

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Tenth Annual Report to Congress on State	)	PS Docket No. 09-14
Collection and Distribution of 911 and	)	
Enhanced 911 Fees and Charges	)	
	)	
Commission Seeks Public Comment On	)	
Tenth Annual Report To Congress On State	)	
Collection And Distribution Of 911 And	)	
Enhanced 911 Fees And Charges	)	

**COMMENTS OF CTIA**

**I. INTRODUCTION.**

CTIA<sup>1</sup> submits these comments in response to the Federal Communications Commission's (Commission) Public Notice seeking comment on the Tenth Annual Report to Congress on State Collection and Distribution of 9-1-1 and Enhanced 9-1-1 Fees and Charges (*Tenth Report*).<sup>2</sup> A robust and reliable 9-1-1 service is the centerpiece of our nation's emergency communications system and is responsible for enabling public safety professionals to save lives every day. 9-1-1 is a partnership among federal, state and local governments, public safety

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<sup>1</sup> CTIA® ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *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, PS Docket No. 09-14, DA 18-1271 (rel. Dec. 19, 2018); *Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* (Dec. 17, 2019), [www.fcc.gov/general/911-fee-reports](http://www.fcc.gov/general/911-fee-reports).

professionals, and industry. However, state and local governments undermine public trust and public safety when they divert portions of the \$2.6 billion dollars in 9-1-1 fees collected annually from wireless consumers from their intended purpose of improving 9-1-1 services.

For the first time, the Commission's *Tenth Report* includes data from every state and territory, but the *Tenth Report* demonstrates that the amount of 9-1-1 fee diversions more than doubled from the *Ninth Report*. In fact, the nearly \$285 million in 9-1-1 fees diverted by seven jurisdictions amounts to 30 percent *more* than the \$198.9 million altogether invested *nationally* in NG911 programs in 2017.<sup>3</sup> Even further, combining totals from the last five reports, the Commission has found that states diverted over a billion dollars in 9-1-1 fees – about \$100 million more than was invested *nationally* in NG911 programs during the same period.

For these reasons, CTIA commends the Commission for shining a light on the unacceptable practice of state 9-1-1 fee diversion – and applauds Commissioners O'Rielly and Rosenworcel in particular for their continued calls for accountability.<sup>4</sup> CTIA urges further action to discourage any further diversion of 9-1-1 fees and ensure our nation's 9-1-1 system can continue to support life-saving services for millions of wireless consumers. For example, CTIA supports the *Tenth Report's* statement that going forward, where states are reporting use of 9-1-1 fees to support public safety expenditures, states must now “provide documentation sufficient to demonstrate that the expenditures (1) support Public Safety Answering Point (PSAP) functions

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<sup>3</sup> *Tenth Report* at Table 16, ¶ 45.

<sup>4</sup> Michael O'Rielly and Jessica Rosenworcel, *States are stealing funds from 9-1-1 emergency services – now they'll be punished*, THE HILL (Feb. 9, 2018), <http://thehill.com/opinion/technology/373043-states-are-stealing-funds-from-9-1-1-emergency-services-now-theyll-be> (*O'Rielly/Rosenworcel Op-Ed*); Letter from Michael O'Rielly and Jessica Rosenworcel to Republican and Democratic Governors Associations re 911 Fee Diversion, July 31, 2018, <https://docs.fcc.gov/public/attachments/DOC-353114A1.pdf> (*O'Rielly/Rosenworcel Letter*).

or operations, (2) have a reasonable nexus to PSAPs' ability to receive 9-1-1 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs[.]”<sup>5</sup> CTIA also agrees with the *Tenth Report*'s finding that without such documentation, the expenditure should be presumed to be a diversion of 9-1-1 fees.<sup>6</sup> As discussed in greater detail below, CTIA also supports the adoption of guidelines as to what expenditures qualify as “in support of” 9-1-1 and what expenditures do not.

## **II. DIVERSION OF 9-1-1 FUNDS IS A VIOLATION OF THE PUBLIC'S TRUST AND PUTS PUBLIC SAFETY AT RISK.**

The Tax Foundation estimates that over \$2.6 billion in 9-1-1 fees were collected from wireless consumers to support state and local 9-1-1 services in 2017, and, for 2018, that amount is estimated to be \$2.8 billion.<sup>7</sup> Unfortunately, the *Tenth Report* again finds that hundreds of millions of dollars in 9-1-1 funds were diverted by states and localities for non-9-1-1 purposes. The billions of dollars in 9-1-1 fees collected by state and local governments from millions of wireless consumers each year must be solely dedicated to the maintenance and advancement of 9-1-1, plain and simple. While CTIA sympathizes with the fact that a number of states are dealing with budget shortfalls, diverting hundreds of millions of dollars that wireless consumers pay each year to support 9-1-1 is a violation of the public's trust and puts lives at significant risk by exacerbating the challenges for resource-strained local PSAPs.

