

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

In the Matter of)
)
FCC Seeks Public Comment on Sixth) 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 Last year, NJWA called to the Federal Communications Commission’s (“FCC” or “Commission”) attention the State of New Jersey’s System and Emergency Response Trust Fund Account (“911 Trust Fund”).³ NJWA noted that the State of New Jersey (“State”) had been historically diverting expenditures of the 911 Trust

¹ NJWA is a volunteer member organization comprised of over 1500 professionals from the wireless industry living and or working in the State of New Jersey.

² FCC Seeks Public Comment on Sixth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, *Public Notice*, 30 FCC Rcd 344, available at <http://apps.fcc.gov/ecfs/comment/view?id=60001010747>

³ 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 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).

Fund to non 911 system capital and operations. As the State noted in its response to the FCC's request for information⁴, 88% of the 911 Trust Fund's expenditures were appropriated to offset the operating budget of the NJ State Police and State Homeland Security Department. NJWA noted these operating expenditures were inconsistent with the spirit and intent of the NET911 Improvement Act of 2008⁵. Specifically, the Act⁶ and its context is geared toward the implementation and operation of 911 networks and call processing⁷. Further, under the Act⁸, the continued reference is to "Emergency Communications" not specifically including other emergency services or operating budgets.

As in the NJWA Reply Comments filed in the FCC NET911 2013 proceeding⁹, NJWA wants to continue to highlight several issues with the prioritization and the administration of expenditures from the NJ 911 Trust Fund, none of which have been remedied. First is the issue of the allocation of 911 Trust Fund expenditures between State Agencies/Departments and county/local municipalities. Both the State of New Jersey and county/local municipalities operate Public Safety Answering Points ("PSAPs"), with the vast majority¹⁰ of 911 calls being handled by county/local PSAPs. The PSAPs all operate under a plan from the State of New Jersey's Office of Emergency Telecommunications¹¹. During the years 2006-2009, a portion of the 911 Trust Fund provided grants to New Jersey counties/municipalities. After 2009, no funds were granted to New Jersey counties and municipalities.¹² While grants to locally run PSAPs have been eliminated, the State has allocated 911 Trust Funds to agencies and expense categories that NJWA believes are not consistent with the Act's¹³ spirit and intent. The State continues to deny the vast majority of PSAPs access to funding with which to expand and operate these 911/E911 systems that benefit the residents of the State, which is clearly at odds with the intent of the NET911 ACT.¹⁴

⁴ See Sixth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges", FCC, December 31, 2014, Thomas Wheeler, Chairman, Sec 15, Table 5.

⁵ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 ACT).

⁶ *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"

⁷ *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 with no references to policing or homeland security.

⁸ *id.* Sec 6 (d) Delegation of Enforcement to State Commissions.

⁹ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual FCC Report to Congress, dated March 24, 2014.

¹⁰ See "New Jersey 9-1-1 Consolidation Study; Profile of the New Jersey E9-1-1 System" prepared by Rutgers University, Edward J. Bloustein School of Planning and Public Policy, New Brunswick, NJ, 2005.

¹¹ See N.J.A.C. 17:24 – "9-1-1 Emergency Telecommunication System Readoption and Recodification with Amendments N.J.A.C. 13:81 as 17:24"

¹² See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual FCC Report to Congress, dated March 24, 2014.

¹³ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 ACT).

¹⁴ *id.* Sec 6, Duty to Provide 9-1-1 and Enhanced 9-1-1 Service.

NJWA also notes that another year has gone by and the State has only allocated minimal funding to the planning or implementation of a statewide NG911 network¹⁵. This is of great concern as this enhancement to current 911 services will provide the ability for wireless devices to text 911 calls as well as video messages and other currently available communications methods not served by today's PSAPs. NextGen911 also provides the speech and hearing impaired with improved access to the 911 systems. New Jersey currently processes all 911/E911 calls through its aged TDM switching architecture 911 Selective Router System. This system is approximately 15 years old and has no ability to support NG911 IP based calling. The State of New Jersey must implement a new IP based ESINet (Emergency Services IP Network)¹⁶, however, with 88% of its collected fees being allocated to ineligible expenses, this will never happen.

