

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

In the Matter of)
)
FCC Seeks Public Comment on Tenth) 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 six 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 Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, *Public Notice*, DA 18-1271 (December 19, 2018), *available at* <https://ecfsapi.fcc.gov/file/1219814825860/DA-18-1271A1.pdf>

³ NJWA has filed in this proceeding during the past 6 years; 2013, 2014, 2015, 2016, 2017, and 2018.

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, as per our filings in previous proceedings, we have determined that our state has been diverting these funds since 2006⁶. Additionally, the State of New Jersey has not contributed any of these collected funds, since 2009⁷, 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 Tenth Annual Report to Congress, the State of New Jersey has once again, diverted 911 fees⁸. The State has expended \$14 million to cover the costs of the statewide enhanced 9-1-1 infrastructure⁹ which divided by the \$121.9 million collected, compares to last year's 89% diversion. This \$14 million covers the maintenance of the 911 selective router system that was installed in our state nearly 20 years ago, is past its useful life and is now costing more to maintain from previous years, due to its obsolescence. Ironically, the monies collected for the very upgrade to a new, more efficient, NG911 technology, is being inefficiently applied to support obsolescent hardware, thereby throwing good money after bad. For calendar year 2018, the State estimates the collection of \$134 million in fees, an increase of approximately 10%, with \$26.8 million being applied toward the same statewide enhanced 9-1-1 infrastructure¹⁰. We believe this increase in the collection of fees by 10%, is in fact a budget guestimate for failed State Assembly bills, which would have collected fees from prepaid wireless devices. Since no Assembly bill ever passed, we believe the collected fees for 2018 will end at the same amount as previous years, approximately \$120 million. The State was expected to announce an RFP for a NG911 system during 2018, which we believe was part of the estimated \$26.8 million (or \$12.8 million increase in expenditures), however, this was not released, and no such system will benefit the residents of our state at this time. These estimates of fee increases and expenditure increases are based upon the best of our ability of following the activities of our State government, but we have no specific cites for this information, due to the non-transparent nature of this subject in the halls of Trenton. NJWA has highlighted the non-transparent nature of these revenues and expenditures in previous filings as Open Public Records Act (OPRA) requests were made to the State and denied¹¹. Consequently, our residents will wait yet another year, until the

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 Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, Table 17, page 47.

⁶ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Eighth Annual FCC Report to Congress, dated March 26, 2018, page 2.

⁷ *id.* Page 6, Attachment A

⁸ See the FCC's Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, page 3

⁹ *id.* Page 15

¹⁰ See *Annual Collection of Information Related to the Collection and Use of 911 and E911 Fees by States and Other Jurisdictions* submitted by the State of New Jersey to the FCC for this current proceeding, page 6. This report can be found at <https://www.fcc.gov/tenth-annual-fee-report-state-filings-0>

¹¹ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual FCC Report to Congress, dated March 24, 2014. Attachment pages 26-28.

State files in the FCC’s Eleventh Annual Proceeding, the only public proceeding where this information is disclosed, before we are able to confirm anything that happened in 2018.

NJWA has filed Reply Comments beginning with the FCC NET911 2013 proceeding¹², which continue to highlight issues concerning the prioritization and the administration of expenditures from the NJ 911 Trust Fund, none of which have been remedied, as outlined above. Further, in our filing in the 8th annual proceeding¹³ 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.¹⁴ APCO International has stated the same in its comments filed in this current proceeding.¹⁵ Our state continues to be the leading, but not the only, example of needed clarification, 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 previous proceedings.¹⁶ 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.”¹⁷ NJWA again agrees with APCO in that clarification is needed as states like New Jersey consistently divert funds, year after year.

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 threat areas.¹⁸ 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 APCO in its statement “public safety telecommunicators perform difficult, lifesaving

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

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

¹⁴ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual Report to Congress, dated March 24, 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.”

¹⁵ See Comments of APCO International, dated January 18, 2019, page 3.

¹⁶ See Comments of APCO, dated February 13, 2017.

¹⁷ *id.* page 2

¹⁸ See <https://www.dhs.gov/news/2017/09/01/dhs-announces-grant-allocations-fiscal-year-2017-preparedness-grants>

work and deserve to have the best tools available to do their jobs”¹⁹, but take it one step further and claim our residents deserve this for their safety and peace of mind, especially considering they are paying for it, to the tune of \$120,000,000.

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 states²⁰. 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 consistently continues its initiatives, as part of our educational mission, to inform responsible lawmakers 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. This past year we testified before State Assembly Committees, along side the New Jersey Association of Counties (NJAC), local lawmakers, and the National Emergency Number Association (NENA) to convince our lawmakers to stop its diversion of collected 911 fees and put them to use as intended, for the safety and well-being of our residents. Additionally, we have met with members of the US House of Representatives from various New Jersey Congressional districts, US senators and several FCC Commissioners. Our efforts have certainly raised awareness of the fee diversion issue in our state. We thank Commissioners O’Rielly and Rosenworcel in their unwavering support of our efforts in this regard. We also applaud Chairman Pai in his support of this issue. Unfortunately, these efforts to date have only resulted in several stalled New Jersey Assembly Bills which attempt to correct the issue in our state. 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. NJWA still believes the implementation of the NET911 Act is best done by the states. However, 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 stop throwing good money after bad.

¹⁹ See Comments of APCO, dated January 18, 2019, page 2

²⁰ 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.”

Respectfully submitted,

NEW JERSEY WIRELESS ASSOCIATION

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February 13, 2019