

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
911 Fee Diversion)	PS Docket No. 20-291
)	
Twelfth Annual Report to Congress on State)	PS Docket No. 09-14
Collection and Distribution of 911 and)	
Enhanced 911 Fees and Charges)	

COMMENTS OF APCO INTERNATIONAL

The Association of Public-Safety Communications Officials-International, Inc. (APCO),¹ offers the following comments in response to the Public Notice in the above-captioned proceeding.² The Public Safety and Homeland Security Bureau seeks comment on the Twelfth Report³ and how it should impact the Commission’s ongoing proceeding to deter the practice of 9-1-1 fee diversion by states and localities. In light of the passage of the Consolidated Appropriations Act of 2021, which includes provisions that will change the Commission’s approach to the annual fee diversion reports, APCO expects the Commission to take further action on fee diversion in the near future.⁴ As the Commission reflects upon the Twelfth Report and takes further action to address fee diversion, APCO encourages the Commission to focus on the overall sufficiency of 9-1-1 funding and making the annual reports more useful.

¹ Founded in 1935, APCO is the nation’s oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 35,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including 9-1-1 Emergency Communications Centers (ECCs), emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies.

² Public Safety and Homeland Security Bureau Seeks Public Comment on Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, PS Docket Nos. 20-291, 09-14, *Public Notice*, DA 20-1462 (rel. Dec. 8, 2020) (“Notice”).

³ Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, PS Docket No. 09-14 (Dec. 8, 2020) (“Twelfth Report”).

⁴ Consolidated Appropriations Act of 2021 § 902(d)(2) (requiring the Commission to include in each report “all evidence that suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges, including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction”).

9-1-1 fee diversion is a harmful practice that must end. It exacerbates significant funding, staffing, and technology challenges facing Emergency Communications Centers (ECCs).⁵ When funding is designated to support 9-1-1, it should be expended in support of 9-1-1. The annual reports would be more valuable if, in addition to assessing diversion, they focused on the extent to which 9-1-1 is underfunded and the impacts of underfunding on emergency response. The most important goal of combatting fee diversion, from a public safety perspective, is ensuring that 9-1-1 has the funding it needs, regardless of whether the funding comes from fees on phone bills, state general funds, or other sources.⁶ ECCs must be adequately funded to maintain operations and a sufficient number of well-trained personnel. There is a concurrent need to modernize 9-1-1 systems throughout the country by achieving Next Generation 9-1-1. Diverting funding from 9-1-1 not only harms ECCs, it is detrimental and unfair to the communities they serve. The amount of funding identified as diverted is relatively small - \$200 million⁷ - compared to the amount needed to provide 9-1-1 service – more than \$5 billion⁸ – or transition to Next Generation 9-1-1 - \$15 billion.⁹ Thus, taking a more holistic view of funding problems within the context of fee diversion would be helpful.

Focusing on whether expenditures fit the Commission’s interpretation of “9-1-1 related,”¹⁰ can be a distraction from more important goals because:

⁵ See, e.g., Comments of APCO, PS Docket No. 09-14 (filed Jan. 18, 2019) (“APCO 2019 Comments”).

⁶ See Comments of APCO, PS Docket Nos. 20-291, 09-14, at 1 (filed Nov. 2, 2020).

⁷ Twelfth Report at para. 2.

⁸ *Id.* at para. 12.

⁹ According to the Public Safety Next Generation 9-1-1 Coalition, funding in the amount of \$15 billion is needed to “ensure NG9-1-1 is deployed throughout the country in an effective, innovative, and secure manner and to enable NG9-1-1 implementation nationwide.” See *First Principles of the Public Safety NG9-1-1 Coalition*, Public Safety Next Generation 9-1-1 Coalition, <https://ng-911coalition.org/> (last visited Oct. 22, 2020).

¹⁰ See Notice of Inquiry, PS Docket No. 20-291, 35 FCC Rcd 11010, at para. 35 (rel. Oct. 2, 2020) (“NOI”) (explaining that “9-1-1 related” generally includes expenditures that support ECC functions or operations, have a reasonable nexus to ECCs’ ability to receive 9-1-1 calls and/or dispatch emergency responders, relate to communications infrastructure that connects ECCs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders), and other purposes provided the state or other jurisdiction can document a connection to 9-1-1).

