

# ***NEW YORK STATE OFFICE OF THE STATE COMPTROLLER***

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**H. Carl McCall  
STATE COMPTROLLER**



***DIVISION OF STATE POLICE  
CELLULAR SURCHARGE REVENUES***

***2001-S-27***

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**DIVISION OF MANAGEMENT AUDIT AND  
STATE FINANCIAL SERVICES**

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**H. Carl McCall**  
**STATE COMPTROLLER**

Report 2001-S-27

Mr. James McMahon  
Superintendent  
Division of State Police  
Harriman State Office Building Campus  
Building 22  
Albany, NY 12226

Dear Mr. McMahon:

The following is our audit report addressing the Division of State Police's collection and expenditure of cellular surcharge revenues, and its operation of an enhanced cellular 911 system.

This audit was conducted pursuant to the State Comptroller's authority, as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

*Office of the State Comptroller*  
*Division of Management Audit*  
*and State Financial Services*

March 20, 2002

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***Division of Management Audit and State Financial Services***

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# **EXECUTIVE SUMMARY**

## **DIVISION OF STATE POLICE CELLULAR SURCHARGE REVENUES**

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### **SCOPE OF AUDIT**

In 1989, the State Legislature passed Article 6 of the County Law - Enhanced Emergency Telephone System Surcharge Law (Law), which imposed a monthly fee on land telephone users to help pay for enhanced emergency communications systems. Enhanced systems automatically connect a person dialing 9-1-1 to a public safety answering point that identifies the caller's number and geographic location. In the view of the Legislature, these enhancements could significantly reduce the response time of emergency services, and represent the state of the art in fail-safe emergency telephone system technology.

In 1991, the Law was amended to add Section 309 to the County Law for the purpose of establishing a surcharge on all cellular telephones in the State. Pursuant to Section 309, cellular service suppliers collect a 70-cent per month fee from all cellular phones and remit the revenue less an administrative fee, to the Division of State Police (Division) on a quarterly basis. These funds, which are deposited in the Seized Assets Account, are available for appropriation for Division costs related to operating a cellular 911 emergency telecommunications network (cellular 911) and coordinating emergency response to 911 calls from cellular users. The Division collected surcharge revenues of \$43 million in the fiscal year ended March 31, 2001; since 1991, surcharge collections totaled more than \$162 million. While the Division collects 100 percent of all cellular surcharges, it services only about one-third of the State's population. As of August 30, 2000, of the State's 18.9 million residents, the State Police dispatch centers serviced approximately one-third of the population.

We addressed the following questions about selected aspects of cellular 911 in New York State and the Division's collection and expenditure of surcharge revenues from 1991 through March 31, 2001:

- Is the Division properly collecting, accounting for and transferring surcharge revenues to the State Treasury?

- How has the Division spent the surcharge revenues it has collected?
- Is the Division providing an enhanced cellular 911 service?

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## **AUDIT OBSERVATIONS AND CONCLUSIONS**

While the Division properly records and deposits surcharge revenues received, it does not know the number of providers who should remit revenues, or attempt to verify the accuracy of the amounts that are received. Further, our tests showed the Division spent surcharge revenues on a wide variety of goods that do not appear to relate to cellular 911. In addition, since there is no enhanced cellular 911 service operational anywhere in New York State, we believe the Division needs to plan for and operate an enhanced 911 system.

We found that cellular providers self-report the amounts they owe, and the Division does not verify that providers' remittances are accurate. Further, the Division does not know how many providers exist in the State, or whether providers may exist who owe – but do not pay – surcharge fees. We estimated the Division may be owed as much as \$2 million in additional surcharge revenues for calendar year 2000. To ensure it receives all surcharge revenues due, we recommend the Division identify all providers in the State and estimate surcharge revenues it should receive. (See pp. 7-10)

Having pointed out the need for verifying surcharge revenue collections, we also recognize that the Division may not be in the best position to perform this function. Division management states that it does not have administrative personnel available to conduct audits of cellular service providers, review documentation supporting remittances or perform analytical tests of surcharge revenues using subscriber statistics. We believe that the Department of Taxation and Finance (Department) may be better suited to perform these functions. Furthermore, payment of the cellular surcharge fee could be aligned with and incorporated in the Gross Receipts Tax returns filed with the Department by cellular service providers – making the administration of the cellular surcharge remittance process less burdensome for providers, while allowing for greater accountability for surcharge revenues. (See pp. 10-11)

Although the Law states that surcharge revenues should offset Division costs related to operating cellular 911, our test of a sample of expenditure transactions funded primarily by surcharge revenues revealed that the Division uses surcharge revenues to pay for a wide variety of Division needs, most of which do not appear to be directly related to cellular 911. Examples include expenditures for boots, vehicles, body armor, conferences, travel and incidental costs, such as dry cleaning. The Division does not distinguish between cellular 911 and other costs, or believe it has to, since all these expenditures support public safety. To ensure surcharge fees fund cellular 911 operations, we recommend that the

Division identify direct cellular 911 expenditures, and better account for expenditures of surcharge revenues. (See pp. 11-15)

In 1996, the Federal Communications Commission ordered cellular telephone service suppliers to deploy, by April 1, 1998, an enhanced cellular 911 system capable of providing an emergency dispatcher with both the cellular caller's call-back number and the caller's approximate geographic location. However, enhanced cellular 911 is not operational anywhere in New York State: no Division answering points can routinely identify a cellular caller's call-back number or the caller's location. Thus, Division dispatchers may not be able to respond to cellular 911 calls as quickly as they otherwise could. The Division has not taken steps to develop enhanced cellular 911, in part because it does not believe it is responsible for doing so, and in part because the Law is vague about what the Division must do. While we may agree with Division officials that Section 309 does not contain express language regarding the development and implementation of an enhanced cellular 911 system, we believe that this intent may be gleaned from the statute. The Legislature in enacting Section 309 added it to the existing provisions of Article 6 of the County Law. Legislative materials relating to the enactment of Section 309 make clear that the imposition of the cellular surcharge was to eliminate the inequity between land-based and cellular telephone users because both benefit from coordinated 911 services. Moreover, Section 300 of the Article, titled "Legislative findings and declaration of intent" makes clear that the paramount interest of the Legislature in imposing the surcharges was to significantly reduce the response time of emergency services by facilitating the acquisition of state of the art emergency telephone system technology. Since surcharge fees are available to fund enhanced cellular 911, and since cellular users would benefit from its operation, we recommend the Division develop plans for enhanced cellular 911 implementation. (See pp. 17-21)

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## **COMMENTS OF DIVISION OFFICIALS**

**A** draft copy of this report was provided to Division officials for their review and comment. Their comments were considered in preparing this report. The Division disagrees with our interpretation of the County Law. In general, the Division does not believe it is required to implement an enhanced cellular 911 emergency service. The Division reiterated that all of its expenditures are in support of its overall emergency response operation. Nevertheless, the Division cited a series of steps proposed or underway to address our recommendations. These include initiatives to improve controls over the collection and accounting for surcharge revenues, to clarify the use of surcharge revenues and to issue annual reports to the Legislature on the status of 911 services across the State. While the Division also cited some initiatives to provide enhanced cellular 911 capabilities in response to our recommendations, we continue to believe the State needs to move more aggressively in this regard.

