



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

D.T.C. 18-2

June 29, 2018

**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**

ORDER

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I. INTRODUCTION AND PROCEDURAL HISTORY

On April 10, 2018, the State 911 Department (“911 Department”) petitioned the Department of Telecommunications and Cable (“DTC”) for approval of the following: (1) an increase of 10% or more for its projected expenditures for Fiscal Year (“FY”) 2018; (2) an adjustment of the Enhanced 911 (“E911”)¹ Surcharge for each subscriber or end user whose communication services are capable of accessing and utilizing an E911 system (“surcharge”) to \$1.50,² to provide for expenses associated with 911 services; (3) an increase of 10% or more for

¹ 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–18J and G.L. c. 166, §§ 14A, 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.

² The 911 Department’s Petition did not specify an effective date for the proposed surcharge increase.

the Development Grant category allocation amount for FY2019; and (4) an increase of 10% or more for the Incentive Grant Regional Public Safety Answering Point (“PSAP”) Three to Nine Communities category allocation amount for FY2019 (collectively “Petition”). The DTC has ninety days to review and issue a final decision on the Petition before these requests are deemed approved. *See* G.L. c. 6A, §§ 18B(i)(4)-(5), 18H(b), (c).

The Attorney General of the Commonwealth of Massachusetts (“Attorney General”) intervened in this proceeding as of right on April 30, 2018. Att’y Gen.’s Notice of Intervention (Apr. 30, 2018); *see also* G.L. c. 12, § 11E. CTIA—The Wireless Association (“CTIA”) filed a Petition for Leave to Intervene on May 16, 2018, and the New England Cable and Telecommunications Association (“NECTA”) filed a Motion for Limited Participant status on May 15, 2018, each of which the DTC granted during the evidentiary hearing. Transcript of Record (“Tr.”) at 8. The DTC issued its first set of Information Requests to the 911 Department on April 27, 2018. First Set of Info. Requests of the DTC to the State 911 Dep’t (Apr. 27, 2018). The 911 Department filed its responses on May 8, 2018. Responses to First Set of Info. Requests of the DTC to the State 911 Dep’t (May 8, 2018) (“DTC IR 1-1 through DTC IR 1-15”). The DTC issued its second set of Information Requests to the 911 Department on May 10, 2018. Second Set of Info. Requests of the DTC to the State 911 Dep’t (May 10, 2018). The 911 Department filed its responses on May 17, 2018. Responses to Second Set of Info. Requests of the DTC to the State 911 Dep’t (May 17, 2018) (“DTC IR 2-1 through DTC IR 2-12”). The Attorney General issued its first set of Information Requests to the 911 Department on May 10, 2018. First Set of Info. Requests of the Att’y Gen. to the State 911 Dep’t (May 10, 2018). The

911 Department filed its responses on May 17, 2018. Responses to First Set of Info. Requests of the Att’y Gen. to the State 911 Dep’t (May 17, 2018) (“AG IR 1-1 through AG IR 1-6”).

Written comments were filed by the Attorney General, CTIA, NECTA, and the Franklin Regional Council of Governments. Letter from Maura Healey, Attorney General, to Shonda D. Green, Sec’y, DTC (May 22, 2018) (“AG Comments”); Comments of CTIA (May 23, 2018) (“CTIA Comments”); Letter from David W. Bogan, to Shonda D. Green, Sec’y, DTC (June 7, 2018) (“NECTA Comments”); and Letter from Linda L. Dunlavy, Executive Director, Franklin Regional Council of Governments, to Shonda D. Green, Sec’y, DTC (June 7, 2018) (“FRCG Comments”).

On May 23, 2018, the DTC conducted public and evidentiary hearings on these matters. *See generally* Tr. At the evidentiary hearing, the DTC moved 12 exhibits into evidence. (“Hr’g Exhs. 1 through 12”). On June 7, 2018, the 911 Department responded to seven Record Requests (“RRs”) issued by the DTC and one Record Request issued by the Attorney General at the evidentiary hearing. Responses to Record Requests of the DTC to the State 911 Dep’t (June 7, 2018) (“DTC RR-1 through DTC RR-7”); Response to Record Request of the Att’y Gen. to the State 911 Dep’t (June 7, 2018) (“AG RR-1”).

In this Order, the DTC approves the 911 Department’s projected FY2018 expenditures; an adjustment to the surcharge, as discussed herein; the requested change to the FY2019 Development Grant amount; and the requested change to the FY2019 Incentive Grant Regional PSAP Three to Nine Communities category allocation amount.³

³ The 911 Department also has requested that the DTC consider the Petition as satisfying, for FY2018, the requirement under G.L. c. 6A, § 18H(b) that the 911 Department report annually on the financial condition of the E911 Fund to the DTC. Petition at 1 n.1. The DTC grants the 911 Department’s request.

II. ANALYSIS AND FINDINGS

A. Standard of Review

State law requires the 911 Department to petition the DTC for approval of certain budgetary expenditures and percentage allocations for funds disbursed from the E911 Fund. In particular, the 911 Department must petition the DTC if: (1) the projected total expenditures exceed the total expenditures of the previous fiscal year by 10% or more; (2) the projected expenditures for the Development Grant exceed by 10% or more the \$7,500,000 initial total allocation for this grant; or (3) an adjustment to the percentage of the previous fiscal year's total surcharge revenues allocated to one or more of the four Incentive Grants results in total projected expenditures for the combined Incentive Grants that exceed by 10% or more the \$2,660,294 initial total allocation for the combined Incentive Grants. G.L. c. 6A, §§ 18B(i)(4)(ii), (5), 18H(c); Petition at 1, 9, 21; *Petition of the State 911 Dep't for Approval of FY2017 Expenditures, FY2018 Development Grant Amount, FY2018 Incentive Grant Regional Emergency Communication Center Category Amount, and FY2018 Incentive Grant Regional PSAP Serving Two Communities Amount*, D.T.C. 17-1, Order at 27 (April 7, 2017) ("17-1 Order"); *Petition of the State 911 Dep't for Approval of FY2012 Incentive Grant RECC Category Amount, State 911 Dep't EMD Grant, & FY2011 Expenditures*, D.T.C. 11-2, Order at 4 (Feb. 28, 2011).

State law also requires the 911 Department to petition the DTC for approval to adjust the surcharge, which the statute otherwise fixes at seventy-five cents. G.L. c. 6A, § 18H(a)-(b); Petition at 5-6. The statute does not articulate a standard upon which the DTC should base its decision to approve or deny such an adjustment, but does direct the DTC to "adopt rules that

provide for the funding of prudently incurred expenses associated with services provided by sections 18A to 18J, inclusive, and sections 14A and 15E of chapter 166, by means of the surcharge.” G.L. c. 6A, § 18H(b). The DTC is also responsible for establishing all future surcharges. *Id.*

When reviewing 911 Department petitions to increase expenditures or allocations or to adjust the surcharge, the DTC determines whether the 911 Department’s expenditures are, or will be, prudently incurred. *See Petition of the State 911 Dep’t to Adjust the Enhanced 911 Surcharge*, D.T.C. 15-2, *Order* at 4-5 (June 18, 2015) (“15-2 Order”). When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *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, & amplified handsets at pay tels.*, D.T.C. 07-7, *Order* at 7, 9, 19 (Feb. 8, 2008) (“07-7 Order”). 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 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 Investigation by the Dep’t of Telecomms. & 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, & amplified handsets at pay tels.*, D.T.E. 03-63-Phase I, *Order* at 16 (July 14, 2003) (finding that while the State

