



The Commonwealth of Massachusetts
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
STATE 911 DEPARTMENT
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CHARLES D. BAKER
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Lieutenant Governor

DANIEL BENNETT
Secretary of Public Safety
and Security

FRANK POZNIAK
Executive Director

May 7, 2015

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

Ms. Sara Clark,
Secretary and Paralegal Specialist
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

RE: D.T.C. 15-2, Petition of the State 911 Department to Adjust the Enhanced 911 Surcharge

Dear Ms. Clark:

In connection with the above matter, enclosed herewith for filing is the State 911 Department's response to D.T.C. Record Request 1-12, together with the State 911 Department's Motion for Confidential Treatment of these records. A copy of the confidential records has been provided to Sean Carroll, Hearing Officer in this proceeding, in a separate envelope marked "Confidential."

Thank you for your attention to this matter.

Sincerely,

Louise M. McCarthy
General Counsel

Enclosures

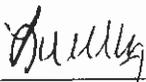
cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

_____))
Petition of the State 911 Department to Adjust))
the Enhanced 911 Surcharge))
_____)) D.T.C. 15-2

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, dated this May 7, 2015.



Louise M. McCarthy
General Counsel
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
RECORDS REQUESTS OF THE DEPARTMENT OF TELECOMMUNICATIONS
AND CABLE TO THE STATE 911 DEPARTMENT
D.T.C. 15-2
May 7, 2015

Responsible Person: Frank Pozniak

D.T.C. 1-12: Please provide all Monthly Surcharge Reports filed by carriers identifying their service provider type as "Wireless" and "Pre-Paid Wireless" for FY2014.

Response: The records requested consist of subscriber and end user information and/or data submitted to the State 911 Department by communication service providers. This information is not subject to public disclosure pursuant to G.L. c. 6A, § 18H, and is, therefore, exempt under G.L. c. 4, § 7 Twenty-sixth (a), for the reasons set forth in the State 911 Department's Motion for Confidential Treatment filed this date. These confidential records are being furnished under separate cover with the understanding that, consistent with D.T.C. practice, they will be afforded confidential treatment until such time as the D.T.C. rules on the State 911 Department's Motion for Confidential Treatment.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**Petition of the State 911 Department to Adjust
the Enhanced 911 Surcharge**

D.T.C. 15-2

STATE 911 DEPARTMENT'S MOTION FOR CONFIDENTIAL TREATMENT

I. INTRODUCTION

The State 911 Department ("Department") hereby requests that the Department of Telecommunications and Cable ("D.T.C.") grant confidential treatment to subscriber and end user information and/or data submitted to the State 911 Department by communication service providers and requested by the D.T.C. in Record Request D.T.C. 1-12. In support of this Motion for Confidential Treatment, the Department offers the following.

Massachusetts law provides that information filed with the D.T.C. may be protected from public disclosure. G.L. c. 25C, § 5 provides, in pertinent part, as follows:

Notwithstanding clause Twenty-sixth of section 7 of chapter 4 and section 10 of chapter 66, the department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need. The commissioner shall adopt procedural regulations consistent with this section to implement this section.

For the reasons set forth below, the State 911 Department has met the requirement for protection from public disclosure.

II. ARGUMENT

The records consist of subscriber and end user information and/or data submitted to the State 911 Department by communication service providers. Pursuant to the State 911 Department's enabling statute, G.L. c. 6A, § 18H, communication service providers are required to report to the State 911 Department on a monthly basis the total surcharge revenues collected from subscribers or end users, along with other information regarding the collection and remittance of the Enhanced 911 Surcharge.

G.L. c. 6A, § 18H, provides, in pertinent part, as follows:

Subscriber or end user information or data provided in accordance with [section 18H] shall be used, consistent with federal law, only for the purpose of responding to emergency calls, administering and operating the enhanced 911 system and providing enhanced 911 service, or for use in any ensuing investigation or prosecution, including the investigation of false or intentionally misleading reports of incidents requiring emergency service. No communication service provider or officers, directors, employees, vendors or agents shall be liable in any action to any person for releases of information authorized by this section or for civil action resulting from or caused by such providers for participation or omissions in the development, installation, operation, maintenance, performance or provision of enhanced 911 service except for wanton or willful misconduct. Release to or use by any person of a communication service provider's subscriber or end user information or data for any use other than the purposes enumerated in this subsection shall be prohibited. Notwithstanding any general or special law to the contrary, such information or data shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66, except that aggregated information that does not identify or effectively identify specific subscriber or end user information or data may be made public. (emphasis added).

The State 911 Department has undertaken significant measures to protect the confidentiality of this information, including without limitation, segregating and maintaining this information in a secure location, restricting access to this information to authorized staff on a need to know basis, and withholding this information from public disclosure. The State 911

Department has withheld this information from public disclosure in response to a public records request, and the State 911 Department does not intend to release this information unless otherwise directed by the supervisor of public records or a court of lawful jurisdiction.

The application of the D.T.C.'s three-part standard dictates that confidential treatment is warranted. First, the information for which protection is sought constitutes the type of information that can be exempted from public disclosure (confidential and competitively sensitive). In fact, the D.T.C. has afforded such protection to this very type of information (non-public subscriber counts). See, e.g., *CoxCom, Inc., d/b/a Cox Communications*, D.T.C. 14-1, (Hearing Officer Ruling). Second, the State 911 Department has overcome the presumption that the information is public information by reference to the express statutory prohibition against release of this information. Third, even where the need for protection has been established, the D.T.C. may protect only so much of that information as is necessary to meet the established need and may limit the length of time such protection will be in effect. Again, based on the express statutory language that all but aggregated information may be released, the State 911 Department has demonstrated that all of the records should be protected on a permanent basis or until such time as the express statutory language is amended or repealed.

III. RELIEF REQUESTED

The State 911 Department requests that the records be withheld from the public, excluded from the public docket and maintained separately from the public record, and returned to the State 911 Department immediately following the conclusion of the appeal period in D.T.C. 15-2. Alternatively, the State 911 Department requests that this information be treated as confidential, and afforded the protections sought herein, on a permanent basis with no sunset date. The statutory protection afforded to this information is not limited in duration, nor does it require a showing by the reporting carriers that the information is or remains competitively sensitive. Therefore, even if return of the records or permanent protection represents a departure from D.T.C. practice, the language of the statute dictates that this information should never be released, and, therefore, special treatment for these records is warranted. The Legislature has clearly spoken, and has determined that the monthly Enhanced 911 Surcharge reports are never to be released other than for the reasons permitted in the statute. The statute is clearly designed to ensure that this information will only be used for the limited reasons set forth therein, and for

no other purpose. Therefore, even the possibility (no matter how remote) that these records could become public at some point in the future is contrary to the goal of ensuring that the carriers properly report and remit the Enhanced 911 Surcharge.

The State 911 Department further requests that, for so long as this information remains in the possession of the D.T.C., this information be afforded safeguards against public disclosure, including without limitation, limiting access to this information to authorized staff solely for purposes of this proceeding. The State 911 Department further requests that the D.T.C. provide notice to the State 911 Department if the D.T.C. receives a third party public records request for this information.

IV. CONCLUSION

WHEREFORE, for all of the foregoing reasons, the State 911 Department respectfully requests that the Department of Telecommunications and Cable grant this Motion for Confidential Treatment and the relief requested herein.

Respectfully submitted,



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Dated: May 7, 2015