equipment or infrastructure “directly support[s] providing 911 services” more closely tracks the language in section 902.¹⁴⁸

50. Further, with respect to the application of this rule to public safety radio expenditures, we leave the precise dividing line between acceptable and unacceptable radio expenditures open for further refinement, and we refer this issue to the 911 Strike Force for further consideration and the development of recommendations.

51. Commenters were divided on whether using 911 funds to pay for public safety radio systems constitutes fee diversion. The Tarrant County (TX) 9-1-1 District strongly disagrees with commenters who assert that allowable uses of 911 fees should include items such as radio infrastructure, mobile radios, portable radios, pagers or other systems: “THIS is exactly the problem. Agencies want to fund the entire public safety response system by recategorizing equipment, vehicles, and unrelated systems as part of the 9-1-1 response. It is emphatically NOT all part of the 9-1-1 system. The purpose of the fee is strictly to support Basic 9-1-1 and Enhanced 9-1-1 (E911) services only.”¹⁴⁹ CTIA and NTCA—The Rural Broadband Association (NTCA) argue that allowing radio system expenses would depart from fee report precedent, where the agency has ruled that use of funds to support public safety radio systems and associated maintenance and upgrades are not 911-related and constitute fee diversion.¹⁵⁰ The North Carolina 911 Board (NC 911 Board) supports the *Notice* proposal and notes that it only funds radio expenses within the PSAP based on the definition of “call taking” in the North Carolina statute.¹⁵¹

52. However, some state and local 911 entities urge the Commission to find that expenditures of 911 funds on public safety radio systems are broadly acceptable and do not constitute fee diversion. These commenters contend that radio networks are not operationally and technically distinct from the 911

¹⁴⁶ Oklahoma 911 Mar. 19, 2021 Comments at 1. Oklahoma 911 notes that one situation “problematic in our State” is a telephone outage at a large, consolidated center, where the backup agency “may not be in radio distance” of that center, so that the emergency 911 call details cannot be delivered to the appropriate agency for dispatch. *Id.*

¹⁴⁷ See Appendix A (section 9.23(c)(3)).

¹⁴⁸ See 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

¹⁴⁹ Tarrant County, TX Apr. 2, 2021 Reply at 1.

¹⁵⁰ CTIA Apr. 2, 2021 Reply at 5-6; NTCA Apr. 2, 2021 Reply at 4.

¹⁵¹ NC 911 Board Mar. 31, 2021 Reply at 3, n.22 (noting that NCGS § 143B-1400(7) defines call taking as “the act of processing a 911 call for emergency assistance by a primary PSAP, including the use of 911 system equipment, call classification, location of a caller, determination of the appropriate response level for emergency responders, and dispatching 911 call information to the appropriate responder”).

system and should be treated as integral components of the 911 ecosystem. For example, NYS DHSES asserts that “[p]ublic safety communication systems are most effective when they address all users. This requires connecting the general public to 911 Centers and their telecommunicators who, in turn, communicate with first responders in the field.”¹⁵² The Michigan 911 Entities assert that “[u]nless the Commission is suggesting that police and fire go back to the wired Call Box on the street corner, there is no doubt that a PSAP is virtually useless without its interconnection to the radio system. Similarly, that radio system is useless without subscriber units for the system with which to communicate.”¹⁵³

53. Several commenters also assert that our proposal to consider expenditures for public safety radio expenses unacceptable for section 902 purposes in certain circumstances is inconsistent with our proposal that expenditures providing for “the interoperability of 911 systems with one another and with public safety/first responder radio systems” would be acceptable. The Pennsylvania Emergency Management Agency (PEMA) asserts that “[t]he proposed rules imply there is a boundary between acceptable and not acceptable radio system expenses, but it is not clear where the boundary lies.”¹⁵⁴ CoPUC states that the line between acceptable and unacceptable radio equipment “is not clear at all” and that “[p]resumably, radio equipment inside the PSAP is allowed, but everything from the PSAP to the portable radio on a patrol officer’s utility belt is part of the infrastructure required to dispatch emergency responders.”¹⁵⁵

54. The issue whether radio system expenditures are acceptable or unacceptable for purposes of section 902 turns on how the Commission interprets the statutory provision that 911 fee expenditures directly support the provision of 911 services. We believe it is important to strike a balance between the opposing views in the record while recognizing the evolving nature of the 911 landscape and the variety of specific issues that could arise. Therefore, we reject as overbroad the proposition that *all* public safety radio expenditures “directly support the provision of 911 services” and are therefore acceptable. This is inconsistent with the standard applied in prior 911 fee reports and risks becoming an exception that swallows the rule. However, the test of whether specific radio expenditures directly support the provision of 911 services should be sufficiently flexible to allow for innovation and evolution in the 911 environment. For example, acceptable radio expenditures are not necessarily limited to technology “inside the PSAP” and could extend to development of integrated communications systems that support

¹⁵² NYS DHSES Mar. 23, 2021 Comments at 6-7.

¹⁵³ Michigan 911 Entities Mar. 23, 2021 Comments at 10 (asserting that expenses for public safety communications systems should be deemed acceptable, “at least with regard to those systems that utilize Part 90 spectrum allocated and assigned by the Commission”); *see also* Adams County, CO et al. Mar. 19, 2021 Comments at 4; NASNA Mar. 22, 2021 Comments at 10; City of Aurora, CO Mar. 22, 2021 Comments at 3; Groveland Township, MI Apr. 5, 2021 Comments at 1; PEMA Mar. 16, 2021 Comments at 3; Michigan State 911 Mar. 12, 2021 Comments at 3-4; Michigan APCO Mar. 19, 2021 Comments at 3; Michigan NENA Mar. 19, 2021 Comments at 3; Letter from Kyle R. Hartnett, Attorney, League of Minnesota Cities et al., to Marlene H. Dortch, Secretary, FCC, P.S. Docket Nos. 20-291 and 09-14, at 1 (filed May 5, 2021) (League of Minnesota Cities et al. *Ex Parte*). The Newaygo County, Michigan 9-1-1 Authority Board (Newaygo) filed a resolution stating that “radio infrastructure, mobile radios, portable radios, pagers, AVL [automatic vehicle location] systems and MDCs [mobile data computers], [are] critical to dispatching the 911 response.” Newaygo County, MI Mar. 23, 2021 Comments, containing a 911 Authority Board Resolution at 1; *see also* CCE Dispatch, MI Mar. 19, 2021 Comments at 1 and attached Resolution of the County of Emmet dated Mar. 18, 2021 at 1; Livingston County, MI Mar. 18, 2021 Comments at 1 and attached Resolution dated March 8, 2021, at 1; Daniel R. Morden Comments, PS Docket No. 20-291, at 1 (rec. Mar. 10, 2021) (filed on behalf of Gratiot County Central Dispatch) (Gratiot County, MI Mar. 10, 2021 Comments); Meceola, MI Mar. 12, 2021 Comments at 1.

¹⁵⁴ PEMA Mar. 16, 2021 Comments at 3; *see also* NTCA Apr. 2, 2021 Reply at 3-4; NASNA Mar. 22, 2021 Comments at 8; NYS DHSES Mar. 23, 2021 Comments at 6-7.

¹⁵⁵ CoPUC Mar. 10, 2021 Comments at 3.

911-related functions such as caller location or that enhance 911 reliability and resiliency. As NENA points out, the Commission’s determinations with respect to edge cases “evolve and are clarified over time as [the agency] is confronted with new quasi-9-1-1 public safety expenditures.”¹⁵⁶ We therefore decline to define a “bright line” test for applying the rule to specific radio expenditures.

55. We also find that commenters on both sides of this issue raise arguments that warrant additional consideration in determining where the line should be drawn between acceptable and unacceptable expenditures for public safety radio equipment. Accordingly, we do not specify public safety radio expenditures in our codified list of unacceptable uses, but we adopt our proposal defining expenditures on infrastructure or equipment as unacceptable if they do not directly support providing 911 services. In addition, we refer this issue to the 911 Strike Force for further guidance on how to apply this standard—to be delivered to the Commission contemporaneously with its final report to Congress—including the extent to which radio expenditures should be considered acceptable for purposes of section 902 because they provide for the interoperability of 911 systems with one another and with public safety/first responder radio systems. Finally, we note that the petition for determination process established by the statute provides a mechanism for further consideration of this issue in the context of specific cases after adoption of these rules.

4. Safe Harbor for Multi-Purpose Fee or Charge

56. *Background.* In the *Notice*, we proposed to adopt an elective safe harbor in our rules providing that if a state or taxing jurisdiction collects fees or charges designated for “public safety,” “emergency services,” or similar purposes and a portion of those fees goes to the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined in section 9.23 under new subpart I.¹⁵⁷ We reasoned that the rules should provide states and taxing jurisdictions the flexibility to apportion the collected funds between 911 related and non-911 related programs, but include safeguards to ensure that such apportionment is not subject to manipulation that would constitute fee diversion.¹⁵⁸

57. *Decision.* We adopt the safe harbor provision as proposed. As we note above, Congress tasked us with designating the acceptability of the obligation and expenditure of 911 fees or charges for purposes of determining whether section 902 consequences will apply. Consistent with that mandate, and to incentivize states and taxing jurisdictions to be transparent about multi-purpose fees, adopting a safe harbor provision offers flexibility to states and taxing jurisdictions to have the 911 portion of such multi-purpose fees be deemed acceptable while not having the non-911 portion be deemed diversion. Some commenters support adoption of the proposed safe harbor,¹⁵⁹ while other commenters object to the creation of the safe harbor provision as regulating non-911 fees outside of the Commission’s authority or

¹⁵⁶ NENA Mar. 23, 2021 Comments at 2.