Emergency Telecommunications Board (“SETB”)⁴ must “support the reasonableness of its proposed expenditures, the [Department of Telecommunications and Energy (“DTE”)]⁵ lacks the jurisdiction to tell the SETB what categories of expenditure it is required to propose”) (“03-83-Phase I Order”). However, even though the 911 Department may make a determination that a certain expense is needed, all expenses must still be prudently incurred. *See 07-7 Order* at 8. Expenses are prudent if they are necessary for the funding of the 911 Department’s provision of E911 services and programs, including disability access programs in the Commonwealth and, at the same time, maintain a stable surcharge level. *See 07-7 Order* at 9; *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, & amplified handsets at pay tels.*, D.T.C. 07-7, *Interim Order* at 7 (Nov. 30, 2007); *Investigation by the Dep’t of Telecomms. & 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, & amplified handsets at pay tels.*, D.T.E. 06-4, *Order* at 27-28, 35 (Dec. 1, 2006).

Given the potentially competing interests of ensuring modern, robust E911 services and maintaining a stable surcharge, the DTC has stated that the 911 Department has the authority to determine what is necessary for the provisioning of E911 service, but that the necessity must be viewed in relation to cost. *See Petition of the State 911 Dep’t for Approval of the Fiscal Year*

⁴ The SETB was the predecessor agency to the 911 Department, and was dissolved on February 1, 2009. *See* 2008 Mass. Acts, c. 223.

⁵ The DTE, the DTC’s predecessor agency, was dissolved on April 11, 2007. *See* 2007 Mass. Acts, c. 19.

2011 Dev. Grant Amount, & Fiscal Year 2010 Expenditures, D.T.C. 10-1, *Order* at 8 (Apr. 5, 2010) (“10-1 *Order*”); 07-7 *Order* at 7. Accordingly, the DTC’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.” *See 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, *Order* at 4-5 (May 27, 2011) (“11-2 *Order*”). The DTC thus must oversee the costs of provisioning 911 services, but that oversight is limited to determining whether the 911 Department’s expenses are prudently incurred. *See id.* If the DTC determines that the 911 Department’s expenses associated with the provisioning of E911 services and programs, including disability access programs are, or will be, prudently incurred, the DTC establishes a surcharge that will fund such expenses. *See* G.L. c. 6A, § 18H(b).

B. Review of 911 Department Projected FY2018 Expenditures

The 911 Department requests DTC approval of projected expenditures of \$171,224,995 for FY2018. *See* Petition at 2, Exh. A. As actual expenditures for FY2017 were \$106,687,952, the 911 Department’s projected FY2018 expenditures represent an increase of over 10% from the previous fiscal year. *See* G.L. c. 6A, § 18H(c) (requiring the 911 Department to seek approval for projected total expenditures that exceed the total expenditures of the previous year by 10% or more). *See* Petition at Exh. A. 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* pp. 4-7. The 911 Department’s projected expenses for FY2018 can be grouped into three cost categories: (a) Administration; (b) Programs, including Grant

Programs; and (c) 9-1-1 Administration and Operation. *See generally* Petition at Exh. A. The DTC analyzes the prudence of these projected expenditures below and determines that the 911 Department's projected FY2018 expenditures are necessary for the provisioning of E911 services and programs, including disability access programs, and are, or will be, prudently incurred.

1. Administration

The 911 Department's administration expenses in FY2018 include salary costs and agency expenses, including small capital projects, totaling \$8,874,619. *See id.* The largest line item in the Administration category of expenses is "Salary Costs," which the 911 Department projects to be \$5,432,926 in FY2018. *Id.* The 911 Department explains that this 2.2% increase over the FY2017 projection is needed to cover contractual step increases and cost of living adjustments required by union contracts. *Id.* at 8. The largest increases in the line items in the Administration category, in both absolute and percentage terms, are in the "Consultant" and "IT services, Equipment" line items. *See id.* at Exh. A. The 911 Department explains that the increase in consultant costs is attributable to the consolidation of existing state police wireless PSAPs located in Middleborough and Framingham into a single 911 Department PSAP in Framingham. *See* DTC IR 1-11. Similarly, the 911 Department explains that the increase in the "IT services, Equipment" line item will cover the cost of additional staff to support the 911 Department's PSAPs as well as Next Generation 911 ("NG 911"), Wireless Direct, Text to 9-1-1 and other projects. *See* DTC IR 2-1. The DTC finds that these expenses are, or will be, prudently incurred.

2. Programs and Grants

Massachusetts law requires the 911 Department to administer several programs related to the provision of E911 services, specifically programs for training, public education, the disabled, and grants. *See* G.L. c. 6A, § 18B(f), (i). The 911 Department's projected program expenditures for these categories in FY2018 total \$85,753,887. *See* Petition at Exh. A. Massachusetts statute establishes minimum and/or maximum spending levels for several of the 911 Department's grant programs, spending beyond which requires the 911 Department to seek DTC approval. *See* G.L. c. 6A, § 18B(i). In 2017, the DTC approved increases in then-proposed FY2018 grant expenditure amounts for the Development Grant, the Incentive Grant for Two Communities, and the Incentive Grant for Regional Emergency Communications Center. *See generally* 17-1 Order. Even where 911 Department projected expenditures for a particular grant do not exceed the spending minimums or maximums that trigger the need for DTC approval pursuant to G.L. c. 6A, § 18B(i), the DTC must determine whether projected spending for these grants will be prudently incurred as part of its review of the 911 Department's total proposed expenditures pursuant to G.L. c. 6A, § 18H(c). The DTC reviews the 911 Department's requests for approval of FY2019 grant amounts separately, below. *See infra* Section II.D., E.

The 911 Department proposes little change to the FY2018 allocation amounts for the PSAP and RECC Training Grant ("Training Grant") and the Support Grant compared to those of the previous fiscal year.⁶ *See* Petition at Exh. A. The amounts remain within each grant's statutorily

⁶ PSAP and RECC Support Grant funds are "disbursed according to a formula that weighs both population served and 911 call volume." G.L. c. 6A, § 18B(i)(2). This grant reimburses: "primary, regional and regional secondary PSAPs and [RECCs] for allowable expenses related to enhanced 911 telecommunicator personnel costs, and the acquisition and maintenance of heat, ventilation and air-conditioning equipment and other environmental control equipment, computer-aided dispatch systems, console furniture, dispatcher chairs, radio consoles, and fire alarm receipt and alert equipment associated with providing enhanced 911 service; regional PSAPs and [RECCs] for allowable expenses related to the acquisition and maintenance of public safety radio systems; regional secondary PSAPs for allowable expenses related to PSAP customer premises equipment maintenance; and primary, regional, and regional secondary PSAPs and [RECCs] for

prescribed allocation. *See* G.L. c. 6A, § 18B(i)(1), (2). Similarly, the 911 Department projects little change in proposed spending for the emergency medical dispatch (“EMD”/Regulatory Compliance Grant (“EMD Grant”)).⁷ *See* Petition at Exh. A. The DTC approved the establishment of the EMD Grant with an initial allocation of 3% of the total surcharge revenues of the previous fiscal year. *11-2 Order* at 8-12. Projected FY2018 expenditures for this grant remain below this level. Petition at Exh. C. The DTC determines that the projected FY2018 funding for the Training, Support, and EMD Grants is necessary for the 911 Department to meet its statutory obligations and finds that these projected expenditures are, or will be, prudently incurred.

