



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued May 3, 2022

Department of Telecommunications and Cable

For the period January 1, 2019 through December 31, 2020





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

May 3, 2022

Ms. Karen Peterson, Commissioner
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02108

Dear Ms. Peterson:

I am pleased to provide this performance audit of the Department of Telecommunications and Cable. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2019 through December 31, 2020. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Telecommunications and Cable for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	2
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	8
APPENDIX	11

LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
DTC	Department of Telecommunications and Cable
E911	enhanced 911
OCABR	Office of Consumer Affairs and Business Regulation

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Telecommunications and Cable (DTC) for the period January 1, 2019 through December 31, 2020. In this performance audit, we examined DTC's oversight of the State 911 Department's Enhanced 911 Fund. Specifically, we determined whether DTC adequately adopted rules for funding prudently incurred expenses associated with enhanced 911 services¹ and programs of the State 911 Department. We also determined whether DTC conducted State 911 Department budgetary proceedings in accordance with the Code of Massachusetts Regulations and the General Laws (see "[Appendix](#)").

Our audit revealed no significant instances of noncompliance by DTC that must be reported under generally accepted government auditing standards.

1. According to Section 18A of Chapter 6A of the General Laws, an enhanced 911 service is "a service consisting of communication network, database and equipment features provided for subscribers or end users of communication services enabling such subscribers or end users to reach a [public safety answering point] by dialing the digits 911, or by other means approved by the [State 911] department, that directs calls to appropriate [public safety answering points] based on selective routing and provides the capability for automatic number identification and automatic location identification."

OVERVIEW OF AUDITED ENTITY

The Department of Telecommunications and Cable (DTC) was established under Section 1 of Chapter 25C of the Massachusetts General Laws as modified by Section 29 of Chapter 19 of the Acts of 2007. DTC is overseen by the Office of Consumer Affairs and Business Regulation (OCABR) and is led by a commissioner, who is appointed by the Governor.

According to DTC's fiscal year 2020 annual report,

The Department's mission is to: (1) oversee the telecommunications and cable industries in accordance with the statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; (2) work to ensure that consumers receive high-quality communications at just and reasonable rates; (3) promote sustainable competition which will increase the welfare of all Massachusetts residents and businesses; (4) maintain and enforce consumer protections, consistent with the public interest, particularly where market forces alone are not sufficient to do so, including investigating and responding to inquiries and complaints from consumers, providers, carriers, and other interested parties; and (5) provide expert input into the development of telecommunications- and cable-related policies for the Commonwealth and the federal government.

The state appropriations for DTC in fiscal years 2019 and 2020 were \$2,935,009 and \$3,054,028, respectively. DTC's appropriation is funded through an assessment on telecommunication and cable providers' intrastate operating revenue generated by the sale of cable television and telephone services in Massachusetts. DTC is located at 1000 Washington Street in Boston. It comprises four divisions: the Administration Division, the Consumer Division, the Competition Division, and the Legal Division. During the audit period, DTC had 22 full-time employees.

Administrative Division

This division provides administrative support to DTC for budget preparation, purchases, accounts receivable and payable, payroll, and the publication of notices of department hearings. It also provides administrative support for DTC evidentiary hearings² and public hearings³ and is DTC's liaison with OCABR.

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2. According to DTC's fiscal year 2020 annual report, "Evidentiary hearings typically are conducted in a courtroom setting in [DTC's] Boston office. . . . The Commissioner or a presiding officer presides over evidentiary hearings, with the active participation of [DTC's] technical and legal staff. Staff members question witnesses to ensure that the record is accurate and complete, while the presiding officer controls the conduct of the proceeding."
 3. According to DTC's fiscal year 2020 annual report, "Public hearings are publicized through legal notice in newspapers in the provider's service territory. . . . Public hearings afford consumers the opportunity to learn more about a rate request or other change, offer their input about the pending case, and comment on the practices of the provider. Public hearings also allow [DTC] staff to hear concerns of customers and local elected officials."

Consumer Division

This division enforces and monitors compliance with Massachusetts laws as well as DTC regulations and policies protecting consumers of telecommunication and cable services. It also handles consumer inquiries and investigates consumer complaints.

Competition Division

According to DTC's fiscal year 2020 annual report,

The Competition Division provides technical and analytical support to the Commissioner, all Divisions of the Department, and other Administration officials, in the regulation of the telecommunications and cable industries in Massachusetts.

