

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
TracFone Wireless, Inc.	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of New	)	
York	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of Florida	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the	)	
Commonwealth of Virginia	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Connecticut	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the	)	
Commonwealth of Massachusetts	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Alabama	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of North	)	
Carolina	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Tennessee	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Delaware for the Limited Purpose of Offering	)	
Lifeline Service to Qualified Households	)	
	)	

Petition for Designation as an Eligible )  
 Telecommunications Carrier in the State of New )  
 Hampshire for the Limited Purpose of Offering )  
 Lifeline Service to Qualified Households )  
 )  
 Petition for Designation as an Eligible )  
 Telecommunications Carrier in the )  
 Commonwealth of Pennsylvania for the Limited )  
 Purpose of Offering Lifeline Service to Qualified )  
 Households )  
 )  
 Petition for Designation as an Eligible )  
 Telecommunications Carrier in the District of )  
 Columbia for the Limited Purpose of Offering )  
 Lifeline Service to Qualified Households )

**PETITION TO RESCIND STATE 911/E911 CONDITION**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby petitions the Commission to rescind one of the conditions imposed upon TracFone by the Commission in its April 2008 order designating TracFone as an Eligible Telecommunications Carrier (“ETC”) for the limited purpose of offering Lifeline service in ten states and the District of Columbia.<sup>1</sup> The Commission’s designation of TracFone as a Lifeline-only ETC was conditioned upon TracFone certifying in each state where it offers Lifeline service pursuant to the Commission’s designation 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.”<sup>2</sup> As will be explained in this petition, that condition was imposed based directly upon false factual allegations made by a single entity -- an entity which has since admitted, under oath, certain misrepresentations in the filing as well as the complete falsity of the very factual allegations set forth in its on-the-record comments to the Commission. Since the entity whose assertions gave rise to the imposition of a state law compliance certification condition has now acknowledged the falsity of those

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service; TracFone Wireless, Inc., et al, 23 FCC Rcd 6206 (2008) (“TracFone Designation Order”).

<sup>2</sup> *Id.*, at ¶ 16.

allegations, the Commission's stated reason for that condition ceases to exist. Accordingly, it should be rescinded.

On February 8, 2008, the Pennsylvania Office of Consumer Advocate (PAOCA) and the National Emergency Numbers Association, Keystone Chapter (Keystone NENA) filed joint comments on TracFone's petition for designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania. In those comments, PAOCA and Keystone NENA accused TracFone of being in violation of Pennsylvania Public Safety Emergency Telephone Act.<sup>3</sup> Specifically, their comments contain the following assertion: "In the experience of Keystone NENA, all wireline local exchange carriers, competitive local exchange carriers and resellers, as well as wireless service providers, comply with the Pennsylvania Act and collect 911 fees - except TracFone."<sup>4</sup> Signing the PAOCA/Keystone NENA comments on behalf of Keystone NENA was Timothy W. Baldwin, ENP, Deputy Director, Lancaster County-Wide Communications. The comments indicate that Mr. Baldwin is Secretary, Keystone NENA.

The above-quoted accusation is, and was intended to be, a very serious and damaging accusation. Stated simply, Mr. Baldwin was accusing TracFone of violating state law and of being the only telecommunications company to do so (i.e., the only company which did not collect state 911 fees from its customers). Moreover, the asserted basis for that accusation was his organization's first hand experience. Since Mr. Baldwin was the Keystone NENA signatory to these comments and since the assertion about TracFone being the only carrier who does not collect 911 fees was based on "the experience of Keystone NENA," the only reasonable conclusion is that Mr. Baldwin bears responsibility for that statement. In reply comments,

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<sup>3</sup> 35 P.S. § 7011 *et seq.*

<sup>4</sup> Joint Comments of PAOCA and Keystone NENA, CC Docket No. 96-45, filed February 8, 2008, at 5 (emphasis added).

TracFone denied Keystone NENA's accusations that i) it is in violation of the Pennsylvania Public Safety Telephone Act and ii) that it is the only company not collecting 911 fees. Specifically, TracFone stated as follows: “. . . PAOCA/NENA has provided no factual basis for its assertion that every telecommunications provider except TracFone complies with that law, and there is no such factual basis as the assertion is indeed incorrect.”<sup>5</sup> Moreover, TracFone supported that denial with reference to public filings of other telecommunications companies, specifically providers of prepaid wireless services, which acknowledged that those companies also can not and do not collect 911 charges from their prepaid customers in Pennsylvania.<sup>6</sup> In a subsequent filing, NENA [the National Emergency Number Association] -- Keystone NENA's national umbrella organization -- filed untimely comments which contained similar unsupported assertions and misrepresentations and which similarly requested a condition like that advocated by Keystone NENA and later imposed by the Commission.<sup>7</sup>

Based upon the unproven allegations of Keystone NENA and the further unsupported statements of NENA -- allegations which TracFone denied, and which were supported by no evidence, the Commission conditioned TracFone's ETC designation for Pennsylvania, nine other states and the District of Columbia on the aforementioned 911/E911 state law compliance certification requirement.<sup>8</sup> In conformance with that requirement, TracFone has confirmed that its conduct conforms with applicable state law requirements and has submitted the requisite state 911 law compliance certifications to the Commission.

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<sup>5</sup> Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, filed February 25, 2008.

<sup>6</sup> *Id.*, at 5-6, n. 7.

<sup>7</sup> Comments of NENA, CC Docket No. 96-45, filed April 3, 2008.

<sup>8</sup> TracFone Designation Order at ¶ 16.

**The State 911 Law Certification Requirement is the  
Result of False Statements Made to the Commission**

TracFone recently had the opportunity to prove unequivocally that the statements of Keystone NENA regarding TracFone's alleged non-compliance with Pennsylvania's Public Safety Emergency Telephone Act were false when made and those statements have now been acknowledged to be false by Mr. Baldwin -- the Keystone NENA signatory to the PAOCA/Keystone NENA comments. TracFone currently is in litigation with the Pennsylvania Emergency Management Agency regarding the applicability of the Public Safety Emergency Telephone Act.<sup>9</sup> During the discovery process, depositions have been taken of various witnesses, including Keystone NENA's Mr. Timothy Baldwin -- the very same Timothy Baldwin who represented to the Commission that in Keystone NENA's experience all local exchange carriers, resellers and wireless providers collect 911 fees from their customer -- "except TracFone." In that June 24, 2009 deposition, Mr. Baldwin, while under oath, clearly conceded that his statement contained in the PAOCA/Keystone NENA comments was completely false. Attached hereto is the transcript of Mr. Baldwin's deposition.

The Commission's attention is directed to several transcript statements. At p. 52, lines 14-21, Mr. Baldwin admits that his opinion regarding who collects 911 fees was, in fact, not based on the "experience of Keystone NENA," as was alleged in the PAOCA/Keystone NENA comments, but rather was based on what he had been told by Mr. Robert Wentzel of the Pennsylvania Emergency Management Agency (PEMA). On p. 53, lines 10-14, Mr. Baldwin acknowledges that Keystone NENA, in fact, does not have any information or experience whatsoever regarding whether wireless carriers comply with the Pennsylvania act: "So, I would

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<sup>9</sup> Pennsylvania Emergency Management Agency v. TracFone Wireless, Inc., No. 565, MD 2008, in the Commonwealth Court of Pennsylvania.

have to say that we would have relied on Rob [Wentzel].” He later admitted that he and Keystone NENA never informed the FCC that what they had described as being based on Keystone NENA’s “experience,” was, in fact, not based on such experience at all, but rather was based entirely on hearsay communicated to them by Rob Wentzel. (Tr. page 54 line 13 - page 55 line 11).

Mr. Baldwin’s deposition testimony is not the only evidence of the falsity of the representations made in the PAOCA/Keystone NENA comments. As part of the same Pennsylvania litigation matter, PEMA’s Mr. Wentzel also was deposed. Mr. Wentzel now admits that he and his employer, PEMA, understand and acknowledge that they have no information as to whether any providers of wireless telecommunications services are able to collect 911 fees from their prepaid customers.

What is even more egregious about Mr. Baldwin’s misrepresentation to the Commission is that he was notified of the inaccuracy of the information contained in the PAOCA/Keystone NENA comments shortly after they were filed. Mr. Baldwin also acknowledged during his deposition that in the context of a discussion with TracFone representatives shortly after the filing of the PAOCA/Keystone NENA comments, TracFone explained to him that his statement was not correct and asked him to correct the misstatement made to the FCC, but that Keystone NENA did absolutely nothing to correct the record before the Commission. (Tr. page 55 line 4 - page 56 line 7). Mr. Baldwin’s only stated excuse for not correcting a knowingly false statement made to the Commission was “inexperience” and that he now believes that the record should have been corrected. (Tr. page 61 lines 1 - 11).

In perhaps his most telling statement during his deposition, Mr. Baldwin admitted that he had sent an e-mail to PEMA’s Mr. Wentzel in which he stated that he (Mr. Baldwin) and

Keystone NENA “took one for the team.” (Tr. p. 30 at lines 5-7). When asked to explain why he made the misstatements he did, he explained that he did so to “get the issue out.” (Tr. p. 30 at lines 16-21).