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Major Contributors to This Report

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# INTRODUCTION

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## Background

In 1989, the New York State Legislature passed Article 6 of the County Law - Enhanced Emergency Telephone System Surcharge Law (Law) to establish a funding mechanism to enable localities to finance enhanced emergency communications systems. Enhanced systems automatically connect a person dialing the digits 9-1-1 to an established public safety answering point (i.e., a communications facility that first receives 911 calls within a specific service area) that can provide automatic caller number identification and automatic caller location identification.

The Law, which assessed land-based telephone customers a monthly fee to cover the costs of implementing such a system, was amended in 1991 to impose a fee on cellular telephones as well. Section 309 of the Law established a 70-cent per month surcharge on all cellular telephones in the State. Cellular telephone service suppliers collect surcharge revenues and remit them, less an administrative fee equal to two percent of collections, to the Division of State Police (Division) on a quarterly basis. Since 1991, the Division has collected in excess of \$162 million in cellular surcharge revenues. For State fiscal year ended March 31, 2001, Division records indicate that it received \$43 million in surcharge revenue from 17 cellular service providers. According to Section 309, these surcharge revenues are deposited in the Seized Asset Account of the Miscellaneous Special Revenue Fund and are available pursuant to appropriation for payment of Division costs related to the statewide operation of a cellular 911 emergency telecommunications network. While the Division collects 100 percent of all cellular surcharges, it services only a small portion of the State's population.

The Division entered into agreements with cellular telephone companies so that 911 calls are directed to the nearest State Police dispatch center for response. As of August 30, 2000, of the State's 18.9 million residents, the State Police dispatch centers serviced about one-third of the population. The Division was not responsible for handling 911 calls for residents who



reside in Chautauqua; Chemung; Livingston; Monroe; Nassau; New York City; Ontario; Schuyler; Seneca; Suffolk; Wayne; Yates; and in parts of Chenango; Steuben and Westchester Counties.

When it passed the 1989 Law, the Legislature indicated that enhanced emergency telephone service provides substantial benefits beyond basic 911 systems, since it provides for automatic number and location identification. In the view of the Legislature, these enhancements could significantly reduce the response time of emergency services to citizens whose lives or property are in imminent danger, and represent the state of the art in fail-safe emergency telephone system technology. In amending the Law in 1991, the Legislature noted that the Law funded the implementation of an enhanced emergency communication system by imposing a fee on land-based customers. However, cellular customers, who would benefit from an emergency telecommunications service when they made 911 calls from cellular phones, were not assessed a fee. The Legislature indicated that the 1991 amendment eliminated this inequity. Thus, we believe the Legislature clearly intended that cellular surcharge fees help pay for Division costs of providing enhanced cellular 911 emergency services.

The Federal government has also shown interest in promoting the establishment of cellular 911 systems. In 1996, the Federal Communications Commission (FCC) ordered cellular telephone service suppliers nationwide to deploy, by April 1, 1998, an enhanced cellular 911 system. This system was to be rolled out in two Phases: in Phase I, the public safety answering point would be capable of providing the emergency dispatcher with both the wireless 911 caller's call-back number as well as the caller's approximate geographic location; in Phase II, the emergency dispatcher would receive more precise information about the geographic location of the 911 caller. According to the FCC order, Phase I was supposed to be launched by April 1, 1998 in all areas where public safety answering points request the service and can use the Phase I data. The FCC also required that there be a mechanism developed by which wireless carriers could recover the costs of providing enhanced cellular 911 services.

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## ***Audit Scope, Objectives and Methodology***

**W**e audited selected aspects of the State's cellular 911 emergency communication system, including the Division's collection and expenditure of cellular surcharge revenues from 1991 through March 31, 2001. The objectives of this financial-related audit were as follows: to examine Division procedures for collecting, accounting for and transferring cellular surcharge revenue for credit to the Seized Assets Account; to determine how the Division has spent cellular surcharge revenues; and to assess the extent to which enhanced cellular 911 services are provided.

To accomplish our objectives, we interviewed personnel at the Division, the Office of the State Comptroller (OSC), the Public Service Commission (PSC), and the FCC. In addition, we analyzed collection, deposit, and expenditure data, and did research to determine the progress other states have made in implementing enhanced cellular 911 and to identify the service providers that remit surcharge revenues to the Division.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Division included within our audit scope. Further, these standards require that we understand the Division's internal control structures and their compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit

reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

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### ***Internal Control and Compliance Summary***

Internal controls are the integrated activities, plans, attitudes, policies, and efforts of the people of an organization working together to provide reasonable assurance that the organization will fulfill its mission. They encompass a comprehensive system that helps an organization manage risk and enables its programs and administrative activities to operate efficiently and effectively. An effective internal control system typically sets standards in five critical areas: control environment, information and communication, control activities, risk assessment, and monitoring. Our evaluation of the Division's internal controls identified weaknesses in revenue collection and expenditure control activities. These weaknesses are discussed in detail in the section of this report entitled, "Surcharge Collections and Expenditures." In addition, we believe the Division may have misinterpreted the intent of Article 6 of the County Law, Section 309. As a result, an enhanced cellular 911 system is not operational anywhere in New York State. This matter is discussed in the section of this report entitled "Enhanced Cellular Communication System."

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### ***Response of Division Officials to Audit***

A draft copy of this report was provided to Division officials for their review and comment. Their comments were considered in preparing this draft report, and are included as Appendix B.

The Division disagrees with our interpretation of the County Law. In general, the Division does not believe it is required to implement an enhanced cellular 911 emergency service. The Division reiterated that all of its expenditures are in support of its overall emergency response operation. Nevertheless, the Division cited a series of steps proposed or underway to address our recommendations. These include initiatives to improve controls over the collection and accounting for surcharge revenues, to clarify the use of surcharge revenues and to issue annual reports to the Legislature on the status of 911 services across the State. While the Division also cited

some initiatives to provide enhanced cellular 911 capabilities in response to our recommendations, we continue to believe the State needs to move more aggressively in this regard.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Superintendent of the Division of State Police shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.



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## SURCHARGE COLLECTIONS AND EXPENDITURES

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The Division should have controls in place to ensure it properly collects and promptly deposits surcharge revenues, that it receives all the revenues due from service providers and that surcharge funds support the establishment and maintenance of a cellular 911 system. We found that the Division uses appropriate collection procedures, but that it does not know the number of providers who should remit surcharge revenues, how much those remittances should be, or attempt to verify the accuracy of the amounts they remit. Service suppliers self-report revenues and pay the Division an amount they determine without providing documentation to substantiate their payments. Further, the Division does not track how surcharge funds are spent, which totaled about \$162 million over the past ten years. Our examination of a sample of these expenditures found the Division used surcharge revenues, among other funds, to purchase a wide variety of goods that do not appear to relate to cellular 911.

