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OFFICE OF THE STATE COMPTROLLER

February 18, 2004

Mr. Wayne E. Bennett
Superintendent
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Mr. Randy Daniels
Secretary of State
Department of State
41 State Street
Albany, NY 12231

Mr. Andrew Eristoff
Acting Commissioner
Department of Taxation and Finance
Harriman State Office Building Campus
Building 9
Albany, NY 12227

Re: Status of Wireless 911 Surcharge
In New York State
Report 2003-F-9

Dear Messers. Bennett, Daniels and Eristoff:

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 have reviewed the actions taken by officials of the Division of State Police (Division), the Department of State, and the Department of Taxation and Finance as of June 30, 2003, to implement recent legislated changes affecting the delivery of enhanced wireless 911 emergency services.

A. Background

In 1989, the State Legislature passed the Enhanced Emergency Telephone System Surcharge Law (Law). The Law imposed a monthly fee on landline telephones to help pay for systems which automatically connect a 911 caller to a dispatcher located in a communication center called a public safety answering point (PSAP). The PSAP is an emergency communications center where emergency calls are answered and directed to the appropriate service. In 1991, the Law was amended to establish a monthly surcharge on all cellular telephones in the State. Wireless surcharge revenues were intended to support Division costs for operating a wireless 911 emergency service.

Wireless 911 emergency services can be grouped into four categories: (1) Basic 911 - provides the call taker with only the caller's voice; (2) Phase 0 - provides the call taker with the caller's call-back number (if not unlisted) using a function similar to "caller ID;" (3) Phase I - automatically identifies the caller's call-back number using automatic number identification (even if it is unlisted) and the nearest cell tower location; and (4) Phase II - automatically identifies the caller's number and location within 50 to 100 meters in most cases. Having Phase II capability is the critical goal of the enhanced wireless 911 emergency services guidelines published by the Federal Communications Commission (FCC). In a series of orders issued since 1996, the FCC has directed actions for states, municipalities and wireless service providers (such as Cingular, Verizon, etc.) to improve the quality and reliability of enhanced wireless 911 emergency services throughout the country. The FCC has ordered that Phase II capability be implemented nationwide between October 1, 2001 and December 31, 2005.

It is important to note that although a PSAP may have Phase II technology, not all wireless users will benefit without obtaining upgrades to their cellular phones. There are two methods available to provide location information to PSAPs: either triangulation or Global Positioning System (GPS). For providers using triangulation, the location of the caller is determined by the three nearest towers to the caller's location. When GPS is used, a caller's cellular phone must have a GPS chip installed in order for the caller to be automatically located by a PSAP.

In our previous audit titled, *Division of State Police, Cellular Surcharge Revenues*, (Report 2001-S-27), issued March 20, 2002, we identified a number of improvement opportunities for the delivery of enhanced wireless 911 emergency services. However, subsequent changes reflected in Section 309 and Article 6-A of the County Law have so significantly altered the manner in which these services are to be financed and delivered that a simple status of many of the prior recommendations would not be applicable or helpful. Therefore, this report addresses the significant shift in responsibilities and procedures for financing and managing enhanced wireless 911 emergency services. In summary, our prior audit found that the Division had collected more than \$162 million in wireless surcharge revenue since 1991, but that it did not know how many providers should be remitting revenues and did not verify the revenues it received. We also found that, while cellular users had paid surcharges for years, with the exception of Cattaraugus County there was no Phase II wireless 911 service operational anywhere in the State. As of March 31, 2001 the Division had spent the majority of surcharge revenues on general operations rather than enhanced wireless 911 emergency services.

Subsequent to the release of our prior audit, the New York State Legislature passed Article 6-A of the County Law, which established within the Department of State, the New York State 911 Board (Board). According to Article 6-A of the County Law, the purpose of the Board is to:

“assist local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of 911 emergency calls, developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community.”

In addition, several local governments (cities and counties) have opted to establish their own local wireless PSAPs rather than receive emergency services through a State PSAP maintained by the Division. Both local and State governments have been responsible for dispatching landline enhanced 911 calls for years. Back in 1991, when wireless 911 emergency service legislation was passed, the thinking was that most related wireless calls would be made from cell phones in cars on highways. Therefore, routing calls to State call centers seemed most appropriate. The significant growth in the use of cell phones has resulted in emergency calls being made from a variety of places, inside a building, in an elevator, on a hiking trail, etc. Local officials have thus recognized that they might be able to improve emergency services if they receive wireless 911 calls directly, instead of through a State PSAP.