There can be no doubt that the only reason for imposition of the state law certification condition was these false statements. As the Commission stated: “Given these circumstances and in light of the concerns raised by NENA and the Pennsylvania Office of Consumer Advocate, we condition TracFone’s designation as an ETC eligible for Lifeline support in each state on TracFone’s certification 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.”<sup>10</sup> Now that the truth has been forcibly revealed, the Commission’s stated reason for imposition of that condition no longer justifies the condition, and it should be promptly rescinded.

**The State 911 Law Compliance Certification Condition is being  
Abused and is Causing Additional and Unnecessary Burdens  
On the Commission and on TracFone**

To date, two petitions to reject TracFone state law compliance certifications have been filed with the Commission. Not surprisingly, the first was filed on January 29, 2009 by PEMA -- the agency which employs Robert Wentzel -- the person who solicited the PAOCA/Keystone NENA comments and who provided the incorrect information to Mr. Baldwin who later mischaracterized that incorrect information as being based upon Keystone NENA’s experience. On February 9, 2009, TracFone filed its opposition to PEMA’s petition to reject. That matter is pending before the Commission and TracFone will not clutter the record of this proceeding with a detailed reiteration of that opposition, other than to note that TracFone explained that the

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<sup>10</sup> TracFone Designation Order at ¶ 16.

applicability of the Pennsylvania Emergency Telephone Act is the subject of pending litigation and that questions of state law should be resolved by state courts of competent jurisdiction, not by the FCC. That matter remains pending in the state court.

The second petition challenging a TracFone state 911 law compliance certification was filed May 29, 2009 by the Alabama Commercial Mobile Radio Service Emergency Telephone Services Board (AL 911 Board). The AL Board petition goes even further than PEMA's petition. Not only does it ask the Commission to reject TracFone's certification of compliance with Alabama law; it also asks the Commission to "revoke" TracFone's Alabama ETC designation. To date, the Commission has not yet issued a public notice inviting comment on the AL Board petition. Once the Commission issues a public notice, TracFone will respond in an appropriate manner.

However, it is noted that the AL Board petition is even more remarkable than the PEMA petition. In Alabama, no legal proceeding before any tribunal regarding TracFone's compliance *vel non* with any Alabama law governing 911 or 911 funding has been commenced. The entirety of the AL Board petition, including its request that the Commission revoke TracFone's ETC designation, is the opinion of certain members of the AL Board that TracFone may be in violation of some state law. At a recent meeting of that board, it was revealed that the Board's interpretation of the relevant Alabama statute is not consistent with the manner in which that board (one of whose members is employed by a competitor of TracFone) seeks to apply the law with respect to TracFone. The point is that in Alabama there are differing interpretations of the state's 911 law, that no adjudication establishing the scope of the law has been commenced, let alone completed, and that any determination regarding that law should be made by an Alabama court, not by the FCC.

The point is simple: neither of these petitions based on unsupported allegations and unproven opinions about state laws would have been permissible but for the imposition of a state law compliance certification condition which was, pursuant to the Commission's own stated explanation, the result of factual allegations which have subsequently been acknowledged as untrue by the individual who articulated those allegations in written on-the-record comments in this proceeding.

### CONCLUSION

For all of the foregoing reasons, TracFone respectfully requests that the Commission rescind the state 911 law compliance certification condition imposed on TracFone at paragraph 16 of the TracFone Designation Order.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



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*Its Attorneys*

July 16, 2009

# Attachment

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 - - -

3 PENNSYLVANIA EMERGENCY :  
MANAGEMENT AGENCY

4 :  
Petitioner

5 :  
vs.

6 :  
TracFone WIRELESS, INC.

7 :  
Respondent

8  
9 - - -

10 June 24, 2009

11 - - -

12 Oral deposition of TIMOTHY BALDWIN,  
13 taken pursuant to notice, was held at the  
14 Law Offices of DRINKER, BIDDLE & REATH,  
15 1000 Westlakes Drive, Berwyn,  
16 Pennsylvania, commencing at 10:00 a.m., on  
17 the above captioned date, before Kathleen  
18 Ruccolo, Professional Reporter and Notary  
19 Public in and for the Commonwealth of  
20 Pennsylvania.

21  
22 MAGNA LEGAL SERVICES

23 Seven Penn Center  
1635 Market Street, 8th Floor  
24 Philadelphia, PA 19102

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1 APPEARANCES:  
2  
3 DRINKER BIDDLE & REATH  
4 BY: MICHAEL MCTIGUE, ESQUIRE  
5 BY: SUSAN ROACH, ESQUIRE  
6 One Logan Square  
7 18th & Cherry Streets  
8 Philadelphia, Pennsylvania 19103  
9 Counsel for the Plaintiff  
10  
11 OFFICE OF ATTORNEY GENERAL  
12 COMMONWEALTH OF PENNSYLVANIA  
13 BY: PATRICK S. CAWLEY, ESQUIRE  
14 Strawberry Square  
15 Harrisburg, Pennsylvania 17120  
16 Counsel for the Defendant  
17  
18 ALSO PRESENT:  
19  
20 Richard Salzman  
21  
22  
23  
24

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1 ---  
2 DEPOSITION SUPPORT INDEX  
3 ---  
4  
5 Direction to Witness Not to Answer  
6 Page Line Page Line Page Line  
7 None  
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9  
10 Request for Production of Documents  
11 Page Line Page Line Page Line  
12 None  
13  
14  
15 Questions Marked  
16 Page Line Page Line Page Line  
17 None  
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20 Stipulations  
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5 By: Mr. McTigue 5  
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8 EXHIBITS  
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10 NO. DESCRIPTION PAGE  
11 T-27 Investigation 57  
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1 (By agreement of counsel,  
2 the signing, sealing, filing and  
3 certification are waived; and all  
4 objections, except as to the form  
5 of the question, are reserved  
6 until the time of trial.)  
7 TIMOTHY BALDWIN, after  
8 having been duly sworn, was  
9 examined and testified as  
10 follows:  
11 ---  
12 EXAMINATION  
13 ---  
14 BY MR. MCTIGUE:  
15 Q. You are not represented  
16 by counsel here today; is that correct?  
17 A. No. The county attorney,  
18 I've been in contact with them. They just  
19 said to provide the documents that you  
20 asked for, and I have them here. To  
21 answer your questions, so . . .  
22 Q. Well, we are going to  
23 start with that. We had an issue  
24 yesterday with potential documents that

1 may have been -- including communications  
2 relating to your filing, NENA's filing  
3 before the FCC, some e-mails that may have  
4 been deleted. We are going to be  
5 requesting inspection of computers as a  
6 result of that. Hopefully we can dispense  
7 with some issues by going through these  
8 documents.

9 A. Yes. I checked with our  
10 IT person at our workplace. We do not  
11 archive -- our Outlook Exchange server is  
12 not set up for journaling. Therefore, it  
13 is incumbent upon us to save documents  
14 because otherwise there is no guarantee  
15 something is recoverable. What is  
16 presented here is everything that I could  
17 find on my computer in the network.

18 Q. Let's take a look at what  
19 we have.

20 MR. CAWLEY: Before we  
21 get going we'll just go with the  
22 same stipulation about reserving  
23 objections except form of the  
24 question until later.

1 A. Yes.

2 Q. Any other -- anything  
3 else you did to search for documents?

4 A. No.

5 Q. Okay. Did you produce  
6 every document that was responsive to the  
7 request?

8 A. To the best of my ability  
9 I did.

10 Q. I guess my question was,  
11 did you hold something back that was  
12 responsive for any reason?

13 A. Not that I'm aware of.  
14 The county attorney told me to make sure I  
15 went through everything to the best of my  
16 ability, print them out and bring them  
17 here.

18 Q. Okay. And how have you  
19 organized these?

20 A. Well, I organized them as  
21 best I could in response to -- well, I  
22 don't have the form. You had sent a form  
23 that said all correspondence related to,  
24 and there were 20-some of those. So, I

1 MR. MCTIGUE: That's fine  
2 between us. That is fine.

3 THE WITNESS: I did my  
4 best to try to organize.

5 BY MR. MCTIGUE:

6 Q. Do you have just one copy  
7 of these documents here?

8 A. Yes. I didn't know how  
9 many to bring. I have one other copy at  
10 work that I made.

11 Q. If Mr. Cawley would like  
12 copies we can make copies for him.

13 You received a subpoena  
14 in this case --

15 A. Yes.

16 Q. -- which you have in  
17 front of you. In connection with that  
18 subpoena you searched for documents that  
19 were responsive to the question set forth  
20 in the subpoena?

21 A. Yes.

22 Q. And your search entailed  
23 looking through your electronic  
24 communication files?

1 did my best to organize them in -- so that  
2 it would somehow make sense. For example,  
3 here is communications with the Office of  
4 Consumer Advocate related to TracFone.

5 Q. I see.

6 A. And then PA NENA related  
7 to TracFone from 2008 and so on.

8 Q. What we'll do is, rather  
9 than going through these line by line now,  
10 over the lunch break we'll take a peek at  
11 these and I'll probably have some  
12 questions for you with regard to some of  
13 these documents.

14 A. Okay.

15 Q. Sir, do you understand  
16 why you are here today?

17 A. I'm just -- it is related  
18 to the filing of the Commonwealth in court  
19 related to the remittance of funds for  
20 TracFone.