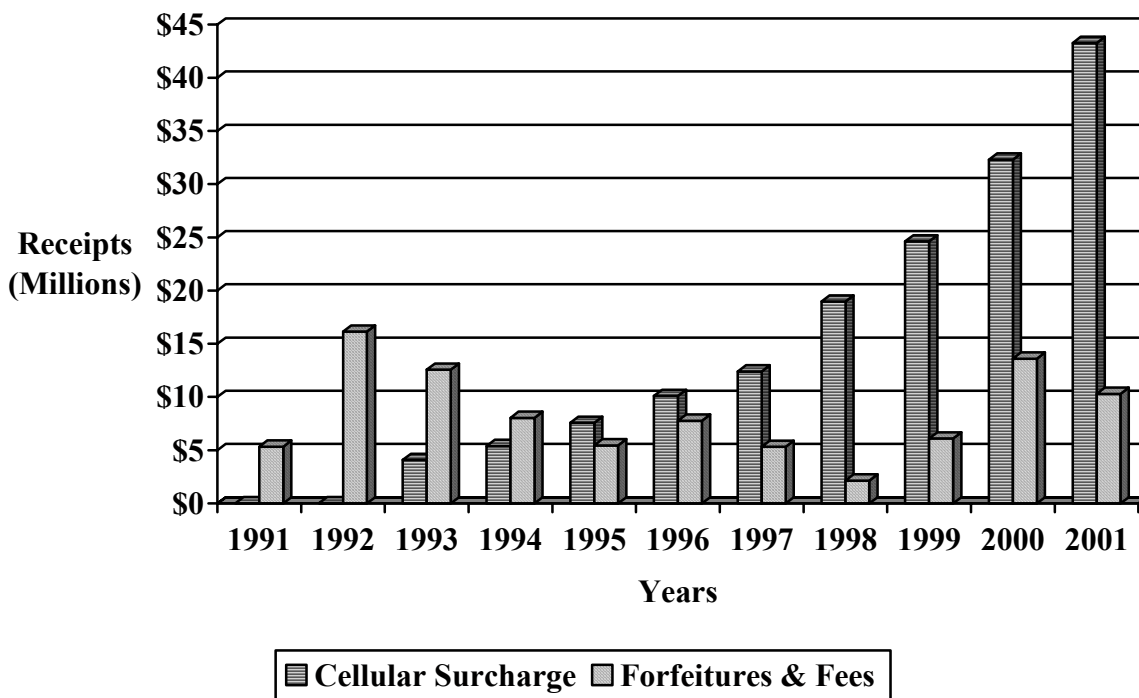
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### *Collections*

The Law requires cellular service providers to remit collections of the 70-cent per month surcharge, minus a two percent administrative fee, to the Division for deposit into the Seized Assets Account. According to Division data, Seized Assets Account funding has three principal components: cellular surcharge revenues, forfeitures, and photo accident report fees. From April 1, 1991 through March 31, 2001, the Division collected more than \$264 million of which cellular surcharge revenue represented more than \$162 million.

As shown on the following graph, since the surcharge was first imposed, cellular surcharge revenues have represented a steadily increasing percentage of Seized Assets Account funds. For example, during the year ended March 31, 2001, surcharge revenues of \$43,278,785 made up 81 percent of the Seized Assets Account's total revenue of \$53,569,802.

### Seized Assets Account Receipts (As of March 31)



The Division should have adequate controls in place to ensure that the surcharge revenues it receives from cellular service providers are properly accounted for and deposited in a timely manner. Our audit tests confirmed that the Division adequately accounts for the remittance checks it receives, and promptly deposits these funds to the State's Seized Assets Account.

The Division should also have controls established that can provide management with assurance that the remittances it receives are accurate, based on cellular subscriber numbers for these providers. To determine how cellular phone companies actually compute their cellular surcharge remittances to the Division, we consulted one of the major cellular providers in the State. Personnel from the cellular provider stated that they calculate cellular surcharge remittances to the State by multiplying the number of subscribers by the surcharge amount, and then subtracting the administrative fee. Unless the Division verifies the completeness and accuracy of provider calculations and remittances, there is a risk that providers are underpaying what they owe the Division.

In explaining the lack of controls to verify that providers remit the correct amount of surcharge revenues, Division managers stated that the Law does not provide them the authority to perform audits that would allow them to make these determinations. We consulted OSC accounting personnel to find out what processes the Division could use, absent authority to audit provider revenues, to verify that it collects all surcharge monies that should be collected from cellular providers. OSC personnel said the Division should, at a minimum, collect documentation from cellular providers to substantiate their cellular surcharge remittance checks.

The Division should also ensure it is receiving monthly remittances from all the cellular providers in the State. However, Division management stated they do not have a system in place to determine how many cellular providers exist in the State, or whether providers may exist who owe – but do not pay – surcharge revenues. Division managers told us they had attempted to identify the number of providers who should remit surcharge revenues by consulting with the Public Service Commission (PSC), which regulates utilities in New York State. Division managers told us that the PSC claimed it could not provide any guidance because the cellular industry was unregulated. Since they could not develop independent information (i.e., data from a source other than providers themselves) about the number of cellular subscribers in the State, managers said, they estimate future surcharge revenues based on historical collection trends. While somewhat useful, this practice may incorporate past omissions and errors by cellular service providers. This approach also does not account for the growth in the number of cell phone users over time.

To find out the number of cellular providers and subscribers in the State for fiscal year 2000-01, we contacted the PSC and the FCC. The spokespersons we contacted indicated that the cellular industry is, for the most part, unregulated, with no provision for oversight by either entity. However, in March 2000, the FCC did release an order that requires providers with a state subscriber base of at least 10,000 people to file subscriber information twice a calendar year with the FCC. An FCC report (Report) published in August 2001 (Trends in Telephone Service) documents the cellular providers for each state that meets the above subscriber base criterion, and the number of cellular subscribers enrolled with these providers. We calculated the State's average number of cellular



subscribers for calendar year 2000 to be approximately 5,200,000 a month by averaging reported subscriber numbers for December 1999, June 2000 and December 2000 (4,833,816, 5,016,524, and 5,873,965, respectively). We estimated monthly surcharge revenues from these subscribers to be approximately \$3,500,000 by multiplying our State subscriber total by .686 (the 70-cent surcharge minus the two percent administrative fee). If our average number of subscribers for 2000 is reasonable – and we believe it is conservative, given that providers with fewer than 10,000 subscribers are not required to report to the FCC - the Division could have collected at least \$42,000,000 in cellular surcharge revenues for calendar year 2000.

To compare the revenues the Division could have collected, as we calculated above, to the amount the Division actually collected in calendar year 2000, we extracted Division cellular surcharge revenue data from Division reports for the months that coincide with the FCC's calendar year statistics. We found that actual revenue collections by the Division for calendar year 2000 totaled about \$39,813,700. Thus, cellular service providers may have owed the Division additional surcharge revenues of more than \$2,100,000 for calendar year 2000, if our average subscriber numbers are generally accurate.

We recognize that, although we used the best available subscriber number data, our calculations of the surcharge revenues the Division could have collected are inexact. Our calculations of potential Division collections are estimates, given that they are based on FCC numbers that are essentially unaudited snapshots of subscriber enrollments on three different dates. However, our point in making this comparison is to illustrate the type of revenue estimation process the Division should develop using independent subscriber data. With such a process in place, the Division can track and account for the revenues it expects to receive from cellular providers on a quarterly basis.