Competition Division staff members work with the Legal Division to draft discovery questions to, and review discovery responses from, companies involved in DTC investigations. It also helps prepare and finalize Final Orders related to ongoing investigations.

Legal Division

This division provides legal support to DTC. Working with the other divisions, the Legal Division ensures compliance by telecommunication and cable providers with state laws, DTC orders and decisions, and other requirements. It also conducts adjudicatory proceedings that vary in complexity and frequency.

Enhanced 911 Surcharge

Section 18H(a) of Chapter 6A of the General Laws imposes a surcharge, referred to hereafter as the Enhanced 911 (E911) surcharge, on each subscriber or end user of communication services⁴ (e.g., wireless telephone services) capable of accessing and using an E911 system (see "[Appendix](#)"). The purpose of the surcharge is to recover prudently incurred costs associated with providing E911 services and to provide the E911 Fund with adequate reserves to cover any unanticipated costs. The surcharge revenue is

4 According to Section 18A of Chapter 6A of the General Laws, communication services include any of the following: "(a) the transmission, conveyance or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless or other medium or method, regardless of the protocol used; (b) the ability to provide two-way voice communication on the public switched network; (c) wireless enhanced 911 service; (d) wireline enhanced 911 service; (e) interconnected [voice over Internet protocol] provider service as defined by the regulations of the [Federal Communications Commission]; (f) [Internet protocol]–enabled service; or (g) prepaid wireless service."

collected by communication service providers. According to Section 18H of Chapter 6A of the General Laws,

- b. The department of telecommunications and cable shall be responsible for establishing the new surcharge, and all future surcharges, upon petition of the department. The department of telecommunications and cable, at its discretion but not more than once per calendar year, may investigate the prudence of the department's revenue and expenditures for the purpose of recalculating the surcharge. . . . The department of telecommunications and cable shall adopt rules that provide for the funding of prudently incurred expenses associated with [E911 services and programs, including disability access programs] by means of the surcharge. . . .*
- d. The surcharge revenues shall be expended for the administration and programs of the department including, but not limited to, salaries, enhanced 911 training programs, enhanced 911 public education programs, the creation of [public safety answering point, or PSAP] customer premises equipment for, and maintenance of, primary and regional PSAPs, [grant and disability access] programs . . . , and for the implementation and administration of enhanced 911 service in the commonwealth.*

Para. b of Section 18H also requires DTC to adopt rules to ensure that only prudently incurred expenses are funded with the revenue generated by the E911 surcharge. DTC's role is to set the surcharge amount and investigate the prudence and reasonableness of the State 911 Department's projected revenue and expenses.

DTC did not review the surcharge amount during our audit period, as it had approved the current amount (\$1.50) for fiscal years 2018 through 2024 in the Final Order for the proceeding associated with DTC Docket Filing 18-2.⁵

Standard of Review

DTC implemented a standard of review to satisfy the requirement of adopting rules to ensure that only prudently incurred expenses would be funded with revenue generated by the E911 surcharge. Each Final Order DTC issues includes a "Standard of Review" section that is based on past Final Orders of the Department of Telecommunications and Energy (DTC's predecessor). It describes how DTC assesses whether expenses are, or will be, prudently incurred. According to the "Standard of Review" section of the Final Order for the proceeding associated with DTC Docket Filing 20-1,

5. DTC assigns a unique case docket filing number to each proceeding it conducts.

When reviewing 911 Department petitions, the DTC must determine whether the 911 Department's allocations and expenditures are, or will be, prudently incurred. . . . When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. . . . The DTC will not substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department's statutory obligations. . . . Expenses are deemed prudent if they are necessary for the funding of the 911 Department's provision of enhanced 911 services and programs, including disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. . . .

The 911 Department has the authority to determine what is necessary for the provisioning of enhanced 911 service, but that necessity must be viewed in relation to cost. . . . Accordingly, the DTC strives to maintain a reasonable, stable surcharge in order to protect the interests of communications service ratepayers. . . . The DTC thus must oversee the costs of provisioning enhanced 911 services, but that oversight is limited to determining whether the 911 Department's expenses are prudently incurred.

State 911 Department Budgetary Proceedings

Section 18H(c) of Chapter 6A of the General Laws requires the State 911 Department to petition DTC for approval of projected total expenses that exceed the previous fiscal year's total expenses by 10% or more. DTC may investigate the reasonableness of the expenses through a type of adjudicatory proceeding that it calls a State 911 Department budgetary proceeding. This type of proceeding is conducted in accordance with procedural rules in Section 1 of Title 207 of the Code of Massachusetts Regulations. DTC has 90 days after the date of a petition to conduct its review and issue a decision. A petition is automatically approved if DTC does not issue its decision within that time.