B. Review Scope, Objectives and Methodology

We have reviewed the actions taken by officials of the Division, the Department of State, and the Department of Taxation and Finance as of June 30, 2003, to implement recent legislated changes affecting the delivery of enhanced wireless 911 emergency services. The objectives of our review were to determine the status of enhanced wireless 911 emergency services, the degree to which the Board provides statewide oversight of enhanced wireless 911 emergency services and the extent of accountability over wireless 911 surcharge revenues.

Unlike an audit, a review includes limited testing and verification of information and records. To accomplish our objectives we met with officials of the Division, the Department of Taxation and Finance, and the Department of State (including a member of the Board), and we surveyed various county officials involved in the provision of enhanced wireless 911 emergency services. We reviewed pertinent sections of the State Finance Law and County Law and obtained summary revenue and disbursement data from the State Accounting System. We also submitted a questionnaire to 57 local PSAPs, plus New York City, and to 16 State PSAPs to determine the status of their enhanced wireless 911 emergency services. Of the local PSAPs, 31 (54%) responded, and all 16 State PSAPs responded.

C. Results of Review

Overall, we conclude that progress has been made in implementing Phase II technology at PSAPs, and significant improvement has been made in setting operating standards for all PSAPs. At the time that our last audit was released, there were no Phase II compliant PSAPs in the State, however, Cattaraugus County had Phase II capability. As of June 30, 2003, 17 local PSAPs and one State PSAP have reportedly developed Phase II capability. Based on feedback obtained through questionnaires sent to local PSAPs, we noted that many that do not have Phase II capability, plan to

have it within two years. In addition, the Division has plans for Phase II implementation at additional PSAPs, but is monitoring its existing PSAPs to determine whether wireless 911 emergency services will continue to be provided by a State PSAP or whether the respective counties will be taking over operations. The establishment of a Board to provide standards of service by October 1, 2003, and to monitor the provision of 911 services throughout the State is expected to help enhance wireless 911 emergency services.

Pursuant to the amendment to Section 309 of the County Law, effective August 1, 2002, the Department of Taxation and Finance is responsible for collecting all wireless surcharges. While the Department of Taxation and Finance has taken steps to improve the level of documentation from providers supporting wireless surcharge collections, there still is little assurance that all surcharge revenues owed by providers are being collected. The Department of Taxation and Finance has no authority to audit the records of wireless service providers, and therefore, cannot verify whether reported surcharge revenues are reasonable. In addition, the amendment broadened the intended use of wireless 911 surcharge monies to include funding for homeland security, as well as State public safety and security programs, including but not limited to the detection, protection against, prevention, response and recovery from terrorist acts or threats.

In accordance with Section 309 of the County Law, wireless 911 surcharge revenues are deposited into the General Fund and the Statewide Public Safety Communications Account. Monies deposited into the Statewide Public Safety Communications Account have been allocated to programs outlined in Section 309. However, monies deposited into the General Fund are used for the State's operating budget and it is not possible to verify specifically how these funds were or will be used. Furthermore, since we did not audit the expenditures of the Statewide Public Safety Communications Account, we cannot report whether all monies allocated to programs outlined in Section 309 were actually expended for their intended purposes. In contrast, it is expected that the Board's review and approval of local PSAP enhanced wireless 911 expenditures should serve to provide reasonable assurance that the reimbursements from the Local Wireless Public Safety Answering Point Account to localities were for their intended purpose. In addition, Department of State officials indicated that the practice of local PSAPs submitting their enhanced wireless 911 plans to the Board should help in identifying aggregate statewide costs.

1. Status of Enhanced 911 Emergency Services

We found that there has been progress in establishing enhanced wireless 911 emergency services at State and local PSAPs, but the lack of a control plan is hampering progress. The Division is not investing in a statewide approach to implementing Phase II capability. To do so would result in the Division incurring additional costs for enhancing a State PSAP that might close down as counties establish a local PSAP. Instead, the Division has established a project plan and a timeline to outline the steps needed to complete wireless implementation of Phase II on a limited basis.

As of June 2003, the Division's Albany PSAP is Phase II compliant, answering calls from five wireless providers in four counties (Albany, Rensselaer, Schenectady and Schoharie Counties). The Albany PSAP is the only Phase II compliant State PSAP. The Division will work with the New York State Office for Technology to consolidate its PSAPs across the State as part of the Statewide Wireless Network. The consolidated State PSAPs and the Statewide Wireless Network will provide an infrastructure to support the continued development of enhanced wireless 911 emergency

services. The provision of enhanced wireless 911 emergency services also requires an effective radio communications system, which the Statewide Wireless Network provides.

