



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 10-01

April 5, 2010

Petition of the State 911 Department for Approval of the Fiscal Year 2011 Development Grant Amount, and Fiscal Year 2010 Expenditures.

ORDER

APPEARANCES:

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I. INTRODUCTION

On January 5, 2010, the State 911 Department (“911 Department”)¹ petitioned the Department of Telecommunications and Cable (“DTC”)² for approval to increase, by more than 10%, the Fiscal Year 2011 (“FY 2011”) Development Grant amount from \$8 million to \$12 million, and to approve an increase of more than 10%, from \$68,949,400 in Fiscal Year 2009 to \$80,215,132 in Fiscal Year 2010 (“FY 2010”), in 911 Department expenditures. Petition of the State 911 Department for Approval of the Fiscal Year 2011 Development Grant Amount, and Fiscal Year 2010 Expenditures at 1 (“Petition”). The DTC docketed its investigation of the 911 Department’s Petition as D.T.C. 10-01. In this *Order*, the DTC approves the FY 2011 Development Grant amount and the FY 2010 911 Department expenditures. The DTC additionally concludes that the Petition satisfies the requirement that the 911 Department report annually on the condition of the Enhanced 911 Fund³ (the “Fund”), and offers further comment on the condition of the Fund.

II. PROCEDURAL HISTORY

On January 5, 2010, the 911 Department filed the Petition, and on January 21, 2010, the DTC issued a Notice of Public Hearing and an Order of Notice in this matter. *See* Docket at 1.

¹ The 911 Department is the successor agency to the Statewide Emergency Telecommunications Board (“SETB”) which was dissolved on February 1, 2009. *See* Acts of 2008, c. 223. Responsibility for SETB’s duties vested in the newly-created State 911 Department. *See id.* For administrative ease, the term “911 Department” as used in this *Order* will refer to both organizations unless specifically stated otherwise.

² The Department of Telecommunications and Energy was dissolved on April 11, 2007. *See* Acts of 2007, c. 19. Jurisdiction over telecommunications matters was placed in the newly-created Department of Telecommunications and Cable. *See id.* For administrative ease, the term “DTC” as used herein refers to both Departments.

³ The 911 Department has requested that the DTC consider their petition in this matter as satisfying the requirement that they report annually on the financial condition of the Enhanced 911 Fund. *See* Petition at 1. Pursuant to G. L. c. 6A, § 18H(b), the 911 Department is required to report the financial condition of the Enhanced 911 Fund to the DTC annually. The DTC grants the 911 Department request and finds that the Petition satisfies the requirements of G. L. c. 6A, § 18H(b).

The Attorney General intervened as of right on January 25, 2010. *See* G. L. c. 12, § 11E. The DTC issued its first set of Information Requests to the 911 Department on January 28, 2010. The 911 Department filed its responses on February 11, 2010. That same day, the DTC conducted a public hearing and procedural conference in this matter. The DTC issued a second round of Information Requests on February 19, 2010. On March 1, 2010, the 911 Department filed its responses to the DTC's second round of Information Requests. Finally, on March 5, 2010, the 911 Department filed its Initial Brief. *See* Docket at 1. The DTC, on its own motion, moves the following into the evidentiary record: the Petition; the 911 Department's responses to the DTC's Information Requests; and the 911 Department Brief.⁴

III. BACKGROUND

Enhanced 911 ("E911") services provide residents of the Commonwealth with the ability to reach emergency services by dialing the digits "9-1-1", and are provisioned pursuant to G. L. c. 6A, §§ 18A – 18I, and G. L. c. 166, §§ 14A, and 15E. E911 is distinguished from traditional 911 services in that E911 provides responders with both the telephone number used to place the 911 call, and information detailing the geographic origin of the call. *See* G. L. c. 6A, § 18A.

Between 2002 and 2008, wireline E911 service and disability access programs⁵ were funded by a surcharge to wireline telecommunications customers' monthly bills, and wireless E911 service was funded by a separate surcharge on wireless customers' monthly bills. *See* Acts of 2002, c. 291, § 1. Funds from the wireline surcharge were deposited into the Wireline E911 Fund, and used by SETB for expenses incurred in providing wireline E911 service and in reimbursing Verizon Massachusetts, Inc., then administrator of disability access services, for the

⁴ In this *Order*, responses to Information Requests will be cited as ("Exh. D.T.C. [request number]").

⁵ Pursuant to G. L. c. 166, § 15E, funding for telephone relay service ("TRS") and specialized customer premises equipment ("SCPE") disability access services are also provided through the E911 surcharge.

provision of such services pursuant to G. L. c. 6A, §§ 18A – 18I, and G. L. c. 166, §§ 14A, and 15E. *See Petition of the Statewide Emergency Telecomms. Bd. to establish a wireline surcharge, for the period Jan. 1, 2008 to June 30, 2008, to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc'ns equip. distribution for people with disabilities, and amplified handsets at pay tels., D.T.C. 07-7, Order at 4 (Feb. 8, 2008) (“2008 E911 Surcharge Order”).* Funds from the wireless E911 surcharge were deposited with the SETB, who administered and funded the provisioning of wireless E911 services separately from wireline E911 services. *See* G. L. c. 10, § 35W.