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<sup>5</sup> *Tenth Report* at ¶ 40.

<sup>6</sup> *Id.*

<sup>7</sup> Scott Mackey, Joseph Bishop-Henchman, and Scott Drenkard, Tax Foundation, Fiscal Fact, Wireless Taxes and Fees in 2017, Fiscal Note No. 567 (Nov. 2017), <https://files.taxfoundation.org/20171108112327/Tax-Foundation-FF567.pdf>; Scott Mackey and Joseph Bishop-Henchman, Tax Foundation, Fiscal Fact, Wireless Taxes and Fees Climb Again in 2018, Fiscal Note No. 626 (Dec. 2018), <https://files.taxfoundation.org/20181210141036/Wireless-Taxes-and-Fees-Climb-Again-in-2018-FF-626-2.pdf>.

As Chairman Pai noted last year, “siphon[ing] 911 funding for unrelated purposes . . . is outrageous and it undermines public safety.”<sup>8</sup> Further, Commissioners O’Rielly and Rosenworcel, in a letter to leaders of the Republican and Democratic Governors Associations last year, stated that the “practice [of 9-1-1 fee diversion] is deceptive” and remains a “persistent problem” that is harmful to public safety.<sup>9</sup> Even more, as Chairman Pai and Commissioner O’Rielly later explained in a letter to the Governor of Illinois, “underfunding [PSAPs] can lead to significant public safety problems, including longer wait times, fewer or overworked personnel, and outdated or inferior equipment to handle the call loads.”<sup>10</sup> Indeed, diversion of 9-1-1 funds drains resources away from efforts to modernize PSAPs, such as by implementing Text-to-911 and NG911 technologies. By compromising 9-1-1 service and investment in NG911 technologies, fee diversion ultimately undermines the ability of the 9-1-1 system to enable emergency response.

### **III. MORE 9-1-1 FUNDS WERE DIVERTED THAN SPENT ON NG911 IN 2017.**

CTIA commends the Commission for working diligently to ensure that every state and territory contributed data to the *Tenth Report*, and it hopes that full participation becomes the norm in future reports. The *Tenth Report*, however, further demonstrates that additional action remains necessary to ensure 9-1-1 funds are appropriately spent.

The *Tenth Report* shows that the amount of 9-1-1 funds diverted more than doubled from the *Ninth Report* – from \$129 million in 2016 to \$284.9 million in 2017. The *Tenth Report*

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<sup>8</sup> News Release, *FCC Issues Annual Report on State 911 Fees* (Dec. 19, 2018) (quoting Chairman Ajit Pai), <https://docs.fcc.gov/public/attachments/DOC-355655A1.pdf>.

<sup>9</sup> See *O’Rielly/Rosenworcel Letter*.

<sup>10</sup> Letter from Ajit Pai and Michael O’Rielly to Governor of Illinois re 911 Fee Diversion, (Aug. 21, 2018), <https://docs.fcc.gov/public/attachments/DOC-353763A1.pdf>.

identifies six states and one territory that engaged in some level of 9-1-1 fee diversion in 2017: Montana, Nevada, New Jersey, New York, Rhode Island, West Virginia, and the U.S. Virgin Islands.<sup>11</sup> In fact, the nearly \$285 million in 9-1-1 fees diverted by these seven jurisdictions amounts to 30 percent *more* than the \$198.9 million altogether invested *nationally* in NG911 programs in 2017.<sup>12</sup> Meanwhile, over the last five years, states have diverted over a billion dollars (\$1.04B) in 9-1-1 fees – about \$100 million more than invested *nationally* in NG911 programs during the same period.<sup>13</sup>

The Commission has faithfully fulfilled its obligation under the NET 911 Act to annually examine the collection and expenditure of funds “in support of 9-1-1.”<sup>14</sup> The Commission has correctly found that only funds used on expenses that involve the support of PSAP functions or that otherwise “ensure the reliable reception and processing of emergency calls and their dispatch to first responders” are made “in support of 9-1-1.”<sup>15</sup> Most states indicate that they use 9-1-1 fees to support these functions. However, some states claim they are compliant, even while using 9-1-1 fees for expenditures that cannot properly be deemed in support of 9-1-1

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<sup>11</sup> *Tenth Report* at ¶ 2. In 2016, the *Ninth Report* found that six states engaged in some level of 9-1-1 fee diversion: Illinois, New Jersey, New Mexico, New York, and West Virginia. See *Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at ¶ 2 (Dec. 2017) (*Ninth Report*).

