

ENDING 9-1-1 FEE DIVERSION NOW
STRIKE FORCE

REPORT AND RECOMMENDATIONS

SUBMITTED TO

THE UNITED STATES CONGRESS

Committee on Energy and Commerce of the House of Representatives
Committee on Commerce, Science, and Transportation of the Senate

Pursuant to the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020

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1 Introduction

This report documents the efforts undertaken by the “Ending 9-1-1 Fee Diversion Now Strike Force” (911 Strike Force) established by the Federal Communications Commission (FCC) pursuant to Congressional directive.¹ On December 27, 2020, the President signed the Don’t Break Up the T-Band Act of 2020, which is Section 902 of the Consolidated Appropriations Act, 2021, enacting it into law.²

- Section 902 includes new congressional mandates related to addressing 911 fee diversion, that is, the practice of some states and jurisdictions of using the 911 fees that consumers pay on their phone bills for non-911 purposes.
- Section 902 directs the FCC to issue final rules within 180 days, which were released on June 25, 2021, defining what uses of 911 fees by states and taxing jurisdictions constitute 911 fee diversion for purposes of the new legislation.
- Additionally, Section 902(d)(3) requires the FCC to establish the 911 Strike Force.

1.1 911 Strike Force Background and Purpose

“Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes.”³ Congress initially directed the FCC to address 911 fee diversion in 47 U.S.C. § 615a-1, which required the FCC to provide an annual report to Congress.

The purpose of the 911 Strike Force is “to study how the Federal Government can most expeditiously end diversion by a State or taxing jurisdiction of 9-1-1 fees or charges.”⁴

- On June 3, 2021, the 911 Strike Force held its first meeting.
- In carrying out this study, the 911 Strike Force formed three working groups. The 911 Strike Force assigned the three working groups with the following tasks, including issues that the FCC referred to the 911 Strike Force:

¹ Unless otherwise indicated, the “911 Strike Force” refers to the 17 voting members appointed by the Acting Chairwoman (also referred to as the parent committee). See *FCC Announces the Membership and First Meeting of the Ending 9-1-1 Fee Diversion Now Strike Force*, Public Notice, 36 FCC Rcd 8547 (PSHSB 2021), <https://www.fcc.gov/document/fcc-announces-members-911-strike-force>. The 911 Strike Force parent committee established three working groups. The working groups are composed of parent committee members and nine (nonvoting) working group-only participants. See Appendices C and D. The “FCC” and “Commission” refer to the FCC’s Acting Chairwoman and Commissioners.

² Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don’t Break Up the T-Band Act of 2020 (Section 902).

³ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Proposed Rulemaking, 36 FCC Rcd 4513, 4514, para. 2 (2021) (*Notice*); see also, e.g., *Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004*, Pub. L. No. 108-494, 118 Stat. 3986 (ENHANCE 911 Act) (relevant grant provisions codified at 47 U.S.C. § 942). Congress provided another round of 911 grant funding, with similar non-diversion requirements, in the NG911 Act. *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, 126 Stat. 237, Title VI, Subtitle E, *Next Generation 9-1-1 Advancement Act of 2012* (NG911 Act) (relevant grant provisions codified at 47 U.S.C. § 942).

⁴ 47 U.S.C. § 615a-1 Statutory Notes (as amended); Section 902(d)(3)(A).

- Working Group 1 (WG 1) evaluated the effectiveness of any federal laws, including regulations, policies, and practices, or budgetary or jurisdictional constraints regarding how the federal government can most expeditiously end 911 fee diversion, the acceptable use of 911 fees for public safety radio systems, and the issue of whether, and how much, the FCC should focus on wireless providers, rather than 911 authorities, when finding fee diversion for subsidization of commercial wireless towers;
- Working Group 2 (WG 2) considered whether criminal penalties would further prevent 911 fee diversion; and
- Working Group 3 (WG 3) identified the impacts of 911 fee diversion and specifically the impact of underfunding 911 services in the state or taxing jurisdiction.

As required by Section 902, it is anticipated that not later than September 23, 2021 (270 days after Section 902 was signed into law), the 911 Strike Force shall publish on the website of the Commission and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings of the study mandated by Section 902, including:

- (i) any recommendations regarding how to most expeditiously end 911 fee diversion, including actions that can be taken by federal departments and agencies and appropriate changes to law or regulations; and
- (ii) a description of what progress, if any, relevant federal departments and agencies have made in implementing the recommendations under clause (i).

1.2 911 Strike Force Structure

Section 902 states that the 911 Strike Force shall be composed of representatives from eight membership categories. The 911 Strike Force shall be composed of such representatives of federal departments and agencies as the Commission considers appropriate, in addition to:

- (i) state attorneys general;
- (ii) states or taxing jurisdictions found not to be engaging in diversion of 911 fees or charges;
- (iii) states or taxing jurisdictions trying to stop the diversion of 911 fees or charges;
- (iv) state 911 administrators;
- (v) public safety organizations;
- (vi) groups representing the public and consumers; and
- (vii) groups representing public safety answering point professionals.

Table 1 – 911 Strike Force Structure

Kelli Merriweather (Chair of the 911 Strike Force) Steven C. Sharpe, EdD (Vice-Chair of the 911 Strike Force)		
Members:		
Cindy Barbera-Brelle	Richard Bradford	Daryl Branson
Terry Clark	Budge Currier	Laurie Flaherty
Shaun Golden	April Heinze	Karima Holmes
Thaddeus Johnson	Mel Maier	Nicole Pickrell
Mark Reddish	Lance Terry	Dana Wahlberg
FCC Liaisons:		
John Evanoff	Jill Coogan	Rachel Wehr
WG 1: Effectiveness of Federal Laws in Ending 911 Fee Diversion	WG 2: Criminal Penalties to Prevent 911 Fee Diversion	WG 3: Impacts of 911 Fee Diversion
Budge Currier (Chair) Daryl Branson (Vice-Chair) April Heinze Laurie Flaherty Captain Mel Maier Steven Sharpe Matt Tooley* James Goldstein* Leah Missildine* Cathy Jones-Gooding* Mark “Fletch” Fletcher*	Richard Bradford (Chair) Thaddeus Johnson (Vice-Chair) Sheriff Shaun Golden Lance Terry Cindy Barbera-Brelle Jeffrey Jelinski* Patricia Coates*	Karima Holmes (Chair) Dana Wahlberg (Vice-Chair) Chief Terry Clark Kelli Merriweather Deputy Chief Nicole Pickrell Mark Reddish Barbara Neal* Peter Beckwith*
* Working group-only participant		

1.3 Report Methodology

The 911 Strike Force established three working groups to evaluate the problem sets assigned by Congress and the FCC. Each working group performed its work independently to ensure no single person or group had undue influence over the final report. Working groups met periodically (e.g., weekly, or bi-weekly) to conduct research, discuss findings, and draft assigned portions of the report. A leadership team consisting of the Chair, Vice-Chair, and working group leaders met regularly to check progress and establish timelines. A mid-term public meeting was held August 2, 2021, where working groups reported their progress and draft findings to the 911 Strike Force's parent committee (i.e., the 17 voting members appointed to the 911 Strike Force). This provided an opportunity for the entire committee to ask questions and provide comments to working groups. Following the August 2, 2021 meeting, drafts of working group reports were sent to the entire 911 Strike Force membership for comment, with each working group retaining drafting responsibility of its assigned portion. The three reports were combined into a single draft report for the 911 Strike Force's parent committee to consider approving. This process precluded the complete harmonization of three different styles and approaches to the working groups' assigned tasks. Despite this challenge, the 911 Strike Force was able to develop consensus and this report offers several recommendations for Congress, the FCC, federal agencies, states, and local 911 agencies to consider. The 911 Strike Force's parent committee adopted the final report, including the working group findings and recommendations, at a public meeting on September 17, 2021.

1.4 Report Executive Summary

All three working groups arrived at similar findings while working separately on their assigned topics. The 911 Strike Force independently and unanimously determined that 911 fee diversion negatively impacts the ability of the public to access emergency assistance via reliable 911 services and technology. Additionally, the following themes emerged across all three working groups and have been further summarized in the key findings below.

Key Findings:

1. 911 fee diversion negatively impacts public safety, 911 operations, first responders, and the fiscal sustainability of 911 service in the United States of America.
2. 911 fee receipts and expenditures should be distinguishable and auditable to ensure 911 fees are used for eligible activities directly related to the provision of 911 services.
3. 911 systems require significant capital and recurring operational investments to accomplish the mission. Greater access to funding (e.g., grants, appropriations, etc.) with prohibitions against 911 fee diversion is necessary to financially disincentivize diverters.
4. 911 fee diversion requires direct enforcement action by the FCC. A majority of 911 Strike Force members agree enforcement actions should follow an escalation path focused on resolving fee diversion. 911 Strike Force working groups presented recommendations including, but not limited to: fines, FCC licensing enforcement actions, and criminal referrals. While common ground currently exists, further study is recommended.