¹⁵⁷ *Notice* at 12, para. 28. Specifically, we proposed to adopt this safe harbor provision in section 9.23(d) under new subpart I. *See id.* at 18, Appx. A.

¹⁵⁸ *Notice* at 12, para. 28.

¹⁵⁹ CTIA Mar. 23, 2021 Comments at 7 (noting that “this rule will allow the Commission to verify that the 9-1-1 portion of such multipurpose fees or charges is not being diverted”); CTIA Apr. 2, 2021 Reply at 9; Intrado Apr. 1, 2021 Reply at 5; NC 911 Board Mar. 31, 2021 Reply at 2 (supporting the safe harbor “[g]iven the purpose and scope of the Strike Force,” but recommending that the safe harbor include “forbearance of any sanctions for a minimum of 12 months following receipt of the Strike Force’s final report”).

as burdensome.¹⁶⁰ In establishing the safe harbor, we believe that we are neither regulating non-911 fees nor overstepping the responsibility Congress required of the Commission. Because new paragraphs (3)(A) and (B) of section 615a-1(f) require the Commission to define “acceptable” expenditures of 911 fees or charges for purposes of section 902,¹⁶¹ and because some states and taxing jurisdictions collect 911 fees or charges as part of multi-purpose fees, we conclude that the Commission has the obligation to consider the portions of such fees that are dedicated to 911 services. The safe harbor is a voluntary provision that provides a set of criteria for states and taxing jurisdictions with multi-purpose fees to demonstrate that they are not diverting 911 fees or charges. Accordingly, section 9.23(d)(2), which provides that the 911 portion of such fees or charges is segregated and not commingled with any other funds, only applies to states and taxing jurisdictions that opt to use the safe harbor provision to demonstrate that they are not diverting 911 fees. Arguments that fee segregation exceeds the Commission’s authority or is burdensome are obviated by the elective nature of the safe harbor.

58. We find that the safe harbor will promote visibility into how funds ostensibly collected for both 911 and other purposes are apportioned, which furthers Congress’s transparency goals and enhances our ability to determine whether 911 funds are being diverted. Without such visibility, multi-purpose fees could be used to obscure fee diverting practices from Commission inquiry, and potentially could render our rules and annual 911 fee report ineffective.

59. We also clarify that the safe harbor provision is not intended to preclude the use of fees collected for non-911 purposes from later being used for 911 purposes. BRETSA “supports the Commission’s proposal in Section 9.23(d),” but challenges a purported provision that “if a fee which is specified to be for a purpose other than 9-1-1 is used to support 9-1-1, it will thereafter be considered a 9-1-1 Fee.”¹⁶² BRETSA misconstrues the safe harbor provision. Nothing in the rules we adopt today would prevent a state or taxing jurisdiction from using fees originally collected for other public safety purposes to instead support 911 services if needed, and then later using those same non-911 public safety fees to support other public safety purposes again.

60. BRETSA also contends that the safe harbor prohibition on comingling of 911 funds with other funds is “unnecessarily restrictive.”¹⁶³ We disagree. Segregation of 911 funds in a separate account will help to ensure that the funds are fully traceable, provide a straightforward framework to avoid 911 fee diversion issues, and promote transparency in the use of 911 fees when a state or taxing jurisdiction collects a fee for both 911 and non-911 purposes. We also clarify that states and taxing jurisdictions are not required to use the safe harbor provision of our rules. Thus, a state or taxing jurisdiction may create an alternative multi-purpose fee mechanism that does not meet the safe harbor requirements. If it does so, however, the burden will be on the state or taxing jurisdiction to demonstrate that it is not diverting 911 funds.

61. Finally, BRETSA suggests that “[i]n section 9.23(d)(1), it should suffice if the 9-1-1 funding statute or regulations specify the: (i) amount or percentage of such fees or charges which are dedicated to purposes *other* than 9-1-1 Services, (ii) *minimum* amount or percentage dedicated to 9-1-1 services, or (iii) prioritize use of the fees or charges for 9-1-1 Service (e.g., permit use of the fees for non-

¹⁶⁰ NYS DHSES Mar. 23, 2021 Comments at 3-4 (stating that this provision effectively regulates accounting mechanisms for non-911 public safety fees by requiring states to show that fees and charges not specifically designated for 911 services are segregated from any funds potentially supporting 911 services, which is outside of the Commission’s authority); AAJ Authorities Apr. 2, 2021 Reply at 1-2 (stating that the provision would be burdensome because it would require “every Colorado 911 authority, some of which are very small, to open and maintain separate accounts merely to hold the portion of a multi-purpose fee dedicated to 911”).

¹⁶¹ 47 U.S.C. § 615a-1(f)(3)(A)-(B) (as amended by section 902).

¹⁶² BRETSA Mar. 23, 2021 Comments at i.

¹⁶³ BRETSA Apr. 2, 2021 Reply at 17-18.

911 purposes after the costs of 9-1-1 Service have been met[)].¹⁶⁴ BRETSA's suggestions (i) and (ii) appear consistent with section 9.23(d)(1), as long as the state or taxing jurisdiction adheres to section 9.23(d)(2) requiring that the fees be kept segregated. We do not intend the safe harbor to restrict flexibility of states and taxing jurisdictions to adjust the percentages of a multi-purpose fee that are allocated to 911 and non-911 purposes.

5. Diverter Designations

62. Some commenters raise concerns regarding the sufficiency of the process by which jurisdictions are determined to be engaged in diversion by the Commission, or request additional procedural safeguards before being designated a diverter in the annual fee report.¹⁶⁵ In addition, some commenters urge creation of an appeal process for states identified as diverters,¹⁶⁶ and one commenter requests a process by which a diversion finding can be removed once a state has come into compliance.¹⁶⁷

63. We decline to adopt such procedures that are not provided for in either section 902 or the NET 911 Act. As discussed above, Congress directed the Commission to adopt final rules defining the acceptable uses of 911 fees and to rule on petitions for determination for additional uses, in order to discourage fee diversion.¹⁶⁸ Section 902 also does not alter the well-established data collection and reporting process that the agency has employed to compile its annual reports. To the contrary, Congress implicitly affirmed the agency's existing reporting processes by requiring that federal grant recipients

¹⁶⁴ BRETSA Apr. 2, 2021 Reply at 18.

¹⁶⁵ BRETSA Mar. 23, 2021 Comments at 13 (arguing that “[t]he labelling of jurisdictions as fee diverters and subjecting them to the denial of federal benefits including grant funds, and potentially criminal penalties, on the basis of survey responses or questionnaires completed by administrators, without benefit of counsel, the right to present evidence in an on-the-record hearing, or administrative and judicial review, would violate[s] even basic standards of fairness” and suggesting that information gathered through the fee report should “at best be deemed evidence that diversion *may* have occurred”) (citations omitted); AAJ Authorities Apr. 2, 2021 Reply at 2 (citing BRETSA's recommendation generally that state and local jurisdictions “should be provided due process before being designated as 911 fee diverters”); PEMA Mar. 16, 2021 Comments at 3 (suggesting that the Commission work with states to make an initial determination, and states would then have the opportunity to make corrections before being penalized); City of Aurora, CO Mar. 22, 2021 Comments at 7 (calling on the 911 Strike Force to “notify the jurisdiction deemed in violation, and that jurisdiction should have the opportunity to report back to the Strike Force with their plans to remediate the issue or appeal before it is reported in the annual report”).

¹⁶⁶ See, e.g., CoPUC Mar. 10, 2021 Comments at 5 (urging inclusion of an appeals process in the rules for state to request reconsideration of designation as diverter, apparently no matter how that designation was imposed); NASNA Mar. 22, 2021 Comments at 11-12 (states identified as fee diverters “for a particular public safety use deemed ‘non-911’ eligible by the Commission” should be afforded a “speedy process of appeal,” not to exceed 60 days); Intrado Apr. 1, 2021 Reply at 6 (arguing that “states will need sufficient notice of non-compliance and opportunity to cure, and an appeals process”); NENA Mar. 23, 2021 Comments at 3-4 (noting the importance of “proper notice and recourse mechanisms” for a determination of diversion).

¹⁶⁷ CoPUC Mar. 10, 2021 Comments at 5 (stating that “there is no process outlined in the proposed rules by which a state may remove the designation of ‘911 fee diverter’ once it has been applied” and suggesting that the Commission include a process by which to remove the designation).