<sup>12</sup> *Tenth Report* at Table 16, ¶ 45.

<sup>13</sup> See *id.*; *Ninth Report* at ¶ 40; *Eighth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at Table 15, ¶ 40 (Dec. 2016); *Seventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at Table 15, ¶ 42 (Dec. 2015); *Sixth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at Table 5, ¶ 26 (Dec. 2014).

<sup>14</sup> See New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008) (NET 911 Act).

<sup>15</sup> *Tenth Report* at ¶ 47.

activities under the NET 911 Act.<sup>16</sup> Indeed, T-Mobile has previously observed that fees diverted to non-9-1-1 activities may actually be higher than the Commission reports indicate.<sup>17</sup>

For example, the *Tenth Report* explains that the Nevada state legislature increased their E911 fee to help pay for body cameras for officers. While the safety and security of police officers and citizens is an important public policy goal, the Public Safety and Homeland Security Bureau rightly concluded that the “expenditure of 911/E911 fees on police body cameras and vehicular recording devices constitutes diversion of 911/E911 fees.”<sup>18</sup>

Separately, because the Commission collects 9-1-1 fee information at the state level, the Commission has “limited visibility” into 9-1-1 fees expenditures at the local level and is not able to assess the level of local 9-1-1 fee diversion.<sup>19</sup> The *Tenth Report* notes that twenty-two states

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<sup>16</sup> Comments of CTIA, PS Docket No. 09-14 (filed March 9, 2018) (CTIA Comments); Reply Comment of T-Mobile, PS Docket No. 09-14 (filed March 9, 2016) (T-Mobile Reply Comments). The *Tenth Report* observes that some states state statutes expressly authorize the diversion of collected 9-1-1 fees; nevertheless, the Commission reviews the reported expenditures to determine whether states diverted funds within the meaning of the NET 911 Act. *Tenth Report* at ¶ 7.

<sup>17</sup> T-Mobile Reply Comments at 2.

<sup>18</sup> *Tenth Report* at ¶ 34. Two bills are pending in the Nevada Legislature that would expand the authorized uses of 9-1-1 funds in Nevada. See S.B. 25, 80<sup>th</sup> Leg. (introduced Nov. 16, 2018) (permitting 9-1-1 fees to be used to pay costs of personnel and training associated with the operation and maintenance of recording devices), <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/5908/Text>; S.B. 12, 80<sup>th</sup> Leg. (introduced Nov. 14, 2018) (permitting 9-1-1 fees to be used to pay costs associated with auditing telecommunications providers), <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/5868/Text>.

<sup>19</sup> *Id.* at ¶ 27, n.45 (noting that 9-1-1 fees are collected and authorized at exclusively at the local level in Arkansas, Mississippi, and Missouri). Some states such as Illinois, New York, and Texas have bifurcated 9-1-1 fee rates, meaning that certain cities or localities pay a different rate than the remainder of the state. For example, the *Report* indicates that the Illinois legislature authorized the City of Chicago to increase its 9-1-1 fee from \$3.90 to \$5.00, compared to \$1.50 for the remainder of the state. *Report* at n.35. Although Chicago officials plan to use the most recent rate increase to meet state-mandated NG911 requirements, after a similar fee increase in 2014, the city used the money to shore up the pension fund for city laborers. See, e.g., *Emergency Telephone System Surcharge – Wireless* (2906), City of Chicago, [https://www.chicago.gov/city/en/depts/fin/supp\\_info/revenue/tax\\_list/emergency\\_telephonesystemsurcharges-wireless.html](https://www.chicago.gov/city/en/depts/fin/supp_info/revenue/tax_list/emergency_telephonesystemsurcharges-wireless.html) (last visited Jan. 16, 2019); Emanuel’s latest possible tax hike: 911 phone fees, CHICAGO

collect at least some 9-1-1 fees at a local level.<sup>20</sup> Thus, it is possible that localities divert additional 9-1-1 funds that would further increase the total funds diverted beyond the \$286 million reported in the *Tenth Report*.

