

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board)	
On Universal Service)	DA 08-2779
)	
TracFone Petition for Modification)	
Of Public Answering Point Condition)	
)	

**THE REPLY COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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January 13, 2009

Introduction and Disclaimer

The Pennsylvania Public Utility Commission (PaPUC) appreciates the opportunity to file Reply Comments on the Petition of TracFone Wireless, Inc. for modification of the Public Safety Answering Point (PSAP) condition in their Petition (the TracFone Petition). The FCC requires TracFone to obtain PSAP certification that TracFone's 911 calls will reach the PSAP before TracFone can get federal funding as an Eligible Telecommunications Carrier (ETC) under Section 254 of the Telecommunications Act of 1996 (TA-96).

The TracFone Petition asks the FCC to allow TracFone to "self certify" compliance with the PSAP certification condition if the PSAP does not certify within 90 days of a TracFone request. TracFone presents no credible evidence warranting any change in the FCC requirement that TracFone obtain PSAP certification that a TracFone 911 call will reach a PSAP.

As an initial matter, this PaPUC filing should not be construed as binding on the PaPUC in any proceeding before the PaPUC. These Reply Comments could change in response to subsequent events, including a review of later filings and subsequent legal or regulatory developments at the state and federal levels.

Summary of the Reply Comments

The TracFone Petition asks the FCC to allow TracFone to “self certify” compliance which modifies the FCC requirement that the state PSAPs certify that TracFone’s 911 calls will actually be delivered to the appropriate PSAP in compliance with the FCC’s E911 Order.¹ TracFone asks for the right to “self certify” whenever a PSAP fails to act on a TracFone request for certification of their 911 services within 90 days after TracFone makes the request. TracFone claims this is necessary because the PSAPs in some states are unjustly refusing to certify that TracFone’s 911 calls can actually be delivered to the PSAP.

This TracFone Petition is another in a series of pleadings seeking special treatment or special accommodations based on TracFone’s professed goal of providing wireless Lifeline service to eligible customers.

The FCC must deny the TracFone Petition. No comments raise significant substantive reasons which undermine the facts and correspondence attached to the PaPUC’s Comments and Reply Comments.

¹ Revisions of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Docket No. 94-102.

Moreover, the filed Comments demonstrate the problems with short filing deadlines on Comments and Reply Comments from multiple jurisdictions on a complicated technical issue. The Computer & Communications Industry Association (CCIA), the North American Numbering Plan Association (NENA), and a consumer group named Consumer Action filed comments.

CCIA urged ETC designation for Worldcall Interconnect, Inc. (WCX), a carrier seeking to serve portions of upstate New York. NENA was not familiar with the details of PSAP-TracFone interactions and took no position although NENA suggested that any 90-day “PSAP compliance clock” operate only if TracFone complies with all state laws. Consumer Action, a California advocacy group, supported the petition based on general consumer benefit but they provided no detailed discussion of how TracFone’s capabilities operate on the West Coast, presumably because California is not named in the TracFone Petition.

The Comments do not address the fact that Pennsylvania’s PSAPs are not unjustly refusing to certify TracFone’s 911 nor have they revoked any prior certification. TracFone refused to conduct the “drive testing” needed to assure the PSAP operators that TracFone’s calls will actually be delivered to the appropriate PSAP. The PSAPs that granted conditional certification did so with the expectation that TracFone would conduct “drive testing” akin to other wireless

carriers that collaborate with the PSAPs to ensure compliance with the FCC's E911 Order. TracFone has consistently refused to conduct such tests to ensure that their handsets will successfully route 911 calls to the appropriate PSAP. TracFone also fails to explain how TracFone can provide 911 calls to the PSAPs using AT&T's underlying facilities when AT&T does not have facilities to deliver Phase Two wireless calls in all the regions in Pennsylvania where TracFone wants to market Lifeline wireless service.

The FCC should also revisit two prior TracFone decisions involving TracFone's forbearance and ETC designation petitions, respectively. The FCC should revisit and revise the first decision granting forbearance from the statutory obligation in Section 254 which requires an ETC to have facilities before they can become an ETC. TracFone is the only carrier not required to own facilities as a precondition to becoming an ETC. The FCC should also revisit the ETC designation in order to avoid involvement in complex and technical state issues.