5. State and local 911 authorities or agencies should be held accountable as individual actors. States should not be punished for the activities of local governments nor local governments punished for the behavior of states.
6. The FCC requires additional authority to ensure local agencies are providing information to states for the compilation of their annual report to Congress. The FCC collection methodology may require adjustment to assist in this effort.
7. The FCC definition of fee diversion requires refinement to ensure that 911 fees directly support the entire 911 communications ecosystem between the 911 “entry point”⁵ and first responders.

While the findings above summarize the work of the three working groups, each working group’s recommendations should be reviewed and considered as a holistic approach to ending fee diversion. Therefore, recommendations from each working group should be specifically reviewed by Congress, the FCC, federal agencies, states, and local 911 agencies.

The FCC *911 Fee Diversion Report and Order* was adopted as the 911 Strike Force was developing its recommendations. Therefore, the 911 Strike Force was unable to identify or evaluate progress made in implementing recommendations or regulatory changes.

⁵ The term “entry point” is defined in the Definitions section in Appendix A.

2 Working Group 1 Summary

Working Group 1 (WG 1) began by reviewing federal laws related to 911 fee diversion and the policies and grant requirements established to deter 911 fee diversion. WG 1 then looked at state statutes for those states that have been identified as 911 fee diverters based on the information in the agency's Twelfth Annual Fee Report to Congress.⁶ The Twelfth Report 911 fee diverters included Nevada, New Jersey, New York, Rhode Island, and West Virginia. Additionally, state statutes from several states were reviewed that were identified because of their clear definition of the authorized use of 911 fees that included California, Iowa, Michigan, Montana, and Tennessee. The final FCC *911 Fee Diversion Report and Order* was also reviewed to ensure that the tasks assigned by the FCC were completed by the working group.⁷ WG 1 highly recommends reading through the FCC *911 Fee Diversion Report and Order* prior to reading this report. WG 1 identified the following key issues as a result of its research and deliberations:

Key Issues:

- Current laws, regulations, policies, and practices at the federal level have not stopped 911 fee diversion.
- While the final FCC *911 Fee Diversion Report and Order* included a definition of authorized uses for 911 fees, WG 1 is recommending additional clarity to ensure states understand what is eligible for 911 funding.
- Several states have good examples of how to ensure 911 fees are used exclusively for 911 purposes.
- States and local jurisdictions can apply a stricter definition of what is eligible for 911 funding; states may have eligibility criteria that differ from local jurisdictions and vice versa.
- Despite negative press, ineligibility to apply for 911 grants, and significant pressure from the federal government, some states and local agencies are still diverting 911 fees.
- Every effort should be made to ensure that the actions of a state do not prevent a local agency from accessing 911 fees and that actions from a local agency do not prevent a state from accessing 911 fees.
- Some states not previously identified as diverting 911 fees may be considered 911 fee diverters under the FCC's new rules without any change to their existing use of 911 fees.
- Using grant eligibility as a means to stop 911 fee diversion is only effective if the grant funding impacted is greater than the fee diverted.

2.1 Effectiveness of Federal Laws in Ending 911 Fee Diversion

After reviewing the existing federal laws, regulations, policies, budgetary or jurisdictional constraints, and practices, WG 1 determined that existing federal efforts are not effective in deterring 100% of 911 fee diversion. This is evidenced by the fact that 911 fee diversion continues.

⁶ FCC, Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges (2020) (Twelfth Report), <https://www.fcc.gov/files/12thannual911feereport2020pdf>.

⁷ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Report and Order, FCC 21-80 (June 25, 2021) (*911 Fee Diversion Report and Order*).

Congress attempted to deter fee diversion by making diverters ineligible for grant funding. One barrier to the effectiveness of these efforts might be the amount of appropriation available through 911 grant programs. If the state or local jurisdiction stands to lose more funding than it gains by diverting, it is more likely to stop diverting. Thus far, the two rounds of 911 grants (\$43M and \$115M) were not large enough appropriations to provide an effective deterrent.

WG 1 researched possible solutions that could be put into place that were not overly restrictive, could be easily implemented, and are likely to be effective.

The restrictions on grant eligibility for any federal grant funding source should align with the allowable use of 911 fees. This includes all grant programs listed on the 911.gov website.⁸ Furthermore, extend eligible 911 grant funding sources to all emergency communications grants. Historically, PSAPs and ECCs have not been eligible for emergency communications grants.⁹ Based on the expanded list of allowable 911 fee activities, any grant that was previously restricted to land mobile radio systems and emergency communications systems should include PSAPs and ECCs as eligible grantees.

The FCC should leverage its authority over public safety licensing activities to deter 911 fee diversion. Because land mobile radio purchases are an allowable use of 911 fees (see Section 2.2.1), there is a direct relationship between public safety FCC licenses and 911 funding. The initial recommendation is to modify the license application for all public safety spectrum¹⁰ licenses through the Universal Licensing System¹¹ to include the following question: “Is the applicant diverting 911 fees as currently defined in 47 CFR Part 9 (Yes/No)?” This question will provide a tracking mechanism that can be used by the FCC, states, and local authorities to identify 911 fee diversion. The next step could include restrictions on all public safety licensing activities. The potential impact on public safety requires a progressive approach to FCC licensing enforcement actions that allows time for remediation before FCC licenses are impacted.¹² Any state or local agency that is diverting 911 fees would not be eligible to file for new public safety spectrum FCC licenses, license modifications, and renewals during the period of 911 fee diversion or until it has provided an approved remediation plan. The public safety spectrum FCC license restrictions will provide another deterrent to 911 fee diversion that will extend beyond grant activities. The FCC license restrictions will also provide a means for local agencies to report 911 fee diversion. An approved remediation plan should include the following:

1. The specific steps that will be implemented to end 911 fee diversion.

⁸ See 911.gov, *Federal Funding Opportunities for 911*, https://www.911.gov/federal_funding_opportunities_for_911.html (last visited Sept. 7, 2021).

⁹ The terms PSAP and ECC are defined in the Definitions section in Appendix A.

¹⁰ See FCC, *Public Safety Spectrum*, <https://www.fcc.gov/public-safety/public-safety-and-homeland-security/policy-and-licensing-division/public-safety-spectrum> (last visited Sept. 7, 2021).

¹¹ See FCC, *Universal Licensing System*, <https://www.fcc.gov/wireless/universal-licensing-system> (last visited Sept. 7, 2021).

¹² WG 1 received comments that public safety officials would be denied the ability to renew FCC licenses based on the actions of elected officials deciding to divert 911 fees. The progressive approach and the remediation plan address this concern by allowing time to stop the 911 fee diversion before FCC licenses are impacted.

2. The timeline for when the fee diversion will end.
3. The process that will be followed to ensure all diverted 911 fees have been repaid.

2.2 911 Fees Discussion

Prior to the final FCC *911 Fee Diversion Report and Order*, it was difficult to determine expenditures that were an acceptable use of 911 fees. Below is a summary of the allowable expenditures¹³ for 911 fees, provided the state or taxing jurisdiction can document the expenditure:

1. PSAP operating costs, including lease, purchase, maintenance, replacement, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
2. PSAP personnel costs, including telecommunicators' salaries and training;
3. PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
4. Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and
5. Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.

2.2.1 Allowable Uses for 911 Fees

The FCC *911 Fee Diversion Report and Order* directed the 911 Strike Force to provide recommendations on developing specific examples of the allowable use of 911 fees that can be used to support public safety radio systems. After feedback from the members of WG 1, the following recommendation was developed:

The allowable use of 911 fees should include the ability for local agencies and states to fund any communication system, technology or support activity¹⁴ that directly provides the ability to deliver 911 voice and data information between the “entry point”¹⁵ to the 911 system and the first responder.

This definition was adopted to ensure that all current and future technologies and communication systems that directly support the 911 system are included in the eligible use of 911 fees. The definition is broad enough to provide state and local agencies the ability to support the communications systems, technology, and support activities that are used every day to save lives. Some examples of allowable expenditures include, but may not be limited to:

¹³ See *911 Fee Diversion Report and Order* at 40-42, Appx. A.

¹⁴ The support activities are defined in the *911 Fee Diversion Report and Order*.

¹⁵ The “entry point” to the 911 system is defined in 47 CFR § 9.4, “Obligation to transmit 911 calls”: “All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5.”

- Legacy 911
- Next Generation 911 (NG911)
- 911 Geographic Information Systems
- Cybersecurity for 911 and PSAP operations
- Equipment and services used in the PSAP/ECC for Emergency Notification Systems
- Communication systems to include land mobile radio, and any communication systems that directly support the exchange of information between the PSAP/ECC and the first responder
- Call Processing Equipment (CPE), also known as Customer Premises Equipment or Call Handling Equipment (CHE)
- Computer Aided Dispatch (CAD)
- Protocol-based caller interrogation systems
- Legacy and Next Generation 911 system analytics
- Training of Public Safety Communications Officials as allowed in the *911 Fee Diversion Report and Order*
- Any other costs allowed in the *911 Fee Diversion Report and Order*

2.2.2 911 Fees Not Allowed—Wireless Providers

The FCC also directed the 911 Strike Force to consider whether, and how much, the FCC should focus on wireless providers, rather than 911 authorities, when finding fee diversion for subsidization of commercial wireless towers.¹⁶

WG 1 determined that the definition given in Section 2.2.1 provides the clarity needed to determine an eligible use of 911 fees. Some local and state agencies are building communication solutions that include commercial wireless technology such as LTE or Wi-Fi. These solutions would be an eligible use of 911 fees provided they are directly supporting the delivery of data and information between the 911 request for assistance and the first responder. The use of 911 fees by telecommunications providers to supply commercial telecommunications services or to subsidize commercial wireless towers would not be an acceptable expenditure of 911 fees under this definition. The definition provided by WG 1 clearly indicates that 911 fees are not eligible to be used to cover the expenditures before the “entry point”¹⁷ into the 911 system.