¹⁶⁸ 47 U.S.C. § 615a-1(f)(3)(A), (f)(5) (as amended); section 902(c)(1)(C). Furthermore, Congress defined diversion under section 902(f)(4) in reference to the final rules that the Commission issues here, stating that diversion is “the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules.” 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(f)(4). When the agency reports to Congress as required by 47 U.S.C. § 615a-1(f)(2) on the status of diversion in states and taxing jurisdictions, it will do so using this definition. See 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(2).

participate in the annual data collection.¹⁶⁹

64. For similar reasons, we decline to establish a “glide path” or “phase-in” period for states and taxing jurisdictions to come into compliance with our rules, as proposed by some commenters.¹⁷⁰ Section 902 does not provide any mechanism for the Commission to delay the implementation of these rules under the statute. We recognize that commenters are concerned about the potential 911 grant eligibility consequences of being designated a fee diverter based on the rules adopted in this order.¹⁷¹ The Michigan Chapter of APCO, for example, asserts that a determination of diversion puts significant federal grant money at risk, which could hinder the 911 system in fulfilling its primary purpose and ultimately harm those it was originally created to protect.¹⁷² Several commenters note that a finding of diversion could impact eligibility for future grants under the Leading Infrastructure for Tomorrow’s America (LIFT America) Act if it is enacted into law.¹⁷³ However, these issues are beyond the scope of this proceeding. The current 911 grant program is administered by the National Telecommunications and Information Administration (NTIA) and the National Highway Traffic Safety Administration (NHTSA), and the LIFT America Act, as currently drafted, provides for grants to be administered by these same agencies. Thus, these agencies, and not the Commission, will determine the appropriate criteria for eligibility to receive 911 grants, including whether a state or taxing jurisdiction would be eligible in the circumstances raised by commenters.¹⁷⁴

C. Petition for Determination

65. *Background.* Section 902(c)(1)(C) provides that a state or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those already deemed “acceptable” by the Commission should be treated as an

¹⁶⁹ 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C).

¹⁷⁰ NENA Mar. 23, 2021 Comments at 2-3 (stating that the “nature of state and local budget cycles means that these taxing jurisdictions often cannot change policy at the drop of a hat”); PEMA Mar. 16, 2021 Comments at 3 (recommending an “implementation period” and giving states a chance to update laws and requirements); CoPUC Mar. 10, 2021 Comments at 5 (recommending a “phase-in” period of no less than a year); City of Aurora, CO Mar. 22, 2021 Comments at 7 (asserting that the Commission needs “to consider state legislative cycles, and local / state budget cycles to adjust accordingly”); BRETSA Mar. 23, 2021 Comments at ii-iii, 17, 30 (asserting that it can be difficult to amend a budget once approved and requesting a “grace period,” and similarly advocating that if a petition for a determination that an expenditure is 911-related is denied, the applicable regulation should be waived for the time necessary for the entity to come into compliance, e.g., by adjusting its budget or raising taxes); Adams County, CO et al. Mar. 19, 2021 Comments at 5 (endorsing “a phase-in period of no less than one year for the new rules to allow states and local governments to come into compliance voluntarily”); Intrado Apr. 1, 2021 Reply at 6 (Enforcement of the rules should be “appropriately balanced” as states adjust to the Commission’s “new baseline expectations”).

¹⁷¹ See, e.g., Michigan APCO Mar. 19, 2021 Comments at 4; Michigan State 911 Mar. 12, 2021 Comments at 5; PEMA Mar. 16, 2021 Comments at 2.

¹⁷² Michigan APCO Mar. 19, 2021 Comments at 4.

¹⁷³ Leading Infrastructure for Tomorrow’s America (LIFT America) Act, H.R. 1848, 117th Cong. § 15001 (2021) (proposed legislation to expand grant funding for Next Generation 911); NPSTC Mar. 23, 2021 Comments at 7-8; NASNA Mar. 22, 2021 Comments at 2; NENA Mar. 23, 2021 Comments at 4; IAFC Apr. 2, 2021 Reply at 4 (quoting NENA Mar. 23, 2021 Comments at 4); Intrado Apr. 1 Reply at 3-4 (referencing NENA Mar. 23, 2021 Comments at 4).

¹⁷⁴ NTIA and NHTSA administer the 911 Grant Program, enacted by the *ENHANCE 911 Act* § 158 (codified at 47 U.S.C. § 942(c)), and amended by the *NG911 Act* § 6503 (codified at 47 U.S.C. § 942(c)). In rulemakings to revise the implementing regulations for the 911 Grant program, NTIA, NHTSA, the Department of Commerce, and the Department of Transportation have clarified that they “are not bound by the FCC’s interpretation of non-diversion under the NET 911 Act.” 911 Grant Program, 83 Fed. Reg. 38051, 38058 (Aug. 3, 2018) (codified at 47 CFR 400).

acceptable expenditure.¹⁷⁵ The state or taxing jurisdiction must demonstrate that the expenditure: (1) “supports public safety answering point functions or operations,” or (2) has a direct impact on the ability of a public safety answering point to “receive or respond to 9-1-1 calls” or to “dispatch emergency responders.”¹⁷⁶ If the Commission finds that the state or taxing jurisdiction has provided sufficient documentation to make this demonstration, section 902 provides that the Commission shall grant the petition.¹⁷⁷

66. In the *Notice*, we proposed to codify these provisions in our rules.¹⁷⁸ We stated our belief that “Congress intended this petition process to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related.”¹⁷⁹ We also stated that the proposed rule would set clear standards for what states must demonstrate to support a favorable ruling, including the requirement to provide sufficient documentation.¹⁸⁰ In addition, to promote efficiency in reviewing such petitions, we proposed that states or taxing jurisdictions seeking a determination do so by filing a petition for declaratory ruling under section 1.2 of the Commission’s rules.¹⁸¹ We noted that the declaratory ruling process would promote transparency regarding the ultimate decisions about 911 fee revenues that legislatures and executive officials make and how such decisions promote effective 911 services and deployment of NG911.¹⁸² We proposed to delegate authority to the Public Safety and Homeland Security Bureau to rule on these petitions for determination,¹⁸³ following the solicitation of comments and reply comments via public notice.¹⁸⁴ We sought comment on these proposals and on any possible alternative processes for entertaining such petitions.¹⁸⁵

67. *Decision.* We adopt our proposed rules and procedures for addressing petitions for determination, with some clarifications. Commenters generally support these proposals,¹⁸⁶ although most commenters recommend modifications or additions to the process.¹⁸⁷ We address these issues in turn.

¹⁷⁵ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C) (“A State or taxing jurisdiction (as defined in paragraph (3)(D)) may submit to the Commission a petition for a determination that an obligation or expenditure of a 9–1–1 fee or charge (as defined in such paragraph) by such State or taxing jurisdiction for a purpose or function other than a purpose or function designated under paragraph (3)(A) should be treated as such a purpose or function”).

¹⁷⁶ 47 U.S.C. § 615a-1(f)(5)(B) (as amended); section 902(c)(1)(C).

¹⁷⁷ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

¹⁷⁸ *Notice* at 19, Appx. A.

¹⁷⁹ *Notice* at 13, para. 31.

¹⁸⁰ *Notice* at 13, para. 31.

¹⁸¹ *See* 47 CFR § 1.2.

¹⁸² *Notice* at 13, para. 31.

¹⁸³ *Notice* at 13, para. 31.

¹⁸⁴ *Notice* at 13, para. 31; *see* 47 CFR § 1.2(b).

¹⁸⁵ *Notice* at 13, para. 31.

¹⁸⁶ *See, e.g.*, CTIA Mar. 23, 2021 Comments at 6 (“useful mechanism”); Michigan 911 Entities Mar. 23, 2021 Comments at 12-13 (“supportive” of the proposed petition for determination procedure); Michigan State 911 Mar. 12, 2021 Comments at 5 (option for petition for determination “a welcome opportunity”); Michigan NENA Mar. 19, 2021 Comments at 3-4 (“welcome opportunity”); IL State Police Mar. 23, 2021 Comments at 2 (“supports the petition process for states seeking further refinement” of which expenditures are considered 911 related); PEMA Mar. 16, 2021 Comments at 3 (“PEMA agrees with the Commission’s approach of providing a petition process to serve as a safety valve for states to seek further refinement of the definition” of 911-related expenditures); NASNA

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68. *Petitions and permitted filers.* First, we adopt our proposal that states or taxing jurisdictions seeking a determination must do so by filing a petition for declaratory ruling under section 1.2 of the Commission’s rules.¹⁸⁸ Some commenters, however, urge us to make the declaratory ruling process available to other stakeholders, such as communications providers and public safety organizations, to request Commission guidance on whether certain measures constitute 911 fee diversion. For example, CTIA asserts that expanding this process would “create a deterrent effect that can restrain state or local taxing jurisdictions from taking new actions that may constitute 9-1-1 fee diversion.”¹⁸⁹ However, other commenters oppose expanding the petition process to other stakeholders. The AAJ Authorities note that section 902 “clearly states” that “only states and taxing jurisdictions” can initiate such proceedings, for the limited purpose of determining whether an expenditure by such a state or taxing jurisdiction is consistent with the Commission’s rules.¹⁹⁰ BRETSA also opposes expanding the petition process to other stakeholders, noting the “wide disparity” between the resources of wealthy service providers and many PSAPs, most of which “do not regularly retain counsel and participate in Commission proceedings,” and might “lack the resources to oppose” the petitions.¹⁹¹ Another

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Mar. 22, 2021 Comments at 11 (agreeing with the Commission’s approach of providing a petition process to serve as “safety valve for states to seek further refinement” of the definition of permissible 911 fee use).