Based on a survey we conducted as part of this review, as of June 2003, 17 local, and 1 State PSAP have Phase II capability. Responses to a questionnaire sent to 57 counties plus New York City, indicate that many local PSAPs will have Phase II capability within two years. The following map reflects the performance status of all counties statewide. The map shows that there are 13 counties that have basic 911 level service, 18 counties that have Phase 0 level service, 5 counties and New York City that have Phase I level service, and 21 counties that have Phase II level service (the Division's Albany PSAP provides Phase II level service to 4 of the 21 counties). It is expected that more counties will be Phase II capable in the near future.

2. Board Oversight

Article 6-A of the County Law established the Board to oversee Statewide implementation of enhanced wireless 911 emergency services and established a new funding mechanism allowing localities that chose to set up a local PSAP, to share a portion of the surcharge revenues. The Board, consisting of 13 members serving four-year terms, has broad oversight powers to monitor statewide implementation of enhanced wireless 911 emergency services. Both State and local PSAPs must certify biennially that they comply with the minimum standards for operation that are established by the Board. The Board is required to promulgate minimum standards to ensure the quality of enhanced wireless 911 emergency services delivered by all PSAPs. These standards were under development as of June 30, 2003 through work groups represented by officials from the Division, NYS Sheriffs Association, the State Chiefs of Police, NYS Association of Fire Chiefs, County Fire Coordinators, NYS Emergency Managers, NYS 911 Coordinators Association, and other interested parties. The work groups were establishing minimum standards in the following areas which are expected to be developed by October 1, 2003:

- Jurisdictional Protocols – Given the overlapping jurisdictions in some areas of the State, more than one patrol car may be in the vicinity of an emergency. The standard will help ensure that the closest car will be dispatched to the emergency. On June 30, 2003, the Board adopted the direct dispatch standard requiring all PSAPs to follow a prescribed procedure for alerting emergency service providers without having to relay or reroute calls unless the call originates outside the jurisdiction.
- Public Safety Answering Point Staffing – This standard governing staffing will help ensure that a sufficient number of employees are on duty to cover calls for assistance and to dispatch appropriate emergency services. Other points of discussion have included written job descriptions, procedures for quality control performance evaluations, and a policy for call back of off duty dispatchers.
- PSAP Training – This standard will provide a basic level of competency for call takers and dispatchers. The basic training standards which were finalized in September 2003, subsequent to the period of our review, include Legal Aspects, Interpersonal Communications, Telephone Techniques, and Stress Management. The annual in-service training standards include Stress Awareness, Community Relations, and Legal Updates.
- PSAP Building, Equipment and Security – This standard will address building safety and power stability, and the types of equipment and security measures that should be utilized at all PSAPs. Use of proper technology is critical to the efficient dispatch of emergency services.

Once in place, these standards are intended to ensure that enhanced wireless 911 emergency services are provided effectively and consistently at all PSAPs. If the Board finds that a PSAP is not in compliance with these standards, it is required to specify measures necessary to secure compliance and require the PSAP to provide a plan of corrective action. Should a local PSAP fail to submit or effect a plan of corrective action, it will not be eligible to receive reimbursement of wireless 911 service costs. Should a State PSAP fail to submit or effect a plan of corrective action,

The Board will notify the chief executive officer of each local government serviced by the State PSAP that it is not in compliance with applicable standards.

In accordance with Article 6-A, Section 328, the Board must issue an annual report to the Legislature and the Governor by March 1st of each year regarding the Board's activities for the previous calendar year, including the status of enhanced wireless 911 emergency services, as well as allocations of monies to local PSAPs from the Local Public Safety Answering Point Account including allocations made but not yet disbursed. In addition, under Article 6-A, Section 329, the Division must certify every two years to the Board that all State PSAPs are in compliance with the Board's standards relating to the delivery of enhanced wireless 911 services. Since the Board was not required to promulgate its standards until October 1, 2003, the two-year time limit has not yet expired, and therefore no certification has been filed by the Division. These measures are intended to provide useful information to the Governor relating to the status of enhanced wireless 911 emergency services throughout the State.

