

NENA Policy Statement Opposing State Raiding of 9-1-1 Funds
June 19, 2009

Thousands of lives are saved every day thanks to America's 9-1-1 system. Decades of government leadership and steady technological progress have given citizens a reliable 9-1-1 system they can trust. In return, citizens trust their state and local governments to responsibly manage the funds collected to pay for 9-1-1 systems. Unfortunately, some state and local governments have seen 9-1-1 revenues – funds raised through fees assessed on telecommunications bills specifically for 9-1-1 – as a revenue source available to be diverted from the 9-1-1 and emergency service delivery for use in other programs, to balance budgets, and/or to provide budget flexibility to fund other non-9-1-1 budget priorities. Commercial telecommunications companies are held to “truth-in-billing” requirements to properly disclose the purposes of fees assessed on their customers. Unfortunately, some state and local governments do not have to meet similar “truth-in-billing” requirements on their 9-1-1 fund expenditures, and increasingly some state governments are being less than honest with their constituents about the purposes of the 9-1-1 fees they impose.

Misuse of 9-1-1 funds not only puts one of the nation's most critical systems at risk; it also breaks the trust established with the public. Use of revenues paid and collected with the express purpose of supporting 9-1-1 and emergency service delivery for other purposes amounts to untruthfulness and misrepresentation. Funds the public remits in good faith specifically for 9-1-1 purposes must be used to further 9-1-1's most basic purpose: to ensure that 9-1-1 callers can quickly be located in emergency situations and receive an effective emergency response. In addition to breaking the public trust, the practice of 9-1-1 fund raiding has at least four very negative impacts on the 9-1-1 system:

1. Funds dedicated to the 9-1-1 system are diverted directly or indirectly to other purposes at a time when it is very difficult for 9-1-1 authorities to pay all of the technical and operational costs of current systems without access to the funds set aside to cover current system costs – let alone prepare for the modernization of 9-1-1 systems.¹
2. 9-1-1 authorities are disincentivized from saving money in a fund to accumulate revenues necessary to invest in the next generation of 9-1-1 technology when they fear any saved revenues will be raided. This makes it exceedingly difficult for 9-1-1 authorities to ensure funds are available to pay for the transition to modern 9-1-1 systems that are able to keep up with consumer technologies.
3. Efforts to secure federal grant funds for 9-1-1 systems may fail when federal policy makers see that funds available in the states for 9-1-1 are not used for their intended purpose. If the 9-1-1 system is not a state priority, it will not be treated as a federal priority.

¹ See “Health of the US 9-1-1 System”, by ColoComm Group, LLC: Dale Hatfield, Brad Bernthal, and Phil Weiser. Sponsored by the 9-1-1 Industry Alliance. http://www.911alliance.org/9IA_Health_of_US_911%20_2_.pdf.

4. Federal law restricts state governments from certain 9-1-1 fund raiding practices and withholds 9-1-1 grant revenues from those states that employ the practice.

NENA applauds federal efforts against raiding 9-1-1 funds. The U.S. Congress took its first steps to protect 9-1-1 funding in 2004 by enacting the ENHANCE 911 Act, which prohibits states that misallocate 9-1-1 fees for unintended purposes from accessing federal 9-1-1 grant money.² In 2008 the U.S. Congress went even further. While expressly acknowledging that nothing in the New and Emerging Technologies (NET) 9-1-1 Improvement Act of 2008 prohibits state and local governments from imposing 9-1-1 fees related to wireless and voice over-IP (VoIP) technology, the legislation also provides that the authority to impose such fees is conditioned on the fees being used for their intended purpose.³

The operative language in the NET 9-1-1 Improvement Act states:

*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, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.*⁴

NENA and a number of States interpret this language to unequivocally bar state and local governments from directly diverting any funds raised for 9-1-1 beyond the 9-1-1 and emergency service delivery purposes. The Office of the Attorney General of the State of Tennessee specifically acknowledges that the NET 911 Improvement Act prohibits the taking of funds collected for 911 purposes. The Office of the Tennessee Attorney General concluded that the Act “expressly preempts a State from using fees charged as part of the State’s 911 or enhanced 911 program for other purposes.”⁵ The Office of the Attorney General of Florida voiced the following concern about transferring money from the Florida 9-1-1 trust fund to general revenue:

*Section 365.172 was enacted, in part, to provide funds to counties to pay costs associated with their E911 or 911 systems. §365.172(2)(b), Florida Statutes. It appears that expenditure of the funds in the E911 Trust Fund for purposes other than the payment of costs associated with Florida's 911 system could result in the loss of the authority to impose and collect those fees.*⁶

² 47 U.S.C.A. § 942.

³ 47 U.S.C.A. § 615a-1.

⁴ 47 U.S.C.A. § 615a-1(f).

⁵ 09 Op. TN. Atty. Gen. 87 at 6 (2009).

⁶ Letter from Lee Ann Gustafson, Office of the Florida Attorney General, to John Ford, Chairman of Florida 911 Board, dated Jan 16, 2009, regarding NET 911 Improvement Act of 2008.

Compliance with the NET 911 Improvement Act is monitored by the Federal Communications Commission (FCC). The Act states:

To ensure efficiency, transparency, and accountability in the collection and expenditure of fees for the support or implementation of 911 or E-911 services, the Commission[FCC] shall submit a report within 1 year after the date of enactment of the 911 Modernization and Public Safety Act of 2007, and annually thereafter, to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives detailing the status in each State of the collection and distribution of 911 fees, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose other than the purpose for which any fee or charges are specified. (H.R.3403 Sec 6(f)(20).

The FCC commenced the monitoring process in 2009.

NENA is committed to working with federal, state and local governments to ensure that the 9-1-1 system operates as a coordinated and collaborative effort between the public and private sectors. In return, government must be committed to properly funding the 9-1-1 system and ensuring that all 9-1-1 fees are collected and utilized for their intended purpose as provided by law.

Therefore, in the best interest of the 9-1-1 system and those citizens who rely on it, NENA strongly urges state and local governments to refrain from diverting 9-1-1 funding for unintended and unauthorized purposes.