¹⁸⁷ The following commenters offered changes to our proposed petition for determination process: Adams County, CO et al. Mar. 19, 2021 Comments at 5; City of Aurora, CO Mar. 22, 2021 Comments at 6; BRETSA Mar. 23, 2021 Comments at iii, 17, 26-27, 30; Consumer Action for a Strong Economy Comments at 2 (advocating a “new docket or a portal” in which non-governmental entities could report fee diversion) (rec. Mar. 23, 2021) (CASE Mar. 23, 2021 Comments); Citizens Against Government Waste Reply, PS Docket Nos. 20-291 and 09-14 at 1 (supporting the CASE suggestion of a new docket or portal) (rec. Apr. 1, 2021) (CAGW Apr. 1, 2021 Reply); CoPUC Mar. 10, 2021 Comments at 2, 4; CTIA Mar. 23, 2021 Comments at 3, 5-7; IL State Police Mar. 23, 2021 Comments at 2; Michigan 911 Entities Mar. 23, 2021 Comments at 12-13; Michigan NENA Mar. 19, 2021 Comments at 3-4; Michigan State 911 Mar. 12, 2021 Comments at 5; NASNA Mar. 22, 2021 Comments at 11-12; NYS DHSES Mar. 23, 2021 Comments at 5-6; PEMA Mar. 16, 2021 Comments at 3; AAJ Authorities Apr. 2, 2021 Reply at 2-3; BRETSA Apr. 2, 2021 Reply at i, 1-2; CTIA Apr. 2, 2021 Reply at 2, 7-8; IAFC Apr. 2, 2021 Reply at 4; Intrado Apr. 1, 2021 Reply at 1-2, 5-6; NC 911 Board Mar. 31, 2021 Reply at 1, 3; NTCA Apr. 2, 2021 Reply at 2.

¹⁸⁸ The Commission notes that the decision to apply section 1.2 of the Commission’s rules to the filing of these section 902 petitions is limited to the use of section 1.2 as a procedural vehicle for conducting an adjudication of these petitions. Accordingly, any limitations of 47 CFR § 1.2 and the Administrative Procedure Act at 5 U.S.C. § 554(e) that might arise from the specification that the Commission may issue a declaratory ruling to terminate a controversy or remove uncertainty do not apply here. Rather, the standard for accepting and granting these special petitions for determination is dictated by the statutory requirements of section 902(c)(1)(C)—specifically, that the Commission must grant such a petition if it finds that the State has provided sufficient documentation to demonstrate that the “purpose or function” (i) supports PSAP functions or operations, or (ii) has a direct impact on the ability of a PSAP to “(I) receive or respond to 911 calls; or (II) dispatch emergency responders.” 47 U.S.C. § 615a-1(f)(5)(B) (as amended); section 902(c)(1)(C).

¹⁸⁹ CTIA Mar. 23, 2021 Comments at 6; *see also* CTIA Apr. 2, 2021 Reply at 7. Intrado supports CTIA’s suggestion that the petition for determination process be expanded to other interested stakeholders, stating that such expansion would serve Congress’s intent in section 902 by providing both “greater transparency” regarding appropriate expenditures and a “stronger deterrent” to prevent states or local taxing jurisdictions from engaging in 911 fee diversion. Intrado Apr. 1, 2021 Reply at 5-6; *see also* NTCA Apr. 2, 2021 Reply at 2 (stating that NTCA “joins CTIA in its request that the Commission expand the proposed declaratory ruling process” to enable other stakeholders to file such petitions).

¹⁹⁰ AAJ Authorities Apr. 2, 2021 Reply at 2.

¹⁹¹ BRETSA Apr. 2, 2021 Reply at i, 1-2. BRETSA further notes that wireless providers “intent on establishing a precedent . . . would rationally pick a small 9-1-1 Authority with limited funding.” BRETSA Apr. 2, 2021 Reply at 2. In addition, BRETSA argues that wireless carriers “have no vested interest in reduction in 9-1-1 fee amounts, because they do not pay the fees,” and that any petition filed “in the abstract,” without reference to a 911 Authority

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commenter, CASE, proposes a different mechanism, suggesting that to encourage reporting by non-governmental entities, the Commission could establish “a new docket or a portal” in which non-governmental entities could provide evidence demonstrating that a state or taxing jurisdiction is underfunding 911 services or “has failed to meet an acceptable purpose and function for the obligation or expenditure of 911 fees or charges.”¹⁹² The AAJ Authorities ask the Commission to reject CASE’s proposal, contending that creation of a new docket or portal would create “undue burdens” for states and local 911 authorities, which would have to spend time and resources responding to Commission inquiries.¹⁹³ The AAJ Authorities also note that Commission “already has an information collection process to identify fee diverters.”¹⁹⁴

69. We find that, under the explicit language of section 902, only a “State or taxing jurisdiction” may file a petition for determination, and that other stakeholders (e.g., communications providers) may not file a petition for determination.¹⁹⁵ In addition, we decline to create a “new docket or portal” for non-governmental authorities to report 911 fee diversion and underfunding issues. Non-governmental parties can provide information to the Commission on a 911 fee concern at any time and can comment on annual 911 fee reports and state responses to the FCC data collection. We find that these existing procedural options available to non-governmental entities are sufficient and decline to add another layer of procedures. For example, these other stakeholders may file a petition for declaratory ruling under section 1.2 of the Commission’s rules or a petition for rulemaking under section 1.401 of the Commission’s rules.¹⁹⁶ However, such petitions would not be subject to or entitled to the specialized petition for determination process and substantive standards that we establish here.

70. *Bureau delegation and public comment.* In general, the Public Safety and Homeland Security Bureau has delegated authority under our existing rules that is sufficient to act on petitions for determination in the first instance.¹⁹⁷ We also adopt our *Notice* proposal that the Bureau seek comment on petitions. Although the North Carolina 911 Board expresses concern that the comment and reply process could lead to administrative burdens for state and local government,¹⁹⁸ other commenters support the proposal.¹⁹⁹ We conclude that seeking comment on petitions will promote transparency and informed decision-making in furtherance of Congress’s goals.

71. *Time Limits.* We decline to place a time limit on Bureau action on petitions for determination. We agree with commenters who advocate for timely action on petitions,²⁰⁰ but also agree

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or PSAP, should be “summarily dismissed,” because it would lack context and information on the practical impact the ruling would have. BRETSA Apr. 2, 2021 Reply at i, 2.

¹⁹² CASE Mar. 23, 2021 Comments at 2; *see also* CAGW Apr. 1, 2021 Reply at 1 (supporting CASE recommendation of new docket or portal, with its “increased transparency” and “accountability”).

¹⁹³ AAJ Authorities Apr. 2, 2021 Reply at 2-3.

¹⁹⁴ AAJ Authorities Apr. 2, 2021 Reply at 3.

¹⁹⁵ 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

¹⁹⁶ *See* 47 CFR §§ 1.2, 1.401.

¹⁹⁷ 47 CFR § 0.392.

¹⁹⁸ NC 911 Board Mar. 31, 2021 Reply at 1.

¹⁹⁹ CTIA Apr. 2, 2021 Reply at 8 (recognizes “the need to allow for public comment”); Michigan 911 Entities Mar. 23, 2021 Comments at 12.

²⁰⁰ Intrado Apr. 1, 2021 Reply at 6 (“expeditious and predictable timeline” so that jurisdictions “have time to adjust their statutes/rules and budgets”); NASNA Mar. 22, 2021 Comments at 11 (“process should be fast and simple”; “rapid remedy”); BRETSA Mar. 23, 2021 Comments at iii, 30 (“expeditious treatment”); IAFC Apr. 2, 2021 Reply at 4 (“quickly resolve petitions”).

with CTIA that the process needs “to allow for public comment and sufficient deliberation of whether expenditures are appropriately within the scope of the Commission’s rules.”²⁰¹ Although some commenters advocate mandatory timelines,²⁰² imposing a rigid time limit on an as yet unknown volume of petition decisions, many of which will require careful consideration of complex situations and questions, would not allow time for sufficient deliberation or public input, would unduly burden limited Commission staff resources, and would potentially lead to inconsistent results.

72. *Review.* Some commenters advocate that an appeal process should be available, whether specifically in relation to the petition decision, or as a more general matter for any finding of fee diversion.²⁰³ In terms of appeals of the Bureau’s petition decisions, we believe creating any specialized appeal process is unnecessary, because petitioners may submit petitions for reconsideration under section 1.106 of the Commission’s rules or applications for Commission review of any Bureau-level decision under section 1.115 of the Commission’s rules.²⁰⁴

73. *Blanket Waivers.* We continue to believe that Congress intended the petition process “to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related.”²⁰⁵ However, BRETSA argues that the petition process should include provisions for “blanket waivers” or special rules for certain common situations that affect a large number of 911 authorities.²⁰⁶ We decline to establish such specialized provisions. We find that our general guidelines on acceptable and unacceptable 911 expenditures are sufficiently broad, and that

²⁰¹ CTIA Apr. 2, 2021 Reply at 8; *see also* CTIA Mar. 23, 2021 Comments at 6 (“expeditious”).

