



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 06-33

Report of the Department of Telecommunications and Energy relative to a long term plan for funding enhanced 911 services.

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I. INTRODUCTION

On August 9, 2002, the Legislature enacted Chapter 239 of the Acts of 2002, “An Act Relative to Funding for Certain Telecommunications Programs Within the Commonwealth.” In § 3, c. 239 of the Acts of 2002, the Legislature required the Department of Telecommunications and Energy (“Department”) to issue a report to the Committee on Government Regulations regarding a long term plan for funding Enhanced 911 (“E911”) services.¹ In developing a long term plan for funding E911, the Legislature required that the Department consider any and all the issues affecting the E911 system including: (1) the equitable payment of the costs of the system by all its beneficiaries; and, (2) the changes and projected changes in technology comprising the E911 system. Acts of 2002, c. 239, §3. The Legislature directed the Department to submit its recommendations and assessments no later than December 31, 2006. Id.

On April 28, 2006, in accordance with the Legislative mandate, the Department voted to open this investigation to develop a long term plan for funding E911 services. See Investigation by the Department of Telecommunications and Energy on its own motion to develop a long term plan for funding Enhanced 911 services, D.T.E. 06-33, Vote and Order to Open Investigation (April 28, 2006). On May, 17, 2006, the Statewide Emergency

¹ E911 refers to the system which provides residents and businesses with the ability to reach emergency services by dialing the digits “9-1-1.” Unlike standard 911, E911 provides the address of the caller, thereby allowing for a shorter response time for emergency personnel. See G.L. c. 166, § 14A; G.L. c. 6A, § 18A.

Telecommunications Board (“SETB”)² submitted initial written comments regarding long term funding for E911 services.

The Department conducted a public hearing in this docket on May 24, 2006 and established a procedural schedule for the submission, by interested parties, of proposals for the long term funding of E911 services and the submission of comments on those proposals. On July 28, 2006, the Department received proposals for the long term funding of E911 from SETB and Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon”). The Massachusetts Communications Supervisors Association (“MCSA”)³ submitted its proposal on August 1, 2006. Comments on the three proposals were submitted by SETB, Verizon, the Attorney General of the Commonwealth (“Attorney General”), AT&T Enterprise Services, Inc. (“AT&T”), and RNK Inc. d/b/a RNK Telecom (“RNK”). Reply comments were filed by

² SETB is an agency within the Executive Office of Public Safety which coordinates, effects the implementation of, and administers wireline and wireless E911 service in the Commonwealth. See G.L. c. 6A, §§ 18, 18B(a), (b). The 21 members of SETB consist of the secretary of public safety; the director of the office of consumer affairs and business regulation; the director of the Massachusetts emergency management agency and office of emergency preparedness; the chief information officer of the information technology division; the state fire marshal; the colonel of state police and the police commissioner of the city of Boston; the executive director of the state office of handicapped affairs; and thirteen members appointed by the governor that represent the Massachusetts Chiefs of Police Association, Massachusetts Fire Chiefs Association, Massachusetts Emergency Medical Care Advisory Board, the Massachusetts Police Association, the Professional Fire Fighters of Massachusetts, the Massachusetts Municipal Association, and the interests of the vision, hearing and mobility impaired. G.L. c. 6A, § 18B(a).

³ MCSA is a non-profit, voluntary association of supervisors and staff of public safety answering points (“PSAPs”) and related emergency services dispatch centers from approximately 60 Commonwealth municipalities and other governmental entities.

SETB, Verizon, Comcast Phone of Massachusetts, Inc. (“Comcast”), and Level 3 Communications, LLC (“Level 3”). On September 22, 2006, the Department held a technical conference in this proceeding.⁴

II. BACKGROUND ON E911 FUNDING

From 1990 to 2002, wireline E911 service and three disability access programs⁵ were funded by charging residential customers for each directory assistance call that exceeded their allowance of ten free calls per month. See Acts of 1990, c. 291, § 7; see also Directory Assistance Charges,⁶ D.P.U. 91-68 (1991). Initially, the directory assistance funding mechanism was sufficient to support wireline E911 services and disability access programs, but the program began operating at an annual deficit in 1995. The deficit under the directory assistance revenue funding mechanism was estimated, as of the end of 2002, at \$43.1 million.

In 2002, the Legislature replaced the directory assistance funding mechanism with the current funding mechanism which imposes a surcharge on each voice grade exchange telephone wireline of business and residential customers in the Commonwealth. See Acts

⁴ All references to “Tr.” in this report are references to the transcript of the September 22, 2006 technical session.

⁵ The three disability access programs funded by the Wireline E911 Fund are: (1) relay services for the hearing impaired; (2) special communications equipment distribution for people with disabilities; and (3) amplified handsets at pay telephones. See G.L. c. 166, § 15E.

⁶ Investigation by the Department on its own motion into the propriety of tariff D.P.U. - Mass. - No. 101 Part A, Section 5, Fifth Revision of Page 81 and Fourth Revision of Page 82, filed with the Department on March 8, 1991, to become effective April 7, 1991, by New England Telephone and Telegraph Company, D.P.U. 91-68 (1991) (“Directory Assistance Charges”).

of 2002, c. 239, § 1. The surcharge funding mechanism includes an input for recovery of the deficit accumulated under the directory assistance funding mechanism. Id.

Pursuant to the Acts of 2002, the Department, in July 2003, established the level of the surcharge at \$0.85 per month.⁷ On December 1, 2006, the Department established a revised surcharge of \$0.99 per month, for effect on January 1, 2007.⁸ The revised \$0.99 surcharge will fund the provision of E911 services and disability access programs, and will also go towards paying off the deficit accumulated under the directory assistance funding mechanism.⁹ The revised \$0.99 surcharge will be imposed on each voice grade exchange telephone line of business and residential customers in the Commonwealth until December 31, 2007, at which time the enabling legislation expires. See Acts of 2002, c. 239, § 1.

Because the enabling legislation expires on December 31, 2007, the Legislature directed the Department to issue a report to the Committee on Government Regulations

⁷ See Investigation by the Department of Telecommunications and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, D.T.E. 03-63 - Phase I (2003) (“D.T.E. 03-63 - Phase I Order”).

⁸ See Investigation by the Department of Telecommunications and Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, D.T.E. 06-4 (2006) (“Revised Surcharge Order”).