Attorneys from DTC's Legal Division serve as presiding officers, designated to conduct the proceedings. Analysts from the Competition Division serve as staff members in the proceedings. Third parties can submit a Notice of Intervention with the purpose of participating in a proceeding. DTC conducted two State 911 Department budgetary proceedings during the audit period, associated with DTC Docket Filings 19-2 and 20-1 in calendar years 2019 and 2020, respectively.

State 911 Department Petition

The State 911 Department's petition lists the expense categories for which it seeks approval, with a description of how each expense will fund an E911 service or program. Expense items are grouped into the following categories: administration, grant programs, 911 administration and operation, and disability access and other programs. With each petition, the State 911 Department includes an Exhibit A, which is

an itemized breakdown of the E911 Fund's actual and projected revenue and expenses from the previous and current petition years.

Order of Notice

Within 20 days after receiving a petition, DTC must send an Order of Notice notifying the State 911 Department of its intent to investigate. Within the Order of Notice is the requirement for the State 911 Department to publish the Notice of Public Hearing in the *Boston Globe*. The State 911 Department must reply with proof of publication. Any parties that file any documents during a proceeding are required to distribute them to all other parties who will appear in the proceeding.

Analysis and Information Requests

DTC's staff analyzes Exhibit A as part of the review of a State 911 Department petition. DTC's staff verifies calculations, compares the changes from previous-year expenses to the current year's projection, and identifies any outliers (line items with large fluctuations from year to year) that require additional information.

Based on the results of the analysis, as part of the discovery phase of the proceeding, DTC and any interveners may issue a set of Information Requests to obtain supporting documents that will substantiate figures presented by the State 911 Department and explain changes since the previous year.

The State 911 Department issues responses to Information Requests from DTC and interveners. The responses inform the questions asked by the presiding officer and staff members during the evidentiary hearing.

Evidentiary Hearing

DTC's presiding officer conducts an evidentiary hearing where analysts ask questions of the State 911 Department staff members, who give testimony under oath. After a hearing in which additional information was required but was not readily available, parties can submit Record Requests, to which the State 911 Department files responses. After the hearing, DTC sends a transcript to all parties.

Final Order

At the end of every proceeding, after the hearing, the presiding officer issues a Final Order. The Final Order contains the history of the proceeding, DTC's analysis of projected revenue and expenses, DTC's

statements on the stability of the E911 surcharge and the condition of the E911 Fund, and DTC's decision about whether the expenses are prudently incurred and reasonable in accordance with the "Standard of Review" section. DTC's general counsel and commissioner review and approve the Final Order before it is issued.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Telecommunications and Cable (DTC) for the period January 1, 2019 through December 31, 2020.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

Objective	Conclusion
1. Did DTC adopt rules that provided for the funding of prudently incurred expenses associated with services provided by the State 911 Department in accordance with Sections 18A through 18J of Chapter 6A, and Sections 14A and 15E of Chapter 166, of the General Laws ?	Yes
2. Did DTC conduct State 911 Department budgetary proceedings in accordance with Section 1 of Title 207 of the Code of Massachusetts Regulations (CMR) and Section 18H(c) of Chapter 6A of the General Laws?	Yes

To achieve our audit objectives, we gained an understanding of the internal control environment in the areas related to the objectives by reviewing applicable DTC policies and procedures, as well as DTC's internal control plan; conducting interviews with management and other employees; and performing walkthroughs of the processes related to DTC's role in the State 911 Department's budgetary proceedings. We also evaluated the operating effectiveness of the relevant controls for the review of Information Requests issued to the State 911 Department as well as the review of Final Orders. To obtain sufficient, appropriate evidence to address our audit objectives, we performed the following procedures.

Adoption of Rules

To determine whether DTC had adopted rules that ensured that only prudently incurred expenses would be funded with the revenue generated by the surcharge in accordance with Section 18H(b) of Chapter 6A

of the General Laws, we interviewed employees to gain an understanding of DTC's interpretation of the statutory requirement and what measures had been implemented.