The 911 Department projects increases in proposed FY2018 expenditures for the Wireless State Police Grant and the combined Incentive Grants. *See id.* at Exh. A. In each case, the proposed FY2018 expenditures are within the statutorily prescribed allocations and do not require DTC approval pursuant to G.L. c. 6A, § 18B(i)(3) and (4). The Incentive Grant programs are designed to support PSAP regionalization. *See id.* § 18B(i)(4), (5). Currently, thirty Massachusetts municipalities have regionalized their PSAP operations and another thirteen municipalities have begun the regionalization process. *See* Petition at 11. Massachusetts has far more PSAPs per capita than the national average. *See* FED. COMMC’NS COMM’N, NINTH ANN. REP. TO CONGRESS ON STATE COLLECTION & DISTRIBUTION OF 911 & ENHANCED 911 FEES & CHARGES at 6-8 (2017), <https://www.fcc.gov/files/9thannual911feereportpdf> (“*Ninth FCC Report*”). Regionalization is one way of achieving the goal of maintaining an efficient and consistent E911 service. *See* G.L. c. 6A,

any other equipment and related maintenance associated with providing enhanced 911 service as approved by the [911 Department].” *Id.*

⁷ While changes in funding levels for the EMD Grant do not have statutory limits beyond which the 911 Department is required to obtain DTC approval, the EMD Grant’s initial funding level provides some standard against which proposed funding levels can be measured.

§ 18B(i)(5); Petition at 3. The 911 Department's consolidation of the two largest Massachusetts State Police-operated PSAPs furthers this goal. *See* Petition at 10, 16. The DTC finds that, given the goal of increased regionalization, the proposed increases in these grants are necessary not only to maintain support for existing Regional PSAPs and RECCs, but also to ensure that sufficient funding is available for increased regionalization. As a result, the DTC determines that the increased expenditures for these grants are, or will be, prudently incurred.

3. 9-1-1 Administration and Operation

The third category of projected FY2018 expenses is "911 Administration and Operation," which the 911 Department projects to be \$76,596,489. *See* Petition at Exh. A. This category is dominated by spending for the E911 support program and for NG 911, which replaced the E911 system. Projected FY2018 spending for this category is below the amount projected for FY2017, \$90,695,996, but above actual FY2017 expenditures of \$47,159,890. *See id.* This partly reflects a delay in expenditures for the NG 911 system. Tr. at 78; DTC IR 1-10. The projected decline from projected FY2017 to projected FY2018 spending also reflects a winding down of the E911 Support program: the 911 Department only funded the E911 Support program for the first six months of FY2018 and, in addition, the level of support for these months decreased consecutively. *See* DTC IR 2-2; Tr. at 71.

a. E911 and NG 911

The 911 Department's transition to NG 911 responds to its mandate to "review and assess new communications technologies that may include, but are not limited to, wireless, video, broadband, and IP-based applications that may serve as the next generation 911 technology platforms, consistent with FCC decisions and federal law." G.L. c. 6A, § 18B(h). The 911

Department began this process in 2009, and, in August 2014, after issuing a Request for Response and undergoing a detailed evaluation process, entered into a five-year contract with General Dynamics Information Technology (“GDIT”) for NG 911 products and services. *See* Hr’g Exh. 9. The 911 Department spent significantly less on non-recurring NG 911 costs in FY2017 than it had projected, reflecting delays in either completing capital projects or equipment purchases, or in disbursing funds to pay for these projects. *See* Tr. at 78; DTC IR 1-10. Much of the proposed FY2018 expenditure of \$29,970,363 for this line item is to fund these capital projects or equipment purchases. *See* Hr’g Exh. 9; Tr. at 78; Petition at Exh. A. With the NG 911 system having become fully operational in the middle of FY2017, future recurring NG 911 costs are projected to increase, compared with FY2017 spending. Petition at Exh. C. Both FY2018 projected non-recurring and recurring NG 911 costs are based on the 911 Department’s contract with GDIT. *See* Hr’g Exh. 9; Petition at 14. The DTC finds that the 911 Department’s projected FY2018 recurring NG 911 costs are contractual and are necessary to achieve the 911 Department’s statutorily mandated goal. The DTC finds that the projected FY2018 expenses related to NG 911 and E911 are, or will be, prudently incurred.

b. Statewide Radio Infrastructure

The 911 Department proposes to spend \$5,000,000 for “Statewide Radio Infrastructure” in FY2018. Petition at Exh. A. This includes spending to purchase dispatch consoles and radios for the Massachusetts State Police, repair backhaul links, and replace simulcast reference clocks, all of which are components of the Commonwealth of Massachusetts Interoperable Radio System (“CoMIRS”). *See* Tr. at 127-130. CoMIRS is the statewide radio system that provides operable and interoperable communications, including E911 service, for 245 public safety and

transportation agencies throughout Massachusetts. *See id.* These expenses are the first of those that the 911 Department plans to incur to upgrade CoMIRS, as recommended by a CoMIRS Radio Modernization Strategy Report, Version 1.0 at Section 8, p. 6 (June 2017) (“CoMIRS Report”) commissioned by the Executive Office of Public Safety and Security.⁸ *See* Tr. at 17; DTC IR 1-7(a)(11); DTC IR 2-9. The interveners as well as the limited participant have questioned the 911 Department’s authority both for these proposed FY2018 expenditures and for the related expenditures that the 911 Department proposes to expend from FY2019 through FY2023 that are necessary to complete the CoMIRS Upgrade. Petition at 14-15, Exh. C; AG Comments at 2-3; CTIA Comments at 2-5; NECTA Comments at 3-4. The Franklin Regional County of Governments commented in support of the expenditures. FRCG Comments. The 911 Department states that the requested surcharge increase in this Petition, which the DTC addresses separately below, is intended to cover the projected costs of the CoMIRS Upgrade. Petition at 3. Therefore, the DTC will examine both the FY2018 proposed expenditure of \$5,000,000 for “Statewide Radio Infrastructure” contained in the proposed FY2018 budget and the proposed FY2019 CoMIRS Upgrade expenditures, together here. *See id.* at Exh. C.

CTIA and NECTA claim that both federal and state law apply to what expenditures are eligible to be paid from 911 fee revenues and, further, that federal law bans these proposed CoMIRS Upgrade expenditures from the Massachusetts 911 Fund. CTIA Comments at 2-5; NECTA Comments at 2-4. Reliance on federal law here, however, is misplaced. The federal

⁸ Expenses to upgrade CoMIRS can be broken down into seven categories: radio site preparation, radio site digital equipment, central switching equipment, dispatch console equipment, subscriber equipment, FDMA radio site upgrades and engineering and radio management. *See* CoMIRS Report at Section 8, p. 6. Together, these elements of rebuilding CoMIRS are projected to cost approximately \$121,954,575 and will be referred to here as the “CoMIRS Upgrade.” CoMIRS Report at Section 8, p. 5.

statute upon which CTIA and NECTA rely ultimately defers to applicable state or local law to determine what 911 services or programs can be funded by 911 fees.⁹ See CTIA Comments at 4-5 (citing 47 U.S.C. § 615a-1(f)(1)); NECTA Comments at 3 (same). Furthermore, while the FCC has claimed that some state public safety radio expenditures are not 911 related, the FCC lacks the statutory authority to make this determination for state 911 programs.¹⁰ See 47 U.S.C. § 615a-1(f); *Ninth FCC Report* at 43.

