

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

In the Matter of)
)
FCC Seeks Public Comment on Seventh) 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 several years³, 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”).⁴ NJWA noted that the State of New Jersey (“State”) was diverting

¹ NJWA is a volunteer member organization comprised of more than 1900 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 Seventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, *Public Notice*, DA 16-22 (Jan. 8, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-16-22A1.pdf

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

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

expenditures of the 911 Trust Fund to non 911 system capital and operations. As the Commission noted in its 7th Annual Report to Congress, the State of New Jersey has once again, diverted 911 fees; 89% of the 911 Trust Fund's expenditures⁵ were appropriated to offset other operating budget items. NJWA has consistently noted these operating expenditures were inconsistent with the spirit and intent of the NET911 Improvement Act of 2008.⁶ Specifically, the Act⁷ and its context is geared toward the implementation and operation of 911 networks and call processing⁸. Further, under the Act⁹, the continued reference is to "Emergency Communications" not specifically including other emergency services or operating budgets.

As in the NJWA Reply Comments filed beginning with the FCC NET911 2013 proceeding¹⁰, 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 majority¹¹ 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 Telecommunications¹². 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. 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's spirit and intent.

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).

⁵ In its 6th Annual Report to Congress, the FCC had noted, and NJWA had detailed in its 2015 filing for this proceeding, New Jersey diverted 88% of its collected fees to non-eligible expenses under the NET911 Act of 2008. This year, New Jersey has increased the fee diversion to 89%.

⁶ See New and Emerging Technologies 911 Improvement Act of 2008, Pub L. No. 110-283, 122 Stat. 2620 (2008) (NET911 ACT).

⁷ *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"

⁸ *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.

⁹ *id.* Sec 6 (d) Delegation of Enforcement to State Commissions.

¹⁰ See New Jersey Wireless Association Reply Comments in NET911 proceeding, Fourth Annual FCC Report to Congress, dated March 15, 2013.

¹¹ 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.

¹² 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"

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 network¹³. 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.

Over the past year, NJWA has continued its initiatives as part of our educational mission to inform responsible law makers of the issues. We have met with key members of the New Jersey Legislature in both the State Senate and Assembly that have jurisdiction and oversight on the 911 Trust Fund. Additionally, we have met with members of the US House of Representatives from various New Jersey Congressional districts and several FCC Commissioners. Unfortunately, our educational efforts to date have resulted in the New Jersey Assembly introducing legislation¹⁴ to increase 911 fees by 10% (approximately \$12 million) in an effort to address NG911 funding, with no mechanism to address the ongoing diversion of existing collected fees (\$121 million). Fortunately, the New Jersey Senate has not passed the companion bill S-2462, so no increases have taken place as of this writing. Our problems in New Jersey are not unique. According to a letter filed in this current proceeding by the Washington State APCO & NENA chapter¹⁵, the State of Washington has taken similar steps to the State of New Jersey when it comes to 911 fee diversion. In the State of Washington, the Revised Code of Washington (RCW) is written such that the uses for which funds are diverted, are permitted. In New Jersey, while the statute as outlined herein does not specifically permit these fund diversions, the current and all past administrations in our state have interpreted this Statute, since its inception in 2004, in such a manner that these 911 fee diversions are now a de-facto way of addressing other budget gaps. Interestingly, TFOPA was not able to contact anyone from New Jersey, but came to similar conclusions based upon discussions with representatives from other states.¹⁶ Washington Chapter President Jones further points out that without a national standard of appropriate uses of these funds, states are free to determine their own uses of these funds. We do not believe the Act permits, nor do we believe Congress envisioned any such interpretations of how to use funds collected under the 911 premise. However, absent an apparent "Rule Book", it is blatantly obvious that states freely interpret the Act to their budgetary benefit. In our filing last year, we had requested Congress and the Commission clarify the definitions within or related to the NET911 Act of what expenditures are intended (and which are not) under the Act as originally

¹³ New Jersey has indicated in its submission to the FCC that \$9,141 of its \$121,000,000 of collected fees, has been appropriated to consulting services for NG911

¹⁴ New Jersey Assembly Bill A-3461 see http://www.njleg.state.nj.us/2014/Bills/A3500/3461_E1.PDF

¹⁵ See letter from Jackie Jones, President of the Washington State Chapter APCO – NENA filed in this current proceeding <http://apps.fcc.gov/ecfs/comment/view.action?id=60001460864>

¹⁶ Task Force on Optimal PSAP Architecture (TFOPA), An FCC Federal Advisory Committee, Report dated Friday, January 29, 2016, page 159, "Some of the listed practices have been utilized for several years and have considerable inertia".

contemplated and subsequently adopted. We believe the Commission's ability to enforce the provision of the Act is well within the spirit of the Act¹⁷ and therefore the Commission should act appropriately to protect the welfare of constituents in these repeat offender states.

