

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
State of Alabama)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the)	
State of Alabama)	

**COMMENTS IN OPPOSITION TO PETITION FOR REJECTION
OF CERTIFICATION AND FOR REVOCATION OF THE LIMITED
ETC STATUS OF TRACFONE WIRELESS, INC. IN THE STATE OF ALABAMA**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its comments in opposition to the petition filed by the Alabama Commercial Mobile Radio Service Emergency Telephone Services Board (“AL Board”) on June 2, 2009.¹ By public notice released July 21, 2009, the Commission invited comment on that petition.²

In its petition, the AL Board accuses TracFone of violating certain provisions of Alabama law and, based upon those accusations, then requests that the Commission “revoke” TracFone’s designation as an Eligible Telecommunications Carrier for the limited purpose of offering Lifeline service. As will be explained in these comments, the AL Board has provided no legal basis for its assertion that Alabama laws have been violated. Moreover, the relief it requests -- revocation of TracFone’s ETC designation would have the unfortunate effect of denying a

¹ Petition for Rejection of Certification and for Revocation of the Limited “ETC” Status of TracFone Wireless, Inc. in the State of Alabama (CC Docket No. 96-45), filed by the Alabama Commercial Mobile Radio Service Emergency Telephone Services Board, June 2, 2009.

² Public Notice - Comment Sought on Alabama Commercial Mobile Radio Service Emergency Telephone Services Board Petition to Reject TracFone Wireless, Inc.’s ETC Self-Certification, DA-09-1558, released July 21, 2009.

wireless Lifeline benefit already being enjoyed by more than 26,000 low income Alabama households, with the enrollment growing daily!

The 911 State Law Certification Condition

By order issued in April 2008, the Commission conditionally designated TracFone as an ETC in ten states and the District of Columbia for the limited purpose of offering Lifeline service to qualified low income consumers.³ One of those states is the State of Alabama. While those ETC petitions were still pending before the Commission, the Commission received several filings which alleged that TracFone was in violation of certain state laws regarding the collection and remittance of fees to support 911 service. Among the parties raising such allegations were the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association Keystone Chapter, and NENA [the National Emergency Numbers Association]. Those assertions, serious as they were, were supported by no documentary evidence of any kind, but were based solely on hearsay statements of the proponents. In responsive filings, TracFone denied those allegations, and noted that questions of state law should be determined by state tribunals with jurisdiction to interpret and apply state laws.

Notwithstanding the total absence of evidentiary support for those allegations, the Commission was sufficiently concerned by them so as to impose the following condition on TracFone: “. . . 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

³ Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al, 23 FCC Rcd 6206 (2008) (“TracFone ETC Designation Order”).

obligations, including obligations relating to the provision and support of 911 and E911 service.”⁴

Imposition of that condition necessitated that TracFone review applicable 911/E911 laws in each state where it had been designated as an ETC and determine whether it could certify that it is in compliance with those laws. TracFone undertook that review and in 2008, it filed the requisite certifications. TracFone’s Alabama certification was filed on August 18, 2008.

The Alabama Board Petition

The AL Board’s petition was filed on June 2, 2009 -- nearly ten months after the filing of TracFone’s Alabama certification. Nowhere in its petition does the AL Board provide any explanation for the ten month delay between the filing of TracFone’s certification and the AL Board’s petition to reject that certification. That petition accuses TracFone of not being in compliance with Alabama 911/E911 obligations.⁵ That petition, like the 2008 comments of the Pennsylvania Office of Consumer Advocate and Keystone NENA, and by NENA, provides not a scintilla of evidence of any violation of any state law. Not only has there been no judicial determination by any tribunal in Alabama with jurisdiction to interpret or enforce that state’s 911/E911 laws, no such proceeding has even been commenced. The entirety of the “legal basis” for the AL Board’s conclusions regarding TracFone’s compliance with state law is the collective opinion of members of the AL Board. In fact, during a recent meeting of the AL Board, it was revealed that the Board’s interpretation of the relevant Alabama statute is not consistent with the manner in which the Board has sought to apply the statute with respect to TracFone.

