



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 18-2

September 4, 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 ON MOTION FOR RECONSIDERATION**

APPEARANCES:

Frank Pozniak, Executive Director  
Louise McCarthy, General Counsel  
State 911 Department  
151 Campanelli Drive, Suite A  
Middleborough, MA 02346  
FOR: STATE 911 DEPARTMENT  
Petitioner

Maura Healey, Attorney General  
By: Donald W. Boecke,  
Assistant Attorney General  
Timothy J. Reppucci,  
Assistant Attorney General  
Office of the Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
FOR: OFFICE OF THE ATTORNEY GENERAL  
Intervener

Benjamin J. Aron  
Matthew DeTura  
CTIA—The Wireless Association  
1400 Sixteenth Street, N.W.  
Washington, DC 20036  
and  
Katie M. Gray, Esq.  
Geoffrey G. Why, Esq.

VERRILL DANA, LLP  
One Boston Place, Suite 1600  
Boston, MA 02108  
FOR: CTIA—THE WIRELESS ASSOCIATION  
Intervener

Timothy O. Wilkerson, Esq.  
New England Cable and Telecommunications Association  
Ten Forbes Road, Suite 440W  
Braintree, MA 02184  
and  
David W. Bogan, Esq.  
Locke Lord LLP  
20 Church Street  
20<sup>th</sup> Floor  
Hartford, CT 06103  
FOR: New England Cable and Telecommunications  
Association  
Limited Participant

I. INTRODUCTION

On June 29, 2018, the Department of Telecommunications and Cable (“DTC”) issued an Order on the 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 (June 29, 2018) (“Order”). Written comments were filed by the Attorney General, CTIA, NECTA, and the Franklin Regional Council of Governments. Letter from Maura Healey, Att’y Gen., 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”); Letter from Linda L. Dunlavy, Exec. Dir., Franklin Reg’l Council of

Gov'ts, 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* Transcript of Record ("Tr."). At the evidentiary hearing, the DTC moved 12 exhibits into evidence. ("Hr'g Exhs. 1 through 12"). On June 7, 2018, the State 911 Department ("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. *Order* at 3.

On July 16, 2018, CTIA – The Wireless Association ("CTIA") filed a Motion to Extend Appeal Period. On July 18, 2018, the DTC granted CTIA's Motion to Extend the Appeal Period by allowing CTIA twenty (20) days from the date of the DTC's Order on Reconsideration to file an appeal of the DTC's Order. On July 19, 2018, CTIA timely filed a Motion for Reconsideration ("CTIA Motion") of the Order pursuant to 207 C.M.R. § 1.10(10). On July 23, 2018, the DTC set a date of August 2, 2018 for filing responses to the CTIA Motion. On August 2, 2018, the 911 Department filed an opposition to the CTIA Motion ("911 Department Opposition").

## II. DTC'S JUNE 29, 2018 ORDER

The DTC issued the Order in response to a petition from the 911 Department for the approval of certain expenditures and an adjustment of the Enhanced 911 Surcharge ("E911 Surcharge"). *Order* at 1-2. The Order approved the 911 Department's requested expenditures, and approved a temporary adjustment of the E911 Surcharge, which is to be used to fund, among other things, an improved statewide radio infrastructure known as the Commonwealth of Massachusetts Interoperable Radio System or "CoMIRS." *Id.* at 7-20.

The DTC carefully considered whether CoMIRS could be funded through the E911 Surcharge. *Id.* After conscientiously reviewing state and federal law and the arguments put forth by the 911 Department, CTIA, the Office of the Attorney General and NECTA, the DTC approved the proposed expenditures related to the CoMIRS Upgrade. *Id.* Specifically, the DTC determined that funding for CoMIRS through the E911 Surcharge was authorized by G.L. c. 6A, §§ 18A-18J. *Id.* at 13-15, 22, 29.