Having pointed out the needed improvements in the controls over revenue collections, we also recognize that the Division may not be in the best position to effect these improvements. Division management states that it does not have administrative personnel available to conduct audits of cellular service providers, review documentation supporting remittances or perform analytical tests of surcharge revenues using subscriber statistics. We believe that the Department of Taxation and

Finance (Department) may be better suited to perform these functions. The Department already administers the Gross Receipts Tax imposed on cellular telephone users. It also has audit staff to conduct the necessary audits, verification procedures and analytical assessments. Furthermore, payment of the cellular surcharge fee could be aligned with and incorporated in the Gross Receipts Tax returns filed by cellular service providers – making the administration of the cellular surcharge remittance process less burdensome for providers, while allowing for greater accountability for surcharge revenues.

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## ***Expenditures***

The Law states that all surcharge monies remitted to the Division should be used for payment of Division costs related to the statewide operation of a cellular 911 emergency telecommunications system. Our review of Division purchasing processes and our tests of a sample of expenditure transactions that were funded, in large part, by surcharge revenues, revealed that the Division spends surcharge revenues on a wide variety of Division needs – from boots to conference costs to vehicle leases and purchases. Division management contends there is no legal requirement dictating exactly how this money should be spent, and that no specific appropriation has ever stated that it had to be spent on cellular 911. Management also told us the Division does not differentiate between cellular 911 costs and those of other emergency operations the Division conducts. Further, the Division does not understand the reason to make such a distinction. In management’s view, “there is no such thing as a 911 cellular expenditure: an emergency call is an emergency call.”

To determine how the Division accesses surcharge revenues, we examined the Division’s appropriation as set forth by the Legislature. For the year ended March 31, 2001, the Division was appropriated \$27,493,100 from the Seized Asset Account. Of this total amount, \$2,546,200 was for non-personal service costs associated with the criminal investigation activities program; \$9,753,200 was for non-personal service costs associated with the patrol activities program; and \$15,193,700 was for non-personal service costs associated with the technical police services program. The appropriations for the criminal investigations, patrol activities and technical police services programs did not specify the manner in which the funds were to be spent, other than for non-personal service costs. The

Division's patrol activities program received an additional appropriation for \$10 million from the New York State Wireless Telephone Emergency Service Account. The \$10 million was to be limited to non-personal service costs associated with the operation and maintenance of a 911 emergency telecommunications system, design and development of a statewide public safety communications system, and other related expenses. The Wireless Telephone Emergency Service Account has no revenue source of its own. For the two fiscal years ending March 31, 2000 and March 31, 2001, the Wireless Telephone Emergency Service Account received \$20 million in total funding pursuant to budget bill provisions that authorized the transfer of \$10 million from the Seized Assets Account in each fiscal year.

To simplify the process of tracking and accounting for cellular surcharge revenues and expenditures, we believe it would be helpful to deposit all cellular surcharge revenues to, and charge all cellular 911 system expenses from, the Wireless Telephone Emergency Service Account. This practice would require an amendment to the Law, which currently requires cellular surcharge funds be deposited into the Seized Assets Account of the Miscellaneous Special Revenue Fund.

We reviewed Division processes for disbursing money from the Seized Assets Account and the Wireless Telephone Emergency Service Account and noted that there is no charge distinction (i.e., cost center coding) to indicate that a purchase is related to the operation of a cellular 911 system. To determine what kinds of items the Division purchased with monies appropriated from these accounts, we obtained a listing from OSC of 19,824 expenditure transactions from both the Seized Asset and Wireless Telephone Emergency Service Account, for the year ended March 31, 2001. We selected a judgmental sample of 50 transactions, based on type of purchase and dollar value. This sampling methodology allows us to draw conclusions about the sampled population, but not about the entire population of transactions. We stratified the sample in the following manner: 30 transactions with values of \$0 – \$9,999; 9 transactions with values of \$10,000 - \$99,999; 5 transactions with values of \$100,000 - \$399,999; and 6 transactions with values of \$400,000 or more. (See Exhibit A for a list of all 50 transactions.)

We found the Division used funds from the Seized Assets Account to lease and purchase vehicles and equipment, and to pay for all kinds of miscellaneous expenses, most of which cannot be easily construed as costs related to the establishment and maintenance of cellular 911. Examples of these transactions include:

- dry cleaning bills;
- transportation and lodging expenses for a promotional exam;
- a missing person search;
- conferences;
- flight safety training;
- helicopter maintenance training and a helicopter international exposition; and
- soft body armor purchases.

Wireless Telephone Emergency Service Account transactions included payment for E-911 Center microwave communication equipment installation costs and for Division radio communications system costs, leases and maintenance – both of which appear to be cellular 911-related. However, the Division also used funds from this account for other expenses that did not appear directly related to a 911 service.

In many instances, it was difficult for the audit team to decipher exactly what the transactions related to because invoice descriptions were vague. To give the Division the opportunity to clarify how the majority of the transactions in our sample related to the operation of cellular 911, we provided Division management with a list of the transactions and requested an explanation of how each sampled transaction related to the statewide operation of cellular 911. We received a memo from Division management regarding our request. In the response, Division management stated that:

"All payments were made in support of this agency's public safety mission. The primary goal of these and all agency expenditures is to build and maintain the supporting framework within which the New York State Police has the ability to provide fast and effective emergency response. There can be no distinction made between the expenditures you reviewed and any others as they relate to this agency's ability to provide emergency response."

The combination of the nonexistence of Division spending requirements for cellular surcharge revenues and the vagueness of the Law has enabled the Division to spend these monies with little, if any, restriction. To help ensure that expenditures from the Seized Assets Account are appropriate, the Division should develop a means of identifying expenses related to the operation of a cellular 911 system. Without establishing spending requirements associated with cellular surcharge revenues, the Division may not be able to expeditiously fulfill the FCC's intent of providing an enhanced cellular 911 system in New York State.

### **Recommendations**

1. Propose legislation in conjunction with the Department of Taxation and Finance to:
  - Amend Section 309 of the County Law to transfer responsibility for collecting and accounting for surcharge revenues to the Department of Taxation and Finance.
  - Amend Section 309 of the County Law to require that cellular telephone carriers provide documentation supporting their revenue submission to the Department of Taxation and Finance, and grant the Department, or its designee, the authority to audit the accuracy and completeness of revenue submittals from these service providers.
  - Amend Subdivision 3 of Section 309 of the County Law to require all cellular 911 surcharge revenues be credited to the New York State Wireless Telephone Emergency Service Account created pursuant to Section 97, paragraph qq of the State Finance Law rather than the Seized Assets Account, and that the use of such monies be limited to enhance the cellular 911 System.
2. Use surcharge revenues only for Division costs directly related to implementing and operating cellular 911 programs.

### **Recommendations (Cont'd)**

3. Establish discrete accountability for the expenditure of all cellular 911 surcharge revenues.



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# ENHANCED CELLULAR COMMUNICATION SYSTEM

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**A**rticle 6, Section 309 of the County Law – Enhanced Emergency Telephone System Surcharge Law, established the cellular surcharge to pay for Division costs related to statewide operation of a cellular 911 emergency telecommunications system. Although the FCC ordered cellular telephone service suppliers to deploy an enhanced 911 system in 1996, the 1991 Law has not been amended to facilitate or direct the Division’s implementation of such a system. We found that an enhanced cellular 911 system is not operational anywhere in New York State. No Division public safety answering points can routinely identify a cellular caller’s call-back number or the caller’s location. Although the current Law is vague, and does not specifically require the Division to plan and coordinate an enhanced cellular 911 system, we believe the Division should adequately plan for and operate an enhanced cellular 911 system.