2.2.3 Examples of Unauthorized Uses of 911 Fees

The definition in Section 2.2.1 can also be clarified by adding examples of what would be an unauthorized use of 911 fees based on the recommendations of WG 1. Some examples of unauthorized uses of 911 fees include, but may not be limited to:

- Land mobile radio assets that support jail and prison operations because these systems are not directly supporting the delivery of data and information between the 911 request for assistance and the first responder.

¹⁶ *911 Fee Diversion Report and Order* at 23, para. 48 n.144.

¹⁷ As previously noted, the “entry point” to the 911 system is defined in 47 CFR § 9.4.

- Subscriber units for Department of Transportation, emergency managers, and other entities that are not directly supporting the delivery of data and information between the 911 request for assistance and the first responder.
- LTE subscription plans that do not directly support delivery of data and information between the 911 request for assistance and the first responder.

2.3 Implications of a Broader 911 Fee Structure

The FCC *911 Fee Diversion Report and Order* and the clarifications discussed in this report for the authorized use of 911 fees may be significantly different from the current practices, statutes, policies, and rules used by state and local authorities. Because of these differences, some state and local authorities that are diverting 911 fees, may no longer be fee diverters. Similarly, some state and local authorities that are not considered to be diverting 911 fees, may now be considered fee diverters.

WG 1 discussed the importance of being able to clearly identify 1) the allowable use of 911 fees, 2) the revenue collected for 911 fees, and 3) the validation that the revenue was used to support allowable activities. State and local authorities should ensure that statutes, policies, procedures, and rules clearly identify these three elements.

Because the recommendation will be viewed as an expansion for some state and local authorities, there will be the need to ensure that statutes, policies, procedures, and rules are updated to reflect the funding needs of the state and local authority. While the FCC definition of the allowable use of 911 fees may be viewed as an expansion of allowable funding, nothing prevents a state or local authority from further restricting state and local use of 911 fees. Expanding the scope of allowable activities beyond the definition stated in Section 2.2.1 would be considered diversion of 911 fees.

Additional Implications:

- States and local agencies can adopt guidelines for the eligible use of 911 fees that are more restrictive than the federal definition, but not less restrictive.
- For states and local agencies that have a stricter definition today, the addition of eligible costs without increasing 911 funding overall may reduce funding available for costs specific to the upgrade and operation of PSAPs/ECCs for many jurisdictions.
- The successful adoption of the definition is dependent upon equitable access to all funding sources for emergency communications, by both 911 agencies and first responder agencies. Currently, many of the funding sources for emergency communications (such as those listed in SAFECOM Guidance on Emergency Communications Grants) exclude 911 as an eligible use of funds. If funding programs are not expanded and additional funding is not secured, 911 agencies (that manage 911 fees in most jurisdictions) will likely be challenged to financially and administratively support additional equipment and service without additional funds to cover these costs.
- FirstNet is legally and contractually precluded from using any of its funds for 911-related costs. The lack of a similarly exclusive funding source for 911 poses a significant equity issue.

- Based on the proposed definition, LTE connections used to support CAD or deliver 911 data between the NG911 core services and the PSAP would be eligible expenses.
- Many state and local jurisdictions may seek increased 911 fees to cover the additional costs associated with the broadened definition.
- The NG911 Cost Study, delivered to Congress in 2018, did not include the items in the broader definition. The estimate of \$9-12 billion for the national upgrade of the nation's 911 system in the 2018 report will be inadequate to cover these additional costs.
- The broader definition may invite interpretation to include additional components of the communication system used by emergency responders in the field, beyond radio networks and equipment.

2.4 Working Group 1 Conclusions and Recommendations

Based on the research completed, WG 1 makes the following recommendations that may apply to different responsible parties (e.g., Congress, the FCC, states, and local agencies).

1. The recommendations are a holistic approach. If the recommendations are implemented individually, the unanimous consensus used to develop the recommendations would be violated.
2. The allowable use of 911 fees should include the ability for local agencies and states to fund any communication system, technology, or support activity that directly provides the ability to deliver 911 voice and data information between the “entry point” to the 911 system and the first responder. This definition includes, but may not be limited to, those items listed in Section 2.2.1. This definition recognizes that 911 telecommunicators are first responders in many states.¹⁸
3. Section 2.2.1 defines the eligible use of 911 fees. States and local agencies can adopt guidelines for the eligible use of 911 fees that are more restrictive than the federal definition, but not less restrictive.
4. Federal grant programs that include public safety communications as an eligible expense should also include 911 as an eligible expense and 911 agencies as eligible applicants.
5. Federal grant funding for 911 should be increased.
6. State agencies that divert 911 fees should not be eligible for federal grant funding that includes 911 as an eligible expense.
7. State agencies that divert 911 fees with an obligation to serve as the State Administrative Authority shall pass 100% of the remaining grant funding through to the local agencies after covering authorized administrative costs for the grant.
8. It should be determined whether a 911 fee diverting state can serve as the State Administrative Authority if the state is ineligible for grant funding.¹⁹

¹⁸ See NENA: The 9-1-1 Association, *Telecommunicator Reclassification Map*, https://www.nena.org/page/reclassification_map (last visited Sept. 7, 2021).

¹⁹ The 911 Strike Force has concerns regarding the legality of allowing a state to act as an administrative authority if the state itself is ineligible for grant funding. We recommend that Congress explore this issue.

9. Local agencies that divert 911 fees should not be eligible for federal grant funding that includes 911 as an eligible expense as a direct grantee or subgrantee.
10. State Administrative Authorities with local agencies that divert 911 fees should be eligible for grant funding but shall ensure no local 911 fee diverting agency receives grant funding.
11. The FCC should modify the license application for all public safety spectrum²⁰ licenses through the Universal Licensing System²¹ to include the following question: “Is the applicant diverting 911 fees as currently defined in 47 CFR Part 9 (Yes/No)?”
12. Any FCC license applicant that is diverting 911 fees shall not be eligible for public safety spectrum FCC license renewals, modifications, or new licenses until it has provided an approved remediation plan as determined by the FCC. The remediation plan process should follow a progressive approach to FCC licensing enforcement actions that allows time for remediation before FCC licenses are impacted.
13. The FCC may need to clarify the language in the *911 Fee Diversion Report and Order* to ensure that the state is not denied FCC applications based on the behavior of local agencies, or vice versa. The FCC may also need to determine a start date for this requirement. The FCC may also need to determine an applicable timeframe, i.e., within the last 12 months.
14. The FCC should direct carriers to include a separate line item for “911 fee” or “911 surcharge” to identify any funds that are collected for 911.
15. State and local 911 fee structures should clearly identify the allowable use of 911 fees that aligns with the final FCC *911 Fee Diversion Report and Order*. Any multi-purpose fee should clearly indicate the breakdown of the fee so that eligible 911 fees can be clearly identified.
16. Any state and local 911 funds should be deposited into designated accounts and should be audited to ensure they were used exclusively for eligible 911 expenditures.
17. State and local authorities should ensure that current statutes, policies, procedures, and rules are updated to reflect the final FCC *911 Fee Diversion Report and Order*.
18. The grant process should be reviewed at the state and local level to ensure equitable access to all potential 911 funding sources.
19. An authorization and appropriation should be adopted to revise the 2018 NG911 Cost Study to ensure adequate funding for the expanded definition.

²⁰ See FCC, *Public Safety Spectrum*, <https://www.fcc.gov/public-safety/public-safety-and-homeland-security/policy-and-licensing-division/public-safety-spectrum> (last visited Sept. 7, 2021).

²¹ See FCC, *Universal Licensing System*, <https://www.fcc.gov/wireless/universal-licensing-system> (last visited Sept. 7, 2021).

3 Working Group 2 Summary

Working Group 2 (WG 2) considered whether criminal penalties would further prevent 911 fee diversion.