21 Q. Okay. Have you spoken  
22 with anyone about your deposition here  
23 today?

24 A. I spoke to two of the

1 county attorneys.  
 2 Q. Other than that?  
 3 A. I spoke to Mr. Cawley  
 4 briefly, just because the county attorneys  
 5 told me to make sure --  
 6 Q. Hold on. You are not a  
 7 lawyer. You are not represented by  
 8 counsel, but I don't want to know what  
 9 your attorneys said to you --  
 10 A. Okay.  
 11 Q. -- regarding your  
 12 appearance here. Those are privileged  
 13 communications. I'm not entitled to know  
 14 that information. I wanted you to be  
 15 aware of that. As to your communications  
 16 with Mr. Cawley, he is not your attorney.  
 17 I can inquire about that.  
 18 I'm not trying to do  
 19 something to trick you here. I just want  
 20 to know the facts. Other than your  
 21 attorneys did you have any communications  
 22 with anyone about your deposition?  
 23 A. So, I can say I just  
 24 spoke to Mr. Cawley to let him know I got

1 the subpoena, and I spoke to Rob Wentzel  
 2 that he knew that I had a subpoena. I  
 3 spoke to the -- Barrett Sheridan from the  
 4 OCA's office to let her know I got a  
 5 subpoena. I spoke to -- not directly, I  
 6 exchanged voice mails with Joe Whitmore  
 7 from the PUC, he is an attorney from the  
 8 PUC, to let him know that I got a  
 9 subpoena.  
 10 Q. What was the substance of  
 11 your communications with Mr. Wentzel?  
 12 A. Just to let him know that  
 13 I got subpoenaed and that I was going to  
 14 provide the documents in accordance with  
 15 the instructions that I received.  
 16 Q. Did you send copies of  
 17 the documents to anybody?  
 18 A. No.  
 19 Q. Have you ever been  
 20 deposed before, sir?  
 21 A. Never.  
 22 Q. Okay. I'm going to ask  
 23 you a series of questions. You are under  
 24 oath, as the court reporter put you in the

1 beginning. She is going to take down your  
 2 responses. Please make sure you verbalize  
 3 all your responses. She can't take down  
 4 head nods or shakes. Try to wait for me  
 5 to ask a complete question before you  
 6 answer. If we talk over each other she  
 7 has trouble taking that down, as well.  
 8 A. Okay.  
 9 Q. Are you under the  
 10 influence of any medication, do you have  
 11 any medical condition that would impair  
 12 your ability to understand my questions or  
 13 answer truthfully today?  
 14 A. No.  
 15 Q. Okay. Sir, when you  
 16 looked for documents in connection with  
 17 the subpoena did you have separate folders  
 18 within your computer system that were  
 19 devoted to TracFone?  
 20 A. I have separate folders  
 21 that are devoted to different projects.  
 22 For example, you'll notice the OCA. I  
 23 don't have one dedicated to TracFone.  
 24 This is representative of the file for

1 OCA. Then I have one for PA NENA for each  
 2 year --  
 3 Q. Okay.  
 4 A. -- and so on.  
 5 Q. All right. And when you  
 6 do -- strike that.  
 7 For the business that you  
 8 conduct for E 911 or in your capacity --  
 9 are you the president of Keystone NENA?  
 10 A. No. I'm the vice  
 11 president. At the time this took place I  
 12 was just the chapter secretary.  
 13 Q. In your capacity with  
 14 Keystone NENA are all your communications  
 15 done on a work computer?  
 16 A. Yes.  
 17 Q. None of those  
 18 communications are done from a home  
 19 computer or personal e-mail account in  
 20 either of those capacities?  
 21 A. No.  
 22 Q. Did you prepare at all  
 23 for the deposition today?  
 24 A. I just did this.

1 (Indicating.)  
 2 Q. Okay. Did you review the  
 3 documents?  
 4 A. Just to -- I searched  
 5 them and I organized them, you know,  
 6 according to date for whoever would have  
 7 to look at them to make it a little  
 8 easier. Other than just give a cursory  
 9 glance, I didn't.  
 10 Q. Are you aware that Mr.  
 11 Wentzel was deposed yesterday?  
 12 A. Yes.  
 13 Q. Okay. Have you discussed  
 14 with anyone his deposition?  
 15 A. No.  
 16 Q. You said you did speak  
 17 with Mr. Whitmore about your deposition;  
 18 is that correct?  
 19 A. Well, I left a voice-mail  
 20 for him at his work and then he, in turn,  
 21 left a voice-mail for me to call him back,  
 22 but then he was off so we've never spoken.  
 23 Q. Did you speak with any  
 24 officers of Keystone NENA about your

1 A. I am the deputy director  
 2 for Lancaster County-Wide Communications.  
 3 It is the 911 PSAP for Lancaster County.  
 4 Q. Who do you report to?  
 5 A. Michael Weaver is my  
 6 boss.  
 7 Q. Okay. What are your  
 8 duties as deputy director of E 911  
 9 services for Lancaster County?  
 10 A. Basically, I manage the  
 11 operation. We have a staff of  
 12 approximately a hundred people. That  
 13 includes the 911 center itself, the call  
 14 center, the radio technicians that are out  
 15 in the field repairing tower sites,  
 16 transmitters, administrative staff, work  
 17 on projects for the operation.  
 18 Q. How long have you had  
 19 this position?  
 20 A. I have been there since  
 21 March of 1992.  
 22 Q. Some time. And you have  
 23 been deputy director since March of '92?  
 24 A. I have.

1 deposition today?  
 2 A. The president, Mike  
 3 Weaver -- Michael Weaver. Michael  
 4 McGrady, he is the chair of the  
 5 legislative committee. I think that's it.  
 6 Q. And what was the  
 7 substance of your communications with  
 8 them?  
 9 A. Just to let them know  
 10 that I received a subpoena and that I'd be  
 11 complying and reporting here today.  
 12 Q. Did you speak with either  
 13 of them about the substance of what you  
 14 would be testifying about?  
 15 A. I went over -- not in  
 16 great detail, but I sort of summarized the  
 17 20-some points that you had and what  
 18 documents I would be providing.  
 19 Q. Did any of them ask you  
 20 what this matter was all about?  
 21 A. No. I think that they  
 22 were aware.  
 23 Q. What is your current  
 24 employment position?

1 Q. Okay. What is Keystone  
 2 NENA?  
 3 A. It is the state chapter  
 4 of National Emergency Number Association.  
 5 There is a national organization that  
 6 covers many chapters and we are one of  
 7 them.  
 8 Q. And are you currently an  
 9 officer of Keystone NENA?  
 10 A. I am. I'm the first vice  
 11 president this year.  
 12 Q. And who are the current  
 13 officers?  
 14 A. Michael Weaver is  
 15 president. The secretary is Frank  
 16 Jannetti. The treasurer is Cindy Dietz,  
 17 D-I-E-T-Z.  
 18 Did you want to know who  
 19 is on the executive board?  
 20 Q. Yes, I would like to know  
 21 that, as well.  
 22 A. Okay. The executive  
 23 board has three regional representatives,  
 24 Brian Melcer, M-E-L-C-E-R, the -- Connie

1 Turner and Laurie Bailey.  
 2 Q. And which regions are  
 3 each of them from?  
 4 A. Brian is the western,  
 5 Connie is central, and Laurie is eastern.  
 6 Q. And are these -- all of  
 7 these individuals, both the officers and  
 8 the executive board, essentially E 911  
 9 coordinators around the Commonwealth?  
 10 A. Yes.  
 11 Q. Okay. Does Keystone NENA  
 12 have regular meetings?  
 13 A. Yes.  
 14 Q. How often do they meet?  
 15 A. Once per month.  
 16 Q. Are minutes kept of these  
 17 meetings?  
 18 A. Yes.  
 19 Q. Who keeps those minutes?  
 20 A. The chapter secretary  
 21 would have them and then distributes them  
 22 after the meeting is over.  
 23 Q. And as -- assume the  
 24 secretary position changes, do the

1 historical minutes move to the next  
 2 secretary?  
 3 A. Well, they typically  
 4 distribute them by e-mail. We meet by  
 5 teleconference call since we have to cover  
 6 the whole state. So, on the call the  
 7 secretary just takes the minutes. After  
 8 the meeting is over, distributes them.  
 9 Q. At one point you were the  
 10 secretary, you said. Does the secretary  
 11 keep a binder of the minutes?  
 12 A. Well, I did not. I just  
 13 kept them on -- in a folder  
 14 electronically.  
 15 Q. And when you ceased being  
 16 secretary did you transfer that folder to  
 17 the new secretary?  
 18 A. No. No.  
 19 Q. Okay. How was the PA  
 20 NENA -- Keystone NENA funded?  
 21 A. We have an annual  
 22 conference. It is in September usually.  
 23 It has always been at State College, to my  
 24 knowledge.

