



911 Funding: Optimizing Revenue from the Current Surcharge Model

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Contents

Introduction	2
Challenges	2
Lack of Authority Regarding Carrier/Provider Remittances	2
Lack of Resources Regarding Carrier/Provider Remittances	5
Lack of Authority Regarding PSAP Usage of 911 Funds	6
Lack of Resources to Enforce PSAP Usage of 911 Funds	7
Best Practices	8
Carriers/Providers	8
PSAPs	9
Fund Diversions	9
Alabama	9
Indiana	10
Kentucky	10
Vermont	10
Example Statutes	10
Alabama	10
Connecticut	11
Maryland	11
Michigan	11
North Carolina	11
South Dakota	12
Vermont	12
Conclusion	12

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Introduction

This brief paper is a companion to the National Association of State 911 Administrator's (NASNA) 2015 paper entitled, "*Four Potential Sustainable Funding Models for NG911.*" A number of NASNA member states feel that it would be premature to change 911 funding models if revenues from the current model are not first optimized – both in terms of collections and in terms of usage.

The purpose of this companion paper is to describe the challenges states face in ensuring they are getting all the 911 fee revenue they should from the carriers/providers, and in ensuring that PSAPs are using their 911 funds for authorized purposes. It also sets forth best practices that could optimize revenue from the current funding model and thereby increase the viability of that model in the near term and perhaps in the long-term.

Information for this paper was solicited from NASNA's 44 member states. Thirty-two (73%) of them responded to these survey questions:

- Do you have authority to require telecomm carriers/providers to establish a point of contact with you?
- Do you have authority to ensure that every carrier/provider that should be remitting the 911 fee actually does so?
- Do you have authority to obtain carrier/provider remittance data?
- Do you have authority to audit carrier/provider remittances for accuracy?
- If non-compliance is detected, do you have the authority to take enforcement action toward carriers/providers?
- Do you have the resources to enable you to carry out these activities, either with staff or consultants?
- Do you have the authority to obtain PSAP records documenting their use of 911 fees?
- Do you have the authority to audit PSAP records for compliance?
- If non-compliance is detected, do you have the authority to take enforcement action toward PSAPs?
- Do you have the resources to enable you to carry out these activities, either with staff or consultants?

Information for non-responding members was gleaned from the FCC's 2015 NET 911 Fee Report and validated with the member state. Information was not gathered from states that are not members of NASNA.

Challenges

Lack of Authority Regarding Carrier/Provider Remittances

The powers and duties of state-level or statewide 911 programs are generally established by state Legislatures.¹ Even when state statute has established a state 911 program, that same statute may not give the state 911 program authority that is broad enough for it to take appropriate action to assure accountability from providers.

¹ Not all member states have a state-level 911 program.

For example, not all state 911 programs are able to identify all of the carriers/providers that have subscribers or customers in their respective states. See Table 1 for survey results.

Table 1

Do you have authority to require telecomm carriers/providers to establish a POC with you?	
Response	Number Responding
Yes, the state 911 program does	21 ²
No, the state 911 program does not	21
No, but another entity does	3
Not Applicable	2

Not all state 911 programs are able to ensure that every carrier/provider that should be remitting the 911 fee actually does so. In the majority of responses, an agency other than the state 911 office has authority over 911 fee collection and remittance. For example, some states place responsibility for oversight of 911 fee remittances in the hands of the Auditor’s office, or the Department of Revenue/Taxes, or the Comptroller. See Table 2 for survey results.

Table 2

Do you have authority to ensure that every carrier/provider that should be remitting the 911 fee actually does so?	
Response	Number Responding
Yes, the state 911 program does	14 ³
No, the state 911 program does not	28 ⁴
No, but another entity does	11
Not Applicable	2

Not all state 911 programs have the authority to obtain carrier/provider remittance data. If carriers/providers remit 911 fees to a state’s tax or revenue agency, these agencies may consider 911 fees to be a tax, and remittance information to be proprietary and confidential. They may interpret state law as prohibiting disclosure of tax information to anyone other than the state auditor without a subpoena or court order – regardless of whether the 911 office has the authority to request and receive 911 fee remittance information. See Table 3 for survey results.