We asked about policies and procedures pertaining to the application of the "Standard of Review" section of DTC's Final Orders during budgetary proceedings. We compared the "Standard of Review" section to Sections 18A through 18J of Chapter 6A, and Sections 14A and 15E of Chapter 166, of the General Laws for the entire population of State 911 Department budgetary proceedings conducted during the audit period. We looked for evidence that the "Standard of Review" section included language and attributes relevant to the General Laws' requirements for enhanced 911 services and programs, including DTC's obligation to assess whether certain expenses funded would be prudently incurred. We also reviewed each expense line item from the Exhibit A included in DTC Docket Filings 19-2 and 20-1. We requested supporting documentation for the State 911 Department's responses to DTC's Information Requests and Record Requests for each line item amount. However, DTC did not require supporting documentation from the State 911 Department, because that department's responses to DTC are given under oath during budgetary proceedings. We provided verbal recommendations to DTC on how to enhance this process.

Compliance with Procedural Rules

To determine whether DTC conducted State 911 Department budgetary proceedings in accordance with 207 CMR 1, we conducted interviews and walkthroughs with DTC to gain an understanding of the elements of its adjudicatory proceedings. We requested policies and procedures and reviewed the procedure notes provided by management. Based on how DTC described its review of the State 911 Department, we created an outline of the process and compared it to the sections of 207 CMR 1 that are relevant to budgetary proceedings.

To test for DTC's compliance with 207 CMR 1, we reviewed the following investigation documents filed in both of the State 911 Department budgetary proceedings from the audit period for evidence that the relevant procedural rules were followed: Petitions, Service Lists, Notices of Intent, Orders of Notice, Notices of Public Hearing, Proofs of Publication, Notices of Intervention (if applicable), Information Requests, Responses to Information Requests, Hearing Transcripts, Record Requests, Responses to Record Requests, and Final Orders.

Compliance with Statutory Timeframes

To determine whether DTC notified the State 911 Department of its intent to investigate within the 20 days allowed by statute, we compared the dates the petitions were submitted to the dates the Orders of Notice were issued to the State 911 Department for the two proceedings conducted during the audit period.

To determine whether DTC issued its decisions about the State 911 Department petitions within the 90 days allowed by statute, we compared the dates the petitions were submitted to the dates the Final Orders were issued for the two proceedings conducted during the audit period.

Data Reliability

Data for this audit were in the form of investigation documents filed during DTC's proceedings. These were obtained from docket filing folders maintained on DTC's shared drive. DTC management provided copies of investigation documents (including, but not limited to, State 911 Department petitions, Orders of Notice, Proofs of Publication, Information and Record Requests, hearing transcripts, and Final Orders) filed during fiscal years 2018 through 2021. To determine the population of proceedings, we asked about the number of State 911 Department petitions that DTC reviewed during the audit period. We confirmed that there were two by reviewing the completed filings in the "Department Orders and Rulings" appendix to DTC's fiscal year 2019 and fiscal year 2020 annual reports. We interviewed knowledgeable staff members about employee access and permissions regarding the docket filings and saved documents. We observed demonstrations of staff members accessing the DTC email account used for receiving investigation documents and saving to the shared drive. To assess data accuracy, we traced all 28 investigation documents to their source emails. We verified that the content of investigation documents we received from DTC matched the original email attachments. To assess completeness, we traced documents from source emails to investigation documents. Based on the results of these procedures, we determined the data to be sufficiently reliable for the purpose of this audit.

Conclusion

Our audit revealed no significant instances of noncompliance that must be reported under generally accepted government auditing standards.

APPENDIX

Section 18H of Chapter 6A of the Massachusetts General Laws

- a. *There shall be imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system, a surcharge in the amount of 75 cents per month for expenses associated with services provided under [enhanced 911 programs, including disability access programs]. . . .*

The surcharge shall be collected by the communication service provider and shall be shown on the subscriber's or end user's bill as "Disability Access/Enhanced 911 Service Surcharge", or an appropriate abbreviation. The surcharge shall not be subject to sales or use tax. The subscriber or end user shall be liable for the surcharge imposed under this section, and the communication service provider shall not be financially liable for surcharges billed on behalf of the commonwealth but not collected from subscribers or end users. Partial subscriber or end user payments shall be first applied to outstanding communication service provider charges.