Section 333 of the County Law established a \$100 million fund, maintained by the New York State Dormitory Authority, to expedite the implementation of enhanced wireless 911 emergency services in a controlled fashion. Only local PSAPs will be eligible for this additional funding. To receive this additional funding, local PSAPs are required to submit written enhanced wireless 911 plans to the Board for review. These plans must include an implementation timeframe, listing of local licensed wireless service providers, summary of projected costs necessary to provide enhanced wireless 911 services, description of the technologies to be used and documentation supporting the local PSAP's ability to receive and utilize enhanced wireless 911 information within 180 days of submitting a plan. The Board has 90 days from the time it receives a plan to declare it complete or incomplete and submit recommendations to the Dormitory Authority of the State of New York for funding each enhanced wireless 911 plan. If the Board does not issue a determination of completeness or incompleteness within the 90 days, the respective plan is deemed approved. As of June 30, 2003, no funds have been distributed from the bond fund. If carried out as prescribed in law, this funding should provide a significant boost to local PSAPs in implementing enhanced wireless 911 emergency services.

However, we found that the Board could further improve its ability to manage future development of enhanced wireless 911 services by assessing and aggregating anticipated costs of Phase II implementation for all PSAPs, both State and local. Although the Board is involved in reviewing and approving the costs of individual local PSAPs, it needs a broader view of the aggregate statewide cost for all local and State PSAPs. Aggregating this information and reporting it to State policy makers would help in planning for future funding needs for all PSAPs to meet the FCC December 31, 2005 expectation for Phase II completion. Department of State officials noted that as local PSAPs submit their enhanced wireless 911 plans to the Board, it should contribute toward the gathering of aggregate statewide costs.

3. Surcharge Accountability

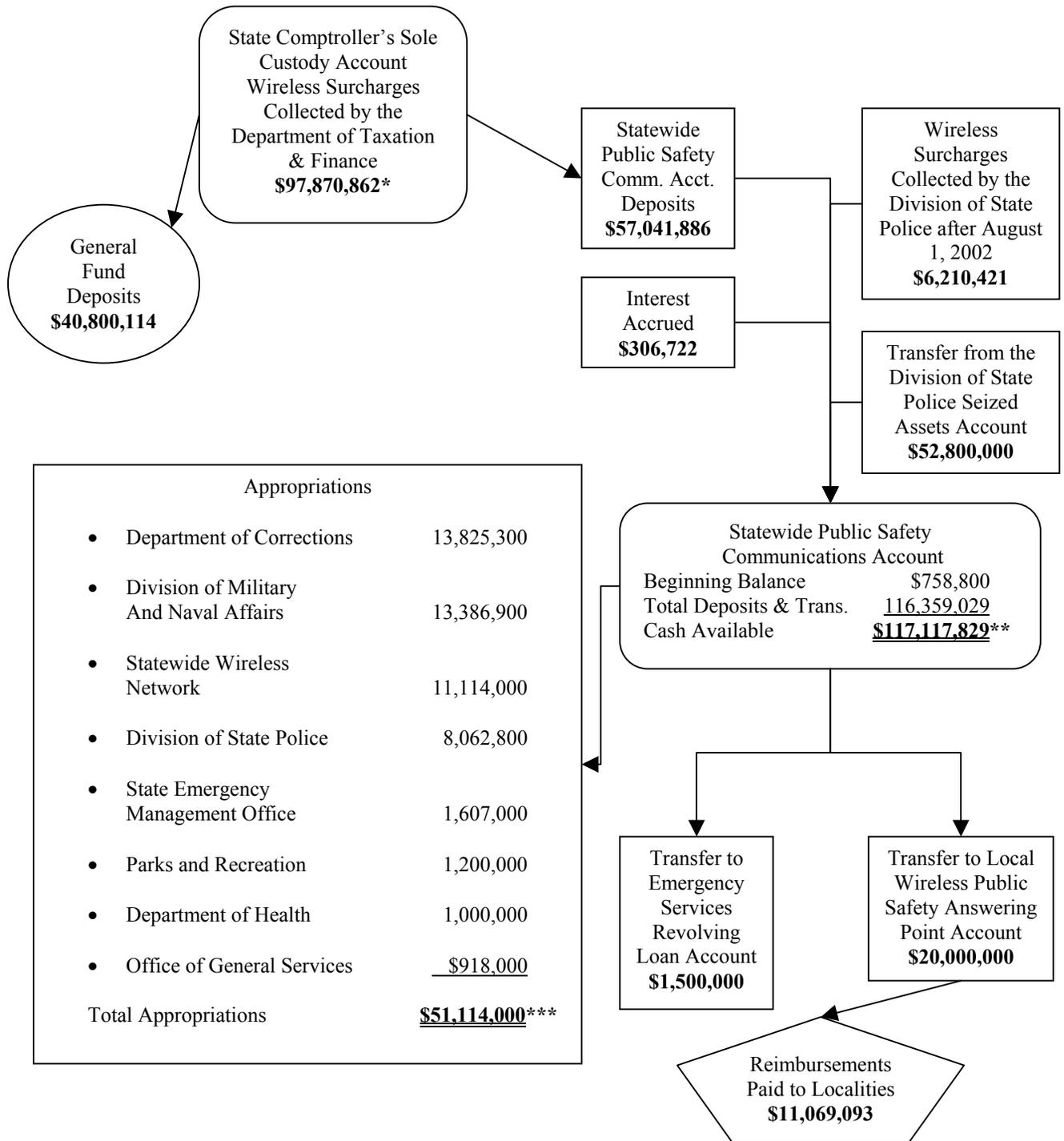
Two pieces of legislation, Section 309 and Article 6-A of the County Law, have had a significant impact on enhanced wireless 911 emergency services. Section 309 of the County Law was amended bringing about the following notable changes:

