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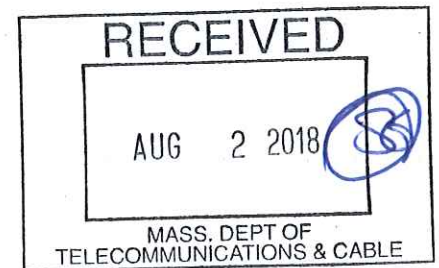
DANIEL BENNETT
Secretary of Public Safety
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August 2, 2018

VIA ELECTRONIC MAIL

Ms. Shonda Green
Executive Administrative Coordinator
Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500



RE: D.T.C. 18-2, Petition of the State 911 Department for Approval of Fiscal Year 2018 Expenditures, Adjustment of the Enhanced 911 Surcharge, Approval of Fiscal Year 2019 Development Grant Amount, and Approval of Fiscal Year 2019 Incentive Grant Regional PSAP Three to Nine Communities Category Amount

Dear Ms. Green:

In connection with the above matter, enclosed herewith for filing is the Opposition of the State 911 Department to CTIA's Motion for Reconsideration of June 29, 2018 Order.

Thank you for your attention to this matter.

Sincerely,

Louise M. McCarthy
General Counsel

Enclosures

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

Petition of the State 911 Department for Approval of Fiscal Year)
2018 Expenditures, Adjustment of the Enhanced 911 Surcharge,)
Approval of Fiscal Year 2019 Development Grant Amount, and)
Approval of Fiscal Year 2019 Incentive Grant Regional PSAP)
Three to Nine Communities Category Amount)
)

D.T.C. 18-2

**OPPOSITION OF THE STATE 911 DEPARTMENT TO CTIA'S MOTION FOR
RECONSIDERATION OF JUNE 29, 2018 ORDER**

The State 911 Department opposes CTIA's motion for reconsideration of the Department and Telecommunications and Cable ("DTC") Order dated June 29, 2018 ("Order").

CTIA argues that the DTC erred as a matter of law in finding that the Commonwealth of Massachusetts Interoperable Radio System ("CoMIRS") is eligible for funding through the Enhanced 911 ("E911") surcharge, erred in approving a surcharge that reflected inclusion of this invalid budget item, and should correct its error of law.

For the reasons set forth below, the DTC Order correctly concludes, based on the record, that the State 911 Department's proposed expenditures are prudently incurred and statutorily authorized.

I. Introduction and Overview

Chapter 223 of the Acts of 2008 ("the legislation") established the State 911 Department and requires that the State 911 Department coordinate and effect the implementation of enhanced 911 service and administer such service in the Commonwealth. *See* G.L. c. 6A, § 18B(d).

The stated purpose of the legislation is to further protect the public's safety by improving the Commonwealth's ability to coordinate and administer the enhanced 911 system and to ensure the most efficient and consistent approach for enhanced 911 service to all cities and towns throughout the Commonwealth.

The legislation grants the State 911 Department broad authority with respect to the coordination, administration, and operation of the Massachusetts 911 system and services. *See* G.L. c. 6A, §§ 18B-J. The State 911 Department is the sole and exclusive agency charged with overseeing the 911 system, including, without limitation, furnishing the necessary customer premises equipment to operate the 911 system, determining the number and location of Public Safety Answering Points (“PSAPs”), ensuring that 911 telecommunicators are properly trained and certified, requiring PSAPs to provide emergency medical dispatch for callers requesting medical assistance, establishing performance standards for the enhanced 911 service provider, and providing and maintaining disability access programs. *See* G.L. c. 6A, §§ 18B-J.

The legislation also requires the State 911 Department to develop and administer grant programs to assist PSAPs and Regional Emergency Communication Centers (“RECCs”) in providing enhanced 911 service and to foster the development of regional PSAPs, regional secondary PSAPs, and RECCs. *See* G.L. c. 6A, 18B(i). The legislation requires that the State 911 Department implement and fund a Regional and Regional Secondary PSAP and Regional Emergency Communications Center Development Grant (“Development Grant”). *See* G.L. c. 6A, § 18B(i)(1)-(5). The stated purpose of the Development Grant is to “support the development and startup of regional and regional secondary PSAPs and regional emergency communication centers, including the expansion or upgrade of existing regional and regional secondary PSAPs, to maximize effective emergency 911 and dispatch services as well as regional interoperability. (emphasis added) *See* G.L. c. 6A, § 18B(g)(5). Thus, effective dispatch and regional interoperability are stated goals of the legislation. As described more fully below, the proposed statewide radio system directly supports these dispatch and interoperability goals.