⁹ The accumulated deficit is projected to be fully paid off in the first quarter of 2007. See Revised Surcharge Order at 32-35.

relative to a post-2007 funding mechanism for the provision of E911 services. Acts of 2002, c. 239, § 3. Consistent with that directive, the Department issues this report.¹⁰

III. THE FUTURE E911 FUNDING PLAN

A. Surcharge Funding Method

1. Introduction

In this section, the Department discusses recommendations from commenters regarding the use of a surcharge, as opposed to the General Fund, as the means for funding E911. In addition, the Department discusses whether new E911 funding legislation should be limited to a specific time period. Finally, the Department discusses whether new legislation should specifically define the permissible uses for E911 funds and whether the uses of E911 funding should be broadened.

2. Positions of the Parties

a. SETB

SETB proposes Massachusetts establish a single E911 surcharge for all technologies and devices that can access the E911 system (SETB July 28 Proposal at 4; SETB August 25

¹⁰ In this report, we consider whether disability access programs should continue to be funded through the same mechanism as E911 services. We do so because disability access programs and E911 service share the same funding mechanism, namely, the prior directory assistance revenue funding mechanism and the current surcharge mechanism. See Acts of 1990, c. 291, and Acts of 2002, c. 239, § 1. Thus, consideration of funding for disability access programs in conjunction with E911 services is appropriate.

Additionally, pursuant to G.L. c. 6A, § 18H½, the Department is required to annually report to the general court concerning the financial condition of the E911 fund. We consider this Report as satisfying that requirement for 2006.

Comments at 2). SETB prefers the surcharge method of raising revenue because it equitably collects from all potential connection points to the system and can provide a steady and predictable funding stream for the E911 program (SETB July 28 Proposal at 2). SETB states that the revenue can then be devoted specifically for the purpose it was collected (id.).

In response to Verizon's proposal to fund E911 through the Commonwealth's General Fund instead of through the surcharge mechanism, SETB argues that Verizon provides no support for its proposal (SETB August 25 Comments at 1-2). Noting that the surcharge method to fund E911 has been in use in Massachusetts since 2002, and is also used in most states and jurisdictions in the United States, SETB argues that Verizon offered no compelling reasons to consider in determining whether Massachusetts should take the lead in the country and abolish the surcharge model (id. at 2).

Finally, SETB urges the Department to consider whether the SETB mandate should be broadened to include other public safety emergency communications missions (SETB May Comments at 4). Specifically, SETB states that the current funding model, while protecting 911 revenues for appropriate uses under the statutes, constrains SETB's ability to address other issues such as interoperability, other N11 systems including 211 (human services referrals), 311 (non-emergency public safety) and 5-1-1 (transportation information), and community notification systems (id.). Similarly, SETB urges the Department to support a broadening of the definition of the state role in funding E911 costs beyond the model of providing the system to municipalities at state expense and relying on local funding of facility and local costs (id.).

SETB notes that its PSAP Training Fund established for fiscal year 2007 and the first six months of fiscal year 2008 addresses some of MCSA's proposals by providing resources to ensure that local departments can send telecommunicators¹¹ to training offerings in order to improve the quality of E911 service (SETB Comments at 2). SETB states that, contrary to Verizon's assertions, nothing in G.L. c. 6A, § 18D and the Acts of 1990, c. 291 limits SETB's ability to fund training costs of municipal employees (id.).

SETB notes that its principle of "E911 funds used only for E911 service" is based upon the experience in other states whereby E911 funds are completely diverted for other public safety or non-public safety purposes, such as balancing state budgets in difficult years, but that, in response to opposition to funding training of E911 dispatchers and call-takers, SETB insists that the use of E911 revenues to provide a higher level of training and to create a more professional public safety emergency communications workforce is entirely consistent with the principle of using E911 funds only for E911 service (SETB Reply Comments at 2).

b. Verizon

Verizon argues that E911 programs benefit everyone in the Commonwealth, and therefore, should be funded through the state's General Fund rather than by end users (Verizon July 28 Proposal at 2). Nevertheless, should an E911 surcharge funding mechanism be established, Verizon agrees with SETB's proposal that E911 services and surcharges be reviewed periodically and adjusted accordingly based on the costs of the service (Verizon

¹¹ Telecommunicators is a general term used for PSAP staff, including public safety dispatchers, emergency telecommunications dispatchers, police or fire dispatchers, fire alarm operators, or 911 telecommunications (see MCSA August 1 Proposal at 5).

August 25 Comments at 3). Verizon, however, argues that the Department, not SETB, is in the best position to review SETB's costs and to adjust the surcharges, as appropriate (id.).

Moreover, while Verizon agrees with SETB that E911 funds should only be used for providing and administering E911 service, Verizon argues that, consistent with the M.G.L. c. 6A, §18D and c. 291 § 8 of the Acts of 1990, PSAP costs that go beyond operational training for E911 call handling "should be borne by the respective municipality or public safety organization requesting such training" (Verizon August 25 Comments at 1-2; Verizon July 28 Proposal at 2-3).

Finally, Verizon warns the Department to exercise caution in endorsing proposed costs that stray from operational training for 911 call handling, or are inconsistent with the General Court's directives in G.L. c. 6A, § 18D and the Acts of 1990, c. 291, § 8 that staffing costs in PSAPs are to be borne by municipalities (Verizon Proposal at 3). Verizon argues that, although there may be broad public benefit to training personnel receiving 911 calls to perform other public safety functions, these costs are most logically borne by local or state general budgets, not telephone customers (id.).

c. MCSA

MCSA argues that reliable, efficient, informed, and speedy response to life-threatening emergencies is the most important function of government, and that the E911 system plays a central role in emergency response (MCSA August 1 Proposal at 2). MCSA therefore argues that plans for the future of the E911 system must recognize the fundamental importance of the E911 system to the well-being of the citizenry, with cost as a secondary consideration (id.).

To that end, MCSA proposes that any future E911 system be constructed with objective performance goals and measures so that policy and resources can be adjusted periodically to ensure performance objectives are being met (id.).

MCSA explains that few components of the 911 system are as important as having skilled and experienced persons to answer and process 911 calls (id. at 4). Nevertheless, MCSA states that many 911 telecommunicators have little or no pre- or in-service training over a period of many years, and, in cases where training is provided by the PSAP employer, it is often restricted to the basic skills of CPR and first aid re-certification (id. at 5). MCSA asserts that the principal reason for the failure of PSAPs to provide in-service training to 911 telecommunicators is cost (id. at 6). MCSA explains that PSAPs are typically staffed at the margin and, therefore, most PSAPs are unable to build a training relief factor into the regular work schedule (id.). MCSA states that even those PSAPs who are able to structure staffing levels to provide for training typically find that the intended training relief factor must be used to staff regular shifts due to personnel turnover or extended absences due to illness, maternity leave, disability or military leave (id.). Accordingly, MCSA recommends a support program for in-service training of 911 telecommunicators to be included in the 911 program and funded out of any surcharge (id.).