WG 2 began by noting that the question presented seeks a yes or no response. WG 2 concluded that the imposition of some form of criminal penalty may assist in ending 911 fee diversion. WG 2 recognizes that some penalties, such as suspension or denial of licenses, may have negative impacts on entities, and citizens, who have no hand in diverting 911 fees. WG 2 also recognizes that identifying fee diversion as a criminal act, thereby identifying public officials, state legislators, or others as having criminal intent, may create additional challenges to end 911 fee diversion. WG 2 reviewed information in the agency's Twelfth Report, comparisons of diverting states' statutes and practices, the FCC Enforcement Bureau's Enforcement Overview,²² publicly available reports from fee diverters²³ referenced in the Twelfth Report, and the final FCC *911 Fee Diversion Report and Order*. WG 2 emphasizes the following key points in its conclusions and recommendations:

- The primary actors diverting fees are elected officials or bodies such as state legislatures.
- Most PSAPs are operated by local governments.
- We do not know whether changes in federal legislation and the final rules will end 911 fee diversion.
- The FCC has some, albeit undetermined, authority to enforce the final rules under current law.
- Issues such as intent of diverters, notice to diverters, and opportunity or time for changing practices or law of diverters may impact imposition of criminal penalties.
- Criminal penalties may assist in preventing 911 fee diversion, or provide a means to assist in ending 911 fee diversion if Congress's changes and the FCC's rules are not fully effective.

3.1 Discussion

WG 2 reviewed publicly available records relating to past fee diversions identified in the agency's annual 911 fee reports to Congress. Using the agency's reports and the survey results submitted by diverting jurisdictions, WG 2 conducted further review of documents referenced by those jurisdictions as well as publicly available documents relating to those jurisdictions. WG 2 found Rhode Island's report and other records convoluted and confusing. Surcharges varied by subject, application, and deposits.²⁴ Rhode Island legislation changed in 2019,²⁵ directing a \$.50

²² FCC Enforcement Bureau, Enforcement Overview (2020), https://www.fcc.gov/sites/default/files/public_enforcement_overview.pdf (Enforcement Overview).

²³ Twelfth Report at 49-50, para. 27 & n.85, Table 16; *see also* FCC, *Twelfth Annual Fee Report State Filings*, <https://www.fcc.gov/twelfth-annual-fee-report-state-filings-0> (last visited Sept. 7, 2021). All five of these states self-identified as non-diverters. *Id.*

²⁴ Twelfth Report Rhode Island Questionnaire at C1a; Twelfth Report New York Questionnaire at C1a, C2, C3. <https://www.fcc.gov/twelfth-annual-fee-report-state-filings-0>.

²⁵ Twelfth Report at 55, para. 38 (noting the effective date of October 1, 2019).

911 surcharge to a restricted account.²⁶ Funding appears limited to a single PSAP and a single backup PSAP.²⁷ The funding relationship between the single primary PSAP and multiple secondaries, or dispatch centers, operated by municipal governments is unclear.²⁸ The agency noted deficits in reports from Rhode Island and New Jersey, and specifically asked for more complete responses.²⁹ These reviews revealed a likelihood that the surveys are not collecting all relevant data regarding 911 fees or 911 services.³⁰ Acknowledging the FCC's instruction to the 911 Strike Force regarding annual surveys, WG 2 recommends that Congress consider any additional authority needed by the FCC to enforce full and accurate responses to the annual survey.

Diverting states' Twelfth Report surveys³¹ identified disparate approaches to funding 911 services which WG 2 considered. In 2019 New Jersey received approximately \$124M in 911 fees and deposited the funds in the 9-1-1 System and Emergency Response Trust Fund account.³² The Trust account funds programs within the Departments of Law and Public Safety, Military and Veterans' Affairs, and Treasury.³³ The state legislature diverts fees through appropriations. Approximately 11% of the funds pay for expenses with an apparent 911 nexus (staff, OIT, network, PSAP CPE for State Police). Rhode Island deposited 90% of the collected funds in the state's general fund and 10% into the State Information Technology Investment Fund.³⁴ The agency was unable to determine whether Rhode Island's expenditures were correctly allocated for 911 services.³⁵

WG 2 considered "multi-purpose" fee provisions enacted by some states.³⁶ States' legislation directs deposits and uses of such multi-purpose fees involving both state and local governments. New York's survey responses exemplify this aspect of fee diversion. The New York Division of

²⁶ Title 39 R.I. Gen. Laws Ann. § 39-21.1-14 (West) (effective Oct. 1, 2019). *See* Letter from J. David Smith, RI E-911 Uniform Emergency Telephone System, Rhode Island Department of Public Safety, to Lisa M. Fowlkes, Chief, Public Safety and Homeland Security Bureau, FCC at 5 (June 29, 2020) (Rhode Island Supplemental Letter Response).

²⁷ Twelfth Report Rhode Island Questionnaire at B1.

²⁸ Twelfth Report Rhode Island Questionnaire at C2, D1 (the state receives 911 fee receipts and approves expenditure of such funds). The RI-911 Center is a transfer agency that receives 911 calls but transfers all calls to other entities for dispatch. *See* Rhode Island Supplemental Letter Response at 1. Municipalities operate secondary PSAPs, or dispatch centers, at their expense. Title 39 R.I. Gen. Laws Ann. § 39-21.1-1.5 (d), (f).

²⁹ Twelfth Report at 50, 54-55, para. 28 n.93, para. 37 nn.115 & 121, para. 38 n.124 (e.g., requesting that Rhode Island report all information requested and relevant to the annual survey).

³⁰ New Jersey, for example, failed to identify the number of PSAPs or telecommunicators in the state's Twelfth Report Questionnaire and explained that E911 is funded at a cost of \$14M but operational, equipment, and personnel costs are the responsibility of the PSAP and not reported to the State 911 Office. Twelfth Report New Jersey Questionnaire at B1, B2, B3a.

³¹ The Twelfth Report covers calendar year 2019 fee activities.

³² Twelfth Report at 50, para. 28. The agency found that New Jersey used 911 funds for non-public safety or unspecified uses. *Id.* at 3, para. 2.

³³ Twelfth Report at 50, para. 28. The agency found some uses may have a nexus to 911 but others do not. Perhaps more telling and relating to the safe harbor procedures, New Jersey did not provide any documentation supporting a nexus to 911. *Id.* *See* N.J. Stat. Ann. §§ 52:17C-18, 52:17C-19.

³⁴ Rhode Island Supplemental Letter Response at 5.

³⁵ Twelfth Report at 54, para. 37.

³⁶ *911 Fee Diversion Report and Order* at 9-11, paras. 18, 20.

Homeland Security and Emergency Services' Office of Interoperable and Emergency Communications (OIEC) filed the 2019 annual report.³⁷ New York laws³⁸ direct quarterly remittance of surcharges collected by providers to the state tax commissioner. The Comptroller is directed to deposit 41.7% of the available funds into the state's general fund.³⁹ Although some 911 fees are established by local governments,⁴⁰ such are remitted to the tax commissioner and disbursed at the direction of the local government.⁴¹ Responsibility for administration of the collected funds is not vested in a state 911 authority. Based on comments in the OIEC survey responses and comments filed in PS Docket No. 20-291 (911 Fee Diversion), OIEC did not report all of the fee receipts within the scope of FCC PS Docket Nos. 20-291 and 09-14.⁴² Hence there is a substantial question of whether OIEC is the proper, or only, entity that should file a report representing New York. The same lack of information and transparency is demonstrated in New Jersey's report.⁴³ WG 2 recommends that the agency modify the annual survey to ensure that all states respond to the survey detailing all 911 fees and expenditures.

Ancillary to the question presented, WG 2 identified differences among jurisdictions relating to how 911 fees are treated under accounting practices, budgets, and audits by state and local governments, and WG 2 notes that state-level enforcement actions may be consistent with the FCC's efforts to end 911 fee diversion. WG 2 members' collective experience is that all states have some form of auditing oversight for expenditures for local government and state agencies, despite some states' contrary reports.⁴⁴ Agency audits typically include corrective actions or recommendations. Other state-level actions may include whistleblower actions and fraud investigations.⁴⁵ Some such actions, such as state or administrative audits, mirror the FCC's intent to promote transparency, accountability, and integrity in the collection and expenditure of fees collected for 911 services.⁴⁶ WG 2 believes auditing and oversight may help to end 911 fee diversion, and that citizens may have standing under some state laws to challenge fee diversion when states act inconsistently with federal legislation and the final rules.

³⁷ See Twelfth Report New York Questionnaire at A2, C1a, C2, C3, F1, F2 (showing that no wireless funds were collected by OIEC).

³⁸ N.Y. Tax Law § 186-f (McKinney) ("Public Safety Communications Surcharge"); N.Y. Tax Law § 186-g (McKinney) ("Wireless Communications Surcharge").

³⁹ N.Y. Tax Law § 186-f 5(a) (McKinney).

⁴⁰ N.Y. County Law Article 6-A §§ 320-336 ("Local Enhanced Wireless 911 Program").

⁴¹ N.Y. Tax Law § 186-g (McKinney).

⁴² Twelfth Report New York Questionnaire; New York State Division of Homeland Security and Emergency Services (OIEC) Comments, PS Docket Nos. 20-291 and 09-14 (rec. Mar. 23, 2021), <https://ecfsapi.fcc.gov/file/10324198555825/NYS%20DHSES%20Comments%20on%20911%20Fee%20Diversion%20Notice%20of%20Proposed%20Rulemaking.pdf>.

⁴³ Twelfth Report New Jersey Questionnaire.

⁴⁴ Twelfth Report at 60-63, para. 43, Table 18.

