7. Lingo's VoIP service is portable for both residential and business customers; that is, so long as Lingo's customers have access to a broadband Internet connection, the Lingo customer can make use of the service anywhere in the United States or, for that matter, from anywhere in the world. The customer does not have to purchase Internet access from Lingo to make use of the service.

8. Also, Lingo's service allows customers in one geographic area to use telephone numbers that are associated with distant or non-local areas. Lingo heavily markets its service to customers with international business operations, who find this capability very useful. For example, a Lingo customer who lives in Washington, DC may have a telephone number assigned from Los Angeles, California or from Sydney, Australia and could use the service from any location in the world where there is broadband Internet access.

9. Many of Lingo's customers use Lingo's service outside of the United States. It makes no sense for the *Order* to apply to such users as there is little a PSAP in the United States can do to assist a Lingo user in another country.

10. Many other Lingo customers use the service within the United States, but have requested telephone numbers associated with foreign countries, thereby allowing them to keep in touch with customers, suppliers, or personal contacts in a particular foreign country. The use of such foreign telephone numbers raises unique challenges with the E911 solution utilized by Lingo and has not yet been resolved.

B. The Commission's Order & Logical Consequences.

11. By July 29, 2005, the Commission's *Order* required providers of "interconnected two way VoIP services" like Lingo to: 1) "specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may

not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service;"[3] 2) "obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory;"[4] and 3) distribute to all existing and new subscribers "warning stickers and other appropriate labels" stating that E911 service "may be limited or not available."[5]

12. Within 120 days after the effective date of the *Order* (*i.e.*, by November 28, 2005), all interconnected VoIP providers must: 1) "as a condition of providing that service to a consumer," provide that consumer with E911 service as required by the *Order*;[6] (2) "transmit all 911 calls, as well as ANI [Automatic Number Identification] and the caller's Registered Location for each call, to the PSAP [Public Service Answering Point], designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location ...;"[7] 3) route "[a]ll 911 calls ... through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network [*i.e.*, the existing emergency services network]";[8] (4) make the Registered Location "available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate

---

3 *Order* at ¶ 48.

4 *Id.*

5 *Id.*

6 *Id.* at ¶ 47.

7 *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2).

8 *Id.* ANI is defined as "Automatic Number Identification." Pseudo Automatic Number Identification ("Pseudo-ANI") means "[a] number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system."

automatic location information (ALI) database;"[9] (5) "[o]btain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized; (6) "[p]rovide ... end users one or more methods of updating their Registered Location ... [which] must allow an end user to update the Registered Location at will and in a timely manner"; and (7) "submit a letter to the Commission detailing ... compliance with [the 120-day requirements]."[10]

13. The Commission's *Order* explicitly prohibits interconnected VoIP providers from allowing customers to "opt-out" of E911 services or requiring customers to opt-in to E911 services. Therefore, Lingo cannot limit its E911 service to particular geographic areas in which it markets the service – *even if a customer agrees to this limitation.* Instead, interconnected VoIP service providers must ensure that E911 service is available from any location where the customer may roam. Under the Commission's new Rules, the only option apparently available to a provider whose customer tries to register a service location at which the provider cannot comply with the E911 requirements is to disconnect that customer's VoIP service completely.

14. The Commission's *Order* poses substantial problems for users that travel between two places frequently (*i.e.,* the nomadic VoIP user). For example, a Lingo user may live in Washington, DC part of the year and then in a remote part of Maine for part of the year. If E911 services are available in Washington, DC, but not in Maine, the Company would be forced to disconnect the Lingo customer anytime the Lingo customer self-reported that the service was being used from the Maine location. The same is true for Lingo customers that are business travelers that are using the service from a hotel room. I believe that, if Lingo is required to disconnect these customers, many customers are likely to conceal their true location from Lingo

---

9 *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(4).

10 *Id.* at ¶ 79; *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2).

to avoid interruption of their service. Alternatively, those business customers that take last minute trips may very well forget to update their location information, and be disadvantaged to find service has been disconnected. This would, in my opinion, be contrary to the intent of the Commission's regulations.

15. Due to the portable nature of the VoIP services offered by Lingo, coupled with the requirements of the *Order*, the Commission's Rules effectively require Lingo to have VoIP E911 capability throughout the entire United States, its territories and possessions by November 28, 2005, because a Lingo customer may use the service from any location where broadband Internet access is available.