MCSA states that support program funding would be put towards personnel costs of E911 telecommunicators to attend specific SETB-approved training courses targeted at improving key skills and knowledge and that, while SETB would oversee the program, PSAPs would be responsible for the specific direction of the training for their own employees (MCSA

August 1 Proposal at 6). MCSA maintains that it is in consumers' interest to broaden the scope of future legislation so that PSAPs will be included in the entities authorized to receive support from the 911 program (id. at 4). MCSA notes that the Commonwealth's Wireless E911 Program recognizes and supports this broader scope for 911 by funding not only the E911 technology but also the personnel costs, including salaries, of wireless E911 dispatchers (id.).

d. RNK

RNK agrees with Verizon that there should be a periodic review of the costs associated with E911 and other related programs in order to ensure revenues are in line with costs (RNK August 25 Comments at 5). RNK also agrees with Verizon's proposal that E911 funds should be used solely for provisioning and administering E911 service, and that all other public safety services should be funded through non-E911 sources (id.).

e. Attorney General

The Attorney General agrees with the principles established in the National Emergency Number Association's ("NENA") Report titled Next Generation 9-1-1: Responding to an Urgent Need for Change (March 2006) ("NENA Report") which states that the E911 system should constantly evolve to adapt to new technologies and that SETB should use the fees collected exclusively for E911 purposes (Attorney General August 25 Comments at 3-4).

f. AT&T

AT&T asserts E911 services and other public safety programs should be funded through the Commonwealth's General Fund rather than through a surcharge (AT&T August 25 Comments at 3). AT&T supports the NENA principles for funding E911 which includes limiting E911 funds to narrowly-defined, specific E911 purposes and urges regulators to rebuff calls to direct funding to other unrelated public safety efforts (id.).

g. Level 3

Level 3 agrees that there should be a single E911 surcharge to help ensure the financial stability of the E911 system (Level 3 September 7 Reply Comments at 2). Level 3 further agrees with comments proposing to include Voice over Internet Protocol ("VoIP")¹² technology which utilizes E911 services as a contributor to the E911 fund through a surcharge mechanism (id. at 1).

3. Recommendation and Analysis

As discussed in detail below, the Department recommends that the provision of E911 service continue to be funded by a surcharge mechanism. Additionally, similar to the current funding legislation, the Department recommends that future E911 funding legislation be limited in term so that the effect of emerging technologies on the E911 system may be reviewed. Lastly, the Department recommends the new E911 funding legislation specifically state the permissible fund uses.

¹² VoIP is an industry transmission standard which supports voice communications over packet networks, such as the Internet.

a. Surcharge Mechanism

SETB, the Attorney General and Level 3 argue in favor of the surcharge method for funding of the E911 program. Verizon and AT&T, on the other hand, argue that general funds should be used to fund E911 services because the E911 program benefit everyone in the Commonwealth.

Without a doubt, E911 service is an invaluable service for the citizens of the Commonwealth and, therefore, the Department finds that ensuring a steady funding source for the E911 program is an absolute necessity. To that end, the surcharge mechanism is the most viable method to ensure a steady funding source for the provision of E911 services. Unlike funding through the Commonwealth's General Fund, an E911 surcharge ensures that funds are used exclusively for their intended purpose. More specifically, funding through a surcharge eliminates the E911 program having to compete with other public service programs for limited state resources as well as the possibility that E911 funding could be diverted for non-E911 uses, such as balancing state budgets, which could jeopardize the reliability and efficiency of the E911 system, and, in turn, place the safety and well being of Commonwealth's citizens at risk. Accordingly, the Department recommends that the Legislature continue to fund E911 services by means of a surcharge on end users.

b. Term of New E911 Legislation

The Department agrees that new E911 legislation must be sufficiently flexible to respond to future technological changes and to possible changes in Federal law. Accordingly, the Department recommends that the Legislature limit the term of the post-2007 E911

legislation to three years to allow for the re-evaluation of the E911 program as a whole and to address unforeseen issues related to emerging technologies and possible changes in Federal law.

In the past 10 years, dramatic changes have occurred in the telecommunications industry not only due to federal regulation but, more significantly, from the proliferation of new and innovative technologies such as VoIP. New technologies will continue to emerge and alter the telecommunications industry in new ways and new E911 legislation must recognize this constantly evolving telecommunications landscape. Therefore, revisiting the effect of unforeseen changes in three years is vital to ensure that the E911 program continues to meet the needs of the citizens of the Commonwealth. A three year review period will allow the Legislature to address, in a timely fashion, changes that result from emerging technologies or new Federal policy and avoid jeopardizing the stability of the E911 program.

Additionally, the Legislature should continually be informed of developments that effect the E911 program so that it can assess the affect of such changes on the E911 program. The Department therefore recommends that the new legislation include an annual reporting requirement mandating the Department to report on the status of the E911 fund and, as part of that report, to recommend any necessary changes before the recommended three-year expiration of the new legislation. To assist the Department in carrying out its reporting function, the new legislation should also require SETB to report annually to the Department and provide its assessment of new developments affecting the program within 60 days of the end of each fiscal year.

c. Uses of the E911 Fund

First, given the disagreement over whether costs beyond the technological systems, equipment and operational training should be funded by surcharge revenues, the Department strongly recommends that the Legislature explicitly enumerate the permissible uses for E911 funds. We note that this issue has engendered passionate disagreement from interested parties. For example, in the Department's recent Revised Surcharge Order, the Department approved as a prudently-incurred expense, SETB's PSAP Training Fund where, beginning in fiscal year 2007, five percent of annual surcharge revenues would be set aside to reimburse municipalities for expenses associated with training E911 telecommunicators to SETB-established standards.¹³ Revised Surcharge Order at 28-30. In that proceeding, the parties strongly differed as to whether SETB was authorized to fund the training of PSAP telecommunicators beyond operational training. In resolving the issue, the Department interpreted SETB's current statutory authority in G.L. c. 6A, § 18B to incorporate authority to fund the training costs of E911 telecommunicators. Id.