### III. CTIA'S MOTION

CTIA first alleges that the DTC misinterpreted state and federal law in determining that CoMIRS was part of the E911 system and, therefore, eligible for E911 Surcharge funding. CTIA Motion at 2. CTIA argues that the Order both misinterprets the definition of "Enhanced 911 system[]," contained in G.L. c. 6A, § 18A, and misinterprets G.L. c. 6A, § 18B(a), which authorizes the use of E911 Fund resources. *Id.* at 3-7. CTIA then argues that, if expenditures related to the proposed CoMIRS upgrade are not eligible for E911 funding under state law, "funding CoMIRS through the E911 Surcharge would also be inconsistent with federal law." *Id.* at 7-8.

CTIA's second allegation is that, even if the DTC ruled correctly that CoMIRS expenditures are authorized by G.L. c. 6A, §§ 18A-18J, E911 Fund reimbursement for some of the radios which the 911 Department seeks to replace as part of the CoMIRS upgrade is not authorized by state law, because these radios are not part of PSAPs' operations. *Id.* at 11. CTIA identifies 18,300 radios which CTIA believes are not eligible for reimbursement from the E911

Fund because, CTIA states, they “cannot reasonably be expected to” receive any relay or dispatch calls from Massachusetts PSAPs.<sup>1</sup> *Id.* at 11-12.

#### IV. STATE 911 DEPARTMENT’S OPPOSITION TO CTIA’S MOTION

The 911 Department’s Opposition supports the Order’s finding that Massachusetts statute authorizes the 911 Department to reimburse expenditures necessary to complete the proposed upgrade of the CoMIRS system from the E911 Fund. *See generally* 911 Department Opposition. The 911 Department states both that G.L. c. 6A, §§ 18A-18J grants it broad authority to administer, coordinate, and operate the Massachusetts 911 system and that “effective dispatch and regional interoperability” are stated goals of the statute. *Id.* at 2. The 911 Department notes that the improvements to the public safety radio systems that will result from the proposed CoMIRS upgrade will help assure the timely and appropriate response by first responders to the emergency calls PSAPs receive. *Id.* at 3. Because PSAP functions includes the ability “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,” and the CoMIRS system is the primary means by which PSAPs achieve this function, the 911 Department states that the statute authorizes it to use E911 Surcharge revenue to upgrade the CoMIRS system. *Id.* at 4-5. Finally, the 911 Department states that as CoMIRS is eligible for E911 funding under state law, it is also eligible under federal law. *Id.* at 8-9.

---

<sup>1</sup> The CTIA Motion incorrectly states that the cost of the radios it believes to be ineligible for E911 funding pursuant to the Order’s reasoning equals 63% of the total cost of the proposed CoMIRS upgrade. *See* CTIA Motion at 11. Most of the cost of the CoMIRS upgrade, however, is comprised of the cost of infrastructure such as radio towers, backhaul equipment, and software. The cost of replacing those radios that CTIA believes are ineligible for E911 funding is actually a fraction of the total proposed CoMIRS upgrade expenditures. *See* Response to First Set of Info. Requests of DTC to the State 911 Dep’t 1-7(c); *Order* at 20.

V. STANDARD OF REVIEW

The DTC reconsiders previously decided issues only where extraordinary circumstances require that the DTC take a fresh look at the record. *Verizon New England Inc.*, D.T.C. 13-6, Hearing Officer Ruling, Verizon MA Motion for Reconsideration and Clarification at 3 (Nov. 29, 2013) (“Verizon Interconnection Agreement”); *Verizon New England Inc.*, D.T.C. 07-9, Order on Motion for Reconsideration and Clarification at 10 (Dec. 7, 2009); *Verizon New England, Inc.*, D.T.C. 06-61, Order on Clarification and Partial Reconsideration at 11 (May 11, 2012) (“Verizon Order on Clarification and Partial Reconsideration”). The burden to demonstrate such extraordinary circumstances is on the party requesting reconsideration. *Verizon New England Inc.*, D.T.E. 04-33-A, Reconsideration Order at 17 (Dec. 16, 2005); *Verizon New England Inc.*, D.T.E. 01-20, Order Granting Verizon & AT&T Motions for Reconsideration, in Part, & Requesting Additional Evidence at 14 (Sept. 24, 2002); *Berkshire Gas Co.*, D.T.E. 01-56-A, Order on the Motions of Berkshire Gas Co. & the Att’y Gen. for Reconsideration, Clarification, & Recalculation at 7-8 (May 8, 2002); *Sprint Commc’ns Co. L.P.*, D.T.E. 00-54-A, Order on Sprint’s Motion for Reconsideration; Motion to Admit Late-Filed Exhibit; Motion for Official Notice at 14-30, (May 3, 2001); *Verizon Interconnection Agreement* at 3. Extraordinary circumstances warranting reconsideration may exist when: (i) “previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered” are newly brought to light; or (ii) an issue was wrongly decided due to the DTC’s mistake or inadvertence. *Boston Edison Co.*, D.P.U. 90-270-A, Order at 2-3 (Sept. 27, 1991); *Mass. Elec. Co.*, D.P.U. 90-261-B, Order at 7 (Feb. 1, 1991); *New England Tel. & Tel. Co.*, D.P.U. 86-33-J, Order on Motions for Recalculation & Reconsideration at 2 (June 23, 1989);