In its petition, the AL Board cites to § 11-98-7, *Code of Alabama 1975*, as amended, as the basis for its authority to petition the Commission. The AL Board’s legislatively-established

⁴ *Id.*, at ¶ 16.

⁵ AL Board petition at 2.

powers are enumerated at § 11-98-7(b). Those powers include such items as (1) to levy a CMRS emergency telephone service charge on each CMRS connection at the rate of \$0.70 per CMRS customer; (2) to establish and maintain the CMRS fund in an insured, interest-bearing account; (3) to make disbursements from the CMRS fund; (4) to obtain the services of a third party auditor; (5) to retain an auditor to verify collected information; (6) to conduct a cost study; and (7) to promulgate rules.⁶ Conspicuously absent from the Board's powers is any reference to making determinations of applicable state law. As in all states, the power to interpret and enforce state law resides with the state's courts, not with its 911 board.

TracFone takes seriously allegations of state law violations like those set forth in the AL Board petition. Following receipt of the AL Board's petition, TracFone sent to the AL Board on June 5, 2009 a request for public records pursuant to Alabama's Open Records Law, *Code of Alabama 1975*, as amended, § 36-12-40.⁷ The purpose for the Open Records Act request was to obtain from the AL Board documentation and information that might shed light on the basis for the AL Board's unilateral conclusion that TracFone was in violation of state law, and to better understand how the AL Board seeks to interpret and apply the state's 911/E911 law both with respect to TracFone and with respect to other providers of wireless telecommunications services.

The Open Records law requires state agencies and departments subject to that law, including the AL Board, provide responses within fourteen days of receipt of requests. The AL Board's response, including the requested documents, was due June 19, 2009. By letter dated June 19, TracFone was advised by the AL Board's counsel that, due to counsel's travel schedule, the AL Board would not meet the statutory deadline but that it would comply no later than July

⁶ Code of Alabama, § 11-98-7(b). For the Commission's convenience, a copy of that section of the Alabama Code is attached hereto as Attachment 1.

⁷ A copy of TracFone's Open Records Act request to the AL Board is attached to these comments as Attachment 2.

10, 2009.⁸ As of the date of these comments, no response to the June 5 Open Records Act request has been forthcoming. Several e-mail and telephonic messages left by TracFone's counsel with the AL Board's counsel have not been returned. Based upon this continuing disregard for TracFone's Open Records Act request, TracFone can only conclude that the AL Board has no intention of providing the requested documents or that the documents, if produced, would undermine the unsupported accusations made by the AL Board in its petition.

**The AL Board Petition Further Demonstrates Why
The State Law Compliance Certification Condition
Should be Rescinded**

All telecommunications companies -- those that are ETCs and those that are not -- are required to operate lawfully and to comply with applicable federal laws and regulations, as well as the applicable laws and regulations of the jurisdictions where they operate. That obligation exists irrespective of any specially-imposed state law certification condition. The state law certification compliance condition did, however, place a special burden on TracFone. More importantly, it created an opportunity for entities with their own agendas and perhaps their own internal politics to exploit the state law certification condition for their own purposes. What is especially problematic about the condition is that it is the direct and proximate result of a series of statements made to the Commission which TracFone then asserted and now has proven were false when made and which falsity was subsequently acknowledged under oath by the very person who made such statements to the Commission. Those false statements which were admitted to be false during the course of a deposition taken in a Pennsylvania civil law suit are described in detail in TracFone's Petition to Rescind State 911/E911 Condition, filed with the

⁸ A copy of the June 19 letter from the AL Board's counsel is attached to these comments as Attachment 3.

Commission July 16, 2009.⁹ TracFone will not repeat in detail the false statements which were uncovered during the course of that deposition. However, TracFone directs the Commission's attention to its petition to rescind and to the deposition transcript attached to that petition.

