

Before the
Federal Communications Commission
Washington, D.C. 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 )

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. On December 27, 2020, the President signed the Don't Break Up the T-Band Act of 2020 as part of the Consolidated Appropriations Act, 2021.1 Section 902 of the new legislation requires the Commission to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, it directs the Commission to issue final rules, not later than 180 days after the date of enactment of section 902, designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. § 615a-1, as amended by section 902.2 In this Notice of Proposed Rulemaking, we propose measures to implement section 902. We seek

1 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).

2 Section 902(c)(1)(C).

comment on these measures, which are designed to identify those uses of 911 fees by states and other jurisdictions that support the provision of 911 services.<sup>3</sup>

## II. BACKGROUND

2. Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes. In the ENHANCE 911 Act of 2004, Congress required states and local jurisdictions receiving federal 911 grants to certify that they were not diverting 911 funds.<sup>4</sup> In the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Congress enacted additional measures to limit 911 fee diversion, codified in 47 U.S.C. § 615a-1 (section 615a-1).<sup>5</sup> Specifically, section 615a-1(f)(1) provided that nothing in the NET 911 Act, the Communications Act of 1934,<sup>6</sup> or any Commission regulation or order “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation . . . for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.”<sup>7</sup>

3. The NET 911 Act also required the Commission to begin reporting annually on the status in each state of the collection and distribution of fees for the support or implementation of 911 or E911 services, including findings on the amount of revenues obligated or expended by each state “for any purpose other than the purpose for which any such fees or charges are specified.”<sup>8</sup> Pursuant to this provision, the Commission has reported annually to Congress on 911 fee diversion every year since

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<sup>3</sup> Comments on this Notice of Proposed Rulemaking are due within 20 days after publication of a summary of the document in the Federal Register, and reply comments are due within 30 days after such publication in the Federal Register. The Commission considers this time period necessary given the 180-day statutory deadline for its rulemaking and given the scope of the issues raised.

<sup>4</sup> 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).

<sup>5</sup> New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (*NET 911 Act*). The NET 911 Act enacted 47 U.S.C. § 615a-1 and also amended 47 U.S.C. §§ 222, 615a, 615b, and 942. *See* 47 U.S.C. § 615a-1 Editorial Notes.

<sup>6</sup> 47 U.S.C. § 151 *et seq.*

<sup>7</sup> 47 U.S.C. § 615a-1(f)(1) (prior version). Under the NET 911 Act, the Commission’s annual 911 fee report covers states, as well as U.S. territories and the District of Columbia. *See* 47 U.S.C. § 615a-1(f)(2) (directing the Commission to report on the status “in each State” of the collection and distribution of 911 fees and charges); *id.* § 615b(2) (definition of “State”).

<sup>8</sup> 47 U.S.C. § 615a-1(f)(2) (prior version).

2009.<sup>9</sup> All 12 of the annual reports issued to date have identified some states that have diverted 911 fees to other uses.<sup>10</sup>

4. In October 2020, the Commission released a Notice of Inquiry seeking comment on the effects of fee diversion and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911 fees.<sup>11</sup> Noting that publicly identifying diverting states in the Commission's annual reports has helped discourage the practice but has not eliminated fee diversion, the Commission sought comment on whether it could take other steps to discourage fee diversion, such as conditioning state and local eligibility for FCC licenses, programs, or other benefits on the absence of fee diversion.<sup>12</sup> The Commission received eight comments and seven reply comments in response to the Notice of Inquiry.<sup>13</sup>

5. The newly enacted section 902 requires the Commission to take additional action with respect to 911 fee diversion. Specifically, section 902(c)(1)(C) adds a new paragraph (3)(A) to section 615a-1(f) that directs the Commission to adopt rules "designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable" for purposes of section 902 and the Commission's rules.<sup>14</sup> The newly added section 615a-1(f)(3)(B) states that these purposes and functions shall be limited to "the support and implementation of 9-1-1 services" provided by or in the state or taxing jurisdiction imposing the fee or charge, and "operational expenses of public safety answering points" within such state or taxing jurisdiction.<sup>15</sup> The new section also states that, in designating such purposes and functions, the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as the intended purposes and functions for their 911 fees or charges, and "determine whether such purposes and functions directly support providing 9-1-1 services."<sup>16</sup>

6. Section 902 also amends section 615a-1(f)(1) to provide that the rules adopted by the Commission for these purposes will apply to states and taxing jurisdictions that impose 911 fees or charges. Whereas the prior version of section 615a-1(f)(1) referred to fees or charges "obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as

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<sup>9</sup> The Chair of the Federal Communications Commission submits the annual report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, as mandated by the NET 911 Act and as prepared by the staff in the Public Safety and Homeland Security Bureau. See 47 U.S.C. § 155(a) (stating, inter alia, that "[i]t shall be [the Chair's] duty . . . to represent the Commission in all matters relating to legislation and legislative reports"). These annual reports can be viewed at <https://www.fcc.gov/general/911-fee-reports>.

<sup>10</sup> The Twelfth Report found that five states diverted more than \$200 million in 911 fees or surcharges for non-911 purposes in 2019, or 6.6% of all fees collected. FCC, Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 49-50, para. 27, Table 16 (2020) (*Twelfth Report*), <https://www.fcc.gov/files/12thannual911feereport2020pdf>. Following release of the Twelfth Report, the Bureau sought comment on the Twelfth Report and "how it should impact the Commission's ongoing proceeding to end the practice of 911 fee diversion by states and localities." *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*, PS Docket Nos. 20-291 and 09-14, Public Notice, 35 FCC Rcd 14144, 14144 (PSHSB 2020), <https://www.fcc.gov/document/pshsb-seeks-comment-twelfth-annual-report-911-and-e911-fees>.

<sup>11</sup> *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Inquiry, 35 FCC Rcd 11010, 11010, para. 1 (2020) (*Fee Diversion NOI*).

<sup>12</sup> *Fee Diversion NOI*, 35 FCC Rcd at 11011, 11016, paras. 5, 16.

<sup>13</sup> These filings can be viewed in the FCC's electronic comment filing system (ECFS) at <https://www.fcc.gov/ecfs/>, under PS Docket Nos. 20-291 and 09-14.

