

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Public Safety and Homeland Security Bureau) PS Docket No. 09-14
Seeks Comment On Information Collection)
and Recommendations to Congress Regarding)
State 911/E911 Fees and Expenditures)
)
)

To: The Commission

**COMMENTS OF THE
BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY**

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February 13, 2013

Summary

Neither Congress nor the Commission has any proper interest in state administration and use of fees, surcharges or taxes collected under state law to fund state services, including 9-1-1 services. The transfer of such funds to state general funds or and the uses to which such funds are put are governed by state law, and any remedies are provided by state law or the political process.

The Commission's focus on 9-1-1 services and deployment of Next Generation 9-1-1 ("NG9-1-1") is driven by, and demonstrates, a misunderstanding of the practical implications and importance of the service. The Commission is seeking to promote applications which are not the most important features of NG9-1-1; applications which would in fact diminish the effectiveness of 9-1-1 service. To the extent that text messaging will benefit specific communities of subscribers without interfering in the efficacy of 9-1-1 (so long as most people continue to place voice calls to 9-1-1), text-messages-to-9-1-1 can be delivered by a variety of methods at a small fraction of the expense of the expeditious upgrade to ubiquitous NG9-1-1.

The Commission and Congress would better serve the public interest by providing improved means of collecting 9-1-1 fees, surcharges and taxes from providers of prepaid wireless services, and clarifying that state and local authorities can assess surcharges on broadband services, per unit of upstream bandwidth, instead of assessing them on VoIP providers and other services and applications running on the broadband service. Congress should also provide funding for 9-1-1 and emergency response services where federal activities impose excess costs on the services or limit the funding for such services.

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The Boulder Emergency Telephone Service Authority (“BRETSA”), by its attorney, hereby responds to the Public Notice of the Federal Communications Commission’s request for public comment on its annual collection of information regarding fees collected by states and other jurisdictions to support 9-1-1 services and the expenditure of such fees.¹ BRETSA is a Colorado 9-1-1 Authority which establishes, collects and distributes the Colorado Emergency Telephone Surcharge to fund 9-1-1 Service in Boulder County, Colorado.

While BRETSA shares concerns that its constituent’s federal tax payments might be used for grants to subsidize 9-1-1 Service in states which squander or misuse their own 9-1-1 fees, surcharges or taxes (collectively “9-1-1 Fees”); BRETSA submits that there is no appropriate federal interest in the collection and expenditure by state or local governments of 9-1-1 Fees. The Commission should instead take action to improve the collection and remittance of fees by all service providers, and Congress should fund 9-1-1 services where federal activities impose costs on 9-1-1 and emergency response services.

¹ FCC Seeks Comment On Fourth Annual Report To Congress On State Collection and Distribution Of 911 And Enhanced 911 Fees And Charges, PS Docket No. 09-14, Public Notice, DA 13-45 (rel. Jan. 14, 2013) (“Public Notice”).

I. There Is No Appropriate Federal Interest In State Or Local Collection And Use Of 9-1-1 Fees, Surcharges Or Taxes.

The operation of local public safety agencies, and provision of 9-1-1 and emergency response service, is a matter of state and local concern. The establishment, collection and use of 9-1-1 Fees on telephone services pursuant to state law is a matter between state and/or local officials and their constituents. It is not a matter of federal interest.

States establish 9-1-1 Fees on telephone services, and limitations on use of the proceeds of the 9-1-1 Fees. Colorado has established a surcharge pursuant to Colorado Revised Statutes (“C.R.S.”) 24-11-102. The purposes for which the proceeds of the surcharge may be used are specified by C.R.S. 24-11-104. Should local or state authorities use proceeds of 9-1-1 Fees in violation of statutory requirements, state law and the electoral process would provide remedies. Federal action is neither required nor appropriate.

A. Legislative “Raids” Of 9-1-1 Funds.

Concern has been expressed with state legislatures transferring the proceeds of 9-1-1 Fees into state general funds to assist in balancing state budgets.

These transfer to state general funds of the proceeds of 9-1-1 Fees, created and levied pursuant to state law, are taken by duly elected state legislators and governors subject to judicial review and recall or non-re-election by their constituents. They are subject to state remedies with which the federal government should not interfere.