The point is simple, but important: entities like the AL Board have sought to utilize the well-intended state 911/E911 law certification process as a device to demand that TracFone do what no other provider of prepaid wireless services in those states does -- or is able to do -- collect 911 fees from customers of prepaid wireless services who receive no bill for service and with whom the providers have no direct contact once the prepaid service has been purchased.

TracFone does not dispute that collection of 911 fees from customers of prepaid wireless services is important and is growing in importance as customers migrate from traditional post-paid billed services to prepaid services. With the prepaid segment being the fastest growing segment of the CMRS industry, this is a growing problem. The critical point -- a point which seems to be lost on entities like the AL Board or which they simply choose to ignore -- is that the issue of 911 fee collection from customers of prepaid services is not a TracFone problem, it is an industry problem. More importantly, it is a problem for all stakeholders, including the public safety community and ultimately for residents of each state who depend on available and reliable 911/E911 service. As such, it is a problem that requires a comprehensive solution that addresses the needs of each constituency and ensures that all users of wireless service contribute to the support of 911/E911 without regard to whether it is billed service or prepaid service.

Recently, CTIA - The Wireless Association® has recognized this as an industry-wide concern and has offered a solution -- collection of 911 fees at the point-of-retail sale.¹⁰ Under

⁹ Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. *et al*, CC Docket No. 96-45, Petition to Rescind State 911/E911 Certification Condition, filed by TracFone, July 16, 2009.

the approach advocated by CTIA and others, the fees would be collected by whomever sells the service to the customer and to whom the customer pays for the service. That entity would, in turn, remit the collected proceeds to the state's 911 fund. To date, this approach has been embraced by several states including West Virginia, Texas, Wisconsin, Maine, and Louisiana. Still other states are actively considering point-of-sale collection mechanisms either through legislation or through regulation.

Adequate 911/E911 funding is a critical public safety matter which requires a comprehensive industry solution. That matter will not be addressed by misuse of the Commission's 911/E911 certification condition to attack a single company. All that would result from petitions like the AL Board petition is that, if granted, thousands of low income customers would lose their wireless Lifeline benefits, including free wireless handsets and free monthly airtime, provided as part of TracFone's SafeLink Wireless program. In Alabama, more than 26,000 households already are enrolled and now have wireless service which was not previously available to them or, if available, was unaffordable. Nowhere does the AL Board offer any explanation as to how the public interest would be served by grant of its wholly unsupported petition and deprivation of service to those thousands of consumers.

¹⁰ The CTIA position paper, entitled "Wireless Principles for 9-1-1 Fees and Surcharges" is attached to these comments as Attachment 4. See, especially, the paragraph captioned "Fees Should be Imposed on End-User" at p. 3.

For all the reasons set forth in these comments, TracFone opposes the petition of the AL Board and respectfully requests that it be denied forthwith.

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
(202) 331-3100
Its Attorneys

July 24, 2009

Attachment 1

Section 11-98-7**Commercial Mobile Radio Service - Board created; powers and duties; Sunset provision.**

(a) There is created a Commercial Mobile Radio Service (CMRS) Board, consisting of seven members that shall reflect the racial, gender, geographic, urban and rural and economic diversity of the state.

(1) The first five members of the board, each of whom shall serve for a term of four years, shall be appointed by the Governor, subject to confirmation by the Senate, as follows:

- a. Two members recommended by the ECDs.
- b. Two members recommended by CMRS providers licensed to do business in Alabama.
- c. One member recommended by the State Auditor.

(2) The next two members of the board, each of whom shall serve for a term of four years, shall be appointed as follows:

- a. One member of the House of Representatives appointed by the Speaker of the House.
- b. One member of the Senate appointed by the Lieutenant Governor.

(3) The term of each member shall be four years, except that of the members first appointed, one representing ECDs shall serve for three years and one representing CMRS providers shall serve for three years, one representing ECDs shall serve two years and one representing CMRS providers shall serve two years. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes appointments. The two legislative members shall serve for the length of their elective service, but no more than four years.

(4) In the event of a vacancy, a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. Any vacancy occurring on the board, whether for an expired or unexpired term, shall be filled by appointment by the appointing authority as soon as practicable after a vacancy occurs, whether for an expired or unexpired term.