Table 3

² One respondent said yes for networking and trouble ticketing, but no as it relates to fee remittances, because the state Division of Taxation is responsible for fee remittances.

³ One respondent said it has authority only over wireless.

⁴ One respondent said the authority exists only at the local government level.

Do you have authority to obtain carrier/provider remittance data?	
Response	Number Responding
Yes, the state 911 program does	17 ⁵
No, the state 911 program does not	25
No, but another entity does	8
Not Applicable	2

Not all state 911 programs have authority to audit carrier/provider remittances for accuracy. A number of the responding states indicated that auditing authority lies with another entity, such as the tax or revenue department, the state auditor or comptroller. Disturbingly, some indicated that they do not know whether these oversight activities actually occur or not.

Furthermore, many state tax or revenue agencies do not provide any audit function; they are simply the collector/repository of the revenues.

Even if a state 911 program does have authority to audit carrier/provider remittances, the form that typically accompanies remittances may not require enough detail from the carriers/providers. Thus, it may be difficult or even impossible to ascertain whether the amount remitted accurately reflects subscriber/customer counts, or in the case of multi-line telephone systems, line counts. See Table 4 for survey results.

Table 4

Do you have authority to audit carrier/provider remittances for accuracy?	
Response	Number Responding
Yes, the state 911 program does	12
No, the state 911 program does not	30
No, but another entity does	12
Not Applicable	2

Regardless of who does it, if state statute does not provide for a check and balance, there is simply no way to know whether all providers that are required to remit their 911 fees actually do so. Without that

⁵ One respondent said that the 911 fee forms are remitted to the 911 office, with the exception of pre-paid wireless fees, which are remitted to the Department of Revenue; the Department of Revenue has been unwilling to provide any information related to pre-paid fees. Another respondent said it has authority to obtain carrier/provider remittance data only for prepaid wireless and nothing else.

basic information, there is no way to identify gaps or inconsistencies, to conduct a follow-up investigation, or to take remedial action.

That lack of basic oversight and enforcement may result in under-collection of funds. The under-collection of funds may give rise to a perception that there is a funding problem. Under-collection may be exacerbated by the inability to take effective action to do something about it. If the problem were remedied, revenue would be optimized and the perceived funding problem would be shown to be due to other underlying issues and not, in reality, due to a problem with the funding mechanism itself. See Table 5 for survey results.

Table 5

If non-compliance is detected, do you have the authority to take enforcement action toward carriers/providers?	
Response	Number Responding
Yes, the state 911 program does	16
No, the state 911 program does not	25
No, but another entity does	11
Not Applicable	3

Lack of Resources Regarding Carrier/Provider Remittances

Even if a state 911 program has the authority, it may not have the resources necessary to undertake this level of oversight. See Table 6 for survey results.

Table 6

Do you have the resources to enable you to carry out these activities, either with staff or consultants?	
Response	Number Responding
Yes, the state 911 program does	15
No, the state 911 program does not	24
No, but another entity does	7
Not Applicable	4

Lack of Authority Regarding PSAP Usage of 911 Funds

As previously stated, the powers and duties of state-level or statewide 911 programs are generally established by state Legislatures. State statutes typically identify broad categories of allowable and disallowable uses of 911 funds. Not all state-level 911 programs have the authority to set policy or adopt rules regarding the usage of 911 funds, or to hold PSAPs accountable. See Table 7 for survey results.

Table 7

Do you have the authority to obtain PSAP records documenting their use of 911 fees?	
Response	Number Responding
Yes, the state 911 program does	25 ⁶
No, the state 911 program does not	12
No, but another entity does	3
Not Applicable	7

Not all states have the authority or capability to audit PSAPs to ensure they use 911 solely for allowable purposes. See Table 8 for survey results.

Table 8

Do you have the authority to audit PSAP records for compliance?	
Response	Number Responding⁷
Yes, the state 911 program does	21 ⁸
No, the state 911 program does not	15
No, but another entity does	4
Not Applicable	7

⁶ One responded that it could request this information only when/if the local 911 authority applies for a surcharge increase greater than 70 cents. One responded that it could do so only for use of wireless 911 fees, but not landline.

