

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

New and Emerging Technology 911 Improvement Act of 2008	) ) ) ) )	PS Docket No. 09-14
--	-----------------------	---------------------

**COLORADO PUBLIC UTILITIES COMMISSION RESPONSE TO PUBLIC NOTICE REQUESTING  
PUBLIC COMMENT TO THE TENTH ANNUAL REPORT TO CONGRESS ON STATE COLLECTION  
AND DISTRIBUTION OF 911 AND ENHANCED 911 FEES AND CHARGES**

**Introduction**

On December 19, 2018, the Federal Communications Commission (FCC) issued Public Notice DA 18-1271, “FCC SEEKS PUBLIC COMMENT ON TENTH ANNUAL REPORT TO CONGRESS ON STATE COLLECTION AND DISTRIBUTION OF 911 AND ENHANCED 911 FEES AND CHARGES,” and outlined several specific areas which the Commission wished to solicit comment.

The Colorado Public Utilities Commission (COPUC) has statutory oversight over Basic Emergency Service (the core 911 system service) in the state of Colorado<sup>1</sup> and also approves local 911 surcharges in excess of 70 cents per access line per month<sup>2</sup>. COPUC Staff completes the annual NET 911 Act reports due to the FCC on behalf of the State of Colorado, and interacts directly with local 911 governing bodies and Public Safety Answering Points (PSAPS) through its 9-1-1 Advisory Task Force.

**Comments**

COPUC has no comment regarding several of the items the FCC specifically seeks input. However, we do offer the following comments that relate to Colorado.

*“we seek comment on potential ways to dissuade states and other jurisdictions from continuing or instituting 911 fee diversion.”*

COPUC has no knowledge of any 911 fee diversion in Colorado. All 911 funding is local, and we are unaware of any local 911 fee diversion. However, we believe that it is important to

---

<sup>1</sup> § 40-15-201(2), C.R.S.

<sup>2</sup> § 29-11-102(2)(b), C.R.S.

remember that there is a division of responsibility for oversight of 911 services at the federal, state and local government levels, with overlap in some areas. For example, both the FCC and the states both have roles in overseeing network reliability, outage reporting, and outage mitigation.

Regarding the actual handling of 911 calls by public safety telecommunicators, and how state-authorized 911 surcharge funds are spent, this is an area that is solely the responsibility of state and local governments.

Although some states have chosen to use 911 surcharge funds in a manner that, from the FCC's perspective and role, is not consistent with their intended uses, the COPUC does not believe that this is a problem for the FCC to solve. How state governments or local governments expend 911 surcharge funds is a matter that they must resolve.

To the extent that federal funds are to be made available for use at the state and local level, it is appropriate to only make those funds available to state and local governments that spend their funds in a manner that is consistent with the statutorily allowed use of those funds. The current round of funding anticipated from the National 911 Program, jointly operated by the National Highway Traffic Safety Administration (NHTSA) and the National Telecommunications Information Administration (NTIA), for example, is being made available only to states that meet eligibility requirements. One of those requirements is that the applying state or territory has refrained from diverting 911 surcharge funds in recent the previous 180 days<sup>3</sup>.

Despite this disincentive to divert funds, some states and territories may still divert funds to other purposes. It is a feature of federalism that not all state or territories may choose to manage state and local funds in the same way, and it is not necessarily a matter for the FCC to correct. We suggest that the FCC's best role in such situations may be to continue to point out diversions as they occur so that the citizens and decision-makers of the diverting states and territories may be aware of how their 911 funds are spent.

The FCC may also consider asking the National Emergency Number Association to publish model state 911 fee statutory language, using best practices from existing state statutes. This would perhaps provide an avenue toward standardizing how 911 surcharge funds are used nationally without causing the FCC to engage in activities that may be beyond federal jurisdiction.

*"We seek comment on whether states and other jurisdictions have altered practices to avoid losing eligibility to participate in the grant program."*

COPUC can only comment on its own practices. While all 911 funding in Colorado is locally controlled, the COPUC does have the responsibility of approving any surcharge in excess of 70 cents. As a result of a rulemaking proceeding in 2017, COPUC adopted new rules regarding the surcharge approval process that require 911 governing bodies applying for surcharge increases to attest that "the applicant has not used emergency telephone charge funds for purposes not authorized by § 29-11-104(2), C.R.S. within the last 18 months, that the planned use of all future revenues raised from the emergency telephone charge are authorized by §

---

<sup>3</sup> 911 Grant Program, 83 Fed. Reg. 38051 (August 3, 2018) (to be codified at 47 CFR Part 400).