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## *Division Operation of Cellular 911*

**T**he Law requires the Division to collect the cellular surcharge funds and use them for Division costs related to the statewide operation of a cellular 911 emergency telecommunications system. Currently, an individual in New York State can dial 911 on a cellular phone and be in contact with a public safety answering point, from which emergency service is dispatched. As long as the cellular caller is coherent and knows precisely where he or she is, help can be provided. This basic level of cellular 911 emergency service is in compliance with the Law. However, the FCC’s order requires an enhanced 911 system, capable of identifying the cellular caller’s call-back number and location so emergency service can be dispatched even if the caller is disoriented or unintelligible. Division management states it has no responsibility under the Law to establish such a system. Consequently, enhanced cellular 911 is not operational anywhere in New York State: no Division answering point can routinely identify a cellular caller’s callback number or the caller’s location. Thus, dispatchers may not be able to respond



to cellular 911 calls as quickly as they could if enhanced cellular 911 were in place.

The Division answers cellular 911 emergency calls at their 20 public safety answering points in the State. Cellular 911 calls not answered by Division public safety answering points are those that route to county-run public safety answering points in several counties that opt to answer cellular 911 calls, even though they do not receive a share of the cellular surcharge revenues for their service provision. None of the Division's public safety answering points are equipped with Phase I technology to display a cellular 911 caller's number or location. The Division is gathering information to determine how much it will cost to update the technology so they can display this information. However, the Division has not developed a strategic plan to help implement new technology or to guide future cellular 911 service provision.

Enhanced cellular 911 is a complex evolving system, involving elaborate communication technology, the participation of private wireless service providers along with State government, millions of dollars in costs and more than one Phase of implementation. Establishing such a system, coordinating its operation and ensuring accountability requires strategic planning, effective control over revenues and expenditures and regular reporting of results.

Currently, the Division does not plan and coordinate an enhanced cellular 911 system for the State, or account for the use of surcharge revenues, in part because it does not believe it is responsible for these tasks. Division officials indicated that it is not their responsibility to build an enhanced cellular 911 network with cellular surcharge collections. They believe their responsibility is limited to operating the public safety answering points.

While we may agree with the Division that Section 309 does not contain express language regarding the development and implementation of an enhanced cellular 911 system, we believe that this intent may be gleaned from the statute. The Legislature in enacting Section 309 added it to the existing provisions of Article 6 of the County Law. Legislative materials relating to that enactment make clear that the imposition of the cellular surcharge was to eliminate the inequity between land-based and cellular telephone users because both benefit from

coordinated 911 services. Moreover, Section 300 of the Article, titled “Legislative findings and declaration of intent” makes clear that the paramount interest of the Legislature in imposing the surcharges was to significantly reduce the response time of emergency services by facilitating the acquisition of state of the art emergency telephone system technology. Section 309, itself, provides that surcharge revenues are to be devoted to the Division’s costs “related to statewide operation of a cellular 911 emergency telecommunications system.”

Further, because the Law does not specifically require it, the Division does not report on the status of cellular 911 so that State policymakers can measure the progress made in establishing cellular 911 or an enhanced 911 service – at least for Phase I capability – in New York State.

Growing cellular telephone usage is a nationwide phenomenon, and the establishment of an enhanced cellular 911 is a concern for every state. To gain perspective on how the State’s progress in implementing cellular 911 compares to other states, we reviewed a July 11, 2001 report, entitled “Wireless 911 Service in New York State: Crisis in the Making,” issued by members of the New York State wireless telephone industry. The report was prepared to serve as a guide to wireless emergency 911 telephone service in the State. The report stated that, as of July 2001, 23 states had achieved complete or partial implementation of Phase I wireless service. By comparison, not one of the 20 public safety answering points operated by the Division had deployed Phase I enhanced cellular 911 service, or had requested such service. According to the report, most of the above 23 states had used similar strategies for enhanced cellular 911 implementation, which included: having a sufficient revenue stream, usually funded by wireless users via surcharges; providing central, state-level administration of both surcharge collections and disbursements; creating statewide boards to facilitate and assist all aspects of enhanced cellular 911 deployment; and establishing a cost recovery mechanism for both public safety answering points and wireless carriers.

We contacted two of the states (Virginia and New Jersey) to determine the scope of their cellular 911 legislation, the practices and procedures they use to control surcharge collections and expenditures, and the extent of their service provision. It is important to note that New Jersey has

implemented an enhanced cellular 911 system with Phase I capability throughout the state, but that Virginia has not. Further, the methods these states use to deploy cellular 911 may not be the ones New York State should use, since many variables (population dispersion, existing technology, etc.) can affect the operation of such a system. However, both states have made significantly more progress in implementing enhanced cellular 911 than has New York State. We believe this has occurred because implementation efforts in these states are founded on strategic planning, accountability for revenues and expenditures, the existence of oversight and required reporting.

In Virginia, the Wireless E-911 Legislation requires cellular service providers to collect a 75-cent per month cellular surcharge from customers and to remit monthly collections, minus an administrative fee, to Virginia's Wireless E-911 Services Board (Board), which is responsible for assisting in the statewide development, deployment, and maintenance of a 911 system. Surcharges are deposited into a sole source fund, and must be used exclusively to support wireless costs. The Board's mandated responsibilities include developing a comprehensive plan for implementing enhanced cellular 911 statewide; reporting annually on the status of cellular 911 services in the state, as well as on the need for legislation or for funding changes regarding cellular 911. The Board has not exercised its authority to audit the surcharge revenues, but reportedly has identified remittance errors by tracking revenue trends. Localities provide the majority of wireless 911 services, while the state provides funding and basic coordination. Of Virginia's 133 public safety answering points, 41 have full or partial Phase I capability and 53 have requested Phase I deployments.

New Jersey's Statewide 911 Enhanced Emergency Telephone System Act created the Office of Information Technology (the 911 Commission) and the Office of Emergency Telecommunications Services (Office). The Office is responsible for establishing a statewide plan for enhanced cellular 911, and for doing continual planning, design and coordination of the system, while the Commission has oversight responsibilities for the system's implementation. New Jersey funds its cellular 911 system with legislative appropriations via a budgetary line item for enhanced 911. New Jersey has approximately 310 public safety answering points. In 1997, New Jersey equipped all its public safety answering points with

Phase I technology. Over the past two years, cellular companies have been working on a new technology to make it possible for New Jersey's public safety answering points to receive Phase II data.

We believe that clear assignment of responsibility and coordinated planning has contributed to the progress being made by New Jersey and Virginia in implementing an enhanced cellular 911 system. Both states also make provisions for oversight and accountability. New York State already has funding available to finance enhanced cellular 911 service through its dedicated revenue stream. To implement an enhanced cellular 911 system in the State with Phase I capability, the Division needs to develop a focused strategic plan that can serve to prioritize expenditures and coordinate activities of all public safety answering points. Further, mandating the development of a cellular 911 strategic plan, and requiring accountability for surcharge funds and cellular 911 implementation, would, in our opinion, make the development of a statewide enhanced cellular 911 system much more likely.