State legislatures and governors are generally required by state constitution to balance their budgets annually. In an era of declining state tax revenues (resulting from federal mismanagement of the economy), cuts must often be made to state budgets and programs to balance the budget. Transferring 9-1-1 Fees to the state general fund allows the states to spread the cuts across all programs and balance cuts to education and other essential services with cuts

to 9-1-1. If voters don't agree with the difficult choices their state governments make in balancing state budgets, the voters have recourse through the ballot box. The federal government has no place mandating state funding of 9-1-1 services over other essential services.²

B. “Misuse” of 9-1-1 Funds.

Concern has also been expressed that authorities may be misusing the proceeds of state 9-1-1 Fees for non-9-1-1 purposes. Proper and permitted uses of such proceeds are defined by state law; not by the preferences of service providers or even federal agencies which do not have responsibility for local public safety operations and emergency response.

Technological developments including NG9-1-1 are blurring the lines of what may be appropriate uses of 9-1-1 funds. For just one example, public safety radio safety systems would clearly be appropriate uses where they were used to transmit 9-1-1 calls or data directly to First Responders, even though some service providers would consider such use improper.

One Colorado county has encountered situations when First Responders in route to the scene of an incident will ask the dispatcher to have the person who called 9-1-1 hang up, so the First Responder can call the person directly. When the First Responder calls the person directly (using commercial wireless service), the call is not recorded, nor is critical information from the call entered into the incident records in the CAD system (which often are subsequently transferred to agency records) and/or relayed to other First Responders. Officials in the county are seeking a solution to route 9-1-1 calls through the PSAP to First Responders for the First Responders to speak directly with the caller, yet have the call recorded by the PSAP call logger and dispatchers monitor the call and enter critical information in the CAD incident record.

² States may be prevented from cutting some federally mandated programs, and may thus be required to cut other programs including 9-1-1. The federal government should not use funding mandates to prevent the states from making the kinds of difficult choices responsible officials must make; and to force federal-style irresponsible runaway spending on the states.

NG9-1-1 will make possible the transmission of photographs, video and other data to the PSAP. Many public safety officials believe such data will be of little or no use for dispatch purposes and may even delay dispatch of First Responders. However such data may be of use for investigation and prosecution, or to First Responders. One Colorado 9-1-1 Authority is exploring the options for transmitting photos, videos and similar NG9-1-1 data to First Responders while in route to an incident, *without displaying such data to the dispatcher.*

Indeed, with NG9-1-1, the Data Complex is capable of transmitting 9-1-1 calls directly to First Responders via local or statewide public safety radio systems to which the Data Complex has access, when dictated by the jurisdiction’s call routing rules. Each of these situations is an example of radio systems becoming part of the 9-1-1 call delivery network and indisputably falling within the scope of appropriate uses of 9-1-1 funds.

II. The Information Collected And Reported By The Commission Is Meaningless.

The information collected by the Commission includes the amount of 9-1-1 Fees collected in each state, purposes for which the funds may be used under state guidelines, purposes for which the funds were used, and oversight. However without information regarding costs of service and emergency response, the amount of surcharges, and population, area served, per capita income, overall tax/fee burden and other factors; the information is meaningless. Such additional information is necessary to put state 9-1-1 Fee programs in context.

Take for example the states of Colorado and New Jersey:

	Population	Area (Sq. Mi.)	Population Density	Median Household Income
New Jersey	8,864,590	8,721	1189	\$70,378
Colorado	5,187,582	104,094	49.3	\$56,993

With a larger population, there will be more 9-1-1 calls and demand for emergency response; but with smaller total areas and greater population densities come economies of scale. States with

higher median incomes can assess higher 9-1-1 Fees without increased impact on constituents; although cost-of-living should also be taken into consideration. 9-1-1 Authorities in New Jersey may well have surpluses after they have met the costs that service providers and others might define as appropriate uses of 9-1-1 Fees, and be able to fund additional expenses without sacrificing funding of “appropriate uses.”