Another issue we highlighted in past filings was transparency to the decision process for the expenditures and an opportunity for the public or affected stakeholders to address the expenditure process. While the Act¹⁸ 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 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 expenditures which are beyond the definition of communications¹⁹ as defined above. NJWA also notes that the State continues to ignore the Act's²⁰ 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 information as requested through the Open Public Record Act ("OPRA") as to information used for determining the fee allocation methodology and appropriation²¹ in order to better understand how and why 911 fee monies are administered. Further, NJWA believes Congress should mandate that the process and organizations with jurisdiction over the expenditures of 911 Fees be subject to OPRA. These groups within our state are collecting sums of taxpayer monies in excess of \$100 million on an annual basis. While we agree there are confidential aspects of the 911 system, that if released to the general public, would create public security concerns, information concerning the misappropriation of public funds in excess of \$100 million annually, can certainly be handled in such a way as to not divulge sensitive information yet demonstrate accountability through transparency. We believe Congress had the same intentions in its writing of the NET911 Act and the transparency references therein.

Further, Table 16 of the FCC's 7th Annual Report to Congress²² outlines the states which have been diverting funds through the period 2009 through 2015. Several concerns about the accuracy of this information immediately come to light. First, as per our filings over the past 4

¹⁷ 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]***

¹⁸ 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

¹⁹ *id.*, Sec 6 (d) - Delegation of Enforcement to State Commissions.

²⁰ *id.*, Sec 6 (f) (2) - Fee Accountability Report

²¹ See NJWA's 2014 Filing, dated March 24, 2014, in this proceeding with attached NJWA OPRA request C76177, C76179, and C76180 responses from the State of New Jersey

²² See Seventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges", FCC December 31, 2015, Thomas Wheeler, Chairman, Page 65, Table 16

years, NJWA has documented that the State of New Jersey has consistently diverted these funds, however it only shows up on this chart for the past two years. Second, as pointed out by Washington Chapter President Jones, Washington has diverted funds repeatedly, however, Washington only shows up once on this chart. 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. According to the FCC's own task force TFOPA²³, "Currently, the accuracy and quality of data submitted to the FCC for incorporation into the agency's annual report to Congress, required by the Net 9-1-1 Act, is deficient." Further, TFOPA has outlined in its report that fee diversion trending has gotten worse.²⁴ As noted above, we agree with Washington Chapter President Jones that a "national standard" as to what can be considered eligible expenditures (and ineligible) under the NET911 ACT of 2008, needs to be established. As per our filing last year, we believe this falls under the jurisdiction of Congress and the FCC.

We 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.** We have presented new found information as well as evidence from other states and the FCC's own TFOPA that the current process is in desperate need of repair. New Jersey's statutes have been broadly interpreted in a manner which NJWA believes is inconsistent with the Act. This interpretation transcends all administrations in our state since the inception of the statute. Washington State has laws which permit expenditures that are in conflict with the Act. Several states are known and documented repeat offenders. Based upon the inaccuracy of data collection cited by TFOPA, it is our belief that there are other states with similar issues, however, that information is not included in this public forum for the reasons outlined above. Also the lack of transparency, again inconsistent with the Act does not afford the general public within the State of New Jersey, or other states, the ability to understand how and if their fees are being properly allocated as directed by the Act. 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. Further, NJWA believes Congress should mandate that the process and organizations with jurisdiction over the expenditures of 911 Fees be subject to OPRA. While the State of New Jersey appears to be delinquent in the adoption of NG911 for its residents at a statewide level, many of the PSAPs in the State are upgrading their dispatch facilities to be "NG911 ready", as these PSAPs realize they answer to and are responsible for the public safety of their constituents. A significant underlying

²³ See Task Force on Optimal PSAP Architecture (TFOPA), An FCC Federal Advisory Committee, Report dated Friday, January 29, 2016, page 26

²⁴ *id.*, page 154, "In short, the nation's system of 9-1-1 fee collection and expenditures is at risk. In many parts of the country, the trend lines are not encouraging. In fact, they have gotten worse over the past few budget cycles in many jurisdictions".

issue here is that these upgrades are being paid for through normal taxpayer revenues²⁵, not the 911 fees which are specifically collected for this purpose, effectively “double dipping” our residents. Based upon the information noted herein and filings in other states, it appears New Jerseyans are not the only citizens being double dipped. Congress and the FCC have the authority and responsibility to correct this situation and promote public safety, part and parcel to their respective charters.

Respectfully submitted,

NEW JERSEY WIRELESS
ASSOCIATION

By: _____ /s/ _____

Michael Lee Foster

President, Board of Trustees

Rob Ivanoff

Vice President, Board of Trustees

Dominic C. Villecco

Member, Board of Trustees,

Chair, Public Safety Committee

New Jersey Wireless Association

1480 Route 9 North, Suite 303

Woodbridge, New Jersey 07095

mlfoster@newjerseywireless.org

rivanoff@newjerseywireless.org

dvillecco@newjerseywireless.org

March 7, 2016

²⁵ See NJWA’s 2014 Filing, dated March 24, 2014, in this proceeding with attached letters of support from several county public safety officials.