

December 2, 2020

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

REPLY COMMENTS

Re: *In the Matter of 911 Fee Diversion* (PS Docket No. 20-291)

Dear Ms. Dortch:

The Industry Council for Emergency Response Technologies (“iCER”) respectfully submits the following Reply Comments in response to the *Notice of Inquiry* (“NOI”) released by the Federal Communications Commission (“FCC” or “Commission”) on October 2, 2020, in conjunction with the above-referenced docket.¹ iCER appreciates the opportunity to provide feedback to the Commission.

iCER is the nation’s only trade association focused exclusively on the commercial emergency response sector. Our member companies represent a broad cross section of companies with a collective interest in advancing innovative solutions that will improve public safety communications and help protect first responders and the public they serve. This includes companies that develop, provide, and support 911 systems, services, and equipment that the public safety community and the public rely on every day. Unfortunately, these efforts are undermined when funds intended for 911 support are diverted for other purposes.

Diversion of 911 fees undermines public safety. Each year, public safety officials answer more than 200 million emergency calls from individuals seeking help for themselves or others. The effectiveness of the 911 system in answering those calls and dispatching the right help to those in need is often the difference between life and death. In order to respond effectively, however, public safety agencies must have the equipment, services, applications, personnel, and training that makes the 911 system work – and all of that requires public funding. Diversion of those funds for other purposes creates substantial harm to first responders and the public they serve by denying 911 authorities the resources needed to ensure timely

¹ 911 Fee Diversion, Notice of Inquiry, FCC 20-134 (rel. Oct. 2, 2020) (“NOI”).
<https://docs.fcc.gov/public/attachments/FCC-20-134A1.pdf>

and effective emergency response. Commenters to the FCC's NOI overwhelmingly agree that diversion of 911 funds harms public safety and must be eliminated.²

The harmful effects of 911 fee diversion are especially acute today, as our communities continue to fight the COVID-19 pandemic. While the demands placed on our nation's telecommunicators and emergency responders have always been high, the pandemic has increased these demands dramatically. As essential front-line workers, public safety personnel face increased risk of exposure, and contractions among and within agencies creates a shortage of available personnel. The pandemic's economic impact often has a detrimental effect on a state's tax revenues, which further exacerbates the strain on emergency response resources. There is no good time to take away funding from critical emergency services but doing so during a pandemic puts the public at significant additional risk.

As some commenters note, diversion of 911 funding also impedes the efforts of state and local government agencies to modernize the 911 system.³ Technological advancements have enabled the development of Next Generation 911 ("NG911") systems that will substantially improve emergency response. These advancements increase the compatibility of the nation's 911 systems with the emerging communications trends of today's consumers (e.g., text, data, and video). They also allow individuals in distress to be located more quickly, provide first responders with critical data to improve situational awareness, and improve the flexibility, reliability, and survivability of our 911 systems.

States already face significant challenges in obtaining the funds necessary to transition to these next generation capabilities. However, these challenges are substantially worsened when funds are diverted for other purposes. The FCC's annual 911 fee reports, which provide information on fee diversion and NG911 investments in each state, suggest that 911 fee diversion is having a direct impact on NG911 implementation in those states identified as diverters.

More aggressive restrictions on Federal grant programs are needed to deter 911 fee diversion. The NOI notes that one approach for discouraging 911 fee diversion is to prohibit federal 911 grant funding for those jurisdictions that divert funds; an approach already implemented for funding made available recently through the NG911 Advancement Act of 2012 ("NG911 Act").⁴ The new grant program,

² See generally Comments of APCO International ("APCO Comments"), Comments of NENA: The 9-1-1 Association ("NENA Comments"), Memorandum of New Jersey Association of Counties ("New Jersey Counties Comments"), Comments of T-Mobile USA, Inc. ("T-Mobile Comments"), and Comments of CTIA ("CTIA Comments").

³ APCO Comments at 2; NENA Comments at 2.

⁴ NOI at ¶ 18.

administered by the National Highway Traffic Safety Administration (NHTSA), requires applicants to certify that they are not diverting any portion of 911 fees collected and that they will return grant funds if they divert 911 fees during the term of the grant. iCERT supports the imposition of such grant conditions.