#### **IV. GREATER CLARITY ON APPROPRIATE EXPENDITURES CAN HELP REDUCE THE MISUSE OF 9-1-1 FUNDS.**

CTIA recognizes the Commission, and Commissioners O’Rielly and Rosenworcel in particular, for continuing to shine a light on the unacceptable practice of 9-1-1 fee diversion – but as they acknowledge, even more aggressive measures are needed.<sup>21</sup> As Commissioner O’Rielly recently noted, “naming-and-shaming hasn’t eradicated the problem of fee diversion.”<sup>22</sup> In 2012, as part of the Middle Class Tax Relief and Job Creation Act, Congress directed the National Telecommunications and Information Administration to refrain from issuing grants from the 9-1-1 upgrade grant program to any jurisdictions that have been diverting 9-1-1 fees.<sup>23</sup> Although this approach has had some impact on fee diversion, the problem remains persistent.<sup>24</sup>

CTIA supports further action to reduce the continued diversion of 9-1-1 funds. For example, CTIA supports the *Tenth Report’s* statement that going forward, where states are reporting use of 9-1-1 fees to support public safety expenditures, states must now “provide

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TRIBUNE (June 1, 2017), <https://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-phone-fee-increase-met-0602-20170601-story.html>.

<sup>20</sup> *Tenth Report* at ¶ 2.

<sup>21</sup> See, e.g., *O’Rielly/Rosenworcel Op-Ed*; *O’Rielly/Rosenworcel Letter*.

<sup>22</sup> Michael O’Rielly, *Status Update: Fixing 9-1-1 Fee Diversion*, FCC Blog (Nov. 29, 2018), <https://www.fcc.gov/news-events/blog/2018/11/29/status-update-fixing-9-1-1-fee-diversion>.

<sup>23</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, §158(c)(3).

<sup>24</sup> For example, the Governor of West Virginia wrote to Commissioner Michael O’Rielly noting that when he became aware that his state was “ineligible for certain federal funds due to being designated a ‘diverter’ state,” he “immediately directed [] staff to remedy any problems.” Letter from Governor Jim Justice to Commissioner Michael O’Reilly, Nov. 28, 2018, <https://docs.fcc.gov/public/attachments/DOC-355305A2.pdf>.

documentation sufficient to demonstrate that the expenditures (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 9-1-1 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs[.]”<sup>25</sup> CTIA also agrees with the *Tenth Report's* finding that without such documentation, the expenditure should be presumed to be a diversion of 9-1-1 fees.<sup>26</sup>

A further measure that CTIA continues to support is the adoption of guidelines as to what expenditures qualify as “in support of” 9-1-1 and what expenditures do not.<sup>27</sup> In the last Congress, the 9-1-1 Fee Integrity Act was introduced to provide the Commission with an enhanced role in determining what constitutes 9-1-1 fee diversion.<sup>28</sup> Specifically, the legislation would require the Commission to issue rules designating the acceptable purposes and functions for the expenditure of 9-1-1 funds, including that funds be used in support of 9-1-1 services and operational expenses of PSAPs.<sup>29</sup> CTIA supports this type of legislation because it would give the Commission authority to identify for states the specific types of expenditures that qualify as “in support of” 9-1-1. Such rules would promote greater transparency and consistency by giving states formal guidance as to the types of expenditures that constitute 9-1-1 fee diversion. With such specificity in place, it will be more difficult for states to claim they are compliant with the Net 9-1-1 Act even as they divert funds for non-9-1-1 purposes.

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<sup>25</sup> *Tenth Report* at ¶ 40.

<sup>26</sup> *Id.*

<sup>27</sup> CTIA Comments at 5-6.

<sup>28</sup> See 9-1-1 Fee Integrity Act, H.R.6424, 115<sup>th</sup> Cong. (2018).

<sup>29</sup> *Id.*



**V. CONCLUSION.**

In sum, states and localities that divert 9-1-1 funds collected from millions of wireless consumers violate the public trust. CTIA supports Commission and Congressional efforts to shine a light on this unacceptable practice and urges further action to stanch such diversion. No amount of 9-1-1 fee diversion is acceptable.

Respectfully submitted,

/s/ Patrick Donovan  
Patrick Donovan  
Senior Director, Regulatory Affairs

Thomas C. Power  
Senior Vice President and General Counsel

Scott K. Bergmann  
Senior Vice President, Regulatory Affairs

Matthew B. Gerst  
Vice President, Regulatory Affairs

**CTIA**  
1400 Sixteenth Street, NW  
Suite 600  
Washington, DC 20036  
(202) 785-0081

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