The legislation sets forth the allowable expenses to be reimbursed under certain of these required grant programs. Among the allowable expenses for the Support Grant are “radio consoles” and, for regional PSAPs and RECCs “allowable expenses related to the acquisition and maintenance of public safety radio systems.” *See* G.L. c. 6A § 18B(i)(2). Thus, the legislation clearly permits E911 funding for radios and radio systems.

The legislation also directs the State 911 Department to review and assess new communications technologies that may include, but are not limited to, wireless, video, broadband, and IP-enabled applications that may serve as the next generation 911 technology platforms. *See* G.L. c. 6A, § 18B(h).

In short, the legislation calls for a comprehensive, robust, evolving 911 system and assigns the State 911 Department broad authority in fulfilling these responsibilities and obligations. In accordance with the legislation's directive to assess the next generation 911 technology platforms, in 2017, the State 911 Department completed the deployment of a comprehensive, end to end, fully featured, standards-based Next Generation 911 system to replace the legacy enhanced 911 system. *See* Petition, at 11-12. The new system is more efficient and effective than its predecessor, offering new capabilities such as text to 911. *See* Petition, at 11-12.

Likewise, the current statewide radio system is in need of replacement. *See* Petition, at 14-15. A recently concluded independent study of the radio network identified critical deficiencies and recommended the immediate replacement of the 25-year-old analog platform with a new digital platform that assures mission critical voice communications, provides greater capacity, expands coverage, and addresses radio spectrum efficiency issues. *See* Petition, at 14-15. As the study highlights, the statewide radio network serves a vital role in 911 dispatch, and it provides needed backhaul for local public safety communications needs. *See* Petition, at 14-15.

The upgrade of the radio network is a critical path item to ensuring the effectiveness of 911 emergency response going forward. The value of the Next Generation 911 system depends upon the ability of the 911 telecommunicator to communicate with other PSAPs and with public and private safety agencies such as police, fire, medical, ambulance, and emergency medical services entities. Funding and deploying mission critical public safety communication systems in tandem with the Next Generation 911 system is a top priority, and these radio infrastructure improvements will help assure the timely and appropriate response by first responders to emergency requests received and handled by PSAPs throughout the Commonwealth. *See* Petition, at 14-15.

II. The DTC Order correctly concludes that the State 911 Department's proposed expenditures are prudently incurred and statutorily authorized.

CTIA argues that CoMIRS is not eligible for funding through the E911 Surcharge. CTIA also argues that the DTC ignores facts in the record showing that the majority of the CoMIRS expenses are ineligible for support even under the DTC's own analysis.

The DTC Order correctly concludes, based on the record, that the proposed expenditures for CoMIRS are prudently incurred, statutorily authorized expenses necessary to administer and operate the 911 system in the Commonwealth.

Emergency radio communication is an essential component of providing enhanced 911 services to the residents of and visitors to Massachusetts. CoMIRS serves as the primary, statewide, interoperable communications tool for PSAPs to communicate with public safety organizations and to arrange the timely dispatch of first responders to resolve 911 emergency calls. The planning and investment for a digital upgrade of the statewide interoperable radio system addresses the radio needs for multiple first responder organizations that provide emergency response and services in support of the operations of the Commonwealth's PSAPs. It also assures the effectiveness of PSAP communications backhaul and redundancy and provides some of the key infrastructure needed to support PSAP regional consolidation. *See* Petition, at 14.

The facilities and equipment of the statewide radio system play an integral role in ensuring that "enhanced 911 service" is provided to "end users" and "subscribers" of "communications service providers" as defined in G.L. c. 6A, § 18A. *See* AGO IR's.

The responsibility to ensure that 911 calls are routed to PSAPs located throughout the Commonwealth is certainly an important component of the State 911 Department's statutory responsibility. However, the routing of 911 calls to the appropriate PSAP, while critical, is merely one component of the E911 service that is provided to 911 callers. The State 911 Department's statutory obligations are not limited to simply routing the 911 calls and providing the network and equipment necessary for a call to reach the 911 system. The routing of inbound calls into the 911 system and the ability of a call to reach a PSAP would mean nothing to the caller if the PSAP could not dispatch the 911 call. The delivery of 911 services depends upon the dispatching of the 911 calls. *See* AGO IR's.