⁷ 30 of 43 members responded to this question.

⁸ One responded that it could audit PSAP records only in relation to a request for a surcharge increase greater than 70 cents.

Not all states have the authority or ability to take remedial action in the event it is discovered that funds are being misused. Without a check and balance system in place, what may be perceived as a lack of adequate funding may in fact be the result of inappropriate use of funding. See Table 9 for survey results.

Table 9

If non-compliance is detected, do you have the authority to take enforcement action toward PSAPs?⁹	
Response	Number Responding
Yes, the state 911 program does	17
No, the state 911 program does not	18
No, but another entity does	2
Not Applicable	7

Lack of Resources to Enforce PSAP Usage of 911 Funds

Not all states have the resources to carry out this level of oversight. Inappropriate use of funding is most assuredly exacerbated by the inability to exercise adequate oversight and impose discipline. See Table 10 for survey results.

Table 10

Do you have the resources to enable you to carry out these activities, either with staff or consultants?	
Response	Number Responding
Yes, the state 911 program does	22
No, the state 911 program does not	15
No, but another entity does	1
Not Applicable	7

One response to the question above was highly nuanced. While answering “yes” to the question and indicating that the state 911 program has the authority to do everything asked in the entire survey, the respondent noted that the practical capacity of staff and budget makes it impossible to fully exercise

⁹ 30 of 43 members responded to this question.

that authority. As a result, audits are not done on every entity every year and the audits that are done are random spot audits; complete audits are cost prohibitive.

Best Practices

Carriers/Providers

State 911 programs need to have the authority and resources to require telecommunications providers, the entity responsible for collecting provider remittances, and PSAPs to submit whatever records are necessary to conduct the audit and validate its results. That authority could be specifically set forth in statute, or the 911 program itself could be granted broad authority under which a variety of activities could be carried out consistent with the statute.

Regardless of whether the state 911 program undertakes these activities or another agency does, it is not possible to have an accurate understanding of the 911 funding situation without adequate oversight of the entire remittance process. This is what should occur:

- Require all providers whose services are capable of accessing 911 to officially designate a person to coordinate with and provide information to the state 911 office.
- Require the public utilities commission to require service providers under its purview to notify the utilities commission and the state 911 office when they start or stop offering service in the state
- Identify all carriers/providers that should be remitting and refresh that at least annually
- Review remittance histories to determine whether every company that should be remitting is remitting
- Identify any gaps appearing in a carrier/provider's remittance history and take appropriate investigative action
- Audit remittance records to determine whether the amount remitted is correct based on an independent and accurate assessment of subscriber/customer counts
- If the form that accompanies a carrier/provider's remittances is not sufficiently detailed to enable the auditor to make that determination, then revise the form; and require carriers/providers also to submit the worksheet used to calculate the remittance amount
- Take enforcement action as necessary on all of the previous points
- Ensure there are adequate staff and financial resources to conduct annual audits of all providers' remittances and to take enforcement action if needed

If this auditing authority is granted to an agency other than the state 911 program, that agency should be required to work closely with the state 911 office staff and to report fully on these matters. If non-disclosure agreements need to be executed between the agencies, then this should be done.

If the statutory and regulatory framework does not provide for this level of oversight, that is a problem that should be remedied.

PSAPs

Not all state 911 programs are able to obtain documentation of their PSAPs' usage of their 911 funds.

Not all state 911 programs have the authority or capability to audit PSAP usage of 911 funds to ensure funds are being expended only on authorized uses.

Regardless of whether the state 911 program undertakes these activities or another agency does, it is not possible to have an accurate understanding of PSAPs' 911 fund usage without adequate oversight. This is what needs to occur:

- The state 911 program should be tasked with assuring local governments are accountable in the use of 911 funds
- Local government should not be allowed to co-mingle 911 funds with general funds – they should be held in a separate account
- Accounting for the use of 911 funds should likewise be maintained separately
- Local government should be required to provide documentation of their use of 911 funds to the state 911 program office
- An annual audit of local government's use of 911 funds should be conducted to determine whether 911 fund revenues were used for authorized expenditures or not
- If violations are found, then enforcement action should be taken

If PSAP auditing authority is granted to an agency other than the state 911 program, that agency should be required to work closely with the state 911 office staff and to provide them with all information collected and all findings.

