



THE COMMONWEALTH OF MASSACHUSETTS
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May 1, 2020

Shonda D. Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

Re: *Petition of the State 911 Department for Approval of FY 2020 Expenditures and FY 2021 Development Grant Amount, D.T.C. 20-1*

Dear Secretary Green:

Enclosed for filing please find the Office of the Attorney General's Comments on the State 911 Department's Petition and Certificate of Service in the above-captioned docket. Please file according to your usual practice. Thank you for your assistance in this matter.

Sincerely,

/s/ Timothy J. Reppucci

Timothy J. Reppucci
Assistant Attorney General

Enclosures

cc: William Bendetson, Presiding Officer
Service List

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

PETITION OF THE STATE 911)	
DEPARTMENT FOR APPROVAL OF)	D.T.C. 20-1
FY 2020 EXPENDITURES AND FY 2021)	
DEVELOPMENT GRANT AMOUNT)	

**OFFICE OF THE ATTORNEY GENERAL’S COMMENTS ON
THE STATE 911 DEPARTMENT’S PETITION**

Pursuant to the Notice Regarding Hearing issued by the Department of Telecommunications and Cable (the “Department”) on March 23, 2020, the Office of the Attorney General (“AGO”) hereby submits written comments in the above-captioned docket. The AGO submits these comments to commend the Department’s continued oversight of the use of ratepayer funds from the Commonwealth’s Enhanced 911 (“E911”) Fund for the Executive Office of Public Safety and Security’s (“EOPSS”) upgrade of the Commonwealth of Massachusetts Interoperable Radio System (“CoMIRS”).

In docket D.T.C. 18-2, the State 911 Department (“State 911”) asked the Department to authorize a \$0.50 increase in the E911 Surcharge from \$1.00 to \$1.50 in order to support an upgrade to CoMIRS. Att. AG-1-2a, at 2–3 (2018 Petition). A dispute arose in that proceeding concerning whether the E911 Fund was a proper source of funds for the CoMIRS upgrade within the meaning of the language of chapter 6A, section 18B(f) of the Massachusetts General Laws. *Petition of the State 911 Dep’t for Approval of Fiscal Year 2018 Expenditures, Adjustment of the Enhanced 911 Surcharge, Approval of Fiscal Year 2019 Dev. Grant Amount, & Approval of Fiscal Year 2019 Incentive Grant Reg’l PSAP Three to Nine Cmtys. Category Amount*, D.T.C. 18-2, at 12–16 (2018). The Department ruled that the statute allowed the use of the E911 Fund to fund the CoMIRS upgrade and found that the proposed fiscal year 2018 expenditures for the

project were or would be prudently incurred. *Id.*, at 15–20. In making this ruling, the Department accepted jurisdiction over the prudence of E911 Fund revenues and expenditures related to the CoMIRS upgrade project. *See, e.g.*, G.L. c. 6A, § 18H(b) (authorizing the Department to investigate the prudence E911 Fund revenues and expenditures for the purpose of recalculating the E911 Surcharge and to adopt rules for the funding of prudently incurred expenses associated with the E911 program).

CoMIRS “is a statewide radio system that provides operable and interoperable communications for 245 public safety and transportation agencies throughout the Commonwealth.” Exh. AG-1-9, at 1 (CoMIRS Strategy Report, Executive Summary). In addition to supporting intradepartmental communications for certain public safety agencies within the Commonwealth, CoMIRS supports interoperable communications amongst a number of public safety entities and for certain interjurisdictional communications systems. *Id.* In areas where CoMIRS is available, “it is the main platform for allowing different jurisdictions to communicate with each other” during mutual aid events. Tr., at 34. Since first seeking E911 funds for the CoMIRS upgrade, State 911 has touted the project as a necessary step for maintaining the existing CoMIRS network and as a way to “provide[] greater capacity, expand[] coverage, and address[] radio spectrum efficiency issues.” Att. AG-1-2a, at 15; Att. AG-1-2b, at 11 (2019 Petition); Exh. 911-1, at 9 (2020 Petition). The planned CoMIRS upgrade to what is called a fully P25 TDMA, digital radio network will accomplish enhanced interoperability and expanded network capacity, allowing more organizations to utilize the network by accommodating more radio channels on each licensed frequency. Tr., at 17–18.

