

## Attachment 1

1 **TESTIMONY OF JEFFREY J. IRVIN**

2 **Q1: WHAT IS YOUR NAME AND POSITION?**

3 A: My name is Jeffrey J. Irvin. I am currently the Executive Director for the Jefferson  
4 County E-911 Emergency Communications Authority. I have held this position for  
5 approximately 14 months. I previously was the manager of the Jefferson County  
6 Sheriff's Office Communications Unit. Part of my current duties include working as a  
7 liaison between the Jefferson County Authority and the ten Public Safety Answer Points  
8 ("PSAPs") located in Jefferson and Broomfield Counties, Colorado; monitoring  
9 contracts, and acting as the bookkeeper keeping track of the accounts payable and  
10 remittances.

11 **Q2: PLEASE DESCRIBE THE JEFFERSON COUNTY AUTHORITY.**

12 A: The Jefferson County Authority was created by Intergovernmental Agreement in the late  
13 1980s (the "IGA"). The cities, towns, fire districts in Jefferson County, the City and  
14 County of Broomfield and the Jefferson County Commissioners are signatories to the  
15 IGA. The Jefferson County Authority consists of five Board members. The Jefferson  
16 County Commissioners appoint the Board Members. The Board is comprised of two  
17 members from law enforcement (a Commander with the Arvada P.D. and owner of an  
18 ambulance company), 2 representatives for fire districts (an Assistant Fire Chief and  
19 former Deputy Fire Chief), and the County Commissioners appoint one of the  
20 Commissioners. However, the Commissioner typically designates his position to the  
21 Jefferson County Emergency Management manager.

22 **Q3: WHAT DOES THE JEFFERSON COUNTY AUTHORITY DO?**

1 A: The Jefferson County Authority is primarily a funding entity. The Authority Board meets  
2 one time per month. The Authority Board sets the emergency telephone charge. Funds  
3 received from the emergency telephone charge are then used to fund the PSAPs and 911  
4 services in Jefferson County. The Authority pays the monthly tariffed rate to Qwest and  
5 the Qwest charges for the infrastructure associated with the delivery of the 911 calls to  
6 the PSAPs, pays the language line charge when a 911 caller needs an interpreter, pays for  
7 the mapping used to identify call location of 911 callers, pays for “reverse citizen  
8 notification”, computer software, MSAG maintenance, and purchases equipment and  
9 services for the PSAPs. The Authority pays for dispatcher training and a host of other  
10 911 related services.

11 **Q4: WHO OPERATES THE PSAPs?**

12 A: Each PSAP is operated by its own governing entity. For example, the Jefferson County  
13 Dispatch Center is operated by the Jefferson County Sheriff’s Office; the Golden Police  
14 Department operates the Golden Police Dispatch Center. The following cities all operate  
15 their own dispatch center: City of Arvada, City of Broomfield, City of Lakewood, City of  
16 Wheat Ridge and City of Westminster. Additionally, there are three secondary PSAPs in  
17 Jefferson County: Evergreen Fire District, West Metro Fire Rescue and Arvada Fire  
18 Protection District.

19 **Q5: WHAT ROLE DOES THE JEFFERSON COUNTY AUTHORITY PLAY IN**  
20 **OPERATING THE PSAPs?**

1 A: The Jefferson County Authority has no role in operations of a PSAP. The Authority is  
2 solely a funding entity. The money collected from the emergency telephone charge  
3 assists the PSAPs in funding their 911 related needs.

4 **Q6: DOES THE JEFFERSON COUNTY AUTHORITY RECEIVE FUNDING FROM**  
5 **ANY SOURCE OTHER THAN THE EMERGENCY TELEPHONE CHARGE?**

6 A: No. There is some interest income, but at today's interest rates that amount is not great.  
7 The sole source of funding for the Jefferson County Authority is the 911 emergency  
8 telephone charge.

9 **Q7: DO PSAPs RECEIVE FUNDING FROM SOURCES OTHER THAN THE**  
10 **JEFFERSON COUNTY AUTHORITY?**

11 A: Yes. The Authority Board only supplements the funding to operate the PSAPs. The  
12 Authority Board does not pay any of the personnel expenses to operate the PSAPs, the  
13 utilities, and many other expenses associated with operating a dispatch center and 911  
14 related functions.