1 Q. Okay. And how was  
 2 funding achieved through that annual  
 3 conference?  
 4 A. Well, there is a --  
 5 vendors pay a fee to display things.  
 6 There are -- the members pay a  
 7 registration fee.  
 8 Q. And by vendors are these  
 9 wireless phone carriers or landline  
 10 carriers?  
 11 A. Well, it's more along the  
 12 line of equipment vendors for the public  
 13 safety answering point. So, you would get  
 14 computer-aided dispatch vendors, or  
 15 telephony vendors for equipment, some  
 16 consultants.  
 17 Q. Does Keystone NENA have a  
 18 budget?  
 19 A. Well, we try to come up  
 20 with one for the annual conference. Other  
 21 than that...  
 22 Q. What type of expenditures  
 23 does it have?  
 24 A. Well, we don't really

1 have much. We have to pay for the  
 2 conference center. There is mileage paid  
 3 for folks that have to attend meetings.  
 4 We pay for -- we have regional meetings,  
 5 we pay for lunch.  
 6 Q. What is the legal  
 7 relationship between Keystone NENA and  
 8 national NENA?  
 9 A. Well, we are chartered as  
 10 a chapter, but I don't know how to answer  
 11 that.  
 12 Q. Did you get any funds  
 13 from national NENA?  
 14 A. The membership dues. The  
 15 annual membership dues, each chapter would  
 16 receive a portion of that. I think that  
 17 is the extent of that.  
 18 Q. One of the things we are  
 19 going to get in later are some of the  
 20 filings that are made by Keystone NENA in  
 21 the FCC proceedings. Who funds the work  
 22 that is done on that and any fees and cost  
 23 associated with that?  
 24 A. Well, in the case of the

1 OCA filing I just worked with Barrett  
2 Sheridan, I think that was back in early  
3 '08, and I just did that on my county  
4 time.

5 Q. Did you pay any outside  
6 lawyers to work on that?

7 A. No.

8 Q. Do the individuals who  
9 come to the convention pay a fee to  
10 attend?

11 A. Yes, there is a  
12 registration.

13 Q. Do you know where the  
14 money comes from for those fees?

15 A. Oh, I would imagine  
16 county.

17 Q. Do you know if they come  
18 from E 911 revenue dollars from cellular  
19 phone or phone carriers?

20 A. I think it is an eligible  
21 cost. Whether or not people put in for  
22 that to the state, I don't know that.

23 Q. As to your county do your  
24 people who attend put in for that as part

1 A. I believe more on the  
2 federal level than they do on the state.

3 Q. Do you understand you've  
4 seen them take positions on legislation?

5 A. In individual states?

6 Q. Or on a national --

7 A. On a national level I  
8 have.

9 Q. And you don't know one  
10 way or the other whether they do so in  
11 individual states?

12 A. I've seen them distribute  
13 information about legislation going on in  
14 different states, but I don't know if they  
15 have taken an active role.

16 Q. When NENA takes a  
17 position on a legislation matter, do they  
18 speak for Keystone NENA?

19 A. So, you are saying when  
20 national NENA takes a position on federal  
21 -- I would imagine so, unless a chapter  
22 would object to something. I mean, I  
23 don't think there is anything to stop a  
24 chapter from disagreeing with the national

1 of reimbursement form the E 911 fund?

2 A. No.

3 Q. Why do you say you think  
4 it is an eligible cost?

5 A. Well, training is an  
6 eligible cost. So, if they so chose to  
7 include that in their yearly annual  
8 application of activities, training  
9 activities, it would be covered provided  
10 they got approval for it.

11 Q. And how is it that you  
12 didn't seek -- Lancaster has not sought  
13 reimbursement for these?

14 A. Well, it is not a lot of  
15 money. I think it's \$100 or something per  
16 attendee. It fluctuates a little bit.  
17 This year it is going to be a little less.

18 Q. Do you think it qualifies  
19 under the statute?

20 A. Sure, I guess. Yeah, we  
21 could put in for that.

22 Q. Does national NENA take  
23 an official position on proposed  
24 legislation regarding E 911 issues?

1 office.

2 Q. Before the national  
3 office takes a position do they pole their  
4 regional or state NENA offices to see if  
5 people support or do not support the  
6 position?

7 A. Well, at their annual 911  
8 Goes to Washington, for folks that attend  
9 that they have discussions on upcoming  
10 legislation and what they are going to do.  
11 They put out a -- I guess a somewhat  
12 frequent e-mail blast that says what they  
13 are working on. I would imagine that  
14 anyone would be free to provide their  
15 opinion on that.

16 Q. Has Keystone NENA taken  
17 positions on legislation in the  
18 Commonwealth of Pennsylvania?

19 A. Yes.

20 Q. Okay. And how does  
21 Keystone NENA go about taking a position  
22 on legislation in the Commonwealth?

23 A. Well, we have a  
24 legislative committee -- a joint

1 legislative committee between ourselves  
2 and another organization called APCO, the  
3 state chapter of APCO, and they -- well,  
4 anyone who really learns of any  
5 legislation initiatives that are being  
6 proposed advise the joint committee who  
7 discusses it and figures on, you know,  
8 what position they would recommend the  
9 chapter take.

10 Q. And then when there is a  
11 recommendation how does a decision get  
12 made as to the position of Keystone NENA?

13 A. The executive board will  
14 make that decision and there is nothing  
15 stopping, you know, a county who disagrees  
16 from disagreeing.

17 Q. So, for decisions on  
18 legislation it is the executive board not  
19 the officers that make the decision?

20 A. I would say that is  
21 correct.

22 Q. Okay. How about on  
23 filings, for example, the FCC filings that  
24 were made in connection with TracFone's

1 A. I wouldn't feel  
2 comfortable doing that just myself.

3 Q. Okay. I understand that  
4 you wouldn't -- what actually happened in  
5 this case is what I'm trying to find out.

6 A. Well, I would imagine  
7 what I had done is would have discussed  
8 that and brought that fourth that, you  
9 know, here is the issue and that there was  
10 an available -- there was a notice out for  
11 a filing and would have asked for  
12 permission, but I don't remember the  
13 details that went into getting approval to  
14 do that.

15 Q. Yesterday Mr. Wentzel  
16 testified that he solicited you to make  
17 that filing. Is that consistent with your  
18 recollection?

19 A. He supported the filing,  
20 but I don't know if he -- he said he  
21 solicited it. Well, I would say either he  
22 would have encouraged it or supported it,  
23 but I don't know if he -- he didn't  
24 strong-arm anybody into doing that.

1 position on Lifeline service, who made  
2 that decision?

3 A. Well, in the case of  
4 working with the OCA I believe that I  
5 brought that to the executive board to  
6 discuss and to be allowed to take a  
7 position.

8 Q. And the executive board  
9 made the decision to go ahead with the  
10 filing?

11 A. Sure. I would say that  
12 is correct.

13 Q. Was there a -- I mean,  
14 could you have filed it without their  
15 approval?

16 A. For the county? Me as a  
17 NENA person?

18 Q. You understand that that  
19 filing was made on behalf of Keystone  
20 NENA, right?

21 A. Uh-huh.

22 Q. Did you have the  
23 authority to make that filing on your own  
24 without someone else approving it?

1 Q. I don't view solicitation  
2 as strong-arming. I do see it as  
3 potentially seeking out those to make such  
4 a filing. What I'm trying to get at, sir,  
5 is did Mr. Wentzel approach Keystone NENA  
6 about making that filing, I believe it was  
7 in January of 2008?

8 A. We would have had  
9 discussions.

10 Q. I guess what I'm trying  
11 to say, did the idea originate with Mr.  
12 Wentzel?

13 A. I don't remember it  
14 originating with him.

15 Q. Where do you think it  
16 originated?

17 A. I tried to look back here  
18 on the e-mails, and I don't know if this  
19 was a discussion that came up at the PUC  
20 911 task force meeting to get the ball  
21 rolling. I mean Rob would have been  
22 there, I'm pretty sure, for that meeting.  
23 I don't know -- I'm not trying to be  
24 evasive here. I just don't remember, you

1 know, if he solicited that.  
 2 Q. Do you remember writing  
 3 an e-mail to Mr. Wentzel after the filing  
 4 saying that you took one for the team?  
 5 A. Yes, he said that. Yeah.  
 6 Q. I thought that was an  
 7 e-mail that you wrote, that you took one  
 8 for the team?  
 9 A. I didn't find that in  
 10 mine, but I remember that being said.  
 11 Q. Did you believe that  
 12 Keystone NENA took one for the team in  
 13 that filing?  
 14 A. Took one for the team?  
 15 Say that again.  
 16 Q. Do you believe that  
 17 Keystone NENA took one for the team with  
 18 that filing?  
 19 A. Do you have that, that I  
 20 could look at?  
 21 Q. It is Exhibit 3. Sir,  
 22 I'm giving you what has been marked as  
 23 Exhibit 3 previously. Do you recognize  
 24 this e-mail?