### **Recommendations**

4. Develop a strategic plan to assist in prioritizing activities and coordinating efforts for the implementation of cellular 911.
5. Work with cellular telephone service suppliers to meet the FCC requirements for enhanced cellular 911 system capabilities.
6. Plan for, implement and operate an enhanced cellular 911 system in New York State.
7. Provide the Legislature with an annual status report on the enhanced cellular 911 system implementation and performance.



## ANALYSIS OF A SAMPLE OF 50 DIVISION EXPENDITURES

Amount	Description
\$1,266,794	Vehicle Lease Payment
1,196,119	*Maintenance on Radio Systems
1,105,744	Vehicle Lease Payment
777,070	Vehicle Lease Payment
777,070	Vehicle Lease Payment
442,560	Vehicle Purchases
287,664	Vehicle Purchases
230,811	*Phase II communication research
135,324	Phone and Radio Lines
112,275	Office space lease
104,865	Soft body armor
85,900	*Microwave communication equipment
83,567	*Radio communication system
83,555	Maintenance on radio systems and lease repairs
67,042	Laboratory supplies
52,370	Phone bill for dedicated lines
19,187	Winter Boots
17,847	Office phone bill
14,646	Gasoline
10,448	Northway emergency call box repair
5,762	Division promotional exam and transportation expenses
5,398	Travel expenses for flight safety and helicopter maintenance training and helicopter international exposition
5,310	Computer Software
5,187	Travel expenses for 5 different conferences
4,850	Office space lease
3,694	Cellular phone bill (usage)
1,730	Office phone bills
684	Laboratory supplies
651	Garbage removal
411	Dry cleaning
385	Travel and lodges expenses related to a missing person search
289	Pens
275	Automobile maintenance
231	Office supplies
217	*Window decal
202	Car washes
186	Locks and keys
143	Automobile maintenance
140	Travel expenses for a conference
93	Photo development
91	Laboratory supplies
75	Automobile parts
62	Dry cleaning
55	Building supplies
40	Lawn mowing services
33	Automobile safety parts
33	Dry cleaning
32	Shipping Charges
15	Automobile maintenance
15	Blank Keys

\* Wireless Telephone Emergency Service Account transactions

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## MAJOR CONTRIBUTORS TO THIS REPORT

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JAMES W. MCMAHON  
SUPERINTENDENT

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March 15, 2002

Mr. William P. Challice  
Audit Director  
Office of the State Comptroller  
Division of Management Audit & State Financial Services  
123 William Street - 21<sup>st</sup> Floor  
New York, New York 10035

Dear Mr. Challice:

We have reviewed your draft audit 2001-S-27 on Cellular Surcharge Revenues. While the audit raises legitimate issues regarding the role of New York State government in providing for the design and implementation of a coordinated emergency communications and public safety response system in the state, the audit does not reflect an accurate understanding of the legislative and technological history of the issue. For your review and consideration, I have attached a brief history of the issues surrounding cellular 911 and detailed response to the findings.

We are pleased that the audit made no unfavorable findings concerning the receipt of funds by this agency. The audit points out that, in accordance with New York State County Law, cellular providers self-report revenues to the Division. County Law conveys no statutory authority to the carriers to enforce the collection of the cellular surcharge nor does it grant any authority to this agency beyond the collection of such self-reported revenues. We question, however, the methodology used to assert that this agency failed to collect all revenues due the state.

\*  
*Note*  
1

More importantly, the audit also mischaracterizes legitimate expenditures made by this agency as being inappropriate uses of the cellular surcharge monies. Each of the expenditures outlined in the report were made in the furtherance of either first responders communications efforts or the Division's overall emergency response operation and are appropriate given the more than ten-year legislative and appropriation history of the surcharge revenues.

\*  
*Note*  
2

The assertion that the 1991 amendment made to County Law mandated the implementation by the Division of State Police of an enhanced cellular 911 on a statewide basis does not reflect an accurate understanding of this complex issue. Enhanced cellular 911 technologies did not exist at the time, and are only now being refined and implemented in some areas of the country. Moreover, enhanced cellular 911 implementation requirements for wireless carriers were not the subject of Federal Communications Commission rulemaking until 1996.

\*  
*Note*  
3

\* See State Comptroller's Notes, Appendix C

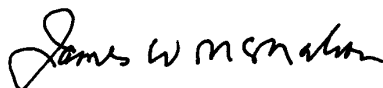


We believe the audit reflects a perspective that is far too narrow, given the legislative and technological history of this issue, and fails to reflect efforts undertaken by the Governor to address this issue. In 2000, the Governor commissioned a study of the issues surrounding the handling of 911 calls across the state. The study, conducted by the then Director of Criminal Justice Katherine Lapp, made recommendations, many of which were included in S.5444, introduced in the 2001 Legislative Session on the Governor's behalf by Senator Rath. The bill passed in the Senate, but failed to be introduced in the Assembly.

As a part of the Executive Budget, the Governor has proposed legislation which, when enacted, would further clarify the use of surcharge revenues by directing that revenues from the surcharge on cellular telephones be used to offset Division of State Police costs related to emergency response operations and for the development of a statewide communications network. In response to the terrorist attack on the World Trade Center, significant new investments in security have been required. The enactment of the Governor's bill will permit revenue generated by this surcharge to support public safety and security initiatives including activities related to protection against terrorist acts or threats.

Should you require any additional clarification, please feel free to contact Colonel David Christler, Deputy Superintendent - Administration at 518-457-6621.

Sincerely,

A handwritten signature in black ink that reads "James W. McMahon". The signature is written in a cursive style with a large initial "J" and "M".

James W. McMahon  
Superintendent

**Division of State Police  
Cellular Surcharge Revenues  
Response to Draft Audit 2001-S-27**

**Background**

The mission of the State Police is to serve, protect and defend the people while preserving the rights and dignity of all. In order to accomplish that mission, the Division continually strives to be coordinated and cooperative with all law enforcement organizations and public safety agencies in New York State. With respect to wireless 911, the Division's emphasis has been to ensure that calls received at communications centers are handled efficiently, and that appropriate resources are dispatched to the citizens of New York State. The Division also continues to work with all county-operated wire-line 911 Public Safety Answering Points (PSAP's), some of which also receive wireless 911 calls, to ensure coordination and efficient use of all available law enforcement resources.

In 1987, the Division took steps to provide wireless 911 emergency access to the increasing number of wireless telephone users by identifying Division communications centers to receive wireless calls and establish protocols to efficiently dispatch or redirect those calls as appropriate. At that time cellular phones were used almost exclusively in automobiles, and a majority of wireless 911 calls received were for traffic-related matters such as motor vehicle accidents, reports of erratic drivers and reports of intoxicated drivers. As a function of traffic volume many of the calls originated from interstates and major highways patrolled primarily by the Division. The Division, in 1988, received approximately 4,000 wireless 911 calls and just over 8,000 were received in 1989. In contrast, more than 600,000 calls were received in 2001.

The Division's statewide network of communications centers and ability to coordinate with other existing public safety answering points operated by counties, cities, and even towns in some instances, made it an appropriate agency to receive wireless 911 calls. Unlike Enhanced 911 wire-line systems, wireless signals do not adhere to geographical boundaries. Furthermore, at the time there was no available technology to pinpoint the location of a caller or to ensure that a call emanating from a specific location would always be directed to the same cellular tower and consequently routed to the same public safety answering point.