15 **Q8: IT IS COMMON KNOWLEDGE THAT THE ECONOMY HAS CAUSED**  
16 **GOVERNMENT REVENUES TO DECREASE. HOW IS THIS AFFECTING**  
17 **THE PSAPs?**

18 A: Funding for the communication centers has been decreased. For example, the Arvada  
19 Police Department Communications Division has been asked to cut their budget by 5%.  
20 Arvada has been forced to lay off 5 record clerks and they now outsource their  
21 transcriptions. At Westminster there are call taker and dispatcher positions that are not  
22 being filled. The budget crunch is hurting all of the local governments. Even the fire

1 district revenues are not as much as projected as property values have either not gone up  
2 as anticipated or have actually decreased.

3 **Q9: HOW HAS THE JEFFERSON COUNTY AUTHORITY RESPONDED TO THE**  
4 **PSAPS BUDGETS BEING REDUCED?**

5 A. The Jefferson County Authority has historically been very conservative in what it would  
6 spend money on. This year, however, the Authority Board determined that it would fund  
7 additional programs to assist the PSAPs. These programs include paying for all  
8 Computer Aided Dispatch (“CAD”) software and maintenance, the wireless data costs  
9 incurred by the responders in receiving and answering 911 calls, emergency medical  
10 dispatch programs, training of dispatch personnel, regional GIS, as well as maintenance  
11 of the Master Street Address guide (MSAG). The Authority has also allocated funds for  
12 the replacement of mobile data computers as needed by the agencies with a 4-6 year  
13 replacement program. The Authority has made a conscious effort to increase its spending  
14 to assist the PSAPs. The 5 Board members are all associated with public safety and  
15 believe that wherever they can assist 911 they should do so, all the way from assisting the  
16 caller to be able to call 911 to helping the responder assist the person in need. The  
17 statutorily permitted use of the 911 emergency telephone charge to assist 911 is pretty  
18 broad.

19 **Q10: ARE YOU AWARE THAT TRACFONE WILL NOT PAY THE EMERGENCY**  
20 **TELEPHONE CHARGE?**

21 A: Yes. I have read some of their filings with the PUC. TracFone does not intend to pay the  
22 emergency telephone charge for those customers participating in the Lifeline program.

1 TracFone does not pay the emergency telephone charge on its existing prepaid wireless  
2 customers.

3 **Q11: ARE YOU AWARE WHETHER OTHER CARRIERS OFFERING PREPAID**  
4 **WIRELESS PAY THE EMERGENCY TELEPHONE CHARGE?**

5 A: It is difficult to tell as the remittance checks do not specifically identify if it is for a  
6 landline, postpaid wireless or prepaid wireless. However, it is my understanding that  
7 Patrick Fuzik, the lobbyist for Sprint, advises that Sprint sells prepaid wireless through its  
8 subsidiary Nextel Boost and that Sprint/Nextel does pay the emergency telephone charge  
9 on its prepaid wireless customers. This remittance is received from 'Nextel Boost'.  
10 Additionally, I am advised that Vaiero pays the emergency telephone charge. However,  
11 most prepaid wireless providers do not pay the emergency telephone charge. The general  
12 position of the prepaid wireless industry is that they do not do not send out a bill to their  
13 customers, and therefore do not have a duty to pay the emergency telephone charge. We  
14 have inquired with the PUC staff and other carriers that have received ETC status in  
15 Colorado and all the other carriers do pay the emergency telephone charge.

16 **Q12: WHAT IS THE JEFFERSON COUNTY AUTHORITY'S CONCERN**  
17 **REGARDING TRACFONE RECEIVING ETC DESIGNATION?**

18 A: That revenues from the emergency telephone charge will decrease in Jefferson County  
19 and across the state. TracFone will not pay the emergency telephone charge. The  
20 Jefferson County Authority believes that it is poor public policy and against the public  
21 interest to permit any telecommunication carrier to refuse to participate in payment of the  
22 emergency telephone charge. One requirement for participation in the Lifeline program

1 is that the phone must be able to route 911 calls. If the device can contact 911, the  
2 service provider should be required to collect and pay the emergency telephone charge.  
3 TracFone estimates that there are 385,000 households in Colorado that are eligible to  
4 participate in the Lifeline program (**Exhibit A**). If TracFone supplies only 45% of the  
5 qualifying 385,000 households, TracFone will provide approximately 175,000 phones in  
6 the state of Colorado. The maximum amount permitted to be charged without PUC  
7 approval is \$0.70 per line. This would mean that the Authority Boards in Colorado  
8 would not get paid \$122,500 (175,000 x \$0.70). (Not all Authority Boards charge \$.70)  
9 Annually, the amount is almost \$1.5 million. This is a significant amount of money.  
10 TracFone will have received \$21,000,000 at \$10.00 per phone for 175,000 participants.  
11 TracFone will likely even have more than 175,000 customers as prepaid wireless is the  
12 fast growing segment of the wireless industry. Attached as **Exhibit B** is the latest  
13 wireless industry estimates that 75% of new wireless customers are prepaid users.