16. Also, in many instances, the existing emergency services network ("Wireline E911 Network") cannot process calls originated from devices that allow for the use of non-local telephone numbers. Because Lingo's service allows 911 calls from customers whose telephone number is not "local" to the actual geographic location from which the customer is making a call, these calls cannot be processed without additional steps. In order to resolve this issue, pseudo-telephone numbers (or "pseudo-ANIs") are assigned to the VoIP call when a 911 call is placed. The use of pseudo-ANIs requires an entity to administer such numbering resources. In certain parts of the country, the Regional Bell Operating Company ("RBOC") has assumed that role. But in other areas the entity responsible for assigning such resources has not been established. In these areas, it is highly unlikely that Lingo will have access to the numbering resources it needs to implement an E911 solution for non-native numbers by November 28, 2005. Also, unlike wireless carriers, Lingo has many customers with non-U.S. telephone numbers, and to the best of my knowledge the pseudo-ANI solution is not capable of processing these numbers.

B. Lingo's Efforts to Comply With the Commission's Customer Notification and Affirmative Acknowledgement Rules

17. Since the Commission adopted the *Order*, Lingo has devoted significant resources to attempting to comply with the Commission's new Rules, and changed its operating procedures as required by those Rules.

18. Although Lingo's existing terms and conditions contained a robust explanation of its emergency calling service, Lingo revised its terms of service to reflect the language required by the *Order*, and all new customers must agree to the revised terms of service to complete the subscription process.

19. Additionally, Lingo has invested considerable resources in developing its back-office systems that revised its customer subscription process so that customers separately acknowledged a 911 Safety Advisory (the "911 Advisory") before initiating service. For existing customers, Lingo retooled its online "account manager" so that customers could review the 911 Advisory and acknowledge the same when logging on to their account.

20. Lingo has also developed a system for distributing and making available via download the warning stickers required by the Commission. Lingo also has worked with one of its equipment (or "CPE") manufacturers to have the stickers placed on the equipment at the point of manufacture, which in turn, is negotiating on Lingo's behalf to have its retail distributors include the stickers with the CPE package.

21. Lingo continues to modify both its web-based systems and customer service procedures to allow its customers to update registered location information. Lingo also developed a process to track and record the affirmative acknowledgements received back from customers.

22. Since July, 2005, Lingo has engaged in a massive campaign to inform its then-existing subscriber of the limitations associated with its emergency calling services, even though customers were advised, through the robust disclaimer in the terms and conditions, of the limitations at the time of initial sign up prior to the Commission's adoption of the *Order*.

23. On July 21, 2005, Lingo sent a package via first class mail to customers that contained the following items (1) an introductory letter explaining the purpose of the mailing and noting that service may be suspended if an acknowledgement to the 911 Advisory is not received; (2) an informational pamphlet about emergency calling; and (3) a sticker sheet with instructions. On August 17 and August 26, reminder postcards were sent via the U.S. Postal Service to customers who had not yet acknowledged the 911 Advisory. On September 19, 2005, letters and acknowledgement forms were sent via U.S. Postal Service to all customers who had not yet submitted acknowledgements. Customers were given the option to sign and return a copy of the 911 Advisory via mail (postage prepaid by Lingo) or by fax.

24. Lingo also has used its close contact with its customer base through an electronic mailing. On July 27, 2005, the first of a sequence of e-mails was sent to the customer base. On August 3, 8, 11, 13, 15, 18, 21 and 24, reminder e-mails were sent to all customers that had not yet acknowledged the 911 Advisory. Beginning September 6, 2005, Lingo sent reminder e-mails to customers who had not acknowledged the 911 Advisory every four (4) days.

25. Beginning August 5, 2005, a prerecorded message has played for all consumers who contact the Lingo Customer Care department. Customers are required to listen to this message before being placed into the queue for service. Beginning on September 1, 2005, customers have been able to dial a toll free number to reach the interactive voice response system ("IVR") that plays a recording of the 911 Advisory to the customer, and then a voice verification

is conducted. The prerecorded message noted above was modified to provide this toll free number to Lingo customers. This telephone number has also been provided to customers via e-mail, voice messages, Lingo's website and other means of contact.