*Verizon Interconnection Agreement* at 3; *Verizon Order on Clarification and Partial Reconsideration* at 11. A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. *Verizon New England, Inc.*, D.T.C./D.T.E. 04-33-D, Order on Motion for Partial Reconsideration by Verizon New England, Inc. D/B/A Verizon Massachusetts at 3 (Sept. 14, 2007).

VI. ANALYSIS

CTIA has failed to meet its burden to prove extraordinary circumstances requiring the DTC to take a fresh look at the record. As a result, the CTIA Motion fails to meet the necessary standard of review. The CTIA Motion does not bring to light previously unknown or undisclosed facts. *See generally* CTIA Motion. Instead, the CTIA Motion seeks to meet the standard for reconsideration by alleging two instances where the Order was decided due to mistake or inadvertence. *See id.* at 2. The first, that expenditures used to upgrade CoMIRS are ineligible for funding through the E911 Surcharge, was considered and rejected by the DTC in the Order. The second, that even if CoMIRS expenditures are authorized, E911 funding is not authorized for some of the radios that will use CoMIRS, misinterprets the Order.

CTIA's allegation that expenditures used to upgrade the CoMIRS system are ineligible for funding through the E911 Surcharge pursuant to both state and federal law was extensively argued, considered, and decided in the main case, in which the DTC considered CTIA's arguments and disagreed with its interpretation of state and federal law. *Order* at 13 ("Reliance on federal law here, however, is misplaced"); *Order* at 15 ("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). The

DTC disagrees.”) (citations omitted); *Order* at 18 (“[A]s the 911 Department’s proposed CoMIRS expenditures are authorized under state law, the expenditures are necessarily authorized under federal law.”) (citations omitted); *see also* Response to Second Set of Info. Requests of the Office of the Attorney General to the State 911 Dep’t 1-1; AG Comments at 3; CTIA Comments at 2-5; NECTA Comments at 2-4. Contrary to CTIA’s position, the DTC found that Massachusetts law, not federal law, controls which expenditures are permissible from E911 Surcharge fees and, further, that the proposed CoMIRS upgrade is a permissible expenditure pursuant to G.L. c. 6A, §§ 18A-18J, because it will assist the 911 Department in operating the E911 system. *Order* at 15-18. Specifically, the DTC found that functioning PSAPs are part of the enhanced 911 system in the Commonwealth and that the proposed CoMIRS upgrade is necessary for PSAPs, including the 911 Department’s PSAPs, to properly function. *Id.* CTIA’s first allegation seeks to relitigate points of statutory interpretation thoroughly examined in the *Order* and, therefore, does not meet the standard of review for reconsideration.

The CTIA Motion’s second allegation, that even if the DTC ruled correctly that CoMIRS expenditures are authorized, some of the radios which the 911 Department seeks to fund through the E911 Surcharge are not, misinterprets the relevant provisions of the *Order*. CTIA contends that the *Order* approved the State 911 Department’s funding of radios “that cannot reasonably be expected to be involved in dispatching, transferring, and relaying emergency calls.” CTIA Motion at 11. CTIA then provides a list of agencies the cost of whose radios CTIA believes is ineligible for reimbursement from the E911 Fund pursuant to the *Order*’s reasoning for the statutory authorization of CoMIRS upgrade expenditures from E911 Surcharge revenues. *Id.* at 12. The CTIA Motion misreads the *Order* here in three ways.



