

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

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

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

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

¹ NJWA is a volunteer member organization comprised of more than 2,000 professionals from the wireless industry living and or working in the State of New Jersey. See www.newjerseywireless.org for more details.

² FCC Seeks Public Comment on Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, *Public Notice*, DA 18-116 (February 7, 2017), available at <https://ecfsapi.fcc.gov/file/0207521926093/DA-18-116A1.pdf>

³ NJWA has filed in this proceeding during the past 5 years, 2013, 2014, 2015, 2016, and 2017.

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

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

of the 911 Trust Fund to non 911 system capital and operations, since the inception of its statute. The Commission reports in its current report to Congress, that the State of New Jersey has been diverting funds since 2014⁵, however, through our research and conversations with public safety officials in our state over the past 5 years, we have determined that our state has been diverting these funds since 2006⁶, thereby putting our state in the same long term repeat offender category as the States of New York, Rhode Island and Illinois. Additionally, the State of New Jersey has not contributed any of these collected funds, since 2009, to any of the PSAPs that answer the vast majority of 911 calls, thus increasing the burden on the local taxpayers that support these PSAPs. As the Commission noted in its Ninth Annual Report to Congress, the State of New Jersey has once again, diverted 911 fees⁷. Diversion of 89% of the 911 Trust Fund’s collected fees were appropriated to offset other operating budget items. NJWA has consistently noted over the past 5 years, that these operating expenditures were inconsistent with the spirit and intent of the NET911 Improvement Act of 2008. We believe the spirit and intent of the Act was captured very clearly in the name given to it by Congress; “New and Emerging Technologies . . . ”⁸ Specifically, the Act⁹ and its context, is geared toward the implementation and operation of 911 networks and call processing¹⁰. Further, under the Act¹¹, the continued reference is to “Emergency Communications” not specifically including other emergency services or operating budgets. The FCC has reviewed similar claims by other states in which fees were used for purposes that initially appeared to conflict with the NET911 Act. Through its further investigation, the Commission had determined these states¹² had expended funds correctly, however, it did not find that same argument holds true for New Jersey.¹³

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

⁵ See the FCC’s Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, Table 17, page 47.

⁶ See Attachment A

⁷ In its Ninth Annual Report to Congress, the FCC reports and NJWA again notes, New Jersey has continued its trend of fee diversion. This year 89% of collected 911 fees have been diverted.

⁸ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 Act).

⁹ *id.* Page 1 “An Act to promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services, encourage the nation’s transition to a national IP-enabled emergency network, and improve 911 and E-911 access to those with disabilities”

¹⁰ *id.* Sec 6 (h) Development of Standards – This section outlines the promotion of standards for call delivery, call handling, overflow, PSAP certification and testing and procedures; all network related implementation and operational issues.

¹¹ *id.* Sec 6 (d) Delegation of Enforcement to State Commissions.

¹² See the FCC’s Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, page 45. Both California and Virginia were examples of states the Commission had researched to determine certain claimed expenditures could be considered as eligible under the spirit and intent of the NET911 ACT

¹³ *id.* page 46 “Accordingly, the Bureau determined that New Jersey diverted \$108,128,000 in fees for non-911 related uses”

NJWA has filed Reply Comments beginning with the FCC NET911 2013 proceeding¹⁴, which continue to highlight issues concerning the prioritization and the administration of expenditures from the NJ 911 Trust Fund, none of which have been remedied. Further, in our filing in last year's proceeding¹⁵ we agreed with Washington State in its recommendation to the Commission, when requesting clarification, in an effort to help states better manage collected fees under this federal law. NJWA had also suggested this same recommendation in its 2014 filing.¹⁶ Our state continues to be a prime example of needed clarification (or just plain ignorance of the federal law), therefore further emphasizing the need for clarification of specific and eligible expenditures under the NET911 ACT. NJWA recalls the comments of APCO in this regard in last year's proceeding.¹⁷ In its 2017 comments, APCO specifically suggests "the Commission should clearly define NG9-1-1 as part of the information collected on NG9-1-1 expenditures."¹⁸ Again, in this year's comments, APCO suggests "States should receive clear notice as to what constitutes 9-1-1 fee diversion in order to properly document and combat this practice."¹⁹ NJWA agrees with APCO in that clarification is needed as states apparently interpret eligibility requirements each year, some of which are legitimate like California and Virginia, and others, like New Jersey, New York and Rhode Island are consistently illegitimate.