26. Voicemails were sent to all Lingo customers on August 11, 2005, informing them of the 911 Advisory and necessary acknowledgements. Reminder voicemails were sent to only those Lingo customers who had not acknowledged the 911 Advisory on August 23, 2005. Further, outbound calling to customers that had not yet acknowledged the 911 Advisory began on August 17, 2005. Each customer received approximately three calls in August, 2005. Such calls continued, however, throughout September 2005.

27. As a result of these efforts, by October 15, Lingo has received affirmative acknowledgement from approximately 94% of its customers that they had received and understood the 911 Advisory.

C. Lingo's Efforts to Comply With the Commission's 120-Day Requirements to Provide E-911 Service

28. Lingo began its efforts to comply with the Commission's 120-day requirements to provide E911 service to its customers by investigating what it would require in terms of resources and time to deploy and E911 solution nationwide. From my vast business and technical experience, the operational and technical magnitude of this task (regardless of the manner in which it is resolved) is overwhelming. The U.S. wireline network evolved over many decades and the wireless industry is still coping with issues on becoming E911 compliant even though the wireless industry has been working on this issue for over 10 years.

29. Lingo quickly determined that it did not have the resources, capital or time to create and deploy its own dedicated E911 network with a nationwide footprint.

30. To deploy a self-provisioned E911 solution that would comply with the Commission's *Order*, Lingo would have to comply with all applicable telecommunications regulatory rules (which may include obtaining certification as a local provider) in all 50 states, as well as the United States' territories and possessions. Lingo would then have to enter into interconnection agreements with the entities having access to the selective routers that comprise the 911 system, which are currently the only way in which a call can be directly routed to the primary emergency telephone number at the PSAP.[11] It would be logistically impossible for Lingo to contact, negotiate, and contract with all with all the necessary parties to implement and manage a nationwide network-based solution. Even if Lingo had the capital and resources to engage in such an endeavor – which it does not – Lingo would not have been able to complete this process by November 28, 2005. Accordingly, Lingo soon discovered that it would have to rely on the efforts of third-party providers for a solution.

31. Lingo contacted several third parties offering limited geographic solutions that would comply with the Commission's rules. After months of discussion with various providers concerning their proposed E911 solutions, Lingo amended their contract with Intrado in September 2005, to provide an E911 solution by November 28, 2005. Prior to that time, Lingo was using Intrado for the provision of emergency calling services, but the method employed, routing to PSAP administrative telephone numbers, will not be an acceptable form of emergency service access under the Rules come November 28, 2005. Intrado's new service offering is a complete solution that includes address updating and verification, as well as call routing

[11] For the most part, the regional Bell operating companies, (*i.e.*, BellSouth, Qwest, SBC and Verizon), and certain incumbent providers of local exchange service have exclusive access to these routers.

functionality. Intrado and Lingo are still establishing systems that allow for dynamic address updating and validation of addresses provided by Lingo customers. Intrado and Lingo continue to work on the problems associated with routing 911 calls when a customer is using a telephone number associated with a foreign country in the United States.

32. Based on representations made by Lingo's third-party solution provider, Lingo has determined that it may be possible to provide E911 services in compliance with the Commission's rules in the majority of the top 20 MSAs in the continental United States and a few areas outside of the top 20 MSAs by November 28, 2005. However, Lingo will not have a nomadic solution in place if the customer takes the VoIP service to a location in some markets within the top 20 MSAs and virtually any location outside of these top 20 MSAs by November 28, 2005. Lingo is unaware of any third party provider that is offering a solution that will cover the entire United States (including Alaska and Hawaii), the territories and possessions, by November 28, 2005. Indeed, Lingo is unaware of any third-party solution provider that is offering a VoIP E911 solution with any certainty that will cover the continental United States by November 28, 2005.

33. At this time, Lingo does not know when it will be possible to provide E911 services throughout the United States as Lingo is wholly reliant on third-party providers as well as on incumbent providers of telephone service that must allow the third-party solution providers access to the Wireline E911 Network.

34. A major impediment in adopting an E911 solution that will comply with the Commission's mandate is the vagueness associated with the Commission's *Order* that makes it impossible for Lingo to know whether the solution chosen by Lingo will satisfy the Commission's Rules.