The Division identified 21 centers regionally dispersed throughout the state and made arrangements for wireless carriers to route calls to those centers. The Division instituted policies to dispatch police calls to the "closest available police unit" regardless of agency affiliation and, whenever it was determined that fire or emergency medical services were required, to immediately route the caller information to a fire and EMS dispatch center if the Division center did not have the capability to dispatch those services directly. Similar models were instituted and continue in numerous states across the country.

From the outset, however, the Division did not receive all wireless 911 calls in the state as some calls were routed to non-Division answering points. Additionally, as new wireless carriers established operations in New York some entered into arrangements to route wireless 911 calls to specific county-operated PSAP's. Starting in 1996, several counties began initiating efforts to route wireless 911 calls to county PSAP's, including the passage of local laws by several counties requiring that carriers route calls to the county PSAP or face criminal and civil sanctions. Although the validity of such laws is currently being litigated, some carriers have already rerouted calls from Division PSAP's to county PSAP's. As a result, although the Division operates a communications network that now includes 20 wireless 911 answering points, wireless 911 calls are also answered by many counties in addition to New York City.

The series of orders initiated and revised by the Federal Communications Commission (FCC) to govern the implementation of enhanced wireless 911, which began in 1996, included numerous mandates on wireless carriers including two that were referred to in the audit report.

**Phase I E911 Requirements:** As of April 1, 1998, or within six months of a request by a designated Public Safety Answering Point (PSAP), whichever is later, carriers are required to provide to the PSAP the telephone number of the originator of a 911 call (Automatic Number Identification or ANI) and the location of the cell site or base station receiving a 911 call.

**Phase II E911 Requirements:** Wireless carriers are required to provide Automatic Location Identification (ALI) as part of Phase II E911 implementation beginning October 1, 2001. There are separate accuracy requirements and deployment schedules for network-based and handset-based technologies. Carriers must meet several network and/or handset upgrades according to schedules provided by the FCC, regardless of any actions of PSAP's. Additionally, once a PSAP has requested Phase II wireless E911 service from a carrier (i.e. Automatic Location Information) the carrier must begin delivering such service.<sup>1</sup>

The E911 Phase I requirements for wireless carriers, as well as certain Phase II requirements, are applicable only if a designated PSAP is capable of receiving and using the information provided. The Division recognized in 1996, after the FCC rulemaking was initiated, that significant equipment upgrades to its PSAP's would have to be made to enable Phase I and Phase II capabilities and subsequently request Phase I and II service. Implementation of upgrades for all Division wireless PSAP's would have required significant budget appropriations. The Division did not initiate such budget requests at that time, however, because a series of ongoing efforts began at the same time that very well may have resulted, and in some cases did result in wireless calls being rerouted to non-

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<sup>1</sup> Fact Sheet B FCC Wireless 911 Requirements. 6 March 2002  
<[http://www.fcc.gov/911/enhanced/factsheet\\_requirements\\_012001.txt](http://www.fcc.gov/911/enhanced/factsheet_requirements_012001.txt)>

Division PSAP's. Several counties proposed local laws requiring wireless carriers to route 911 calls to a county PSAP. As of March 2002, over 30 counties have passed or are in the process of passing such laws.

Beginning in 1997, a series of meetings were held between Division personnel and various representatives of the State Sheriffs' Association during which officials requested that wireless calls be rerouted from the Division. Joint meetings were also held with wireless carriers, Sheriff Association representatives and a newly created 911 Coordinator's association during which legislative proposals addressing routing decisions were discussed. Legislation was introduced in the Senate and Assembly and A.11379 became the first proposal passed by the Legislature that sought to address this wireless 911 routing issue.

After a veto of A.11379 in August of 2000, which indicated several deficiencies in the bill, the Governor directed the Director of Criminal Justice to undertake a study and make recommendations as to the handling of 911 calls. The Director issued a report after holding a series of forums over several weeks seeking input from all interested parties, including sheriffs, local police and fire and emergency medical service providers. In June 2001 S.5444 was introduced in the legislature at the request of the Governor, which incorporated the major recommendations outlined in the Director of Criminal Justice's report. S.5444 passed the state Senate but was not introduced in the Assembly.

## Agency Response to Surcharge Collections and Expenditures Recommendations

1. ***Propose legislation in conjunction with the Department of Taxation and Finance to:***
  - ***Amend Section 309 of the County Law to transfer the responsibility for collecting and accounting for surcharge revenues to the Department of Taxation and Finance.***
  - ***Amend Section 309 of the County Law to require that cellular telephone carriers provide documentation supporting their submission to the Department of Taxation and Finance, and grant the Department, or its designee, the authority to audit the accuracy and completeness of revenue submittals from these service providers.***
  - ***Amend Subdivision 3 of Section 309 of the County Law to require all cellular 911 surcharge revenues be credited to the New York State Wireless Emergency Service Account created pursuant to Section 97, paragraph qq of the State Finance Law rather than the Seized Assets Account, and that the use of such monies be limited to enhance the cellular 911 system.***
2. ***Use surcharge revenues only for Division costs directly related to implementing and operating cellular 911 programs.***
3. ***Establish discrete accountability for the expenditure of all cellular 911-surcharge revenues.***

The report confirmed that the Division had adequately accounted for the remittance of checks and promptly deposits the checks into the Seized Assets Account as directed by Section 309 of the New York State County Law.<sup>2</sup> County Law, as enacted, does not authorize the Division to audit cellular providers to determine the accuracy of cellular surcharge monies received, nor does it allow for the Division to proscribe levels of documentation received from the providers. However, most providers do include payment advices with their checks, which calculate the amount of administrative fees being retained by the providers.

The auditors did contact the Public Service Commission (PSC) and Federal Communications Commission (FCC) in an attempt to obtain a listing of cellular providers in New York State. They were unable to document that there were any carriers that failed to remit cellular surcharge monies. Using an August 2001 FCC report, the auditors

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<sup>2</sup> Draft Audit 2001-S-27, p. 6

extrapolated data in an attempt to show that for calendar year 2000, the Division did not collect all of the surcharge monies due the State. The suggestion that the Division use data contained in an FCC report would serve little purpose given the fact the data is self-reported, unaudited and not timely for the verification of cellular receipts. In addition, Section 309 of the County Law requires only that the service provider remit monies collected; the providers have no legal obligation, nor does the Division have the statutory authority, to enforce the collection of the surcharge.

The original intent of Section 309 of the County Law was to eliminate an inequity by assessing a monthly fee to cellular telephone users similar to that imposed on land-based telephone customers and to make monies available for appropriation to the Division for costs related to the operation of the Division's cellular 911 emergency communications network. The 1992 amendment to Section 309 made technical corrections to the original bill regarding the collection and deposit of surcharge monies. The bill memorandum accompanying that legislation stated that the revenues generated from the surcharge would offset Division costs of coordinating emergency response operations. All of the expenditures made from the Seized Assets Account, either directly or indirectly, support the Division's emergency response operations.

