

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

In the Matter of)	
)	
911 Fee Diversion)	PS Docket No. 20-291
)	
New and Emerging Technologies 911)	PS Docket No. 09-14
Improvement Act of 2008)	

COMMENTS OF APCO INTERNATIONAL

The Association of Public-Safety Communications Officials-International, Inc. (APCO)¹ offers the following comments in response to the Notice of Inquiry on the collection and expenditure of 9-1-1 fees.² As APCO has previously explained, 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).³

When funding is designated to support 9-1-1, it should be expended in support of 9-1-1. Unfortunately, controversy over permissible fee expenditures can be a distraction from the ultimate goal which 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. The controversy, and to some extent confusion over fee diversion arises from the fact that eliminating fee diversion has three different goals:

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 Notice of Inquiry, PS Docket No. 20-291, FCC 20-134 (rel. Oct. 2, 2020) (“NOI”).

³ See, e.g., Comments of APCO, PS Docket No. 09-14 (filed Jan. 18, 2019).

- Protecting 9-1-1 funding (although the amount of funding identified by the Commission as diverted is small - \$187 million⁴ - compared to the amount needed to provide 9-1-1 service - \$5 billion⁵ - or transition to Next Generation 9-1-1 - \$15 billion⁶).
- Ensuring states are expending 9-1-1 fees consistent with states' laws.
- Ensuring consumers have accurate information about how the fees they are paying are being spent.

While each of these goals has merit, the first is the most important for public safety. As the Commission notes, "PSAPs must be adequately funded so that they can implement modern call-handling technology and maintain well-trained personnel," and the 9-1-1 system must modernize by achieving Next Generation 9-1-1.⁷ Diverting funding from 9-1-1 not only harms ECCs but is unfair to the communities they serve. Many ECCs already struggle with insufficient funding and staffing. Understanding the challenges facing our nation's 9-1-1 professionals is essential for developing effective support.

The Commission's annual reports have been helpful for bringing attention to funding and other challenges facing ECCs. The reports would be more valuable, however, if they focused on the extent to which 9-1-1 is underfunded and the impacts of underfunding on emergency response rather than focusing on whether expenditures fit the Commission's interpretation of "9-1-1 related"⁸ because:

- The total cost of providing 9-1-1 service far exceeds the revenue collected from phone bill fees.⁹

⁴ Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, PS Docket 09-14, at para 2 (Dec. 19, 2019) ("Eleventh Report").

⁵ *Id.* at para. 12.

⁶ 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 training 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).

⁷ NOI at para. 2.

⁸ See NOI at para. 35 (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).

⁹ Eleventh 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 less than \$2.7 billion was collected in 9-1-1 fees).

- Not all states have established a dedicated funding mechanism for 9-1-1¹⁰ which means they could not be labeled as a “diverter” regardless of whether responsible governance and funding mechanisms are in place to support 9-1-1.
- The Commission and even state-level agencies might not have insight into whether diversion is occurring at the local level,¹¹ 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.¹²
 - 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.¹³ 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.”¹⁴
- It’s unclear the extent to which the state legislative reforms cited by the Commission¹⁵ 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.

Focusing on whether expenditures fit the Commission’s interpretation of “9-1-1 related” is also problematic because it naturally leads to efforts to discourage misbehavior even though many options for punishing states would result in additional harm to 9-1-1. ECCs that are already missing funds they were expecting from 9-1-1 fees would be further harmed when they lose eligibility for federal grant funding or Commission licenses, programs, or advisory committees. Some consequences could reduce accurate reporting about fee expenditures and representation of state professionals with important perspectives to share, which would undermine the higher goal

¹⁰ NOI at para. 3 (citing Eleventh Report at 16, para. 13).

¹¹ See NOI at para. 32 (citing CTIA Comments, PS Docket No. 09-14, at 6-7 (rec. Feb. 8, 2019)).

¹² NOI 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).

¹³ 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).

¹⁴ 47 USC § 615a-1(f)(2).

¹⁵ NOI at para. 28.

of understanding the extent to which 9-1-1 is underfunded and the impacts on emergency response.

The Commission should reconsider its approach to the annual reports. The reports should be a tool for understanding the extent to which 9-1-1 is underfunded and what the impacts of underfunding are on emergency response. Although the statute requiring the report directs the Commission to detail the status of collection and distribution of 9-1-1 fees and findings on the amount expended for any purpose other than the purpose for which such fees are specified,¹⁶ the Commission can comply with the law and make the reports more useful. Indeed, the Commission's annual reports were initially much simpler.¹⁷ The Commission laudably expanded the reports to allow comparison of the revenue from 9-1-1 fees and the total cost of providing 9-1-1 services, but this has been eclipsed by the focus on labeling states as “diverters.” If the Commission lacks the authority to make the annual reports a more useful tool, Congress should revisit the law.

Respectfully submitted,

APCO INTERNATIONAL

By:

Jeffrey S. Cohen
Chief Counsel
(571) 312-4400 ext. 7005
cohenj@apointl.org

Mark S. Reddish
Senior Counsel
(571) 312-4400 ext. 7011
reddishm@apointl.org

November 2, 2020

¹⁶ 47 USC § 615a-1(f)(2).

¹⁷ See Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, PS Docket 09-14, at paras. 13-16 (July 22, 2009) (describing the reported uses of revenue from 9-1-1 fees for purposes other than 9-1-1 without labeling states as “diverters”).