⁴⁵ New Jersey reported that there are no oversight or auditing procedures for the 911 funds. See Twelfth Report New Jersey Questionnaire at H1.

⁴⁶ *911 Fee Diversion Report and Order* at 6, para. 12. "9-1-1 services" is defined in 47 U.S.C. § 942(e)(1) as including both E911 and NG911 services, and "E9-1-1 services" is defined in 47 U.S.C. § 942(e)(2) as meaning "both phase I and phase II enhanced 9-1-1 services, as described in section 20.18 of the Commission's regulations (47 C.F.R. 20.18), as in effect on [the date of enactment of the Next Generation 9-1-1 Advancement Act of 2012 (NG911 Act), enacted Feb. 22, 2012], or as subsequently revised by the Commission."

In considering the issue presented, WG 2 first considered the primary actors using the historical information above. The actors are primarily elected officials or bodies such as state legislatures. Other officials or bodies acting in county or municipal governments may share responsibilities for fee diversion.⁴⁷ State legislatures and governors may rely upon their state constitutions for authority to budget or direct funds in extraordinary situations or otherwise. We generally recognize that these individuals or bodies may believe their past actions have been conducted under color of state law. WG 2 is also aware that some state legislatures have established a non-reverting fund for 911 fee receipts and that such funds are not appropriated by the legislature.⁴⁸ This approach appears successful in avoiding fee diversion and WG 2 therefore recommends that states adopt similar measures.

WG 2 assumed states implemented 911 fees pursuant to their interpretation of federal law. Recent federal legislation removes the deference previously afforded states and taxing jurisdictions. WG 2 members relied upon extensive experience in the 911 community, state, and local government. Despite evidence of past 911 fee diversion, and some evidence of change, WG 2 remains concerned that diverting states may not expediently act in conjunction with changes in federal law that may then lead to enforcement actions.

The vast majority of PSAPs are operated by local governments. WG 2 members' general knowledge and experience determined that PSAPs may have FCC licenses but that states typically have FCC licenses too. WG 2 did not have information to determine the actual or relative numbers of FCC licenses among PSAPs and states.

WG 2 considered whether a criminal penalty is necessary. We concluded that identifying fee diversion as a crime requires careful consideration of various impacts upon the primary actors and the FCC. WG 2 quickly determined that any criminal penalty should be limited to imposition of monetary fines or forfeitures.

3.2 Penalties Considered

We do not know whether the federal legislation will end fee diversion, nor whether the FCC's *911 Fee Diversion Report and Order*, and final rules, will i) end fee diversion and ii) establish a decisional framework that effectively ends fee diversion within a reasonable time. We agree with the FCC's observation that fee diversion undermines the purpose of federal 911 legislation.⁴⁹ WG 2 also considered whether the number of diverting jurisdictions merits implementation of criminal penalties as an effective means of modifying behavior.

⁴⁷ Twelfth Report at 21-25, paras. 14-16, Tables 6 & 7.

⁴⁸ As used here, "non-reverting" includes two concepts. First, that 911 fees collected but not expended may accumulate across a state's fiscal year, i.e., roll from one year to the next, without appropriation actions by the state's legislature. Second, that 911 fees are deposited into a fund limited to 911 receipts and expenditures which facilitates accounting, audits, and other reviews. Some states also use "reserve" funds or "restricted" funds in this context.

⁴⁹ *911 Fee Diversion Report and Order* at 8-9, para. 17; *see also id.* at 10-11, para. 20 (discussing the legislative history of the NET 911 Act).

WG 2 supports the potential positive impact that criminal penalties may bring to end fee diversion. We have considered the nature of such penalties and a general construct of escalating penalties. WG 2 concluded that a single-level penalty setting a relatively small dollar amount, or small percentage of 911 fees diverted, invites diverting jurisdictions to simply trade off between the penalty and total fees diverted. WG 2 also considered suspending FCC licenses awarded to diverting jurisdictions and concluded that the likelihood of negative impacts on citizens and first responders must be carefully considered before imposing such penalties. As noted above, fee diversion typically occurs by act of a state legislature or public official. Considering historical evidence, WG 2 concluded that suspending an FCC license held by a PSAP, or withholding a license from a PSAP, would not target the majority of fee diverters. However, delaying license awards or granting temporary licenses may achieve compliance to end fee diversion by associating a time for compliance with the delay or temporary license. We recommend imposing a series of escalating penalties together with actions impacting public safety spectrum licenses as presented below. WG 2 intends that any enforcement action involving FCC licensing must be specifically identified with a diverting jurisdiction.

WG 2 considered delaying license renewal applications. Within WG 2's experience, jurisdictions frequently seek renewals on the eve of expiration. Denial or delay of renewal applications may have merit as an enforcement mechanism. However, WG 2 does not recommend taking such action without further study of the potential impacts on citizens, PSAPs, and response agencies.

Two primary factors supported our recommendation to impose criminal penalties. First, few jurisdictions⁵⁰ were identified as diverters, but those diverting jurisdictions have repeatedly diverted 911 fees.⁵¹ Second, the agency's survey data identified states which combined 911 fees with other revenues, and indicated that 911 fee diversion may occur within county or municipal governments independent from state oversight.⁵² WG 2 had some concerns regarding the ability to prove that a jurisdiction, or actor, intended⁵³ to divert 911 fees. Although we believe the FCC's Enforcement Bureau would establish notice of any action pursuant to an investigation, we are unsure that state legislatures are aware of the changes in federal law, the final rules, and the impacts of those changes.⁵⁴ The multi-purpose fee safe harbor⁵⁵ and use of illustrative acceptable costs⁵⁶ may have impacts on determinations of intent and notice.

WG 2 concluded that 911 fees are "state funds" under laws of states' jurisdictions, and as generally understood among the states. Understanding that 911 fees are state funds, and that prior federal law included some deference to states' determination of acceptable 911 expenditures, WG 2 believes states may require a period of time to implement legislative or other

⁵⁰ Twelfth Report at 3, para. 2.

⁵¹ Twelfth Report at 56-59, para. 41, Table 17.

⁵² Twelfth Report at 21-22, 41, 60, paras. 14, 23, 43.

⁵³ See generally Enforcement Overview.

⁵⁴ Fourteen states and one jurisdiction reported modifications to their 911/E911 funding legislation in 2019. Twelfth Report at 19-20, para. 13.

⁵⁵ See *911 Fee Diversion Report and Order* at 42-44, Appx. A (§ 9.23(d)).

⁵⁶ See *911 Fee Diversion Report and Order* at 42-44, Appx. A (§ 9.23(b)). The FCC noted that acceptable has the same meaning as Congress provided. *Id.* at 5, para. 9.

changes necessary to end 911 fee diversion. WG 2 anticipates that the safe harbor⁵⁷ provision will illuminate multi-purpose fees and establish the means, and a reasonable time, for compliance with the *911 Fee Diversion Report and Order*. WG 2 also anticipates use of the safe harbor provision to mitigate penalty enforcement.

WG 2 considered imposing a penalty effected by disallowing providers' disbursements to states that divert 911 fees. This notion was not found in comments filed in response to the *Notice*. WG 2 believes CMRS providers would have concerns regarding administration of such funds as collected but not disbursed and administrative costs associated with such funds. Additionally, this action would negatively impact CMRS cost reimbursements where such are authorized by state law. We are not aware of any existing authority to implement this notion. However, if this form of sanction can be interposed through additional authority granted to the FCC, such may have a positive impact on ending fee diversion.

Existing procedural rules will govern actions, petitions, etc., before the FCC.⁵⁸ WG 2 also notes that the Enforcement Overview provides clear explanations of how matters may be investigated and how actions during and following investigations are managed. WG 2 recommends ensuring that diverting jurisdictions have notice of potential actions and penalties prior to imposition of any fines or other penalties. It is certain from available records that some jurisdictions are aware of the agency's past findings that 911 fees were diverted.⁵⁹ WG 2 believes its concerns regarding notice to diverting jurisdictions will be satisfied by the FCC's Enforcement Bureau and the safe harbor provisions in the final rules.⁶⁰ WG 2 recommends ensuring that the FCC is granted sufficient authority to act upon enforcement measures to end 911 fee diversion. WG 2 also recommends that the agency modify the annual 911 fee questionnaire instructions to identify changes in the law, the final rules, and the potential for future enforcement action if diversion of 911 fees occurs.

⁵⁷ See, e.g., *911 Fee Diversion Report and Order* at 11, para. 21.

⁵⁸ 47 U.S.C. § 615a-1(e)(2) provides that the FCC "shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 et seq.]" and that "[f]or purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively."

⁵⁹ WG 2 notes that West Virginia's Legislative Auditor published a report dated August 20, 2020 identifying S.B. 579 (2020 W. Va. Acts 303 codified in §24-6-6b of the Code of West Virginia) as segregating a Wireless E-911 fee for distribution to support 911 in response to the FCC's conclusions. This indicates corrective action by the state in response to the FCC's identification of the state as a diverter. See Joint Committee on Government and Finance, West Virginia Office of the Legislative Auditor, Post Audit Division, Legislative Auditor's Letter Report (Aug. 20, 2020), http://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA_2020_708.pdf. Rhode Island Governor Raimondo agreed that 911 surcharges should not be deposited into the general fund. See Government Technology, *Editorial: 911 in Rhode Island Needs Dedicated Funds* (Apr. 22, 2019; The Providence Journal), <https://www.govtech.com/em/safety/editorial-wake-up-and-protect-91.html> (last visited Sept. 6, 2021).