In 2019, NHTSA provided \$109 million in federal 911 grants to 34 states through the program authorized by the NG911 Act. As required by statute, no grants were provided to the five states identified by the FCC as having diverted 911 funds in 2018. Given the size of federal grants awarded, however, it does not appear that the restrictions imposed by Congress were a sufficient deterrent to discourage diversion of 911 fees. As T-Mobile notes, the amount of funding that state diverters could have expected to gain from the new federal 911 grant program is far less than the amounts they were able to divert and thus unlikely to provide an effective incentive to change their behavior.⁵

iCERT believes that federal grant restrictions like those included in the NG911 Act can be an effective mechanism to deter 911 fee diversion but only if the grants awarded outweigh the benefits of diverting 911 fees. Importantly, federal legislation is pending that would provide \$12 billion in funding to promote nationwide deployment of NG911.⁶ iCERT supports this legislation, as well as the provisions included in the bill that would prohibit grant awards to states that divert 911 fees. This level of federal funding, which is desperately needed to promote NG911 implementation nationwide, would provide meaningful funding for states and could create an incentive to end 911 fee diversion practices.

iCERT agrees with NENA and NASNA, however, that the FCC must be cognizant of the potentially punitive effects that such grant restrictions can have on 911 entities.⁷ State and local 911 authorities are already faced with significant budget challenges, and imposing such grant restrictions may simply penalize those communities that are already suffering from a lack of investment in critical 911 capabilities. Given the importance of 911 and NG911 to our nation, iCERT believes that grant conditions designed to eliminate the diversion of 911 fees should be targeted to federal grant programs that provide states with significant funding but that are unrelated to 911. For example, restricting access to federal highway funds for those states that divert 911 fees would act as a much more effective deterrent without undermining critical emergency services. iCERT recognizes, of course, that the Commission does not have the authority to impose conditions on federal highway funds. However, we believe that the Commission should work with

⁵ T-Mobile Comments at 2.

⁶ See, e.g., Next Generation 9-1-1 Act of 2019, available at <https://www.congress.gov/bill/116th-congress/senate-bill/1479>.

⁷ NENA Comments at 2; Comments of National Association of State 911 Administrators at 2.

other federal agencies and Congress to institute funding policies that ensure the nation's 911 systems have the funding they need.

Any new regulations should focus on those entities that divert 911 fees. The FCC seeks comment on any regulatory options that might discourage fee diversion. In particular, it asks if the Commission should require service providers "to disclose on their bills that the state or other jurisdiction in which the consumer resides is a 911 fee diverter," arguing that the Commission's truth-in-billing rules may warrant such action.⁸ iCERT agrees with CTIA that such a requirement is beyond the Commission's authority.⁹ While telecommunications carriers must provide on their bills an explanation of all charges including "a brief, clear, non-misleading, plain language description of the service or services rendered," that does not include a disclosure that the state or other jurisdiction within which the consumer resides is guilty of 911 fee diversion. Even if the service provider had the ability to make such an affirmative determination, which it does not, doing so would significantly undermine the relationship between the state and the service provider that is providing an important emergency response function. Even more objectionable is the FCC's suggestion that the service provider should identify 911 fee diverters on its website. There is no legal basis for such a regulation. The FCC should not impose regulations on entities that are neither responsible for 911 fee diversion nor have the ability to alter state practices. Regulations designed to dissuade states from instituting or continuing 911 fee diversion, if they are employed, should be targeted directly at those responsible for fee diversion.

The FCC should clearly define what constitutes eligible spending of 911 funds. iCERT believes that the FCC's annual 911 fee reports have been an extremely effective tool in identifying fee diversion problems, as well as providing a broader understanding of how 911 funding mechanisms are employed across the country. We do believe, however, that some improvements in the FCC's reporting process may help to discourage further diversion of 911 fees. In particular, we agree with APCO, the National 911 Program, and others that ask the Commission to establish a clear definition of what constitutes eligible spending of 911 funds. Specifically, iCERT believes that 911 funds should only be used to support reasonable costs that are legitimately attributable to the planning, implementation, operation, administration, maintenance, training and coordination related to 911, E911, and NextGen 911 services and systems. This would include hardware, software and infrastructure associated with: (1) facilitating consumer access to 911 services, (2) the development and operation of the Emergency Services IP Network (ESInet), (3) call

⁸ NOI at 21.

⁹ CTIA Comments at 7.

and dispatch management applications and processes, and (4) network components that are shared with other communications systems or government services (e.g., backhaul) so long as there is a clear allocation of payment responsibility among users.

iCERt appreciates the Commission's continued efforts to discourage 911 fee diversion, and we stand ready to assist the Commission and the public safety community in addressing this critical problem. Diversion of 911 funding undermines the nation's 911 systems and places our nation's emergency responders and the public at significant risk. Given that a significant percentage of 911 funding comes from surcharges paid by communications consumers, 911 fee diversion is also a violation of the public's trust. It must come to an end.

Respectfully submitted,

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