In 2008, the Massachusetts Legislature enacted Chapter 223 of the Acts of 2008 (“2008 Act”) which levied a unified surcharge of \$0.75 on all telecommunications customers,⁶ and created a single unified Fund to cover the expense of providing all types of 911 and disability access services. *Id.* The 2008 Act also abolished the SETB, replacing it with a new Governing Commission, and the current 911 Department. *Id.* Additionally, the 2008 Act: (1) gave the 911 Department responsibility for the administration of all 911 emergency services programs; (2) provided the 911 Department a mandate to promote regionalization of Public Safety Answering Points (“PSAPs”); (3) created five new development grant initiatives to help support and develop the emergency communications system; and (4) charged the 911 Department with sole responsibility for administration of the disability access programs. *Id.*

⁶ For the purposes of this *Order*, the DTC defines “telecommunications customers” as “communication services subscribers” pursuant to G. L. c. 6A, § 18A. “Communication services” are defined as including “(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 VoIP provider service as defined by the regulations of the FCC regulations[sic] (f) IP-enabled service; or (g) prepaid wireless service.” G. L. c. 6A, § 18A.

IV. ANALYSIS AND FINDINGS

The DTC approves the increase in FY 2011 Development Grant amount, and the increase in FY 2010 911 Department expenditures, based on the following analysis and findings.

A. FY 2011 DEVELOPMENTAL GRANT ALLOCATION

In its Petition, the 911 Department seeks to increase the Development Grant funding amount from \$8 million to \$12 million or 25% for FY 2011 due to an increase in the funding sought in applications between the FY 2009 and FY 2010 grant cycles, and in order to “maximize its regionalization efforts prior to the possible beginning of the Next Generation 911 solution.”⁷ Petition at 1; Exh. D.T.C. 1-9; Exh. D.T.C. 1-20. The 911 Department asserts that this increase is “necessary for the 911 Department to meet its statutory responsibility.” Exh. D.T.C. 2-10. The DTC finds that an increase in the Development Grant amount to \$12 million for FY 2011 is a prudently incurred expense, and accordingly approves this increase.

General Laws chapter 6A, section 18B(i)(5) establishes a Development Grant to “support the development and startup of regional and regional secondary PSAPs and regional emergency communications centers, including the expansion or upgrade of existing regional and regional secondary PSAPs.” The statutory purpose of the Development Grant is to “maximize effective emergency 911 and dispatch services as well as regional interoperability.” G. L. c. 6A, § 18B(i)(5). The 911 Department is charged with establishing guidelines regarding eligibility, and the amount and allocation of funding under this program. *Id.* However, if the 911 Department

⁷ “Next Generation 911” is an enhanced 911 system that incorporates the handling of all 911 calls and messages, including those using IP-enabled services or other advanced communication technologies in the infrastructure of the 911 system itself. *See* G. L. c. 6A, § 18A.

wishes to increase the funding of these grants by more than 10% from the previous year, it must seek the approval of the DTC. G. L. c. 6A, § 18B(i)(5). As these grant programs are newly established, the DTC has not previously reviewed a petition for approval of an increase in funding of this nature. Therefore, before we begin our analysis, the DTC must first establish its criteria for approval of grant program allocations.

While G. L. c. 6A, § 18B(i)(5) clearly vests with the DTC the authority to approve increases of 10% or more, the statute is silent as to what standard the DTC is to apply in making its determinations. *Id.* Hence, the DTC must look to other relevant statutory sections and past DTC precedent for guidance. A close examination of other sections of the statute reveals that the DTC has the authority to investigate the reasonableness of increases of more than 10% in 911 Department expenditures. G. L. c. 6A, § 18H(c). In addition, the statute specifies the 911 Department shall disburse money from the Fund only for prudently incurred expenses associated with grant funding. G. L. c. 6A, § 18B(f). Moreover, the DTC is required to adopt rules that provide for the funding of prudently incurred expenses associated with the services provided by Sections 18A to 18J, inclusive, and Sections 14A and 15E of Chapter 166. G. L. c. 6A, § 18H(b). The DTC is also empowered, at its discretion, to annually investigate the prudence of 911 Department's revenue and expenditures. *Id.* Since prudence is generally accepted as the action of a reasonable person, the DTC concludes that the reasonableness and prudently incurred standards are functionally equivalent. *See Town of Hingham v. Dept. of Telecomms. and Energy*, 433 Mass. 198, 202 (2001) (finding that the test for prudence in terms of cost recovery is based on whether a reasonable company's actions were prudent in light of all circumstances known or reasonably known at the time); *Commonwealth v. Torres*, 433 Mass. 669, 676 (2001) (determining that a belief is reasonable if a "reasonably prudent man" in that position would be

warranted in such a belief); *Tobin v. Norwood Country Club, Inc.*, 422 Mass. 126 (1996) (defining “reasonable care” as the “the obligation of a person to behave as a reasonably prudent person using the ordinary degree of care in the circumstances”). This is in keeping with past DTC precedent, as we have previously interpreted an earlier reasonableness standard to hinge upon a determination of whether SETB expenses were prudently incurred. *See 2008 E911 Surcharge Order* at 7 (finding that expenses are “prudently incurred” if they were reasonable and prudent in light of circumstances that then existed); *Investigation by the Dep’t of Telecomms. and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline enhanced 911 servs., relay servs. for TDD/TTY users, commc’ns equip. distribution for people with disabilities, and amplified handsets at pay tels.*, D.T.E. 03-63-Phase I, *Order* at 16 (July 14, 2003) (“2003 E911 Surcharge Order”) (determining that prudently incurred cost review standard contained in G. L. c. 6A, §§ 18B-18D empowers the DTC to require SETB to submit documentation to support the reasonableness of its proposed expenditures).