<sup>14</sup> 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

<sup>15</sup> 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

<sup>16</sup> 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

specified in the provision of State or local law adopting the fee or charge,”<sup>17</sup> the amended version reads as follows:

Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, *consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.*<sup>18</sup>

7. In addition, section 902(c) establishes a process for states and taxing jurisdictions to seek a determination that a proposed use of 911 fees should be treated as having such an acceptable purpose or function even if it is for a purpose or function that has not been designated as such in the Commission’s rules.<sup>19</sup> Specifically, newly added section 615a-1(f)(5) provides that a state or taxing jurisdiction may submit to the Commission a petition for a determination that an obligation or expenditure of a 911 fee or charge “for a purpose or function other than a purpose or function designated under [section 615a-1(f)(3)(A)] should be treated as such a purpose or function,” i.e., as acceptable for purposes of this provision and the Commission’s rules.<sup>20</sup> The new section 615a-1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function “(i) supports public safety answering point functions or operations,” or “(ii) **has a direct impact on the ability of a public safety answering point** to—(I) receive or respond to 9-1-1 calls; or (II) dispatch emergency responders.”<sup>21</sup>

8. Section 902(d) requires the Commission to create an “interagency strike force” to study “how the Federal Government can most expeditiously end diversion” by states and taxing jurisdictions and to report to Congress on its findings within 270 days of the statute’s enactment.<sup>22</sup> Section 902(d)(1) provides that if the Commission obtains evidence that “suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges,” the Commission shall submit such information to the strike force, “including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”<sup>23</sup> Section 902(d)(2) provides that the Commission shall also include evidence it obtains of diversion and underfunding in future annual fee reports, beginning with the first report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act.”<sup>24</sup> In addition, section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after the date of the enactment of the new legislation, “such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the

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<sup>17</sup> 47 U.S.C. § 615a-1(f)(1) (prior version).

<sup>18</sup> 47 U.S.C. § 615a-1(f)(1) (as amended) (emphasis added); section 902(c)(1)(A).

<sup>19</sup> 47 U.S.C. § 615a-1(f)(5) (as amended); section 902(c)(1)(C).

<sup>20</sup> 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

<sup>21</sup> 47 U.S.C. § 615a-1(f)(5)(A)-(B) (as amended); section 902(c)(1)(C).

<sup>22</sup> Section 902(d)(3).

<sup>23</sup> Section 902(d)(1).

<sup>24</sup> Section 902(d)(2). Based on the December 27, 2020 enactment date of section 902, this requirement will apply beginning with the next annual fee report, due to Congress by December 31, 2021.

[annual report to Congress on 911 fees].”<sup>25</sup> Finally, section 902(d)(4) prohibits any state or taxing jurisdiction identified as a fee diverter in the Commission’s annual report from participating or sending a representative to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) under 47 U.S.C. § 1425(a) or any advisory committee established by the Commission.<sup>26</sup>

9. Section 902 does not impose any requirement on states or taxing jurisdictions to impose any fee in connection with the provision of 911 service. As revised, the proviso to section 615a-1 states that nothing in the Act or the Commission’s rules “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services” specifically designated by the taxing jurisdiction “for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, consistent with the purposes and functions designated in [the Commission’s forthcoming rules] as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.”<sup>27</sup>

### III. DISCUSSION

10. With this Notice of Proposed Rulemaking, we propose rules to implement the provisions of section 902 that require Commission action. Specifically, we propose to amend part 9 of our rules to establish a new subpart I that would address 911 fees and fee diversion in accordance with and for the purposes of the statute. Accordingly, we propose to (1) adopt rules that clarify what does and does not constitute the kind of diversion of 911 fees that has concerned Congress (and the Commission), (2) establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues, and (3) codify the specific restrictions that section 902 imposes on states and taxing jurisdictions that engage in diversion as defined by our rules (i.e., a reporting requirement upon which eligibility for NTIA grants are to be conditioned, and the exclusion from eligibility to participate on certain committees, panels, councils, and Commission advisory committees). We tentatively conclude that these proposed changes to part 9 would further Congress’s stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions. We seek comment on this tentative conclusion and on the proposed changes we set forth below.

#### A. Definitions and Applicability

11. As a preliminary matter, we note that section 902 defines certain terms relating to 911 fees and fee diversion. To promote consistency, we propose to codify these definitions in our rules with certain modifications, as described below. We seek comment on these proposed definitions.

12. *911 fee or charge.* Section 902 defines “9-1-1 fee or charge” as “a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.”<sup>28</sup> We propose to codify this definition in our rules. However, we note that the statutory definition in section 902 does not address services that may be subject to 911 fees other than Commercial Mobile Radio Services (CMRS) and IP-enabled voice services. The reason for this omission is unclear. For example, virtually all states impose 911 fees on wireline telephone services and have provided information on such fees for inclusion in the

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<sup>25</sup> 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C).

<sup>26</sup> Section 902(d)(4).

<sup>27</sup> 47 U.S.C. § 615a-1(f)(1) (as amended); section 902(c)(1)(A).

<sup>28</sup> 47 U.S.C. § 615a-1(f)(3)(D)(i) (as amended); section 902(c)(1)(C), (f)(1).

Commission's annual fee reports. In addition, as 911 expands beyond voice to include text and other non-voice applications, states could choose to extend 911 fees to such services in the future.<sup>29</sup>

13. To promote regulatory parity and avoid gaps that could inadvertently frustrate the rapid deployment of effective 911 services, including advanced Next Generation 911 (NG911) services, we propose to define "911 fee or charge" in our rules to include fees or charges applicable to "other emergency communications services" as defined in section 201(b) of the NET 911 Act. Under the NET 911 Act, the term "other emergency communications service" means "the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service."<sup>30</sup> The proposed modification will make clear that the rules in subpart I extend to all communications services regulated by the Commission that provide emergency communications, including wireline services, and not just to commercial mobile services and IP-enabled voice services.