29-11-104(2), C.R.S. and that the applicant agrees to comply with § 29-11-104(5), C.R.S.”<sup>4</sup>

*“We also seek comment on other mechanisms, including Commission action, which can create incentives for state and other jurisdictions to avoid diverting 911 fees to non-911 purposes.”*

COPUC believes that the current incentives and disincentives are the appropriate role for the FCC and the federal government to take in this matter. The incentives include making non-diversion of funds an eligibility requirement for federal grant funding, and disincentives include the identification of diverting states that takes place by being listed in the FCC’s report to Congress.

*“We seek comment on whether NG911 expenditures identified over the past three years are representative of overall NG911 expenditures, indicative of a trend in expected future expenditures, and whether the identified expenditures are adequate for implementation of NG911 services and infrastructure nationwide.”*

In Colorado’s response to the annual report’s question “In the annual period ending December 31, 2017, has your state or jurisdiction expended funds on Next Generation 911 programs?” we stated that “No funds have been spent by the State in preparation for NG911. It is unknown how much may have been spent by local 911 governing bodies for NG911 programs this year.”<sup>5</sup> This nuance is not reflected in the FCC report to Congress, and we believe it may lead to an inaccurate conclusion that no funds have been expended for NG911 preparation. We know that several local governments have expended funds in preparation for NG911, including upgrading CPE equipment and in some cases installing IP-networks connecting local groups of PSAPs in preparation for IP-based 911 services becoming available in the State, but these are not captured in our report because these are local expenses that local governments are not required to report to the State.

In 2017, Colorado’s incumbent 911 system service provider, CenturyLink, filed a tariff for providing Emergency Services IP-Network (ESInet) services to Colorado’s Public Safety Answering Points. After lengthy negotiations between CenturyLink and numerous stakeholders, including COPUC trial staff, a settlement was filed and ultimately approved by the Commission in December 2018<sup>6</sup>. Based on this settlement, we expect CenturyLink to begin migrating PSAPs to the ESInet by the middle of 2019, and all PSAPs to be migrated 18 months following. Despite this immense undertaking, the state will not be making any expenditures, since all funding of 911 is local in Colorado. Local PSAPs and 911 governing bodies will be paying all expenses related to the migration, since they are the only ones that receive 911

---

<sup>4</sup> 4 *Colorado Code of Regulations* 723-2-2147(b). The Colorado Public Utilities Commission Decision adopting this rule is C17-1066. § 29-11-104(2), C.R.S. outlines the allowable uses of 911 surcharges by 911 governing bodies. § 29-11-104(5), C.R.S. requires local 911 governing bodies to undergo audits and post such audits on their website, if they have a website, unless otherwise exempted by state law.

<sup>5</sup> Section I, question 2a.

<sup>6</sup> See Colorado Public Utilities Commission Decision R18-1063.

surcharge funding<sup>7</sup>, although we are hoping to utilize funds from the upcoming 911 Grant Program being jointly administered by NHTSA and NTIA to off-set the costs. COPUC has designated \$1 million in funds to serve as the matching requirement for that grant, but the source of those funds is an industry-funded Performance Assurance Program fund, so again, no state funds are allocated for the purpose of NG911 migration.

Relying solely on the FCC's report to Congress, it would appear that Colorado is making no preparations for NG911 simply because funds are not expended by the *State* for that purpose. However, if the plan set forth in the tariff and settlement mentioned above is completed, every primary PSAP in Colorado will be receiving 911 calls in IP-format via an ESInet by the end of 2020, which is a significant step toward full NG911 implementation.

COPUC requests that in future editions of the annual report that the FCC include the statements provided by the states that put their report responses in context so that Congress has a complete story of what is happening regarding NG911 deployment and surcharge fund usage in the states.

*“As in previous years, the Report finds that almost every reporting jurisdiction collects 911 fees from in-state subscribers, but that many states continue to lack authority to audit service providers to verify that the collected fees accurately reflect the number of in-state subscribers served by the provider. We seek comment on the impact that this lack of auditing authority has on these states and local entities and any additional barriers to their effective oversight of fee collection.”*

In Colorado, state statute gives local 911 governing bodies the authority to “at its own expense, require an annual audit of the service supplier’s books and records concerning the collection and remittance of the charge authorized by this article.”<sup>8</sup> As such, while the state does not have auditing authority over the remittance of 911 surcharge funds, local governments do.