14 **Q13: DID THE JEFFERSON COUNTY AUTHORITY HAVE OTHER CONCERNS**  
15 **ABOUT DESIGNATING TRACFONE AS AN ETC?**

16 A: There was concern that TracFone would take customers away from existing landline and  
17 wireless carriers that pay the emergency telephone charge. The basic believe is that a  
18 company that provides critical connectivity to the E911 infrastructure should collect and  
19 remit the emergency telephone charge to support the E911 infrastructure.

20 **Q14: SHOULD THE PREPAID WIRELESS INDUSTRY COLLECT AND PAY THE**  
21 **EMERGENCY TELEPHONE CHARGE?**

1 A: Yes. TracFone's excuse is that they do not mail a bill to the individual's home. Thus,  
2 TracFone argues in its filings that because they do not send a bill, they are under no  
3 obligation to collect the emergency telephone charge. Since TracFone does not collect it,  
4 they do not remit it to the Authority Boards. However, TracFone bills its customers  
5 when their customers go online to get additional minutes. Likewise, TracFone bills its  
6 customers when they sell the prepaid cards through retail establishments. TracFone  
7 should include an amount on the price of their product to collect the emergency telephone  
8 charge from their customer. They simply refuse to do so. I am not a lawyer and do not  
9 know what the law requires, but do know that the Authority Boards across the state of  
10 Colorado believe it unfair that wireline and postpaid customers subsidize the prepaid  
11 customers. Prepaid customers should pay the same as wireline and postpaid customers as  
12 they have the same access to 911. If Qwest started requiring all their wireline and  
13 wireless customers to pay monthly via the internet, using TracFone's argument that  
14 because Qwest does not mail a billing statement, Qwest would not be required to collect  
15 and pay the emergency telephone charge either.

16 TracFone's Application for ETC certification specifically states they must  
17 maintain the address of their Lifeline customers. Thus, TracFone will know the address  
18 of the customer, and thus know in what governing body's jurisdiction the customer  
19 resides and the amount of the emergency telephone charge within that jurisdiction.  
20 TracFone should be required to pay the emergency telephone charge as a condition to  
21 TracFone receiving ETC certification. How they collect the money from their customer  
22 (if they choose to do so) is their choice.



1 **Q15: DO YOU PARTICIPATE WITH THE COLORADO PUC 9-1-1 TASK FORCE?**

2 A: Yes, I am a voting member.

3 **Q16: DID YOU ATTEND THE SEPTEMBER 3, 2009 MEETING OF THE COLORADO**  
4 **PUC 9-1-1 TASK FORCE?**

5 A: I attended via telephone.

6 **Q17: WAS THE TOPIC OF TRACFONE BEING CERTIFIED AS AN ELIGIBLE**  
7 **TELECOMMUNICATIONS PROVIDER (“ETC”) ADDRESSED?**

8 A: Yes. The Task Force was advised that TracFone had made application to receive ETC  
9 status in Colorado. I understood this to mean that TracFone would provide a telephone  
10 and free minutes to eligible households, and TracFone would receive \$10 per month for  
11 the free minutes provided to the eligible households.

12 **Q18: WAS THERE DISCUSSION AT THIS TASK FORCE MEETING ON WHETHER**  
13 **TRACFONE WOULD PAY THE EMERGENCY TELEPHONE CHARGE?**

14 A: Yes. The Task Force asked specifically if TracFone was going to pay the emergency  
15 telephone charge. The answer was that TracFone did not intend to pay the emergency  
16 telephone charge. A formal motion was made to the effect that the ETC certification  
17 should not be given to any telecommunications carrier that does not participate in  
18 collection or otherwise pay the emergency telephone charge. There was a roll call vote.  
19 The motion passed with four people abstaining but no negative votes.

20 **Q19: SHOULD THE PUC IMPOSE AS A CONDITION OF TRACFONE RECEIVING**  
21 **ETC DESIGNATION A REQUIREMENT THAT TRACFONE PAY THE**  
22 **EMERGENCY TELEPHONE CHARGE?**

1    **A:**    Yes. The PUC should require TracFone to pay the emergency telephone charge to the  
2            local 911 Authority Board. TracFone will know the address of the service user/Lifeline  
3            participant and can easily find the name and address of the local 911 Authority Board.  
4            It is in the public interest for all ETC designees to be required to pay the emergency  
5            telephone charge. It is not sufficient to impose a condition to pay the emergency  
6            telephone charge on if the customer pays the emergency telephone charge. This is so  
7            because TracFone will not be issuing bills and/or will not collect the emergency  
8            telephone charge from its customers. The mechanism whereby TracFone acquires the  
9            funds to pay the emergency telephone charge is their own business decision: either they  
10           pay from the \$10.00 received per customer, or they increase other charges, or they do not  
11           participate as an Eligible Telecommunications Carrier in Colorado.