1 A. Yes.  
 2 Q. Did you send this e-mail  
 3 to Mr. Wentzel?  
 4 A. Yes.  
 5 Q. Okay. Do you see here  
 6 you say, PA NENA took one for the team?  
 7 A. Yes.  
 8 Q. What did you mean by  
 9 that?  
 10 A. Well, according to this  
 11 to get the issue out to the -- to get the  
 12 issue out, the argument out and get a  
 13 ruling on the filing on our issue of  
 14 non-remittance of funds.  
 15 Q. Whose issue is that?  
 16 A. Well, I think in general  
 17 it would be a state issue that there is a  
 18 provider that is not remitting funds to  
 19 the wireless fund. Here it says that the  
 20 law does not apply to TracFone, that is  
 21 what TracFone said.  
 22 Q. Do you have an  
 23 understanding that Mr. Wentzel did not  
 24 want to make such a filing on behalf of

1 the Commonwealth?  
 2 A. No, I was not aware of  
 3 that.  
 4 Q. Do you understand why Mr.  
 5 -- that the Commonwealth did not file  
 6 comments at that time that Keystone NENA  
 7 filed comments?  
 8 A. No.  
 9 Q. Did you share drafts with  
 10 Mr. Wentzel before you filed the comments?  
 11 A. I would believe I did.  
 12 Q. Did he give you  
 13 information for purposes of the filing?  
 14 A. I don't remember what he  
 15 would have given me.  
 16 Q. Who had the most  
 17 information with regard to the E 911  
 18 revenue issue, was it Keystone NENA or Mr.  
 19 Wentzel's office?  
 20 A. It would be Mr. Wentzel's  
 21 office.  
 22 Q. How could you make a  
 23 filing regarding that issue and whether or  
 24 not TracFone was in compliance with that

1 issue on your own?  
 2 A. Well, he would have told  
 3 me that they are not remitting funds.  
 4 Q. And you took him at face  
 5 value on that at making your filing?  
 6 A. Sure.  
 7 Q. Did you do any other due  
 8 diligence in connection with the  
 9 representation by Mr. Wentzel?  
 10 A. No.  
 11 Q. If you go back to the  
 12 e-mail there, where it says -- after PA  
 13 NENA took one for the team, hey at least  
 14 we got the issue out there.  
 15 And the next one: On a  
 16 positive note, hopefully you can glean  
 17 information from their comments.  
 18 What did you mean by on a  
 19 positive note?  
 20 A. On a positive note -- I  
 21 don't know why I would have said that. I  
 22 don't know.  
 23 Q. Does Keystone NENA have  
 24 liability insurance?

1 A. We have -- yes, we do.  
 2 Q. What type of coverage is  
 3 it?  
 4 A. There is errors and  
 5 omissions insurance and there are two  
 6 policies, but I don't know what the other  
 7 one would be.  
 8 Q. Directors' and officers'  
 9 liability coverage?  
 10 A. That might be it.  
 11 Q. Okay. Do you have an  
 12 understanding that Mr. Wentzel has  
 13 animosity towards TracFone?  
 14 A. Do I have?  
 15 Q. Do you believe that Mr.  
 16 Wentzel has animosity towards TracFone?  
 17 A. That's not coming across  
 18 in like a personal level. Professionally  
 19 I think that he felt that the fact that  
 20 TracFone is not remitting is wrong. So, I  
 21 don't know how -- if you can have a  
 22 professional animosity. I never really  
 23 thought about it.  
 24 Q. Is it your understanding

1 Q. Do you know the mechanism  
 2 under the legislation whereby prepaids  
 3 remit funds to the Commonwealth for E 911?  
 4 A. Well, currently it is my  
 5 understanding that the wireless firms pay  
 6 into the fund for both their prepaid arms  
 7 and their contracted services, and they  
 8 pay the -- they must aggregate that  
 9 somehow and then submit it to the state.  
 10 Q. Do you know how -- where  
 11 the money comes from?  
 12 A. Well, I would imagine it  
 13 comes from their sales of wireless time or  
 14 bills, they receive the money and then --  
 15 Q. Do you understand whether  
 16 the legislation is set up for the consumer  
 17 to pay the charge or for the carrier to be  
 18 ultimately responsible for paying the  
 19 charge?  
 20 A. Well, I think that is  
 21 what the contention is with TracFone. Rob  
 22 has told me that the only firm who is not  
 23 remitting is TracFone. So, the others --  
 24 I don't know the process that they do. I

1 from your dealings with Mr. Wentzel that  
 2 he looks for ways to make business  
 3 difficult for TracFone across the country?  
 4 A. That's not come across to  
 5 me.  
 6 Q. Do you have an  
 7 understanding -- strike that.  
 8 Are you familiar with the  
 9 E 911 statute on the revenue side, how  
 10 revenue is determined?  
 11 A. For state?  
 12 Q. For the state?  
 13 A. I have a working  
 14 knowledge of it, I think.  
 15 Q. Do you understand how it  
 16 applies to prepaid wireless providers?  
 17 A. Well, I know prepaid is  
 18 mentioned in the legislation in a couple  
 19 different spots, and from my understanding  
 20 that the law asks that they remit funds.  
 21 Q. Where did you get that  
 22 understanding?  
 23 A. From the legislation  
 24 itself. Do you have a copy?

1 know there is an argument regarding point  
 2 of sale versus the firm themselves  
 3 collecting the fee from their subscribers  
 4 to pay.  
 5 Q. When did Rob tell you  
 6 that TracFone was the only firm not  
 7 remitting?  
 8 A. Well, that's -- I mean,  
 9 he's made that statement a number of  
 10 times. I wouldn't be able to say -- give  
 11 you a precise date or anything.  
 12 Q. What is your  
 13 understanding of -- what does he mean by  
 14 remitting?  
 15 A. Well, when they sell the  
 16 prepaid minutes either on the Internet or  
 17 at a retail store that they would collect  
 18 the dollar per handset per month at that  
 19 time and then pay the state money.  
 20 Q. So, by remitting you are  
 21 talking about paying the Commonwealth  
 22 money?  
 23 A. Yes.  
 24 Q. Okay. Do you have an

1 understanding -- did Mr. Wentzel lead you  
2 to believe that TracFone was collecting  
3 money as part of the sale process, but not  
4 remitting it to the Commonwealth?

5 A. He has not said that. I  
6 don't know -- there is a provision in the  
7 law, if memory serves, that a firm can't  
8 do -- how do I say this? If a firm is  
9 collecting money and -- that they also  
10 can't put in for access to the wireless  
11 fund for tower site build-outs or anything  
12 related to their network, they can't  
13 double-dip the money. So, in other words,  
14 they would be collecting a fee and yet be  
15 able to access -- not turn the fee over,  
16 but be able to access the wireless fund  
17 itself for improvements or anything like  
18 that. I don't know if I answered your  
19 question.

20 Q. I don't think so.

21 - - -

22 (At this time the court  
23 reporter read back from the  
24 record as was requested.)

1 - - -

2 THE WITNESS: No.  
3 BY MR. MCTIGUE:

4 Q. Is it fair to say your  
5 understanding of how the statute applies  
6 comes primarily from Mr. Wentzel?

7 A. How the statute applies,  
8 yes.

9 Q. And do you have an  
10 understanding that Mr. Wentzel has his own  
11 view of the statute and how it applies?

12 A. In that he would have  
13 told us?

14 Q. Well, let me back up. I  
15 mean, you could understand the scenario  
16 where people may differ on their  
17 interpretations of a statute; is that  
18 correct?

19 A. Yes.

20 Q. And you have an  
21 understanding that Mr. Wentzel has a  
22 particular view of the statute that may  
23 not be shared by others?

24 A. I had not thought about

1 it, but I would imagine people -- sure,  
2 people can differ.

3 Q. Do you just assume that  
4 Mr. Wentzel's view is correct?

5 A. Well, he has access to  
6 things that we would not have access to.  
7 In other words, the state association of  
8 911 directors, which we are not permitted  
9 to -- I mean, you have to be a state 911  
10 director to attend those meetings, and I  
11 would imagine that they discuss what is  
12 going on across the country. So, he would  
13 be a knowledgeable source of information  
14 for us that we would not have access to.

15 Q. Before we go on. At any  
16 time if you want to take a break just tell  
17 me. You are entitled to break. If you  
18 would like something to drink, by the way,  
19 while you are talking, that is fine with  
20 me as well. But we can continue if you  
21 like.

22 A. No, I'm fine. Go ahead.

23 Q. Let's go to the filing  
24 that I believe occurred in January of 2008

1 -- I'm sorry, February of 2008 when the  
2 joint comments of the Pennsylvania Office  
3 of Consumer Advocate and Keystone, you are  
4 familiar with that filing?

5 A. Uh-huh.

6 Q. I think you testified  
7 that you shared a draft of that filing  
8 with Mr. Wentzel before it was filed; is  
9 that correct?

10 A. Yes.

11 Q. And that Mr. Wentzel  
12 would have provided you with information  
13 in connection with that filing for  
14 purposes of your filing; is that correct?

15 A. Yes.

16 Q. Okay. I'm going to show  
17 you what has been marked as T-4 and T-1.  
18 Let me ask you first, do you recognize  
19 what has been designated T-4?