The scope of SETB's authority to fund municipal training efforts are valid concerns both now and in the future, and therefore the Department believes it is imperative that the post-2007 legislation for the provision of E911 services clarify the appropriate uses for E911

¹³ We note that SETB is currently drafting criteria and standards for disbursement of the PSAP Training Funds approved in the Revised Surcharge Order and will submit its finalized criteria for Department review. See Revised Surcharge Order at 30. If new legislation is enacted that explicitly permits SETB to dedicate funds to training of E911 telecommunicators beyond just operational equipment training, SETB's newly-drafted standards and criteria could serve as the basis upon which funds are disbursed for training.

revenues. As to the specific parameters for uses of E911 funds, the Department stresses that the Legislature, not the Department, is in the best position to determine the public policy behind appropriate expenditures from these funds. In addition, the Legislature is also in the best position to make funding decisions that may impact municipal budgets, such as the payments to municipalities for training costs associated with E911 services, as anticipated by the PSAP Training Fund. In the previous sections of this report, we have provided summaries of the insightful comments on this issue received during this proceeding which will help guide the Legislature in its deliberations. To provide additional guidance, the Department recommends that the Legislature consider forming a special committee of interested parties, including but not limited to SETB, telecommunications carriers, and municipalities, to further study the issue of appropriate expenditures from E911 funds and to provide appropriate recommendations to the Legislature to consider in adopting new legislation.

The Department urges legislators to ensure that each specified category of allowable expenditures from the E911 funds must have a clear nexus to the administration and provision of E911 services. This will protect the integrity of the E911 funds and will also control spending. In addition, the Department recommends that, while the Legislature should specifically enumerate allowable expenditures in future legislation, the Legislature should also balance the importance of the proposed expenditures of E911 funds with the collective and individual impact that a potentially larger E911 surcharge would have on consumers' telephone bills.

Second, while Verizon predicts that the deficit associated with the directory assistance funding mechanism will be eliminated in the first quarter of 2007, the exact date on which the deficit will be finally eliminated has not been determined. See Revised Surcharge Order at 32-35. The Department required Verizon to provide the Department with notice of when it determines the deficit to be fully recovered. See id. at 34-35. Nevertheless, because there is a possibility, although remote, that the deficit will not be entirely eliminated by December 31, 2007, the Department recommends that the new funding legislation explicitly include recovery of costs associated with deficit recovery unless elimination of the deficit has been verified in advance of enactment of the new legislation. In addition, consistent with our recommendation in section D, below, that the Legislature separate disability access programs from E911 services, we recommend that recovery of expenses associated with disability access programs be excluded from E911 funding in the new legislation.

Third, the Department also recommends that new legislation more specifically define the respective roles of the Department and SETB in determining how E911 funds are used. Currently, pursuant to G.L. c. 6A, § 18B, SETB is vested with the authority to administer and implement the E911 program. The Department, pursuant to G.L. c. 6A, § 18H^{1/2}, must review the prudence of SETB's expenditures in establishing the level of the E911 surcharge. However, the current statutory scheme is silent as to which agency has the ultimate authority to determine the types of programs for which expenditures are made and the Department urges the Legislature to resolve this issue.

Additionally, pursuant to G.L. c. 6A, § 18D(c)(4), the Department must approve any capital expenditure that exceeds \$500,000. Section 18D(c)(4) of G.L. c. 6A, however, provides no standard of review upon which the Department must base its review. While the Department acknowledges that SETB has the expertise to determine the needs of the E911 program, the current statutory scheme gives SETB the authority to determine expenditures without taking into account the interest of ratepayers. Accordingly, the Department also recommends that the new legislation require that any increases exceeding \$500,000 in SETB's overall budget require Department review of the prudence of those expenditures.

Finally, we note that legislators in New Jersey recently passed a bill to reform E911 which includes consolidation of PSAPs and PSAP functions (see S. 45, 212th Leg. (NJ 2006)). Because a regional E911 program would likely result in operating efficiencies, including the elimination of unnecessary duplication of hardware and personnel, the Department strongly urges that the Massachusetts Legislature also study and consider the cost effectiveness of a regional approach to the provision of E911 services. Specifically, the Department recommends that new E911 legislation require SETB to study and report back to the Legislature within one year of the effective date of the new legislation on possible ways to increase the efficiency and lower the cost of the E911 program through consolidation of PSAPs or other ways, such as adopting the 311 abbreviated dialing code for use as non-emergency information calls.

We note that, while significant differences exist in how the E911 program is structured in different states, Connecticut's E911 program subsidizes the planning and operation of

PSAPs that serve three or more towns and New Hampshire has a single, statewide PSAP (see MCSA August 1 Proposal at 8-9). Additionally, MCSA supports building in a component into the E911 system that encourages, but does not mandate, regionalism (id. at 8). The principle argument that the Legislature should be concerned with is utilizing ratepayer and taxpayer money effectively and efficiently to establish and operate E911 centers appropriately. Given the new technology that is available and the expense of that technology it would appear that having 270 individual PSAPs may not be necessary or warranted on a going-forward basis. We leave the specifics of this issue to the Legislature to best decide how to proceed.

B. Technology Neutral Surcharge and Single Fund

1. Introduction

In this section, the Department discusses recommendations from the commenters that the Legislature combine the existing separate wireline and wireless E911 funds, and include other technologies in the funding requirement. In addition, the Department discusses whether the proper entity the Legislature should designate to collect and remit the E911 surcharge to SETB is the retail communications service provider or the underlying infrastructure provider. Lastly, the Department discusses whether it is appropriate for a communications service provider to contract with a third party for collection and remittance of the E911 surcharge.

2. Positions of the Parties

a. SETB

SETB asserts that the major technological change that has affected the provision of E911 service is the emergence of VoIP (SETB May 17 Comments at 2). Therefore, SETB argues that any future funding plan for E911 in Massachusetts should capture surcharge revenue from any device that can access the 911 system, whether it be wireline, wireless, VoIP or some other technology (id. at 3). SETB argues that the revenue should be deposited into a single E911 Trust Fund to pay for all necessary expenses for SETB to operate the system (id.). In its proposal, SETB asserts that a major shortcoming of the current funding mechanism is the fact that the current statutes only capture revenue from two sources (i.e., wireless and wireline devices) (SETB July 28 Proposal at 2). Because a number of new communications technologies have emerged since the statutes were enacted, SETB argues that it is essential that the future funding mechanism allows the collection of revenues from all connection points that allow access to the E911 system (id.). SETB asserts that it is likely that the migration of communications technology away from wireline phones to wireless and IP-enabled devices will continue, therefore, future funding statutes must also be flexible enough to adapt to a rapidly changing environment (id. at 3).