⁶⁰ See Enforcement Overview at 17-18 (explaining that clear evidence of intent in a forfeiture action is shown if the conduct continues after notice of violation).

3.3 Working Group 2 Conclusions and Recommendations

3.3.1 For Congress

WG 2 recommends that Congress consider any additional authority needed by the FCC to enforce full and accurate responses to the annual survey.

WG 2 recommends imposing an escalating series of actions against states or other jurisdictions to enforce ending 911 fee diversion. There is no expectation or recommendation that legislators, public officials, or any other natural persons, are to be prosecuted or incarcerated. As a first-level action, we recommend a fine, as a criminal penalty, against the jurisdiction diverting 911 fees. Escalation may include increasing fines representing specific amounts or a percentage of the fees diverted by the jurisdiction. If the initial fine fails to achieve compliance with applicable federal law and FCC rules, we recommend imposing additional penalties including a percentage of 911 fees diverted, e.g., ten percent or more. If the escalating fines fail to achieve compliance with applicable federal law and FCC rules, it is recommended that any new public safety spectrum license applications should be delayed for a period of time, e.g., 60-90-180 days, or granted only as temporary licenses with approval based on satisfying conditions to end fee diversion. If such penalties fail to achieve compliance, WG 2 recommends that Congress provide authority to the FCC to take direct action suspending or otherwise limiting licenses held by diverting jurisdictions. WG 2 intends that any enforcement action involving FCC licensing must be specifically identified with a diverting jurisdiction, e.g., a license held by a county PSAP should not be the subject of action if the state diverts 911 fees.

WG 2 recommends ensuring that the FCC is granted sufficient authority to act upon enforcement measures to end 911 fee diversion.

WG 2 recommends ensuring that diverting jurisdictions have notice of potential actions and penalties prior to imposition of any fines or other penalties. WG 2 also recommends modifying the annual 911 fee questionnaire instructions to identify an active effort to provide notice to jurisdictions identified as diverters of changes in the law, the final rules, and potential for future action if diversion of 911 fees occurs.

3.3.2 For the FCC

WG 2 suggests modifying the annual survey to ensure that all entities receiving 911 fees, and multi-purpose fees, respond to the survey detailing applicable fees and expenditures.

- Add the definition of 911 fee. B1.
- Add the definition of 911 services. B3.
- For C2, identify any oversight or audit authority for: a State, a Local Authority, and hybrid approach. (Should relate to responses in D2a.)
- Add C3 (or C2a) requesting details of any effort to collect information from Local Authorities if the box for Local Authority or hybrid approach is checked.
- Modify E1 to use “any” instead of “all,” and further modify the instruction as follows: “Provide a statement identifying with specificity any activities, programs, and organizations for whose benefit your state, or political subdivision thereof, has obligated or expended funds collected for 911/E911/Next Generation 911 purposes.” The

remaining part of E1 should be retained as a separate instruction: “How have the collected funds supported 911/E911/Next Generation 911 services?”

- Modify E2 to correspond to the final rules, i.e., add both acceptable and unacceptable expense categories.
- Modify G1 to conform with the legislative changes in § 615a-1: “In the annual period ending December 31, _____, were funds collected for 911 services in your state or jurisdiction made available or used solely for purposes identified in 47 U.S.C. § 615a-1?”
- Modify K1 to conform with the legislative changes in § 615a-1.

4 Working Group 3 Summary

Working Group 3 (WG 3) was tasked with determining the impacts of diversion by a state or taxing jurisdiction of 911 fees or charges and underfunding 911.⁶¹ In response, the group developed a comprehensive list of specific examples of impacts on 911 service and the ability of PSAPs to protect life and property. WG 3 then categorized the examples into related categories and subcategories. Additionally, WG 3 considered the subject of how to define underfunding of 911 services in the state or taxing jurisdiction. WG 3 reviewed the Twelfth Report which identified states and/or jurisdictions identified as diverting 911/E911 fees from 2009-2020, as well as the 2016 Task Force on Optimal PSAP Architecture Final Report with respect to the diversion of funding.⁶² WG 3 determined the following key points should be emphasized in the report.

Key Points:

- 911 fee diversion is a harmful practice that exacerbates significant challenges facing PSAPs.
- Defining 911 fee diversion and uncovering instances of diversion is difficult. However, the most important goal from a public safety perspective is ensuring that 911 has the funding it needs.
- The cost of providing 911 service nationwide far exceeds the revenue collected from 911 fees.⁶³
- Fee diversion and/or underfunding have a negative impact on every aspect of 911 programming because impacts of fee diversion directly affect every fundable resource in a PSAP, which inhibits the ability of emergency communications centers to perform optimally and to transition from legacy systems.
- Fee diversion and/or underfunding may result in resource cuts, whether staffing, technological, or programmatic, to meet 911 program priorities established by leadership, governance structures, and/or political climates. One of the foreseeable impacts that may be the result of fee diversion and/or underfunding is related to the transition from legacy to NG911 systems. NG911 requires acquiring NG911 services and equipment while simultaneously maintaining the legacy 911 system. Fee diversion and insufficient funding can unnecessarily extend dual system operations, degrade the efficiency of 911, and create duplicative costs for an indefinite period.
- We defined 911 underfunding as occurring when funding levels are below the levels required for optimal performance of 911 operations.

⁶¹ *911 Fee Diversion Report and Order* at 38-39, para. 82 (“We direct the Bureau to modify the annual fee report questionnaire to seek additional information on the underfunding of 911 systems, including both (1) information on the impact of fee diversion on 911 underfunding, and (2) information on 911 underfunding in general. We also refer this issue to the 911 Strike Force.”); *id.* at 39, para. 83 (referring the topic of defining underfunding 911 to the 911 Strike Force to study).

⁶² See FCC, *Task Force on Optimal Public Safety Answering Point Architecture (TFOPA)*, <https://www.fcc.gov/about-fcc/advisory-committees/general/task-force-optimal-public-safety-answering-point> (last visited Sept. 7, 2021).

⁶³ Twelfth Report at 3-4, 14, paras. 2, 12 (noting that for the states and territories that provided data, the total cost of providing 911 service exceeded \$5 billion while approximately \$3 billion was collected in 911 fees).

- Underfunding 911 can be a result of 911 fee diversion, and 911 can be underfunded even where no 911 fee diversion is taking place. Further, not all jurisdictions have established a 911 fee, and these jurisdictions therefore could not be labeled as “diverters” regardless of whether governance and funding mechanisms are in place to adequately support 911.
- Even if 911 fee diversion does not result in underfunding 911, diversion can have harmful impacts (such as violating the public’s trust). However, the impacts of diversion most related to public safety occur when diversion results in underfunding 911.
- 911 fee diversion and/or underfunding not only prevent 911 programs from implementing new and emerging technologies, but also harm critical services employed today.
- Adoption of progressive tools is key for our emergency communications centers to sustain the level of operational functionality that supports all stakeholders. 911 service is a critical component of the emergency communications ecosystem which requires hiring, training, and exercising highly qualified staff to meet the needs of the citizens who expect the system to work both seamlessly and flawlessly.
- The impact of fee diversion and/or underfunding of PSAPs will be evident to others in the emergency communications ecosystem, i.e., Law Enforcement, Fire, and EMS.

As a method of specifying within the broad subject of impacts, the team developed categories to group the types of impacts. This grouping method was used to help better highlight the broad brush of effects of fee diversion and/or underfunding 911. The categories are described in Section 4.1 Impacts of Fee Diversion and/or Underfunding 911.

4.1 Impacts of Fee Diversion and/or Underfunding 911

Evidence of the impacts of fee diversion and/or underfunding 911 is discernable in the following critical functional areas:

- Basic Operations
- Technology
- Interoperability
- Preparedness and Planning
- Public Trust and Accountability
- 911 Fee Oversight and Administration

4.1.1 Basic Operations

One of the most recognizable impacts of fee diversion and/or underfunding 911 we see today is the insufficient resources to support day-to-day operations. 911 fee diversion and/or underfunding prevent PSAPs from achieving and maintaining proper performance and operational services. Examples of this include:

- Insufficient funding for critical positions, resulting in inadequate staffing. PSAPs across the country are consistently operating at or below minimum staffing levels.
- Low staff retention rates due to lack of competitive compensation and benefits commensurate with the expected level of performance. Further, recruits should be offered compensation packages that account for the level of skill required to perform well, and the complexity and critical nature of the work.