If the statutory and regulatory framework does not provide for this level of oversight, that is a problem that should be remedied.

Fund Diversions

The facts of the diversion of 911 funds by state legislatures and administrations for non-911 purposes is well documented, and there is no need to review the record here.

Some states have implemented mechanisms to reduce the risk of fund diversions, and this section provides some examples that are worth duplicating elsewhere. Note that none of these provisions can absolutely prevent the diversion of funds: State legislatures can write protective provisions into law and can also revoke them.

Alabama

Section 11-98-5.2 911 Fund. (a) Effective October 1, 2013, the 911 Fund shall be created as an insured interest-bearing account into which the 911 Board shall deposit all revenues derived from the service charge levied on voice communications service providers under this chapter and all prepaid wireless 911 charges received from the department. The revenues deposited into the 911 Fund shall not be monies or property of the state and shall not be subject to appropriation by the Legislature. The 911 Board shall administer the fund and shall credit the 911 Fund all revenues received. The fund and revenues generated by the fund may only be used as provided in this chapter.

Indiana

IC 4-9.1-1-7. Money in the fund:(1) does not revert at the end of any state fiscal year but remains available for the purposes of the fund in subsequent state fiscal years, notwithstanding IC 4-13-2-19 or any other law; and(2) is not subject to transfer to any other fund or to transfer, assignment, or reassignment for any other use or purpose by:(A) the state board of finance notwithstanding IC 4-9.1-1-7,IC 4-13-2-23, or any other law; or (B) the budget agency or any other state agency notwithstanding IC 4-12-1-12 or any other law.

Kentucky

KRS 65.7627: There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the Kentucky 911 Services Board. The CMRS service charges levied under Sections 8, 15, and 29 of this Act shall generate revenue equitably from prepaid and postpaid CMRS connections within the boundaries of the Commonwealth. No charges other than the CMRS service charges levied under Sections 8, 15, and 29 of this Act are authorized to be levied by any person or entity for providing wireless service. All revenues collected under KRS 65.7635 and Sections 15, 16 to 23, and 29 of this Act shall be deposited directly into the fund, and the board shall direct disbursements from the fund according to the provisions of KRS 65.7631. Moneys in the CMRS fund shall not be the property of the Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not: (1) Be loaned to the Commonwealth or to any instrumentality or agency thereof; (2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by KRS 65.7621 to 65.7643; or (3) Be expended for any purpose other than a purpose authorized by KRS 65.7621 to 65.7643.

Vermont

30 V.S.A. § 7054. Funding. (a) The enhanced 911 fund is created as a special fund subject to the provisions of subchapter 5 of chapter 7 of Title 32. Balances in the fund on June 30 of each year shall carry forward and shall not revert to the general fund.

Example Statutes

This section provides examples of statutes from around the country that serve as models for what has been previously discussed in this paper.

It should be noted that not all of the responding NASNA states said they could confirm whether audits conducted by external entities actually occur or not. A statute may require or authorize an external agency to conduct audits, but that is a separate matter from whether they *are* conducted.

Alabama

Alabama's statutory provision comprehensively covers both providers and local 911 authorities.

Alabama statutes at §11-98-13 says, "On a biennial basis, if not more frequently, the 911 board shall retain an independent, third-party auditor for the purpose of receiving, maintaining, and verifying the accuracy of any and all information, including all proprietary information, that is required to be collected, or that may have been submitted to the board by voice communication providers and [911] districts, and the accuracy of the collection of the 911 service charge required to be collected."

Alabama statutes at §11-98-6 (e) says, “Beginning with fiscal year 2013, the Department of Examiners of Public Accounts shall audit each district on a biennial basis to ensure compliance with the requirements of this chapter regarding both revenues and expenditures.”

Connecticut

The Department of Emergency Communications’ regulations at Sec. 28-24-3 (i) provide for the auditing of any entity that receives a subsidy or grant funds: “Any entity provided with subsidy or grant funds shall be audited in accordance with the provisions of Sections 4-230 through 4-236 of the Connecticut General Statutes.”

