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P.O. Box 42563 Washington, D.C. 20015-2604

March 25, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission VIA ELECTRONIC FILING
445 12th Street, S.W.
Washington, DC 20554

Re: P.S. Docket No. 09-14, FCC Seeks Public Comment On Fifth Annual
Report To Congress On State Collection And Distribution Of 911 And
Enhanced 911 Fees And Surcharges

Dear Ms. Dortch:

The Industry Council for Emergency Response Technologies (“iCERT” or
“Industry Council”)¹ respectfully submits the following comments in response
to the public notice released by the Federal Communications Commission
(“FCC” or “Commission”) on January 24, 2014² in connection with the above-
referenced matter. iCERT appreciates this opportunity to provide feedback and
commends the Commission for its efforts to “ensure efficiency, transparency,

¹ Established by a group of prominent business leaders in December, 2005 originally as the 9-1-1 Industry Alliance, iCERT plays an important role as the voice of commercial public safety companies, wireless carriers, and related vendors on public policy issues impacting 9-1-1 and the emergency response system. iCERT’s membership is diverse, and many of its members not only have differing business objectives, they may be direct competitors. All of iCERT’s members agree that an invigorated vendor community engaged in frequent two-way dialog with public safety officials, regulators and policy makers is indispensable to creating the highest quality emergency services for all Americans. Industry Council members believe history has demonstrated that business leaders’ expertise can assist public policy makers and government emergency communications professionals as they address complex choices regarding advanced communications technologies. See, <http://www.theindustrycouncil.org/index.cfm>

² Public Notice DA 14-82 released January 24, 2014.

and accountability” in connection with states’ collection and distribution of 911 fees as required by federal law.³

The FCC’s annual reports to Congress are widely disseminated and relied upon by the emergency communications industry.⁴ Policy makers and others assume these reports contain complete and accurate data, thus it is critical for these reports to measure up to that expectation. While the information in these reports, including the fifth annual report to Congress (“5th Report”), provides useful information and is considered by many to be the best planning tool of its kind today, it is not complete and accurate.

One need look no further than the first sentence of section 6(f)(2) to glean the fundamental intent of Congress: to “ensure efficiency, transparency, and accountability” such that state residents and other constituents can see exactly what jurisdictions are doing with the fees collected expressly for 911 services; and iCERT believes the reports do not completely meet that requirement. The reports do not explain discrepancies in the data, plus, the Commission could go beyond simple data gathering and reporting of raw data, i.e., data could be analyzed more deeply each year, as well as on a year-to-year basis. For example, in the 5th Report:

Table 6:

Alabama (page 21) - shows over \$60 million for the 2009 report; yet, with no explanation for the discrepancy in 2010 (and for years thereafter), the amount drops dramatically by over 50% to \$29.8 million in 2010.

Illinois (page 21) - total reported revenue has never included the city of Chicago - the first commercial wireless market in the U.S. But, it is possible to calculate a reasonable estimate, and add it to the reported total, based on the known surcharges and publicly-available data, including, among others, the FCC’s own Local Competition Reports.

Michigan (page 22) - shows \$69.8 million for the 2009 report; yet the amount jumps to \$93 million in 2010 (which might be explained by additional wireless revenue, but the reader is left to guess); and then, after a slight decline in 2011 (\$87.6 million), the amount inexplicably jumps dramatically to \$196.2 million in 2012 - well over twice the amount of the prior year - and then falls to \$181.2 million for the 2013 report.

Table 7 (page 25) – shows that, in the 2009 report, Maine reported diverting funds, that it did not divert in 2010, that it again diverted funds in 2011 and 2012, but that it did not do so during the present (2013) 5th Report period. There is no information in the 5th Report

³ Section 6(f)(2) of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (“Net911 Act”).

⁴ See, for example, TRDaily, January 24, 2014.

that explains why Maine is vacillating in this way; and generally, even though question 9 of the OMB form used for collecting state data (reprinted at Appendix A of the 5th Report) asks for an explanation, either an explanation was not provided or the information is not spelled out in the 5th Report.

Such unexplained discrepancies not only call into question the circumstances in the particular state, they undermine the credibility of the report itself. Where such discrepancies emerge during the Commission's information gathering stage, it would be appropriate, prior to publishing the pending report, to give the state(s) the chance to respond to such discrepancies, whereupon the Commission should include in the pending report the explanation given; but absent an explanation, the Commission should point out the discrepancy in the published report. And, if relevant and confirmed information is otherwise available to the Commission and can shed light on the discrepancy, the Commission should consider including it in the report (e.g., see the example above relative to Illinois and the information available from the Local Competition Order).

Among the respondents in the initial round of comments are two iCERT member companies: Mission Critical Partners (MCP) and Tracfone Wireless, Inc. (Tracfone).

iCERT agrees with MCP which commented that the reports provide some baseline information and a macro perspective of 9-1-1 funding across the states but that the reports are insufficient for reconciliation of state funding models needed to support a true accounting of the costs of the 9-1-1 system.⁵ The Commission should always remain mindful of its statutory authority - - in this case, the limited obligation under section 6(f)(2) which does not instruct the Commission to analyze underlying cost data associated with 911 and E911 to determine the sufficiency of funding for Next Generation 911 service requirements - - but policy makers should first have available to them such underlying cost information in order to make informed decisions about the degree to which current funding is insufficient. Over two years ago, recognizing the need for a cost study prior to considering federal action to support NextGen 911 funding, Congress instructed the National 911 Office to conduct such a cost study,⁶ however, Congress then failed to fund the initiative, and to date, no comprehensive study has been done.

iCERT also agrees with Tracfone which commented that the reports emphasize information about *distribution* and lack data on *collection* of fees (i.e., how funds are collected, particularly with regard to non-billed services such as pre-paid wireless service).⁷

Additionally, the Commission should consider modifying the OMB form used to gather data, and adopt any other reasonable process, to eliminate arbitrage opportunities. The Commission should also consider providing more of the underlying data and documentation. For example, at

⁵ See, Mission Critical Partners comments, pages 2 and 5, February 24, 2014.