The business case for the CoMIRS upgrade highlighted the importance of this enhanced interoperability and expanded network capacity in the context of the planned FCC auction and

potential loss of a band of radio frequencies currently utilized by a significant number of police and fire departments in the Commonwealth for emergency communications. *See* Exh. AG-1-10, at 114–15, 124–25 (CoMIRS Strategy Report, Current State Assessment and Key Findings). The business case promoted as a benefit of the project that the upgraded network could “serve as an option for T-Band departments” in the Commonwealth:

Upwards of 166 police departments and 83 fire departments in eastern Massachusetts may be impacted by legislative actions to remove 500 MHz (T-Band) spectrum from the public safety pool by 2022 or 2023. As of 2021, the 500 MHz channels currently in use by Boston Area Police Emergency Radio Network (BAPERN) members, Metrofire Network members, and others will revert back to the FCC for public auction in 2023 and must be vacated. This action will force a migration from 500 MHz to other[] bands such as 150 MHz, 450 MHz, 700 MHz, and 800 MHz. This action will accelerate demand for 700/800 MHz channels or drive dislocated users to request service on CoMIRS or both.

Id., at 124–25 (footnote omitted). The P25 TDMA technology’s effective doubling of capacity in licensed spectrum, along with timely spectrum planning and channel plan approval from the FCC, will make it possible for the upgraded CoMIRS to accommodate those jurisdictions and regional interoperable networks, such as BAPERN,¹ once they lose spectrum as a result of the planned T-Band reversion and auction. *Id.*, at 125; *see also* Tr., at 35. The CoMIRS upgrade business plan that was submitted to the Department in D.T.C. 18-2, with a publication date of June 2017, identified an urgency of two to five years for the upgrade’s expanded efficiency and capacity goals. Exh. AG-1-10, at 114, 124; Exh. AG-1-9, at 4.

¹ At least as of 2013, BAPERN’s coverage included 25 percent of the Commonwealth’s land area, one-half of the state’s population, and 9,700 law enforcement officers. National Public Safety Telecommunications Council, *T-Band: What’s Next for Public Safety?*, Presentation at APCO International, at 13 (Aug. 21, 2013), http://www.npstc.org/download.jsp?tableId=37&column=217&id=2852&file=TBand_APCO_Presentation_130821.pdf&page=NPSTC.

So far, the CoMIRS upgrade project appears to be experiencing delays, raising the concern that the upgrade project will not provide its capacity and coverage benefits in a timely manner. As originally planned, the CoMIRS upgrade was to be completed by fiscal year 2022. Exh. AG-1-9, at 13–14. The completed upgrade is now anticipated to occur sometime within fiscal year 2024, and EOPSS is currently unable to commit to accepting any new future users, including those municipal departments that may lose T-Band spectrum licenses in 2022 or 2023. Tr., at 59, 76–77; Exh. AG-RR-2. The AGO understands that the desired funding source for the capital costs of the upgrade—the revenues from the \$0.50 increase in the E911 Surcharge—did not begin to accrue until January 1, 2019.² Tr., at 56. Even after this funding source became available, the project has had delays. In March 2019, EOPSS signed a contract with its engineering design vendor that created a robust set of deadlines, with a final engineering design deadline of September 3, 2019. Att. AG-1-6-1, at 24–26. The engineering design work is now anticipated to be complete by July 31, 2020—almost eleven months after the original due date. Exh. AG-RR-3 (final submission of all project deliverables).