The funding and cost structure of 9-1-1 and emergency response in larger, less densely-populated states and counties is different from more densely populated areas. These jurisdictions face relatively higher costs for radio facilities and First Responder resources to cover their larger areas, but have lower funding because of their smaller populations. Local public safety officials have to meet the requirements of overall public safety and emergency response of which 9-1-1 is but one component.³ These states or counties might reasonably determine that they can best meet the needs of their constituents by contracting with a vendor to delivery text-to-9-1-1 messages to their existing TTY device(s) or interface(s) for a per-call fee, rather than sacrificing other resources to meet the ongoing expense and costs of subscribing to NG9-1-1 service and upgrading the PSAP to NG9-1-1 compatibility.

All of these factors impact whether the 9-1-1 Fees are adequate to fund 9-1-1 service, produce subsidies which might be used for related purposes without impacting 9-1-1 service, or must be used to assure adequate response to the 9-1-1 calls. It is a much more complex equation than the Commission’s data collection allows; and one which should be left to the state and local authorities with the experience and responsibility for meeting the public safety needs of their constituents.

³ A jurisdiction could have the best equipped and staffed, most modern NG9-1-1 PSAP available; but if this is accomplished at the expense of reducing the number, equipment and training of First Responders, emergency response and public safety will be diminished.

III. The Information Collected By The Commission Is Not A Premise For Federal Regulation Of State Or Local Funding Of 9-1-1.

There are those that would have the Commission or Congress enact legislation or adopt rules to assure that 9-1-1 Fees are used solely for purposes they would deem appropriate. Congress, and federal agencies charged with implementing the very costly upgrade to NG9-1-1, prefer that state and local 9-1-1 funds be spent on NG9-1-1.

The Commission and Congress are focused only on NG9-1-1 and their in-expert perception of the benefits of NG9-1-1. The problem is that state and local officials with finite amounts of money must not only fund the routing and transmission of 9-1-1 calls to the PSAP and PSAP operations; they must employ, equip and train First Responders to respond to those calls, maintain jails, provide victim services and other essential public safety services. On a larger scale, local and state governments must provide a whole host of essential services and programs, including services mandated by the federal government; also with finite resources. State and local officials struggle to meet these obligations with limited resources, even before the Commission and certain vendors began pushing for the very expensive upgrades to NG9-1-1.

In pushing for the rapid transition to NG9-1-1, the Commission is chasing an unrealistic expectations of public safety operations, perhaps based upon unrealistic *fictional* televised dramas. There are benefits to NG9-1-1.⁴ However the features of NG9-1-1 which the Commission is promoting may actually delay emergency response and *cost* lives. The record in PS Docket No. 11-153 demonstrates that the Commission lacks the practical knowledge and understanding of PSAP operations and how they fit into overall public safety operations. One-size does not fit all, and what is appropriate for one area of the country will not be appropriate

⁴ For public safety professionals, the most important benefits are a more robust and survivable 9-1-1 network, with improved capabilities for inter-PSAP call transfers and alternative routing rules and capabilities, where needed.

for all other areas. Decisions regarding deployment of NG9-1-1 and the services it can enable, and use of 9-1-1 Fees must be left to local and state public safety professionals.

Specifically, voice calls to 9-1-1 will continue to be the most effective and expeditious means of alerting the PSAP to *the nature and location of an emergency* so that First Responders can be dispatched. Text messages are less effective and expeditious, but will serve the needs of the speech- and hearing-impaired community, and people in silent call situations or who are located in an area with an insufficient wireless connection to place a voice call. However it has been demonstrated in PS Docket No. 11-153 that wireless providers or third party vendors can convert and/or deliver SMS text messages to PSAPs via (i) existing PSAP TTY devices or interfaces, (ii) web portals, (iii) forwarding to smartphone devices or Internet text-messaging applications procured by a PSAP for that purpose, (iv) conversion to and from e-mail, or even (v) voice relay (a remote call-taker communicating by text with an end user and placing a voice call to the destination PSAP to communicate the information conveyed by the end user to a dispatcher). Delivery of text messages to PSAPs does *not* require ubiquitous NG9-1-1 and a rapid conversion to NG9-1-1 as opposed spreading the costs over time.