⁹ 47 U.S.C. § 615a-1(f)(1) states in full: “Nothing in this Act, the Communications Act of 1934, 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.**” (emphasis added). But see NECTA Comments at 3 (quoting the statute only in part, omitting its deference to state or local law). For the DTC’s application of Massachusetts law, see *supra* pp. 15-18.

¹⁰ In fact, many states have funded their public safety agency radio systems with state 911 fee revenue in order to improve response times and coordination. The New Hampshire 911 Fund covers the cost of the maintenance of the State Police radio system and the personnel costs of the Statewide Interoperability Coordinator office. FED. COMM’NS COMM’N, ANN. COLLECTION OF INFO. RELATED TO THE COLLECTION & USE OF 911 & E911 FEES BY STATES & OTHER JURISDICTIONS: N.H. at 6 (2016), <https://transition.fcc.gov/pshs/911/Net%20911/8th-Report/NewHampshire2016.pdf>. New Jersey, Iowa, Washington, West Virginia, and Guam have also used 911 surcharge revenue to purchase and/or maintain new State Police radios. FED. COMM’NS COMM’N, REP. TO CONGRESS ON STATE COLLECTION & DISTRIBUTION OF 911 & ENHANCED 911 FEES & CHARGES at 12 (2009), <https://docs.fcc.gov/public/attachments/DOC-292216A2.pdf> (New Jersey); FED. COMM’NS COMM’N, ANN. COLLECTION OF INFO. RELATED TO THE COLLECTION & USE OF 911 & E911 FEES BY STATES & OTHER JURISDICTIONS: IOWA at 7 (2016), <https://transition.fcc.gov/pshs/911/Net%20911/8th-Report/Iowa2016.pdf>; FED. COMM’NS COMM’N, SIXTH ANN. REP. TO CONGRESS ON STATE COLLECTION & DISTRIBUTION OF 911 & ENHANCED 911 FEES & CHARGES, Appendix D at 4 (2014), https://transition.fcc.gov/pshs/911/Net%20911/NET911_Act_6thReport_Appendix_D_123014.pdf (Washington); FED. COMM’NS COMM’N, ANN. COLLECTION OF INFO. RELATED TO THE COLLECTION & USE OF 911 & E911 FEES BY STATES & OTHER JURISDICTIONS: W. VA. at 9 (2016), <https://transition.fcc.gov/pshs/911/Net%20911/8th-Report/WestVirginia2016.pdf>; FED. COMM’NS COMM’N, REP. TO CONGRESS ON STATE COLLECTION & DISTRIBUTION OF 911 & ENHANCED 911 FEES & CHARGES at 12 (2011), <https://docs.fcc.gov/public/attachments/DOC-310873A1.pdf> (West Virginia); FED. COMM’NS COMM’N, REP. TO CONGRESS ON STATE COLLECTION & DISTRIBUTION OF 911 & ENHANCED 911 FEES & CHARGES at 13 (2012), <https://docs.fcc.gov/public/attachments/DOC-318391A1.pdf> (Guam).

In the absence of controlling federal law, state law determines whether state or local 911 Fund spending is statutorily authorized. Therefore, the DTC looks to state law to determine whether spending on CoMIRS would be prudently incurred for E911 services and programs. Massachusetts General Laws Chapter 6A, § 18H(a) states that the E911 surcharge was created to cover the “expenses associated with services provided under sections 18A to 18J, inclusive, and sections 14A and 15E of chapter 166.” CTIA and NECTA argue that the 911 Department’s proposed CoMIRS Upgrade expenditures would violate state law because such expenditures are not authorized by G.L. c. 6A, sections 18A to 18J. *See* CTIA Comments at 2-5; NECTA Comments at 2-4; *see also* AG Comments at 2-3 (raising this issue). Specifically, CTIA concludes that expenditures for CoMIRS are not authorized by state law because CoMIRS is not part of the E911 system and, therefore, not among the expenses authorized by G.L. c. 6A, § 18B(f). *See* CTIA Comments at 2-3. The DTC disagrees.

Expenditures from the 911 Fund are authorized by G.L. c. 6A, § 18B(f). G.L. c. 6A, § 18B(f) authorizes the 911 Department to “disburse funds from the Enhanced 911 Fund for prudently-incurred expenses . . . incurred by the state 911 department in administering *and operating* the enhanced 911 system in the commonwealth.” G.L. c. 6A, § 18B(f) (emphasis added). An “Enhanced 911 system[]” is defined as “a distinct entity . . . consisting of network routing elements serving as a control office and trunking connecting all central offices within a geographical segment, *and including PSAPs* and network used to deliver location data to PSAPs from a data base.” (emphasis added). *Id.*, § 18A. The 911 Department not only administers the Enhanced 911 system, but operates PSAPs, which are a key part of that system, including operating the only mobile PSAP in the Commonwealth. Petition at 16. From FY2013 through

FY2016, the 911 Department opened and operated, through a contract, a regional PSAP in Essex County which, by calendar year 2017, handled approximately 15% of the Commonwealth's emergency 911 calls. *See 15-2 Order* at 12, 20; *Ninth FCC Report* at 11. In FY2020, the 911 Department plans to resume operation of the Essex County PSAP. *Petition* at 16; *DTC IR 1-8*. Further, on or about July 1, 2018, the 911 Department will have begun operating a PSAP which will combine the operations of two of the three existing PSAPs previously operated by the Massachusetts State Police. *Tr.* at 106. Thus, beginning in FY2019, the 911 Department will handle more than one million emergency 911 calls annually, one third of all 911 calls made in the Commonwealth, based on 2016 call volumes. *See DTC IR 1-2; Tr.* at 107-108; *Ninth FCC Report* at 11. And by FY2020, the 911 Department will operate PSAPs handling nearly half of all emergency 911 calls in Massachusetts, based on 2016 call volumes. *DTC RR 1-8; Ninth FCC Report* at 11. In addition to authorizing the 911 Department to expend 911 Fund dollars to administer the E911 system in Massachusetts, § 18B(f) authorizes the 911 Department to expend 911 Fund dollars to operate that system, of which these 911 Department PSAPs are a critical part. As a result, § 18B(f) authorizes the expenditure of 911 Funds to pay for the operations of the 911 Department's PSAPs.