(5) For all terms expiring after October 1, 2007, appointments made by the Governor shall be subject to confirmation by the Senate as provided in this subdivision. Appointments made at times when the Senate is not in session shall be effective immediately ad interim and shall serve until the Senate acts on the appointment as provided herein. Any appointment made by the Governor while the Senate is in session shall be submitted to the Senate not later than the third legislative day following the date of the appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature. In the event the Senate fails or refuses to act on the appointment, the person whose name was submitted shall continue to serve until action is taken on the appointment by the Senate.

(b) The board shall have the following powers and duties:

(1) To levy a CMRS emergency telephone service charge on each CMRS connection that has a place of primary use within the geographical boundaries of the State of Alabama. The rate of the CMRS service charge shall be seventy cents (\$.70) per month per CMRS customer on each CMRS connection beginning on May 1, 1998, which amount shall not be increased except by the Legislature. The CMRS service charge shall have uniform application and shall be imposed throughout the state. The board shall receive all revenues derived from the CMRS service charge levied in the state and collected pursuant to Section 11-98-8.

(2) To establish and maintain the CMRS Fund as an insured, interest-bearing account into which the board shall deposit all revenues derived from the CMRS service charge levied on CMRS connections and collected pursuant to Section 11-98-8. The revenues deposited into the CMRS Fund shall not be moneys or property of the state and shall not be subject to appropriation by the Legislature.

(3) To make disbursements from the CMRS Fund in the following amounts and in the following manner:

a. Out of the funds collected by the board and after deduction of administrative expenses, 56 percent shall be distributed to ECDs in accordance with the distribution formula and may only be used for the lease, purchase, or maintenance of wireless enhanced emergency telephone equipment, including necessary computer hardware, software, and data base provisioning, for incremental expenses directly related to the FCC Order and the handling of wireless emergency calls.

b. Beginning on October 1, 2007, 24 percent shall be distributed to ECDs in accordance with Section 11-98-7.1.

c. Twenty percent shall be deposited into a bank account and shall be used solely for the purpose of payment of the actual costs incurred by CMRS providers in complying with the wireless E-911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide the service as well as the incremental costs of operating the service. Verified itemized statements shall be presented to the board in connection with any request for payment by any CMRS provider and shall be approved by a majority vote of the board prior to any disbursement. Approval shall not be withheld or delayed unreasonably. In no event shall any invoice be approved for the payment of costs that are not related to compliance with the wireless E-911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

d. Beginning no later than October 1, 2007, and no later than each October 1 thereafter, each CMRS provider wishing to participate in the payments provided in paragraph c. for expenses related to the providing of Phase II Enhanced 911 Service shall certify to the board that it does not then collect a cost-recovery or other similar separate charge from its customers. CMRS providers failing to provide such certification by October 1 shall be ineligible to receive such

payments for any such Phase II expenses incurred until such certificate is provided to the board. Any CMRS provider electing to collect cost-recovery or other similar separate charges at any time following its October 1 certification shall immediately notify the board and shall be ineligible to participate in the payments established in this subsection until ceasing such collection from its customers and providing the notice required herein. This requirement shall only apply to payments for expenses related to the provision of Phase II Enhanced 911 Services.

e. In the event that there are wireless emergency telephone services which cannot be efficiently performed at the ECD level or there are expenses which cannot be properly allocated at the ECD level, any ECD or CMRS provider may submit invoices directly to the board and the board shall determine the smallest practical unit basis for joint implementation.

(4) To obtain, pursuant to subdivision (5), from an independent, third-party auditor retained by the board a copy of the annual reports to the Department of Examiners of Public Accounts no later than 120 days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS Fund during the preceding fiscal year and all disbursements to ECDs during the preceding fiscal year. The Department of Examiners of Public Accounts shall conduct an annual audit of the expenditures of the board from all CMRS service charges from the CMRS Fund.