Extended Discussion

TracFone must continue to be required to secure PSAP certification without the ninety-day (90 day) "PSAP compliance clock" proposed in the TracFone Petition. The TracFone Petition proposes a ninety-day period of time following

notification to PSAPs that TracFone is planning to commence Lifeline service in the PSAP area and is requesting certification. If the PSAP does not provide the requisite certification, TracFone requests to “self certify” that its Lifeline customers have access to 911 and E911 without regard to activation or availability of prepaid minutes. TracFone claims that this self-certification proposal will be available only if TracFone confirms with its underlying carriers that TracFone’s 911 calls will be treated the same as the underlying carrier calls.²

The fact that TracFone cannot secure PSAP certification, let alone certify that it is in compliance with all existing state laws, is very problematic for public safety. TracFone’s proposed “PSAP compliance clock” is no credible substitute when the facts indicate that the states’ PSAPs, particularly in Pennsylvania, are not acting unreasonably or arbitrarily on an important public safety requirement.

The PaPUC respectfully reminds the FCC that this latest reiteration of special treatment in the TracFone Petition arises because the FCC improperly exempted TracFone from the important long-standing statutory requirement under Section 214(e)(1)(A), stating that any Federal Universal Service Fund (FUSF) recipient rely on at least a portion of their own facilities for ETC designation. Unlike every other carrier that gets ETC Universal Service Support, TracFone is

² *TracFone Modification Petition*, p. 2.

the sole wireless reseller that secures FUSF funding for Lifeline without satisfying the ownership of facilities requirement.

The FCC's decision exempting TracFone from the obligation to own facilities noted that this decision would be revised if the predictive effect was different from what was expected. This latest TracFone Petition demonstrates that the predictive effect was not positive. TracFone continues to have problems complying with a basic public safety requirement. A "PSAP compliance clock" will simply give TracFone yet another special accommodation under the guise of expanding wireless Lifeline service. The request should be denied and the ETC designation should be revisited.

The improper grant of ETC designation to TracFone has given rise to unique problems and special accommodations due to TracFone's operations. The problems first arose when the FCC granted TracFone a special accommodation which exempted TracFone from the Section 214 obligation to own facilities in order to get ETC designation. The latest problem arises because the PSAPs are unwilling to certify that Tracfone's 911 calls will be delivered to their PSAP. TracFone simply refuses to conduct the drive testing needed to assure the PSAPs that TracFone's calls will be delivered to the appropriate PSAP. Pennsylvania has

instituted this drive testing requirement as part of Pennsylvania's Phase II compliance since 2005. The same should be expected of TracFone.

This ongoing inability or refusal to comply with basic testing obligations is traceable to TracFone's initial circumvention of the statutory requirement to own facilities. Encouraged by a pattern of special treatment based on TracFone's professed desire to provide wireless Lifeline service, TracFone seeks to avoid compliance with a basic public safety requirement designed to assure PSAPs that TracFone's customer calls will actually get delivered to their PSAP.

Special accommodations are inappropriate. Special accommodations should not absolve TracFone from the basic obligation to operationally interact with a PSAP and conduct the testing needed to assure a PSAP that TracFone's calls will actually get delivered to the PSAP. TracFone must be required to comply because TracFone should not avoid responsibility for a nonfunctioning 911 call that may be life-threatening to the customer and fraught with legal ramifications for the PSAP.

TracFone now wants the FCC to modify the reasonable condition that TracFone acquire certification from a PSAP that TracFone calls will actually get

delivered to the PSAP. This was a reasonable condition given the FCC's decision to relieve TracFone of the statutory obligation to own facilities.

The FCC should deny modification of that condition. The FCC should also revisit the decision not to require TracFone to have some facilities as a condition to receiving the federal funding that comes with an ETC designation. The following PaPUC observations illustrate why denial of the TracFone Petition and revisiting the earlier forbearance is appropriate.

First, it is simply untrue that the Pennsylvania Emergency Management Agency (PEMA) or any of Pennsylvania's 69 PSAPs have granted, and then revoked, any PSAP certification. Pennsylvania PSAPs granted "conditional" certifications to TracFone. This means that the PSAP would certify that TracFone's calls reach their PSAP but only if TracFone conducted the "drive testing" which assures the PSAP operator that the call will reach the PSAP. PSAPs expect this from every carrier.