When examining whether an expense is, or will be, prudently incurred, the DTC reviews whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *See 2008 E911 Surcharge Order* at 7, 9, 19. The DTC will not simply substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department’s statutory obligations, and has previously held that the 911 Department has the authority to determine which categories of equipment, training, and support expenditures it will submit to the DTC for approval. *See 2003 E911 Surcharge Order* at 16 (finding that while the DTC may require SETB to “support the reasonableness of its proposed expenditures, the DTC lacks the jurisdiction to tell the SETB what categories of expenditure it is

required to propose.”) However, even though the 911 Department may make a determination that a certain expense is needed, the DTC has held that all expenses must still be prudently incurred. *See 2008 E911 Surcharge Order* at 8. Specifically, expenses are deemed prudent if they are necessary for the funding of the 911 Department’s provision of E911 services and disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. *See 2008 E911 Surcharge Order* at 9; *Petition of the Statewide Emergency Telecommunications Board to establish a wireline surcharge, for the period January 1, 2008 to June 30, 2008, 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.C. 07-7, *Interim Order* at 7 (Nov. 30, 2007); *Investigation by the Dep’t of Telecomms. and Energy to establish a permanent surcharge to recover prudently incurred costs associated with the provision of wireline Enhanced 911 servs., relay servs. for TDD/TTY users, commc ’ns equip. distribution for people with disabilities, and amplified handsets at payphones*, D.T.E. 06-4, *Order* at 27-28, 35 (Dec. 1, 2006) (“2006 E911 Surcharge Order”).

The DTC’s authority in relation to the 911 Department’s broad authority to determine the categories of expenditures which are required to fulfill its (i.e., the 911 Department’s) statutory responsibilities could only be viewed as conflicting, or at a minimum, limited, and we note the difficulty of reconciling the competing interests of ensuring modern, robust E911 services and disability access programs, and maintaining a stable surcharge. *See, e.g., G. L. c. 6A, § 18B* (authorizing the 911 Department to disburse funds from the Fund for prudently-incurred expenses associated with the provisioning of E911 and disability access services). For this reason, the DTC believes it is important to clarify our view of the relationship between the

seemingly conflicting authority of the 911 Department and the DTC under G. L. c. 6A, §§18A – 18I and G. L. c. 166, §§ 14A, and 15E. The DTC has stated in the past that the 911 Department has authority to determine what is necessary for the provisioning of E911 service, and under the 2008 Act, the DTC similarly defers such judgment as it applies to disability access programs. *See 2008 E911 Surcharge Order* at 7. But “necessity” cannot be viewed in a vacuum. It must be viewed in relation to cost, and to that extent, the DTC’s mandate under the 2008 Act is to maintain a reasonable, stable surcharge, in order to protect the interests of the payers of these services – telecommunications customers – and to serve as a counterweight to the 911 Department’s authority. *See* G. L. c. 6A, §§ 18A(b), (c). In this sense, the DTC plays a very important role in overseeing the costs of the E911 and disability access programs. *See* G. L. c. 6A, §§ 18A(b), (c). That role is effected by determining whether expenses are prudently incurred.

In past reviews, the DTC has undertaken extensive investigation into the prudence of E911 and disability access costs. *See 2006 E911 Surcharge Order; 2007 Interim E911 Surcharge Order; Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§ 2.00 et seq., D.T.E. 03-24-A, at 6-7 (July 28, 2003) (“E911 Rulemaking”).* However, under the 2008 Act, the DTC is only given ninety days to review and issue a final decision on the 911 Department petition before the request is presumed to be approved. *See* G. L. c. 6A, §§ 18B(i)(5) and 18H(c). This strict statutory deadline dramatically shortens the DTC’s traditional review period, precluding a traditional comprehensive review. *See, e.g., 2006 E911 Surcharge Order* at 1-2 (Department investigation into SETB expenditures spanning January to December 2006). In addition, although the 2008 Act does allow the DTC to employ outside experts to assist in its analysis, the timing of the instant filing did not allow for retention

of experts.⁸ *See* G. L. c. 6A, § 18H(c). Moreover, no interveners participated in this case. As a result, the only evidence submitted in this case was by the petitioner – the 911 Department, which inherently constrains the DTC’s ability to develop a comprehensive record. With these limitations in mind, the DTC conducts its statutorily-obligated review.

The 911 Department seeks to increase the Development Grant amount from \$8 million to \$12 million for FY 2011 in order to maximize regionalization before implementing the Next Generation 911 solution.⁹ Exh. D.T.C. 1-20. Under G. L. c. 6A, § 18D, the 911 Department is charged with developing and maintaining a statewide plan for E911 service, including Next Generation 911 services. According to the 911 Department, increasing the Development Grant amount to \$12 million for FY 2011 “should help the 911 Department to ascertain the most accurate number of PSAPs [(“public safety answering points”)] to be served for planning purposes in terms of public safety and cost before the transition to the Next Generation 911 solution.” Exh. D.T.C. 2-28. Specifically, this increase will allow it to “(1) bring regionalization projects that have been previously awarded funds for construction and equipment to fruition if additional funds are required, (2) award funds for construction and equipment to projects that have completed feasibility studies, and (3) award funds for feasibility studies for new regional projects, all before the possible beginning of Next Generation 911 solution.” Exh. D.T.C. 2-28.

The 911 Department states that a Development Grant amount of \$12 million for FY 2011 “will allow the 911 Department to fund projects more fully than it has in the past two FYs.”¹⁰

⁸ The DTC is concerned with the timeframe for review of 911 Department petitions and in the near future will explore ways to assist its review process. One possible solution would be to require filing of an annual petition on a fixed date.