- Forced overtime because of inadequate staffing, which contributes to telecommunicator burnout, decreased wellness, and low morale.
- Insufficient funds to provide critical training, resulting in errors and slower call processing and dispatch times.
- Inability to fund the purchase of industry specific, ergonomically correct workstations, chairs, and other equipment, which can contribute to degraded performance and increased workers' compensation claims.
- Equipment rooms lack proper attention (such as HVAC systems), which results in premature equipment failures.

4.1.2 Technology

911 is a complex system of critical infrastructure that is designed to process emergency communications. Lack of relevant and enhanced technology is catastrophic. 911 fee diversion and/or underfunding can result in:

- Inadequate funding to plan, implement, and transition to NG911 while also funding the legacy system until it can be decommissioned.
- Inadequate funding for integration of emerging technologies such as text-to-911 and wireless location accuracy applications, and implementation of telecommunicator resources such as integrated call handling protocol software.
- Inability to maintain or replace end-of-life equipment.
- Lack of integration with key systems and ability to optimize features. Specific examples include:
 - Inability to develop and maintain necessary geospatial data sets and integrate solutions that improve the delivery of the location information of the 911 caller. This is increasingly critical given more than eighty percent of calls to 911 are initiated from wireless handsets.⁶⁴
 - Inability to implement solutions that provide supplemental data such as personal health information about an individual, etc., delivered with a 911 call.
 - Inability to communicate using text and other multimedia, such as photos and videos, as expected by the public.
 - Inability to procure integrated public alert and warning system equipment or other public safety agency alerting programs to perform both external and internal timely notification to keep the public safe.
 - Inability to procure cybersecurity protections which have become of paramount importance in the transition to an IP environment.

4.1.3 Interoperability

A vital function of emergency communications is to transfer information between critical entities, such as 911 callers and field responders, in an expedited and coherent manner. The following are examples of the impact of 911 fee diversion and/or underfunding on these critical exchanges:

⁶⁴ See, e.g., NENA: The 9-1-1 Association, *9-1-1 Statistics*, <https://www.nena.org/page/911Statistics> (last visited Sept. 7, 2021).

- A lower level of quality and completeness in processing a 911 call, which sets the stage for the entire rest of the response; interoperability is a basic expectation for field responders and the public.
- Increased burden on public safety partners, i.e., Police, Fire, and EMS, due to their stymied ability to interface and maintain interoperability with PSAPs.
- The inability to communicate and/or transfer incident information with other jurisdictions or public service entities during emergencies (e.g., partners that aid in emergency response, such as public works, gas and electric providers, schools, and others).

4.1.4 Preparedness and Planning

911 fee diversion and/or underfunding prevent the ability for 911 programs to perform necessary strategic long-term planning for continuity of operations (COOP) which includes:

- Inability to follow best practices related to planning and mitigative efforts, preparedness, response, and recovery.
- Inadequate funding to procure and integrate backup equipment such as generators, uninterruptible power supply (UPS), and redundant systems and infrastructure.
- Inability to participate in mitigation activities such as training and exercises.
- Inadequate funding to ensure efficient response through procurement and integration of resources such as Mobile PSAP/PSAP in a box.
- Stymied recovery from catastrophic events.

4.1.5 Public Trust and Accountability

911's customers are every American and visitor to our country, in their time of need. The trust needed at the time of emergency starts before the 911 call and ends when our industry can prove accountability. Examples of when 911 fee diversion and/or underfunding can cause the fabric of trust to fade can be seen in:

- Fees collected for 911 purposes not being spent on 911.
- Lack of funding for public education, community outreach, and engagement to ensure that the callers know when, how, and what to expect when calling 911.
- Lack of funding to address the public's perception about PSAPs' inability to accept text messages, photos, and videos when commercially available social apps can.
- Lack of funding to educate the public about limitations of calling 911 from non-registered VoIP devices, non-initialized wireless devices, or devices which do not have service during commercial power outages.

4.1.6 Fee Oversight and Administration

When 911 fees are diverted, the 911 program's mission, values, and vision may be prevented from being adequately fulfilled. In addition, priorities, governance, and leadership structure support, such as human resources, technological, programmatic, and/or administrative resources that could monitor and audit the fee usage, may be cut due to diverted funds creating:

- Unclear guidance and authoritative support for states and territories to ensure that fee diversion is not occurring.
- Inconsistent interpretations of acceptable expenditures.

- Inability to properly audit 911 fee expenditures.

4.2 Defining “Underfunding” of 911

We defined 911 underfunding as occurring when funding levels are below the levels required for optimal performance of 911 operations.

However, underfunding of 911 can have different meanings depending on the context and can be both coupled or decoupled from 911 fee diversion. Additional time, research, and input from a broader and diverse set of stakeholders is needed to devise a more exhaustive definition and adequately address the topic of underfunding. Preliminarily, we found that 911 underfunding:

- Results in a lack of resources to fulfill statutorily or other defined responsibilities.
- Can be a result of 911 fee diversion.
- Can occur even when no 911 fee diversion is taking place.
- The consequences are exacerbated when fee diversion and underfunding occur simultaneously.

4.3 Working Group 3 Conclusions and Recommendations

911 was explicitly established to serve the public when they experience their worst day. 911 funding mechanisms must ensure dedicated, reliable, and sustainable resources are available to carry out that charge.

WG 3 concludes that 911 fee diversion and/or underfunding inhibit the ability of emergency communications centers to perform optimally, resulting in the inability to conduct the technological and operational “business” of 911. Specific impacts include, but are likely not limited to, the following:

- Reduced capacity to answer and dispatch 911 calls.
- Reduced capacity to hire, train, and retain qualified staff to process emergency calls and operate the specialized equipment necessary to support an effective public safety response.
- Increased potential for misrouted calls and/or slower call processing time—which results in slower responses and potentially leads to compromised call outcomes.
- Reduced ability for investment in new technology, including tools that deliver and enable immediate data sharing capability from the caller to the PSAP and to public safety responders.
- Erosion of public trust due to the public’s lack of confidence in the ability of a jurisdiction to provide emergency services when instances of substandard performance occur as a result of inadequate funding.

WG 3 makes the following recommendations:

- States should be provided with additional guidance on how to respond to the agency’s annual questionnaire seeking information about fee diversion and the underfunding of 911 services in general. This guidance should help ensure the collected information is comprehensive and consistent across jurisdictions.

- Jurisdictions across the nation should have mechanisms in place to review and act upon fee diversion and/or underfunding that impact 911 services, including access to federal funding to support a nationwide transition to NG911.
- Additional research is needed to understand the relationship between 911 fee diversion, 911 underfunding, and emergency response.
- Jurisdictions should have oversight mechanisms such as annual audits of 911 fee collection and expenditures to ensure funding mechanisms are optimized.

5 911 Strike Force Closing Comments

The 911 Strike Force members spent hundreds of volunteer hours developing recommendations to end 911 fee diversion and safeguard the long-term sustainability of 911 service in the United States of America. The recommendations developed by the three independent working groups and adopted by the 911 Strike Force parent committee should be considered as a holistic approach rather than a menu of options. As such, all parties (Congress, the FCC, federal agencies, states, and local 911 agencies) should take a measured and balanced approach to solving this critical issue.

Additionally, there are significant areas that require further study. FCC licensing enforcement actions, federal and state regulation updates regarding NG911,⁶⁵ and the chronic underfunding of 911 services represent specific areas where 911 Strike Force members strongly recommend more deliberation prior to deciding a path forward regarding these three issues.

The FCC *911 Fee Diversion Report and Order* was adopted as the 911 Strike Force was developing its recommendations. Therefore, the 911 Strike Force was unable to identify or evaluate progress made in implementing recommendations or regulatory changes.

The 911 Strike Force would like to thank Congress for seeking counsel regarding this complex issue. We also thank the FCC assigned staff and the 911 Strike Force members for their dedication to this process.

⁶⁵ The 911 Strike Force acknowledges that current Title 47 regulations may require further study to address issues relating to the recommendations presented.

6 APPENDIX A: DEFINITIONS

The definitions below reflect the recommendations of the 911 Strike Force unless otherwise indicated.