14. We tentatively conclude that adoption of this proposed expanded definition of "911 fee or charge" is reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities under section 902 and other federal 911-related statutes that, taken together, establish an overarching federal interest in ensuring the effectiveness of the 911 system.<sup>31</sup> The Commission's general jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to CMRS and IP-enabled voice services. Section 251(e)(3) of the Communications Act of 1934, which directs the Commission to designate 911 as the universal emergency telephone number, states that the designation of 911 "shall apply to both wireline and wireless telephone service," which evidences Congress's intent to grant the Commission broad authority over different types of communications services in the 911 context.<sup>32</sup> Similarly, RAY BAUM'S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls "regardless of the technological platform used."<sup>33</sup> In addition, section 615a-1(e)(2) provides that the Commission "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

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<sup>29</sup> For example, the Commission has extended 911 obligations to providers of text messaging services. *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 10-255 and 11-153, Report and Order, 28 FCC Rcd 7556 (2013) (*Bounce-Back Report and Order*) (requiring covered text providers to provide consumers attempting to send a text to 911 with an automatic bounce-back message when the service is unavailable); *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (*Text-to-911 Second Report and Order*) (requiring covered text providers to implement text-to-911 service no later than June 30, 2015 or six months from the date of a PSAP's request, whichever is later). Further, in RAY BAUM'S Act, which directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls, Congress specifically defined the term "9-1-1 call" to include a voice call "or a message that is sent by other means of communication." *See Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (*RAY BAUM'S Act*) § 506(c)(1) (codified at 47 U.S.C. § 615 Notes).

<sup>30</sup> *NET 911 Act* § 201(b), codified at 47 U.S.C. § 615b(8).

<sup>31</sup> *See, e.g., Comcast Corp. v. FCC*, 600 F.3d 642, 646-47 (D.C. Cir. 2010).

<sup>32</sup> 47 U.S.C. § 251(e)(3). Section 251(e)(3) was added as part of the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (*911 Act*), which established 911 as the national emergency number and required the Commission to provide for appropriate transition periods for areas in which 911 was not in use. Congress broadly stated the purpose of the 911 Act as "to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs." *911 Act* § 2(b), codified at 47 U.S.C. § 615 Notes.

<sup>33</sup> *See RAY BAUM'S Act* § 506(a).

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.”<sup>34</sup>

15. Based on the foregoing, we tentatively conclude that including “other emergency communications services” within the scope of the definition of 911 fees we propose is also reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities for ensuring that the 911 system, including 911, E911, and NG911 calls and texts from any type of service, is available, that these 911 services function effectively, and that 911 fee diversion by states and other jurisdictions does not detract from these critical, statutorily recognized purposes.<sup>35</sup> Diverting fees collected for 911 service of any type, whether it be wireline, wireless, IP based, or text, undermines the purpose of these federal statutes by depriving the 911 system of the funds it needs to function effectively and to modernize 911 operations.<sup>36</sup> We seek comment on this tentative conclusion and on the extent to which our proposed rules would strengthen the effectiveness of a nationwide 911 service.

16. In addition, we seek comment on extending the definition of “911 fee or charge” to include fees or charges designated for the support of “public safety,” “emergency services,” or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation

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<sup>34</sup> 47 U.S.C. § 615a-1(e)(2).

<sup>35</sup> See, e.g., 47 U.S.C. § 151 *et seq.*; 47 U.S.C. § 601; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996); *911 Act* § 3(a), and as codified at 47 U.S.C. §§ 222, 251, 615, 615a, 615b; 47 CFR § 64.3000 *et seq.*, renumbered as 47 CFR § 9.4 *et seq.*; 47 CFR § 20.18, renumbered as 47 CFR § 9.10; 47 CFR § 9.1 *et seq.*, renumbered as 47 CFR § 9.11 *et seq.*; *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Nuvio Corp. v. FCC*, 473 F.3d 302, 312 (D.C. Cir. 2007) (Kavanaugh, J., concurring); *NET 911 Act*, as codified at §§ 222, 615a, 615a-1, 615b, 942; Twenty-First Century Communications and Video Accessibility Act, Pub. L. No. 111-260, 124 Stat. 2751 (2010) § 106, as codified in part at 47 U.S.C. § 615c(a), (g); *Bounce-Back Report and Order; Text-to-911 Second Report and Order; NG911 Act* §§ 6503-6509, and as codified at 47 U.S.C. §§ 942, 1471-1473; Kari’s Law Act of 2017, Pub. L. No. 115-127, 132 Stat. 326 (2018), codified at 47 U.S.C. § 623; *RAY BAUM’S Act*, codified at 47 U.S.C. § 615 Notes; *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607 (2019), *corrected by* Erratum, 34 FCC Rcd 11073 (PSHSB Dec. 2, 2019).

<sup>36</sup> The 2016 report of the Task Force on Optimal PSAP Architecture (TFOPA) recounted how fee diversion practices have “delayed plans in several states to meet the deployment schedule for the transition to an NG9-1-1 system.” See FCC, Task Force on Optimal PSAP Architecture, Adopted Final Report at 154 (2016) (*TFOPA Report*), [https://transition.fcc.gov/pshs/911/TFOPA/TFOPA\\_FINALReport\\_012916.pdf](https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf); see generally FCC, Legal and Regulatory Framework for Next Generation 911 Services, Report and Recommendations, at Sec. 4.1.4 (2013), [https://www.911.gov/pdf/FCC\\_Report\\_Legal\\_Regulatory\\_Framework\\_NG911\\_Services\\_2013.pdf](https://www.911.gov/pdf/FCC_Report_Legal_Regulatory_Framework_NG911_Services_2013.pdf). Other commenters have noted instances of fee diversion resulting in the delay of 911 improvements. See New Jersey Wireless Association Reply Comments to Tenth Report, PS Docket No. 09-14, at 2 (rec. Feb. 12, 2019) (noting that instead of upgrading to NG911 technology, New Jersey is maintaining a 911 selective router system that is “past its useful life and is now costing more to maintain from previous years, due to its obsolescence”); Letter from Matthew Grogan, 1<sup>st</sup> Vice President, Nevada APCO at 1 (Feb. 15, 2019) (noting that Nevada 911 funds have been used to purchase police body cameras at a time when “several counties and jurisdictions . . . are still not equipped with enhanced 9-1-1 services”), [https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=36516&fileDownloadName=SB%2025\\_Testimony%20in%20Opposition\\_Matthew%20Grogan%20Nevada%20Fee%20Diversion.pdf](https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=36516&fileDownloadName=SB%2025_Testimony%20in%20Opposition_Matthew%20Grogan%20Nevada%20Fee%20Diversion.pdf).

of 911 services.<sup>37</sup> This would be consistent with the approach taken in the agency’s annual fee reports, which found that the mere labelling of a fee is not dispositive and that one must examine the underlying purpose of the fee to determine whether it is (or includes) a 911 fee within the meaning of the NET 911 Act.<sup>38</sup> We seek comment on these conclusions.