⁶ Middle Class Tax Relief and Job Creation Act of 2012.

⁷ See, Tracfone Wireless, Inc. comments, page 3, February 24, 2014.

Appendix B, page 37 of the 5th Report, the state of Texas is said to have reported that it has not used 911 funds for “other purposes.” This representation is apparently derived from answers to questions 8 and 9 of the OMB form (although, because readers of the report don’t have access to the completed OMB forms, readers cannot confirm this). Based on publicly available information, it appears that the representation from Texas is disingenuous at best - - perhaps taking advantage of the manner in which questions 8 and 9 are written or interpreted, and at worst, the representation seems patently false. By any reasonable measure, Texas does divert 911 funds for other purposes. State-based 911 revenues collected from Texans for the explicit purpose of funding the planning and implementation of 911 services provided by state agencies must first be appropriated by the legislature before those agencies may use the funds. Under Texas law, the legislature is not required to appropriate all of the 911 revenue collected and thus can *manufacture a surplus*. Why do this? Because funds *in excess of appropriation* (i.e., a surplus) can legally be withheld and used for anything the legislature decides.⁸ For years, the Texas legislature has manipulated the process in this way (and has been less than fully transparent with its constituents) withholding tens of millions of dollars to help balance the state’s budget.⁹ Apparently, according to the Texas respondent,¹⁰ if the funds are not appropriated, there is no diversion of funds, even if the funds are obviously being siphoned off. This defies reality and runs counter to the transparency Congress sought in section 6(f)(2).

A similar situation was addressed by Commission staff as part of the public comments related to the Commission’s fourth report to Congress (and was reported in the 5th Report). Steuben County, New York’s asserted that the state of New York provided “skewed information” and did not adequately explain its use of 911 funds, i.e., the diversion of \$22.8 million into the state’s general fund. Although the state freely admitted that it diverted the funds, Commission staff determined that, because the disputed expenditures appeared to be within the ambit of New York’s 911 funding statute, staff concluded that there was no diversion of funds.¹¹ Such a conclusion is illogical and flies in the face of Congressional intent. It is one thing for the Commission to declare that diverting funds is legal in a particular state; and it’s quite another to enable such manipulation by failing to report such manipulation for what it is: exactly the kind of fund diversion targeted by section 6(f)(2).

Seeking additional content on the OMB form would also yield helpful information not currently being revealed. For example, the following questions could be posed:

⁸ Section 403.095 Texas Government Code. A report entitled “Report on Use of General Revenue Dedicated Accounts 82nd Legislature 2011” shows balances in excess of appropriation by account and that is, under sec 403.095 available for general revenue appropriations. See also, “Closing the Gap: Texas’s legislature reaches for the axe.” *The Economist*, online edition May 26th 2011. <http://www.economicst.com/node/18744627>.

⁹ The Texas legislature passed this law years ago to gain control over funds collected by the state Commission on State Emergency Communications (CSEC) which collects the funds.

¹⁰ It is also important to note that, during the data gathering process, communication is often between the FCC and state governor’s offices, and it is easy for the governor’s representative to side-step responsibility for addressing the FCC’s request, e.g., by simply responding that the state *per se* is not the keeper of the records.

¹¹ See, 5th Report, page 18-19.

- On which types of technologies (i.e., wireline, VoIP, wireless - including prepaid) are 911 fees assessed and collected?
- If there is an overall decline of 911 revenues collected, is that having a negative impact on public safety's ability to pay for fixed or recurring costs?

iCERT agrees with MCP that annual reports could be more useful if they included information from each state about: (a) number of PSAPs, i.e., an accurate count of active primary and secondary PSAPs which should be reconciled with the Commission's master PSAP registry; (b) high level revenue and remittance models; (c) eligible uses of funding, e.g., whether remittances may be used for personnel costs, tele-communicator training, travel, etc.; (d) number of active call-taking positions within the jurisdiction receiving funding; (e) call volume data; (f) funding challenges or questions, e.g., disparities between access lines and the funds remitted by wireline carriers, triage by stakeholders, etc.¹²

However, this presents at least two issues:

- With respect to most of these additional categories, collecting and analyzing the data is tantamount to performing a national cost study which comes perilously close to overstepping the statutory limitations of section 6(f)(2) and also runs counter to Congressional intent (i.e., Congress reserved this for the National 911 Program Office); and
- Given the lack of federal authority over states in this area, such information would need to be submitted voluntarily (as compared to MCP's suggestion that the Commission "require" states to provide it). Without full cooperation from the states, at least for some period of time and for some respondents, it would be very difficult to normalize cost-per-call metrics.

iCERT commends the Commission for its efforts to advance emergency communications including the work done on its annual reports to Congress. We offer our time and expertise in the event the Commission has any questions.

Respectfully submitted,



George S. Rice, Jr.
Executive Director

¹² MCP Comments, page 3 - 4.