COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§ 2.00 et seq., to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ 16.00 et seq..	)	**D.T.E. 03-24**

REPLY COMMENTS OF VERIZON MASSACHUSETTS

The Department should adopt its proposed rules for establishing a funding mechanism for Enhanced 911 ("E911"), relay services and the TDD/TTY equipment distribution program in Massachusetts, with one minor change. That modification, as proposed by Verizon Massachusetts ("Verizon MA") in its April 22, 2003, comments, corrects the reporting period for the status of the pre-existing deficit relating to E911, relay services and TDD/TTY equipment distribution costs.[1]

The recommendations made by the Attorney General, the Commonwealth of Massachusetts' Statewide Emergency Telecommunications Board ("SETB"), the Massachusetts Communications Supervisors Association ("MCSA"), the City of Cambridge, and AT&T Communications of New England, Inc. ("AT&T") are unreasonable, inappropriate and unjustified. The Attorney General's recommended

[1] At the public hearing held on April 30, 2003, Verizon MA corrected a typographical error contained in its April 22nd comments as follows: "The first report on August 1, 2003, will cover the period ending December 31, 2002." Tr. A:11.

changes to the Department's proposed rules are minimal. The thrust of his comments is to urge further investigation of other issues. The Department should disregard the Attorney General's requests as unfounded, unnecessary, and beyond the scope of this rulemaking.

Likewise, the Department should reject the rule changes proposed by SETB, MCSA, and the City of Cambridge because they are inconsistent with applicable law. The Department should also deny AT&T's proposal for an independent audit of the existing deficit and an examination of the TDD/TTY equipment program as redundant, unnecessary and outside the scope of this proceeding. Accordingly, the Department should adopt its draft rules, with the one minor modification recommended by Verizon MA.

ARGUMENT

A. The Attorney General's Comments

Throughout his comments, the Attorney General mischaracterizes both the current and new laws governing the funding of E911, relay and TDD/TTY equipment services.[2]

[2] First, until December 31, 2002, E911 and other services were funded by directory assistance charges to residential customers - not business customers, as the Attorney General erroneously states. AG Comments, at 2 n.3. Under the new law, the Department "shall determine the portion of directory assistance revenues that will be used to offset the deficit…" G.L. c. 6A, § 18H. Contrary to the Attorney General's claim, it does not "direct the Department to determine whether to repay any of the existing E911 deficit." AG Comments, at 1.

Second, the new law provides that the Department "shall annually report to the general court concerning the financial condition of the fund and shall address in that report the reasonableness of the capital expenditures and related expenses" of SETB. G.L. c. 6A, § 18H. The Department does not, however, "oversee the ongoing E911 wireline expenditures." AG Comments, at 1. Indeed, as the Department indicated, the new law does not change the fact that SETB is responsible for administering the funds and determining capital expenditures and E911 related expenses. Tr. A:6. Moreover, SETB's management of E911 expenses and funding does not end on December 31, 2007, as the Attorney General incorrectly states. AG Comments, at 2.

Third, nothing in the new law supports the Attorney General's statement that "the legislature will evaluate the Department's long-term recommendations for continued funding." AG Comments, at 2. The new law requires that the Department "shall develop a long term plan for funding

The Attorney General also misinterprets the scope of this proceeding, as set forth by the Department in its *Order Instituting Rulemaking*, issued March 13, 2003, and reiterated at the April 30th public hearing. *Order*, at 3-5; Tr. A:5-6.

The Department opened this rulemaking proceeding to establish rules, in compliance with Chapter 6A, Section 18H of the Massachusetts General Laws. Section 18H introduces a surcharge to provide "for the recovery by telecommunications companies of expenses that have been, or will be, until December 31, 2007, incurred that are associated with" E911, relay services and the TDD/TTY equipment distribution program "pursuant to sections 18A to 18F, inclusive, of this chapter [6A] and sections 14A and 15E of chapter 166."

In his comments, the Attorney General does not propose any change to the Department's proposed rules implementing the new funding mechanism. Rather, the Attorney General attempts to expand the scope of this proceeding by raising various issues relating to the amount of the "911/Disability Access" surcharge, the existing deficit, the level of directory assistance charges, and public education regarding the

---

enhanced 911 services" and identifies factors that the Department may consider. The new law also establishes a deadline of December 31, 2006, for the Department to "submit its recommendations and assessments to the committee on government regulations," but makes no reference to determinations regarding future funding. Acts of 2002, c. 239, § 3.