17. We propose that for purposes of implementing section 902, our definition of “911 fee or charge” should similarly extend to fees or charges that are expressly identified by the state or taxing jurisdiction as supporting 911, even if the fee is not labelled as a 911 fee. We tentatively conclude that this is consistent with the purpose of section 902 with respect to diversion of 911 fees and charges.<sup>39</sup> We seek comment on this proposal. Does the proposed definition of 911 fees or charges capture the universe of 911 fees or charges that can be diverted? Is the definition overinclusive or underinclusive? Are there other modifications to the definition that would help to prevent 911 fee diversion?

18. *Diversion.* Section 902(f) defines “diversion” as follows:

The term “diversion” means, with respect to a 9-1-1 fee or charge, the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.<sup>40</sup>

We propose to codify this definition, with minor changes to streamline it. Specifically, we propose to define diversion as “[t]he obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to [the applicable rule section in subpart I].”<sup>41</sup> In addition, we propose to clarify that diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated by the Commission. We believe this provision will clarify that states and taxing jurisdictions are also responsible for diversion of 911 fees by political subdivisions, such as counties, that may receive 911 fees. We seek comment on these proposals.

19. *State or taxing jurisdiction.* Section 902 defines a state or taxing jurisdiction as “a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”<sup>42</sup> We propose to codify this definition in our rules. We note that the existing language in section 615a-1 directs the Commission to submit an annual report to Congress on the use of 911 fees by “each State or political subdivision thereof,” and section 902 does not revise this language. We also note that section 902 does not alter the

<sup>37</sup> We also propose a safe harbor in the rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. *See infra* para. 28.

<sup>38</sup> *E.g.*, *Twelfth Report* at 51-52, para. 31 (“We do not agree that a fee or charge must be exclusively designated for 911 or E911 purposes in order to constitute a fee or charge ‘for the support or implementation of 9-1-1 or enhanced 9-1-1 services’ under section 6(f)(1) of the NET 911 Act.”); *see also* FCC, Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 43, para. 34 (2019) (*Eleventh Report*), <https://www.fcc.gov/files/11thannual911feereport2019pdf>.

<sup>39</sup> *See, e.g.*, 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

<sup>40</sup> Section 902(f)(4).

<sup>41</sup> As proposed for the new subpart I, “[a]cceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to: (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.”

<sup>42</sup> 47 U.S.C. § 615a-1(f)(3)(D)(iii) (as amended); section 902(c)(1)(C), (f)(5).



definition of “State” in the existing legislation. Under section 615b, the term “State” means “any of the several States, the District of Columbia, or any territory or possession of the United States.”<sup>43</sup> Accordingly, provisions in subpart I that apply to any “State or taxing jurisdiction” would apply to the District of Columbia and any United States territory or possession as well. To clarify this and to assist users of the regulations, we propose to add the definition of “State” to subpart I.

20. Regarding the scope of proposed subpart I, we propose that the rules apply to states or taxing jurisdictions that collect 911 fees or charges (as defined in that subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services. And as the proposed definitions make clear, such fees or charges would include fees or charges designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services. We seek comment on these proposals.

#### **B. Designation of Obligations or Expenditures Acceptable for Purposes of Section 902**

21. Section 902 requires the Commission to issue rules “designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable” for purposes of the statute.<sup>44</sup> In addition, section 902 provides that the purposes and functions designated as acceptable for such purposes “shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction.”<sup>45</sup> Section 902 also provides that the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and “determine whether such purposes and functions directly support providing 9-1-1 services.”<sup>46</sup> Moreover, Section 902 provides states and taxing authorities with the right to file a petition with the Commission for a determination that an obligation or expenditure of a 911 fee or charge that is imposed for a purpose or function other than those designated as acceptable for purposes of the statute in the Commission rules should nevertheless be treated as having an acceptable purpose or function for such purposes.<sup>47</sup>

22. We propose to codify the statutory standard for acceptable purposes and functions for the obligation or expenditure of 911 fees or charges by providing that acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of PSAPs within such state or taxing jurisdiction. This proposed language tracks the language in section 902.<sup>48</sup> In addition, we propose to specify in the rules that examples of such acceptable purposes and functions include, but are not limited to, the following, provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

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<sup>43</sup> 47 U.S.C. § 615b(2).

<sup>44</sup> 47 U.S.C. § 615a-1(f)(3)(A) (as amended); section 902(c)(1)(C).

<sup>45</sup> 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

<sup>46</sup> 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C).

<sup>47</sup> 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C). Such a petition must be granted if the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to demonstrate that the purpose or function in question supports PSAP functions or operations, or that the purpose or function has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. *Id.*

<sup>48</sup> See 47 U.S.C. § 615a-1(f)(3)(B) (as amended); section 902(c)(1)(C) (stating that “[t]he purposes and functions designated [by the Commission] shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction”).

- (1) PSAP operating costs, including lease, purchase, maintenance, 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.

23. We believe these purposes and functions are consistent with the general standard for designating acceptable uses of 911 fees and charges set out in section 902. They also are consistent with the Commission's past analysis of 911 fee diversion in its annual fee reports, and, as required under section 902, they reflect the Commission's consideration of the purposes and functions that states have specified for their 911 fees and charges. In particular, the Commission has stated in its annual fee reports that the requisite nexus to 911 includes expenditures that (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 911 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders).<sup>49</sup> In addition, the Commission has stated that expenses associated with integrating public safety dispatch and 911 systems (e.g., purchase of CAD hardware and software to support integrated 911 and dispatch operations) may be 911 related, provided the state or other jurisdiction can document a connection to 911.<sup>50</sup> We seek comment on our proposed inclusion of these examples of acceptable purposes and functions and any additional examples that should be specified in the rules.

24. We also seek comment on specifying certain examples of purposes and functions that are *not* acceptable for the obligation or expenditure of 911 fees or charges for purposes of the statute. These would include, but are not limited to:

- (1) Transfer of 911 fees into a state or other jurisdiction's general fund or other fund for non-911 purposes;
- (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
- (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, **that does not have a direct impact on the ability of a PSAP to receive or respond** to 911 calls or to dispatch emergency responders.