35. Intrado has not contractually guaranteed that its services will comply with the Commission's *Order*. Currently, Intrado anticipates rolling out its service in a phased approach that will eventually cover 116 of the 922 MSAs that comprise the continental United States by the first quarter of 2006. Intrado has informed Lingo that there are some parts of the continental United States that likely will never have coverage.

D. Consequences of Lingo's Inability to Comply Fully with Rule 9.5(b) and (c)

1. Effect on Lingo Customers.

36. I understand that Rule 9.5, with which Lingo must comply effective November 28, 2005, will require Lingo to provide every existing subscriber with E911 service, and have E911 service available for every potential subscriber nationwide. Since full compliance is impossible within this unreasonable timeframe, as we currently interpret the *Order* and Rules, by November 28, 2005, Lingo will either have to disconnect those customers who we can no longer serve in conformance with the Commission's Rules or suffer whatever enforcement actions and penalties the Commission decides to impose. Both options will be detrimental to Lingo and its customers.

37. If Lingo is forced to disconnect customers in order to comply with Rule 9.5, it may also endanger the safety of those same customers, thereby exposing them (and Lingo) to additional harm. Specifically, customers that are disconnected and do not have separate landline phones, will not be able to reach emergency services by dialing 911 in an emergency, nor will they be able to engage in non-emergency essential communication (*e.g.*, contacting medical alert personnel, alarm companies, a child's doctor, etc.). It appears the Commission fails to see the irony that in their efforts to protect the public, their *Order* and subsequent Rules, if fully

implemented as written, may create even more harm to a large segment of customers. As an executive of a company dedicated to providing an important resource to customers, this is clearly an unacceptable result.

38. Other unforeseen consequences are likely to result if Lingo is forced to disconnect customers. Porting telephone numbers used by Lingo customers to new service providers in a timely manner will be virtually impossible. In the best of circumstances, it takes a minimum of five (5) business days to port a single telephone number. The port requests that will result from disconnecting Lingo customers and the customers of other VoIP providers similarly affected by the *Order* and Rules could easily surpass a hundred thousand port requests and will occur in a very short period of time. This will result in an extremely chaotic situation for customers attempting to preserve their communications services, as well as the entities overseeing the number resources.

39. Finally, the Commission fails to consider the economic impact on customers that would result from ordering a company like Lingo to disconnect service to its substantial customer base. Lingo's customers have migrated to the service for the features and advantageous pricing they are able to obtain through Lingo. Disconnecting Lingo customers will require them to purchase services at a higher price and with less functionality.

2. Effect on Lingo's Business.

40. Since full compliance is impossible within the timeframe given, Lingo will, based on the Commission's own statements in the *Order* as further described in the next paragraph, face the risk of regulatory violations and ensuing penalties from any enforcement action, as well as suffer loss of business reputation and customer goodwill.

41. It is my understanding that the Commission can impose substantial monetary penalties (or "forfeitures") for noncompliance with its regulations. Indeed, the Commission specifically stated in the *Order* that, "[f]ailure to comply with these rules cannot and will not be tolerated . . . Interconnected VoIP providers who do not comply fully with the requirements set forth in this Order will be subject to swift enforcement action by the Commission, including substantial proposed forfeitures and, in appropriate cases, case and desist orders and proceedings to revoke any Commission licenses held by the interconnected VoIP provider."[12] Statements like those found in the *Order* clearly convey that the Commission will actively and forcefully pursue VoIP companies in violation of the Rules, regardless of the adverse consequences I have summarized herein.

42. The possible regulatory violations by Lingo and the Commission's ability and apparent willingness to impose substantial fines against Lingo for violating regulations that are impossible to comply with would have immeasurable consequences that could not be remedied by monetary compensation, especially given Lingo's status as newer company.

43. Customers who have their service disconnected by Lingo will certainly blame Lingo, not the Commission, for the inconvenience, expense and potential danger they suffer from having their phone service shut off. Customers will perceive Lingo as unreliable and will undoubtedly share these opinions with friends, neighbors and other acquaintances. This will impair Lingo's ability to attract new customers and retain its existing ones — even those who were not disconnected. The resentment towards Lingo felt by these customers will not likely dissipate, even after an appeal of the Commission's *Order* and Rules are decided. Rather, the

[12] *Id.* At ¶ 51.

perception created by the disconnections forced by construing Rule 9.5 as requiring disconnection will linger in the market long after the legality of the Rules has been adjudicated.