TracFone refused to conduct the "drive testing" needed to assure the PSAP operators that their customers' calls comply with this important public safety obligation. This is a testing obligation.

TracFone's dismissive refusal to participate in "drive testing" does not mean that the PSAP operators are acting unreasonably or arbitrarily. TracFone's refusal does not warrant imposition of the "PSAP certification clock" sought in the TracFone Petition.

TracFone wants the FCC to allow TracFone to "self certify" compliance with the 911/E911 obligation unless the PSAP makes that certification within 90 days of a request. TracFone wants to avoid a basic public safety requirement, in this case drive testing, just like TracFone sought, and received forbearance from, the Section 254 obligation to own facilities, a requirement for ETC designation.

The TracFone Petition next raises some alleged confusion about how the Pennsylvania North American Numbering Administrator (PaNENA) interacts with PEMA and the counties. In fact, TracFone's interaction with these entities demonstrates that TracFone is fully aware of the requirements of these entities.

TracFone knows that Pennsylvania's 69 PSAPs certify compliance with 911. It was for that very reason that TracFone asked the PSAPs for certification. It is also why TracFone wants the FCC to modify the 911 condition. The PSAP operators want TracFone to do drive testing. TracFone refuses. The Monroe

County letters attached to the PaPUC Comments show that TracFone is fully aware of the issues and the public safety concerns raised therein.

TracFone's letter from PEMA, attached to the PaPUC Comments and these Reply Comments, demonstrates that TracFone is fully aware that PEMA does not certify compliance with 911. The PEMA letter demonstrates that, contrary to any TracFone claims, Pennsylvania is able to distinguish financial concerns (like ensuring that wireless carriers remit 911 fees to PSAPs as required by state law) from technical concerns (like conducting the drive testing needed to assure a PSAP operator that TracFone calls will actually get delivered to the PSAP).

The TracFone Petition also fails to discuss the issue of Phase Two E-911 compliance. The PaPUC understands that other wireless carriers in Pennsylvania except TracFone interact with Pennsylvania's PSAPs to ensure compliance with the technical standards for Phase Two E-911. In fact, every wireless carrier in Pennsylvania other than TracFone that is providing Phase II level service complies with the requirement.

TracFone's problem arise largely because TracFone appears to have failed to engage the engineering and technical experts required to resolve complex matters like drive testing and Phase Two E-911 compliance. TracFone apparently

does not want to do the drive testing and Phase Two E-911 compliance required to provide the PSAP operators with the assurances they need that TracFone's 911 calls will actually reach a PSAP. TracFone seems to prefer to rely on legal pleadings alone in order to circumvent its technical and operational obligations on complex technical issues like drive testing, 911 compliance, and Phase Two E-911 standards that affect fundamental *public health and safety*.

TracFone claims that the PSAPs are imposing unreasonable conditions or revoking a 911 certification. A PSAP certification on complex matters like drive testing and Phase II E-911 compliance is not unreasonable or unjust just because the carrier seems to lack the technical and engineering staff to address the issues.

The earlier FCC forbearance decision was extended to Pennsylvania when the FCC included Pennsylvania as one of the 12 jurisdictions where TracFone sought FCC designation as an ETC.³ The PaPUC remains concerned about ETC

³ Federal State Joint Board on Universal Service, Petitions of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, Ex Parte Filing of TracFone Wireless, Inc., January 22, 2008, p. 2. TracFone sought FCC action on pending petitions for New York, Florida, Virginia, Alabama, Connecticut, Massachusetts, North Carolina and Tennessee since 2004. TracFone filed for ETC Designation in November 2007 for Delaware and New Hampshire. In December 2007, TracFone filed for ETC designation in Pennsylvania. In January 2008, TracFone filed for ETC Designation in the District of Columbia. Prior to the Pennsylvania ETC designation, the FCC only granted TracFone conditional forbearance from the Section 214(e) (1)(A) obligation that FUSF recipients' provider supported services from their own facilities or a combination of owned and leased facilities.

designations given our net contributor role to the FUSF and because of the impact on Lifeline customers, especially when a claim is made that this enhances choice.