NJWA agrees with the comments of Commissioners O'Rielly and Rosenworcel in their recent statements on this issue as pointed out by CTIA in its comments²⁰. The Commissioners point out the issues we have raised in this proceeding over the past five years, and again in these Reply Comments; namely fee diversion and no accountability toward the governments that collect and divert these 911 fees. Further, several states remain repeat offenders despite continued specific mention in the FCC's annual reports, again with no accountability. The underlying issue at stake is the public safety of all US constituents, regardless of the offending entity. The state of New Jersey is positioned between two major metropolitan areas, New York City and the City of Philadelphia. Further, the New York and Philadelphia metropolitan areas are considered two of the top high-threat, high-density areas in the US that the Department of Homeland Security defines under its Urban Area Security Initiative (UASI) program, which provides grants for these high

¹⁴ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fourth Annual FCC Report to Congress, dated March 15, 2013.

¹⁵ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Eight Annual FCC Report to Congress, dated March 13, 2017, page 2.

¹⁶ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual Report to Congress, dated March 25, 2014, page 3, "NJWA believes the FCC and Congress should clarify the definitions within or related to the NET911 Act of what expenditures are intended under the Act as originally contemplated and subsequently adopted. These clarifications will help New Jersey and other states modify and adopt legislation which is consistent with the spirit and intent of the NET911 Act as put forth by Congress."

¹⁷ See Comments of APCO, dated February 13, 2017.

¹⁸ *id.* page 2

¹⁹ See Comments of APCO, dated March 9, 2018, page 3.

²⁰ See Comments of CTIA, dated March 9, 2018, page 4

threat areas.²¹ We have nuclear power plants, joint defense logistics military bases, a long coastline, and major northeast corridor infrastructure (rail, highway, airports) that keeps our country moving. Our first responders need access to the latest technologies in an effort to keep our constituents safe in this densely populated and high threat environment. We agree with CTIA in its comments that “fee diversion ultimately undermines the utility of the 9-1-1 system to respond to emergencies”²², which unfortunately, will prove disastrous in our high-threat, high –density state.

NJWA therefore recommends again to the Commission, that clarification of eligible expenditures and definition of NG911 services would provide guidance to not only the state of New Jersey, but other repeat offending states²³. This clarification, definition and guidance will ultimately help the nationwide 911 community implement the technologies as appropriately envisioned by Congress under the “**New and Emerging Technologies** 911 Improvement Act of 2008” (emphasis added).

NJWA also notes that another year has gone by and the State has allocated virtually no funding to the planning or implementation of a statewide NG911 network²⁴. The State of New Jersey has indicated money spent was for the development of an RFP to implement a statewide ESINet, which we agree would be an excellent step in the right direction. However, this NJ report was for the calendar year ending on December 31, 2016, and as of the date of this Reply Comments filing over a year later, no such RFP has been released. The underlying issue at hand is that this ESINet project will progress no further as it is an unfunded project, with nearly 90% of fees being diverted to cover other budget gaps.

Accordingly, NJWA has continued its initiatives as part of our educational mission to inform responsible law makers of the issues over the years of this proceeding. We continue to meet with key members of the New Jersey Legislature, in both the State Senate and Assembly, who have jurisdiction and oversight on the 911 Trust Fund, and have provided testimony before committees in Trenton, including the Homeland Security Committee and the Telecommunications and Utilities Committee. Additionally, we have met with members of the US House of Representatives from various New Jersey Congressional districts, US senators and several FCC Commissioners. While we believe our efforts have certainly raised awareness of the fee diversion

²¹ See <https://www.dhs.gov/news/2017/09/01/dhs-announces-grant-allocations-fiscal-year-2017-preparedness-grants>

²² See Comments of CTIA, dated March 9, 2018, page 4

²³ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Seventh Annual Report to Congress, dated March 7, 2016, page 4, “The states of New York, Illinois, and Rhode Island have been a repeat offenders throughout the time period of the chart and the current trend of this chart shows an increase in the diversion of funds by states, not the inverse.”