SETB proposes that Massachusetts establish a single E911 surcharge to be applied to all devices and technologies that can access the E911 system. SETB proposes that the surcharge be collected by entities that own, control or manage the connection points to the E911 system (SETB July 28 Proposal at 4). SETB argues that it is essential to identify the point at which

surcharge revenue is captured as the “last mile” of service to the subscriber (id.). The “last mile” concept, argues SETB, is a common element to any technology or device that can access the E911 system, therefore, it is a logical point at which to assess the surcharge (id. at 5).

SETB disagrees with Verizon’s recommendation to only use future E911 surcharge revenue to pay for incremental costs of enabling VoIP access to the E911 system (SETB September 8 Reply Comments at 2). Rather, argues SETB, funding must come from all access methods and technologies using principles of competitive neutrality (id.). SETB also disagrees with RNK’s recommendation that the surcharge be collected by retail communications service providers rather than infrastructure providers (id. at 3). SETB argues that broadband infrastructure providers, as the “last mile” service in the VoIP environment, should collect and remit the surcharge because they are identifiable entities and the Department already has the ability to regulate them and to provide information on the number of subscribers that will be important to determine the denominator to be used in setting an initial surcharge in 2008 (id.). Although SETB acknowledges that not all broadband customers use VoIP, SETB asserts that an increasing proportion of broadband users will have VoIP service that can access the E911 system (id.).

b. Verizon

Verizon agrees that E911 funding must come from all end users that have access to E911 services without regard to the access method (Verizon July 28 Proposal at 3). Verizon argues that, with regard to VoIP end users, they should also contribute to the costs of the E911 system, however, because the FCC has generally preempted state regulation of VoIP services,

Verizon argues that any state mandated fees relating to VoIP E911 must be based solely on the costs of providing E911 services to VoIP end users and cannot be used to fund anything else (id. at 4).

Verizon argues that, similar to the current treatment of the wireless E911 surcharge's recovery of the costs of enabling, administering, and maintaining wireless access to E911 services, any E911 surcharge applicable to VoIP services must be set to recover only the incremental costs of enabling VoIP access to the system and not to subsidize the building, maintaining, and administering the existing wireline or wireless E911 access systems (Verizon August 25 Comments at 2). Verizon argues that because VoIP is a new and emerging service, it should be assessed at the lowest possible statewide rate and should not be burdened with the historical cost of providing access to wireline E911 service (id.). Verizon also argues that VoIP services should likewise not be burdened with the portion of the E911 surcharge intended to fund disability access programs, which are currently supported only by wireline end users (id.).

Verizon further stresses that a surcharge should be imposed only on "interconnected VoIP service" as that term is defined by FCC regulations (Verizon August 25 Comments at 2-3). Verizon asserts that the VoIP surcharge should be collected and remitted to SETB by the retail communications service provider although a VoIP provider should be able to contract with a third party to provide that service (id. at 3). In addition, Verizon agrees with RNK that the underlying facilities provider should not be responsible to collect and remit the E911 surcharge (Verizon September 8 Reply Comments at 1).

c. MCSA

The MCSA proposes that the future E911 system be integrated under one technical architecture, one statutory framework, and one approach to funding based on a monthly surcharge to be applied to all technologies (MCSA August 1 Proposal at 7). The MCSA also proposes that there be parity in the distribution of costs to end users, pointing out that under the current system, wireless customers pay \$.30/month, wireline customers pay \$.85/month, and VoIP and non-traditional customers pay varying amounts or nothing at all (id.).

d. RNK

RNK disagrees with SETB's proposal that the future E911 surcharge be collected by infrastructure providers (RNK August 25 Comments at 2). This approach, suggests RNK, would be inefficient in practice and result in either over or under-collection of surcharges (id. at 3). As an example, RNK points out that a customer may obtain a high-speed internet connection from a landline provider, such as Verizon, but obtain IP-based voice services from RNK (id.). In such a situation, asserts RNK, Verizon (the broadband provider) would not necessarily be aware that the customer is running a VoIP application that enables access to E911 (id.). Under these circumstances, argues RNK, it would be nearly impossible for the broadband provider to effectively and accurately collect the E911 surcharge from its subscribers that are connected to the E911 system through a third-party provider such as RNK because the broadband provider would not know which subscribers to bill for the surcharge (id. at 4). Also, RNK argues that it is unclear whether VoIP end users would not be charged twice for E911 access, once on the voice service and again, indirectly through the local

exchange carrier that provides the physical connection to the PSAP (id.). Therefore, RNK argues that the entities that own, control, or manage the connection points to the E911 system should not be required to collect and remit the surcharge to SETB (id.).

Rather, argues RNK, the retail communications service providers should be responsible for collection of the E911 surcharge from their end users on a subscriber account basis (RNK August 25 Comments at 5). Because the retail service provider derives a benefit from the end user's ability to access the E911 system, argues RNK, it is the retail service provider, not the broadband provider or the "connection point" provider that should carry the burden of collection and remittance of the surcharge (id.). Moreover, argues RNK, the retail service provider will be aware of the end users' access to the E911 and will be able to invoice them directly and accurately (id.). For example, only a retail service provider would know that a small business with seven VoIP "line equivalents" over a common broadband facility should be billed multiple E911 surcharges, as is the case with business customers with multiple landlines (id.).

e. Attorney General

The Attorney General agrees with SETB that the Department should recommend to the Legislature that it should establish a single E911 surcharge applicable to all devices and technologies that can access the E911 system (Attorney General August 25 Comments at 3). The Attorney General also agrees that the revenue from the surcharge should be deposited into a single "E911 Trust Fund" to pay for all necessary expenses for SETB to operate the E911 system (id.).

f. AT&T

AT&T supports the premise that a funding mechanism for E911 should apply to all end users accessing E911 services regardless of the type of technology used to access the services (AT&T August 25 Comments at 1). AT&T emphasizes that this will expand, secure, and stabilize the funding base, the importance of which is paramount in the face of customers' increasing abandonment of traditional wireline service in favor of wireless, VoIP, and other technologies (id. at 2). However, AT&T stresses that its support for expanding the E911 surcharge to include VoIP providers is not an acknowledgment that states have broad authority to regulate IP-based services like VoIP (id.).

g. Comcast

Comcast agrees that E911 should be supported through a funding mechanism that extends to all end users that use and benefit from the E911 system, regardless of the technology used to access the system (Comcast September 8 Reply Comments at 1). Comcast argues that the Department should not require the surcharge to be collected by entities that own, control, or manage the "connection points" to the E911 system, rather, Comcast agrees with RNK that it should be the retail service provider who collects and remits the surcharge to SETB because it is the retail service provider that provides the end user E911 calling capability as part of the retail service (id.).

h. Level 3

Level 3 agrees that, in the future, VoIP services that utilize the E911 system should be included in the funding requirements for E911 in Massachusetts (Level 3 September 7 Reply Comments at 1). Level 3 argues that implementing a single 911 surcharge for all carriers and providers on each end user “line” as suggested by the Attorney General would go a long way towards ensuring the financial stability of the E911 system (id.). Level 3 stresses that it is important to provide explicitly in future legislation the ability for providers to enter into commercial arrangements where underlying network, wholesale or third party providers can remit on behalf of retail provider customers as suggested by Verizon (id.). Level 3 argues that the most effective funding mechanism is one that is readily implemented and easily complied with, therefore, if rules are established that do not account for wholesale business models or contain different rates for different classifications of service or are overly complex, the likelihood that 911 funding falls short increases (id. at 2).