If the FUSF support migrates from wireline Lifeline to wireless Lifeline, there is no increased cost. However, and importantly, the Lifeline customer loses regulatory protections because the PaPUC (and apparently many other state commissions) do not regulate wireless service. The PaPUC is concerned that Pennsylvania's net contributions from wireline services are underwriting reduced services for vulnerable Lifeline customers.

If the FUSF support is in addition to any wireline Lifeline support, this will mean increased costs to Pennsylvania. There will also be an adverse impact to Pennsylvania's wireline Local Exchange Carriers (LECs). They are expected to support wireless migration and reduced services using assessments on wireline communications that deliver greater service. Contributions from wireline carriers that are providing greater services and more consumer protections will pay for providers of less service to more vulnerable consumers that have less protection.

This discrepancy arises because TracFone's wireless Lifeline service provides a free telephone and 30 calling units per month. By contrast, a wireline Lifeline service provides unlimited local calling for a reduced monthly rate.

The PaPUC is not convinced that Section 254 of TA-96 was intended to impose increased costs on providers of larger local service and more protections to underwrite the delivery of less local service and substantially reduced protections to vulnerable Lifeline customers. The fact that Pennsylvania's carriers and consumers will pay the increased costs for less service heightens concern.

At this time, the PaPUC would remind the FCC that its January 9, 2008 notice of TracFone's Pennsylvania Petition for ETC Designation required that a copy be provided to the PaPUC. The PaPUC believes that TracFone failed to provide a copy of its Petition as required by the FCC. In fact, the PaPUC learned of this Petition for ETC Designation in Pennsylvania from the Daily Digest.

TracFone's Petition for ETC Designation in Pennsylvania relied, in part on the previous forbearance decision of the FCC issued September 8, 2005 at CC 96-45 (the TracFone Forbearance Order). That TracFone Forbearance Order issued in response to TracFone's request to forbear from the overarching requirement of Section 214(1)(1)(1) that an ETC carrier must own facilities. TracFone embedded that request in their Petition for ETC Designation in the State of New York

On June 24, 2005, the FCC posted notice of this New York petition and the overarching forbearance from Section 214 request. The pairing of this overarching forbearance request with the New York ETC Petition, like the obligation to provide copies to state commissions, produced less input on what has proven to be a very important forbearance decision.

The September 8, 2005 TracFone Forbearance Order granted forbearance with conditions although decision did not act on the New York petition for ETC Designation. However, in the TracFone Forbearance Order, the FCC did act *sua sponte*. The FCC went beyond TracFone's Section 214 request to also grant forbearance from 47 CFR 54.201(d)(1) of the FCC's regulations which mirrored the Section 214(e) requirement of the Act. Like the obligation to provide state commissions with copies of ETC petitions, there is no evidence that the FCC provided notice of that action or solicited public input.

Finally, the ETC Designation decisions that followed this 2005 TracFone Forbearance Order, and the Pennsylvania ETC Designation decision that TracFone complains about in this proceeding, were granted by action of staff. However, before that, the FCC had placed all the TracFone ETC Petitions, with the exception of Pennsylvania and the District of Columbia petition, on the Public Meeting Agenda. Given the identical nature of the petitions, the placement of

other ETC petitions on the Public Meeting Agenda precluded Pennsylvania from filing any Ex Parte submissions as a matter of administrative ethics.

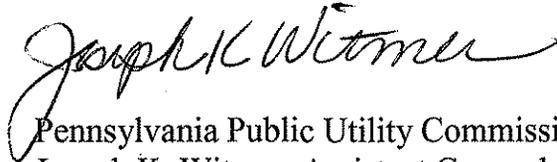
Although those ETC Designation petitions were withdrawn from the Public Meeting Agenda, the FCC subsequently issued an Opinion and Order which granted the ETC petitions listed on the Public Agenda *but also included Pennsylvania even though Pennsylvania was never on the Public Agenda.*

Consequently, the FCC decision granting TracFone's Pennsylvania ETC petition was made without substantial input from Pennsylvania. The TracFone Petition is a result of the decisions made in those novel administrative processes.