This obligation does not end by simply ensuring that the call reaches the PSAP. Rather, the State 911 Department is charged with ensuring that 1) the PSAP receives the call; and 2) the PSAP is able to transmit a request for law enforcement, fire fighting, medical, ambulance or other emergency services to a public or private safety department that provides the requested services.¹ *See* AGO IR's.

Therefore, although the public safety radio system is not used to direct a 911 call to an appropriate PSAP and is not the means by which automatic number identification (“ANI”) or automatic location information (“ALI”) from a 911 caller is provided to a PSAP, the public safety radio system and infrastructure are necessary to support enhanced 911 service throughout the Commonwealth. *See* AGO IR's.

Public safety radios and radio systems are a fundamental component of 911 service, and the 911 system relies upon an operational and interoperable radio communication network in providing 911 service throughout the Commonwealth. *See* AGO IR's.

By definition, a PSAP receives 911 calls, and as importantly, dispatches 911 calls. The dispatch function is inherent in serving as a PSAP. The role of the PSAP does not end when the 911 call reaches the PSAP, but rather the PSAP's role includes the dispatch of the 911 call (either through direct dispatch or through transfer to another public safety facility for dispatch). The dispatch of the 911 call is part of the PSAP's function. The PSAP must not only receive the 911 call, but also ensure that the 911 call is properly dispatched. This is the core component of the job of a 911 telecommunicator, and radio services are a core component of performing this function. A PSAP is required to transmit emergency call information to responders, and it is simply not possible to operate a PSAP without radios, radio coverage, and a radio network and infrastructure. The PSAPs must be able to interface with the public radio system in order for the dispatchers to communicate with first responders. *See* AGO IR's.

The dispatch function provided by PSAPs is distinguishable from the response function provided by “public safety departments,” and, therefore, law enforcement vehicles, ambulances, and fire fighting apparatus would not be considered to be directly related to enhanced 911. *See*

¹ The legislation defines “Public safety department” as follows: “a functional division of a municipality or a state that provides fire fighting, law enforcement, ambulance, medical or other emergency services.” *See* G.L. c. 6A, § 18A. These are the entities to which the 911 calls are to be transferred or relayed for the provision of emergency services.

AGO IR's. CTIA argues that the universe of potential items for funding could spiral beyond the intent of the legislation. The following hearing testimony addresses this argument: "I want to be very clear about this. Nobody is going to say it, I will. This is not about trying to, you know, buy police cruisers with funding. This is not about trying to buy fire engines or other types of gear. We believe that this is about communication infrastructure. The ability to communicate with our first responders in order to complete, you know, not only the 911 calls, but day-to-day operational communications infrastructure for our public safety community that we deal with every day. 911 is a major component with it. Anything that we're requesting is really for the communication and structure of support . . ." *See Tr. at 55.*

Radio is directly related to the delivery of a 911 call and, therefore, serves as a fundamental component of enhanced 911 service. Although the PSAP does not communicate directly with the end user or subscriber (911 caller) over the radio, radio is a core part of the enhanced 911 service that is provided to the end users and subscribers who dial 911 in an emergency. *See AGO IR's.*

In addition, in the event of a catastrophic event when 911 calls are unable to be delivered to the PSAPs, the public safety radio system provides the Commonwealth with a fully interoperable, statewide backup communications solution. *See AGO IR's; See Tr. at 32.* The system also provides the capability for interoperable communications among multiple jurisdictions. *See Tr. at 26.*

The radios and radio networks are directly associated with enhanced 911 service. Enhanced 911 service does not end when the 911 call reaches the PSAP. The dispatching of a 911 call is a fundamental, core component of the enhanced 911 service provided to subscribers and end users. *See AGO IR's.*

All of the Commonwealth's PSAPs operate and depend on public safety radio systems to dispatch and communicate with first responders and to interoperate with other municipalities and state resources. Radio communications on the CoMIRS radio network are the primary means of interoperable communications for PSAPs. *See Petition, at 14.* The following hearing testimony further describes the ability of CoMIRS to serve as an interoperable system: "It can be used in lieu of a 911 call where a police officer, or a firefighter, or an EMT responds to the situation where they see an issue. They can use that radio communication to call and dispatch for emergency services in lieu of a 911 call. I think it is a network, an infrastructure. It is used for day-to-day

operations both in the 911 field and for the day-to-day operations of providing security and safety for the residences [sic] in the Commonwealth through police, fire, emergency medical.” *See* Tr. at 23.