25. Identifying these examples as unacceptable expenditures for purposes of the statute is consistent with the manner in which such expenditures were analyzed in our annual 911 fee reports. For

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<sup>49</sup> See FCC, Tenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 49, para. 40 (2018) (*Tenth Report*), <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>. Under this analysis, funding for 911 dispatcher salaries and training would have a sufficient nexus to 911, but equipment and infrastructure for law enforcement, firefighters, and other first responders generally would not. See also *Eleventh Report* at 74, para. 59 ("CTIA supports the Commission in requiring documentation sufficient to demonstrate that the expenditures (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 9-1-1 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs.").

<sup>50</sup> See *Twelfth Report* at 48-49, para. 26; *Eleventh Report* at 39, para. 26; *Tenth Report* at 42, para. 26.

example, the fee reports have repeatedly found that transferring 911 fees to the state's general fund or using 911 fees for the expansion of commercial cellular networks constitutes fee diversion.<sup>51</sup> The fee reports also have found that expenditures to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related.<sup>52</sup> The Eleventh Report explained that the purchase or upgrade of public safety radio equipment was not considered to be 911 related because "radio networks used by first responders are technically and operationally distinct from the 911 call-handling system."<sup>53</sup> We seek comment on whether we should reexamine any of these prior findings in light of the impact of the coronavirus pandemic on public safety and emergency communications services, if any.

26. Our proposed designation of acceptable purposes and functions for purposes of the statute is also consistent with the legislative history of the NET 911 Act. In its report on H.R. 3403 (the bill that was enacted as the NET 911 Act), the House Committee on Energy and Commerce noted that several states were known to be using 911 fees for "purposes other than 911 or emergency communications services."<sup>54</sup> The Report also noted that under subsection 6(f) of the proposed legislation, "[s]tates and their political subdivisions should use 911 or E-911 fees only for direct improvements to the 911 system. Such improvements could include improving the technical and operational aspects of PSAPs; establishing connections between PSAPs and other public safety operations, such as a poison control center; or implementing the migration of PSAPs to an IP-enabled emergency network."<sup>55</sup> Further, "[t]his provision is not intended to allow 911 or E-911 fees to be used for other public safety activities that, although potentially worthwhile, are not directly tied to the operation and provision of emergency services by the PSAPs."<sup>56</sup>

27. We seek comment on our proposed designation of acceptable purposes and functions under the statute. Are the proposed purposes and functions that would be deemed acceptable overinclusive or underinclusive? If the proposed purposes are overinclusive, commenters should explain how and why. What purposes and functions have states and taxing jurisdictions specified as the intended functions for 911 fees and charges, and how should we take these specifications into account as we designate acceptable purposes and functions under section 902? CTIA contends that allowable 911 expenditures should include the nonrecurring costs of establishing a 911 system, the costs of emergency telephone and dispatch equipment, and costs for training for maintenance and operation of the 911 system but should exclude costs for leasing real estate, cosmetic remodeling of facilities, salaries or benefits, or emergency vehicles.<sup>57</sup> The Commission has found in its 911 fee reports, however, that some PSAP overhead costs, such as 911 telecommunicator salaries, are 911 related.<sup>58</sup> To the extent that the proposed purposes and functions are underinclusive, commenters should identify what additional purposes and functions should be deemed acceptable, and why.

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<sup>51</sup> E.g., *Twelfth Report* at 52-54, paras. 32, 35, 37; *Eleventh Report* at 40, 42-43, paras. 28, 32, 35; *Tenth Report* at 43-44, 46-47, paras. 30, 32, 35, 37.

<sup>52</sup> See *Twelfth Report* at 48-49, para. 26; *Eleventh Report* at 39, para. 26; *Tenth Report* at 42, para. 26.

<sup>53</sup> See *Eleventh Report* at 42, para. 32; see also *Eleventh Report* at 44, para. 37 (finding that there was no 911 fee diversion where Virginia allocated a portion of its wireless E911 funding to the Virginia State Police for costs incurred for answering wireless 911 telephone calls and to support sheriff's 911 dispatchers).

<sup>54</sup> House of Representatives Committee on Energy and Commerce, Report on 911 Modernization and Public Safety Act of 2007, H. Rept. 110-442 at 11 (2007) (*H. Rept. 110-442*), <https://www.congress.gov/110/crpt/hrpt442/CRPT-110hrpt442.pdf> ("The most recent data available indicate that four states use 911 fees, including wireless and wireline fees, for purposes other than 911 or emergency communications services.").

<sup>55</sup> *H. Rept. 110-442* at 15.

<sup>56</sup> *H. Rept. 110-442* at 15.

<sup>57</sup> CTIA Comments on *Fee Diversion NOI* at 5-6 (rec. Nov. 2, 2020).

<sup>58</sup> See, e.g., *Eleventh Report* at 21, para. 18; *Tenth Report* at 44-45, para. 33.

28. We also propose to define acceptable purposes and functions under section 902 for states and taxing jurisdictions that impose multi-purpose fees or charges intended to support 911 services as well as other public safety purposes. In such instances, we believe states and taxing jurisdictions should have the flexibility to apportion the collected funds between 911 related and non-911 related programs, but that safeguards are needed to ensure that such apportionment is not subject to manipulation that would constitute fee diversion. We therefore propose to adopt a safe harbor in our rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. This provision would provide transparency in the use of 911 fees when a state or taxing jurisdiction collects a fee for both 911 and non-911 purposes. It would also enable the Commission to verify through the annual fee report data collection that the 911 portion of such fees or charges is not being diverted.<sup>59</sup>

29. We seek comment on our proposal for determining whether there is diversion of a fee or charge collected for both 911 and non-911 purposes. Are the measures we propose sufficient to provide transparency with respect to diversion in the use of such fees? Are there other measures that would help ensure that 911 fees or charges are fully traceable in states or taxing jurisdictions with such funding mechanisms? In addition, some state laws and regulations provide that any excess 911 funds left over after all 911 expenditures have been covered can be used for non-911 related purposes.<sup>60</sup> Similarly, some state laws and regulations provide that if the 911 service is *discontinued*, the remaining 911 funds can be disbursed to non-911 uses, such as a general fund. Does the existence or implementation of such provisions for non-911 related disbursements constitute diversion?