Maryland

Maryland statutes §1-309 (f) (1) provides that “The Legislative Auditor shall conduct fiscal/compliance audits of the 911 Trust Fund and of the appropriations and disbursements made for purposes of this subtitle.”

The state of Maryland’s Emergency Number Systems Board (ENSB) has broad oversight and auditing/inspection authority of the overall 911 System as well as the 24 locally operated PSAPs. The State establishes guidelines and direction for the PSAPs. The PSAPs develop operational procedures to meet State guidelines. The ENSB has authority to withhold funds from PSAPs that are found to be not in compliance with the law or the ENSB’s regulations. For example, in the section of Maryland statute addressing the use of 911 funds, §1-309 (e) (1) provides that “The Board may direct the Comptroller to withhold from a county money for 9-1-1 system expenditures if the county violates this subtitle or a regulation of the Board.”

Michigan

Michigan statute at §484.1406 provides for the expenditure of funds, accounting and auditing as follows: “(1) The funds collected and expended under this act shall be expended exclusively for 9-1-1 services and in compliance with the rules promulgated under section 413. (2) Each PSAP or secondary PSAP shall assure that fund accounting, auditing, monitoring, and evaluation procedures are provided as required by this act and the rules promulgated under this act. (3) An annual audit shall be conducted by an independent auditor using generally accepted accounting principles and copies of the annual audit shall be made available for public inspection. (4) An increase in the charges allowed under this act shall not be authorized or expended for the next fiscal year unless according to the most recently completed annual audit the expenditures are in compliance with this act. (5) The receipt of 9-1-1 funds under this act is dependent on compliance with the standards established by the [public service] commission under section 413.”

North Carolina

North Carolina General Statutes §62A-48 provides for the state to recover funds that have been used by unauthorized purposes by a carrier/provider or a PSAP. It reads, “The 911 Board must give written notice of violation to any voice communications service provider or PSAP found by the 911 Board to be using monies from the 911 Fund for purposes not authorized by this Article. Upon receipt of notice, the voice communications service provider or PSAP must cease making any unauthorized expenditures. The voice communications service provider or PSAP may petition the 911 Board for a hearing on the question of whether the expenditures were unauthorized, and the 911 Board must grant the request within a reasonable period of time. If, after the hearing, the 911 Board concludes the Page 6 Session Law

2015-261 House Bill 730-Ratified expenditures were in fact unauthorized, the 911 Board may require the voice communications service provider or PSAP to refund the monies improperly spent within 90 days. Money received under this section must be credited to the 911 Fund. If a voice communications service provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent money, the 911 Board must suspend funding to the provider or PSAP until corrective action is taken.”

N.C. Gen. Stat. § 143B-1417 (f)(3) provides that the state 911 board is to receive a copy of annual PSAP audits: “A PSAP must be included in its governing entity's annual audit required under the Local Government Budget and Fiscal Control Act. The Local Government Commission must provide a copy of each audit of a local government entity with a participating PSAP to the 911 Board.”

South Dakota

South Dakota Codified Laws 34-45-4.3 requires carriers/providers to register with the state: “Any entity required to collect and remit the surcharge imposed pursuant to § 34-45-4 or 34-45-4.2 shall register with the Department of Revenue. There is no registration fee. A registration shall be made upon a form prescribed by the secretary of the Department of Revenue and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business, and such other information as the secretary may require.

The department shall issue an identification number to each applicant. This identification number is not assignable and is valid only for the entity to which it was issued. The identification number is valid until canceled or revoked.”

Vermont

30 V.S.A. §87-7054 (c) provides that “each local exchange telecommunications company, cellular company and mobile personal communications service company within the state shall designate a person to coordinate with and provide all relevant information to the E-911 board and public service board in carrying out the purposes of the chapter.”

Conclusion

The State 911 Administrators agree that the current 911 funding model needs to be optimized and sustained for the time being, but understand that it will eventually become necessary to change to a different mechanism.

This paper set forth practical steps states could take to ensure that 911 fee collection and remittance is optimized; that 911 fee use is controlled; and that adequate oversight and enforcement activities are undertaken. NASNA recommends that states take these steps in order to determine whether the current funding mechanism is generating adequate revenue or not.