Current delays in implementation already risk the loss of the full benefits of the CoMIRS upgrade project by failing to have an expanded network available in advance of reversion of the T-Band spectrum.³ Further, the recent experience of the Commonwealth in responding to the

² It is not clear that waiting for the increase in the E911 Surcharge was necessary to begin the CoMIRS upgrade project. In June 2018 when the Department issued its order approving use of E911 funds for the CoMIRS upgrade, State 911 had reported a more than \$122 million surplus for fiscal year 2017 and anticipated a surplus for fiscal year 2018 of approximately \$55 million. D.T.C. 18-2, Petition, Exh. A (Apr. 10, 2018). As of March 31, 2018, the E911 Fund had a more than \$144 million surplus for fiscal year 2018. D.T.C. 18-2, Petition, Exh. A - Updated (May 18, 2018).

³ FCC Chairman Pai and some members of Congress have asked Congress to repeal the mandate to auction the T-Band spectrum. See Press Release, FCC, *Chairman Pai Calls on Congress to Protect Public Safety and Repeal T-Band Mandate* (Dec. 2, 2019), <https://docs.fcc.gov/public/attachments/DOC-361103A1.pdf>; Press Release, Senator Ed Markey,

September 13, 2018 Merrimack Valley pipeline incident highlights the pressing need for the Commonwealth to address spectrum efficiency and capacity issues in advance of future mutual aid, emergency events.⁴ The AGO is concerned that, while State 911 has been collecting more than sufficient revenues for the past year and a half in order to move the CoMIRS upgrade forward, the E911 funds are not being used to attain all of the intended benefits of the CoMIRS upgrade as envisioned when this Department first approved expenditures for it.

The AGO encourages the Department to continue to review and scrutinize the E911 Fund revenues and expenditures related to the CoMIRS upgrade project. The Department's "mandate is to maintain a reasonable, stable surcharge in order to protect the interests of communications service ratepayers 'and to serve as a counterweight to the 911 Department's authority.'" D.T.C. 18-2, at 7 (quoting *Petition of the State 911 Dep't for Approval of Fiscal Year 2012 Incentive Grant Reg'l Emergency Commc'ns Ctr. Category Amount; State 911 Dep't Emergency Med. Dispatch Grant; & Fiscal Year 2011 Expenditures*, D.T.C. 11-2, at 4-5 (2011)). And it has a "very important role in overseeing the costs of provisioning 911 services" by "determining

Senators Markey, Schumer, Gillibrand, Warren, and Casey Reintroduce Legislation to Protect Critical First Responder Spectrum (Oct. 31, 2019), <https://www.markey.senate.gov/news/press-releases/senators-markey-schumer-gillibrand-warren-and-casey-reintroduce-legislation-to-protect-critical-first-responder-spectrum>.

⁴ In its report on the incident, the National Transportation Safety Board ("NTSB") included in its findings, "The field radio communications used across fire departments on September 13 lacked adequate interoperability and availability to ensure that emergency responders had efficient means of interdepartmental and intradepartmental communications." NTSB, *Pipeline Accident Report: Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts, September 13, 2018*, NTSB/PAR-19/02, at 48 (Sept. 24, 2019), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf>. Of the agencies involved in the response to the incident, the Massachusetts State Police and North Andover were current users of CoMIRS, and Lawrence and Andover were not. *Id.*, at 10. The NTSB noted the lack of available radio channels and interoperable radios during the event. *Id.*, at 44. State 911 has indicated that the CoMIRS upgrade, once complete, "will better support and benefit current and future users especially during multi-jurisdictional incidents such as the one that occurred in the Merrimack Valley area." Exh. AG-1-7.

whether expenses are prudently incurred.” D.T.C. 11-2, at 5. The AGO encourages the Department to continue to review the use of E911 funds for the CoMIRS project and to consider the impact of project delays both on the prudence of the added Surcharge fees being collected to fund the project and on public safety. *See* G.L. c. 6A, § 18H(b) (authorizing Department investigations into the “prudence of . . . revenues and expenditures for the purpose of recalculating the surcharge” and the adoption of “rules that provide for the funding of prudently incurred expenses associated with” E911 programs).

The AGO thanks the Department for this opportunity to provide comments on this important ratepayer and public safety issue and to have participated in the above-captioned docket.

Respectfully submitted,

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DATED: May 1, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of 207 C.M.R. 1.05(1). Dated at Boston this 1st day of May, 2020.

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