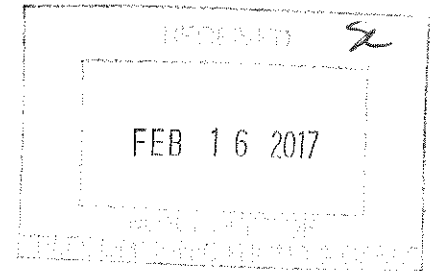




February 16, 2017

Ms. Sara Clark  
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RE: DTC Docket No. 17-1; Petition of the State 911 Department for Approval of Fiscal Year (FY) 2017 Expenditures, FY 2018 Development Grant Amount, FY 2018 Incentive Grant Regional Emergency Communications Center Category Amount, and FY 2018 Incentive Grant Regional Public Safety Answering Points Serving Two Communities Amount

CTIA<sup>1</sup> submits this letter to express its concerns over the State 911 Department's ("911 Department's") request that the Department of Telecommunications and Cable ("DTC") authorize an increase in the 911 Department's projected expenditures for Fiscal Year 2017 to a level nearly \$89 million, or approximately 100%, above actual expenditures for Fiscal Year 2016.<sup>2</sup> Any increase in the 911 Department's projected expenditures should be examined carefully because the statutory mandate that E911 surcharges be "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system"<sup>3</sup> has not been effectuated by the 911 Department's rules governing E911 surcharge collection and remittance. Due to the manner in which the 911 Department's rules prescribe collection of E911 surcharges, prepaid wireless customers, unlike other classes of customers, do not contribute to the State's E911 Fund directly.

CTIA and its member companies support investment in NG911 technology, which will provide a number of benefits to consumers and the public safety community, but collection and remittance of E911 surcharges to support such investment must be

<sup>1</sup> CTIA – The Wireless Association® ("CTIA") ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> See Petition of the State 911 Department for Approval of Fiscal Year (FY) 2017 Expenditures, FY 2018 Development Grant Amount, FY 2018 Incentive Grant Regional Emergency Communications Center Category Amount, and FY 2018 Incentive Grant Regional Public Safety Answering Points Serving Two Communities Amount, DTC Docket No. 17-1 (January 9, 2017).

<sup>3</sup> See M.G.L. ch.6A §18H(a).



equitable and conform to statutory requirements. To promote both investment in NG911 technology and lawful collection and remittance of E911 surcharges, the DTC should encourage the 911 Department to adopt E911 surcharge rules that implement a "point of sale" ("POS") methodology. Alternatively, the DTC should urge the Legislature to compel the 911 Department to adopt rules implementing a POS methodology. Adoption of a POS methodology would fulfill the statutory requirement for "equitable and reasonable" collection and remittance of E911 surcharges in a manner that imposes the surcharges "on each subscriber or end-user," and will increase revenue available for investment in NG911 technology.

The 911 Department's current methodology for collecting E911 surcharges fails to conform to Massachusetts law. By statute, the E911 surcharge must be "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system"<sup>4</sup>; and E911 surcharge collection and remittance must be "equitable and reasonable."<sup>5</sup> The 911 Department's regulations require that wireless providers either (1) collect E911 surcharges from subscribers on a monthly basis; or (2) calculate and remit E911 surcharges on a monthly basis based upon the product of the provider's Massachusetts revenue for prepaid wireless service divided by its national average revenue per prepaid user, multiplied by the E911 assessment surcharge. The 911 Department's rules fail to meet the statutory prescription that the E911 surcharge be "imposed on each subscriber" because prepaid providers cannot collect surcharges from their customers due to the lack of a direct and ongoing billing relationship with them. The 911 Department's rules also fail to conform to statutory mandates because only wireline, postpaid wireless, and Internet-based voice service customers pay E911 surcharges directly, creating an inequitable, disparate surcharge impact among classes of consumers in violation of the statutory requirement that surcharge collection and remittance be "equitable and reasonable."

In addition to conforming to statutory requirements, a POS methodology for prepaid wireless – which has been adopted in 38 states, the District of Columbia, and the U.S. Virgin Islands – would also increase overall collections by at least \$5 million annually.<sup>6</sup> This would provide relief to Massachusetts postpaid wireless consumers, who currently face a combined tax, fee, and surcharge rate of 13.61% on wireless service in Massachusetts. This includes an average state tax and fee burden of 7.79% on wireless service and an additional 5.82% federal USF surcharge. In contrast, the general sales tax rate in Massachusetts is only 6.25%.<sup>7</sup>

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<sup>3</sup> See M.G.L. ch.6A § 18H(a).

<sup>5</sup> See M.G.L. ch.6A § 18H(a).

<sup>6</sup> See Mackey, Scott, "Further Updated Massachusetts Prepaid Point of Sale Revenue Estimate", KSE Partners (December 19, 2013), at Appendix A.

<sup>7</sup> See Mackey, Scott and Henchman, Joseph. "Wireless Taxation in the United States 2014." Tax Foundation (October 8, 2014), available at <http://taxfoundation.org/article/wireless-taxation-united-states-2014>.



For these reasons, the DTC should encourage the 911 Department and the Legislature to adopt a POS methodology for collection of E911 surcharges from prepaid wireless consumers to ensure that E911 surcharges are imposed equitably, reasonably, and in the manner required by law.

Respectfully submitted,

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