²⁰² *See* Michigan 911 Entities Mar. 23, 2021 Comments at 12-13 (stating that the Michigan 911 Entities are “very concerned” with the amount of time the Commission’s consideration of petitions may take and arguing that FCC should impose “mandatory timelines” for consideration of petitions); City of Aurora, CO Mar. 22, 2021 Comments at 6 (noting negative “direct impact” on jurisdictions of a lengthy process; petition process “needs to be codified in a clear format of required documentation with a clearly defined timeline” for decision); Adams County, CO et al. Mar. 24, 2021 Comments at 5 (noting that Adams County, CO et al. “strongly encourage” the FCC to include in the proposed rule “some time limit” for FCC to respond to petitions); Michigan State 911 Mar. 12, 2021 Comments at 5 (asking the Commission to include in the rulemaking language “a clear and concise timeline” for decision, and to ensure responses are delivered in “timely manner to the best of the Commission’s ability,” in order to minimize negative impact on the jurisdiction); Michigan NENA Mar. 19, 2021 Comments at 4 (“clear and precise timeline” and responses delivered in “timely manner to the best of the Commission’s ability”); CoPUC Mar. 10, 2021 Comments at 2, 4 (suggesting that the Commission respond to all petitions within 60 days of receipt); IL State Police Mar. 23, 2021 Comments at 2 (arguing that petitions must be processed in a “timely manner, in no more than 45 days,” and that the petition process must be “straightforward”).

²⁰³ *See, e.g.,* CoPUC Mar. 10, 2021 Comments at 5 (urging inclusion of an appeals process in the rules for state to request reconsideration of designation as diverter); NASNA Mar. 22, 2021 Comments at 11-12 (states identified as fee diverters “for a particular public safety use deemed ‘non-911’ eligible by the Commission” should be afforded a “speedy process of appeal,” not to exceed 60 days); Intrado Apr. 1, 2021 Reply at 6 (enforcement of the rules should be “appropriately balanced” as states adjust to the Commission’s “new baseline expectations,” and “states will need sufficient notice of non-compliance and opportunity to cure, and an appeals process”).

²⁰⁴ 47 CFR §§ 1.106(b)(1) (describing that generally, “any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken”), 1.115(a) (“Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.”).

²⁰⁵ *Notice* at 13, para. 31.

²⁰⁶ BRETSA Mar. 23, 2021 Comments at iii, 16, 26-27 (arguing some common situations “affect a sufficient number of 9-1-1 Authorities and PSAPs as to create an [] undue burden on the 9-1-1 Authorities, PSAPs and the Commission if individual petitions for declaratory ruling pursuant to Section 9.24 of the Rules were required from each affected 9-1-1 Authority or PSAPs”).

these overarching national guidelines, the illustrative lists of examples, and the petition process complement each other, with the petition process allowing localized refinements that accommodate varying circumstances as well as a reasonable mechanism to evaluate future perhaps as yet unforeseen, but legitimate, expenses. We also note that nothing in the rules prevents multiple states or taxing authorities from filing a joint petition to address a common issue.

D. Eligibility to Participate on Advisory Committees

74. *Background.* Pursuant to section 902(d)(4), any state or taxing jurisdiction identified by the agency in the annual 911 fee report as engaging in diversion of 911 fees or charges “shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 . . . or any advisory committee established by the Commission.”²⁰⁷ In the *Notice*, we proposed to codify this restriction in section 9.26 as it applies to any advisory committee established by the Commission.²⁰⁸

75. *Decision.* We adopt the proposal from the *Notice* with a minor modification and provide additional guidance and clarification on certain aspects of the rule.²⁰⁹ As proposed, we find that any state or taxing jurisdiction identified by the agency as engaging in diversion will be ineligible to participate on any advisory committee established by the Commission. The first fee diversion report required to be submitted one year after the enactment of section 902 will include a list of states and taxing jurisdictions identified as practicing fee diversion.²¹⁰ The agency will begin identifying representatives of diverting jurisdictions on its current advisory committees, if any, following the issuance of that report, and evaluate how to remove such representatives from current advisory committees. One commenter supports the prohibition without caveats,²¹¹ and some commenters seek clarification on or ask the Commission to revisit the scope of the prohibition against serving on advisory committees when a state or taxing jurisdiction has been designated a diverter.²¹²

²⁰⁷ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(4) (citation omitted). The committees, panels, and councils referred to in section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 are those established to assist FirstNet. See 47 U.S.C. § 1425(a).

²⁰⁸ *Notice* at 13, 19, para. 32 & Appx. A. Additionally, we sought comment on the extent to which state and local governments currently diverting 911 fees (based on the agency’s most recent report) now participate in such Commission advisory committees and the impact on them from being prohibited from doing so. *Id.* at 13, para. 32. Finally, we asked whether it would be helpful to provide a mechanism for states and taxing jurisdictions to raise questions regarding their eligibility to serve on an advisory committee. *Id.*

²⁰⁹ See Appendix A (section 9.26) herein. We revise the language of the proposed rule to clarify the reference to section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. § 615a-1(f)(2)).

²¹⁰ See 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(2).

²¹¹ MCP Mar. 23, 2021 Comments at 6.

²¹² IAFC Apr. 2, 2021 Reply at 4 (arguing that such a prohibition from serving on an FCC advisory committee “placed on a locality that has no control over the 911 diversion action of the state unfairly penalizes that locality and potentially robs the FCC of valuable information and diversity of perspective”); NPSTC Mar. 23, 2021 Comments at 6 (recognizing that the Commission must follow the direction of Congress, but warning that, without “some further clarification and consideration” of new section 9.26 on advisory committee participation, including “which committees are ‘established’ by the Commission,” the prohibition could “unfairly penalize public safety overall” and “localities that happen to be in states on the 911 fee diversion list could be unfairly penalized”); Michigan 911 Entities Mar. 23, 2021 Comments at 13 (agreeing with NPSTC that the Commission should “closely review the full impact of proposed limitations on diverting state’s [sic] ability to participate on advisory committees” and asserting that while some limitations may be appropriate, they must be targeted to resolving the issue rather than “punishing and compromising public safety”); Michigan State 911 Mar. 12, 2021 Comments at 5 (arguing that penalizing an entire state 911 ecosystem, including many 911 centers that had no direct responsibility for the diversion that may

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76. We clarify that only employees of a diverting jurisdiction (i.e., state or other taxing jurisdiction) who are acting as official representatives of that jurisdiction will be ineligible to participate on advisory committees established by the Commission. Further, we clarify that this prohibition will not extend to representatives of non-diverting localities that are located within diverting states. We also clarify that an individual who is employed by a diverting jurisdiction may still serve on a Commission advisory committee as a representative of a public safety organization or other outside association. Lastly, we clarify that an advisory committee “established” by the Commission includes any advisory committee established under the Federal Advisory Committee Act and any other panel that serves an advisory function to the Commission as reflected on the Commission’s website.²¹³ In light of these clarifications, we believe the prohibition appropriately balances the interests of Congress in restricting representatives of fee diverting jurisdictions from serving on advisory committees, without limiting representatives of non-diverting jurisdictions from providing their perspectives.²¹⁴ Our clarification tracks NPSTC’s view that an individual “may be employed by a locality or state, but serve voluntarily in public safety associations/organizations for the benefit of all public safety,” and may wish to end diverting practices.²¹⁵

77. Mission Critical Partners proposes that the restriction on diverter participation on advisory committees be expanded to include “congressional panel[s], the National 911 Program, or other public safety-related committees, panels, or councils.”²¹⁶ Because this proposal would exceed Congress’s

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have been committed at a level out of their control, “is not a true representation of the intent of this legislation” and that losing the ability to participate on advisory committees will “further hinder” the 911 system and harm those it was originally created to protect; and urging the Commission to “determine more appropriate means of accountability that will not punish state and/or local jurisdictions that are not guilty of diversion”). In addition, NPSTC notes that section 902(d)(4) also references the ineligibility of diverting states or taxing jurisdictions to serve on FirstNet committees, panels, or councils, and states that this section encompasses the FirstNet Public Safety Advisory Committee (PSAC). NPSTC Mar. 23, 2021 Comments at 7. NPSTC asserts that “[t]he PSAC appears to be established by Congress in the legislation, not by the Commission.” *Id.* at 7. NPSTC argues that “the Commission, in coordination with the FirstNet governmental entity, should clarify any impact of this legislation to FirstNet and related advisory committees, councils or panels,” as “an individual on the PSAC that represents a public safety or governmental association/organization should not be penalized for an employer’s 911 fee decisions over which he/she may have no involvement.” *Id.* at 7; *see also* IAFC Apr. 2, 2021 Reply at 5 (quoting NPSTC). We observe that at the May 5, 2021 FirstNet board meeting, FirstNet updated the charter of the PSAC to prevent representatives of fee diverting jurisdictions from participating on the PSAC. *See* First Responder Network Authority, Board Resolution 109–Bylaws and Public Safety Advisory Committee Charter Revisions at 1-2 & Exh. B (May 5, 2021), <https://firstnet.gov/sites/default/files/Resolution%20109%20-%20Bylaws%20and%20PSAC%20Charter%20Revisions%20May%202021.pdf>.

²¹³ A full list of the advisory committees established by the Commission can be found at <https://www.fcc.gov/about-fcc/advisory-committees-fcc>. This prohibition would not extend to the Regional Planning Committees (RPCs), which are administrative rather than advisory in nature. *See* NPSTC Mar. 23, 2021 Comments at 6 (requesting clarification of whether RPCs would be considered committees “established” by the Commission).