Expenditures necessary to operate these 911 Department PSAPs necessarily include those expenditures required to fulfill PSAPs' statutorily prescribed mission of "directly dispatching emergency response services or transferring or relaying emergency 911 calls." G.L. c. 6A, § 18A. This includes expenditures necessary to operate a reliable, interoperable dispatch, transfer, or relay system that reaches every part of the Commonwealth. The duties of dispatching, transferring, and relaying include not only a PSAP employee dialing the phone

number of an emergency responder to which the PSAP employee wishes to transfer an emergency 911 call or choosing the radio channel of an emergency responder to which the PSAP employee wishes to relay the 911 call (or which that employee seeks to dispatch to respond to such a call) but also includes the capability to successfully connect to the emergency responder's communications equipment. *See* AG IR 1-1; Naugatuck Ambulance, Inc. v. Borough of Naugatuck, No. UWYCV156026284, 2015 WL 7060804 at *4 (Conn. Super. Ct., Oct. 20, 2015) (finding that a Connecticut municipality's duty of "directly dispatching emergency response services or transferring or relaying emergency 9-1-1 calls" extends until the request for emergency services is transmitted to the emergency responder). Without this connection capability, the PSAP employee cannot "dispatch" emergency response services or "transfer" or "relay" emergency 911 calls. *See* AG IR 1-1; Naugatuck, 2015 WL 7060804 at *4. Without a connection to an emergency response service's means of electronic communication, the PSAP employee's pushing of a button will not transfer the emergency 911 call nor will her spoken words constitute a "dispatch" or "relay" of that call. *See id.*; Naugatuck, 2015 WL 7060804 at *5 (construing the duty to dispatch emergency response services, or transfer or relay emergency 911 calls in a manner that produces a "reasonable and rational result").

The 911 Department's PSAPs' capability to dispatch, transfer, or relay emergency 911 calls relies on a reliable, interoperable dispatch, transfer and/or relay system that reaches every part of the Commonwealth. *See* DTC IR 1-7(e). In Massachusetts, CoMIRS serves this function. *See* DTC IR 1-7(g). As of June 7, 2018, at least 180 PSAP dispatch consoles were part

of the CoMIRS network, using local public safety radio talkgroups¹¹ to dispatch E911 calls to first responders using the CoMIRS network. AG RR-1. Because the 911 Department's PSAPs rely on CoMIRS to dispatch, transfer, and relay the emergency 911 calls it handles, the proposed expenditures to complete the CoMIRS Upgrade are among those statutorily authorized by G.L. c. 6A, § 18B(f).

Further, as the 911 Department's proposed CoMIRS expenditures are authorized under state law, the expenditures are necessarily authorized under federal law. *See* 47 U.S.C. § 615a-1(f); *supra* p. 14.

Having determined that expenditures necessary to complete the CoMIRS Upgrade are authorized by Massachusetts law, and thus federal law, the DTC must determine whether the CoMIRS Upgrade expenditures proposed for FY2018, for which the Petition seeks DTC approval pursuant to G.L. c. 6A, § 18H(c), are, or will be, prudently incurred. When examining whether an expense is, or will be, prudently incurred, the DTC assesses whether circumstances, at the time the decision was made, adequately justified the reasonableness of the expense. *See 07-7 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. *03-83-Phase I Order* at 16. Many Massachusetts PSAPs, including the 911 Department's PSAPs, rely on CoMIRS to perform their dispatch, transfer, and relay functions, both routinely and in case of emergency or local system failure. *See* DTC IR 1-7; Tr. at 32. In addition, CoMIRS provides infrastructure needed by regional PSAPs, allowing the

¹¹ Talkgroups are a group of users given access to a designated radio channel, thereby allowing those users to speak and listen to each other. Talkgroups can be permanent or established on short notice for emergencies. Tr. at 47.

geographically separated call-receiving locations in a regional PSAP to communicate with the other locations in the regional PSAP. *See* Petition at 14. The steps proposed in the CoMIRS Report to complete the CoMIRS Upgrade must be completed in the coming months and years as detailed in the CoMIRS Report in order for the Commonwealth to maintain a reliable, interoperable dispatch, transfer and/or relay system that reaches every part of the Commonwealth. *See* CoMIRS Report at Executive Summary, pp. 3-4. Several critical pieces of the existing CoMIRS system are either failing, are unable, or will soon be unable, to be repaired. CoMIRS Report at Section 2, p. 6-10; Tr. at 114-116, 123. For example, because CoMIRS does not currently reach the entire Commonwealth, PSAPs are not assured of being capable of fulfilling their dispatch, transfer, or relay functions if the emergency responder with whom they wish to communicate is located in one such inaccessible location at the time of the communication. *See* CoMIRS Report at Section 2, p. 75-86; Tr. at 128, 134. This will become increasingly the case because much of the existing non-CoMIRS, local interoperable radio systems which cover portions of the Commonwealth, such as the Boston Area Police Emergency Response Network, upon which some Massachusetts PSAPs currently rely to transfer, relay, or dispatch emergency 911 calls, will lose the spectrum they rely on to function sometime between February 22, 2021 and February 22, 2023. *See* 47 U.S.C. § 1413(a), (c); Tr. at 40. Given the lead time necessary to transfer these users to CoMIRS, it is reasonable to expect that some of the expenses necessary to do so be incurred in FY2018.

Finally, the upgraded CoMIRS system will add features that will improve emergency 911 response compared with that available through the current CoMIRS system, including providing PSAPs clear and reliable dispatch, transfer, and relay throughout the Commonwealth's territory;

allowing both voice and data transmission, as the 911 Department prepares to accept text communications; allowing for voice encryption; and providing radio location capability. *See* DTC IR 1-7.

Further, in addition to the proposed expenditures needed to upgrade CoMIRS and detailed in the CoMIRS Report being critical to the functioning of the 911 system, the CoMIRS Upgrade's component parts are indivisible. *See* Tr. at 56. The CoMIRS system cannot function without all of the proposed components. *Id.* As a result, the expenditures recommended by the CoMIRS Report and proposed by the 911 Department are all necessary for PSAPs to perform their dispatch, transfer, and relay functions, as the system components cannot function on their own. *Id.* at 24-25. A radio network requires both radios and the network infrastructure that allows for the transmission of electronic communication between those radios. *Id.* at 39. This includes radio towers, network management and interconnectivity software, and central switching and dispatch console equipment. *See* DTC IR 2-2. Because the CoMIRS network plays a critical role in the Commonwealth's E911 system, enabling PSAPs to dispatch, transfer, and relay emergency 911 calls, the DTC finds that the FY2018 proposed expenditures related to the CoMIRS Upgrade are, or will be, prudently incurred.¹²

4. Conclusion

¹² The 911 Department has petitioned the DTC to approve FY2018 expenditures related to the capital costs of the CoMIRS Upgrade and for a surcharge adjustment reflecting post-FY2018 CoMIRS Upgrade capital costs. Such expenditures and capital costs do not include CoMIRS operating costs, which will continue to be covered from other sources. Tr. at 126.

The DTC determines that the 911 Department's projected FY2018 expenditures are reasonable and are, or will be, prudently incurred. Accordingly, the DTC approves the expenditures pursuant to G.L. c. 6A, § 18H(c).

C. Adjustments to the Enhanced 911 Surcharge

The 911 Department requests an adjustment of the surcharge to \$1.50 to provide for expenses associated with 911 services. Petition at 1. On July 31, 2008, the Massachusetts General Court established a surcharge of \$0.75 on each subscriber or end user whose communication services are capable of accessing and utilizing an E911 system. 2008 Mass. Acts, c. 223 (codified at G.L. c. 6A, § 18H(a)). In 2015, the DTC approved a one-year increase in the surcharge to \$1.25 followed by an adjustment downward to \$1.00, where it remains today. *See 15-2 Order*. The 911 Department states that it will not be able to meet its statutory mandates absent the requested surcharge adjustment. Petition at 2.