20 A. Yes, I recognize this.

21 Q. Okay. What is that  
22 document?

23 A. This is the document that  
24 I worked on.

1 Q. Yes, is this the original  
2 draft that you created for the filing?  
3 A. I don't know if it is the  
4 original one. I worked with Barrett  
5 Sheridan to -- I'm not in-depth at doing  
6 filings here, so I know that I worked with  
7 Barrett to refine comments. Obviously,  
8 they file comments all the time.  
9 Q. Right. That document was  
10 produced by PEMA, I believe, within Mr.  
11 Wentzel's files.  
12 A. Okay.  
13 Q. Did Mr. Wentzel provide  
14 you with comments on this document?  
15 A. I think that the one  
16 thing that would come to mind is that -- I  
17 think it says TracFone was the only one to  
18 not remit.  
19 Q. We'll go to the next  
20 document I think perhaps it is in there.  
21 That came from Mr. Wentzel, that  
22 information?  
23 A. Yes.  
24 Q. Did you receive any

1 written comments back from Mr. Wentzel?  
2 A. If I did --  
3 Q. It is in that stack?  
4 A. -- it is here.  
5 Q. We have not gone through  
6 that yet, so...  
7 Let's go to T-1 then.  
8 Does T-1 represent the actual joint filing  
9 by the Pennsylvania Office of Consumer  
10 Advocate and Keystone NENA on or about  
11 February 8, 2008, and in the TracFone FCC  
12 proceeding?  
13 A. Certainly looks like it.  
14 Q. If you jump to page five  
15 I think the first full paragraph it says:  
16 In the experience of Keystone NENA all  
17 wireline local exchange carriers,  
18 competitive local exchange carriers and  
19 resellers, as well as wireless service  
20 providers comply with the Pennsylvania act  
21 and collect 911 fees except TracFone.  
22 Do you see that?  
23 A. Uh-huh. Yes.  
24 Q. Where did that sentence

1 come from?  
2 A. I'm certain I would have  
3 talked to Rob about that.  
4 Q. Okay. Did he write that  
5 sentence?  
6 A. I would think that  
7 Barrett probably wrote that sentence.  
8 Q. Who is Barrett?  
9 A. Barrett Sheridan, she is  
10 an attorney with the Office of Consumer  
11 Advocate.  
12 Q. This says, "In the  
13 experience of Keystone NENA." It has  
14 nothing to do with the Office of Consumer  
15 Advocate.  
16 A. I'm only assuming that  
17 she would have taken our comments from  
18 here and aggregated them into this.  
19 Q. When you -- before you  
20 made the filing who from Keystone NENA  
21 made sure that the representations in here  
22 were accurate?  
23 A. Well, I would have read  
24 it.

1 Q. But you don't know --  
2 Keystone NENA does not know whether or not  
3 this statement is true?  
4 A. Well, based on the  
5 information that we would have gotten, I  
6 mean, I believe Rob to be, you know,  
7 provide -- has provided us credible  
8 information in the past.  
9 Q. You relied on Mr. Wentzel  
10 for the accuracy of this statement?  
11 A. Sure.  
12 Q. Okay. Did you have  
13 conversations with Mr. Wentzel about the  
14 fact that he indicated that all wireline  
15 local exchange carriers, competitive local  
16 exchange carriers and resellers, as well  
17 as wireless service providers comply with  
18 the act and collect 911 fees, and by that  
19 did you actually have conversations where  
20 he indicated that every single one of  
21 those entities collected 911 fees except  
22 TracFone?  
23 A. Yes.  
24 Q. And you understand there

1 is a difference between collecting fees  
2 from customers and remitting fees to the  
3 Commonwealth?

4 A. I would have -- I would  
5 assume it would be one and the same. Why  
6 would you collect a fee and not remit it?

7 Q. How about could you  
8 imagine a situation where a carrier remits  
9 without collecting?

10 A. A carrier remits -- well,  
11 some wireless providers -- I don't know.  
12 I don't know why -- you are saying they  
13 would remit. That is confusing to me.

14 Q. Okay. You understand  
15 there is some issues in the prepaid  
16 wireless arena about collecting potential  
17 fees from their customers because of the  
18 nature of the business; do you understand  
19 that?

20 A. Yes.

21 Q. I'll tell you as part of  
22 the act there is a mechanism by which the  
23 legislation set up that the subscribers  
24 are the ones that are supposed to pay the

1 fee. Okay?

2 A. The subscriber, the end  
3 user?

4 Q. Right, the end user. And  
5 it is easy I believe, and spelled out  
6 clearly in the statute with regard to  
7 postpaid customers. If you are a postpaid  
8 wireless provider you are in the same  
9 situation as all of us, on your bill you  
10 will see there is a \$1 -- if you live in  
11 the Commonwealth, there is a \$1 E 911  
12 conspicuously on that bill, a buck gets  
13 charged every month. The customer pays  
14 the fee, carrier collects the fee, carrier  
15 remits the fee to the Commonwealth. Do  
16 you understand that scenario?

17 A. Yes.

18 Q. You understand there is  
19 some issues with prepaid because they  
20 don't get bills?

21 A. Right.

22 Q. Could you imagine a  
23 scenario then where a prepaid would not be  
24 able to collect fees from their customers?

1 A. Well, and that's the bone  
2 of contention here regarding how to do  
3 that. I mean, some people are advocating  
4 point-of-sale collections. Other people  
5 say, well, the retail industry says that  
6 the vendor should -- you should collect  
7 them and not burden the retailer. So,  
8 yes.

9 Q. Okay. You had told me  
10 before that Mr. Wentzel indicated to you  
11 that every carrier was remitting except  
12 TracFone. This doesn't say that. This  
13 sentence says every carrier was collecting  
14 fees except TracFone. Do you have any  
15 basis for that statement?

16 A. That they are collecting?  
17 Well, all I can say is at the time we  
18 would have thought it was one and the  
19 same.

20 Q. Why would you think that?

21 A. It is somewhat circuitous  
22 because why would you collect it and not  
23 remit it?

24 Q. Or the other way?

1 A. Why would you remit  
2 without collecting? I don't --

3 Q. Could you imagine some  
4 pressure from the Commonwealth that would  
5 cause carriers to remit without  
6 collecting?

7 A. I don't know what kind of  
8 muscle the state would have to do that.  
9 That would be foreign to me. I wouldn't  
10 know that. Wouldn't a vendor be able to  
11 say no, we are not --

12 Q. Do you go to national  
13 NENA conventions at all?

14 A. I've never attended one.

15 Q. Are you familiar with the  
16 practice of carriers outside the  
17 Commonwealth of Pennsylvania and other  
18 states with regard to E 911 charges?

19 A. Not intimately familiar.  
20 I know states, various states have  
21 statutes. Some don't have any.

22 Q. Are you familiar that  
23 many carriers have filed documents in  
24 other states saying that they are

1 remitting under a method that they choose,  
2 but they are not able to collect these  
3 funds from their consumers?

4 A. Well, there is an e-mail  
5 here as part of the subpoena that Verizon  
6 mentions their other -- companies under  
7 their umbrella I'm guessing, and that they  
8 are remitting on their behalf, but I don't  
9 know if they are -- if they are point of  
10 sale, are collecting from those people as  
11 well.

12 Q. So, you did nothing to  
13 verify whether every carrier was  
14 collecting 911 fees in the Commonwealth of  
15 Pennsylvania?

16 A. No, I would have taken  
17 Rob's statement at face value.

18 Q. Would you say there is  
19 more to the statute, the E 911 statute,  
20 than merely remitting revenue to the  
21 Commonwealth of Pennsylvania?

22 A. Oh, yes. There is other  
23 requirements in there.

24 Q. Sitting here today what

1 are those requirements?

2 I'm not trying to trick  
3 you. Let's make this easier. T-6, sir,  
4 if you look at section B?

5 A. You are asking me are  
6 there other provisions to this or is it  
7 the law in its entirety?

8 Q. Other than remitting to  
9 the Commonwealth, are there other  
10 requirements placed on wireless carriers?

11 A. Yes. It says here that  
12 annually wireless providers shall provide  
13 a list of names and addresses of wireless  
14 service customers carrying a balance.

15 Q. Let me make it easier for  
16 you, the first line says at B1 wireless  
17 providers shall collect a fee as part of  
18 their billing process. Do you see that?

19 A. Yes.

20 Q. That is one. If you look  
21 at No. 3 it talks about the fees collected  
22 under the subsection shall not be subject  
23 to taxes?

24 A. Correct.

1 Q. It talks for prepaid, if  
2 you look at 4 there is a potential  
3 mechanism set out for potentially  
4 collecting funds. Do you see that?

5 A. I'm sorry, which one in  
6 4?

7 Q. B4.

8 A. B4. Okay.

9 Q. And so you understand  
10 that compliance with the act is not just  
11 about remittance to the Commonwealth,  
12 right?

13 A. I would have to agree.

14 Q. Okay. Let's go back to  
15 the filing, which is T-1 on page 5. This  
16 says that in the experience of Keystone  
17 NENA, and I think we've established that  
18 it is actually what Mr. Wentzel told you;  
19 is that right, not actually in the  
20 experience of Keystone NENA?

21 A. Correct.

22 Q. Okay. That it says in  
23 here that all wireline local exchange  
24 carriers, competitive exchange carriers

1 and retailers, as well as wireless  
2 services providers comply with the  
3 Pennsylvania act. What is the basis for  
4 that statement, that all of these entities  
5 comply with the act?

6 A. That they are meeting all  
7 of the requirements.

8 Q. And is that in the  
9 experience of Keystone NENA?

10 A. Well, we don't have -- as  
11 far as wireless service providers go we  
12 don't have access to that information.  
13 So, I would have to say that we would have  
14 relied on Rob.

15 Q. And you would have no way  
16 of knowing whether every carrier listed  
17 here complied with the act or collected  
18 911 fees?