The PaPUC respectfully suggests that forbearance from statutory requirements under Section 254 based on minimal input from the affected states and making ETC decisions with such novel administrative process encourages other states to also start making their own ETC designations under Section 254

The PaPUC appreciates the opportunity to submit these Reply Comments.

Respectfully submitted,



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Dated: January 13, 2009



PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



October 16, 2008

Dear 9-1-1 Coordinator:

On April 11, 2008, the Federal Communications Commission issued an Order (FCC 08-100) conditionally granting the petition of TracFone Wireless seeking designation as an eligible telecommunications carrier ("ETC") for the limited purpose of providing Lifeline service. The Order included two state-related requirements for lifting the conditional status of TracFone's ETC designation: (1) obtaining certifications from State's affected public safety answering points ("PSAPs") that TracFone is "providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes"; and (2) providing a certification by TracFone that "it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service" in each affected state.

While PEMA has been in contact with TracFone regarding the Public Safety Emergency Telephone Act's remittance issue, I would like to take this opportunity to elaborate on the matter of Public Safety Answering Point certification pursuant to FCC Order 08-100:

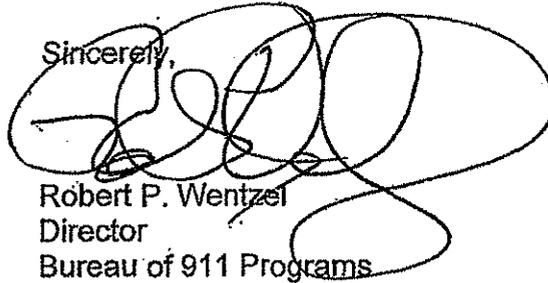
1. The Public Safety Answering Point certification process is independent of the remittance issue.
2. Your response to TracFone's request should certify your PSAP's compliance for delivery of Phase II wireless data and your ability to answer all wireless 911 calls that are routed to your PSAP regardless of carrier, activation status or availability of prepaid minutes. The actual routing of 911 calls is dependent upon the capabilities of the users' handset, the originating carriers' network, and the PSAPs' serving telephone company, all of which are outside the control of the PSAP.

TracFone's proposal to provide wireless Lifeline services to eligible residents in the Commonwealth is truly unique from similar services offered through traditional wireline providers. When you are contacted by TracFone, I strongly encourage your timely support of their request to effect the appropriate certification of your PSAP.

TracFone LifeLine Service
October 16, 2008
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Should you have any questions, please do not hesitate to contact me at (717) 651-2288 or via email at rwentzel@state.pa.us.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and curves, positioned over the typed name and title.

Robert P. Wentzel
Director
Bureau of 911 Programs

RPW/prg

cc: 911 Program File

Monroe County Control Center

Monroe County Public Safety Center
100 Gypsum Road, Suite 2
Stroudsburg, Pa. 18360
570-992-4500
Fax 570-402-8890

December 4, 2008

Michael McAllister, Esquire
Shutts & Brown, LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, FL 33301

Re: **2nd Request for TracFone Certification**

Dear Mr. McAllister;

I am responding to your email that I received today relative to your request for us to sign-off for TracFone certification.

It's my understanding that TracFone has petitioned the Federal Communications Commission (FCC) to release them from the PSAP certification process.

Our position remains the same with respect to "drive testing". If TracFone ever comes to the realization that the drive test process isn't about any 9-1-1 center directors "ego" but it is a validation process to insure that their equipment is working correctly.

The drive testing will also reduce potential liability for them as well as the 9-1-1 center. By us just signing off without this validation process certainly passes on whatever liability comes out of an incident where the outcome for the wireless user isn't very good. I would hope that TracFone wants the best possible outcome when someone uses a device which they issued.

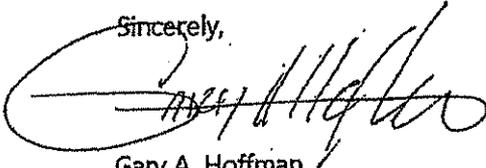
Clearly our position is as follows;

- We are not going to entertain signing off until such time that the appropriate "drive tests" have been done and certified.
- We also elect to hear the results of the petition before the FCC.