### C. Petition for Determination

30. Section 902(c)(1)(C) provides that a state or taxing jurisdiction may petition the Commission for a determination that “an obligation or expenditure of a 9-1-1 fee or charge . . . by such State or taxing jurisdiction for a purpose or function other than a purpose or function designated under paragraph (3)(A) [support for 911 services/PSAP expenditures] should be treated as such a purpose or function.”<sup>61</sup> The state or taxing jurisdiction must demonstrate that the expenditure: (1) “supports public safety answering point functions or operations,” or (2) **has a direct impact** on the ability of a public safety answering point to “receive or respond to 9-1-1 calls” or to “dispatch emergency responders.”<sup>62</sup> If the Commission finds that the state or taxing jurisdiction has provided sufficient documentation to make this demonstration, section 902 provides that the Commission shall grant the petition.<sup>63</sup>

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<sup>59</sup> This proposal is consistent with the agency’s review of the U.S. Virgin Islands’ “Emergency Service” surcharge, which is dedicated for both 911 and non-911 purposes. The Eleventh Report noted that under the U.S. Virgin Islands’ statute, surcharge funds are deposited in an Emergency Service Fund (ESF), with ESF funds allocated 40% to the Virgin Islands Territorial Emergency Management Agency (VITEMA) and the other 60% allocated to other specific public safety, non-911 uses. *See Eleventh Report* at 44-45, paras. 39-40. In addition, the percentage of the ESF allocated to VITEMA must be used entirely for 911/E911 support of PSAPs, and the ESF cannot be commingled with or redirected to the general fund or any other account. *See id.* at 45, para. 40. The Commission concluded that the collection and use of these surcharge funds did not constitute diversion of 911 fees. *See id.* at 44-45, paras. 39-40.

<sup>60</sup> The TFOPA Report noted, “The legislative practice of sweeping uncommitted balances of 9-1-1-related accounts, especially those intended to fund NG9-1-1 system infrastructure generally occurs quietly without much public scrutiny.” *TFOPA Report* at 153-54. The TFOPA Report proposed measures to deter such sweeps and advised that “there should ultimately be consequences for *repeated* diversions.” *Id.* at 162.

<sup>61</sup> 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

<sup>62</sup> 47 U.S.C. § 615a-1(f)(5)(B) (as amended); section 902(c)(1)(C).

<sup>63</sup> 47 U.S.C. § 615a-1(f)(5)(A) (as amended); section 902(c)(1)(C).

31. We propose to codify these provisions in new subpart I of the rules. We believe Congress intended this petition process to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related. At the same time, the proposed rule would set clear standards for what states must demonstrate to support a favorable ruling, including the requirement to provide sufficient documentation. To promote efficiency in reviewing such petitions, we also propose that states or taxing jurisdictions seeking such a determination must do so by filing a petition for declaratory ruling under section 1.2 of the Commission's rules.<sup>64</sup> The declaratory ruling process would promote transparency regarding the ultimate decisions about 911 fee revenues that legislatures and executive officials make and how such decisions promote effective 911 services and deployment of NG911. Consistent with the declaratory ruling process outlined in section 1.2(b), we anticipate docketing the petition within an existing or new proceeding.<sup>65</sup> In addition, we anticipate the Public Safety and Homeland Security Bureau will seek comment on petitions via public notice and with a comment and reply comment cycle.<sup>66</sup> We propose to delegate authority to the Bureau to rule on these petitions. We seek comment on these proposals and on any possible alternative processes for entertaining such petitions.

#### **D. Other Section 902 Provisions**

32. Pursuant to section 902(d)(4), any state or taxing jurisdiction identified by the Commission in the annual 911 fee report as engaging in diversion of 911 fees or charges "shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 . . . or any advisory committee established by the Commission."<sup>67</sup> *We propose to codify this restriction as it applies to any advisory committee established by the Commission in subpart I and seek comment on this proposal.* We also seek comment on the extent to which state and local governments currently diverting 911 fees (based on the Commission's most recent report) now participate in such Commission advisory committees and the impact on them from being prohibited from doing so. Would it be helpful to provide a mechanism for states and taxing jurisdictions to raise questions regarding their eligibility to serve on an advisory committee?

33. Section 902(c)(1)(C) also provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of enactment of section 902, "such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual report to Congress on 911 fees]."<sup>68</sup> We propose to codify this provision in subpart I and seek comment on this proposal. What effect does this statutory provision and its proposed codification in the Commission's rules have on states or taxing jurisdictions that receive such grants? Does this provision, combined with other statutory anti-diversion restrictions that already apply to 911 grant recipients, increase the likelihood that diverting states and taxing jurisdictions will change their diversion

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<sup>64</sup> See 47 CFR § 1.2.

<sup>65</sup> See 47 CFR § 1.2(b).

<sup>66</sup> See 47 CFR § 1.2(b).

<sup>67</sup> Section 902(d)(4) (internal citations omitted). The committees, panels, and councils referred to in section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 are those established to assist FirstNet. See 47 U.S.C. § 1425.

<sup>68</sup> 47 U.S.C. § 615a-1(f)(4) (as amended); section 902(c)(1)(C). The National Highway Traffic Safety Administration and National Telecommunications and Information Administration will review the regulations for the 911 Grant Program at 47 CFR part 400 in order to determine how best to implement the new obligation under the law. The Commission will work with these Agencies to ensure a coordinated compliance regime.

practices?<sup>69</sup> Are there any aspects of our proposed implementation of section 902 that might create obstacles to state fiscal needs?

34. Finally, section 902(d)(2) provides that, beginning with the first annual fee report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act,” the Commission shall include in each report “all evidence that suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges, including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”<sup>70</sup> Given that the Commission is similarly required to provide the interagency strike force with any information regarding underfunding of 911 services,<sup>71</sup> in addition to the proposals discussed above, we seek comment on how the Commission can emphasize this aspect of its information collection reports.

#### IV. PROCEDURAL MATTERS

35. *Initial Paperwork Reduction Act of 1995 Analysis.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.<sup>72</sup> If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>73</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>74</sup>

36. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>75</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>76</sup> Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is contained in Appendix B.

37. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>77</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made

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<sup>69</sup> The ENHANCE 911 Act required grant applicants to certify that no portion of 911 charges were obligated or expended for “any purpose other than the purposes for which such charges are designated or presented” and required grant recipients that improperly obligated or expended grant funds to return all funds. *ENHANCE 911 Act* § 158 (codified at 47 U.S.C. § 942(c)). The NG911 Act included similar provisions. *NG911 Act* § 6503 (codified at 47 U.S.C. § 942(c)).

<sup>70</sup> Section 902(d)(2).