When reviewing the 911 Department's petition to adjust the surcharge, the DTC determines whether the 911 Department's expenditures are, or will be, prudently incurred. *See 15-2 Order* at 4-5. If the DTC determines that the 911 Department's expenses associated with the provisioning of E911 services and programs, including disability access programs are, or will be, prudently incurred, the DTC establishes a surcharge that will fund such expenses. *See 15-2 Order* at 7. In order to determine an appropriate surcharge level, the DTC also examines the reasonableness of the 911 Department's revenue projections. *See 15-2 Order* at 34. Here, the 911 Department requests an increase in the surcharge in order to support CoMIRS Upgrade procurements. Petition at 3. In order to set the surcharge pursuant to G.L. c. 6A, § 18H(b), the DTC considers whether both the 911 Department's proposed CoMIRS Upgrade expenditures and

non-CoMIRS Upgrade expenditures for the fiscal year in which the surcharge will be adjusted, FY2019, are, or will be, prudently incurred.

For the reasons detailed in Section II.B.3.b., *supra*, and for the purpose solely of reviewing the proposed FY2019 surcharge adjustment pursuant to G.L. c. 6A, § 18H(b), the DTC finds that the proposed CoMIRS Upgrade FY2019 expenditures will be prudently incurred. In addition, for the reasons described below, the DTC finds that the 911 Department's proposed revenue projections and proposed non-CoMIRS expenditure projections for FY2019 are reasonable and will be prudently incurred. As a result the DTC grants an adjustment to the surcharge to \$1.50 in FY2019, within the parameters detailed below.¹³

1. Review of Projected Revenues

Fund revenues are generated primarily from the surcharge, which is "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system." G.L. c. 6A, § 18H(a); Petition at 4-5. The Fund's projected annual surcharge revenue is derived by multiplying the average number of monthly subscribers by the surcharge to produce the projected monthly surcharge revenue.¹⁴ Petition at 7. This averaged monthly revenue is then reduced by 1% to account for a carrier administrative fee and 2% to account for uncollectible revenue. *Id.* The adjusted monthly revenue is then multiplied by

¹³ As final FY2018 surcharge revenues are unknown at this time, and statutorily required DTC approvals of 911 Department expenditures are based on an expenditure's percentage of the previous fiscal year's actual expenditures, it is not possible at the time of this Order to determine whether the 911 Department will be required by G.L. c. 6A, § 18H(c) to seek approval of its proposed FY2019 expenditures, or of proposed FY2019 grant expenditures should they require DTC approval pursuant to G.L. c. 6A, § 18B(i), in 2019.

¹⁴ The 911 Department tracks subscriber count by type of service provider on a monthly basis. *See* Petition at 7. This subscriber count is averaged to determine the overall number of subscribers per month per carrier type. *Id.*

twelve to get the annual projected surcharge revenue for each fiscal year. The 911 Department projects surcharge revenues of \$103,515,788 in FY2018 and \$142,988,517 in FY2019. *Id.* at Exh. C. The increase in surcharge revenues projected for FY2019 reflect the 911 Department's proposed surcharge adjustment.¹⁵ *See id.* The projected revenue figures for FY2019 also include earned interest—based on an estimated 0.91% interest rate—from the portion of the Fund that the 911 Department invests.¹⁶ *Id.* at 7, Exh. C. The 911 Department's method of calculating its projected revenue for FY2019 is reasonable. Accordingly, the DTC finds that the 911 Department's revenue projections for FY2019 are reasonable. *See* G.L. c. 6A, § 18H(b).

The DTC, however, encourages the 911 Department to revisit the uncollectible revenue rate, which is currently set at 2.0%. *See 10-1 Order* at 13-14; Tr. at 66. The 2.0% rate included in the 911 Department's revenue projections was first established by the DTC in 2007, prior to the 911 Department's creation, when "Verizon [as the dominant local exchange carrier] was reporting an uncollect[i]ble rate of 2.1 percent across residential and business wireline accounts." *10-1 Order* at 13, citing *07-7 Order* at 12. However, the 911 Department's uncollectible rate has declined dramatically since then, reaching .009% in FY2017. DTC IR 1-1. The DTC

¹⁵ The Petition's FY2019 revenue projection, contained in Exhibit C, appears to assume that the surcharge amount will remain at the current \$1.00 for the first month of that Fiscal Year and then increase to \$1.50 for the remaining eleven months of that Fiscal Year. Because carriers remit the surcharge revenues they collect for a month to the 911 Department in the following month, a surcharge increase effective August 1, 2018 would produce ten months of revenue to the 911 Department in FY2019 at this higher surcharge level, i.e., remitted to the 911 Department in the months of September 2018 through June 2019, inclusive. Surcharge revenues remitted by the carriers for the first two months of FY2019 would have been at the current rate of \$1.00.

¹⁶ The Fund is managed by the State Treasurer. *See* G.L. c. 29, § 23 (charging the state treasurer with managing "all cash, funds, or investments under the control or jurisdiction of any state agency"). The Office of the State Treasurer reports the average interest rate for the Massachusetts Municipal Depository Trust for 2018 at 0.91%. *See* Petition at 7. As the future average interest rates for the Massachusetts Municipal Depository Trust are unknowable at this time, the DTC finds that the Petition's calculation of projected interest based on the latest available rate, 0.91%, is a reasonable assumption for purposes of projecting interest earned on the invested funds for FY2018 and FY2019.

recommends that the 911 Department adjust its methodology for permissible uncollectible revenue percentage(s).

2. Review of Projected FY2019 Non-CoMIRS Expenditures

The 911 Department projects expenditures of \$145,221,886 in FY2019. Petition at Exh. C. The 911 Department does not seek DTC approval of such expenditures under G.L. c. 6A, § 18H(c) at this time. *See* G.L. c. 6A, § 18H(c). However, given that the 911 Department requested approval of an adjustment to the surcharge for FY2019, the DTC must review the prudence of these expenditures under G.L. c. 6A, § 18H(b). *See id.* § 18H(b). As discussed below, for purposes of considering the 911 Department's petition to adjust the surcharge in FY2019, the DTC finds that the 911 Department's projected FY2019 expenditures are necessary to the provisioning of E911 services and programs, including disability access programs, and thus will be prudently incurred.

a. Administration

As discussed above, the 911 Department's Administration expenses can be grouped into the following categories: salary costs, agency expenses, and capital projects. *See supra* Section II.B.1.; Petition at Exh. C. The 911 Department projects a decrease in total Administration costs, from FY2018 projected expenditures of \$8,874,619 to \$7,358,313 projected for FY2019. *See* Petition at Exh. A. This total includes both modest increases in salary costs and sharp declines in the "Agency Expenses," "Consultant," and "IT Services, Equipment" line items, which coincide with the completion of the transition of the Massachusetts State Police PSAPs to the 911 Department in FY2019. *See* DTC IR 1-11; Petition at Exh. C. The DTC determines that the 911 Department's projected Administration expenses in FY2019 will be prudently incurred.

b. Programs and Grants

The 911 Department anticipates largely level funding its programs and sharply decreasing its grant expenditures between projected FY2018 and FY2019. *See* Petition at Exh. C. The 911 Department projects changes in grant spending that coincide with the 911 Department's expectation of the successful regionalization of thirteen PSAPs. *See id.* at 11. For example, while the 911 Department projects a decline in expenditures for the Incentive Grant Two Communities Category, the 911 Department projects an increase in spending for the Incentive Grant Three to Nine Communities Category, reflecting the shift of one regional PSAP from the former to the latter category. *See infra* Section II.E. Most of the projected decrease in grant expenditures in FY2019 is a result of the 911 Department's failure to include funds for roll over line items for the grants. *See* Petition at Exh. C. Beyond those two grant changes for which the Petition sought DTC approval, *see infra* Section II.D., E., none of these projected grant expenditures would represent expenditure or allocation changes requiring DTC approval. *See* G.L. c. 6A, § 18B(i). The DTC determines that these proposed program and grant expenses are required by statute and thus will be prudently incurred.