3. Recommendation and Analysis

As discussed fully below, the Department recommends that the Legislature establish a common surcharge rate on all end users who have access to the E911 system regardless of the technology used to do so, to be deposited into a single E911 fund. The Department concludes that this approach is competitively and technologically neutral and is flexible enough to respond to future changes in communications technology. Our bases for this recommendation are explained in detail below.

a. Single Surcharge, Single Fund

All commenters that participated in this proceeding were in agreement that, in the future, the Massachusetts E911 system should not be supported solely by wireline and wireless end users as is currently the case, but instead funding for E911 services should come from a common surcharge assessed on all end users that have access to E911 services regardless of the communications technology used to do so (see SETB May 17 Comments at 3; SETB July 28 Proposal at 2; Verizon July 28 Proposal at 3; MCSA August 1 Proposal at 7; Attorney General August 25 Comments at 3; AT&T August 25 Comments at 1; Comcast September 8 Reply Comments at 1; Level 3 September 7 Reply Comments at 1). The Department agrees that requiring a broader base of funding sources subject to a common surcharge will not only secure and stabilize the E911 system itself, but also comports with the notions of competitive and technological neutrality in that an end user's ability to access E911 services is the governing factor rather than the specific technology used.¹⁴

¹⁴ While Verizon agrees with other commenters that all technologies with access to the E911 system should be required to contribute to the funding of the system, Verizon also argues that, because VoIP "is a new and emerging service, [VoIP users] should be assessed at the lowest possible statewide rate," and argues that VoIP users should only be assessed surcharges that are limited to the costs of VoIP users' access to the E911 system (Verizon August 25 Comments at 2). Therefore, Verizon appears to be recommending a different surcharge for users of VoIP services than other technologies, although Verizon does not explain how this different surcharge would be established or administered. However, Verizon also argued that "if you are going to have the same surcharge for wireless as you do for landline, then VoIP should be the same as that . . ." (Tr. at 80). In any event, we determine that our recommendation to the Legislature should be governed by principles of competitive and technological neutrality, and therefore, we do not recommend that the Legislature implement an approach establishing different surcharges for different technologies.

Turning to the recommendations of the commenters to establish a single fund (i.e., requiring the surcharges assessed on all communications technologies be deposited in a single fund for use by SETB (see SETB May 17 Comments at 3; Attorney General August 25 Comments at 3)), the Department also agrees. No commenter has argued that separate funds for different technologies, such as the current separate Wireline E911 Fund and Wireless E911 Fund, provide any advantage to the funding of E911 services, and the Department concludes that the gains in administrative efficiency by having a single fund are evident. In addition, we note that there is currently a significant difference between the wireless E911 surcharge of \$0.30 and the wireline E911 surcharge of \$0.99, which becomes effective January 1, 2007. In addition, the number of customers contributing to the wireless fund is increasing while the reverse is true for the wireline fund due to decreasing use of traditional wireline service, some of which is the result of wireless substitution. The cost differential between the wireless and wireline E911 surcharges may provide an incentive for some end users to migrate from wireline service to wireless service which could, in turn, then require an upward adjustment of the wireline E911 surcharge resulting in an even greater cost differential and a greater incentive to migrate to wireless service. A single surcharge and a single fund, however, would negate the effect of customers migrating from wireline service to wireless service.

b. Retail Service Provider vs. Infrastructure Provider

With the exception of SETB, all commenters in the Department's proceeding that addressed the issue agree that the Legislature should impose responsibility on retail communications service providers to assess and collect E911 surcharges from their retail

customers (Verizon September 8 Reply Comments at 1; RNK August 25 Comments at 2-5; Comcast September 8 Reply Comments at 1; Level 3 September 7 Reply Comments at 1). SETB argues, however, that it should be the underlying communications infrastructure provider (i.e., the entity that owns the “last-mile” facilities to the end user’s location) that should have the responsibility to assess and collect the surcharges from end users (SETB July 28 Proposal at 4-5; SETB September 8 Reply Comments at 3). The advantage of such an approach, argues SETB, is that the “last mile” concept is a common element to any technology or device that has the ability to access the E911 system, and therefore, it is a logical point at which to assess the surcharge (SETB July 28 Proposal at 5).

We agree that, in a wireline and wireless world, such an approach makes sense. However, in a broadband world, voice services (and by extension, access to the E911 system) are not available unless a separate VoIP product from a retail service provider is used, and, as SETB acknowledges (see Tr. at 54), there is no way for the underlying broadband facilities provider to ascertain whether the broadband end user is using the broadband connection for voice services (i.e., whether or not the end user actually has the ability to access E911 services over the broadband connection through a VoIP service provider). Because we conclude it would be inequitable to assess and collect the E911 surcharge from end users who do not, in fact, have the ability to access the E911 system, we do not recommend that the Legislature adopt the funding requirement as suggested by SETB. Rather, we determine that the mere *potential* to access the E911 system is not a sufficient basis upon which to assess a surcharge, but rather it is the *ability* to access the E911 system that should be the determining factor.