19 A. Since we don't have  
20 access to the wireless service information  
21 I would -- no.

22 Q. And you believe that Mr.  
23 Wentzel approved this language?

24 A. Sure. Yes.

1 Q. If you look at continuing  
 2 on here.  
 3 MR. MCTIGUE: Let's take  
 4 two seconds. Take a quick break  
 5 and you can get something there  
 6 and I'll let you know where the  
 7 restrooms are.  
 8 - - -  
 9 (At this time a short  
 10 break was taken.)  
 11 - - -  
 12 BY MR. MCTIGUE:  
 13 Q. We are still on  
 14 Exhibit 1, the preface to that sentence,  
 15 "In the experience of NENA," was actually  
 16 false, wasn't it? It is in the experience  
 17 of Keystone NENA?  
 18 A. In the experience of  
 19 Keystone NENA. Yes, I think that should  
 20 have been restated.  
 21 Q. Okay. Did you let the  
 22 FCC know that with this statement that you  
 23 were merely relying on what Rob Wentzel  
 24 had told you?

1 subsequent filings said, without looking  
 2 at them.  
 3 Q. I'm not talking about  
 4 subsequent filings. Did Keystone NENA do  
 5 anything to correct the impression, the  
 6 false impression given by this filing?  
 7 A. No.  
 8 Q. Why not?  
 9 A. I guess we didn't think  
 10 it was the wrong statement at the time.  
 11 Q. Again, didn't TracFone  
 12 bring to your attention information  
 13 regarding this statement indicating that  
 14 it most likely wasn't true, the balance of  
 15 it, that is?  
 16 A. Yes, they said that there  
 17 were other people who were not complying.  
 18 Q. And who were not  
 19 collecting fees?  
 20 A. I don't know exactly it  
 21 said that.  
 22 Q. Did they show you  
 23 documents to support that?  
 24 A. I don't remember

1 A. Did we tell the FCC that?  
 2 Q. Right.  
 3 A. No.  
 4 Q. I mean, doesn't this  
 5 leave the impression with the FCC that,  
 6 you know, a body like NENA, which has some  
 7 cachet, is making a representation on  
 8 these facts that it knows from its  
 9 experience that these facts are true?  
 10 A. Yes, looking at it from  
 11 the way you are presenting it, yes.  
 12 Q. Don't you think that is a  
 13 problem?  
 14 A. I guess we didn't think  
 15 so at the time.  
 16 Q. Well, didn't TracFone  
 17 subsequently tell you after this filing  
 18 that these facts were not true?  
 19 A. Yes.  
 20 Q. And did you do anything  
 21 to correct the record before the FCC when  
 22 you were told that these facts were not  
 23 true?  
 24 A. I don't know what the

1 documents being shown.  
 2 Q. Do you remember seeing  
 3 documents from Connecticut that they sent  
 4 you that would support that?  
 5 A. No.  
 6 - - -  
 7 (At this time a document  
 8 was marked for identification as  
 9 Exhibit No. T-27.)  
 10 - - -  
 11 BY MR. MCTIGUE:  
 12 Q. Do you recognize this  
 13 document, sir?  
 14 A. No, I don't.  
 15 Q. Have you ever seen these  
 16 documents before?  
 17 A. No.  
 18 Q. These documents weren't  
 19 sent to you by TracFone?  
 20 A. No, I don't have a copy  
 21 of these.  
 22 Q. If you look at the third  
 23 to the last page it appears to be a filing  
 24 by Verizon and in the State of

1 Connecticut. Do you see this?  
 2 A. Yes.  
 3 Q. You see here in the  
 4 company's response it says: Verizon  
 5 wireless is not currently collecting an E  
 6 911 surcharge for prepaid customers due to  
 7 the unique nature of the service, the  
 8 variety of outlets where prepaid service  
 9 is sold, and the difficulty identifying  
 10 and tracking prepaid customers.  
 11 Do you see that?  
 12 A. I do.  
 13 Q. And then: To do so would  
 14 be prohibitively burdensome. However,  
 15 Verizon Wireless does remit payment of the  
 16 surcharge for our prepaid customers in the  
 17 following states from its own funds.  
 18 Do you see that?  
 19 A. I do.  
 20 Q. And is Pennsylvania  
 21 listed there?  
 22 A. They are.  
 23 Q. Okay. So, as to Verizon  
 24 Wireless they are representing in a

1 submission March 30, 2007, that they were  
 2 paying, that is remitting to the  
 3 Commonwealth of Pennsylvania, but not  
 4 collecting fees; is that correct?  
 5 A. Yes. According to this  
 6 that is true.  
 7 Q. Didn't TracFone bring  
 8 that type of information to your attention  
 9 in around April of 2008 after you made the  
 10 FCC filing?  
 11 A. I recall TracFone indeed  
 12 mentioning that there were indeed people  
 13 who did not collect their point of sale.  
 14 That they were paying -- I don't know how  
 15 they worded this -- basically from their  
 16 own funds or from their own sales.  
 17 Q. And didn't TracFone  
 18 therefore say that the statement in here  
 19 on -- we've already put aside the fact the  
 20 ending was false, but the balance of the  
 21 statement was incorrect because of that  
 22 information, didn't they indicate that to  
 23 you?  
 24 A. Yes, after we submitted.

1 Q. And did they ask you to  
 2 correct the record before the FCC?  
 3 A. I believe there was a  
 4 correction, at least I thought there was,  
 5 from the OCA about that in a subsequent --  
 6 either a filing or an e-mail that is there  
 7 about that.  
 8 Q. The OCA had an e-mail?  
 9 Did Keystone NENA correct  
 10 the record after TracFone informed  
 11 Keystone NENA that the balance of the  
 12 statement, substantive balance of the  
 13 statement made that we've been discussing  
 14 was not accurate?  
 15 A. No.  
 16 Q. Why not?  
 17 A. We're working with the  
 18 OCA -- I don't know exactly how to answer  
 19 that, in the sense that we worked with the  
 20 OCA on this using their experience with  
 21 these filings to relay information, but  
 22 Keystone NENA did not submit a separate  
 23 document to the OCA to submit on our  
 24 behalf.

1 Q. Why didn't Keystone NENA,  
 2 though, once it learned that the  
 3 information that it provided to the FCC  
 4 was inaccurate correct the record before  
 5 the FCC?  
 6 A. I can only say  
 7 inexperience.  
 8 Q. Sitting here today, do  
 9 you believe that Keystone NENA should have  
 10 corrected the record?  
 11 A. Yes.  
 12 Q. Okay. If you look at the  
 13 document we just showed you, look at the  
 14 Sprint Nextel information which is almost  
 15 halfway through, maybe a third of the way  
 16 through?  
 17 A. Okay.  
 18 Q. You see there that it  
 19 also says there if you look at that, that  
 20 Boost Mobile pays the E 911 surcharge and  
 21 it lists Pennsylvania?  
 22 A. Yes.  
 23 Q. And if you look at the  
 24 paragraph below that the last -- last

1 sentence says: Boost Mobile does not  
2 separately correct the 911 charge directly  
3 from the customer as is done with Sprint  
4 Nextel's postpaid wireless service because  
5 there is no monthly invoice.

6 Do you see that?

7 A. Yes.

8 Q. If you go back, as well,  
9 to T-Mobile's response, which looks like  
10 this.

11 A. Okay.

12 Q. You'll see that it says  
13 the same thing. Pre-confirm that T-Mobile  
14 certified to the state of Connecticut they  
15 do not collect the 911 surcharge from  
16 prepaid customers.

17 A. Yes, I see that.

18 Q. Do you understand there  
19 was a decision -- discussions and decision  
20 not to withdraw the false statements that  
21 were put to the FCC?

22 A. There was a decision not  
23 to?

24 Q. Not to withdraw the false

1 completely false?

2 A. Yes.

3 Q. Okay. Do you recall Mr.  
4 Salzman and Mr. Brecker (ph) telling you  
5 on the phone the difference between  
6 remitting and collecting?

7 A. I remember being on a  
8 conference call. I wasn't sure who it was  
9 with, but it was myself and Barrett  
10 Sheridan and I don't -- I know it was with  
11 TracFone representatives, but I think --  
12 Brecker, I remember that name. That is --  
13 there is an e-mail there about scheduling  
14 the conference call. I don't remember who  
15 else was on the call. I think there is an  
16 e-mail in there that summarizes after the  
17 call, from Barrett Sheridan, on what we  
18 were supposed to do.

19 Q. And do you recall that  
20 during this call they brought to your  
21 attention the difference between  
22 collecting and remitting?

23 A. I'm sorry. I don't  
24 recall the exact -- all of the details of

1 statements that we just discussed?

2 A. Can I --

3 Q. No, I'm just asking your  
4 recollection, was there an affirmative  
5 decision not to withdraw the false  
6 statements before the FCC?

7 A. Was there a decision not  
8 -- I don't think it was discussed.

9 Q. Didn't TracFone request  
10 that you withdraw the false statements?

11 A. I don't recall the  
12 specifics of that, but if that would have  
13 been made it would be there in the packet  
14 that you have with the OCA. Again, with  
15 us working collectively with them and us  
16 not having -- you know, relying on them  
17 with their experience with these filings

18 --

19 Q. So, as you were advised  
20 by TracFone after the filing and as you've  
21 now seen in the exhibit I've shown you,  
22 which is Exhibit 27, do you now agree that  
23 the statement that all providers collect,  
24 that we have been referring to is

1 the call.