On the other hand, the delivery of photos and videos to PSAPs will require the costly conversion to NG9-1-1, but will not improve, and may well diminish, the efficacy of 9-1-1 and emergency response. For PSAP personnel or First Responders to discern information from pictures and videos will take longer and be less accurate than for a person on scene with situational awareness to describe the nature and location of the emergency via voice call. With non-public safety professionals taking the photographs and videos for transmission to the PSAP, they are likely to focus on more sensational but less useful images. They are also likely to place themselves in harm's way in their quest to get the pictures or videos. Visual images from

accident and crime scenes are also likely to subject dispatchers to increased stress of viewing disturbing images with little or no benefit for purposes of emergency response.

The purpose of 9-1-1 is to communicate to the PSAP as quickly as possible the nature and location of an emergency (without the caller having to know or determine what jurisdiction he or she is located in and the unique 10-digit number for the PSAP serving that jurisdiction). That is the basic information required to dispatch First Responders. The First Responders already have the training, and take with them the equipment they need, to deal with any emergency they are likely to encounter.

IV. The Federal Government Should Assure It Does Not Preclude Collection Of 9-1-1 Fees, Surcharges or Taxes.

Congress and the Commission's time and effort would best be spent assuring that federal laws, regulations and policy do not preclude or inhibit collection of 9-1-1 Fees. Indeed, the Commission can take action to facilitate the collection of 9-1-1 Fees.

A. Prepaid Wireless Services.

Prepaid wireless services pose a significant challenge to collection of 9-1-1 Fees. In Colorado, like most states, the fees are collected by the retail vendor as a percentage of the cost of pre-paid minutes purchased, and remitted to the Colorado Department of Revenue. The Department of Revenue then deducts a percentage to recoup its costs of administering the program, and distributes the collected surcharges to the Colorado 9-1-1 Authorities ratably to the percentage of Colorado 9-1-1 calls which are routed to the PSAPs in each Authority's jurisdiction. Even though each Colorado 9-1-1 Authority establishes the amount of the 9-1-1 surcharge in its jurisdiction, a single rate for the pre-paid fee is established statewide.

Point-of-sale collection of 9-1-1 Fees on prepaid wireless usage is uneven, and costly to administer and enforce even with "brick and mortar" retail establishments let alone online

vendors. It is known that many retail vendors do not collect the and remit the fees, and with the number of small retail vendors the costs of enforcement could well exceed the 9-1-1 Fees recovered. It is nevertheless the only alternative on which state authorities have been able to reach agreement with the prepaid service providers. Even then, prepaid wireless provider Tracfone has made an *ex parte* presentations to the Commission seeking to be entirely relieved of 9-1-1 Fee obligations, even after having pushed that obligation off to the retail points-of-sale. *See TracFone Wireless, Inc. January 29, 2013 Ex Parte* (January 29, 2013 letter from Mitchell F. Brecher to Marlene H. Dortch, Secretary, Federal Communications Commission re Notice of Ex Parte Presentation in PS Docket Nos. 11-153, 10-255 and 12-333). Prepaid wireless providers likely enjoy a competitive advantage in that prepaid customers are not reliably charged the 9-1-1 Fees that customers of other telephone services pay.

A much more efficient and effective means of collecting 9-1-1 Fees from prepaid service providers would be for Congress or the Commission to impose a single rate 9-1-1 Fee on prepaid service nationwide that providers would remit upon activation of pre-paid minutes. The imposition of a single rate nationwide would allow for the service providers to include the amount of the 9-1-1 Fees in the price of the pre-paid minutes (even though separately identified presented as a 9-1-1 Fee on the packaging or advertising of the minutes), and to remit the fees. Remittance of 9-1-1 Fees by the relatively small number of prepaid service providers upon activation of purchased minutes would be much less cumbersome and costly, and much more effective, than for each state to try and collect point-of-sale 9-1-1 Fees from all of the brick-and-mortar and online retailers selling prepaid minutes in their jurisdiction. The funds collected could also be distributed among the states based upon the location of the purchaser or proportionately

to the distribution of prepaid wireless or 9-1-1 usage.⁵ Each state should determine the means for allotting the prepaid 9-1-1 Fees it receives among the 9-1-1 Authorities or jurisdictions within the state, if applicable.

