



**The Commonwealth of Massachusetts**

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**DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-82

March 2, 2007

Petition of Dig Safe System, Inc. for Implementation of 811 as the Abbreviated Dialing Code for Providing Notification of Excavation Activities to Underground Facility Operators Within Massachusetts.

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## I. INTRODUCTION AND PROCEDURAL HISTORY

Dig Safe System, Inc. (“Dig Safe”) is the administrator of the Commonwealth of Massachusetts’ “one call” notification system designed to inform underground facility operators of proposed excavations on public or private property.<sup>1</sup> See G.L. c. 164, § 76D. The Dig Safe member operators that have underground facilities in the area of the proposed excavation then arrange for the identification and marking of their facilities. See G.L. c. 82, §§ 40, 40A-40E (also known as the “Dig Safe laws”); 220 C.M.R. §§ 99.00 et seq. The Department of Telecommunications and Energy (“Department”) is responsible for enforcing the Commonwealth’s Dig Safe laws.<sup>2</sup>

On November 10, 2005, Dig Safe filed a Petition with the Department to implement the three-digit dialing code 811 as the abbreviated dialing code for providing notification of excavation activities to underground facilities operators within Massachusetts. In its Petition, Dig Safe requests that the Department require that:

- (a) the abbreviated dialing code 811 be used exclusively for access to Dig Safe;
- (b) all telecommunications carriers immediately cease using the abbreviated dialing code 811 for any other purpose other than providing access to Dig Safe;

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<sup>1</sup> Any person who intends to perform excavations on public or private property in the Commonwealth is required to notify Dig Safe by contacting Dig Safe’s toll-free telephone number, 888-DIG-SAFE (888-344-7233). Access to one call notification systems for other states can be obtained by calling, toll-free, 1-888-258-0808.

<sup>2</sup> Any violation of the Dig Safe laws found by the Department carries a civil penalty of \$1,000 for the first offense and not less than \$5,000 nor more than \$10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E.

- (c) all telecommunications carriers use the area code or operating switch to determine whether the calls should be routed to Dig Safe; and,
- (d) all 811 calls for excavations in Massachusetts be routed by a telecommunications carrier to a toll-free number designated by Dig Safe to ensure that the caller does not incur toll charges.

(Dig Safe Petition at 6).

On February 10, 2006, the Department docketed its investigation into Dig Safe's petition. See Vote and Order to Open Investigation, D.T.E. 05-82 (February 10, 2006). On March 8, 2006, the Department held a public hearing and procedural conference. The Department granted the petitions to intervene filed by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"), AT&T Communications of New England, Inc. ("AT&T"), Massachusetts Electric Company d/b/a National Grid ("National Grid"), Bay State Gas Company ("Bay State"), NSTAR Electric and Gas Corp. ("NSTAR").<sup>3</sup> Additionally, KeySpan Energy Delivery New England ("KeySpan")<sup>4</sup> was granted limited participant status.

On April 3, 2006, Dig Safe, Verizon, AT&T, National Grid and NSTAR submitted comments to the Department. These comments addressed the following issues: (1) what needs to be done to implement 811 by Dig Safe, telecommunications carriers and users of the one call system; (2) what technical, operational or compliance issues, if any, exist with implementation of 811; and (3) identification of, and responsibility for, the costs of

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<sup>3</sup> NSTAR consists of Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company and NSTAR Gas Company.

<sup>4</sup> Boston Gas Company, Colonial Gas Company and Essex Gas Company each do business in Massachusetts as KeySpan Energy Delivery New England.

implementing and operating the 811 service. On April 26, 2006, the Department held a technical conference in this proceeding.

On April 28, 2006, the Department issued a notice to telecommunications carriers operating in the Commonwealth requiring each carrier to contact Dig Safe to coordinate implementation of the 811 abbreviated dialing code ("April 28 Notice"). In compliance with the Department's April 28 Notice, Dig Safe submitted a report to the Department on June 9, 2006 ("Dig Safe Report") as to the status of its discussions with carriers, and requested additional time to address cost recovery issues raised by a single carrier, namely Verizon.

Dig Safe's request for additional time to address cost recovery issues raised by Verizon was granted on June 23, 2006. On July 31, August 31 and October 31, 2006, Dig Safe and Verizon submitted Joint Status Reports on their discussions regarding the cost recovery issues associated with implementation of the 811 dialing code. On November 15, 2006, the Department held a status conference in this proceeding where Dig Safe and Verizon requested, and were granted, additional time to seek resolution of the cost recovery issues without Department involvement.

On January 12, 2007, Dig Safe and Verizon submitted a Joint Status Report requesting Department assistance to resolve the cost recovery issues associated with implementation of the 811 dialing code. In the January 12 Joint Status Report, Dig Safe requested that the Department defer the cost recovery issue until it had addressed the relief sought in Dig Safe's

Petition (January 12 Joint Status Report at 2). This Order addresses the relief sought in Dig Safe's Petition. We will address cost recovery in a later order, if necessary.<sup>5</sup>

## II. STANDARD OF REVIEW

Consistent with the mandate in the Pipeline Safety Act of 2002<sup>6</sup> for a three-digit toll-free nationwide number to be used to access state one call notification systems, the Federal Communications Commission ("FCC") released its 811 Order<sup>7</sup> on March 14, 2005 designating an N11 code,<sup>8</sup> specifically 811, as the national abbreviated dialing code to be used exclusively by a state's "one call" notification system, such as Dig Safe. 811 Order at ¶¶ 1, 12. The FCC required that the 811 abbreviated code be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless and payphone service providers that provide access to state one call centers. Id. at ¶ 4. The FCC required that this designation of 811 be effective thirty days after publication of the 811 Order in the Federal Register (i.e. May 13, 2005).<sup>9</sup> Id.