(5) To retain, upon majority vote of the members of the board who are present and voting, an independent, third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any and all information, including all proprietary information, that is required to be collected, or that may have been submitted to the board by CMRS providers and ECDs, and the accuracy of the collection of the CMRS service charge required to be collected. An audit, if conducted pursuant to this subdivision, shall be conducted pursuant to Chapter 2A of Title 40.

(6) To conduct a cost study on or before July 1, 1999, to be submitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives for the purpose of determining whether legislation should be proposed during the 2000 Regular Session of the Alabama Legislature to adjust the amount of the CMRS service charge to reflect actual costs to be incurred by CMRS providers and ECDs in order to comply with the wireless E-911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(7) To promulgate such rules and regulations as may be necessary to effect the provisions of this section.

(8) To make the determinations and disbursements as provided by Section 11-98-8(c).

(9) Neither the board nor any ECD shall require the CMRS providers to select or to deploy particular commercial solutions to meet the requirements of the FCC Order, provided the solutions chosen are compatible with the operations of the ECDs.

(c) The CMRS service charge provided in subdivision (b)(1) shall be the sole charge assessed to CMRS providers relating to emergency telephone services.

(d) The board shall serve without compensation, provided, however, that members of the board

shall be entitled to be reimbursed for actual expenses and travel costs associated with their service.

(e) Nothing in this chapter shall be construed to constitute the regulation of the entry of or rates charged by CMRS providers for any service or feature which they provide to their CMRS service customers, or to prohibit a CMRS provider from charging a CMRS service customer for any service or feature provided to the customer.

(f) Subsection (k) of Section 40-21-121 shall apply to the CMRS emergency telephone service charge imposed in this section.

(g) The board shall be subject to the Alabama Sunset Law under Chapter 20 of Title 41, shall be classified an enumerated agency under Section 41-20-3, and shall terminate on October 1, 2000, and every four years thereafter, unless continued as therein provided. If continued, the board shall be reviewed every four years thereafter and terminated unless continued into law.

(Acts 1984, No. 84-369, p. 854, §6; Act 98-338, p. 584, §1; Act 2007-459, §1.)

Attachment 2

June 5, 2009

VIA FACSIMILE AND OVERNIGHT MAIL

Mr. Ron Sleeper
Chairman
Alabama Wireless 9-1-1 Board
307 Clinton Avenue West
Suite 500
Huntsville, AL 35801
Fax (256) 539-8050

Re: Request for Public Records

Dear Mr. Sleeper:

This letter is intended as a communication submitted under Alabama's open records law, Ala. Code, § 36-12-40, and is submitted by me in my capacity as counsel for TracFone Wireless, Inc. By this communication, I am seeking access to records in the possession of the Alabama Wireless 9-1-1 Board ("Board").

Alabama's open records law requires every public writing to be accessible for inspection and copying. Ala. Code, § 36-12-40. The Alabama Code defines "public record" as "all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by public officers of the state, counties, municipalities and other subdivisions of government in the transaction of public business." Ala. Code, § 41-13-1. By this letter I am requesting the documents described in Attachment 1 appended to this letter. These documents constitute public records or writings that must be disclosed under the open records law.

Through this communication, I am requesting that you respond to this request by producing photocopies of the responsive records to me within fourteen (14) days of your receipt of this request.

Please contact me if you have any questions about this request.

Sincerely,



Mitchell F. Brecher

Attachment

ATTACHMENT 1

RECORDS REQUEST TO ALABAMA WIRELESS 9-1-1 BOARD

DEFINITIONS

The following definitions apply to this request:

Alabama Wireless 9-1-1 Board (“Board”) - Alabama Commercial Mobile Radio Service Emergency Telephone Service Board.

CMRS Fund - The Commercial Mobile Radio Service Fund required to be established and maintained pursuant to Ala. Code § 11-98-7 (b)(2).

CMRS Service Charge - The CMRS emergency telephone service charge levied and maintained pursuant to Ala. Code § 11-98-7 (b)(1)(2) and collected pursuant to Ala. Code § 11-98-8.