Term	Description
911 Entry Point	The “entry point” to the 911 system is defined in 47 CFR § 9.4, “Obligation to transmit 911 calls”: “All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5.”
Allowable Uses of 911 Fees	<p>The allowable uses of 911 fees should include the ability for local agencies and states to fund any communication system, technology or support activity that directly provides the ability to deliver 911 voice and data information between the “entry point” to the 911 system and the first responder.</p> <p>For a list of eligible expenditures, refer to Working Group 1, Section 2.2.1.</p>
Public Safety Answering Point (PSAP) / Emergency Communications Center (ECC)	The National Emergency Number Association defines PSAP as: “An entity responsible for receiving 9-1-1 calls and processing those calls according to a specific operational policy.”
Underfunding 911	<p>Funding levels that are below the levels required for optimal performance of 911 operations.</p> <p>Refer to Working Group 3, Section 4.1 for discussion and examples of impacts.</p>

7 APPENDIX B: REFERENCES

The 911 Strike Force’s webpage is <https://www.fcc.gov/911strikeforce>

The 911 Strike Force’s email account is 911StrikeForce@fcc.gov

Section 902, Division FF, Title IX of the Consolidated Appropriations Act, 2021 (“Section 902”). <https://uscode.house.gov/statviewer.htm?volume=134&page=3206>

Section 902 Legislative History. <https://www.congress.gov/congressional-report/116th-congress/house-report/521>

911 Fee Diversion Report and Order. <https://www.fcc.gov/document/fcc-adopts-order-address-911-fee-diversion>

911 Fee Diversion Notice of Proposed Rulemaking. <https://www.fcc.gov/document/fcc-proposes-rules-address-911-fee-diversion-0>

911 Fee Diversion Notice of Inquiry. <https://www.fcc.gov/document/fcc-seeks-combat-911-fee-diversion>

911 Fee Diversion Public Notices in PS Docket Nos. 09-14 and 20-291:

- *Public Safety and Homeland Security Bureau Opens PS Docket No. 20-291* (2020). <https://www.fcc.gov/document/public-safety-and-homeland-security-bureau-opens-ps-docket-no-20-291>
- *Public Safety and Homeland Security Bureau Seeks Comment on Twelfth Annual Report to Congress on 911 Fee Diversion in Light of Ongoing Proceeding to Deter Such Practices* (2020). <https://www.fcc.gov/document/pshsb-seeks-comment-twelfth-annual-report-911-and-e911-fees>
- *Public Safety and Homeland Security Bureau Announces Comment and Reply Comment Dates for the Notice of Proposed Rulemaking on 911 Fee Diversion* (2021) <https://www.fcc.gov/document/pshsb-announces-comment-dates-911-fee-diversion-nprm>

FCC Annual Reports to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges. <https://www.fcc.gov/general/911-fee-reports>

Annual State Filings in Response to FCC Fee Questionnaire. <https://www.fcc.gov/general/911-fee-reports>

FCC Electronic Documents System (EDOCS), PS Docket Nos. 09-14 and 20-291. <https://www.fcc.gov/edocs/search-results?t=quick&dockets=09-14> and <https://www.fcc.gov/edocs/search-results?t=quick&dockets=20-291>

FCC Electronic Comment Filing System (ECFS), PS Docket Nos. 09-14 and 20-291. https://www.fcc.gov/ecfs/search/filings?proceedings_name=09-14&sort=date_disseminated,DESC and

[https://www.fcc.gov/ecfs/search/filings?q=\(\(proceedings.name:\(\(20%5C-291*\)\)%20OR%20proceedings.description:\(\(20%5C-291*\)\)\)\)&sort=date_disseminated,DESC](https://www.fcc.gov/ecfs/search/filings?q=((proceedings.name:((20%5C-291*))%20OR%20proceedings.description:((20%5C-291*))))&sort=date_disseminated,DESC)

8 APPENDIX C: 911 STRIKE FORCE MEMBERSHIP

Chair:

- Kelli Merriweather, Executive Director of the Texas Commission on State Emergency Communications (CSEC), representing the National Association of State 911 Administrators (NASNA) as current President

Vice-Chair:

- Steven C. Sharpe, EdD, Genesee County (NY) Director of Emergency Communications, representing the New York State 911 Coordinators Association

Representatives of federal departments and agencies:

- Laurie Flaherty, Coordinator of the National 911 Program (911.gov), National Highway Traffic Safety Administration's Office of Emergency Medical Services, U.S. Department of Transportation

State attorneys general:

- Richard Bradford, Special Deputy Attorney General, Office of the Attorney General, North Carolina Department of Justice

States or taxing jurisdictions found not to be engaging in diversion of 911 fees or charges:

- Terry Clark, Chief of Police of Prairie Band Potawatomi Tribal Police, Prairie Band Potawatomi Nation, Kansas
- Daryl Branson, State 911 Program Manager, Colorado Public Utilities Commission

States or taxing jurisdictions trying to stop the diversion of 911 fees or charges:

- Lance Terry, Oklahoma 911 Coordinator, Oklahoma 911 Management Authority
- Dana Wahlberg, Director of the Department of Public Safety Emergency Communications Networks, Minnesota Department of Public Safety
- Budge Currier, 911 Branch Manager for the California Office of Emergency Services

State 911 administrators:

- Cindy Barbera-Brelle, Statewide 911 Administrator, Illinois State Police
- Kelli Merriweather, Executive Director of the Texas Commission on State Emergency Communications (CSEC), representing the National Association of State 911 Administrators (NASNA) as current President

Public safety organizations:

- Nicole Pickrell, Deputy Chief for Communications and Support Services of Loudoun County (Virginia) Department of Fire and Rescue, representing the International Association of Fire Chiefs
- Mel Maier, Captain, Oakland County (MI) Sheriff's Office (OCSO), representing the Major County Sheriffs of America
- Shaun Golden, Sheriff, Monmouth County (NJ) Sheriff's Office

Groups representing the public and consumers:

- Thaddeus Johnson, Assistant People's Counsel at the Washington, DC Office of the People's Counsel (DC-OPC), representing the National Association of State Utility Consumer Advocates

Groups representing public safety answering point professionals

- April Heinze, 911 and PSAP Operations Director, the National Emergency Number Association
- Karima Holmes, Senior Director, ShotSpotter, Inc., representing 911der Women. Inc.
- Mark Reddish, Senior Counsel and Manager of Government Relations, Association of Public Safety Communications Officials-International
- Steven C. Sharpe, EdD, Genesee County (NY) Director of Emergency Communications, representing the New York State 911 Coordinators Association

FCC Staff

- John A. Evanoff, Designated Federal Officer, and Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau
- Jill Coogan, Deputy Designated Federal Officer, and Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau
- Rachel Wehr, Working Group Liaison, and Honors Attorney, Policy and Licensing Division, Public Safety and Homeland Security Bureau

9 APPENDIX D: 911 STRIKE FORCE WORKING GROUPS

** indicates a member of the 911 Strike Force (those without this designation are working group participants only)*

WORKING GROUP 1: EFFECTIVENESS OF FEDERAL LAWS IN ENDING 911 FEE DIVERSION

Chair: **Budge Currier**,* 911 Branch Manager, California Office of Emergency Services

Vice-Chair: **Daryl Branson**,* State 911 Program Manager, Colorado Public Utilities Commission

April Heinze,* 911 and Public Safety Answering Point Operations Director, National Emergency Number Association

Laurie Flaherty,* Coordinator, National 911 Program, National Highway Traffic Safety Administration's Office of Emergency Medical Services, U.S. Department of Transportation

Mel Maier,* Captain, Oakland County Sheriff's Office, Oakland County, Michigan, representing the Major County Sheriffs of America

Steven Sharpe,* EdD, Director of Emergency Communications, Genesee County, New York, representing the New York State 911 Coordinators Association

Matt Tooley, Technology Coordinator, Metro Communications Agency, Sioux Falls, South Dakota

James Goldstein, Director of Government Relations, National Public Safety Telecommunications Council

Leah Missildine, Executive Director, Alabama 911 Board

Cathy Jones-Gooding, Deputy State 911 Coordinator, Washington State Enhanced 911 Coordination Office

Mark Fletcher, Vice President of Public Safety Solutions, 911inform

WORKING GROUP 2: WHETHER CRIMINAL PENALTIES WOULD FURTHER PREVENT 911 FEE DIVERSION

Chair: **Richard Bradford**,* Special Deputy Attorney General, Office of the Attorney General, North Carolina Department of Justice

Vice-Chair: **Thaddeus Johnson**,* Assistant People's Counsel, Washington, DC Office of the People's Counsel, representing the National Association of State Utility Consumer Advocates

Shaun Golden,* Sheriff, Monmouth County Sheriff's Office, Monmouth County, New Jersey

Lance Terry,* Oklahoma 911 Coordinator, Oklahoma 911 Management Authority

Cindy Barbera-Brelle,* Statewide 911 Administrator, Illinois State Police

Jeffrey Jelinski, County Commissioner for Morrison County, Minnesota, representing the Association of Minnesota Counties

Patricia Coates, Administrator of the Court and Law Enforcement Management Information System/ 911 Coordinator, Oakland County, Michigan, representing the Michigan Communication Directors Association

WORKING GROUP 3: IMPACTS OF 911 FEE DIVERSION

Chair: **Karima Holmes**,* Senior Director, ShotSpotter, representing 911der Women, Inc.

Vice-Chair: **Dana Wahlberg**,* Director, Department of Public Safety Emergency Communications Networks, Minnesota Department of Public Safety

Terry Clark,* Chief of Police, Prairie Band Potawatomi Tribal Police, Prairie Band Potawatomi Nation, Kansas

Kelli Merriweather,* Executive Director, Texas Commission on State Emergency Communications, representing the National Association of State 911 Administrators as its President

Nicole Pickrell,* Deputy Chief for Communications and Support Services, Loudoun County Department of Fire and Rescue, Loudoun County, Virginia, representing the International Association of Fire Chiefs

Mark Reddish,* Senior Counsel and Manager of Government Relations, Association of Public-Safety Communications Officials-International

Barbara Neal, Executive Director, Vermont Enhanced 911 Board

Peter Beckwith, General Counsel, South Sound 911, Pierce County, Washington