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<sup>5</sup> Unless the parties formally resolve the cost recovery issues by March 9, 2007, briefs and reply briefs are to be filed on March 12, 2007 and March 19, 2007, respectively.

<sup>6</sup> Pub. L. No. 107-355, 115 Stat. 2985 (2002).

<sup>7</sup> In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, Sixth Report and Order, FCC 05-59 (rel. Mar. 14, 2005) ("811 Order").

<sup>8</sup> N11 codes are service codes that enable callers to access special services by dialing only three digits. To route the three-digit code, the network is programmed to translate the three-digit code into the appropriate seven or ten-digit dialing sequence. See 811 Order at n.27.

<sup>9</sup> The 811 Order was published in the Federal Register on April 13, 2005. 70 Fed. Reg. (continued...)

The FCC deferred to the expertise of the carriers, in cooperation with the individual states, to develop and determine the most appropriate technological means of implementing 811 access to one call services, as dictated by their particular network architectures. 811 Order at ¶ 32. The FCC also recognized that states have unique knowledge that will assist in implementing the transition to use of 811 as the abbreviated number to access state one call centers and, accordingly, delegated authority to the states to address the technical and operational issues associated with the implementation of the 811 abbreviated code for access to state one call notification systems. Id. at ¶ 35.

With regard to cost recovery issues, the FCC recognized that there may be some costs associated with implementation of the 811 code, but did not specify parameters for cost recovery. 811 Order at App. B, ¶ 39. More specifically, the FCC held that,

[T]he Congressional mandate and benefits of a national N11 code assignment, specifically 811, outweigh any concerns regarding cost recovery on the federal level. These issues are most appropriately addressed by the state and local governments. As indicated above, we believe that state commissions are in the best position to address issues associated with implementing 811 because many of the One Call Centers were developed by, or under the auspices of, the state commissions.

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<sup>9</sup>

(...continued)

19,321 (2005) (to be codified at 47 C.F.R. Part 52). Additionally, the FCC established a two year transition period, beginning from the date of publication of the 811 Order in the Federal Register, for implementation of 811 as the national abbreviated dialing code for access to state one call centers. 811 Order at ¶¶ 32-34. The transition period provides carriers time to clear the 811 abbreviated dialing code of any other existing uses, provide customer education, and ensure that there is no unreasonably abrupt disruption of the existing uses. Id. at ¶ 34. Based upon the April 13, 2005 publication of the 811 Order in the Federal Register, the two year transition period ends on April 13, 2007.

Id. (footnote omitted).

### III. ASSIGNMENT OF THE 811 DIALING CODE

As noted above, the FCC has mandated that 811 abbreviated dialing code be assigned for use exclusively by a state's "one call" notification system, such as Dig Safe, and established a two year period for implementing 811 as the national abbreviated dialing code for access to a state's "one call" system. The Department has no authority to prescribe a use for the 811 abbreviated dialing code in the Commonwealth that conflicts with the FCC's assignment. Nor does the Department have authority to require an implementation period for the 811 dialing code different from that prescribed by the FCC. Indeed, the FCC explicitly declined to delegate authority to state commissions to establish the implementation period. 811 Order at ¶ 35.

In the proceeding at hand, the relief sought by Dig Safe consists of an order by the Department that: (a) assigns the abbreviated dialing code 811 for use exclusively for access to Dig Safe; (b) requires all telecommunications carriers immediately to cease using the abbreviated dialing code 811 for any other purpose other than providing access to Dig Safe; (c) requires all telecommunications carriers use the area code, operating switch, and other available information, to route 811 calls to a toll-free number designated by Dig Safe to ensure that the caller does not incur toll charges (Dig Safe Petition at 6). The parties to this proceeding have identified no technical or operational issues, other than cost recovery, that could prevent implementation of the 811 abbreviated dialing code on or before April 13, 2007

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While resolution has not yet been formally reached on the cost recovery issues, we determine that the remaining cost recovery issues need not be resolved in order to grant the relief sought by Dig Safe. The relief sought by Dig Safe requests nothing more than that which the FCC requires in its 811 Order. We therefore find it appropriate to defer the cost recovery issues until a later date. Nevertheless, we find that prompt resolution of the cost recovery issues is necessary and thus endeavor to resolve these issues, if needed, before the FCC's 811 two year implementation deadline. A briefing schedule has been established in the event that Dig Safe and Verizon cannot resolve these issues without Department involvement. In sum, the Department hereby grants Dig Safe's Petition. All telecommunications carriers operating in the Commonwealth, including wireline, wireless and payphone service providers, must cease use of the 811 dialing code for any use other than for access to Dig Safe, the administrator of the Commonwealth's "one call" notification system. Additionally, all telecommunications carriers are to begin routing calls made to the 811 abbreviated dialing code to the toll-free number designated by Dig Safe no later than April 13, 2007.

#### IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Petition of Dig Safe System, Inc. is hereby granted; and it is

FURTHER ORDERED: That all telecommunications carriers operating in the Commonwealth, including wireline, wireless and payphone service providers, must cease use of the 811 dialing code for any use other than for access to Dig Safe Systems, Inc., the administrator of the Commonwealth's "one call" notification system; and it is

FURTHER ORDERED: That all telecommunications carriers operating in the Commonwealth, including wireline, wireless and payphone service providers, shall route calls made to the 811 abbreviated dialing code to the toll-free number designated by Dig Safe Systems, Inc. no later than April 13, 2007; and it is

FURTHER ORDERED: That parties comply with all other directives contained herein.

By Order of the Department,

/s/  
Judith F. Judson, Chairman

/s/  
James Connelly, Commissioner

/s/  
W. Robert Keating, Commissioner

/s/  
Soo J. Kim, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.