²¹⁴ Michigan State 911 Mar. 12, 2021 Comments at 5 (arguing against prohibiting representatives of diverting jurisdictions from serving on advisory committees); IAFC Apr. 2, 2021 Reply at 4 (arguing against the restriction, including because of the loss of valuable information and diversity of perspective); Association of Public-Safety Communications Officials-International, Inc. Comments, PS Docket Nos. 20-291 and 09-14, at 3-4 (rec. Nov. 2, 2020) (responding to the *Fee Diversion NOI* in this proceeding issued prior to the passage of section 902, APCO cautions that consequences of a diverter losing eligibility for federal grants or Commission licenses, programs, or advisory committees could include reduction in accurate reporting on fee expenditures and reduction in representation of “state professionals with important perspectives to share,” which would undermine the “higher goal” of understanding the extent to which 911 is underfunded and the impacts on emergency response).

²¹⁵ NPSTC Mar. 23, 2021 Comments at 7.

²¹⁶ MCP Mar. 23, 2021 Comments at 6.

directive in section 902, we decline to adopt it.

E. Reporting Requirement

78. *Background.* Section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after the date of enactment of section 902, “such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual report to Congress on 911 fees].”²¹⁷ In the *Notice*, we proposed to codify this provision in section 9.25 under new subpart I to require grant recipients to provide such information to the Commission.²¹⁸

79. *Decision.* We adopt our proposal, which was unopposed in the comment record, with clarifying modifications.²¹⁹ Mission Critical Partners notes that the collection of information regarding states’ use of 911 funds “provides comprehensive information for Congress to scrutinize and understand the needs of states and local 911 authorities.”²²⁰ APCO notes that “[u]sing the strike force and annual reports to better understand the relationship between funding for 9-1-1 and emergency response will produce helpful information for public safety agencies and serve the Commission’s and Congress’s goal of discouraging fee diversion.”²²¹

F. Underfunding 911 Services and Improving the Annual 911 Fee Report

80. *Background.* In the *Notice of Inquiry* in this proceeding, we sought comment on whether improvements to the agency’s data collection and reporting process could further discourage fee diversion.²²² Section 902(d)(2) provides that, beginning with the first annual fee report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act,” the Commission shall include in each report “all evidence that suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges, including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”²²³ Given that section 902 similarly requires us to forward any evidence of fee diversion, “including any information regarding the impact of any underfunding of 9-1-1 services,”

²¹⁷ 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C). NHTSA and NTIA will review the regulations for the 911 Grant Program at 47 CFR part 400 in order to determine how best to implement the new obligation under the law. The Commission will work with these agencies to ensure a coordinated compliance regime.

²¹⁸ *Notice* at 13, 19, para. 33 & Appx. A. We sought comment on what effect this statutory provision and its proposed codification in the Commission’s rules might have on states or taxing jurisdictions that receive such grants. We also asked whether this provision, combined with other statutory anti-diversion restrictions that already apply to 911 grant recipients, increases the likelihood that diverting states and taxing jurisdictions will change their diversion practices. Finally, we asked whether any aspects of our proposed implementation of section 902 might create obstacles to state fiscal needs. *Notice* at 13, para. 33.

²¹⁹ See Appendix A (section 9.25). We revise the language of the rule to clarify the reference to section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. § 615a-1(f)(2)). We also clarify that each state or taxing jurisdiction subject to this requirement must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau.

²²⁰ MCP Mar. 23, 2021 Comments at 4-5.

²²¹ Association of Public-Safety Communications Officials-International, Inc. Comments, PS Docket Nos. 20-291 and 09-14, at 2 (rec. Mar. 23, 2021) (APCO Mar. 23, 2021 Comments).

²²² *Fee Diversion NOI*, 35 FCC Rcd at 11021, para. 34.

²²³ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(2).

to the 911 Strike Force,²²⁴ in the *Notice* we sought comment on how we can best emphasize this aspect in our information collection reports.²²⁵

81. *Decision.* As a threshold matter, we direct the Bureau to update the annual 911 fee report questionnaire to reflect the rules adopted in the *Report and Order*. This should help address concerns raised by commenters that our annual data collection be more effective in identifying fee diversion.²²⁶

82. Commenters generally support the Commission’s approach of using the 911 Strike Force and annual reports to better understand underfunding.²²⁷ APCO and several other commenters urge us to take a “broad approach” to analyzing the extent and impacts of 911 underfunding, whether or not it is caused by 911 fee diversion.²²⁸ Commenters note that the presence or absence of fee diversion does not reliably correlate to adequate funding for 911 and suggest that we take additional steps to study the broader impacts of underfunding the 911 system.²²⁹ We direct the Bureau to modify the annual fee report questionnaire to seek additional information on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding, and (2) information on 911

²²⁴ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(1).

²²⁵ *Notice* at 14, para. 34.

²²⁶ BRETSA Mar. 23, 2021 Comments at 9-13 (requesting that the Commission reform its forms and approach to collecting information on 911 fees and their uses, and requesting that the fee report questionnaires be “more useful in general, and more user friendly” and take less time to complete); NASNA Mar. 22, 2021 Comments at 5 (requesting that the Commission extend its fee diversion data collection and reporting to a more granular level, “to local units”); T-Mobile Mar. 23, 2021 Comments at 1-2 (urging the Commission to seek additional information on the practices of various states, counties, and municipalities to ensure that its definition of “fee diversion” captures all instances where 911 fees are not being used for 911 costs); *see also* BRETSA Apr. 2, 2021 Reply at i, 16 (urging the Commission to survey wireless providers regarding their role in fee diversion, including by “refusing to serve portions of their service area absent subsidies from ‘9-1-1 Fees’”).

²²⁷ APCO Mar. 23, 2021 Comments at 2 (using the Strike Force and annual reports will produce helpful information and serve the goal of discouraging fee diversion “while looking at the bigger picture of the extent of underfunding regardless of the source”); NC 911 Board Mar. 31, 2021 Reply at 3 (stating that the NC 911 Board “supports the Commission’s apparent intent to seek greater clarity [on underfunding] through the Strike Force”); IAFC Apr. 2, 2021 Reply at 5-6 (quoting and supporting APCO’s assertion that the Commission should use the Strike Force and annual reports to produce helpful information regarding underfunding). We note that the 911 Strike Force is due to submit its report to Congress by September of this year, which will not be enough time for the agency to pass along underfunding information collected through the fee report process this year. The 911 Strike Force will examine, however, the impact of fee diversion on underfunding, and the Commission will submit to the 911 Strike Force the information that it currently has, as mandated by statute. *See* 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(1)-(3).

²²⁸ APCO Mar. 23, 2021 Comments at 2 (interpreting section 902 as directing the Commission “to understand how *any* underfunding, not just underfunding as a result of diversion, is impacting 9-1-1 service across the country”); Intrado Apr. 1, 2021 Reply at 3 (encouraging the Commission and 911 Strike Force “to take a broad approach to analyzing 911 underfunding as suggested by [APCO],” and citing APCO comments); IAFC Apr. 2, 2021 Reply at 5-6 (quoting and agreeing with APCO Mar. 23, 2021 Comments at 2); NC 911 Board Mar. 31, 2021 Reply at 2-3 & n.18 (citing APCO Mar. 23, 2021 Comments at 2); BRETSA Mar. 23, 2021 Comments at 8 (stating that the Commission must “avoid judging the adequacy of 9-1-1 funding in isolation”).

²²⁹ APCO Mar. 23, 2021 Comments at 2-3 (noting that the cost of providing service is far greater than the revenue collected from fees, not all states have a dedicated funding mechanism for funding 911, state-level reports may not accurately reflect expenditures at a local level, and legislative reforms may eliminate diversion without altering 911 funding levels); BRETSA Apr. 2, 2021 Reply at 4 n.16 (stating that “[t]he concerns with Fee Diversion are based on the unproven assumption that it results in the underfunding of 9-1-1 Service”).

underfunding in general. We also refer this issue to the 911 Strike Force.²³⁰ The 911 Strike Force is charged with examining, among other things, “the impacts of diversion,” and we expect that its report will address underfunding as a potential impact of diversion.²³¹

83. We decline two requests from the NC 911 Board to expand the Commission’s approach to analyzing underfunding, first that the Commission address underfunding of 911 as a prerequisite to finding that fee diversion has occurred, and second that the Commission provide more detail regarding the intent, definition, and scope of underfunding.²³² Neither section 902 nor the NET 911 Act contains a requirement that the Commission find underfunding prior to finding fee diversion. Regarding the request that the Commission provide more detail about the intent, definition, and scope of underfunding, we note that section 902 did not specifically direct the Commission to define underfunding at this time, but we refer the topic of defining underfunding 911 to the 911 Strike Force to study.

IV. PROCEDURAL MATTERS

84. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²³³ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²³⁴ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

85. *Paperwork Reduction Act of 1995 Analysis.* The requirements in section 9.25(b) constitute a modified information collection to OMB Control No. 3060-1122. The modified information collection will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).²³⁵ OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002,²³⁶ we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements in section 9.25(b) will be unduly burdensome on small businesses.²³⁷ Applying these

²³⁰ See generally T-Mobile Mar. 23, 2021 Comments at 2 (calling underfunding of 911 resources “chronic”); APCO Mar. 23, 2021 Comments at 1 (stating that 911 fee diversion “is a harmful practice that exacerbates significant challenges facing ECCs”); Intrado Apr. 1, 2021 Reply at 2 (stating that fee diversion has “caused a significant gap in 911 funding”); but see BRETSA Apr. 2, 2021 Reply at 18 (stating that BRETSA is “unaware of any finding that 9-1-1 has been underfunded”).

²³¹ 47 U.S.C. § 615a-1 Statutory Notes (as amended); section 902(d)(3)(B)(iii).

