

D.P.U./D.T.E. 97-87

Petition by the Statewide Emergency Telecommunications Board, pursuant to G.L. c. 6A § 18D(c)(4) for approval to spend approximately \$5.6 million to modify and improve the 911 network.

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I. INTRODUCTION

On May 20, 1997, the Statewide Emergency Telecommunications Board ("SETB"), pursuant to G.L. c. 6A, § 18D(c)(4) filed with the Department of Telecommunications and Energy (formerly the Department of Public Utilities) ("Department") a request for approval to spend approximately \$5.6 million¹ to modify and improve the Enhanced 911 network ("E-911").² Specifically, SETB intends to expend \$3.2 million for relocating the existing public safety answering centers, \$49,000 for improving mobile answering equipment, \$2.7 million for upgrading 911 recording equipment, and \$130,000 for purchasing training simulators. The Department docketed this matter as D.P.U./D.T.E. 97-87.

On September 17, 1997, the Department conducted a public hearing to afford the public an opportunity to be heard and a procedural conference. At the procedural conference, the Department granted the petition to intervene of New England Telephone & Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"). Pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention in the proceeding. On October 20, 1997, the Hearing Officer granted the late petitions to

¹Approximately \$2.9 million of the requested \$5.6 million will be carried over into 1998 since certain activities were not completed by December 31, 1997 (SETB Comments at 2). The Department notes that SETB is not required to re-petition for approval of carryover expenditures. However, SETB is required to petition the Department for approval of expenditures over \$500,000 for additional modifications made in the 1998 calendar year.

²The Enhanced 911 system provides residents and businesses with the ability to reach emergency services by dialing the digits "9-1-1." Unlike standard 9-1-1, E-911 provides address location of the caller, thereby allowing for a shorter response time for emergency personnel.

intervene of the cities of Boston, Haverhill and Fall River, and the towns of Natick, Bedford and Hingham.

On October 3, 1997, comments on whether the Department has jurisdiction to approve the funding of each of SETB's expenditures through the Directory Assistance ("DA") fund were received from Bell Atlantic, the Attorney General, SETB, and the cities of Boston, Haverhill, and Fall River.

On December 22, 1997, SETB filed a Motion to Compel Bell Atlantic to respond to information requests concerning the DA Fund. Bell Atlantic filed a timely response.³

On April 9, 1998, the Department requested that the parties state their positions on (1) whether the expenditures for which SETB seeks approval are reasonable; (2) how the expenditures should be funded; and (3) whether there are material facts in dispute. Responses were received from SETB, Bell Atlantic and the Attorney General on April 24, May 1 and May 15, respectively.

II. POSITIONS OF THE PARTIES

A. SETB

SETB states that the expenditures are necessary to ensure public safety (SETB Comments at 1). SETB notes that the projects to enhance the 911 system were reviewed and evaluated, and determined to be reasonable for the continued operation of the emergency system (id.).

³In light of the findings in this Order, the Department notes that the Motion to Compel is moot and will make no determination on the Motion.

With regard to funding the expenditures, SETB contends that in accordance with the plain language of the statute, petitions filed pursuant to G.L. c. 6A, § 18D(c)(4) must be funded through the DA fund (id. at 3).

B. Bell Atlantic

Bell Atlantic states that once SETB authorizes a project, it is Bell Atlantic's role to estimate the costs associated with those enhancements and modifications (Reply Comments of Bell Atlantic at 2). According to Bell Atlantic, the information necessary to find that SETB's expenditures are reasonable is contained in the petition (id. at 2).

Regarding funding the expenditures, Bell Atlantic contends that the \$5.6 million should be funded as an exogenous cost under Bell Atlantic's price cap regulation plan, and not through the DA fund (id. at 3). See NYNEX Price Cap, D.P.U. 94-50 (1995). Specifically, Bell Atlantic argues that the DA fund is intended to apply to costs prudently incurred by the Company to establish and maintain the E-911 network (id.). Bell Atlantic states that because the additional E-911 expenditures at issue pertain solely to costs associated with subsequent changes to the already established E-911 system, the statute does not authorize such expenditures, and, therefore, they should be recovered as an exogenous cost (id. at 4). In addition, Bell Atlantic argues that there are no material facts in dispute, and that a hearing is not needed (id.).