<sup>71</sup> Section 902(d)(1).

<sup>72</sup> Pub. L. No. 104-13.

<sup>73</sup> Pub. L. No. 107-198.

<sup>74</sup> 44 U.S.C. § 3506(c)(4).

<sup>75</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>76</sup> 5 U.S.C. § 605(b).

<sup>77</sup> 47 CFR §§ 1.1200 *et seq.*

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

38. *Comment Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in PS Docket Nos. 20-291 and 09-14. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>78</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

39. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

40. *Additional Information.* For additional information on this proceeding, contact Brenda Boykin, [Brenda.Boykin@fcc.gov](mailto:Brenda.Boykin@fcc.gov) or 202-418-2062, or John A. Evanoff, [John.Evanoff@fcc.gov](mailto:John.Evanoff@fcc.gov) or 202-418-0848, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

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<sup>78</sup> *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

**V. ORDERING CLAUSES**

41. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up the T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b, that this *Notice of Proposed Rulemaking* is hereby ADOPTED.

42. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* on or before 20 days after publication in the Federal Register, and reply comments on or before 30 days after publication in the Federal Register.

43. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



**APPENDIX A****Proposed Rules**

The Federal Communications Commission proposes to amend part 9 of Title 47 of the Code of Federal Regulations as follows:

**PART 9 – 911 Requirements**

1. Revise the authority citation for part 9 to read as follows: [TO BE INSERTED PRIOR TO FEDERAL REGISTER PUBLICATION]
2. Amend part 9 by adding subpart I to read as follows:

**Subpart I – 911 Fees**

Sec.

9.21 Applicability.

9.22 Definitions.

9.23 Designation of acceptable obligations or expenditures.

9.24 Petition regarding additional purposes and functions.

9.25 Participation in annual fee report data collection.

9.26 Advisory committee participation.

**§ 9.21 Applicability.**

The rules in this subpart I apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

**§ 9.22 Definitions.**

For purposes of this subpart I, the terms below have the following meaning:

*911 fee or charge.* A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

*Diversion.* The obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23.

*Other emergency communications services.* The provision of emergency information to a public safety answering point via wire or radio communications, and may include 911 and E911 service.

*State.* Any of the several States, the District of Columbia, or any territory or possession of the United States.

*State or taxing jurisdiction.* A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

**§ 9.23 Designation of acceptable obligations or expenditures.**

- (a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to:
- (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
  - (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.
- (b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:
- (1) PSAP operating costs, including lease, purchase, maintenance, 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;
  - (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.
- (c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges include, but are not limited to, the following:
- (1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;
  - (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks);
  - (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that **does not have a direct impact** on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.
- (d) If a State or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes that include the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:
- (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;
  - (2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and
  - (3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

**§ 9.24 Petition regarding additional purposes and functions.**

- (a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.
- (b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
  - (1) supports public safety answering point functions or operations, or
  - (2) **has a direct impact** on the ability of a public safety answering point to:
    - (i) receive or respond to 911 calls, or
    - (ii) dispatch emergency responders.

**§ 9.25 Participation in annual fee report data collection.**

If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1(f)(2)).

**§ 9.26 Advisory committee participation.**

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1(f)(2)) as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any advisory committee established by the Commission.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The *NPRM* proposes and seeks comment on ways to implement section 902 of the Consolidated Appropriations Act of 2021.<sup>4</sup> On December 27, 2020, the President signed the Don't Break Up the T-Band Act of 2020, which is Division FF, Title IX, Section 902 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). Section 902 directs the Commission to issue final rules 180 days after enactment on December 27, 2020 designating acceptable purposes and functions for the obligation or expenditure of 911 fees by states and taxing jurisdictions. Section 902 also provides that the use of 911 fees for any purpose or function other than those designated by the Commission constitutes 911 fee diversion.

3. To implement section 902 of the Act, the *NPRM* seeks comment on the Commission's proposals to amend part 9 of the rules to establish a new subpart I regarding "911 Fees." Section 902 defines several terms, and the *NPRM* proposes to codify these definitions in the new subpart I of the rules. In addition, section 902 directs the Commission to issue final rules designating purposes and functions for which the obligation or expenditure of 911 fees is acceptable. It also provides that the purposes and functions identified by the Commission as acceptable "shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction." The *NPRM* seeks comments on proposals to develop an illustrative, non-exhaustive list of permissible and non-permissible uses for purposes of section 902.

4. Section 902 provides that a state or taxing jurisdiction may petition the FCC for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those deemed acceptable by the Commission should be treated as an acceptable expenditure. Per section 902, the petition must demonstrate that the expenditure: (1) supports public safety answering point (PSAP) functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. In addition, the Commission seeks comment on amending the rules to require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after December 27, 2020, such state or taxing jurisdiction shall provide the information requested by the Commission to prepare the annual

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 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).

report to Congress required by the NET 911 Act. The *NPRM* seeks comment on proposals to codify these provisions in subpart I of part 9 of the rules.

## **B. Legal Basis**

5. This action was taken pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up The T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>7</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>9</sup> First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA’s) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>10</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.<sup>11</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>12</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual

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<sup>5</sup> See 5 U.S.C. § 603(b)(3).

<sup>6</sup> See *id.* § 601(6).

<sup>7</sup> See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>8</sup> See 15 U.S.C. § 632.

<sup>9</sup> See 5 U.S.C. § 601(3)-(6).

<sup>10</sup> See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. § 601(4).

electronic filing requirements for small exempt organizations.<sup>13</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>14</sup>

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>16</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>17</sup> Of this number there were 36,931 general purpose governments (county,<sup>18</sup> municipal and town or township<sup>19</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>20</sup> with enrollment

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<sup>13</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>14</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>17</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>18</sup> See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>19</sup> See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>20</sup> See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

populations of less than 50,000.<sup>21</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>22</sup>

10. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>23</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>24</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>25</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.<sup>26</sup> Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>27</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>28</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms

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<sup>21</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>22</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

<sup>23</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>26</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>27</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>28</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

that operated that year.<sup>29</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>31</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>32</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>33</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.<sup>34</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>35</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million, and 15 firms had annual receipts of \$25 million to \$49,999,999.<sup>36</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

13. As indicated in Section A above, the *NPRM* seeks comment on proposed rules to implement section 902. The *NPRM* generally does not propose specific reporting or recordkeeping requirements. The *NPRM* does, however, propose and seek comment on codifying the requirement that states or taxing jurisdictions seeking a Commission determination on 911 fee diversion satisfy certain criteria established in section 902. In such cases, a state or taxing jurisdiction would have to show that a proposed expenditure: (1) supports PSAP functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. The information and documentation that a state or taxing jurisdiction will have to provide the Commission to make the requisite showing will impact the reporting and recordkeeping requirements for small entities and others subject to the requirements. The Commission proposes to apply the existing declaratory ruling procedures and obligations under section 1.2 of the Commission’s rules, which small entities may already be familiar with, to petitions for determination.