44. Based on the foregoing, it is highly unlikely that Lingo will be able to convince customers to return to Lingo's service at some future time after disconnection. Customers disconnected by Lingo will most likely believe that Lingo is an unreliable provider due to their disconnection experience. Further, Lingo customers will immediately have to find a new provider of telecommunications services.

45. If Lingo is required to disconnect those customers where it can't provide E911 service in compliance with the Commission's rules, Lingo will suffer irreparable harm to its business in the form of a significant loss of its customer base, loss of future financing, inability to fulfill its contracts as a customer of telecommunications carriers, loss of reputation and loss of any competitive advantage it has achieved over other providers of VoIP services.

I hereby affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

RAVINDRA BHATIA

Dated: October 21, 2005
McLean, Virginia

DECLARATION OF JOHN J. GREIVE

1. My name is John J. Greive. I am over the age of 18 and competent to provide the testimony herein. I have personal knowledge of the facts set forth in this Declaration.

2. I am employed by Lightyear Network Solutions, LLC ("Lightyear") as Vice President of Regulatory Affairs and General Counsel. Prior to joining Lightyear in July, 1996, I maintained a general law practice as a partner with Chandler, Saksefski and Greive. I also worked as an associate in the corporate section of a mid-sized firm in Louisville, Kentucky. Since joining Lightyear, I have been responsible for managing all legal and regulatory affairs including representing Lightyear before state and federal regulatory agencies. I received my B.S. in Mathematics from Bellarmine University and my Juris Doctorate from the University of Louisville. I also serve as the Corporate Secretary for Lightyear.

3. The purpose of this Declaration is to explain why, in the absence of a stay, Lightyear will be immediately and irreparably harmed by enforcement of the Voice over Internet Protocol ("VoIP") "E911" requirements established in the Commission's First Report and Order in WC Docket Nos. 04-36 and 05-196 ("*Order*"). In particular, I will describe Lightyear's efforts to comply with the customer notification and affirmative acknowledgement requirements of Rule 9.5. I will also describe Lightyear's attempts to comply with the requirement of routing all 911 calls to the appropriate public safety agency as of November 28, 2005.

4. As I will show, full compliance with this rule is impossible for reasons outside the Company's control; therefore, if the rule is not stayed, Lightyear will be unable to continue lawfully to provide service to approximately 88%of its customers based on the data available to

Lightyear at this time. It is very unlikely that customers will voluntarily return to Lightyear's service later, even if the FCC's rules are later vacated, after having had that service disconnected.

A. Lightyear's VoIP Services

5. Lightyear's VoIP service is an Internet application that enables its customers to communicate by voice over the Internet, both with other users of the service and with users of ordinary telephones on the public switched telephone network. Lightyear now has approximately 5,000 customers. Lightyear is currently adding over 750 customers per month on average.

6. Lightyear's VoIP service is portable; that is, so long as a Lightyear customer has access to a broadband Internet access line, the Lightyear customer can make use of the service anywhere in the United States or from any broadband Internet connection anywhere in the world. The customer does not have to obtain their Internet access from Lightyear.

7. Also, Lightyear's service allows customers in one geographic area to use telephone numbers that are associated with distant or non-local areas. For example, a Lightyear customer who lives in Washington, DC may have a telephone number assigned from Los Angeles, California; and that same customer could use the service from any location in the world where there is broadband Internet access.

8. By July 29, 2005, the Commission's *Order* required providers of "interconnected two way VoIP services" like Lightyear to: 1) "specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service;"[1] 2) "obtain and keep a record of affirmative acknowl-

[1] *Order* at ¶ 48.

edgement by every subscriber, both new and existing, of having received and understood this advisory;"[2] and 3) distribute to all existing and new subscribers "warning stickers and other appropriate labels" stating that E911 service "may be limited or not available."[3]

9. Within 120 days after the effective date (by November 28), all IVPs must: 1) "as a condition of providing that service to a consumer," provide that consumer with E911 service as required by the *Order*;[4] (2) "transmit all 911 calls, as well as ANI [Automatic Number Identification] and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location ...;"[5] 3) route "[a]ll 911 calls ... through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network";[6] (4) make the Registered Location "available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database;"[7] (5) "[o]btain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized; (6) "[p]rovide ... end users one or more methods of updating their Registered Location ... [which] must allow an end user to update the Registered Location at will

---

2 *Id.*

3 *Id.*

4 *Id.* at ¶ 47.