C. The Attorney General

The Attorney General submits that SETB's expenditures should be approved by the Department as reasonable and funded through the DA fund (Attorney General Comments at 1-

2). The Attorney General states that the DA fund was established to offset all costs necessary to provide and maintain E-911 facilities (id. at 2). Therefore, because the \$5.6 million is necessary for municipalities to provide or maintain the E-911 system, the Attorney General submits that these expenses are required to be funded by the DA fund and thus do not qualify for exogenous cost recovery treatment (id.). Moreover, the Attorney General notes that by definition there are no exogenous costs since Bell Atlantic has failed to demonstrate the existence of any criteria of exogenous cost changes; namely, (1) changes in tax laws or accounting methods that are unique to the telecommunications industry, (2) jurisdictional separation changes, or (3) regulatory, judicial or legislative changes uniquely affecting Bell Atlantic (id.). The Attorney General states that the legislation creating the DA fund was adopted in 1990, prior to the 1995 Price Cap Order defining exogenous costs (id. at 3). Finally, the Attorney General contends that there are no material facts in dispute (id.).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 166, § 14A, each telephone company offering local exchange service in the state shall provide and maintain E-911 service in compliance with a schedule established by SETB. SETB is charged with the responsibility of coordinating the implementation of the E-911 system. G.L. c. 6A, § 18A et seq.

Pursuant to G.L. c. 6A, § 18D(a), each municipality in the commonwealth must submit for SETB's approval its recommendations for providing E-911 service. G.L. c. 6A, § 18(D)(c)(4) requires that SETB review the municipalities' proposals and develop changes or recommendations for change. Should the recommendation with respect to the provision of

E-911 service result in aggregate expenditures of \$500,000 or more in a calendar year by a telephone company, said expenditures must be approved by the Department. G.L. c. 6A, § 18(D)(c)(4).

Concerning the funding of the E-911 system, Section 7 of G.L. c. 159, § 19A states that revenues received by a telephone company under a directory assistance charging plan shall be used to offset the prudently incurred costs to provide for (in pertinent part) the E-911 system. See G.L. c. 6A §§ 18A-F and G.L. c. 166, § 14A.

IV. ANALYSIS AND FINDINGS

SETB states that it has fulfilled its requirements under the law and has reviewed the municipalities' recommendations for providing improvements and modifications for E-911 service. Moreover, SETB notes that it has developed changes or recommendations for change to the proposals submitted by the municipalities. Because SETB's recommendations regarding the provision of E-911 for 1997 would result in aggregate expenditures of more than \$500,000, SETB seeks Department approval to expend the aforementioned \$5.6 million. The Department has reviewed and considered SETB's recommendations that will provide improved E-911 service to the Commonwealth and finds that the expenditures have been prudently incurred. Therefore, the Department approves the expenditures contained in SETB's petition.

The Department must also determine how these expenditures should be funded. Section 7 of G.L. c. 159, § 19A, read concomitantly with G.L. c. 166, § 14A and G.L. c. 6A, § 18A et seq., specifically states that DA revenues should be used to offset the prudently incurred costs associated with providing the E-911 system. Although the statute

authorizing DA funding for the E-911 system does not distinguish the "provision" of the system from the "modification" or "enhancement" of the system, the Department finds that the relocation of public safety answering centers, improvements to mobile answering equipment, upgrades to recording equipment, and the purchase of training simulators are necessary to maintain and provide the service. Therefore, the Department finds that the expenditures in the amount of \$5.6 million shall be funded through the DA fund.⁴

V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Petition of the Statewide Emergency Telecommunications Board for approval to expend \$5.6 million to enhance and modify the E-911 system is hereby

GRANTED; and it is

FURTHER ORDERED: That the expenditures of \$5.6 million be funded through Bell Atlantic's Directory Assistance Fund; and it is

⁴Bell Atlantic indicates that the DA fund is currently in deficit. Therefore, the Department intends to open an investigation to examine whether changes in the DA fund are warranted.

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

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

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. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).