- b. *The [State 911 Department] may petition the department of telecommunications and cable for an adjustment in the surcharge established in subsection (a). The department of telecommunications and cable shall be responsible for establishing the new surcharge, and all future surcharges, upon petition of the department. The department of telecommunications and cable, at its discretion but not more than once per calendar year, may investigate the prudence of the department's revenue and expenditures for the purpose of recalculating the surcharge, and may hire experts to assist in its investigation. . . . The department of telecommunications and cable shall conduct its review and issue a decision within 90 days of the date of the commencement of the investigation, but the surcharge shall be deemed approved if the department of telecommunications and cable does not issue its decision within such 90 days. The department of telecommunications and cable shall adopt rules that provide for the funding of prudently incurred expenses . . . by means of the surcharge. The department shall report annually to the department of telecommunications and cable on the financial condition of the Enhanced 911 Fund and on the department's assessment of new developments affecting the enhanced 911 system. The report shall be submitted to the department of telecommunications and cable within 60 days of the end of each fiscal year. The department of telecommunications and cable shall file an annual report with the clerks of the house of representatives and the senate relative to the financial condition of the Enhanced 911 Fund.*
- c. *The department shall seek the approval of the department of telecommunications and cable for projected total expenditures that exceed total expenditures of the previous fiscal year by 10 per cent or more. The department of telecommunications and cable may investigate the reasonableness of the expenditures and shall conduct its review and issue a decision within 90 days from the date the department files its request for approval, but the request for approval shall be deemed approved if the department of telecommunications and cable does not issue its decision within such 90 days. The department of telecommunications and cable shall notify the department of its intent to investigate within 20 days of the date the department files its request for approval. The department's request for approval shall be deemed approved in the absence of the department of telecommunication and cable's notification to the department of*

its intent to investigate. If the department of telecommunication and cable notifies the department that it intends to investigate an expenditure, the department of telecommunications and cable may hire experts to assist in its investigation. The reasonable cost of the experts shall be charged to the Enhanced 911 Fund, but in no event shall such cost exceed \$200,000, which may be adjusted to reflect changes in the consumer price index.

Section 1 of Title 207 of the Code of Massachusetts Regulations

1.03: Appearances; Intervention and Participation: Parties

1. Intervention.

- a. *Any person who desires to participate in a proceeding shall file a written petition for leave to intervene or to participate in the proceeding. . . .*

1.04: Pleadings

1. Initial Pleading.

- a. Definition. *An initial pleading, as used in 207 [Code of Massachusetts Regulations, or CMR] 1.04, shall refer to any paper or document by which an adjudicatory proceeding may be commenced. Such papers or documents shall include but not be limited to applications, petitions, complaints, and protests. . . .*

1.05: Service

1. Service.

- a. General Rule. *Service of all documents or other papers relating to any proceeding, including complaints, orders, decisions, pleadings, motions, processes, notices, briefs, claims of appeal, and exhibits, shall be by personal delivery, by first-class mail, or by Electronic Medium.*
- b. On Whom Served. *All such documents or other papers shall be served by the person filing the same on every person who has theretofore entered an appearance in the proceeding. . . .*

1.06: Hearings. . . .

5. Notice. . . .

- d. Order of Notice. *The Department may require any person filing an initial pleading to give notice of the hearing on such pleading by publication or other means or both, in which case such person shall receive an order of notice from the Department which shall be returned, with proof of compliance with said order, not later than the commencement of hearing on the petition. . . .*

6. Conduct of Hearings.

a. Presiding Officer. The hearing shall be conducted by a Presiding Officer who shall be the Commissioner or an employee designated by the Commissioner. The Presiding Officer shall administer oaths and affirmations, issue subpoenas, and make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing. . . .

c. Discovery.

1. Purpose. The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled. . . .

7. Transcripts.

a. At the request of any party, made in writing at least seven days before the hearing date, or of its own accord, the Department shall provide that all proceedings in a pending case be officially recorded by a reporter appointed for that purpose. The Department shall require any party requesting a copy of the transcript to pay the reasonable cost of preparing said copy before the Department makes said copy available to the party. . . .

1.10: Rulings, Briefs, Oral Argument and Post-hearing Procedure. . . .

7. Filing of Documents Subsequent to Hearing. The Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of hearing, such time to be determined by the Presiding Officer. If a request for such subsequent filing is granted, the requesting party shall on or before the date set for filing, send copies of all documents or exhibits which are the subject of the request to all parties and persons who have filed appearances. . . .

1.11: Decisions

1. All decisions of the Department shall be in writing and shall be accompanied by a statement of reasons for the decision. A copy of the decision and such statement of reasons shall be served on all parties pursuant to 207 CMR 1.05(1).