Finally, the Attorney General incorrectly describes the reporting requirements and remittance process reflected in the Department's proposed rules. AG Comments, at 3. Pursuant to the new law, telecommunications companies are obligated to submit historical data to the Department regarding their participation in the statutory funding mechanism. G.L. c. 6A, § 18H. This is reflected in the Department's proposed rule (220 C.M.R. § 16.05(3)), which specifies that telecommunications carriers provide a "report on the status of the pre-existing deficit."

As the Department recognized, under the existing law, SETB is responsible for administering and determining E911 expenditures. Accordingly, the Department requires that the SETB (not the telecommunications companies) submit an annual report on those expenditures under its proposed rules. Proposed Rule 220 C.M.R. § 16.05(2). Contrary to the Attorney General's claim, each telecommunications carrier will remit to SETB the collected surcharge amounts on a monthly (not quarterly) basis, with *no* interest applied. AG Comments, at 3; Proposed Rule 220 C.M.R. § 16.04(1).

introduction of the surcharge. The Department should disregard the Attorney General's comments.

First, the Attorney General's request that the level of the surcharge be set only following an adjudicatory hearing is completely unwarranted. AG Comments, at 3. The determination of a surcharge is a mathematical exercise based on the number of access lines and the associated E911/Disability Access costs, including the existing deficit. The Department does not need to conduct an adjudicatory proceeding to perform that calculation.[3]

Second, contrary to the Attorney General's claims, there is no basis for investigating the "nature, extent and effect" of the existing deficit for E911, relay and TDD/TTY equipment services. AG Comments, at 3. That deficit is the result of Verizon MA having incurred costs for the provision of these services that exceeded the revenues produced by residence directory assistance ("DA").

Since 1991, in compliance with the Order in D.P.U. 91-68, Verizon MA has filed with the Department annual tracking reports that compared residence DA revenues with the E911 costs submitted by the SETB and the Disability Access costs incurred by the Company in providing relay services and the TDD/TTY equipment program. *D.P.U. 91-68 Order*, at 18-19 (1991). For each year since 1996, those reports demonstrated that residence DA revenues were insufficient to fund the E911/Disabilty Access expenditures. This has resulted in a deficit of approximately $35 million, including interest, as reflected

[3] As contemplated by the Department's proposed rule (220 C.M.R. § 16.03), the level of the surcharge is based on data provided by SETB, Verizon MA and other telecommunications companies. Should the Department first set an interim surcharge amount using estimated line count data and costs, that interim surcharge may be subject to subsequent review and adjustment based on actual data. In addition, at the end of each calendar year, SETB or a telecommunications company may petition the Department for review of the level of the surcharge and request an adjustment.

in Verizon MA's July 2002 report.[4] *See* Verizon MA's Eleventh Annual Report, at Attachment B, pp. 3-4.

In D.P.U. 91-68, the Department also directed that an external audit of the DA accounting process be conducted during the 10-year reconciliation period. *D.P.U. 91-68 Order*, at 19 (1991). In 1998, the Department selected the accounting firm of Deloitte & Touche to conduct an independent audit of the process. *See* Department Letter dated August 27, 1998, captioned "Residence Directory Assistance Audit RFP." The audit report, which was filed with the Department in December 1999, found that Verizon MA was in full compliance with applicable accounting requirements in reporting expenses and DA revenues, and that the reported amounts were accurately stated.

In short, the Department has already verified through an independent audit that Verizon MA accurately records and reports its revenue and expense data. Thus, further examination, as requested by the Attorney General, is unnecessary and unreasonably would require Verizon MA to expend additional resources and incur additional costs.

Likewise, the Attorney General's contention that the Department should investigate how much of the existing deficit contains wireless E911 expenses is without merit. Every primary public safety answering point ("PSAP") in Massachusetts handles wireline E911 calls. Because of this functionality, those PSAP-related costs are appropriately reflected in the existing deficit.

As wireless E911 service is deployed in Massachusetts,[5] the associated costs will be separately tracked and reported under a new Massachusetts law establishing a separate

---

[4] This directly contradicts the Attorney General's comments, which incorrectly reference the level of the pre-existing deficit. AG Comments, at 2.

[5] Implementation of wireless E911 service is not yet fully completed in Massachusetts.

funding mechanism for the provision of wireless E911 service by wireless carriers.[6] G.L. c. 6A, § 18H(a). This ensures that no intermingling of wireline and wireless E911 expenses occurs, as the Attorney General incorrectly alleges. AG Comments, at 3.