Because the end user's ability to access the E911 system is known only by the retail communications service provider (whether that provider be a VoIP service provider, or "traditional" wireline or wireless service provider), we conclude that it is the retail service provider that should have the responsibility to assess, collect, and remit the surcharges to the E911 Fund. We therefore recommend that the Legislature adopt this funding requirement in its future legislation.¹⁵

c. Ability to Contract with Other Parties for Collection and Remittance of Surcharges

Of importance to the carriers that participated in the Department's proceeding to develop recommendations on long term funding for the Massachusetts E911 system was that retail communications service providers should not be precluded from the ability to contract with other parties (whether that party be the underlying network provider or a third party) for billing services, including the responsibility for the collection and remittance of E911 surcharges to SETB (see Level 3 September 7 Reply Comments at 1-2; Verizon August 25 Comments at 3; Verizon September 8 Reply Comments at 1). We agree that communications service providers should have the flexibility to develop business models that are not

¹⁵ We acknowledge SETB's concerns that there could be VoIP retail service providers that provide their customers with access to the Massachusetts E911 system and never assess surcharges or contribute to the Massachusetts E911 Fund, and the difficulties this can create when SETB attempts to ascertain predictable "line counts" in order to establish the surcharge amount (Tr. at 57-61). We therefore further recommend that, in future legislation, the Legislature emphasize the mandatory contribution requirement for all retail communications service providers that offer services with the ability to access the Massachusetts E911 system and include mandatory periodic reviews of the funding mechanism by the Department to ensure that potential contributors to the E911 Fund are not being overlooked.

constrained by unnecessary and burdensome requirements. A clear, simple statement setting forth the E911 funding requirements will allow service providers to meet the statutory requirements with the minimum amount of regulatory oversight. Therefore, the Department recommends that, if the retail communications service provider determines that contracting with other parties is the best way to fulfill its obligations under the future E911 funding requirements, then the service provider should not be precluded from doing so.

C. Recalculation of the Surcharge

1. Introduction

In this section, the Department discusses the process for recalculating the surcharge in the future. This includes an examination of what entity should have the authority to set changes in the surcharge and the frequency of formal reviews to determine whether adjustments to the level of the surcharge are necessary.

2. Positions of the Parties

a. SETB

SETB argues that it should, over the life of the new legislation, have the authority to adjust the single wireline and wireless surcharge based on changing circumstances in the same way that it now can adjust the wireless surcharge (SETB July 28 Proposal at 5). As SETB points out, under the current wireless surcharge legislation, the surcharge is circumscribed by a floor of \$0.30 and a ceiling of \$0.75 per month, with SETB having the authority to adjust the surcharge if circumstances dictate without seeking Legislative approval (id., citing G.L. c. 6A,

§ 18H; Tr. at 68).¹⁶ Only if it were necessary to lower the surcharge below the floor or increase it above the ceiling would SETB be required to seek Legislative approval (Tr. at 68-69). SETB states that it is not seeking complete, unrestricted authority to reset the surcharge (Tr. at 68, 72), nor does it consider the current wireless surcharge model, where SETB has the authority to determine both expenditures and the amount of revenues for the wireless E911 system, to be a conflict of interest (Tr. at 68, 72, 84-85). Although its preference is the existing wireless surcharge floor/ceiling model, because, according to SETB, that model demonstrates the Legislature's most recent preference on this issue, SETB notes that "there could continue to be involvement [by the Department] either in the initial setting of the surcharge under the statute or the recalculation provision" (Tr. at 74-75).

b. Verizon

If the Department recommends that the E911 and disability access programs be funded by a surcharge, Verizon states that the costs and revenues of these programs should be periodically reviewed in order to keep the costs and revenues in balance (Verizon August 25 Comments at 3). Particularly with respect to an E911 surcharge, Verizon argues that the Department should conduct such a review and is in the best position to reset the surcharges, if necessary, because of its independent and broader perspective on rate matters concerning telecommunications consumers (id.; Tr. at 74). Verizon argues that, regardless of what entity

¹⁶ SETB has not adjusted the wireless surcharge since it went into effect in 2002, but indicates that it may need to before expiration of the surcharge legislation at the end of 2007 (SETB July 28 Proposal at 5). If an adjustment is made, it would require the approval of SETB's 21-member board and also would need to be justified in a report to the Legislature (Tr. at 76).

resets the surcharge -- SETB or the Department -- the Legislature should set clear standards on what the funds can be spent on to guide any future changes in the E911 surcharge so that the charge is “purely cost-based and reasonable” (id.; Tr. at 36). This is especially important if SETB continues to have authority to set the surcharge amount while also determining the level of E911 expenditures, because, Verizon argues, “you run the risk that an agency that is not subject to the normal budget process then has unrestricted use of the money” (Tr. at 36).

c. Attorney General

The Attorney General argues that, consistent with one of the basic principles of the NENA Report, SETB should be “held accountable in their collection and distribution of 911 funds and that SETB [should] use the fees collected only for E911 purposes” (Attorney General August 25 Comments at 3, citing NENA Report).

d. RNK

RNK supports a periodic review of the costs and revenues of programs funded by the E911 surcharge “to ensure that the revenues are in line with the associated costs” (RNK August 25 Comments at 6).

3. Recommendation and Analysis

In Sections A and B, above, the Department recommends that the Legislature continue to fund the E911 system through a surcharge on residential and business customers but that a single surcharge be assessed on all end users that have access to E911 services regardless of the communications technology used to do so. The issue to be decided here is whether the authority to calculate and revise the level of the surcharge should vest with SETB or the

Department. Although the floor/ceiling approach currently in place for establishing the level of the existing wireless E911 surcharge appears to have worked smoothly, the Department agrees with Verizon that the Department is better suited to handle the responsibilities of calculating, and, if necessary, revising the surcharge.

First, the Department has only an oversight role in determining the level of expenses for SETB, and thus would be not be in a position, like SETB currently is with respect to the wireless surcharge, of determining both expenses and revenues. Second, SETB's expertise is in the development and maintenance of the E911 system, not in funding and ratemaking matters. Because of the Department's broad perspective on telecommunications customer rate matters, the Department is in a better position than SETB to balance the funding needs of SETB and consumer interests in keeping charges as low as possible.

We also agree with the commenters that the combined E911 Fund should be subject to periodic review of the costs and revenues, and, therefore, recommend that the Legislature require SETB to submit, as part of the annual reporting requirement discussed in Section A.3.b., a discussion of the financial status of the E911 Fund to provide the Department with the necessary information to carry out that oversight function. Based on those annual reviews, the Department can determine whether changes in the surcharge are warranted. The new legislation should also continue to require the Department to report annually to the Legislature on the financial status of the fund so that the Legislature can independently assess whether any changes in funding or covered services are necessary. However, the new legislation also should provide for the ability of SETB to petition the Department at any time for a change in

the surcharge if circumstances warrant. Finally, as noted in Section A, the Department recommends that the Legislature provide clear guidance on what expenses can be paid from the E911 Fund, so that the level of the surcharge does not become unnecessarily excessive and burdensome to consumers, given the other fees, surcharges, and taxes that now appear on customers' bills.