5 *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2).

6 *Id.* ANI is defined as "Automatic Number Identification." Pseudo Automatic Number Identification ("Pseudo-ANI") means "[a] number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system."

7 *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(4).

and in a timely manner"; and (7) "submit a letter to the Commission detailing ... compliance with [the 120-day requirements]."[8]

10. The Commission's *Order* explicitly prohibits interconnected VoIP providers from allowing customers to "opt-out" of E911 services or requiring customers to opt-in to E911 services. Therefore, Lightyear cannot limit its 911 service to particular geographic areas in which it markets the service – *even if a customer agrees to this limitation.* Instead, interconnected VoIP service providers must ensure that E911 service is available from any location where the customer may roam. The only option apparently available to a provider whose customer tries to register a service location at which the provider cannot comply with the E911 requirements is to disconnect that customer's VoIP service completely.

11. Due to the portable nature of the VoIP services offered by Lightyear, coupled with the requirements of the *Order*, the Commission's rules effectively require Lightyear to have VoIP E911 capability throughout the entire United States, its territories and possessions by November 28, 2005, because a Lightyear customer may use the service from any location where broadband Internet access is available.

12. Also, in many instances, the existing wireline E911 network cannot process calls originated from devices that allows for the use of non-local telephone numbers. Because Lightyear's service allows 911 calls from customers whose telephone number is not "local" to their actual geographic location, these calls cannot be processed without additional steps. The same problem exists for wireless telephones. In order to resolve this issue, pseudo-telephone numbers are assigned to the VoIP call when an emergency call is placed. The use of pseudo-

---

[8] *Id.* at ¶ 79; *Id.* App. B at 47, *to be codified at* 47 C.F.R. § 9.5(b)(2).

numbers requires an entity to administer such numbering resources. In certain parts of the country, the Regional Bell Operating Company ("RBOC") has assumed that role. But in other areas the entity responsible for assigning such resources has not been established. In these areas, it is highly unlikely that Lightyear will have access to the numbering resources it needs to implement an E911 solution for non-native numbers by November 28, 2005.

B. Lightyear Network Solutions, LLC's Efforts to Comply With the Commission's Customer Notification and Affirmative Acknowledgement Rules

13. Since the Commission adopted the *Order*, Lightyear has devoted significant resources to attempting to comply with the Commission's new rules, and has changed its operating procedures as required by those rules.

14. Lightyear changed its new customer subscription process to comply with the customer notice and registered location requirements in the *Order*. Lightyear also revised its terms of service to reflect its current 911 offerings, and all new customers must agree to the revised terms of service to complete the subscription process. Lightyear developed a process to track and record the affirmative acknowledgements received back from customers.

15. Lightyear engaged in a massive campaign to inform its existing subscriber of the E911 limitations associated with its service, even though customers were advised of the limitations associated with E911 service at the time of initial sign up prior to the Commission's adoption of Rule 9.5.

16. Subsequent to the Commission's adoption of the *Order*, Lightyear embarked on a campaign to notify customers of the E911 limitations associated with the Company's service and to obtain customer's affirmative acknowledgement that they are aware of such limitations. As

part of this effort, Lightyear offered customers a $5.00 credit towards their August 2005 invoice if they provided affirmative acknowledgement by July 18, 2005.

17. On July 21, 2005, Lightyear completed an upgrade to its website that prevents subscribers from logging on to their VoIP Account Manager if they have not yet acknowledged the Company's E911 Notice. Subscribers cannot continue to access their Account Manager without first going through the E911 acknowledgement process.

18. A paper notice containing the Company's customer notification was mailed July 11, 2005, via first-class mail to all existing subscribers who had signed up for service as of July 4, 2005. The notice contained a self-addressed stamped envelope for the subscriber to return the acknowledgement along with a set of six warning stickers. The notice also contained two toll free numbers; one to Lightyear's Customer Service Department if the subscriber had any questions, and one to an automated response number that captures and records the subscriber's VoIP telephone number, their name, state in which they reside, a statement inquiring as to whether they were the decision-maker for the account, the appropriate E911 Notice unique to the subscriber based on the E911 capabilities of the service, and requests that the customer provide their affirmative acknowledgement that they understood the E911 disclosure. Additionally, on July 17, another paper notice was sent via first-class mail to subscribers who had signed up between July 5 and July 11; and then on July 25, 2005, to subscribers who had signed up between July 12 and July 19. After that date, a new subscriber acknowledgement was put in place covering new customers.