First, the Order approved a temporary increase in the E911 Surcharge in order to cover the cost of upgrading the CoMIRS system over a five-year period, including proposed expenditures for those components of the proposed CoMIRS upgrade necessary to allow 911 Department PSAPs to perform their statutorily prescribed functions. *Order* at 15-18, 27. As the 911 Department reasonably expects that its PSAPs may be required to transfer or relay 911 emergency calls or dispatch public safety agencies anywhere in the Commonwealth, the Order approved expenditures for “radio towers, network management and interconnectivity software, and central switching and dispatch console equipment” throughout Massachusetts. *Id.* at 20. The Order also approved a temporary E911 Surcharge increase to cover the cost of those radios similarly necessary for the 911 Department’s PSAPs to perform their statutorily mandated functions. *Id.* This does not necessarily include the cost of every radio that may one day transmit communication via CoMIRS. The 911 Department’s witness stated the 911 Department’s intention to reimburse the cost of those radios necessary to 911 response. *Tr.* at 62 (“We’re looking really—the focus is on our state police and our municipalities that rely on our service for 911 and part of our network to respond.”). Radios whose cost is eligible for reimbursement from E911 Surcharge revenues include those of public safety departments and other first responders to which the 911 Department reasonably believes its PSAPs may transfer or relay 911 emergency calls or that the 911 Department reasonably believes its PSAPs may contact to dispatch help in response to 911 emergency calls they may receive. As the 911 Department is, or soon will be, operating both a mobile PSAP and PSAPs located in Essex and Framingham which, together, will receive emergency calls from across Massachusetts and will handle a significant share of the Commonwealth’s E911 calls, it is reasonable to assume that first

responder agencies throughout Massachusetts may receive relayed emergency calls from these PSAPs or may be contacted by these PSAPs for dispatch. *See Order* at 16.

Further, the 911 Department states that the radios of the agencies that are currently part of the CoMIRS system are currently used “to respond and communicate with 911 dispatch” and will be used to provide “Enhanced 911 service.” *Tr.* at 23, 38. Indeed, the record shows that several of the entities whose radios CTIA believes are not part of PSAP functions do currently receive PSAP relay or dispatch calls. *Id.* at 26 (Cambridge radios are used to respond to 911 calls); *Id.* at 35, 61 (Barnstable County Towns’ radios receive PSAP dispatch); *Id.* at 38, 115 (Shelburne radios receive PSAP dispatch); *Id.* at 119 (discussing County Jails and County Prisoner Transport radios); Response to Second Set of Info. Requests of the Office of the Attorney General to the State 911 Dep’t 2-3(1) (detailing FY2017 PSAP grants to Barnstable, Cambridge, and Worcester). The CTIA Motion acknowledges that the agencies it claims are ineligible for E911-funded radios may have first responder duties and receive emergency communications from PSAPs. CTIA Motion at 12. And as demonstrated above, CTIA’s claim that the record contains no evidence of such duties and activities is erroneous. *See id.* It is reasonable to assume that agencies currently receiving PSAP relay or dispatch communications, may receive such communications from the 911 Department’s PSAPs in the future and, therefore, are part of the PSAPs the 911 Department is or soon will be operating.<sup>2</sup> As a result,

---

<sup>2</sup> Notably, the Order did not substitute the DTC’s judgment for that of the 911 Department as to which first responder agencies the 911 Department reasonably believes are eligible to receive E911-funded radios. *See G.L. c. 6A, § 18H(b)* (directing the DTC to “adopt rules that provide for the funding of prudently incurred expenses associated with services provided by sections 18A to 18J, inclusive . . . by means of the surcharge.”); *Order* at 5 (stating that under these rules, now well-established, 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, and the 911 Department has the authority to determine which categories of equipment are so necessary).

contrary to CTIA's contention, these agencies are eligible to have the cost of replacing their radios reimbursed from the E911 Fund.