⁹ The 911 Department anticipates moving to a Next Generation 911 solution as early as FY 2012. Petition at 3.

¹⁰ Awards in FY 2009 and FY 2010 awards were reduced by approximately \$3.4 million and \$6.3 million, respectively, due to the limitation on funding for those years. Exh. D.T.C. 2-36; Exh. D.T.C. 2-37. The FY

Exh. D.T.C. 2-34. The 911 Department anticipates “a multitude of [Development Grant] applications in FY 2011” which it anticipates will “at a minimum equal the request of \$11.5 million that occurred in FY 2009 and may well equal or exceed the \$22.5 million requested in FY 2010.” Exh. D.T.C. 1-20; Exh. D.T.C. 2-34. The 911 Department notes that increased regionalization leads to more efficient and effective use of resources, and improves public safety. Exh. D.T.C. 2-10. Importantly, the 911 Department states that it can incur the \$12 million expense without eliminating or reducing any other expenditures, and while “maintaining the 75 cents per month surcharge.” Petition at 4; Exh. D.T.C. 1-21.

Based on its review, the DTC finds that the 911 Department’s requested increase is necessary to meet its statutory obligations to (1) maximize effective E911 services and regional interoperability, and (2) develop and maintain a statewide plan of E911 service, including possible Next Generation 911 services. *See* G. L. c. 6A, § 18B(i)(5); G. L. c. 6A, § 18D. Having concluded that the 911 Department can maintain the current surcharge level for FY 2010,¹¹ notwithstanding this necessary, additional expense, the DTC further finds that this increase in the Development Grant amount is prudently incurred. *See 2008 E911 Surcharge Order* at 8. Accordingly, the DTC approves the increase in the Development Grant amount to \$12 million for FY 2011.

B. 911 DEPARTMENT FY 2010 EXPENDITURES

The 911 Department reports surcharge revenues of \$69,381,675 and requests DTC approval of projected expenditures of \$80,215,133 for FY 2010. *See* Petition at Exhibit C. As

2010 awards would have been reduced by approximately \$13.8 million, had applicants not filed revised applications reducing their initial requests. Exh. D.T.C. 2-33; Exh. D.T.C. 2-37.

¹¹ The DTC interprets its standard of review under the statute as requiring a finding that the surcharge will remain stable for the relevant period of review, in this case for FY 2010. *But see infra* at 22-24, for a discussion of the long-term stability of the surcharge.

actual reported expenditures for FY 2009 were \$68,949,400, the 911 Department's FY 2010 request represents an increase of 16% from the previous fiscal year. *See* Petition at 4. The 911 Department is required to seek the DTC's approval for projected total expenditures that exceed total expenditure of the previous year by 10%. G. L. c. 6A, § 18H(c). As discussed above, the DTC reviews the reasonableness of such requests by inquiring into whether these expenses are, or will be, prudently incurred. *See supra* at 6-7. To determine whether these expenses are prudently incurred, as set forth below, the DTC first assesses the amount of revenue collected via the surcharge, and then evaluates the prudence of the expenses incurred by the 911 Department. *See 2008 E911 Surcharge Order* at 8-9. Applying this standard as discussed in detail below, the DTC concludes that the 911 Department projected expenditures are, or will be, prudently incurred.

(1) Analysis of Surcharge Revenues

As discussed above, Fund revenues are generated from a surcharge "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system." *See* G. L. c. 6A, § 18H(a). The surcharge is the sole source of E911 and disability access funding in Massachusetts.¹² The Fund's net revenue is derived by multiplying the surcharge by the number of access lines and subtracting one percent for administrative fees and two percent for uncollectible revenue. *See* Exh. D.T.C. 1-27. The 911 Department's revenue projections for FY 2010 rely on three assumptions: (1) a 0.75 percent interest rate applied monthly to the fund balance; (2) no change in the number of access lines subject to the surcharge; and (3) a two percent uncollectable revenue rate. Exh. D.T.C. 1-32; Exh. D.T.C. 1-

¹² Portions of E911 and disability access programs receive additional funds from matching federal grant programs.

33; Exh. D.T.C. 1-27. The reasonableness of each assumption, as well as discussion of surcharge revenues from prepaid wireless subscribers, is set forth below.

(a) Interest Rate

The DTC is satisfied that an annual rate of 0.75 percent is a reasonable estimate of the interest rate to be applied, on a monthly basis, to the fund balance for FY 2010. The 911 Department projects the earned interest on the Fund balance in FY 2010 to be \$790,712. The E911 Fund is managed by the State Treasurer. *See* G. L. c. 29, § 23 (“The state treasurer shall manage all cash, funds, or investments under the control or jurisdiction of any state agency.”). For the fiscal year ended June 30, 2009, the Massachusetts Municipal Depository Trust’s cash portfolio’s total return was 2.05%. *See* CASH MGMT. DEP’T, OFFICE OF THE TREASURER & RECEIVER GEN., COMMONWEALTH OF MASS., MASS. MUN. DEPOSITORY TR. 2009 ANN. REP. While the interest rate fluctuates on a monthly basis, and as of February 2010 this percentage was in decline,¹³ the DTC finds that a 0.75 percent interest rate is a reasonable assumption for purposes of calculating interest earned on the total Fund balance in FY 2010.