19. Lightyear has sent e-mails to all of its customer instructing them to click on a hyperlink within the e-mail that would deliver the subscriber to a website containing Lightyear's 911 disclosure. Such e-mails were transmitted to all customers on July 15, 2005, and follow-up

e-mails were sent to those subscribers who had not yet responded on July 20, 22, August 3, August 16, and August 19, 2005. Each e-mail contained an Internet hyperlink loaded from the Lightyear web-server that takes the customer to a web page with the appropriate E911 customer notification and requests that the customer provide affirmative acknowledgement.

20. On July 22, 2005, Lightyear initiated an outbound call campaign to reach the subscribers who had not yet replied. Lightyear employees made the calls. In addition, on July 25, 2005, an independent contractor began making outbound calls on Lightyear's behalf to the remaining customers who had not yet responded. On August 7 and 8, 2005, Lightyear employees made more telephone calls to customers that had not yet provided affirmative acknowledgments.

21. At Lightyear's Sales Conference held July 16 and 17, 2005 Lightyear placed signs on the registration tables reminding everyone to please complete and return their 911 Acknowledgement letter. For those wanting to complete their acknowledgment at the Sales Conference, forms were provided for that purpose.

22. As detailed above, Lightyear has sent multiple e-mails, letters and voice messages to its subscribers in order to notify and to obtain affirmative acknowledgement from our customers that they understood the E911 limitations associated with the VoIP service. These e-mail, postal mail, voice mail and other notification efforts have continued through the present.

23. Lightyear has implemented a "soft" disconnect procedure for those customers that have not provided affirmative acknowledgement. The "soft" disconnect allows affected customers to place 911 calls, but prevents the initiation of all other types of outbound calls. When a customer that has not provided affirmative acknowledgement picks up their phone to make a call, they will hear a simulated dial tone. If the customer attempts to place an outbound call other than to 911, the call is routed to a pre-recorded message informing the customer that they must

provide affirmative acknowledgement in order to restore the full functionality of their VoIP service. The pre-recorded message instructs customers to access their Account Manager via the Lightyear website, log in with their VoIP number, complete the acknowledgement, and their outbound calling service will be fully functional. The pre-recorded message also provides customers with a toll free number to contact Lightyear's customer support center should they have any questions or need assistance in accessing their Account Manager which is made available to customers through the Internet.

24. As of October 19, 2005, Lightyear has received affirmative acknowledgement from 98% of its customers.

C. Lightyear's Efforts to Comply With the Commission's 120-Day Requirements

25. Lightyear began its efforts to comply with the Commission's 120-day requirements by investigating what it would require in terms of resources and time to deploy an E911 solution nationwide.

26. Lightyear quickly determined that we did not have the resources, capital or time to create and deploy our own dedicated E911 network with a nationwide footprint. Lightyear is a privately-held telecommunications company with 160 employees and approximately $7 million per month in revenue. Lightyear's financial resources are limited as it emerged from bankruptcy in 2004.

27. It would be logistically impossible for Lightyear to contact, negotiate, and contract with all the necessary parties to implement and manage a nationwide network-based solution. Even if Lightyear had the capital and resources to engage in such an endeavor – which it does not – Lightyear would not be able to complete this process by November 28, 2005. Accord-

ingly, it quickly became apparent to Lightyear that the Company would have to rely on the efforts of third-party solution providers.