Third, the Attorney General argues that the Department should reduce Verizon MA's DA charges once the deficit is eliminated. Not only is that argument inappropriate, but it is clearly not at issue in this rulemaking proceeding. The law provides a funding mechanism for eliminating the deficit. That has not occurred, and when it does, the regulatory framework in place at the time the deficit is eliminated should govern price changes, if any, for DA services. The Department simply does not need to consider at this juncture the issue raised by the Attorney General.

Finally, the Attorney General's proposal to enhance public education regarding the surcharge is unwarranted. Promoting consumer awareness is a matter to be determined by SETB and the telecommunications companies providing E911 service. This is addressed by SETB's standards for E911 services, as set forth in 560 C.M.R. § 2.07. No further action is required by the Department.

Likewise, the Department should reject the Attorney General's only suggested rule change, which is to modify the description of the surcharge line item on customer bills from "911/Disability Access Fee" to "E911/Disability Access Fee." AG Comments, at 4; *see* Proposed Rule 220 C.M.R. § 16.03(2). Contrary to the Attorney General's

---

[6] As recently amended, G.L. c. 6A, § 18A defines "wireline E911 service" as "the service required to be provided by wireless carriers pursuant to the FCC Order" - *i.e.*, all orders issued by the FCC "pursuant to the proceeding entitled "Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems' (CC Docket No. 94-102; RM 8143), or any successor proceeding, including all other criteria established therein, regarding the delivery of wireless enhanced 911 service by a wireless carrier." *Id*. Pursuant to FCC rules, wireless carriers are required to phase-in the capability to locate and call back the originating wireless E911 caller.

claim, that change will not promote consumer awareness, but is actually misleading – and could result in misdialed calls since the prefix "E" is not used when calling E911 service.

B. Comments from the MCSA, City of Cambridge, and the SETB

MCSA and the City of Cambridge recommend various changes in the Department's proposed rules relating to the nature of E911 costs to be recovered by the new funding mechanism. The Department should not adopt their proposals because they seek unreasonably to expand the scope of E911 expenses that may be recovered under Massachusetts law and, in doing so, unlawfully shift the decision making process for determining appropriate E911 expenditures from SETB.

First, MCSA and the City of Cambridge seek to include a new set of training costs (including travel and out-of pocket expenses associated with training) as expenses covered by the statutory funding mechanism. MCSA Comments, at 2; City of Cambridge Comments, Attachment at 2. The proposed changes not only conflict with applicable statutes, but also are inconsistent with SETB's E911 standards, as codified in 560 C.M.R.

Section 8 of the Acts of 1990, Chapter 291 provides, in pertinent part, that municipalities "shall be responsible for the staffing and operation of the public safety answering point terminal equipment provided to it in accordance with the terms and conditions specified by" SETB. Likewise, SETB's E911 standards state that "[c]ommunications personnel shall be trained and have the highest level of experience possible within available resources." 560 C.M.R. § 2.06(o)(2). It is clear from these regulations that SETB governs training activities, and that the current statutory funding mechanism is not intended to cover employee related costs. Accordingly, any personnel,

staffing or additional training costs, including but not limited to travel and/or out-of-pocket expenses, should be the responsibility of the individual municipality.

Absent a legislative change, MCSA and the City of Cambridge would need to seek another funding source to cover the broad range of additional expenses described in their comments. Nothing in the new law amends the existing requirements, or enables the Department to allow for the recovery of those expenses in this rulemaking proceeding.

Second, MCSA seeks to specify the types of expenditures to be covered by the new surcharge by broadly defining the term "prudently incurred costs" to include a variety of expenses, such as additional training and staffing, travel, specific PSAP equipment, and other PSAP-related supplies and services. MCSA Comments, at 2, 4-5. The Department should not revise its proposed rules as suggested.

Section 18H of Chapter 6A of the General Laws requires that the rules promulgated by the Department "shall provide for the funding of the prudently incurred expenses" by means of a surcharge. As described above, ongoing staffing and additional training expenses are to be borne by the city or town under Massachusetts law.