(b) Access Line Counts

In calculating net revenue, the 911 Department uses the average number of subscribers, accounting for monthly fluctuations. Exh. D.T.C. 1-27. The 911 Department has held constant the average number of subscribers for its FY 2010 through FY 2012 projections. Exh. D.T.C. 1-33. The DTC is satisfied that this is a reasonable assumption for projecting net revenue. In previous years, the 911 Department adjusted projections for the increasing migration of wireline customers to wireless and Voice-Over-Internet-Protocol (“VoIP”) technologies, and decreased the number of wireline subscribers subject to the surcharge accordingly. *See 2008 E911*

¹³ The average daily yield for the Comm. of Mass. Municipal Depository Trust declined from January (0.33%) to February (0.32%) 2010. Office of Treasurer Timothy P. Cahill, Cash Management Department.

Surcharge Order at 11-12; *2006 E911 Surcharge Order* at 23. Under current regulations, multiple types of voice technologies must contribute to the Fund, including wireless and VoIP. *See* G. L. c. 6A § 18H(a); Exh. D.T.C. 1-33. According to the DTC's 2010 Competition Status Report ("Report"), VoIP subscribers and wireless substitution have increased by approximately 600,000 since 2005. GEOFFREY G. WHY, MASS. DEP'T OF TELECOMMS. & CABLE, COMPETITION STATUS REP. 46, 58 (2010). However, this increase does not include wireless substitution in the business voice market, suggesting an even higher number of total customers subscribing to wireless and VoIP services. The DTC notes that it would be prudent for the 911 Department to closely monitor the changes in subscriber counts for each type of access line contributing to the Fund to reflect the realities of evolving competition in the voice market. Moreover, adjustment of the average number of subscribers contributing to the Fund, to include all prepaid wireless subscribers in future budget projections, is also strongly recommended.

(c) Uncollectable Revenue

The 911 Department employs a 2 percent uncollectable revenue rate to reduce the total fund revenue in its projections. Exh. D.T.C. 1-27. DTC regulations permit a reduction in total surcharge revenues to reflect uncollected revenues. *See* 220 C.M.R. § 16.03 (8) (telecommunications companies are only "obligated to remit the actual amount collected from subscribers"). The DTC finds that the 911 Department's use of a 2 percent uncollectable revenue rate is reasonable. When the DTC approved the 2 percent uncollectable revenue rate, Verizon was reporting an uncollectable revenue rate of 2.1 percent across residential and business wireline accounts. *2008 E911 Surcharge Order* at 12. Thus, the DTC found that applying a 2 percent uncollectable rate to reduce the 911 Department's Net Revenue "is appropriate because Verizon is the dominant local exchange carrier in the Commonwealth." *Id.*

However, wireline access lines now constitute less than 40% of the total lines subject to the surcharge. *See* Exh. D.T.C. 2-23. Due to the increase in non-wireline access lines subject to the surcharge, the DTC recommends that the 911 Department adjust its methodology to account for uncollectable revenue rates by access line type when calculating uncollectable revenues in the future.

(d) Prepaid Wireless Revenues

Under G. L. c. 6A § 18H(a), the 911 Department promulgated regulations for the remittance and collection of the surcharge for prepaid wireless service, which went into effect on July 1, 2009. 560 C.M.R. § 3.02; Exh. D.T.C. 1-27. The 911 Department reports that it is currently investigating compliance with these regulations. Exh. D.T.C. 1-27. Thus far, the results of this review indicate that some of the wireless prepaid providers were remitting surcharge fees for their prepaid customers under the category “wireless” before the prepaid wireless regulations went into effect. Exh. D.T.C. 2-24. Now, under the prepaid wireless regulations, these providers appear to be reporting their surcharge collection of prepaid wireless customers as “prepaid wireless” and have proportionately reduced the total amount of “wireless” surcharge fees collected. *Id.* At present, only four prepaid wireless providers submit the surcharge and report their subscribership monthly as required under the regulations. 560 C.M.R. §§ 3.05, 3.06; Exh. D.T.C. 2-25. The 911 Department has collected \$57,000 per month on average from prepaid wireless subscribers, for an annual projection of \$684,000. Exh. D.T.C. 2-27. The 911 Department is working to identify prepaid wireless providers that are not submitting surcharge revenues, and sending demand letters to all providers that are not in compliance. Exh. D.T.C. 2-24. The 911 Department plans to seek assistance from the Attorney General’s office to enforce the provisions of the regulations, as provided under G. L. c. 6A, § 18E. *Id.* The 911

Department anticipates that such enhanced review and enforcement procedures will be in place by the first quarter of FY 2011. Exh. D.T.C. 2-27. The DTC finds that the 911 Department's efforts are reasonably prudent, and encourages the 911 Department to continue those efforts to identify non-compliant carriers; inform them of their obligation to contribute to the Fund; and pursue enforcement with the Attorney General. The DTC further recommends that the 911 Department adjust its future revenue projections made to the DTC to include remittances from prepaid wireless carriers as a separate category, to better facilitate the DTC's review.

(2) Analysis of 911 Department Expenditures

The DTC now analyzes the 911 Department expenditures, and determines that the projected expenses are necessary to the provisioning of E911 services and disability access programs, and are, or will be, prudently incurred for FY 2010. The 911 Department's projected expenses for FY 2010 are broken down into three major cost categories: (a) Administration; (b) E911; and (c) Disability Access Programs. *See* Petition at Exhibit C. The DTC analyzes the prudence of expenditures in each cost category in greater detail below.

(a) Administration Expenses

The DTC determines that the 911 Department's projected administration expenses of \$7,622,416 for FY 2010 are, or will be, prudently incurred. The 911 Department's administration expenses include salary costs, agency expenses, and capital project costs. *See* Exh. D.T.C. 1-25.