CTIA argues that certain of the radios will be provided to “ineligible” agencies. The following hearing testimony addresses this argument: “This is a system and a network that's built and designed to provide our first responders the appropriate communications for day-to-day operations and for emergency response. You can't separate a network out. You can't partition radios that simply. This is an integrated system that we've designed in collaboration with all of our communities with the understanding that 911 service . . . is the most important service that we can provide our folks.” *See* Tr. at 39.

In addition to day-to-day local and regional mutual aid partners, PSAPs routinely interoperate with several state agencies, including the Department of State Police, the Environmental Police, the Transit Police, the Department of Conservation and Recreation, and the Massachusetts Department of Transportation, to ensure immediate response to emergency calls and to enhance mutual aid response. *See* Petition, at 14.

The current statewide radio infrastructure provides operable and interoperable radio communications for two hundred forty-five (245) agencies with approximately thirty thousand (30,000) subscriber units (portable and in-vehicle mobile radios). The CoMIRS overhaul is expected to take approximately five (5) years to complete and will be the subject of a competitive bidding process. *See* Petition, at 15.

CTIA argues that the record is unclear as to how many CoMIRS radios are included in the budget request. The following hearing testimony addresses the issue with current best estimates of the number of radios to be replaced: “That’s the best number we could come up with based on current users on CoMIRS statewide. Understanding that once we built out the network to be completely digital, the people that are on the system today will have an analog radio that would no longer work on the digital network. So the way we approach this was to account for that. I mean, we provided updates for the 19,000. We’ve certainly provided you the list of different agencies and organizations. That right now is the number. I would say it’s probably a good number, give or take a couple here or there . . . So that number right now is the number that we’re working on. It could change. It’s not going to go up tremendously . . .” *See* Tr. at 60-61.

The new radio system will focus on deploying new digital infrastructure across the state, radio consoles at 911 call centers as needed, and subscriber units for users of the network. The proposed design of this new system may also provide an opportunity for municipalities and regional entities with aging and non-supportable systems to join the statewide radio system. This investment will also support PSAP consolidation efforts. *See* Petition, at 14.

Funding and deploying mission critical public safety communication systems in tandem with the Next Generation 911 system is a top priority. These radio infrastructure improvements will help assure the timely and appropriate response by first responders to emergency requests received and handled by PSAPs throughout the Commonwealth.² *See* Petition, at 14.

III. The DTC Order correctly concludes that CTIA's reliance on federal law is misplaced.

Given that the State 911 Department's proposed expenditures are authorized under the legislation, CTIA's reliance on federal law is unnecessary and misplaced. As noted in the Order, the federal law cited by CTIA— The NET 911 Act— explicitly defers to state law to determine which 911 services can be funded by the 911 surcharge.³ The NET 911 Act (42 U.S.C. § 615a-1(f)(1)) states in full:

“Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, **as specified in the provision of State or local law adopting the fee or charge.**”

² CTIA argues that certain of the CoMIRS radios included in the budget request are not eligible for 911 funding because the radios will be provided to agencies that have no role in first response. The following hearing testimony addresses this issue: “When you see these users that seem to be nontraditional first responders, they're not first responders. They're part of the network infrastructure and use the system in order to effectively communicate and call for services in the event of emergencies or operational needs.” *See* Tr. at 28.

³ CTIA argues that, if the DTC does not reconsider its Order, the Commonwealth will risk being eligible for federal grants. Contrary to this assertion, the State 911 Department does not have any applications pending for federal grants. *See* DTC IR 2-8.

Thus, the federal law is not intended to prevent the imposition of a 911 surcharge where, as here, the surcharge is permitted by state law.

For the foregoing reasons, the State 911 Department respectfully requests that the DTC deny CTIA's Motion for Reconsideration.

Respectfully submitted,

State 911 Department



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