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<sup>29</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevIew=false>.

<sup>30</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>31</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>35</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePrevIew=false>.

<sup>36</sup> *Id.*



14. In addition, the *NPRM* seeks comment on amending the rules to require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such state or taxing jurisdiction shall provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1(f)(2)). This proposed requirement is consistent with the requirements of section 902. Under OMB Control No. 3060-1122, the Office of Management and Budget previously approved and renewed the information collection requirements associated with filing annual 911 fee reports as mandated by the NET 911 Act.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

15. The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>37</sup>

16. In the *NPRM*, the Commission seeks to implement the provisions of section 902 that require Commission action by proposing changes to part 9 of our rules that would achieve the stated objectives of Congress's mandated rules in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunication services or to states and taxing jurisdictions. Using this approach, we inherently take steps to minimize any significant economic impact or burden for small entities. Specifically, we propose to adopt and codify the definitions in section 902 for certain terms relating to 911 fees and fee diversion in part 9 of our rules. For a few terms, we make limited modifications to the definition to avoid gaps and promote the apparent intent of the new statute.<sup>38</sup> In addition to promoting consistency, we believe our proposals will help small entities and others who will be subject to section 902 and our rules avoid additional expenses for compliance which may have resulted if the Commission in the alternative proposed and adopted different definitions for certain terms in section 902 relating to 911 fees and fee diversion.

17. Similarly, to fulfill the Commission obligations associated with issuing rules designating acceptable purposes and functions, for consistency we propose to use language from section 902 codifying the statutory standard for which the obligation or expenditure of 911 fees or charges by any state or taxing jurisdiction is considered acceptable. We also propose to specify in the rules examples of both acceptable and unacceptable purposes and functions for the obligation or expenditure of 911 fees or charges. If adopted, identifying and including these examples in the Commission's rules should enable small entities to avoid unacceptable expenditures in violation of our rules, which could impact eligibility for federal grants and participation in federal advisory committees.

18. Finally, the Commission expects to more fully consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

19. None.

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<sup>37</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>38</sup> The definitions for the terms "911 fee or charge" and "Diversion" include modifications.

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *911 Fee Diversion*, PS Docket No. 20-291; *New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket No. 09-14, Notice of Proposed Rulemaking (February 17, 2021)

The first duty of the public servant is the public safety. So it is fitting that the first vote at my first meeting as Acting Chairwoman is this rulemaking to protect and strengthen our nation's emergency number—911.

As the old saying goes, you may only call 911 once in your life, but it will be the most important call you ever make. Chances are when you make that call, you won't put much thought into the system that's behind it. But the reality is that with the advent of the digital age, there are technologies that could improve this system and enhance emergency calling. However, we are unlikely to see those upgrades in all parts of the United States without first halting a practice known as 911 fee diversion. That simply means that when states allow a charge on communications bills for 911 service, they shouldn't be turning around and sending those fees elsewhere, shortchanging public safety in the process.

Unfortunately, fee diversion is not new. I first wrote about this subject more than four years ago. I later testified before Congress about it. Then I shared the pen with my former colleague Michael O'Rielly, who was also concerned about this practice. Then late last year Congress enacted new appropriations legislation providing the FCC with fresh tools to help solve this persistent problem.

So we are wasting no time. Today the Federal Communications Commission starts a rulemaking to ensure that fees that say they are for 911 go to 911. Specifically, we seek comment on rules that would define the kinds of expenditures by states that would constitute 911 fee diversion, create a process for states to petition the FCC for case-by-case review, and require federal 911 grantees to provide information on fee diversion to the FCC.

But that's not all. We know the results of 911 fee diversion can be tragic. It can lead to understaffed calling centers, longer wait times in an emergency, and sluggish dispatch for public safety personnel. And it can slow the ability of 911 call centers to update their systems to support digital age technologies. So consistent with this new law, I've also directed the Public Safety and Homeland Security Bureau to establish an interagency 911 Fee Diversion Strike Force that will study and report on what can be done to end this practice. In fact today, the Bureau will announce it is seeking members for this group from the public safety community as well as local and state governments.

I look forward to the work they will do and the record that develops in response to this rulemaking. All good ideas are welcome. We need them. In fact, I believe they can make a meaningful difference as we navigate both the ongoing pandemic and the transition to next-generation 911. They are especially important for states wrestling with funding challenges and they matter deeply for the nation's 911 operators who run emergency call centers across the country. They deserve the support intended for them; fee diversion needs to stop.

I extend my thanks to the Commission staff who helped prepare this Notice of Proposed Rulemaking, including Brenda Boykin, Jill Coogan, John Evanoff, Lisa Fowlkes, David Furth, Erika Olsen, Rachel Wehr, Michael Wilhelm, from the Public Safety and Homeland Security Bureau; David Horowitz, Keith McRickard, Bill Richardson, Anjali Singh from the Office of the General Counsel; Chuck Needy from the Office of Economics and Analytics; Becky Tangren from the Wireless Telecommunications Bureau; Heather Hendrickson from the Wireline Competition Bureau; and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: 911 Fee Diversion, PS Docket No. 20-291, New and Emerging Technologies 911 Improvement Act of 2008, PS Docket No. 09-14

Ensuring that a modern, effective 911 system stands ready to assist Americans during a crisis is one of the Commission's most important responsibilities. Both Congress and the Commission have long recognized that 911 fees should serve 911 purposes and have worked to combat fee diversion. Recent legislation, adopted as part of the 2021 Consolidated Appropriations Act, extends and strengthens those efforts by directing the Commission to define and deter 911 fee diversion. I thank the staff of the Public Safety and Homeland Security Bureau for their hard work quickly preparing this Notice of Proposed Rulemaking in response to that statute, and I look forward to reviewing a robust record on these important issues.