FCC Petition - The Petition for Rejection of Certification and for Revocation of the Limited “ETC” Status of TracFone Wireless, Inc. in the State of Alabama, filed by the Alabama Commercial Mobile Radio Service Emergency Telephone Services Board at the Federal Communications Commission, CC Docket No. 96-45, May 29, 2009.

REQUESTS

1. Correspondence, communications (including, but not limited to, electronic communication such as e-mail) or documents sent to any Commercial Mobile Radio Service (“CMRS”) provider (other than to TracFone), including any CMRS provider with which a Board member is employed, or is otherwise affiliated, alleging a failure to collect and/or pay the CMRS service charge to the CMRS Fund.
2. Correspondence, communications (including, but not limited to, electronic communication such as e-mail) or documents filed with any court or public agency concerning any CMRS provider (other than TracFone), including, but not limited to, any CMRS provider with which a Board member is employed, or is otherwise affiliated, and the CMRS provider’s alleged failure to collect and/or pay the CMRS service charge to the CMRS Fund.
3. All correspondence, communications (including, but not limited to, electronic communication such as e-mail) or other documents received by the Board or a Board member from any CMRS provider (other than TracFone) responding to any allegation by the Board that the CMRS provider failed to pay the CMRS service charge, or which describes how and/or with what frequency said CMRS provider collects and remits CMRS service charge from or on behalf of prepaid wireless customers.
4. All information and documents that refer to the amount of CMRS service charges received from all CMRS providers, including any CMRS provider with which a Board member is

employed or is otherwise affiliated, from January 1, 2005 to the present that are attributable to prepaid services.

5. All information and documents that refer to whether CMRS providers, including any CMRS provider with which a Board member is employed, or is otherwise affiliated, collected the CMRS service charge from prepaid customers from January 1, 2005 until the present, and if so, the manner and frequency in which the CMRS providers collected the charges.
6. All correspondence, communications (including, but not limited to electronic communications such as e-mail) by and between or on behalf of the Board or a Board member and any CMRS provider operating in Alabama, including any CMRS provider with which a Board member is employed, or is otherwise affiliated, in connection with any inquiry or investigation as to the practices of that wireless carrier for collection and/or remittance of the CMRS service charge from or on behalf of its own prepaid wireless customers.
7. All correspondence, communications (including, but not limited to, electronic communications such as e-mail) and other documents between the Board and/or any employees, members, or representatives of the Board and Alabama NENA or any employees, members, or representatives of Alabama NENA relating to the collection and remittance of the CMRS service charge by providers of prepaid wireless service, including any CMRS provider with which a Board member is employed or is otherwise affiliated.
8. All correspondence, communications (including, but not limited to, electronic communications such as e-mail) and other documents regarding the appointment of members of the Board or recommendations for such appointments.
9. All correspondence and communications (including, but not limited to, electronic communications such as e-mail) with any party or entity in any state, including NENA and Alabama NENA, regarding the filing of the FCC petition.
10. Minutes or other records or documents, including recorded votes, indicating or referencing the Board's authorization for the filing of the FCC petition and the hiring of counsel to represent the Board before the FCC.
11. All information and documents relating to amounts spent by the Board during the period of January 1, 2006 to the present for attorneys' fees and costs, including such fees and costs related to T-Mobile and TracFone.
12. All information and documents showing methods used by the Board to determine, for purposes of levying the CMRS service charge, whether a CMRS connection provides access to 911, in view of the statutory definition of CMRS (Ala. Code § 11-98-6(3)) which does not include "service whose customers do not have access to 911"
13. All information and documents regarding the number of customers the Board has found to be exempt from the CMRS service charge because the customers receive a service whose customers do not have access to 911.