In Monroe County, Pennsylvania at present, TracFone is required to drive test their devices. For specific information of how to facilitate those tests in our County you can direct TracFone to contact our deployment specialists; Essential Management Solutions LLC, specifically Mr. Thomas Rowe, Principal at 570-621-9000 or 484-678-4909 to discuss the process from our agencies perspective and requirements.

Thank you and I hope you have a happy holiday season.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Hoffman". The signature is written in a cursive style with a large, sweeping initial "G".

Gary A. Hoffman
Director of Communications

Cc: Robert Wentzel, 9-1-1 Bureau Director – PEMA
Federal Communications Commission
David Williamson, Esquire (Solicitor)
Tom Rowe, Essential Management Solutions, LLC.

Monroe County Control Center

Monroe County Public Safety Center
100 Gypsum Road, Suite 2
Stroudsburg, Pa. 18360
570-992-4500
Fax 570-402-8890

October 17, 2008

Michael McAllister, Esquire
Shutts & Brown, LLP
200 East Broward Boulevard, Suite 2100
Fort Lauderdale, FL 33301

Re: TracFone Certification Request

Dear Mr. McAllister;

I am responding to your email request for certification within the Commonwealth of Pennsylvania specifically Monroe County. I am the 9-1-1 Coordinator for Monroe County and my agency, the Monroe County Control Center is the authorized public safety answering point (PSAP) for the geographic area of Monroe County and Lehman Township in Pike County, Pennsylvania.

I can and will attest to the fact that our 9-1-1 center is "Phase II" deployed with our current wireless carriers, Verizon, AT&T, Sprint, T-Mobile, Nextel and South Canaan Wireless.

However since TracFone was not part of the original Commonwealth of Pennsylvania's Act 56 Wireless program or our communications center's wireless deployment process I cannot make any claims to the technological capabilities of whether or not TracFone's equipment will integrate. This validation can only be determined through the process known as "drive tests", the same tests conducted by the other wireless carriers.

One thought or concern that has surfaced thinking about this entire initiative; I wonder if TracFone and the carriers that they contract to provide the actual wireless service, the phone call, understand the potential liability and subsequent ramifications that could be there if the "devices" do not provide the Phase II location information.

Specifically, if TracFone uses AT&T for the wireless infrastructure/system to deliver the phone call to us and the AT&T infrastructure is Phase II compliant however the device, the phone that TracFone has issued the client does not transmit the Phase II location information to the dispatcher because of TracFone's selection of equipment who's liable?

Consider the primary purpose of what this initiative has been developed for. TracFone is facilitating this to provide emergency cell phones to those people that may not normally be able to afford a phone. You really may not be helping.....actually if your devices are not Phase II compliant and provide us only what tower/antenna sector the call is coming from that is not

helping the person making the call. The person making the call could be literally miles away from their actual location.

To determine or certify if TracFone's wireless devices are Phase II compatible they will be required to conduct the drive tests. And unfortunately even though the Federal Communications Commission (FCC) wants 9-1-1 centers to sign a document conversely it does not provide the 9-1-1 centers with the funding necessary to facilitate "drive tests".

Since TracFone is not part of the Commonwealth of Pennsylvania's legislatively imposed Act 56 Wireless surcharge I cannot in good conscious utilize the funds that were remitted by other carriers to pay for the drive testing to validate TracFone's wireless equipment.

So that TracFone can validate the accuracy of their equipment they will be responsible to engage (*pay for*) a contractor to facilitate these tests.

If TracFone has a sincere interest in having their network integrated into our E-9-1-1 telephone infrastructure they should be directed to contact our deployment specialists; Essential Management Solutions LLC, specifically Mr. Thomas Rowe, Principal at 570-621-9000 or 484-678-4909 to discuss the process from our agencies perspective and requirements.

I will forward your request on to our solicitor for his opinion about signing your document however until I receive that information back this letter is our response to your request.

Thank you for your time and have a nice day.

Sincerely,

Gary A. Hoffman
Director of Communications

Cc: Robert Wentzel, 9-1-1 Bureau Director – Pennsylvania Emergency Management Agency
Federal Communications Commission
David Williamson, Esquire
Tom Rowe, Essential Management Solutions, LLC.