

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In Matter of)	
)	
Ninth Annual Report to Congress on State Collection)	PS Docket No. 09-14
and Distribution of 911 and Enhanced 911 Fees and)	
Charges)	
)	
FCC Seeks Public Comment on Ninth Annual)	
Report to Congress on State Collection and)	
Distribution of 911 and Enhanced Fees and Charges)	

To: The Commission

COMMENTS OF CTIA

CTIA¹ submits these comments in response to the Commission’s Public Notice seeking comment on the Ninth Annual Report to Congress on State Collection and Distribution of 9-1-1 and Enhanced 9-1-1 Fees and Charges (“*Report*”).² State diversion of 9-1-1 fees violates the public’s trust and is a serious impediment for sustaining and advancing 9-1-1 services. CTIA supports the Commission’s continued focus on this unacceptable practice and appreciates

¹ CTIA® (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.

² Public Notice, *FCC Seeks Public Comment on Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, PS Docket No. 09-14, DA 18-116 (rel. Feb. 7, 2018) (“*Notice*”); FCC, Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges (Dec. 29, 2017) (“*Report*”).

Commissioners O’Rielly and Rosenworcel’s leadership in shining a light on state 9-1-1 fee diversion and their interest in seeking new ways to address the problem.³

A robust and reliable 9-1-1 service is the centerpiece of our nation’s emergency communications system. CTIA’s member companies, including wireless providers and device manufacturers, are committed to the continued success, and continued evolution, of 9-1-1 service, including the deployment of next generation 9-1-1 (NG911) technologies. Sustaining and enhancing 9-1-1 service requires significant funds – funds provided in part through 9-1-1 fees and surcharges that states and some localities collect from wireless consumers.⁴ The *Report* finds that in 2016 (the most recent year of collected data) consumers contributed nearly \$3 billion in 9-1-1 and Enhanced 9-1-1 fees to jurisdictions that responded to the Commission,⁵ and the Tax Foundation estimates that wireless consumers are responsible for more than \$2.6 billion of these contributions.⁶ Unfortunately, at least six states continue to divert a significant amount of this money to other uses instead of providing the funding critically needed for 9-1-1.⁷

³ 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”); see also Statement of Commissioner Michael O’Rielly on Letter to States that Failed to Submit Data to FCC on 9-1-1 Fee Diversion, Feb. 20, 2018, https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0220/DOC-349332A1.pdf.

⁴ See *id.* at 6 (noting that 5,184 public safety answering points (“PSAPs”) in reporting jurisdictions are “dependent on funding derived from the collection of 911 fees”).

⁵ *Id.* at 3.

⁶ Scott Mackey, Joseph Bishop-Henchman, and Scott Drenkard, Tax Foundation, *Fiscal Fact, Wireless Taxes and Fees in 2017*, Fiscal Note No. 567 (Nov. 2017), available at <https://files.taxfoundation.org/20171108112327/Tax-Foundation-FF567.pdf>.

⁷ *Report* at 3.

Misdirection of 9-1-1 Funds is a Violation of the Public's Trust and Compromises

9-1-1 Service. Consumers rightfully expect that the 9-1-1 fees on their wireless bills are used to fund and support life-saving 9-1-1 service and have no expectation that their state would funnel those funds to other uses. Yet that continues to happen today. The *Report* finds that six states are diverting 9-1-1 fees for non-9-1-1 purposes, and that nearly \$130 million was diverted from 9-1-1 fees in 2016 (an amount that is roughly two-thirds of the \$205 million that states invested in *all NG911 programs* in the same time period).⁸ And the amount of diverted fees may be higher, as seven states and territories did not respond to the Commission's inquiry.⁹ Further, while the report covers state-led fee diversions, it does not examine whether local jurisdictions that collect 9-1-1 fees engage in fee diversions.¹⁰ And, as T-Mobile has explained, because there is no consensus as to what investments qualify as 9-1-1-related, some claims of compliance may be based on expenditures that cannot properly be deemed 9-1-1 activities.¹¹ For example, some states find that funding military programs is an appropriate use of 9-1-1 fees.¹² To be clear,

⁸ The *Report* identifies the following states as diverting 9-1-1 fees: Illinois, New Jersey, New Mexico, New York, Rhode Island, and West Virginia. *Id.* New York did not respond to the FCC's inquiry, but the FCC found sufficient public record information to support a finding that New York diverted funds. *Id.* at 3.

⁹ In addition to New York, Missouri, Montana, and Oklahoma, as well as Guam, Northern Mariana Islands, and Puerto Rico, did not respond to the FCC's information requests. *Id.* at 4.

¹⁰ See, e.g., *id.* at 13 (noting that many respondents indicated they lacked authority to collect 9-1-1 cost data from local jurisdictions).

¹¹ See T-Mobile Reply Comments, PS Docket No. 09-14, at 2-3 (filed Mar. 9, 2016).