14. All information and documents showing how the Board determines “place of primary use” for a prepaid CMRS customer, as that term is used in Ala. Code § 11-98-7(b), which authorizes the Board to levy a fee on each CMRS connection with a “place of primary use” within the State of Alabama.
15. All information and documents relating to the methods used by the Board to ensure that state and local taxes are not applied to any portion of the CMRS service charge as required by Ala. Code § 11-98-8(f).
16. All information and documents showing the number of prepaid wireless customers paying the CMRS service charge for the period of January 1, 2006 through the present.
17. All information and documents showing the methods whereby each prepaid CMRS provider in Alabama collects or collected the CMRS service charge from their prepaid customers.
18. All information and documents, including any documentation of discussions, regarding the Board’s authority to include “pre-paid wireless connections” in the definition of CMRS at Ala. Admin. Code § 225-1-2-03, when “pre-paid wireless connections” does appear in the statutory definition of CMRS at Ala. Code § 11-98-6(3).

Attachment 3

LAW OFFICES
CARLOCK, COPELAND, SEMLER & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JAMES T. SASSER

E-MAIL ADDRESS
jsasser@carlockcopeland.com

FACSIMILE
706-653-9472

P. O. BOX 139
COLUMBUS, GA 31902-0139

THE ROTHSCHILD BUILDING
1214 FIRST AVENUE, SUITE 400
COLUMBUS, GA 31901

TELEPHONE (706) 653-6109

www.carlockcopeland.com

ATLANTA OFFICE

2600 Marquis Two Tower
285 Peachtree Center Ave.
Atlanta, Georgia 30303-1235
(404) 522-8220

REPLY TO COLUMBUS OFFICE

June 19, 2009

**LETTER VIA EMAIL: Brecher@gtlaw.com;
FACSIMILE @ 1-202-331-3101; REGULAR MAIL**

Mr. Mitchell F. Brecher
GREENBERG TRAUER
2101 L Street NW, Suite 1000
Washington D.C. 20037

RE: Request for Public Records from the Alabama Wireless 9-1-1 Board

Dear Mr. Brecher:

This will acknowledge receipt of your letter dated June 5, 2009 regarding request for public records from the Alabama Wireless 9-1-1 Board. I received a copy of your letter last week. However, I was out of the office most of this week and will be out of the office most of the next two (2) weeks. Therefore, the Board cannot comply with your request to provide documentation by the end of today's date. However, the Board will endeavor to comply with your request in so far as it can as soon as practicable. I would anticipate that we will be able to comply with your request by no later than July 10, 2009.

If you should have any questions, please do not hesitate to contact me.

Sincerely,


JAMES T. SASSER
Attorney for the Alabama
Wireless 9-1-1 Board

JTS/ams

Attachment 4

Wireless Principles for 9-1-1 Fees and Surcharges

The goal of the wireless industry is to work with state policymakers and public safety officials to ensure that E911 service is a coordinated and collaborative operation between the private and public sector to provide quality E911 service at a reasonable cost. Wireless consumers provide significant capital to support public safety, through their payment of taxes, fees and surcharges. This funding is extremely critical to our nation's public safety systems, making it possible to obtain the necessary infrastructure to receive and act on wireless calls to emergency responders. These wireless calls help to save lives, locate missing children and prevent numerous crimes.

Wireless carriers annually collect nearly \$2 billion dollars of dedicated taxes, fees and surcharges from wireless consumers for the purpose of supporting and upgrading the technical capabilities of the 6,174 Public Safety Answering Points (PSAPs) that exist across the country. In addition to the nearly \$2 billion dollars annually collected from consumers and remitted to state and local governments, wireless service providers have also expended billions to modify their networks to enable them to identify and locate wireless 911 callers.

The taxes and fees collected from wireless consumers at the state and local level under the auspices of E911 deployment were collected to advance these stated public policy goals and must be solely dedicated to the advancement of E911. To that end, the wireless industry endorses the following principles concerning revenue collection and disbursement relative to E911 statutes in the states:

- 1. Funds Should be Spent on E911 Systems**
- 2. Need for Accountability and Audits**
- 3. Justify Costs or Reduce Imposition**
- 4. Funds Should Not be Raided or Diverted**
- 5. Fees Should be Imposed on End-User**
- 6. Collection at the State Level, Not Locality by Locality**
- 7. Funding Should Ultimately be from General Revenue**