Salary costs for FY 2010 are projected at approximately \$3.4 million, compared to the FY 2009 actual costs of \$2.0 million, representing an annual increase of almost 60 percent. *Id.* The 911 Department explains that the increase in salary costs is due to the addition of thirteen full-time positions created for the administration of the Massachusetts Equipment Distribution

Program that provides and distributes SCPE. *See* Exh. D.T.C. 1-26. The 911 Department took over the administration of the distribution program as part of its new statutory responsibilities under G. L. c.166, § 15E(b). *See* Acts of 2008, c. 223, § 15. The 911 Department states that the projections reflect contractual step increases and cost of living adjustments, negotiated by the National Association of Government Employees union and the Commonwealth. *See* Exh. D.T.C. 1-26. The DTC finds that the increase in salary expenses is due to the 911 Department's fulfillment of its statutory responsibilities, and contractual employment obligations arising from those responsibilities. The projected FY 2010 salary expenses of \$3,432,468 are therefore necessary to the provisioning of E911 and disability access programs, and are, or will be, prudently incurred.

The next category of administrative expenses, agency expenses, for FY 2010, are comprised of: (1) Employee Reimbursements; (2) Administrative Expenses; (3) Operational Supplies; (4) Utilities/Space Rental; (5) Operational Services; (6) Equipment Purchases; (7) Lease, Maintenance, and Repair Services; (8) Building Maintenance and Repairs; and (9) IT Services and Equipment. *See* Exh. D.T.C. 2-7A. The projected total for agency expenses for FY 2010 is \$640,743, compared to \$667,227 in FY 2009, a reduction of almost 3 percent. *Id.* The FY 2010 budget projections show an increase in expenses for employee reimbursements, operational supplies, utilities/space rental, operational services, equipment purchases, and lease, maintenance, and repair services, while showing a reduction in projected expenses for building maintenance and repairs, and IT services and equipment. *See* Petition at Exhibit C. The 911 Department states that the increases in the relevant expense categories are due to the addition of 13 full-time positions to the 911 Department. *See* Br. at 7-8; Exh. D.T.C. 1-26. Further, the 911 Department explains that the decrease in building maintenance and repairs expenses is a function

of shifting costs to the appropriate programs, while the decrease in IT services and equipment expenses is due to the completion of IT projects in FY 2009. Exh. D.T.C. 1-26. The DTC is satisfied with the 911 Department's explanation that agency expenses increased due to the increase in full-time employees. Moreover, as discussed above, the DTC has already found that the 911 Department's addition of those employees was necessary to the provisioning of E911 and disability access programs. Therefore, the DTC finds that the 911 Department agency expenses for FY 2010 are, or will be, prudently incurred.

The final administrative expense category for FY 2010, Capital Projects, is projected to be \$3,542,205, a significant increase of \$3.26 million over the \$233,000 cost incurred in FY 2009. *See* Petition at Attachment C. The 911 Department breakdown of capital projects includes the purchase of: a new mobile PSAP equipped with Vesta brand Customer Premises Equipment ("CPE") which will be able to provide mobile E911 services in the event of a local PSAP outage (\$1 million); replacement roofs for three buildings at the Taunton headquarters property which are leaking and in need of repair (\$1.2 million); an on-site generator to power Building B's live back-up PSAP in the event of emergency (\$100,000); a security system for the Taunton campus to protect valuable CPE and Equipment Distribution Program ("EDP") as well as PSAP equipment stored on-site (\$300,000); infrastructure improvements to allow PSAPs to migrate to an internet protocol enabled emergency network (\$500,000); renovations to make appropriate space for administration of the EDP program in Building D (\$250,000); and furnishings to outfit the new Maynard Training Center facility (\$100,000). *See* Br. at 7-8. The 911 Department states that the procurement and contracts for capital projects are done through the use of statewide contracts, using competitive bidding processes. Exh. D.T.C. 1-30. The 911 Department has submitted sufficient evidence to convince the DTC that its FY 2010 capital

expenses are necessary to the provisioning of E911 and disability access programs, and therefore are, or will be, prudently incurred.

(b) Enhanced 911

The second major category of expenses is E911 expenses which the 911 Department projects to be \$24,829,813 for FY 2010, 43 percent lower than the actual FY 2009 expenditures of \$43,588,478. *See* Petition at Attachment C. The E911 expenses include: (1) Map Data expenses; (2) Enhanced 9-1-1 Support expenses; and (3) Next Generation 911 and Wireless direct project expenses. *Id.*

We find the increase in map data expense is necessary as an additional part of an ongoing project and therefore, prudently incurred. Map data expenses have increased from \$250,337 in FY 2009 to the projected \$438,057 in FY 2010, an annual increase of 75 percent. *Id.* The 911 Department participates in a project with the Massachusetts Geographic Information System (“MassGIS”) to produce a combined “parcel and point” data set, which will provide the current E911 system, as well as the Next Generation 911 system, with more accurate locations of 911 callers. *See* Exh. D.T.C. 2-18. This is achieved by combining parcel maps showing individual land parcels in a geographic area, with point data which identifies buildings and structures within each parcel. *Id.* The projected increase in FY 2010 expenses reflects the 911 Department’s participation in a federal project to produce orthophoto¹⁴ based maps which are used for E911 dispatching. *See* Br. at 11. The MassGIS, an agency within the Executive Office of Environmental Affairs, provides the updated, synchronized mapping data, and information for

¹⁴ Orthophoto is a term used to describe an aerial photograph which has been geometrically corrected or “orthorectified” to ensure uniform scale. This process corrects for distortions like camera tilt and topographic relief, allowing the orthorectified photo to be digitized and superimposed on a map. United States Geological Survey, US Department of Interior, USGS Fact Sheet May 2001, <http://egsc.usgs.gov/isb/pubs/factsheets/fs05701.html>.

use by the PSAPs, pursuant to an interdepartmental service agreement (“ISA”) with the 911 Department.¹⁵ *Id.* The 911 Department has sufficiently demonstrated that because the map data project is necessary to provisioning E911 and disability access programs, the FY 2010 map data expenses are, or will be, prudently incurred.