¹² *Id.* at 3.

funding military or other non-9-1-1 public safety programs may be a sound use of public funds, but it is not an appropriate use of 9-1-1 fees imposed on wireless consumers' bills.¹³

Misdirecting millions of dollars of 9-1-1 fees exacerbates the challenges that resource-strained PSAPs already face. As Commissioners O'Rielly and Rosenworcel described in a recent op-ed, fee diversion "can lead to understaffed calling centers, longer wait times in an emergency, and sluggish dispatch for public safety personnel. It also will slow the ability of 9-1-1 call centers to update their systems to support digital age technologies."¹⁴ Indeed, by compromising the 9-1-1 service and the investment in NG911 technologies, fee diversion ultimately undermines the utility of the 9-1-1 system to respond to emergencies.

9-1-1 fee dollars provide critical resources that PSAPs can use to, for example, adopt Text-to-911 services,¹⁵ maintain operations during emergencies,¹⁶ and migrate to NG911,¹⁷

¹³ For example, last year Nevada passed legislation that expanded counties' surcharge authority to not only include funding for 9-1-1 but also police body and vehicle cameras. Nevada SB No. 176 §3 (2017) (amending Nev. Rev. Stat. § 244A.7643).

¹⁴ *O'Rielly/Rosenworcel Op-Ed*.

¹⁵ See, e.g., *Report* at 3 (noting that respondents reported 811 PSAPs as being text-capable as of the end of 2016, and projected an additional 1,026 would be by the end of 2017); Press Release, The 911 PSAPs in Utah County, All Police and Fire Chiefs of Utah County and the Utah County Sheriff's Department, *Text to 911*, Jan 17, 2018, <https://www.utahvalley911.org/public-information/press-releases/1923-press-release-for-text-to-911-011718> (announcing "residents anywhere in Utah County can text '911' on their cell phones and be connected with a 911 dispatcher in an emergency"); Press Release, Office of Governor Larry Hogan, *Governor Larry Hogan Announces New Text to 9-1-1 System for Maryland*, Feb. 21, 2018, <http://governor.maryland.gov/2018/02/21/governor-larry-hogan-announces-new-text-to-9-1-1-system-for-maryland/> (announcing approval of new Text-to-911 technology that will "help[] to update the 1960s-era emergency systems with life-saving technology").

¹⁶ See, e.g., Orange County Sheriff's Office, The Daily Briefing, *OSCO earns NextGen911 "Outstanding 911 Call Center" Award*, <https://www.ocso.com/The-Daily-Briefing> ("During Hurricane season, Communications activated a new back-up 911 center and moved personnel to a Hurricane shift configuration to handle the workload."); see also Comments of City of Houston, PS Docket No. 17-344, at 4-5 (filed Jan. 22, 2018) (noting that the Houston Emergency

among other things. For these reasons, CTIA commends the FCC for its ongoing efforts to shine a light on the misuse of 9-1-1 funds.

The FCC Should Consider New Actions to Address the Misuse of 9-1-1 Fees. CTIA supports continued Commission efforts to mitigate 9-1-1 fee diversion activity. Simply identifying states is not, and has not been, sufficient to prevent this behavior.¹⁸ Congress took one step in the Middle Class Tax Relief and Job Creation Act, directing NTIA to refrain from issuing grants from the 9-1-1 upgrade grant program to any jurisdictions that have been diverting 9-1-1 fees.¹⁹ This is a start, and CTIA supports further action to reduce the misdirection of 9-1-1 funds.²⁰

CTIA agrees with Commissioners O’Rielly and Rosenworcel that more assertive measures may be needed.²¹ For example, the Commission, working with NTIA, should consider adopting guidelines as to what expenditures qualify as “in support of” 9-1-1 and NG911 and

Center received 60,000 9-1-1 calls in one day during Hurricane Harvey, a ten-fold increase over an average day).

¹⁷ See, e.g., Press Release, Crow Wing County, *Crow Wing County Prepares Address and Road Data for Next Generation 911*, Jan. 5, 2018, <https://crowwing.us/ArchiveCenter/ViewFile/Item/1636> (announcing Cross Wing County initiative to prepare for transition to NG911); Donny Jackson, *Fairfax County, VA. Upgrading PSAPs to NG911-compliant system from Airbus DS Communications*, Urgent Communications, Jun. 16, 2016, <http://urgentcomm.com/ng-911/fairfax-county-va-upgrading-psaps-ng911-compliant-system-airbus-ds-communications> (noting Fairfax County PSAP migration to NG911-compliant call handling solution).

¹⁸ See CTIA 2011 Comments at 7.

¹⁹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, §158(c)(3).

²⁰ See CTIA 2011 Comments at 4.

²¹ See O’Rielly/Rosenworcel *Op-Ed*.

what expenditures do not. Among other things, these guidelines would provide direction for use of state or local 9-1-1 fees.

Moving 9-1-1 fees into a state's general purpose fund is a blatant misuse of those fees. But the Commission should consider doing more, for example declaring that general purpose public safety expenditures that have no connection to wireless services should not be funded by 9-1-1 fees on consumers' wireless bills. As Commissioners O'Rielly and Rosenworcel note, the Commission's charge is clear: "It is time for 9-1-1 fee diversion to stop."²²

Respectfully submitted,

/s/ Patrick Donovan

Patrick Donovan
Senior Director, Regulatory Affairs

Thomas C. Power
Senior Vice President & General Counsel

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Matthew B. Gerst
Assistant Vice President, Regulatory Affairs

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

March 9, 2018

²² *Id.*