This past year, NJWA undertook an initiative as part of our educational mission to inform members of the State Legislature of these issues. We have met with key members of the New Jersey Legislature. We met with members of the Committees in both the State Senate and Assembly that have jurisdiction and oversight of the 911 Trust Fund. Recognizing the issues at hand, the Assembly introduced legislation¹⁷ to require Next Generation 911 be equipped at each PSAP, however, the bill pays no regard to the current improperly allocated 911 fees and goes further to increase those fees collected by 10% with no specific justification¹⁸. NJWA testified at Two Assembly Committee Hearings¹⁹, noting the proposed legislation does not adequately address the issues of existing funds collected and spent on ineligible expenses. Support at these hearings was also provided by NENA (the National Emergency Number Association)²⁰ at the state and national levels as well as Public Safety Directors of several local NJ counties, and the New Jersey Association of Counties (NJAC).

Another issue we highlighted in last year's filing was transparency to the decision process for the expenditures and an opportunity for the public or affected stakeholders to address the expenditure process.²¹ While, the Act²² specifies nothing within the Act shall prevent States from collecting 911 fees, "provided that the fee or charge is obligated or expended only in support of 9-1-1 and

¹⁵ See Sixth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges", FCC December 31, 2014, Thomas Wheeler, Chairman, Sec 26, Table 8, New Jersey spent \$62,467.60 for a consultant study which was 0.05% of fees collected.

¹⁶ See www.nena.org Detailed Functional and Interface Standards for the NENA i3 Solution for a description of the ESINet.

¹⁷ See <https://legiscan.com/NJ/text/A3461/2014>.

¹⁸ Which would equate to another \$12-\$13 million in annual collected fees.

¹⁹ The two hearings were before the State Assembly Telecommunications and Utilities Committee on September 18, 2014 and the Appropriations Committee on October 2, 2014. The hearing transcripts can be heard at http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ATU&SESSION=2014 and http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=AAP&SESSION=2014 for the September and October hearings, respectively.

²⁰ See www.nena.org

²¹ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fifth Annual FCC Report to Congress, dated March 24, 2014.

²² See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 ACT), Sec 6 (f) (1) – State Authority Over Fees

enhanced 9-1-1 services”, the State collects these fees under the pretense of the Act, however, its statute governing the appropriation of these collected fees can and has been broadly interpreted to include 911 policing and related emergency services which are beyond the definition of communications²³ as defined above. NJWA also notes that the State continues to ignore the Act’s²⁴ encouragement in seeking to ensure efficiency, transparency and accountability in the collection of a fee or charge for the support or implementation of 9-1-1 or enhanced 9-1-1 services. The State has not made changes since NJWA was denied requests through the Open Public Records Act (“OPRA”) as to information used for determining the fee allocation methodology and appropriation²⁵ in order to better understand how and why 911 fee monies are administered. Of great concern is the beginning of an increasing trend of states which are reporting the misuse of collected 911 fees for purposes other than 911 communications. This can be seen in the Commission’s Sixth Annual Report to Congress²⁶.

We support the FCC and Congress in this very important proceeding and report request and we support continuing to make this a priority. NJWA still believes the implementation of the NET911 Act is best done by the states. However, the lack of transparency, again inconsistent with the NET911 Act does not afford the general public within the State of New Jersey the ability to understand how and if their fees are being properly allocated as directed by the NET911 Act. 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.²⁷ Further, NJWA believes Congress should mandate that the process and organizations with jurisdiction of the expenditures of 911 Fees be subject to OPRA, to maintain the spirit of transparency within the Act.

²³ *id.*, Sec 6 (d) - Delegation of Enforcement to State Commissions.

²⁴ *id.*, Sec 6 (f) (2) - Fee Accountability Report

²⁵ *id.*, NJWA OPRA requests C76177, C76179 and C76180 in NJWA Reply Comments March 24, 2014.

²⁶ See Sixth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges”, FCC December 31, 2014, Thomas Wheeler, Chairman, Sec 23, Table 6

²⁷ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 ACT), Sec 6(e)(2) Enforcement – ***The Commission shall enforce this section as if this section was part of the Communications Act of 1934. For 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 regulations promulgated under the Act, respectively. [emphasis added]***

Respectfully submitted,

NEW JERSEY WIRELESS
ASSOCIATION

By: _____/s/_____

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