D. Funding and Administration of Disability Access Programs

1. Introduction

In this section, the Department discusses the merits of Verizon's proposal to transfer the administration of the disabilities access programs to another organization. Included in this discussion is the related issue of how the disabilities access programs should be funded in the future. Only Verizon and SETB addressed this issue in their comments.

2. Positions of the Parties

a. Verizon

Verizon contends that the disability access programs should no longer be funded by the E911 funding source but instead should have a separate surcharge and be administered by a separate state agency, as is done in other states (Verizon July 28 Proposal at 3). Doing so, contends Verizon, would allow SETB to concentrate on administering the E911 system (id.). According to Verizon, the state agency would select providers of the services and administer the programs in a competitively neutral manner, not requiring any one carrier to "shoulder the burden of procuring these services," and would ensure that the costs of the programs are divided equitably among all telephone customers (id.). Verizon also contends that the

Legislature should consider eliminating the instate requirement for the relay services center, because most relay services vendors are unable to meet that requirement and thus can not bid on providing the services (id.). Verizon notes that many states use vendors that provide these services on a regional or national basis (id.).

b. SETB

Although SETB did not express a strong opinion on the future funding and administration of the disability access programs, it did offer suggestions. Regarding the administration of the disability access programs, because of competition in the local telephone market as compared to 15 years ago when Verizon was the monopoly provider, SETB supports the transfer of the administrative duties of the disability access programs from Verizon to an appropriate state agency, such as the Massachusetts Commission of the Deaf and Hard of Hearing, with continued oversight by the Department (Tr. at 28).

According to SETB, the disability access programs could continue to be funded through a combined wireline/wireless E911 surcharge, because it relieves the Legislature of identifying a new funding source (SETB July 28 Proposal at 5-6). Under this scenario, it appears SETB would envision continuing its role in collecting and disbursing revenue for the disability access programs, even if the administration of those programs are transferred to another entity. In the alternative, if the Legislature decided not to fund disability access programs through the E911 surcharge, SETB suggests that existing residential directory assistance revenues could be used to fund these programs (SETB September 8 Reply Comments at 3). As a third

alternative, SETB suggests that these programs could be funded through the General Fund (Tr. at 27).

3. Recommendations and Analysis

In 1990, when there was little competition in the local telephone market, Verizon's directory assistance revenues were used to fund the state's disability access programs and it was therefore logical for Verizon to serve as the administrator of those programs. Today, however, Verizon is only one of many local exchange telephone companies operating in the Commonwealth. Thus, there no longer exists the justification for Verizon to administer the disability access programs. In fact, to require Verizon to continue in that role violates the principle of competitive neutrality which is a cornerstone of modern telecommunications policy. Accordingly, the Department recommends that the Legislature transfer the administrative function of the disability access programs to a more appropriate organization, such as the Massachusetts Commission for the Deaf and Hard of Hearing ("MCDHH").¹⁷ We note that MCDHH has significant experience with the bidding and selection of providers of disability access programs, including relay services, by virtue of its consultative role to Verizon on these and other disability-access related issues.

Furthermore, the Department envisions that the authority and responsibilities of the MCDHH with regard to the disability access programs would mirror those of SETB, with each entity administering its respective programs. Correspondingly, the Department would have the same oversight over the MCDHH as is proposed for SETB, with any expansion of services

¹⁷ The Department issued notice of this proceeding on April 28, 2006. The MCDHH, however, did not submit comments or otherwise participate in this proceeding.

requiring Department approval to ensure an appropriate balance between the level of services provided and the cost of the program on telephone customers.

The Department further recommends that disability access programs be funded through a separate surcharge to be applied and collected (and funds dispersed) by the MCDHH in the same fashion as recommended for the E911 surcharge. As Verizon notes, establishing a separate fund and surcharge for the disabilities access programs would relieve SETB of the administrative responsibilities associated with funding these services, which are unrelated to SETB's core mission. We would expect that the tasks related to this function would not unnecessarily increase the burdens on the MCDHH, or whatever entity the Legislature determines is most appropriate to administer disability access programs. Moreover, we do not expect the additional task for local exchange carriers of collecting and remitting a separate disability access surcharge will be burdensome. More importantly, a separate surcharge for disability access programs on customer's bills will explicitly inform consumers of the costs of funding these programs, which is consistent with state and federal policies for "truth in billing" of telecommunications rates and charges.¹⁸

Lastly, the Department encourages the Legislature to examine the question of eliminating the instate relay services provider requirement found in G.L. c. 166, § 15E(c).¹⁹

¹⁸ In fiscal year 2006 (July 1, 2005 to June 30, 2006), the costs of the disability access programs represented approximately 30 percent of the total expenses covered by the E911 surcharge. See D.T.E. 06-4 (RR-DTE-2 Supp.).

¹⁹ G.L. c. 166, § 15E(c) requires each common carrier to provide relay services "from a center located within the commonwealth." Section 15E(c) also requires that employees of the instate relay services center "be residents of the commonwealth."

Because most relay services providers operate regional or, in some cases, national calling centers, which lowers the cost of their services, the instate requirement discourages relay services providers from bidding on the Massachusetts contract. Accordingly, by maintaining the instate requirement, the Legislature may be increasing the cost of these services, which must be borne by telephone customers.

IV. SUMMARY

In this Report, the Department makes recommendations as to the post-2007 funding mechanism for the provision of E911 services in the Commonwealth. Specifically, the Department recommends that: (1) E911 services continue to be funded through a surcharge; (2) the Legislature consider a regional approach to the provision of E911 services which consolidates PSAPs and PSAP functions; (3) the surcharge be technology neutral and imposed on all telecommunications devices that access the E911 system, including but not limited to wireline, wireless, VoIP and any emerging technologies; (4) the surcharge revenues be deposited into a single E911 Fund; (5) the level of the surcharge be established, and if necessary, recalculated, by the Department; (6) the term of any future funding legislation be limited to a three year term to allow for review of the effect of emerging technologies and changes in Federal law on the E911 program and funding; (7) the E911 legislation explicitly enumerate the appropriate uses of the funds; and (8) disability access programs be funded through a separate surcharge, and that a state agency, such as the MCDHH, be charged with the administration of disability access programs and the disability access surcharge.

V. CONCLUSION

The Department appreciates this opportunity to present this Report to the Committee on Government Regulations and would welcome the opportunity to work with the Legislature in drafting new Enhanced 911 legislation.

Respectfully submitted,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Brian Paul Golden, Commissioner

/s/
Soo J. Kim, Commissioner