E911 Support expenses decreased from \$43,338,141 in FY 2009 to a projected \$23,531,176 in FY 2010, a decrease of 46 percent. *See* Petition at Attachment C. The FY 2010 budget projection is based on a contract with Verizon for database support, network facilities, network maintenance and CPE maintenance & monitoring. *See* Petition at 8. This contract was awarded to Verizon in 2009 through a competitive bidding process (RFR State 911 09-001). *Id.* Because the E911 support expenses are necessary to fulfilling the 911 Department’s statutory obligations in provisioning E911 and disability access programs, the DTC determines that they are, or will be, prudently incurred.

The last, and new, sub-category, Next Generation 911 and Wireless 911 Direct Project, expenses are projected to cost \$860,580 in FY 2010. *See* Petition at Attachment C. These expenses will cover the cost of consultants the 911 Department plans to use to begin its Next Generation 911 project. The consultants will generate an implementation schedule for the deployment of Next Generation technology, as well as assist the 911 Department in identifying the best processes and equipment needed to achieve the project results. *See* Br. at 12. The consultants will also provide an assessment of the technological and financial feasibility of routing wireless 911 calls directly to local PSAPs in accordance with the requirements contained in Chapter 223 of the Acts of 2008. *Id.* The 911 Department, through a competitive bidding process, has selected and entered into a contract with RCC Consultants Inc. as its Next

¹⁵ ISAs are executed pursuant to rules and regulations prescribed by the Office of the Comptroller. *See* 815 C.M.R. §§ 6.00 *et seq.* (Interdepartmental Fiscal Business).

Generation 911 consultant. *Id.* The DTC determines that the FY 2010 projected expenses for the Next Generation 911 and Wireless 911 Direct Projects are necessary to provisioning E911 and disability access programs because the 911 Department is statutorily obligated to carry out these projects. Accordingly, the DTC finds that these expenses are, or will be, prudently incurred.

(c) Disability Access Programs

The third and final category of projected expenses is for disability access programs. Pursuant to G. L. c.166, § 15E, local exchange carriers must provide relay services and specialized equipment distribution programs for the disabled, which are discussed more fully below. Prudently incurred expenses associated with the provision of disability access programs are recovered through the surcharge. *See* G. L. c. 6A, § 18H½. The budget for disability access programs covers the costs of TRS, SCPE, and CapTel. *See* Br. at 12. For the reasons detailed below, the DTC finds that the proposed FY 2010 expenditures for these disability access programs are necessary and are, or will be, prudently incurred.

TRS is a telephone transmission service that provides the ability for individuals with hearing or speech impairments to communicate using voice over wire or radio, in a manner functionally equivalent to a person without such impairments. *See* Br. at 12. TRS in Massachusetts is provided through a contract between the 911 Department and Hamilton Relay Services. *Id.* This contract was originally executed by Verizon and approved by the DTC in 2007, then later assigned to the 911 Department when they replaced Verizon as the program's administrator. *See Petition of Verizon New England d/b/a/ Verizon Mass. for approval of its Request for Proposals to Provide Dual-Party Relay Serv. in Mass., D.T.C. 07-4, Order* (Nov. 13, 2007). The projected cost for TRS in FY 2010 is \$4,081,120, compared to \$4,387,718 in FY

2009. *See* Petition at C. This projection is based on the existing contract with Hamilton Relay Services, and historical spending data for TRS. *See* Br. at 12. The DTC determines that TRS service is necessary to the provision of E911 and disability access programs and is based on a DTC-approved contract for services, therefore, the FY 2010 expenses are, or will be, prudently incurred.

SCPE include artificial larynxes, signaling devices, amplified handsets, large number dial overlays, direct telephone dialing telebrailles, TDD/TTY, and other devices which provide access to telephone networks for people with hearing, speech, vision, or mobility impairments. *See* G. L. c. 166, § 15E(a) (definitions). The 911 Department contracts with various equipment vendors to provide SCPE to disabled citizens through the Massachusetts EDP. *See* Br. at 13. The FY 2010 projected expenses for SCPE total \$1,617,703, compared to \$2,399,900 in FY 2009. The 911 Department has submitted evidence that the FY 2010 SCPE projection is based on historical use and executed contracts which have been previously approved by the DTC. *See* Br. at 13. As such, the DTC finds that the FY 2010 projected expenses for SCPE are necessary to the provisioning of E911 and disability access programs and are, or will be, prudently incurred.

CapTel is a new service being offered to the residents of Massachusetts, pursuant to Section 15 of the 2008 Act. CapTel allows persons with a hearing disability, but that retain some residual hearing, to read captions of what the non-hearing impaired caller is saying while simultaneously listening to that caller. *See* Br. at 13. In December 2009, the 911 Department petitioned the DTC to approve a Request for Response (“RFR”) to procure the services of a CapTel provider. *Id.* The DTC formally approved the RFR on February 25, 2010, and the 911 Department expects this service to be made available to Massachusetts residents by the second

quarter of 2010. *Id.* Given the estimated annual cost of \$2 million for this service, the 911 Department has projected \$500,000 in expenses for the remainder of FY 2010. *Id.* The DTC determines that because the 911 Department is mandated to offer CapTel, its projected expenses are necessary to the provisioning of E911 and disability access programs and are, or will be, prudently incurred.