c. 9-1-1 Administration and Operation

The 911 Department projects 9-1-1 Administration and Operation expenditures, outside of expenditures necessary to complete the CoMIRS Upgrade, to decrease from \$76,596,489 in FY2018 to \$73,381,279 in FY2019. *See* Petition at Exh. C. Proposed spending for the CoMIRS Upgrade increases from \$5 million in FY2018 to \$25 million in FY2019. Expenditures for E911 support end in FY2018 and NG 911 non-recurring costs decline between FY2018 and FY2019, now that the NG 911 system is installed. *Id.* at 14, Exh. C. While the bulk of non-recurring

expenses associated with the deployment of NG 911 are projected to be recorded prior to the start of FY2019, there remain many non-recurring projected expenses necessary to complete the deployment. *See* DTC IR 2-7. These expenses will be incurred pursuant to the 911 Department's contract with GDIT. *See* Petition at 11-13; Tr. at 77-78. The DTC finds that these projected non-recurring NG 911 expenditures are contractual and are necessary to achieve the 911 Department's statutorily mandated goal of establishing NG 911. *See* G.L. c. 6A, § 18B(h). In addition, the 911 Department will assume the nearly \$7.6 million cost of operating the former Massachusetts State Police PSAPs in FY2019. *See* Petition at Exh. C.

Also, the 911 Department's proposed expenditures for 9-1-1 Operation includes the cost of a third data center. *See id.* at Exh. C. The 911 Department states that recent harsh winters illustrated the need for a data center in a different geographic location in order to avoid a statewide weather event or other catastrophe rendering all available data centers inoperable. DTC IR 2-6. While the DTC will not substitute its own judgment for that of the 911 Department as to what is reasonably required to perform the 911 Department's statutory obligations, the need for the two data centers currently operating in Massachusetts, once a third is operating out of state, is not clear. *See* Tr. at 80-86. The DTC may revisit the cost and benefits of the remaining Massachusetts-based data centers as the operations and capabilities of the proposed third data center become clearer. Overall, the DTC finds that the expenditures which the 911 Department proposes for 9-1-1 Administration and Operation are necessary to achieve the 911 Department's statutorily mandated goals and, accordingly, that these projected expenses will be prudently incurred.

d. Conclusion

For the purpose of examining the 911 Department's petition for a FY2019 surcharge adjustment pursuant to G.L. c. 6A, § 18H(b), the DTC determines that the 911 Department's projected FY2019 expenditures are reasonable and will be prudently incurred.

3. Adjustment to \$1.50

Over the past several years, the Fund has amassed a surplus in anticipation of the implementation of NG 911. *See 17-1 Order* at 33. The Fund's ending balance was \$122,694,145 in FY2017. Petition at Exh. A. But as most of the remaining costs of implementing the NG 911 system have been or will be incurred in FY2018, the 911 Department projects an ending balance for FY2018 of \$55,285,805. *See id.* At the current surcharge amount and the FY2017 number of subscribers, revenues for FY2019 would be \$101,132,607.¹⁷ *See* Petition at Exh. C. The 911 Department's projects a starting balance of \$55,285,804 and projected expenditures for FY2019 of \$145,221,886. *Id.* This would leave the 911 Fund's FY2019 ending balance, if the current surcharge amount applied throughout FY2019, at \$11,396,061. In contrast, with a surcharge of \$1.50 beginning on August 1, 2018,¹⁸ the 911 Department projects a FY2019 ending balance of \$53,251,971. *Id.* at Exh. C.

When evaluating the level of surcharge, the DTC must weigh the reasonableness of the 911 Department's proposed expenditures against the interests of telecommunications consumers and of public safety. *See, e.g., 11-2 Order* at 4-5. Indeed, the statute expressly envisions adjustments to the surcharge to fund prudently incurred expenditures. *See* G.L. c. 6A, § 18H(b).

¹⁷ This reflects a \$1.00 surcharge, with 8,671,226 subscribers, minus a 2% uncollectible amount and a 1% carrier administrative fee, plus the interest the 911 Department projected for FY2019. *See* Petition at Exh. C.

¹⁸ *See infra* n. 15.

Given the 911 Department's projected expenditures related to the CoMIRS Upgrade, the DTC finds that adjustment of the surcharge from \$1.00 to \$1.50 is necessary. Nevertheless, given the timing of these expenses and given the interest of carriers and consumers in having time to prepare for a surcharge adjustment, the DTC finds that an adjustment of the surcharge to \$1.50 should be effective January 1, 2019. *See* G.L. c. 6A, § 18H(a)-(b); *07-7 Order* at 9. This surcharge adjustment will leave the 911 Fund with a FY2019 ending balance, based on the 911 Department's projected revenues, interest, and expenditures, of \$32,224,248.¹⁹

4. Adjustment to \$1.00

As discussed above, the 911 Department has requested a surcharge adjustment to \$1.50 specifically in order to complete the CoMIRS Upgrade. The CoMIRS Upgrade budget contained in the CoMIRS Report and the overall project timeframe contained in the Petition warrant a further adjustment to the surcharge after completion of this project. The 911 Department has not indicated any need for future projects beyond FY2023, nor indicated a need for any further expenditures for the CoMIRS Upgrade beyond FY2023. *See* Petition; Tr. at 144-145. Therefore, the DTC determines that as the 911 Department's projected expenditures decrease as a result of the completion of the CoMIRS Upgrade, a decrease in the surcharge is also appropriate. Indeed, if the surcharge remained at \$1.50 after FY2023, the 911 Department would generate, all other expenses remaining static, an annual surplus of at least \$25 million. *See* Petition at Exh. C. As noted above, while the DTC strives for surcharge stability, a temporary increase in the surcharge is appropriate in this case given the one-time costs related to the CoMIRS Upgrade. *See supra* Section II.C.3. Nevertheless, a reversion to the current surcharge amount of \$1.00 is appropriate

¹⁹ For calculation method, see *infra* n. 15, 16.

after the planned completion of this project and will be beneficial to communications service ratepayers. *See 11-2 Order* at 4-5.

5. Conclusion

Given the prudence of the 911 Department's projected FY2019 expenditures as determined above, the DTC finds that an adjustment of the surcharge to \$1.50, effective January 1, 2019, is sufficient and necessary for the funding of the 911 Department's provision of E911 services and programs, including disability access programs. *See G.L. c. 6A, § 18H(a)-(b); 07-7 Order* at 9. Accordingly, the DTC adjusts the surcharge to \$1.50, effective January 1, 2019. In addition, given the 911 Department's projections for the CoMIRS Upgrade, the DTC finds that an adjustment of the surcharge to \$1.00, effective January 1, 2024, is sufficient and necessary for the funding of the 911 Department's provision of E911 services and programs, including disability access programs, at that time. Accordingly, the DTC adjusts the surcharge to \$1.00, effective January 1, 2024.

