

NENA

The 9-1-1 Association

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

December 6th, 2011

RE: PS Docket No. 09-14, 3rd Annual Report to Congress on State Collection and Distribution of 9-1-1 and Enhanced 9-1-1 Fees and Charges

Dear Ms. Dortch:

Four years ago, Congress enacted the New and Emerging Technologies 911 Improvement Act of 2008 (“NET 911 Act”), Pub. L. No. 110-283, 122 Stat. 2620 (2008), and directed the Commission to report annually on the status of collection and distribution of 9-1-1 and E9-1-1 fees in each state, including information on the diversion of such fees to other purposes. Following the issuance of the most recent report on November 1st, 2011, the Public Safety and Homeland Security Bureau issued a Public Notice seeking comment on several proposals to improve the information collected in fulfillment of that obligation, DA 11-859 (Nov. 8, 2011). PN at 2-3. NENA: The 9-1-1 Association respectfully submits the following comments in response to that Notice.

Proposed Revisions to Annual Information Collection

NENA believes that the Bureau’s first proposal, to amend Item 4 of the current OMB-approved Information Collection by adding a provision that asks states to provide “a statement describing enforcement or other corrective actions undertaken in connection with such oversight,” is appropriate given the federal structure of the United States and the strong home rule provisions in many states. In addition, information about enforcement capabilities will assist the Congress in determining whether and to what extent States do strive to ensure that 9-1-1 fees and charges are actually expended “in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services,” NET 911 Act at §6(f)(1), when authority for the obligation or expenditure of such funds does not lie at the state level. Finally, NENA believes that amending the information collection to include this expanded scope could have desirable secondary benefits. For example, a state administrator faced with answering this question in the negative could be motivated to request statutory enforcement authority or to assert administrative enforcement authority where she or he has not previously done so, thus indirectly accomplishing Congress’s purpose to encourage the expenditure of 9-1-1 and E9-1-1 fees for legitimate, 9-1-1 related purposes.

NENA also supports the Bureau’s proposal to add a question to the information collection instrument concerning the “activities, programs, and organizations for whose benefit [a] state ... has ... expended funds collected for 911 or E911 purposes...” The proposed addition can significantly aid the Commission in determining whether expenditures

purported to be 9-1-1 related are in fact so by identifying agencies or programs unrelated to 9-1-1 or E9-1-1 service that have received appropriations or other transfers from funds generated by 9-1-1 or E9-1-1 fees. For example, a program to provide equipment upgrades to emergency rooms paid for out of 9-1-1 funds would be identified in response to the new item proposed by the Bureau, whereas it might have gone unnoticed under the previous instrument, despite lying clearly within the ambit of the Act.

The Bureau's next proposed amendment relates to the phrase in §6(f)(1) of the Act dealing with "enhancements of [9-1-1 or E9-1-1] services." Given the particular need expressed by nearly all commenters in the Commission's recent Next Generation 9-1-1 proceedings, PS Docket Nos. 10-255 & 11-134, NENA believes that this is a very important addition to the information collection instrument. The deployment of Next Generation 9-1-1 capabilities represents the single greatest set of enhancements to 9-1-1 services since the introduction of Automatic Location Identification, and providing the Commission and Congress with information about expenditures related to NG9-1-1 is therefore of paramount importance. In particular, collecting this information could identify regulatory barriers at the state and federal level that currently impede the roll-out of next generation capabilities such as text messaging, video relay translation, and multimedia emergency services requests. This issues figured prominently in the Commission's recent NPRM on NG9-1-1, PS Docket No. 11-134, and in a recently marked-up draft of the Jumpstarting Opportunity with Broadband Spectrum Act (no bill number available), and will likely continue to impact 9-1-1 policy in Congress and at the FCC over the coming years.

In addition to the amendments specifically proposed by the Bureau, NENA recommends that the Commission propose one more: The Commission should seek clearance to ask that states provide "A statement describing the function of the office(s), at each level of government, that is responsible for providing or administering 9-1-1 or E9-1-1 services in your State, listing any and all *other* functions administered or services provided by such office(s), and explaining how 9-1-1 and E9-1-1 funds are segregated by such office(s) from funds used for in connection with such other functions or services." NENA is aware, anecdotally, of information suggesting that 9-1-1 funds are frequently diverted to other purposes by multi-purposing the agencies of state and local government that are responsible for administering 9-1-1 funds and providing 9-1-1 service. For instance, NENA is aware of at least one agency that has allowed the expenditure of 9-1-1 funds for the purchase of police cars. While such use is almost certainly in the interest of public safety writ large, it is clearly *not* linked to the provision or enhancement of 9-1-1 or E9-1-1 service, and Congress should be made aware of such incidents.

Proposed Recommendations to Congress

The Notice also seeks comment on potential recommendations the Commission could submit to Congress regarding "legislative changes that would provide greater accountability in the collection and expenditure of 911/E911 funds by states and other jurisdictions." PN at 4. NENA believes that federal law currently provides inadequate disincentives to states to expend 9-1-1 and E9-1-1 fees for their intended purposes. For example, at least

one state that received federal grant funding under the NET 911 Improvement Act found it more efficient to give back all of that grant funding in order to raid every dollar of the state's 9-1-1 funds, since the fund balance was greater than the grant by an order of magnitude. NENA believes that Congress could provide more effective disincentives for the misuse of 9-1-1 fees by prohibiting states found to have redirected 9-1-1 fees from receiving additional federal grants, of the broadest class possible, until all 9-1-1 fees redirected within the preceding two years have been returned to the appropriate agency, agencies, or fund balance. Alternatively, Congress could impose dollar-for-dollar offsets in funds appropriated to the states under other programs. Either approach would send a powerful signal to the states about the importance Congress places on honesty in taxation, particularly where the safety of the public is concerned.

NENA also believes that the Commission should recommend that Congress establish a program to promote the deployment of NG9-1-1 nation-wide, and appropriate funds for its operation. Under NENA's vision for NG9-1-1, there are certain technical elements, such as a national-level "forest guide," that should be deployed at the federal level. A program designed to deploy such elements and to coordinate the deployment of NG9-1-1 systems at the state and regional levels could yield tremendous benefits in terms of time-to-deployment and overall NG9-1-1 systems' cost. Finally, some direct funding to states and localities would be helpful, if only to assist rural, low-income, and sparsely-populated areas with NG9-1-1 deployment

Respectfully,



Telford E. Forgety, III
Director of Government Affairs