12    **Q.20: HOW DOES THE ADAMS COUNTY AUTHORITY COMPARE TO THE**  
13    **JEFFERSON COUNTY AUTHORITY?**

14    **A.**    They are very similar. The Adams County Authority was also created by  
15            intergovernmental agreement signed by the cities, towns, fire districts and the Adams  
16            County Commissioners. The Adams County Authority also has five Board members, two  
17            representing law enforcement (Brighton and Northglenn Police Chiefs), two representing  
18            fire districts (two Fire Chiefs) and the Sheriff of Adams County. The Adams Authority  
19            has no employees. The Adams Authority funds two PSAPs in Adams County: The  
20            Adams County Communications Center (ADCOM) and the City of Federal Heights. The  
21            City of Thornton has its own Authority Board and its own dispatch center. ADCOM  
22            dispatches for several law enforcement agencies and fire districts. The Adams County

1 Authority sets the emergency telephone charge for Adams County (except Thornton and  
2 those portions of Arvada, Aurora and Westminster that are in Adams County as Aurora  
3 has its own 911 Authority and Arvada and Westminster are part of the Jefferson 911  
4 Authority). The Adams Authority pays for 911 related equipment and services for  
5 ADCOM and Federal Heights similar to the above description of the Jefferson County  
6 Authority. The Adams County Authority also believes that it is not in the public interest  
7 to approve the application of TracFone unless it is conditioned on TracFone paying the  
8 emergency telephone charge.

## Attachment 2

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

**DOCKET NO. 09A-393T**

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IN THE MATTER OF THE APPLICATION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS

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**NOTICE OF WITHDRAWAL**

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TracFone Wireless, Inc. ("TracFone") hereby withdraws its above-captioned pending application for designation as an Eligible Telecommunications Carrier ("ETC"). TracFone states the following as the basis for its withdrawal of its ETC application.<sup>1</sup>

On June 1, 2009, TracFone applied to the Commission for designation as an ETC pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended.<sup>2</sup> By that application, TracFone sought Commission designation as an ETC for the limited purpose of providing its SafeLink Wireless® Lifeline service to low-income Colorado households. As a designated ETC in 24 states and the District of Columbia, TracFone is now providing SafeLink Wireless® Lifeline service to more than 2.5 million low-income households in those states. TracFone's Lifeline customers receive free wireless telephone handsets and specified quantities of free wireless airtime each month. In Colorado, TracFone proposed to provide each SafeLink Wireless® customer with 83 minutes of airtime per month -- 15 minutes more than it provides in any other state. Importantly, the entire SafeLink Wireless® Lifeline benefit in Colorado would

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<sup>1</sup> By this filing, TracFone withdraws its Motion to Hold Application for Designation as Eligible Telecommunications Carrier in Abeyance, or, in the Alternative, Notice of Withdrawal, filed December 21, 2009.

<sup>2</sup> 47 U.S.C. § 214(e)(2).

be funded by the federal Universal Service Fund and by TracFone. It would not cost Colorado's intrastate rate payers, its tax payers, the state treasury or any state fund a single dime.

TracFone had hoped that the Commission would expeditiously consider its application and that it would be able to offer this important federal benefit to qualified low-income Colorado households within a reasonable period. However, TracFone's application has now been pending for nearly seven months and there appears to be little prospect of favorable action any time soon.

The primary reason for this prolonged delay has been the intervention and outright opposition to TracFone's application by the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Emergency Communications Service Authority, and the Jefferson County E-911 Emergency Communications Service Authority (collectively, the "E911 Authorities"). The E911 Authorities have intervened in this proceeding solely based on their allegation that TracFone does not pay the emergency telephone charge "contrary to Colorado Revised Statutes."<sup>3</sup>

This assertion that TracFone somehow is in violation of state law is remarkable and is indeed contradicted by the E911 Authorities themselves who stated in a pleading filed in this proceeding:

No court has ever determined whether C.R.S. 29-11-102 applies to prepaid wireless for TracFone's regular customers. It is a pure question of law whether C.R.S. 20011-100.5 et seq. applies to service providers and service users in the prepaid wireless arena.<sup>4</sup>

In other words, in one pleading filed in this docket, the E911 Authorities assert that TracFone is in violation of state law and that its application for designation as an ETC should be

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<sup>3</sup> See, e.g., E911 Authorities' Motion to Intervene, filed September 21, 2009, ¶ 10.