Because most of Colorado’s 911 governing bodies are very small, the requirement that such audits be conducted at the 911 governing body’s expense means that, in practice, very few audits have ever been conducted. So, while auditing authority does exist in the state, many local 911 governing bodies have expressed frustration that they themselves cannot afford to conduct the audits, particularly not without a guaranteed return on such an investment.

---

<sup>7</sup> Colorado is listed in the Tenth Annual Report as having a “hybrid” funding mechanism since some 911 surcharge funds are remitted to local government while 911 surcharges on prepaid minutes are remitted to the Colorado Department of Revenue (DOR). However, DOR only retains enough of those funds to off-set their administrative costs. The rest of the prepaid funds are distributed back to the local 911 governing bodies. Therefore, there is no state 911 fund in Colorado and all expenses for 911 service are paid by local entities, with the exception of a handful of primary PSAPs that are operated by the Colorado State Patrol. (See § 29-11-102.5, C.R.S.)

<sup>8</sup> § 29-11-103(3)(b), C.R.S.

The FCC may assist the states regarding this issue by clarifying that the FCC's oversight of any provider that remits 911 surcharges to states or local governments does not pre-empt the states from undertaking audits of such providers regarding their 911 surcharge remittance.

### **Additional Suggestions**

Although not in response to specific requests for comment by the FCC, COPUC offers the following comments regarding the FCC's annual report to Congress on 911 Fees.

#### *Multi-Line Telephone Systems*

With the enactment of Kari's Law<sup>9</sup>, there are now requirements regarding the 911 capabilities of multi-line telephone systems that have, in some cases, rendered state statutes obsolete. We believe it would be beneficial to know what each state is doing regarding the implementation of 911 requirements for MLTS and how state statutes on this topic complement or differ from federal statute and the FCC's own rules regarding the topic. We suggest that future versions of this report include information on this topic.

#### *Alternative Funding*

There have been a number of attempts in recent years by the FCC through its Task Force on Optimal PSAP Architecture, the National Association of State 911 Administrators, and others to investigate the possibility of funding sources for 911 that are not tied to subscriber-based billing or prepaid point of sale surcharges.

Identifying non-subscriber-based funding sources for 911 is desirable for two reasons. First, states that have large tourist or temporary populations may see a burden on their states 911 systems from individuals with telephone billing addresses in other states, therefore losing the ability to recover costs from those individuals through the form of billed 911 surcharge fees. Second, as the Internet of Things continues to develop it is more and more likely that in the future there may be a desire to allow Internet-connected devices to access 911 networks, creating a challenge to the monthly surcharge framework that has traditionally been used to fund 911 services.

We believe it would be helpful for Congress and the states to have an understanding of what has been done regarding the implementation of other funding sources for 911 in the various states. We suggest that future versions of this report include information on this topic.

### **Conclusion**

---

<sup>9</sup> H.R.582 - Kari's Law Act of 2017

COPUC thanks the FCC for the opportunity to comment on its “Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges,” and we support the FCC’s efforts to better meet the requirements of the NET 911 Act of 2008 by seeking comments on these reports.

A summary of our recommendations include:

- Continue to respect the division of jurisdiction and authority between the states and federal government regarding the topic of fee diversion, while also continuing to identify states that do divert fees.
- Include in future reports to Congress the commentary that states provide in their reports to the FCC that places the reported information in appropriate context.
- Support and encourage states in undertaking auditing authority of providers regarding remittance of 911 surcharges.
- Consider adding the topics of state MLTS legislation and non-surcharge-based 911 funding to future editions of the FCC’s annual report to Congress.

Respectfully submitted,

/s/ Jeffrey P. Ackermann

Chairman

Colorado Public Utilities Commission

1560 Broadway Ste 250

Denver, CO 80202

/s/ Frances A. Koncilja

Commissioner

Colorado Public Utilities Commission

1560 Broadway Ste 250

Denver, CO 80202

/s/ Wendy M. Moser

Commissioner

Colorado Public Utilities Commission

1560 Broadway Ste 250

Denver, CO 80202