²³² NC 911 Board Mar. 31, 2021 Reply at 3.

²³³ See 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601-612. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²³⁴ 5 U.S.C. § 605(b).

²³⁵ 44 U.S.C. § 3507(d).

²³⁶ Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified at 44 U.S.C. § 3506(c)(4)).

²³⁷ The Commission anticipates the burden and cost levels of these requirements to be similar to the existing collections which OMB approved under OMB Control No. 3060-1122, ICR Reference No: 202102-3060-011. See generally Exec. Office of the President, Office of Info. & Regulatory Affairs, View ICR – OIRA Conclusion, <https://www.reginfo.gov/public/do/PRAMain>. The Commission seeks comment on these costs in its upcoming Paperwork Reduction Act comment periods.

modified information collections will implement section 902 and promote transparency in the collection and expenditure of 911 fees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B.

86. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this is a major rule under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

87. *Additional Information.* For additional information on this proceeding, contact Brenda Boykin, Brenda.Boykin@fcc.gov or 202-418-2062, Rachel Wehr, Rachel.Wehr@fcc.gov or 202-418-1138, or Jill Coogan, Jill.Coogan@fcc.gov or 202-418-1499, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

V. ORDERING CLAUSES

88. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up the T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b, that this *Report and Order* is hereby ADOPTED.

89. IT IS FURTHER ORDERED that the amendments of Part 9 of the Commission's rules, as set forth in Appendix A, ARE ADOPTED, effective sixty (60) days after publication in the *Federal Register*. Compliance will not be required for paragraph (b) in section 9.25 until after approval by the Office of Management and Budget. The Commission delegates authority to the Public Safety and Homeland Security Bureau to publish a document in the *Federal Register* announcing that compliance date and revising paragraph (c) in section 9.25.

90. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

91. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons described in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9 – 911 Requirements

1. The authority citation for part 9 is revised to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a-1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

2. Add subpart I, consisting of §§ 9.21 through 9.26, to read as follows:

Subpart I – 911 Fees

Sec.

9.21 Applicability.

9.22 Definitions.

9.23 Designation of acceptable obligations or expenditures for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C).

9.24 Petition regarding additional purposes and functions.

9.25 Participation in annual fee report data collection.

9.26 Advisory committee participation.

§ 9.21 Applicability.

The rules in this subpart apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

§ 9.22 Definitions.

For purposes of this subpart, the terms in this section have the following meanings set forth in this section. Furthermore, where the Commission uses the term “acceptable” in this subpart, it is for purposes of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, Division FF, Title IX, section 902(c)(1)(C).

911 fee or charge. A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

Diversion. The obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23.

Other emergency communications services. The provision of emergency information to a public safety answering point via wire or radio communications, and may include 911 and E911 service.

State. Any of the several States, the District of Columbia, or any territory or possession of the United States.

State or taxing jurisdiction. A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

§ 9.23 Designation of acceptable obligations or expenditures for purposes of the Consolidated Appropriations Act, 2021, Division FF, Title IX, section 902(c)(1)(C).

- (a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges for purposes of section 902 are limited to:
 - (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
 - (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.
- (b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:
 - (1) PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility and including NG911, cybersecurity, pre-arrival instructions, and emergency notification systems (ENS). PSAP operating costs include technological innovation that supports 911;
 - (2) PSAP personnel costs, including telecommunicators' salaries and training;
 - (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
 - (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and
 - (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.
- (c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges for purposes of section 902 include, but are not limited to, the following:
 - (1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;
 - (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
 - (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities that does not directly support providing 911 services.
- (d) If a State or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes that include the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:

- (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;
- (2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and
- (3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

§ 9.24 Petition regarding additional purposes and functions.

- (a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.
- (b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
 - (1) Supports public safety answering point functions or operations; or
 - (2) Has a direct impact on the ability of a public safety answering point to:
 - (i) Receive or respond to 911 calls; or
 - (ii) Dispatch emergency responders.

§ 9.25 Participation in annual fee report data collection.

- (a) If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a-1(f)(2)).
- (b) Each State or taxing jurisdiction subject to paragraph (a) of this section must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau.
- (c) Paragraph (b) of this section contains information collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing that compliance date and revising this paragraph accordingly.

§ 9.26 Advisory committee participation.

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999, as amended (47 U.S.C. 615a-1(f)(2)), as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)* adopted in February 2021.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Final Rules

2. The *Report and Order* adopts rules to implement section 902 of the Consolidated Appropriations Act, 2021 that required the Commission to take action to help address the diversion of 911 fees by states and taxing jurisdictions for purposes unrelated to 911.⁴ The Commission amends part 9 of its rules to establish a new subpart I to address the use of 911 fees and fee diversion in accordance with the requirements of section 902. More specifically, the rules the Commission adopts in the new subpart I designate illustrative, non-exhaustive purposes and functions for the obligation or expenditure of 911 fees or charges by states and taxing jurisdiction authorized to impose such a fee or charge that are acceptable for purposes of section 902 and the Commission's rules; clarify what does and does not constitute 911 fee diversion; establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues; and codify the specific restrictions that section 902 imposes on states and taxing jurisdictions that engage in diversion, such as the exclusion from eligibility to participate on Commission advisory committees.

3. The Commission adopts rules in the *Report and Order* that provide guidance on the types of expenditures of 911 fees for public safety radio systems and related infrastructure that can be considered acceptable but leaves the precise dividing line between acceptable and unacceptable radio expenditures open for further refinement, and refers this issue to the 911 Strike Force for further consideration and development of recommendations. The *Report and Order* also codifies the provision of section 902 that allows states and taxing jurisdictions to petition the FCC for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those deemed acceptable by the Commission should be treated as an acceptable expenditure. Further, the Commission amends its rules to include a voluntary safe harbor provision that provides if a state or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes and a portion of those fees goes to the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the state or taxing jurisdiction meets certain criteria. This safe harbor provision should incentivize states and taxing jurisdictions to be transparent about multi-purpose fees, while providing flexibility to states and taxing jurisdictions to have the 911 portion of such multi-purpose fees be deemed acceptable while not having the non-911 portion be deemed diversion.

4. The safe harbor provision should also provide visibility into how funds ostensibly collected for both 911 and other purposes are apportioned, while including safeguards to ensure that such apportionment is not subject to manipulation that would constitute fee diversion. Inclusion of the safe harbor furthers Congress's transparency goals and enhances our ability to determine whether 911 funds

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Proposed Rulemaking, FCC 21-25 (Feb. 17, 2021) (*Notice*).

³ See 5 U.S.C. § 604.

⁴ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902).

are being diverted. Without such visibility, multi-purpose fees could increase the burden on limited Commission staff resources in analyzing varied fee structures, and potentially render our rules and annual 911 fee report ineffective. The changes to part 9 adopted in the *Report and Order* are consistent with and advance Congress's stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state or taxing jurisdictions. The rules closely track the statutory language of section 902 addressing 911 fee diversion and seek to promote transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services, while providing stakeholders reasonable guidance as part of implementing section 902.

B. Summary of Significant Issues Raised by Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁵

7. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.⁸ A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA's) Office of Advocacy, in

⁵ 5 U.S.C. § 604(a)(3).

⁶ See 5 U.S.C. § 603(a)(4).

⁷ See *id.* § 601(6).

⁸ See *id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹ See 15 U.S.C. § 632.

¹⁰ See 5 U.S.C. § 601(3)-(6).

general a small business is an independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.¹²

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁵

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2017 Census of Governments¹⁷ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number there were 36,931 general purpose governments (county,¹⁹ municipal and town or township²⁰) with populations of

¹¹ See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹² *Id.*

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁶ 5 U.S.C. § 601(5).

¹⁷ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁸ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁹ See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments - independent school districts²¹ with enrollment populations of less than 50,000.²² Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²³

12. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁵ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁶ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.²⁷ Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

13. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁸ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies

²¹ See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²² While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁵ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

²⁶ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁸ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>

having 1,500 or fewer employees.²⁹ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.³⁰ Of this total, 3,083 operated with fewer than 1,000 employees.³¹ Thus, under this size standard, the majority of firms in this industry can be considered small.

14. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³² This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³³ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³⁴ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.³⁵ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.³⁶ Of those firms, a total of 1,400 had annual receipts less than \$25 million, and 15 firms had annual receipts of \$25 million to \$49,999,999.³⁷ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The rules adopted in the *Report and Order* to implement section 902 will impose new or additional reporting or recordkeeping and/or other compliance obligations on small and other sized state and taxing jurisdictions subject to compliance with the Commission’s 911 fee obligation or expenditure requirements. While some of the requirements will only impact entities that choose to invoke the provisions, the Commission is not in a position to determine whether small entities will have to hire professionals to comply and cannot quantify the cost of compliance for small entities. Below we discuss the reporting and recordkeeping requirements implicated in the *Report and Order*.

16. New Section 9.25 requires that if a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless

²⁹ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

³⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012_EC1251SSSZ5&hidePrevious=false.

³¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³² See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

³³ *Id.*

³⁴ *Id.*

³⁵ See 13 CFR § 121.201, NAICS Code 517919.

³⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012_EC1251SSSZ4&hidePrevious=false.

³⁷ *Id.*

Communications and Public Safety Act of 1999, as amended (47 U.S.C. § 615a-1(f)(2)). Each state or taxing jurisdiction subject to paragraph (a) of this section must file the information requested by the Commission and in the form specified by the Public Safety and Homeland Security Bureau (Bureau).