The statute and the DTC's precedent require that we consider one more criteria in determining whether the 911 Department's 2010 expenses are reasonable. As noted above, expenses are deemed reasonable if they are necessary for the funding of the 911 Department's provision of E911 services and disability access programs in the Commonwealth **and at the same time maintain a stable surcharge level.** *See 2008 E911 Surcharge Order* at 8-9. While the DTC will comment further on the long-term stability of the surcharge below, for the purpose of reviewing the prudence of the 911 Department's FY 2010 expenses, the DTC is limited to examining the impact of expenses at the time they are incurred. *See Attorney Gen. v. Dep't of Pub. Utils.*, 390 Mass. 208, 229 (1983) (ruling a determination of reasonableness or prudence may not properly be made on the basis of hindsight judgments). Given that the 911 Department's FY 2010 budget forecasts a Fund surplus at year end, the increase in the 2010 expenditures does not impact the stability of the fund for FY 2010.

In sum, the DTC finds that the 911 Department has adequately proven that its projected administration and program expenses for FY 2010 are necessary to provision E911 and disability access programs. Moreover, the 911 Department has satisfactorily established that it can incur its projected FY 2010 expenses while maintaining a stable surcharge. Thus, the DTC concludes that the 911 Department FY 2010 expenses are prudently incurred.

C. STABILITY OF THE SURCHARGE

The DTC will now address the long-term stability of the surcharge. The Fund began FY 2009 with a surplus balance of \$70, 011, 474, and with surcharge revenues of \$64,630,225. *See* Petition at C. If the 911 Department holds to its current projection as submitted in its Petition, the Fund will end FY 2012 with a balance of only \$2,271,916. *Id.*

The DTC is concerned that the overall rate of expenditures greatly exceeds annual surcharge revenues and is rapidly depleting the Fund surplus. *See* Petition at C. Unless expenditures are brought in line with surcharge revenues, the Fund balance will be in a deficit within three years. *Id.* For FY 2010 through FY 2012, the 911 Department budget plans to spend \$273,862,812 at an average of \$91,287,604 a year. *See* Petition at C. With surcharge revenues expected to remain constant at \$69,381,675 per year, 911 Department expenditures will outpace revenues by an average of \$21,905,929 per year. *See supra* at 10. This budget deficit is being covered with surpluses from the Fund. *See* Petition at C. Continuing this projection, the Fund will end FY 2013 with a deficit balance of over \$30,000,000 (thirty million dollars). The DTC notes that the Fund is simply unable to sustain this level of spending without a substantial increase to the surcharge.

Moreover, year-to-year analysis of the budget projections reveals a larger concern, namely, rather than remaining constant, expenditures are projected to increase every year while revenues remain constant. *See* Petition at C. By FY 2012, the 911 Department projects expenditures of \$105,802,667. *Id.* While the DTC is convinced the 911 Department will do what it can to “make adjustments” in the budget, the DTC is concerned because a large portion of the 911 Department expenditures are committed expenses over which the 911 Department has little control. *See* Exh. D.T.C. 1-34(c). As the 911 Department states, “[a]t a minimum, 90 percent of the overall (911) Department budget goes to support local PSAPs and the disability

access program.” *Id.* With so much of the budget committed to spending on these programs, the 911 Department has little flexibility with which to make adjustments. Further, as the Fund surplus is depleted, there will be no capital left for the 911 Department to use to fund projects like Next Generation 911 or the wireless project.

The 911 Department did provide the DTC with two alternative five-year budget scenarios to demonstrate how funding might work beyond FY 2012. *See* Exh. D.T.C. 2-7 Attachments A and B. While both projections leave the Fund with a surplus balance through FY 2014, the DTC is not persuaded that they are reliable because both projections rely on assumptions about which neither the DTC nor the 911 Department have sufficient information on which to base a sound and accurate prediction. As the 911 Department testified “[t]he \$38 million figure (for Next Generation solution) is based on estimates derived from very preliminary information the 911 Department has gathered by talking with potential vendors at information sessions” and “it is impossible for the 911 Department to place any level of confidence in such figure.” *Id.*

Therefore, because the projections above are based on unreliable figures, the DTC finds that they cannot be viewed as accurate predictors of changes in the Fund balance. The DTC is not encouraged by the outlook for the Fund balance over the long-term, with great upward pressure on the surcharge, and therefore strongly encourages the 911 Department to review its long-term planning in order to ensure that ratepayers are not unreasonably impacted by spending on 911 and disability access programs. In order to better assess the continued long-term health of the Fund, pursuant to our statutory authority, the DTC will require future petitions for approval of expenditures to be accompanied by five-year forecasts based on data and assumptions in which the 911 Department is confident. *See* G. L. c. 6A, § 18(c).

V. ORDER

Accordingly, after due consideration, the DTC:

APPROVES the 911 Department FY 2011 Development Grant allocations;

APPROVES the 911 Department FY 2010 expenditures; and

ACCEPTS the 911 Department petition as satisfying the requirements of G. L. c. 6A, § 18H(b) to file an annual report on the financial condition of the Enhanced 911 Fund.

By Order of the DTC,

/s/

Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.