6. Stability of the Enhanced 911 Surcharge and Condition of the Fund

Having addressed the 911 Department's projected revenues and expenditures and approved two adjustments to the surcharge, the DTC next looks to the condition of the Fund and the long-term prospects for stability of the surcharge. After collection of the \$1.50 surcharge beginning January 1, 2019, the Fund is projected to end FY2023 with a balance of \$1,818,378, assuming CoMIRS Upgrade expenditures are expended as projected by the 911 Department.²⁰

²⁰

This figure reflects the following calculation: 1) projected revenues for the first seven months of FY2019 based on a \$1.00 surcharge, with 8,671,226 subscribers, minus a 2% uncollectible amount, minus a 1% carrier administrative fee, plus projected revenues for the last five months of FY2019 based on a \$1.50 surcharge, with the same number of subscribers, minus a 2% uncollectible amount and a 1% carrier administrative fee, plus the 911 Department's projected FY2019 interest; plus 2) the sum of projected

See Petition at Exh. C. The DTC strives for surcharge stability, but only to the extent that the surcharge sufficiently covers prudently incurred 911 Department expenditures. *See* G.L. c. 6A, § 18H(a). As discussed above, the CoMIRS Upgrade constitutes a substantial, one-time cost to the 911 Department. Once the CoMIRS Upgrade is completed, the 911 Department's expenditures should decrease, but it is unclear at this time by how much. The January 1, 2024, adjustment of the surcharge established herein notwithstanding, the DTC requires the 911 Department to file a petition for review of the surcharge no later than calendar year 2023 to affirm the health of the Fund and the sufficiency of the surcharge. *See* G.L. c. 6A, § 18H(b).

D. Review of FY2019 Development Grant Amount

The 911 Department seeks approval of its proposal to increase the FY2019 Development Grant by 10% or more over the grant's initial funding allocation. *See* Petition at 18-20. The 911 Department projects FY2019 expenditures of \$15,000,000, up from projected expenditures of \$12,000,000 in FY2018. *See id.* at Exh. C. The 911 Department also carries rollover Development Grant expenses that exceed allocations for both FY2018 and FY2019. *Id.* State law requires the 911 Department to obtain DTC approval of any adjustment in the Development Grant that increases the initial funding allocated to the Development Grant, \$7,500,000, by 10% or more. G.L. c. 6A, § 18B(i)(5); Petition at 19.

State law established the Development Grant to "support the development and startup of regional and regional secondary PSAPs and [RECCs], including the expansion or upgrade of existing regional and regional secondary PSAPs." G.L. c. 6A, § 18B(i)(5). The purpose of the

revenues and interest for FY2020-FY2023; minus the sum of projected expenditures for FY2020-FY2023. *See* Petition at Exh. C.

Development Grant is to “maximize effective emergency 911 and dispatch services as well as regional interoperability.” *Id.* In accordance with statutory requirements, the 911 Department has established guidelines regarding “[t]he eligibility for criteria, amount and allocation of funding” with the approval of the State 911 Commission. *Id.*; *see also 17-1 Order* at 14. On March 17, 2018, the State 911 Commission voted unanimously to authorize the 911 Department to seek DTC approval of a \$15,000,000 allocation amount for FY2018. *Petition* at 20.

The 911 Department seeks to increase the FY2018 Development Grant amount in order to permit it “to fund projects more fully than it has in the past several fiscal years.” *Id.* The 911 Department specifies that it continuously receives funding requests that exceed the total amount allocated to the grant. *Id.* For FY2018, the 911 Department received Development Grant requests totaling \$46,000,000, which is nearly six times the amount initially allocated to this grant. *Id.* The 911 Department states that regionalized PSAPs and RECCs enable more efficient and effective use of resources and improve public safety for the residents they service. *Id.* at 19. For instance, combined emergency communication resources “allows for increased staffing” and “for more efficient response to” emergency 911 calls. *Id.* This permits 911 telecommunicators “to more effectively interact with the public while gathering essential call information,” and it permits “more efficient response to both routine requests for mutual aid and major disasters.” *Id.* The DTC finds that the 911 Department’s requested increase to the Development Grant allocation amount is necessary to meet its statutory obligation to maximize effective E911 services and regional interoperability and that expenditures related to the increase will be prudently incurred. Accordingly, the DTC approves the increase in the Development Grant amount to \$15,000,000 for FY2019. The DTC notes, however, that the 911 Department’s requested FY2019 Development

Grant amount represents a near doubling of this allocation since FY2017, when the allocation stood at \$8,000,000. *Id.* at Exh. A. The DTC encourages the 911 Department to closely monitor the Development Grant allocation amount moving forward and intends to closely monitor savings produced by regionalization in other line items.

E. Review of FY2019 Incentive Grant Three to Nine Communities Grant Amount

The 911 Department seeks approval of its proposal to increase the percentage allocation for the FY2019 Incentive Grant for regional PSAPs serving three to nine municipalities. Petition at 20-22. The 911 Department projects FY2019 expenditures for this Grant of \$1,552,737, up from a projected \$1,067,661 in FY2018. *See id.* at Exh. C. The statute established the Incentive Grant to “provide regional PSAPs and [RECCs] with funds in addition to amounts allocated as part of the [Support Grant]” for reimbursement of allowable expenses, as specified in the Support Grant. G.L. c. 6A, § 18B(i)(4). These grants were established to foster the development of regional PSAPs and RECCs. *See id.* § 18B(i). The 911 Department indicates that this request is largely to accommodate the creation of a new regional PSAP with between three and nine municipalities, including Mansfield, Easton, Foxborough, and Norton. Tr. at 104. This change will double the number of PSAPs eligible for this Incentive Grant, Three to Nine Communities category, from one to two. *See* DTC IR 1-4(c). Given this change, the DTC determines that expenditures related to an increase in the FY2019 Incentive Grant Three to Nine Communities category amount to 1.5% of the total surcharge revenues of the previous fiscal year will be prudently incurred. Accordingly, the DTC approves the requested allocation increase for FY2019.

III. ORDER

Accordingly, after hearing, notice, and due consideration, it is:

ORDERED: That an adjustment of the Enhanced 911 Surcharge to \$1.50 is APPROVED and that the Enhanced 911 Surcharge shall be adjusted from \$1.00 to \$1.50, effective January 1, 2019; and it is

FURTHER ORDERED: That the Enhanced 911 Surcharge shall be adjusted from \$1.50 to \$1.00, effective January 1, 2024; and it is

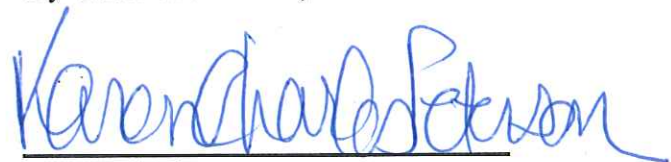
FURTHER ORDERED: That the 911 Department's proposed FY2018 expenditures are APPROVED; and it is

FURTHER ORDERED: That the 911 Department's proposed adjustment to the Development Grant category allocation amount for FY2019 is APPROVED; and it is

FURTHER ORDERED: That the 911 Department's proposed adjustment to the Incentive Grant Regional PSAP Three to Nine Communities category allocation amount for FY2019 is APPROVED; and it is

FURTHER ORDERED: That the Petition satisfies the requirement of G.L. c. 6A, § 18H(b) that the 911 Department file an annual report on the financial condition of the Enhanced 911 Fund for FY2018.

By Order of the DTC,



Karen Charles Peterson
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court.