The Division will explore with the Department of Taxation and Finance the possibility of amending County Law. However, as a part of the Executive Budget, the Governor has proposed legislation which, when enacted, would further clarify the use of surcharge revenues by directing that revenues from the surcharge on cellular telephones be used to offset Division of State Police costs related to emergency response operations and for the development of a statewide communications network. In response to the terrorist attack on the World Trade Center, significant new investments in security have been required. The enactment of the Governor's bill will permit revenue generated by this surcharge to support public safety and security initiatives including activities related to protection against terrorist acts or threats.

As noted in the audit, monies collected from the cellular surcharge are deposited into the Seized Assets Account in accordance with County Law. Appropriations for the expenditure of these funds are made by program. As currently structured, the accounting system does not allow for the tracking of programmatic expenditure by revenue source below the sub-fund level. Monies appropriated from the Seized Assets Account are currently appropriated in the Patrol Activities, Technical Services and Criminal Investigation Activities programs, all of which support the Division's emergency response operations.

## **Agency Response to Enhanced Cellular Communication System Recommendations**

### ***4. Develop a strategic plan to assist in prioritizing activities and coordinating efforts for the implementation of cellular 911.***

The audit report states that the Division should develop a “focused strategic plan to coordinate activities of all public safety answering points.”<sup>3</sup> The Division agrees that a focused strategic plan would benefit efforts to implement enhanced wireless 911 services in New York State. However, there are over 180 PSAP’s in operation outside of New York City according to surveys conducted by the Division of Criminal Justice, only a portion of which are operated by the Division. Section 309 of the County Law, which deals with wireless 911, does not provide the statutory authority for the Division to coordinate the activities of all PSAP’s. Moreover, granting such authority to the Division would not be appropriate in a state that has over 500 police agencies, numerous county-operated wire-line 911 services, a 911 Coordinators Association, a County Emergency Managers Association and an emphasis on home-rule.

The Division alone is not in the position to coordinate a statewide strategic plan for the implementation of wireless 911 because many wireless 911 calls are currently handled by a variety of non-Division PSAP’s, and because efforts underway to reroute wireless 911 calls from Division PSAP’s, which have already been described. Nevertheless, the Division does recognize the need to plan for and implement upgraded communications systems that will improve internal operations and the agency’s ability to communicate with other public safety agencies. Such upgrades are a necessary component to effectively and efficiently coordinate responses to public safety emergencies statewide, whether the emergency is reported via wire-line 911 or wireless 911 and regardless of where the call is received.

For this reason, planning efforts began in the mid-1990’s for a new state-of-the-art communications system to replace the Division’s aging statewide radio system. Recognizing the need to upgrade radio systems of several other state agencies and the potential to provide a communications backbone infrastructure available to local agencies, the project was broadened and transferred to the Office for Technology as the Statewide Wireless Network project. The Statewide Wireless Network provides an opportunity to enhance coordination and interoperability among public safety agencies through interfaces and gateways between currently disparate communications systems and computer-aided dispatch systems. Integration achievable through the Statewide Wireless Network can greatly improve the state’s increasingly mobile citizenry’s ability to connect to the appropriate public safety services they require.

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<sup>3</sup> Draft Audit 2001-S-27, p.17.

**5. Work with cellular telephone service suppliers to meet the FCC requirements for enhanced cellular 911 system capabilities.**

The audit report states, "No Division of State Police PSAP can routinely identify a cellular caller's call back number or the caller's location."<sup>4</sup> Division PSAP's can, in fact, identify call back numbers for calls made through some wireless service provider systems. Nevertheless, the intended observation is valid that no Division PSAP currently is FCC Phase I capable (capable of receiving call back number and location of the cell site receiving the call) or Phase II capable (caller location). Neither, however, is any non-Division PSAP that receives wireless 911 calls in New York State.

The Division has requested Phase I and Phase II from five wireless carriers to implement enhanced wireless 911 at one of its PSAP's in the Capital Region. This limited implementation is being initiated because the Division recognizes that, despite the outcome of pending litigation and future legislation, there will remain several areas of the state where the Division will continue to receive wireless 911 calls for the foreseeable future. The implementation will also assist the Division and suppliers of wire-line and wireless services to determine costs for Phase I and Phase II readiness, including potential recurring costs. At least three county-operated PSAP's in western and central New York have also recently requested Phase I and Phase II or are preparing to do so. The Division is working with wireless carriers on this limited implementation, and expects to work with carriers on subsequent implementations in the very near future.

**6. Plan for, implement and operate an enhanced cellular 911 system in New York State.**

The audit report states that the Division should "adequately plan for and operate an enhanced wireless 911 system."<sup>5</sup> There is no disagreement that the Division must continue to evaluate its communications operations and make improvements as necessary. Presently this includes assessing equipment upgrades necessary to receive enhanced wireless 911 information (ANI and ALI), preparing cost estimates to achieve Phase I and II at two PSAP's, and requesting and preparing for the implementation of Phase I and Phase II in a third PSAP in the Capital Region.

Nevertheless, the Division does not agree with the report authors' reasoning that the intent of Section 309 of the County Law was to have the Division develop and implement an enhanced wireless 911 system.<sup>6</sup> Section 309 was added to the County Law in 1991; long before the technology existed for enhanced wireless 911 services. Moreover, the series of orders by the Federal Communications Commission (FCC) directing wireless carriers to meet certain conditions for enhanced wireless 911 did not begin to be initiated until 1996.

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<sup>4</sup> Draft Audit 2001-S-27, p.13.

<sup>5</sup> Draft Audit 2001-S-27, p.13.

<sup>6</sup> Draft Audit 2001-S-27, p.14.



**7. Provide the Legislature with an annual status report on the enhanced cellular 911-system implementation and performance.**

Section 309 does not require annual reporting of State Police operations specifically related to wireless 911. Legislation proposed by the Governor (S.5444) would create a state 911 board with 17 appointed members.<sup>7</sup> As proposed, the board is required to issue annual reports to the Governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly, on the status of 911 services across the state and the extent to which PSAP's across the state (State Police and non-State Police) are equipped to receive enhanced wireless 911 calls.

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<sup>7</sup> S5444 RATH 6 March 2002 <<http://nyslrs.state.ny.us/NYSLBDC1/bstfrme.cgi>>

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## ***State Comptroller's Notes***

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1. The report makes clear that our revenue estimates were not precise, but rather were offered to illustrate one type of methodology the Division might consider using, (i.e., taking into account independent subscriber data), for purposes of developing revenue expectations against which to compare actual collections.
2. County Law Section 309 expressly limits the payment of the surcharge money to “costs related to statewide operation of a cellular 911 emergency telecommunications system.” Therefore, we believe the Division’s expenditures of surcharge funds must be evaluated against that statutory requirement. As our report points out, many of the expenditures we reviewed could not be easily construed as costs related to the operation of a cellular 911 emergency telecommunications system.
3. The report does not state that the addition of Section 309 to the County Law in 1991 mandated the implementation of an enhanced cellular 911 system. In fact, the report expressly recognizes that the FCC rulemaking regarding enhanced cellular 911 implementation requirements for wireless carriers was not promulgated until 1996, and that Section 309 itself contains no explicit requirement concerning enhanced cellular 911. As noted, that statute speaks only in terms of “statewide operation of cellular 911 emergency telecommunications system.” As the report states, the legislative intent behind Section 309 appears to have been to facilitate the acquisition of state of the art emergency cellular telephone system technology.