<sup>4</sup> E911 Authorities' Response to TracFone Wireless, Inc.'s Motion to Set Aside Interim Order and Alternative Motion to Certify Interim Order as Immediately Appealable, filed November 23, 2009, at 3.

denied. In another pleading filed by the E911 Authorities in the very same docket, they candidly acknowledge (notwithstanding their prior assertion) that no court has ever concluded whether the state 911 fee law is applicable to TracFone or that it is in violation of that law. The inapplicability of Colorado's current E911 fee law to prepaid wireless service is further noted by the Colorado 9-1-1 Resource Center which notified the Federal Communications Commission ("FCC") on behalf of the State of Colorado as follows:

There is currently no mechanism in place in Colorado for collecting surcharges from individuals using pre-paid cell phone plans. Although these individuals use their pre-paid service to call 911, they are not contributing to the revenues used to defray the cost of providing 911 services.<sup>5</sup>

Importantly, that correspondence to the FCC from the Colorado 9-1-1 Resource Center was prepared by the 9-1-1 Resource Center at the request of the Commission and the Governor's Office. As such, it articulates the views of the Commission on whose behalf the report was prepared and filed with the FCC. Notwithstanding this public acknowledgement by the Commission through the 9-1-1 Resource Center that current Colorado law does not contain a statutory mechanism for collection of 911 fees from customers of prepaid wireless services, the Commission has permitted the E911 Authorities to continue for months to utilize Commission processes to advance their unsupported allegation that TracFone is in violation of state law and to delay completion of this proceeding and designation of TracFone as an ETC.

What has become apparent is that the question of 911 fees will remain at issue in this proceeding so long as the E911 Authorities remain intervenors, and so long as they elect to clutter the record with unsupported and contradictory allegations about state 911 fee law compliance. Not only are these disingenuous tactics of the E911 Authorities delaying resolution

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<sup>5</sup> Response of Colorado 9-1-1 Resource Center to the Federal Communications Commission, dated March 23, 2009.

of TracFone's ETC application, and postponing the date of availability of SafeLink Wireless® Lifeline service to Colorado's neediest households, they are imposing substantial burdens on Colorado's E911 fund. Moneys contributed by users of wireless services which could be used to deploy E911 in Colorado are instead being diverted by the E911 Authorities to finance its ongoing litigation against TracFone's ETC application. This continued waste of E911 funds inevitably will place pressure on the fund and may ultimately necessitate increases in E911 fees.

The PUC 911 Task Force whose members include the E911 Authorities' counsel, as well as other representatives of the E911 Authorities, is working with members of the wireless industry -- including TracFone -- to develop a legislative solution which will contain a mechanism for collecting E911 fees from all consumers of wireless services, including consumers of prepaid wireless services. TracFone is hopeful that those cooperative efforts will lead to enactment of such legislation which will result in collection of 911 fees from all users of wireless service in Colorado.

Therefore, rather than continue to contest the E911 Authorities in this ETC proceeding, TracFone prefers to work with the E911 Authorities and other interested stakeholders to formulate an appropriate E911 fee collection mechanism for prepaid wireless and to seek enactment of legislation containing such a mechanism.

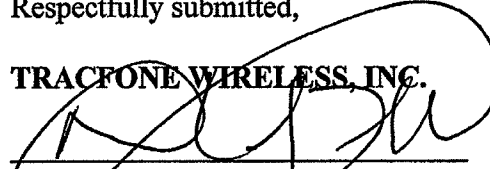
TracFone plans to refile its ETC application with the Commission following enactment and implementation of such legislation. TracFone looks forward to providing low-income Colorado households with its SafeLink Wireless® Lifeline service once the matter of E911 collections from consumers of prepaid wireless service is resolved through appropriate legislation.



For the reasons described herein, TracFone hereby notifies the Commission, as well as the parties to this proceeding, that TracFone is withdrawing its application effective the date of this notice. Such withdrawal is without prejudice to resubmission of the ETC application at an appropriate time.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



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December 22, 2009

## CERTIFICATE OF SERVICE

This is to certify that I have duly served TracFone Wireless, Inc.'s Notice of Withdrawal electronically on all parties listed, this 22<sup>nd</sup> day of December, 2009, addressed as follows:

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