Regarding PSAP equipment and other related materials used for receiving and processing E911 calls, the Department correctly recognized in its proposed rules that SETB is solely responsible for decisions relating to capital expenditures and the related expenses of E911 programs. Tr. A:6; *see e.g.*, G.L. c. 6A, § 18D. Under the new law, SETB's role is unchanged in determining what additional PSAP equipment or replacements are required for the provision of E911 service in Massachusetts. Tr. A:6. MSCA's comments, however, seek to change that process by having the Department

establish in its rules the nature and magnitude of ongoing, equipment related expenses or capital expenditures incurred by the E911 program and covered by the surcharge. MCSA Comments, at 4-5, *citing* MCSA Proposed Rules 220 C.M.R. § 16.03(1), (4), (5) and (9). This exceeds the Department's scope of authority under the law. Accordingly, the Department should reject those proposed rule changes by MCSA because they conflict with applicable law.

Finally, SETB, MCSA and the City of Cambridge recommend that the Department modify its proposed rules to refer to "reasonable and customary, as well as necessary" E911 costs. SETB Comments, at 1; MCSA Comments, at 4-5; City of Cambridge Comments, Attachment 1, at 2. There is no reasonable basis for adopting that modification.

The term "reasonable and customary costs" - in the context of the Department's proposed rules - refers to SETB's five-year projection of E911 costs "expected to be incurred." *See* Proposed Rule 220 C.M.R. § 16.03(4). It is also used to describe the basis for determining the interim surcharge in 220 C.M.R. § 16.03(5). Therefore, the addition of the word "necessary" in those sections would have no effect on the statutory standard for cost recovery via the surcharge, which is based on a determination of "prudently incurred costs" associated with the provision of E911 service. *See* G.L. c. 6A, § 18H. Accordingly, the Department should ignore this recommendation and approve its proposed rules as filed, subject only to Verizon MA's modification as detailed above.

C. AT&T's Comments

AT&T recommends that the Department take the following actions: (1) require an independent audit of Verizon MA's existing deficit; (2) require that the surcharge appear

as "MA 911/Disability Access Fee" on a separate line item of customer bills; and (3) clarify the extent to which TDD/TTY equipment program costs are covered by the new surcharge. The Department should not accept any of those recommendations.

First, as discussed above, the Department has already subjected Verizon MA's annual reports to an independent audit. That audit verified Verizon MA's full compliance with the Department's directives in tracking and reporting the associated costs and revenues. AT&T appears completely unaware of this fact and provides no basis for the Department to conduct yet another audit. Therefore, the Department should reject AT&T's position.

Second, AT&T's recommendation that the surcharge be identified as a "Massachusetts specific" line item on customer bills is unnecessary. E911 is a widely recognized service throughout the Commonwealth. Moreover, AT&T's allegation that customers may confuse this as a fee "paid and retained by the telecommunications companies" is unlikely and insufficient to re-label this line item on customer bills as "MA E911/Disability Access Fee."

Finally, AT&T seeks clarification regarding the level of funding for relay services and TDD/TTY equipment under the new law. This is misplaced. Although Chapter 6A, Section 18H of the General Laws introduces the surcharge as a new funding mechanism, the existing standard contained in Chapter 6A continues to apply for establishing the costs to be recovered. Acts of 1990, c. 291, § 8. That standard is based on the "prudently incurred expenses" associated with E911, relay services and TDD/TTY equipment distribution programs provided by telecommunications companies in Massachusetts. The

new law does not authorize the Department to redefine that standard. Accordingly, the Department should disregard AT&T's request for clarification in the proposed rules.

CONCLUSION

With one minor modification, the Department should adopt its proposed rules for establishing a funding mechanism for E911, relay services and the TDD/TTY equipment distribution program in Massachusetts. That modification, as proposed by Verizon MA, corrects the reporting period for the status of the pre-existing deficit relating to E911, relay services and TDD/TTY equipment distribution costs.

By contrast, the recommendations made by the Attorney General, SETB, MCSA, the City of Cambridge and AT&T are unreasonable, inappropriate and unjustified. The Attorney General simply wants unnecessary, additional process for establishing the surcharge and a determination of issues that are beyond the scope of this rulemaking. Similarly, the rule changes proposed in other comments seek to redefine the existing law by expanding the expenses recoverable from the fund and imposing additional requirements not contemplated by the new statute. Accordingly, the Department should deny those recommendations and adopt its proposed rules.

Respectfully submitted,

VERIZON MASSACHUSETTS

Its Attorney,

_____

Barbara Anne Sousa
185 Franklin Street, 13th Floor
Boston, Massachusetts 02110-1585
(617) 743-7331

Dated: May 9, 2003