2 Q. Do you recall them  
3 bringing up the issue of collection,  
4 though?

5 A. Oh, I'm certain...

6 Q. Why I'm confused, when we  
7 started this deposition and I started  
8 going through this language, I mean you  
9 appeared not to understand there was an  
10 issue with the "collect" language. I  
11 think what you are telling me now, sitting  
12 here now is that that particular language  
13 of collecting 911 fees was brought to your  
14 attention shortly after the filing by  
15 TracFone; is that correct?

16 A. I guess so.

17 Q. Okay. Anything else --  
18 let's go back to No. 1. Anything else in  
19 No. 1 that Keystone NENA relied on from  
20 Mr. Wentzel?

21 A. I don't -- just looking  
22 at this right now I don't see anything.

23 Q. Are you aware of any laws  
24 that restrict Mr. Wentzel from providing

1 you with any information about payments  
2 made by carriers?

3 A. No.

4 Q. Okay. Has Mr. Wentzel  
5 ever told you that he actually has no idea  
6 whether any of the carriers are paying  
7 what they should be paying under the  
8 statute?

9 A. No.

10 Q. Okay. Did he ever talk  
11 to you about an honor system for purposes  
12 of remitting funds by the carriers to the  
13 Commonwealth under the statute?

14 A. No. I know there is --  
15 when you deal with wireline customers  
16 their access line accounts fluctuate. I  
17 only know that because the wireline money  
18 is remitted to the counties. In the case  
19 of Lancaster County you believe that the  
20 wireline customers are paying you what  
21 they are supposed to pay you.

22 Q. Okay.

23 A. But I don't know -- since  
24 I don't see the wireless I don't --

1 Q. Are you surprised if --  
2 strike that.

3 If I were to tell you Mr.  
4 Wentzel testified that he has no idea  
5 whether the carriers are paying what they  
6 should be paying under the statute would  
7 that surprise you?

8 A. Yes.

9 Q. Okay. You would expect  
10 that he should know what the carriers  
11 should be paying?

12 A. Yes.

13 Q. Okay. Are you aware that  
14 the two elements of falsehood in that  
15 statement we just discussed, the preface,  
16 "on your experience," and the collection  
17 comment has caused TracFone substantial  
18 damage to its business?

19 A. No.

20 Q. Are you aware it has  
21 caused substantial damage to its  
22 reputation in the marketplace?

23 A. No.

24 Q. Do you believe that

1 having a statement out there falsely  
2 saying that Keystone NENA has this  
3 experience, as well as having the  
4 underlying statement be false would cause  
5 the FCC perhaps to look at TracFone in a  
6 negative light?

7 A. I guess so.

8 Q. Are you concerned about  
9 that at all?

10 A. I am now.

11 Q. Weren't you concerned  
12 when it was brought to your attention by  
13 TracFone?

14 A. Well, I guess even during  
15 the call, the conference call when that --  
16 when TracFone pointed out that people  
17 don't pay, I or we did not have -- I  
18 didn't have this document or any way to  
19 verify that what was -- what was said that  
20 we had any facts to go on. I guess that  
21 is because I didn't receive any other than  
22 verbally on the call, that I remember  
23 anyway.

24 Q. Did you ask Mr. Wentzel

1 -- strike that.

2 Did you ask Mr. Wentzel  
3 or discuss with Mr. Wentzel the concerns  
4 raised by TracFone?

5 A. I would imagine I did. I  
6 don't recall an answer other than we have  
7 been told that TracFone was the only one  
8 that does not remit.

9 Q. Well, that's different.

10 A. Yes, I understand that  
11 now.

12 Q. What is confusing me is  
13 you say you understand that now, but that  
14 is the very issue that TracFone raised,  
15 the whole collection issue.

16 A. Well, I'm sorry. I don't  
17 know how better to say it.

18 Q. Do you agree that any  
19 damage that TracFone has suffered as a  
20 result of these negative statements could  
21 have been avoided if you had simply told  
22 the FCC the truth?

23 A. Through a subsequent  
24 filing, yes.

1 Q. Do you feel like you were  
 2 at all used by PEMA for soliciting you to  
 3 make the filing?  
 4 A. I would not like to think  
 5 that. In looking back we should have done  
 6 some things differently here. Again, I  
 7 would imagine that it is inexperience. I  
 8 don't know how better to put that.  
 9 Q. Did you rely on -- strike  
 10 that.  
 11 Is Barrett Sheridan a  
 12 lawyer?  
 13 A. Yes, she is.  
 14 Q. How did it come about  
 15 that you joined up with OCA to file  
 16 comments?  
 17 A. We did one additional  
 18 filing with the OCA regarding competitive  
 19 local exchange carriers probably a year or  
 20 two before that.  
 21 Q. Did you reach out to them  
 22 to make this filing?  
 23 A. You know, I looked at  
 24 that and I don't recall. Shawn Sparks,

1 A. Okay.  
 2 Q. While we are on this  
 3 topic. Why don't we take 15 minutes, and  
 4 I'm going to try to review the information  
 5 on this topic so we can wrap up at least  
 6 this topic for now.  
 7 A. Okay.  
 8 - - -  
 9 (At this time a short  
 10 break was taken.)  
 11 - - -  
 12 MR. MCTIGUE: We have had  
 13 a chance to look through the box  
 14 of documents that were produced  
 15 as part of the subpoena. Thank  
 16 you, Mr. Baldwin, for going  
 17 through your documents and  
 18 producing and appearing here  
 19 today.  
 20 We've agreed, rather than  
 21 taking all day with this witness  
 22 and going through the documents  
 23 page by page, we are going to  
 24 take the opportunity to review

1 who is an attorney with the OCA, also sits  
 2 on the PUC 911 task force. I don't know  
 3 if he garnered the discussed -- the  
 4 prepaid discussion at one of those  
 5 meetings or if I spoke to him about this.  
 6 I don't recall.  
 7 Q. In the filing you list  
 8 the -- a couple of disbursements that  
 9 TracFone had made to the Commonwealth.  
 10 Where did you get the information for  
 11 that?  
 12 A. From Rob Wentzel.  
 13 Q. I mean, do you have any  
 14 idea why, you know, PEMA didn't make this  
 15 filing if these representations were  
 16 coming from PEMA?  
 17 A. No.  
 18 Q. There seems to be a whole  
 19 host of documents that you provided to us  
 20 in response to the subpoena relating to  
 21 this issue that we are going to need to  
 22 get into, and it probably makes some sense  
 23 to take a brief break so that we can  
 24 examine these documents.

1 them in an orderly manner so we  
 2 can streamline this process as  
 3 best as possible. We are going  
 4 to reschedule the deposition for  
 5 Mr. Baldwin at a date that is  
 6 convenient for him in order to do  
 7 this in an efficient manner.  
 8 BY MR. MCTIGUE:  
 9 Q. Mr. Baldwin, you agree to  
 10 that approach?  
 11 A. Yes.  
 12 Q. Will you agree that we  
 13 don't have to serve another subpoena on  
 14 you, we can just call you and try to  
 15 schedule something and that you will  
 16 appear?  
 17 A. Sure.  
 18 Q. That is the approach that  
 19 we've decided to take.  
 20 MR. MCTIGUE: Do you have  
 21 any issue with that, Mr. Cawley?  
 22 MR. CAWLEY: That is okay  
 23 with me.  
 24 MR. MCTIGUE: We'll make

1       sure Mr. Cawley is available  
 2       within his schedule as well as we  
 3       move forward. At this time the  
 4       deposition --  
 5       THE WITNESS: If I might  
 6       add, I have two weeks of vacation  
 7       planned in July.  
 8       MR. MCTIGUE: Which two  
 9       weeks?  
 10      THE WITNESS: Like the  
 11      end of the July 20th through into  
 12      the first week of August.  
 13      MR. MCTIGUE: Mrs. Roach  
 14      here will get in touch with you  
 15      to make sure we don't interfere  
 16      with that either way. We know  
 17      how that goes. At this time we  
 18      are adjourned until we reconvene.  
 19      Thank you.  
 20      ---  
 21      (Whereupon, the  
 22      deposition concluded at  
 23      approximately 12:00 noon.)  
 24      ---

1                   LAWYER'S NOTES  
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1                   C E R T I F I C A T I O N  
 2  
 3       I, Kathleen Ruccolo, Professional  
 4       Reporter and Notary Public, do hereby  
 5       certify that the foregoing is a true  
 6       and accurate transcript of the  
 7       stenographic notes taken by me in the  
 8       aforementioned matter.  
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 24           KATHLEEN RUCCOLO

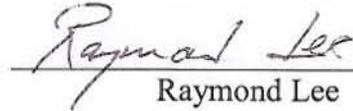
## CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that on July 16, 2009, a true and correct copy of the foregoing Petition to Rescind State 911/E911 Conditions of TraceFone Wireless, Inc. was sent via first-class mail, postage paid, to the following unless stated otherwise:

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Mr. Timothy W. Baldwin, ENP  
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\_\_\_\_\_  
Raymond Lee