²⁴ New Jersey has indicated in its submission to the FCC that \$93,129 of its \$122,150,000 of collected fees, has been appropriated to consulting services for NG911, to develop an RFP for a state wide ESINet. This amounts to 0.07% of fees collected.

issue in our state, unfortunately, these efforts to date have only resulted in several stalled New Jersey Assembly Bills which attempt to “right the ship” back on course. We applaud those lawmakers in our state that have tried to move this in the right direction.

We also applaud the FCC and Congress for this ongoing proceeding and report request and continuing to make this a priority. We also agree with CTIA that the FCC should consider new actions to address the misuse of 9-1-1 fees.²⁵ **NJWA still believes the implementation of the NET911 Act is best done by the states.** However, we have presented consensus opinions from the past few years, pertaining to the need for greater clarification and definition by the Commission. New Jersey’s statutes have been broadly interpreted in a manner NJWA and the FCC believe is inconsistent with the Act. This interpretation transcends all administrations in our state since the inception of the statute. Several states are known and documented repeat offenders, and we have demonstrated NJ is at the top of that list. NJWA believes the FCC and Congress should clarify the definitions within or related to the Act of what expenditures are intended under the Act as originally contemplated and subsequently adopted. CTIA further notes “Consumers rightfully expect that the 9-1-1 fees on their wireless bills are used to fund and support life-saving 9-1-1 service and have no expectation that their state would funnel those funds to other uses.”²⁶ Unfortunately, most wireless consumers in our state are unaware of the travesty which is happening within our state. We respectfully request Congress and the FCC provide the clarification and definition needed to correct this situation and promote public safety as intended under the Act, and help us get our state off the repeat offenders list.

Respectfully submitted,

NEW JERSEY WIRELESS ASSOCIATION

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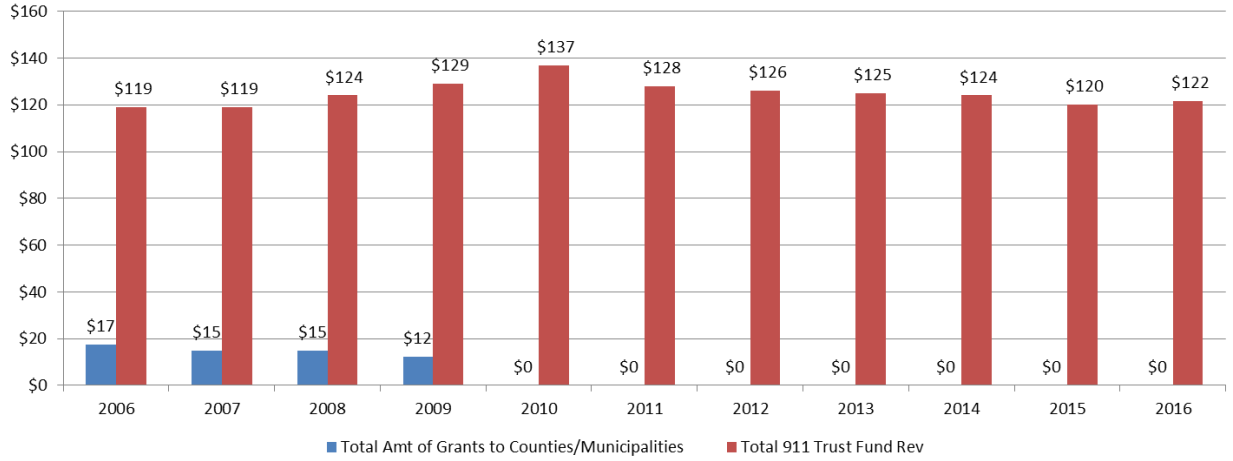
March 26, 2018

²⁵ See Comments of CTIA, dated March 9, 2018, page 5.

²⁶ *id.* page 3

ATTACHMENT A

E911 Trust Fund Rev is not shared with Local PSAP's (\$Millions)



Over \$1.25 Billion Collected between 2006-2016