17. The *Report and Order* directs the Bureau to update the Commission's 911 fee report questionnaire to facilitate the provision of information regarding states' use of 911 funds in order for the Commission to prepare an annual report to Congress on 911 fees.³⁸ The *Report and Order* also directs the Bureau to modify the annual fee report questionnaire to obtain additional information on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding, and (2) information on 911 underfunding in general.

18. Pursuant to the voluntary Petition for Determination process adopted in the *Report and Order* to resolve questions of what are and are not acceptable 911 expenditures, a petitioning state or taxing jurisdiction is required to provide information show that a proposed expenditure: (1) supports PSAP functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. The information and documentation that a state or taxing jurisdiction is required to provide the Commission to make the requisite showing will impact the reporting and recordkeeping requirements for small entities and others subject to the requirements.

19. Similarly, pursuant to the voluntary safe harbor provisions adopted in the *Report and Order*, small and other sized state or taxing jurisdictions that utilize the safe harbor provision to have the non-911 portion of a multi-purpose fee or charge not constitute diversion, must: (1) specify the amount or percentage of such fees or charges that is dedicated to 911 services; (2) show that the 911 portion of such fees or charges are segregated and not commingled with any other funds; and (3) obligate or expend the 911 portion of such fees or charges for acceptable purposes and functions as defined in section 9.23 under new subpart I.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.³⁹

21. In the *Report and Order* the approach we take to implement the provisions of section 902 that require Commission action to help address diversion of 911 fees for other purposes by state and taxing jurisdictions, adopts changes to part 9 of the Commission's rules seeking to achieve the stated objectives of Congress's mandates in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunication services or to states and taxing jurisdictions. Using this approach, we

³⁸ The amended rules require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020, such state or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. § 615a-1(f)(2)). Under OMB Control No. 3060-1122, the Office of Management and Budget previously approved and renewed the information collection requirements associated with filing annual 911 fee reports as mandated by the NET 911 Act.

³⁹ 5 U.S.C. § 603(c)(1)-(4).

have taken the steps discussed below to minimize any significant economic impact or burden for small entities.

22. To promote consistency for small entities and others who will be subject to both section 902 and our rules, the rules adopted in the *Report and Order* and codified in part 9 of the Commission's rules, closely tracks the statutory language from section 902. Specifically, the definitions in section 902 for certain terms relating to 911 fees and fee diversion in part 9 of our rules were adopted and codified as proposed in the *Notice*. For a few terms, limited modifications were made to the definition, i.e. the definitions for the terms "911 fee or charge" and "Diversion" include modifications to promote regulatory parity and avoid gaps that could inadvertently interfere with the rapid deployment of effective 911 services. We believe that having consistency between section 902 and our rules will avoid additional compliance costs for small entities.

23. Similarly, to fulfill the Commission's obligations associated with issuing rules designating acceptable purposes and functions, we use language from section 902, codifying the statutory standard for which the obligation or expenditure of 911 fees or charges by any state or taxing jurisdiction is considered acceptable. We considered but rejected arguments to defer to states and local authorities in determining what constitutes fee diversion. A policy of deferring to states or localities on what constitutes fee diversion would negate one of the principal aspects of section 902, which is that it revises the language in 47 U.S.C. § 615a-1 to make clear that fee diversion is not whatever state or local law says it is. Section 902 charges the Commission with responsibility for determining appropriate purposes and functions for expenditure of 911 funds and we agree that our rules should be reasonably broad given the evolving and diverse 911 ecosystem. The rules adopted in the *Report and Order* establish broad categories of acceptable purposes and functions for 911 fees and provide examples within each category to guide states and localities. Therefore, we have provided State and local jurisdictions sufficient discretion to make reasonable, good faith determinations whether specific expenditures of 911 fees are acceptable under our rules.

24. In the final rules we specify examples of both acceptable and unacceptable purposes and functions for the obligation or expenditure of 911 fees or charges. For example, we revised section 9.23(b)(1) from the *Notice* proposal to include examples to make clear that replacement of 911 systems is an acceptable expenditure and that 911 includes pre-arrival instructions and ENS and also added a reference to cybersecurity. Identifying and including specific examples in the Commission's rules should enable small entities to avoid unacceptable expenditures in violation of our rules, which could impact eligibility for federal grants and participation in federal advisory committees.

25. Finally, we adopt two processes in the *Report and Order* that could minimize the economic impact for small entities, (1) the safe harbor for multi-purpose fees or charges and (2) the petition for determination. As discussed in the prior section, the safe harbor provision gives flexibility to states and taxing jurisdictions to implement multi-purpose fees or charges and to have the 911 portion of such multi-purpose fees be deemed acceptable and the non-911 portion not deemed 911 fee diversion provided certain conditions are met. Also discussed in the prior section, the Commission adopted a petition for determination process to resolve questions of what are and are not acceptable 911 expenditures, allowing states and other taxing jurisdictions to request a determination on whether a proposed expenditure would constitute fee diversion. Using these processes small, and other sized state and taxing jurisdictions can avoid violating section 902 and the Commission's rules for 911 fee diversion and any ensuing economic and other consequences.

G. Report to Congress

26. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁴⁰ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.⁴¹

⁴⁰ See 5 U.S.C. § 801(a)(1)(A).

⁴¹ See 5 U.S.C. § 604(b).

APPENDIX C**List of Commenting Parties****Comments**

Adams County E-911 Emergency Telephone Service Authority; Arapahoe County E-911 Emergency Communications Service Authority; City and County of Denver – Denver 911; Delta County 911 Authority; Douglas County Emergency Telephone Service Authority; Eagle County Emergency Telephone Service Authority; El Paso Teller County Emergency Telephone Service Authority; Garfield County Emergency Communications Authority; Grand Junction Regional Emergency Telephone Authority; Gunnison/Hinsdale Combined Emergency Telephone Service Authority; Jefferson County Emergency Communications Authority; Montrose Emergency Telephone Service Authority; Ouray County Emergency Telephone Service Authority; San Miguel Emergency Telephone Service Authority; Western Colorado Regional Dispatch Center (Adams County, CO et al.)

American Association of Suicidology; American Foundation for Suicide Prevention; Association for Behavioral Health and Wellness; Centerstone; Depression and Bipolar Support Alliance; Fountain House; Inseparable; The Kennedy Forum; Mental Health America; National Alliance on Mental Illness; National Association of Peer Supporters; National Association of State Mental Health Program Directors; S2i Mental Health Strategic Impact Initiative; Steinberg Institute; Trevor Project; Vibrant Emotional Health (988 Entities)

Association of Public-Safety Communications Officials-International, Inc. (APCO)

Boulder Regional Emergency Telephone Service Authority (BRETSA)

Charlevoix, Cheboygan, Emmet Central Dispatch Authority (CCE Dispatch, MI)

City of Aurora Emergency Telephone Service Authority (City of Aurora, CO)

Colorado Public Utilities Commission (CoPUC)

Consumer Action for a Strong Economy (CASE)

CTIA – The Wireless Association (CTIA)

Gratiot County Central Dispatch (Gratiot County, MI)

Groveland Township (Groveland Township, MI)

Illinois State Police Office of the Statewide 911 Administrator (IL State Police)

Livingston County 911 Central Dispatch (Livingston County, MI)

Meceola Consolidated Central Dispatch Authority (Meceola, MI)

Michigan Chapter of the Association of Public-Safety Communications Officials (Michigan APCO)

Michigan Chapter of the National Emergency Number Association (Michigan NENA)

Michigan State 9-1-1 Committee (Michigan State 911)

Mission Critical Partners, LLC (MCP)

National Association of State 911 Administrators (NASNA)

National Public Safety Telecommunications Council (NPSTC)

NCTA – The Internet & Television Association (NCTA)

NENA: The 9-1-1 Association (NENA)

New York State Division of Homeland Security and Emergency Services (NYS DHSES)
Newaygo County 9-1-1 Authority Board (Newaygo County, MI)
Oakland County, Michigan; Oakland County Association of Chiefs of Police; Macomb County, Michigan; Downriver Mutual Aid/Downriver Community Conference; Ingham County, Michigan; Eaton County, Michigan; Clinton County, Michigan; Michigan County Director's Association; Upper Peninsula 911 (Michigan 911 Entities)
Oklahoma 9-1-1 Management Authority (Oklahoma 911)
Pennsylvania Emergency Management Agency (PEMA)
T-Mobile USA, Inc. (T-Mobile)

Reply Comments

Adams County E-911 Emergency Telephone Service Authority; Arapahoe County 911 Authority; Jefferson County Emergency Communications Authority (AAJ Authorities)
Boulder Regional Emergency Telephone Service Authority (BRETSA)
Citizens Against Government Waste (CAGW)
CTIA
International Association of Fire Chiefs (IAFC)
Intrado Life & Safety, Inc. (Intrado)
NTCA—The Rural Broadband Association (NTCA)
North Carolina 911 Board (NC 911 Board)
Tarrant County 9-1-1 District (Tarrant County, TX)

Ex Partes

Citizens Against Government Waste (CAGW)
International Association of Fire Chiefs (IAFC)
League of Minnesota Cities; Association of Minnesota Counties; City of St. Cloud, Minnesota; Minnesota Sheriff's Association PSAP Board; Metropolitan Emergency Services Board (League of Minnesota Cities et al.)