Funds Should be Spent on E911 systems

The intent of E911 fees is to specifically support the costs to establish and maintain the emergency communications systems so that PSAPs have the ability to call back wireless 911 callers and pinpoint their location within FCC prescribed guidelines. Unfortunately, many policymakers incorrectly believe that E911 fees should be used for all sorts of basic public safety services. An emerging trend in multiple states is to ignore the intended purpose of E911 fees and instead use government imposed 911 fees to support general government services. These services that benefit all constituents are important. However, government services that are not directly related to establishing and maintaining emergency communications systems should be funded through general revenue funds that are raised by broad-based taxes and not through E911 fees imposed on users of communications services.

Need for Accountability and Audits

E911 operations and expenditures should not only be efficient, but also transparent and accountable to an oversight board and to the public through annual reports to the legislature and/or Governor. Annual reports should contain information regarding collections and expenditures and progress toward the goal of statewide deployment.

Justify Costs or Reduce Imposition

E911 services must be periodically reviewed and E911 fees shall be adjusted based on actual direct costs of achieving statewide deployment of wireless E911 service. As with any system implementation, funding requirements should decrease as soon as states become Phase I and Phase II compliant. Accordingly, E911 fees should be eliminated or substantially reduced once Phase I and Phase II compliance is achieved. The funding for the recurring costs of operating the system and providing emergency services to the general public should be provided from general revenue funds that are raised by broad-based taxes and not through E911 fees.

Funds Should not be Raided or Diverted

The capital provided in good faith by wireless consumers through 911 fees or surcharges has been and continues to be extremely critical in supporting public safety in a given state. However, the taxes and fees collected from wireless consumers at the state and local level under the auspices of E911 deployment need to be solely dedicated to the advancement of E911 deployment and not used for other revenue purposes.

Fees Should be Imposed on End-user

Wireless E911 fees were established to be imposed on the end user (the beneficiary of being able to access the 911 system) and should not be imposed on or set up in a manner that results in the fee being imposed on the communication service provider. As in the case of all other wireless services, the E911 fee on prepaid wireless service should be collected on the purchase of the service. However, unlike other wireless service, prepaid wireless services are not billed on a monthly basis and are often sold through retail channels that are not exclusive to wireless carriers. Therefore, in order to help ensure ongoing end user support of E911 funding by wireless prepaid customers, the wireless industry maintains that it will be necessary to collect the E911 fee on all retail sales of wireless prepaid airtime whether sold by retail merchants or wireless service providers. This could be done in an efficient and transparent method by having all retailers collect the E911 fee as percentage based equivalent of the fee on each prepaid wireless transaction.

Collection at State level, not Locality by Locality

Wireless E911 fees should be established and collected on a statewide basis, with a single centralized collection agent and a single statewide E911 fee rate. Collection of a single, statewide fee reduces administrative burdens imposed upon communication service providers related to sourcing E911 fees to the proper local jurisdictions. Collecting fees at different rates which can change with little notice, and remitting multiple tax returns to local jurisdictions is onerous and time consuming. The centralized collection agent would then be properly positioned to determine a fair and equitable distribution to local jurisdictions. In those states where the wireless E911 fee is now locally administered, every effort should be made to transition toward an efficient statewide system as quickly as possible.

Funding Should Ultimately be from General Revenue

Sound tax policy supports the principle that government costs related to providing a common public service, such as E911 service, should be funded from general revenue. E911 services benefit all Americans and in the 21st Century the need for a transparent, fully functioning, fully funded, efficiently run system is critical, the cost of which should be borne by all constituents. However, the industry recognizes that migrating from the fee structure that exists today to full funding for these costs from general revenues will take time and is recognized as a long-term goal of the industry.

CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that a copy of the foregoing Comments in Opposition to Petition for Rejection of TracFone Wireless, Inc. was served by first-class mail, proper postage prepaid to the persons listed below, on this 24th day of July 2009.



Raymond Lee

Mr. Wendell Cauley
Bradley Arant Boult Cummings LLP
401 Adams Avenue, Suite 780
Montgomery, Alabama 36104