28. Prior to any Commission orders mandating the provision of 911 services by VoIP providers, and even before the Company launched its VoIP service, Lightyear had held discussions with a number of third-party solution providers. However, the 911 solutions offered at that time were not adequate for a variety of reasons including one offering that routed emergency calls to the administrative lines of the Public Safety Answering Points ("PSAPs"); *i.e.*, emergency calls would be routed to telephone numbers where the party answering the phone may not be trained to take such calls, may not be equipped to capture call-back information, and the telephones may not be staffed 24-hours a day. Lightyear continued to evaluate potential E911 solutions up to and after the release of the Commission's *Order*. In May, 2005, Lightyear intensified discussions with Level 3 Communications, Inc., its underlying carrier for VoIP services, about what services they would have in place to satisfy the Commission's *Order*. At the same time, Lightyear initiated discussions with other service providers such as MCI, Inc., Volo Communications, Inc., and Vox Communications, Inc. to determine if any of them had a VoIP E911 solution. It quickly became apparent that no one had a complete solution.

29. After months of discussion with various providers concerning their proposed E911 solutions, Lightyear contracted with Telefinity Corporation ("Telefinity") in September, 2005, to provide an E911 solution by November 28, 2005. Telefinity uses Intrado's network to provide their VoIP E911 service. Telefinity offers what they refer to as "VoIP Emergency Call Service" or "vECS." Telefinity's vECS allegedly will provide an affordable and low-maintenance method that they believe will assist Lightyear in complying with the recent FCC order regarding emergency services for interconnected VoIP providers. vECS provides VoIP

telephony companies with Subscribers' Registered Address Location management, Web based updating, Interactive Voice Response ("IVR") updating, call center services where a live operator will answer failed calls 24-hours a day, seven days a week.

30. Lightyear's E911 services will most likely be available to only 12% of its customers in the United States by November 28, 2005. Further, Lightyear will not have a nomadic solution in place for any customer takes the VoIP service to a location in where E911 services are not available from Telefinity. Currently, Lightyear believes that Telefinity will be able to provide its VoIP E911 solution in the majority of the top 20 Metropolitan Statistical Areas ("MSAs") in the continental United States and a few areas outside of the top 20 MSAs by November 28, 2005. However, Lightyear will not have a nomadic solution in place if the customer takes the VoIP service to a location in some markets within the top 20 MSAs and virtually any location outside of the top 20 MSAs in the continental United States. Lightyear is unaware of any third party provider that is offering a solution that will cover the entire United States (including Alaska and Hawaii), the territories and possessions, by November 28, 2005. Indeed, Lightyear is unaware of any third-party solution provider that is offering a VoIP E911 solution that will cover the continental United States by November 28, 2005.

31. At this time, Lightyear does not know when it will be possible to provide E911 services throughout the United States as Lightyear is wholly reliant on Telefinity, as well as on the third parties that Telefinity relies on to provide service like Intrado, incumbent providers of telephone service, PSAPs, and other entities that must cooperate and work with Telefinity to interconnect with the existing emergency services network ("Wireline E911 Network").

32. A major impediment in adopting an E911 solution that will comply with the Commission's mandate is the vagueness associated with the Commission's E911 rules that makes it

makes it impossible for Lightyear to know whether the contracts we are entering into will actually satisfy the Commission's rules. Telefinity will not certify that its services will comply with the Commission's *Order*. Currently, Telefinity cannot commit to having a solution compliant with the Order in place throughout the entire continental United States at any point in time.

D. Consequences of Lightyear's Inability to Comply with Rule 9.5(b) and (c)

33. I understand that section 9.5 of the Commission's rules, with which Lightyear must comply effective on November 28, 2005, will require Lightyear to provide every existing subscriber with E911. Since full compliance is impossible as we understand the rules, by November 28, 2005, Lightyear will either have to disconnect those customers who we can no longer serve in conformance with the Commission's rules or suffer whatever enforcement actions and penalties the Commission decides to impose.

34. I also understand that the Commission can impose substantial monetary penalties for noncompliance with its regulations. The possible regulatory violations by Lightyear and the Commission's possible imposition of fines against Lightyear for violating regulations that are impossible to comply with would have immeasurable consequences that could not be remedied by monetary compensation. Lightyear's goodwill and business reputation would be severely damaged. Lightyear will take whatever steps are needed to avoid being in violation of the rules, even if the Commission were to insist that it must disconnect customers to do so.

35. If Lightyear is forced to disconnect customers to comply with Rule 9.5, it may also endanger the safety of those customers that have their service turned off, thereby exposing both the customers and Lightyear to additional harm. Customers who have their service turned off by Lightyear will certainly blame Lightyear, not the Commission, for the inconvenience and expense they suffer from having their phone service shut off. Customers will perceive Lightyear