Second, to the extent that the CTIA Motion identified public safety agencies whose radios have not routinely been used to receive PSAP relay or dispatch communications in the past, this does not automatically disqualify them from E911 funding, because the 911 Department may reasonably expect them to be called on to serve this function in the event of a failure of all or part of Massachusetts PSAPs' communication networks. *See* Tr. at 31-32. If the 911 Department reasonably believes that some agencies' radios that have not routinely received relay, transfer, or dispatch from 911 Department PSAPs may be called on by 911 Department PSAPs in the event of an emergency in the future, these radios would be eligible for reimbursement from E911 Surcharge revenue. *See Order* at 5 (stating that the 911 Department has the authority to determine which categories of equipment are necessary to perform its statutory obligations).

Third, the proposed expenditures to upgrade CoMIRS do not necessarily include the cost of replacing all of the radios which currently access CoMIRS, nor do they necessarily include the cost of all radios which may one day have access to CoMIRS. The 911 Department's witness testified that the radios of some of the 911 Department's partners, which CTIA specifically included as among those that CTIA believes the Order mistakenly or inadvertently approved for reimbursement, will not be reimbursed from E911 Surcharge revenue. Tr. at 61-62 ("They are partners. They're going to pay for their own portable radios."); *see also* Tr. at 143 (confirming that the 911 Department partners for whom E911 funding will be used to purchase radio consoles provide 911 services). Further:

MR. WHY (representing CTIA): So I understand Undersecretary Wood, that the agencies, other than state police -- you mentioned the other and I forget -- other agencies like MassDot and others are going to fund their own radios?

MR. WOOD (witness for the 911 Department): Yes.

*Id.* at 62. The Order approved expenditures for those CoMIRS radios that are necessary for the 911 Department's PSAPs to perform their statutorily mandated functions.<sup>3</sup> *Order* at 20. CTIA's interpretation otherwise is erroneous.

For these reasons, the DTC determines that CTIA's second allegation, that the Order's approval of the use of E911 Surcharge revenue to pay for radios that the 911 Department does not reasonably consider are needed to be available for relay, transfer, or dispatch from 911 Department PSAPs, is factually incorrect. As a result, this allegation fails to allege a ruling that was the result of mistake or inadvertence and, therefore, fails to meet the standard of review necessary for reconsideration.

## VII. CONCLUSION

The DTC concludes that CTIA has failed to meet its burden to prove extraordinary circumstances requiring the DTC to take a fresh look at the record. The Order's holding that the E911 Surcharge may be used to fund the CoMIRS upgrade was neither the result of a previously unknown or undisclosed fact nor due to mistake or inadvertence. As described in Section VI, the

---

<sup>3</sup> The CTIA Motion notes that the record contain several different "number of radios," and argues that this shows that the number of radios that the 911 Department intends to fund "lacks sufficient detail." CTIA Motion at 13. The Order, however, dictates that G.L. c. 6A, §§ 18A-18J authorizes the 911 Department to reimburse agencies for the cost of those radios that the 911 Department reasonably concludes are available to receive relay, transfer or dispatch calls from its PSAPs in order for those PSAPs to fulfill their statutorily defined function. The number of such radios is impossible to determine before both the 911 Department PSAPs are fully operational and the final location and specifications of the telecommunication infrastructure included in the CoMIRS upgrade is determined. *See* Tr. at 60. As it has in the past, the DTC approves adjustments in the E911 surcharge here based on reasonable projections. *See, e.g., Petition of the State 911 Dep't to Adjust the Enhanced 911 Surcharge*, D.T.C. 15-2, *Order* at 33-35 (June 18, 2015).

DTC deliberately considered arguments against the permissibility of reimbursing the cost of the CoMIRS upgrade from the E911 Fund. Instead of adopting CTIA's arguments, the DTC considered every piece of evidence in the record, studied the statutes and its historical interpretations of the statutes, and approved an adjustment of the E911 Surcharge which could be used to fund the proposed CoMIRS upgrade. Furthermore, the Order did not approve the use of E911 Surcharge revenue to pay for radios that the 911 Department does not reasonably believe should be available to receive relay, transfer, or dispatch calls from 911 Department PSAPs using the proposed upgraded CoMIRS system.

VIII. ORDER

Accordingly, after due notice and consideration, it is:

ORDERED: That CTIA – The Wireless Association's Motion for Reconsideration is denied.

By Order of the DTC,



Karen Charles Peterson  
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.