- The total cost of providing 9-1-1 service far exceeds the revenue collected from phone bill fees.¹¹
- Not all states have established a dedicated funding mechanism for 9-1-1¹² which means they could not be labeled as a “diverter” regardless of whether governance and funding mechanisms are in place to adequately support 9-1-1.
- The Commission and even state-level agencies might not have insight into whether diversion is occurring at the local level,¹³ significantly limiting the value of fee diversion determinations that are being made on state-level reports.
- Whether fees are being “diverted” might not be a good indication of whether 9-1-1 fees are being used in a manner that would meet consumers’ expectations.
 - o Based on the Commission’s analysis of multi-purpose 9-1-1 fees, directing the fees to non-9-1-1 purposes may or may not constitute fee diversion.¹⁴
 - o The Commission has previously found that states did not divert fees despite states’ own reports that they had in fact diverted 9-1-1 fees for purposes outside the scope of their established state funding mechanisms.¹⁵ This seems contrary to consumer transparency goals and the statutory instruction to report on expenditures “for any purpose other than the purpose for which any such fees or charges are specified.”¹⁶
- It’s unclear the extent to which the state legislative reforms cited by the Commission¹⁷ have altered funding levels for 9-1-1. If fee diversion was eliminated but contributions to 9-1-1 from the state’s general revenue fund or other sources were commensurately decreased, legislative reform might not be the panacea it seems.

In other words, evaluating how state and local governments expend 9-1-1 fees is complex and sometimes disconnected from the underlying policy goals.

In addition to recommending that the Commission focus on the extent to which 9-1-1 is underfunded, rather than whether fee expenditures are “9-1-1-related,” APCO has repeatedly

¹¹ Twelfth Report at paras. 2, 12 (noting that for the states and territories that provided data, the total cost of providing 9-1-1 service exceeded \$5 billion while approximately \$3 billion was collected in 9-1-1 fees).

¹² *See, e.g., id.* at para. 4, n. 11 (explaining that American Samoa does not collect any 9-1-1 fees on phone service, and instead funds 9-1-1 service 100% out of its General Fund). *See also id.* at para. 13, n. 38 (explaining that for Nevada, where certain local jurisdictions filed individual responses rather than the state, not every local jurisdiction had established a funding mechanism).

¹³ *See* NOI at para. 32 (citing CTIA Comments, PS Docket No. 09-14, at 6-7 (filed Feb. 8, 2019)).

¹⁴ *Id.* at paras. 39-42 (explaining, for example, that the Virgin Islands’ use of the fees – 40% for 9-1-1 and 60% for non-9-1-1 purposes – does not constitute diversion because the percentages are defined by statute, and traceable and severable accounts are used).

¹⁵ *See* Eighth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, PS Docket 09-14, at para. 37 (Dec. 30, 2016) (explaining that although funds were diverted for purposes outside of the established state funding mechanism, the Public Safety and Homeland Security Bureau concluded that the expenditures had a sufficient nexus with 9-1-1).

¹⁶ 47 USC § 615a-1(f)(2).

¹⁷ NOI at para. 28.

offered a variety of suggestions for making the reports more useful.¹⁸ For example, the reports could gather information about whether and how states are achieving interoperability – meaning the ability to share emergency calls and related data regardless of jurisdiction, device, software, or service provider, etc., and without the need for costly after-the-fact integrations or proprietary interfaces. Last year, a report from the Communications Security, Reliability, and Interoperability Council (CSRIC) VII quantified the current state of interoperability for the nation’s 9-1-1 systems.¹⁹ CSRIC’s report used public data and responses to surveys to describe the degree to which ECCs are able to share voice 9-1-1 calls, location data, SMS text-to-911, computer aided dispatch (CAD) data, and other types of data with other ECCs and (where appropriate) with emergency response providers. The report confirmed what 9-1-1 professionals across the country know: despite efforts to deploy pre-NG9-1-1 components such as Emergency Services IP Networks (ESInets), ECCs face significant interoperability problems. ECCs are more likely than not to have an interoperability problem for capabilities other than transferring voice calls, and even that basic capability is far from universal. This unfortunate and critical lack of interoperability results in unnecessary and artificially high costs, and thus is relevant to an analysis of 9-1-1 funding and expenditures. The Commission should use its annual reports to build a more comprehensive picture of interoperability for 9-1-1 across the country.

Respectfully submitted,

APCO INTERNATIONAL

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¹⁸ See APCO 2019 Comments; Comments of APCO, PS Docket No. 09-14 (filed Mar. 9 2018); Comments of APCO, PS Docket No. 09-14 (filed Feb. 13, 2017); Comments of APCO, PS Docket No. 09-14 (filed Feb. 8, 2016).

¹⁹ *Report on the Current State of Interoperability in the Nation’s 911 Systems*, Communications Security, Reliability, and Interoperability Council VII (Mar. 17, 2020).

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