- Increased the wireless surcharge from \$.70 to \$1.20 per month for each user.
- Required wireless providers to report and pay, on a quarterly basis, all wireless surcharges to the Commissioner of the Department of Taxation and Finance, which is responsible for depositing such funds daily with the State Comptroller.
- Directed the State Comptroller to pay 41.7 percent of surcharge monies collected to the General Fund, and 58.3 percent (less 2 percent of this amount retained by service providers for administration fees) to the Statewide Public Safety Communications Account of the Miscellaneous Special Revenue Fund.
- Provided general direction regarding how surcharge monies contained in the Statewide Public Safety Communications Account are to be allocated.
- Established a provision to cover the costs of debt service for bonds and notes issued to finance funding for the expedited deployment of enhanced wireless 911 emergency services.

The Department of Taxation and Finance has required wireless service providers to complete, with each quarterly filing of surcharge revenues, transmittal form WCS-1 showing detailed information, such as the number of subscribers and the total amount collected. This level of detail is an improvement since our prior audit and permits some means of revenue accountability. However, the Department of Taxation and Finance lacks the authority to audit service providers' records, and this significantly limits attempts to verify revenues. We discussed the possibility of utilizing an analytical approach for approximating what the amount of surcharge revenues should be during a given period with Department of Taxation and Finance officials. Such an approach would incorporate the development of revenue estimates based on independent provider data filed with the FCC reflecting the number of subscribers. The Department of Taxation and Finance could compare these estimates with reported revenues to assess whether reported revenues were reasonable. Should reported revenues differ significantly from estimated revenues, an argument could be made for seeking legislative authority to audit service providers. Until such measures are taken, the State still does not have adequate assurance that all surcharge revenues are being accurately reported by all wireless service providers.

In addition, Section 309 has broadened the range of uses for wireless 911 surcharges. As such, use of surcharge revenues only for costs directly related to implementing and operating wireless 911 programs, as required during the period covered by our prior audit, is no longer applicable. As of June 30, 2003, all discernable appropriations of surcharge revenues have been made from the Statewide Public Safety Communications Account. It cannot be determined whether the wireless surcharge revenues deposited into the General Fund have been appropriated for 911 purposes. The following chart summarizes the collection, appropriation and expenditure of wireless 911 surcharge revenues for the period August 1, 2002 through June 30, 2003. The amounts are as reported in the State Accounting System and have not been audited.

Collection, Appropriation and Expenditure of Wireless 911 Surcharge Revenues
August 1, 2002 through June 30, 2003



* The Balance for the State Comptroller's Sole Custody Account as of June 30, 2003 is \$28,862.

** The balance in the Statewide Public Safety Communications Account that has not been appropriated as of June 2003 is \$44,503,829.

*** As of June 30, 2003, \$44,190,146 of this amount had been expended.

Prior to August 1, 2002, wireless 911 surcharge revenues, which amounted to \$.70 per month for each cell phone subscriber, were collected by the Division and deposited into the Seized Assets Account of the Special Revenue Fund. These funds were then appropriated to the Division and used for a wide variety of Division activities including funding the then Safety Communications Account. With the amendment to Section 309 of the County Law, the Safety Communications Account was renamed the Statewide Public Safety Communications Account. At the time the Account was renamed, it had a balance of \$758,800 which became the beginning balance of the Statewide Public Safety Communications Account. Also, with the amendment to Section 309, the Department of Taxation and Finance collected wireless 911 surcharge revenues from wireless providers and transferred those revenues to the State Comptroller for deposit into the Comptroller's Sole Custody Account. Since the amendment to Section 309 took effect on August 1, 2002, and as of June 30, 2003, the Department of Taxation and Finance had transferred about \$97.9 million in wireless 911 surcharge revenues to the Comptroller.