B. Broadband Services.

9-1-1 Authorities find it difficult even to identify the VoIP providers supplying service to customers in their states or jurisdictions, let alone assure or audit their proper remittance of 9-1-1 Fees. Unlike other service providers, VoIP providers do not require any physical facilities or assets in a state, as their services ride on broadband services of providers who supply the physical broadband facilities. VoIP providers claim that the states are preempted from regulating them, and some states have responded by adopting statutes or rules exempting VoIP providers from regulation (although VoIP providers may also be required to contribute to state high cost funds, telephone relay service funds and similar funds, in addition to remitting 9-1-1 Fees. Some VoIP providers claim an exemption to payment of such fees. BRETSA also notes that a stated goal of NG9-1-1 is to permit any device on any network to communicate with the PSAP at any time; and many of these devices, including VoIP devices or services, will communicate via broadband internet connection, and perhaps via local WiFi.

A more efficient and reliable means of collecting 9-1-1 Fees from such providers would be the assessment of 9-1-1 Fees on underlying broadband connection/service, based upon the speed/bandwidth of the upstream connection, rather than the applications and services riding upon that connection. However it is unclear whether the limitations in the Communications Act on the amount (percentage) of the franchise fee which can be collected from cable companies,

⁵ BRETSA has filed a Petition for Rulemaking seeking the adoption of rules which would require wireless and VoIP service providers to supply electronic access to system and customer information for purposes of (i) locating wireless callers to 9-1-1 who have been disconnected, (ii) routing text messages to 9-1-1, (iii) obtaining customer information to populate 9-1-1 databases, and (iv) auditing or verifying remittance of 9-1-1 Fees. To the extent usage patterns could be efficiently derived from these interfaces, such information could be used to determine the distribution of prepaid 9-1-1 Fees. Otherwise, the distribution of 9-1-1 calls could be provided by SSPs.

adopted in a different technological era of one-way broadband service, would prevent this. *See* 47 U.S.C. §542.

Congress or the Commission should take such action as necessary to permit the assessment of 9-1-1 Fees on broadband services which will underlie many communications services which might be used to contact 9-1-1, rather than the VoIP or other services provisioned over the broadband connection. For example, the Commission could issue a declaratory ruling that a 9-1-1 Fee assessed on broadband service per each 56 Kbps of upstream bandwidth (or other unit of upstream bandwidth deemed equal to one voice grade wireline circuit) does not constitute a “franchise fee” under 47 U.S.C. §542(g)(2)(A), provided that (i) the 9-1-1 Fee on each unit of upstream broadband bandwidth is equal in amount or percentage to the 9-1-1 Fees assessed per wireline and wireless provider line or service, and (ii) 9-1-1 Fees are not separately assessed on services provided over the broadband service.

V. The Federal Government Should Provide Funding For 9-1-1 In Areas Where Its Activities Burden 9-1-1 Funding Or Demand.

Federal activities burden the demand for 9-1-1 services or 9-1-1 funding, and the federal government should provide funding in such instances.

The federal government does not pay state or local property taxes on federal lands, such as lands administered by the U.S. Forest Service, National Parks Service, or Bureau of Land Management. In some areas such federal lands constitute a substantial portion of the property in a state or local jurisdiction. These federal lands reduce the tax base to support all public safety services, and may place a burden on local public safety agencies to the extent that the agencies must provide 9-1-1 service and emergency response throughout their jurisdictions without support from property served.

The federal government funds the construction and maintenance of Interstate Highways to facilitate the transportation of goods and travel of people throughout the country. In some areas, the number of people traveling through a jurisdiction on an Interstate Highway for whom the local authorities provide 9-1-1 and emergency response services, exceeds the population of the jurisdiction available to fund the services. In Clear Creek County, Colorado, over 80 percent of 9-1-1 calls are received from Interstate 70 which transects the county; and the percentage may be higher in other jurisdictions.

The Commission's pursuit of rapid deployment of NG9-1-1 and delivery of photos, video and other data formats to PSAPs at great expense and without corresponding benefit (and in fact with detrimental impacts on 9-1-1 and emergency response) will impose significant costs on public safety authorities whose budgets are already strained as a result of federal mismanagement of the economy.

In situations including these examples, the federal government reduces state and local funding available for 9-1-1, or is placing specific burdens and costs on the 9-1-1 and emergency response systems. The federal government should make whole the jurisdictions affected by such federal activity, by providing funding for 9-1-1 and emergency response.

Respectfully submitted,

**BOULDER REGIONAL EMERGENCY
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