The Comptroller divided these revenues as required, depositing about \$40.8 million (41.7 percent) into the General Fund and about \$57 million (58.3 percent) into the Statewide Public Safety Communications Account. In addition, there were three other sources of revenue deposited into the Statewide Public Safety Communications Account: a transfer of \$52.8 million in revenues that had previously been deposited by the Division into the Seized Assets Account of the Special Revenue Fund prior to August 1, 2002; about \$6.2 million in wireless 911 surcharge revenues erroneously sent to the Division by wireless providers after August 1, 2002; and about \$307,000 in accrued interest.

Revenues deposited into the General Fund are not earmarked for future use as in a special revenue fund, such as the Statewide Public Safety Communications Account. Therefore it is not possible to track how 41.7 percent of all wireless 911 surcharge revenues, which are deposited into the General Fund, have been or will be used. Of the \$117.1 million in funds available in the Statewide Public Safety Communications Account, the Legislature has appropriated \$51.1 million to several State agencies, \$1.5 million to the Emergency Services Revolving Loan Account and \$20 million to the Local Wireless Public Safety Answering Point Account. Of the \$20 million in the Local Wireless Public Safety Answering Point Account, approximately \$11 million has been distributed to localities as of June 30, 2003.

Not included in the chart because it is not part of the wireless 911 surcharge is a recently approved \$100 million bond maintained by the Dormitory Authority of the State of New York. In accordance with Section 333 of the County Law, distributions of these bond monies will only be made to local PSAPs based on requests for funding to purchase and maintain equipment needed to provide enhanced wireless 911 services as specified in written plans. The intent of this funding is to expedite the development of enhanced wireless 911 emergency services at localities. The \$100 million has been appropriated through the Department of State's fiscal 2003-04 budget. However, the Board's draft standards, which are currently undergoing public review and comment, need to be adopted before plans can be submitted and funds can be expended. Department of State officials anticipate that the Board will begin approving plans in early 2004. In addition, the chart does not reflect those counties that initiated an additional \$.30 per month local wireless 911 surcharge for each wireless phone, as provided by Section 308 of the County Law. The county-initiated surcharge goes directly to the respective counties and is to be used for enhancing wireless 911 services similar to the statewide 911 surcharge.

In accordance with Article 6-A, the Board distributes wireless 911 surcharge revenues (this does not include local wireless 911 surcharges) from the Local Wireless Public Safety Answering Point Account to local PSAPs. Local PSAPs have discrete accountability for the expenditure of these wireless 911 surcharge revenues. For example, each local PSAP submits its wireless 911 service expenditure summaries to the Board for review and reimbursement. These summaries reflect eligible costs incurred to establish and/or to provide enhanced wireless 911 emergency services. The Board reviews the expenditure summaries to determine if the summaries are complete and items of expense are appropriate. Non-eligible expenses cannot be reimbursed. In addition, regardless of the eligibility of expenses incurred, each local PSAP's funding is limited based on a calculation using its population census data for the year 2000. Therefore, localities with larger populations are allowed higher reimbursement levels.

In contrast to local PSAPs, State PSAPs do not receive funding from the Board, nor do they submit expenditure summaries for Board review. Instead, State PSAPs are funded through the Division's operating budget. Likewise, the \$51.1 million in appropriations to various agencies and the \$1.5 million transferred to the Emergency Services Revolving Loan Account, as shown in the preceding chart, do not undergo Board review and approval. Because the scope of our review did not include a determination of how appropriations were expended and because there is no Board review of these appropriations, we cannot attest to the use of these monies.

We shared our observations with officials from the Division, the Department of State and the Department of Taxation and Finance.

Major contributors to this review were Richard Sturm, Brian Lotz, Theresa Nellis, ShaDina Currie and Paul Bachman.

We would appreciate your individual responses to this report within 30 days, indicating any actions planned or taken to address the matters discussed in this report. We also thank the management and staff of the Division, the Department of State and the Department of Taxation and Finance for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

William P. Challice
Audit Director

cc: William Callahan, Division of State Police
Mark Mitchell, Department of State
Andrew Maguire, Department of Taxation and Finance
Deirdre A. Taylor, Division of the Budget