STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

TracFone Wireless, Inc.	)	
	)	
Verified Petition for Declaratory Ruling	)	Docket No. 07-0023
finding that Section 17 of the	)	
Wireless Emergency Telephone Safety Act	)	
50, ILCS 751/17, does not apply to require	)	
TracFone Wireless, Inc. to remit	)	
monthly wireless carrier surcharges	)	
to the Illinois Commerce Commission	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
RESPONSE TO MOTION FOR SUMMARY JUDGMENT

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its counsel, and, pursuant to Rule 200.190 of the Rules of Practice Before the Illinois Commerce Commission, states, in response to Petitioner TracFone Wireless Inc.'s Motion for Summary Judgment in the above-captioned proceeding, as follows:

I. Introduction

TracFone Wireless Inc. (hereafter "TracFone" or "Petitioner") acknowledges that it provided prepaid wireless telephone service in Illinois continuously from roughly December 22, 1999 through December 31, 2003. Motion for Summary Judgment, at 5. As a "wireless carrier," TracFone remitted certain payments to the State of Illinois as it thought it was obligated to do under the Wireless Emergency Telephone Safety Act ("WETSA"). WETSA originally required "each wireless carrier" to impose a monthly wireless carrier surcharge per CMRS connection on the wireless carrier's end users. The surcharge was to

"be stated as a separate item on the subscriber's monthly bill[.]" 50 ILCS 751/17(a) (2000).

In 2003, the General Assembly amended WETSA, at least in part, to afford prepaid wireless carriers a specific method by which to impose the surcharge upon their end users utilizing certain addresses associated with the point of purchase rather than utilizing end user home addresses. *See, generally,* P.A. 93-507. Consequently, under the WETSA amendment, TracFone avers that it could impose the surcharge on its end users and avoid making the surcharge payments from its own funds, as it alleges that it was forced to do prior to the WETSA amendment. Motion for Summary Judgment at 6.

TracFone now argues that it made these payments in error because the General Assembly subsequently defined a subset of wireless carriers (prepaid wireless carriers) and specified certain methods for prepaid wireless carriers to impose the surcharge on their end users. TracFone, however, at all times remained a wireless carrier both prior to the WETSA amendment and after WETSA was amended.

II. Argument

1. Applicable Rules of Statutory Construction

Petitioner's chief argument in support of summary judgment in its favor is that WETSA, as originally enacted in 2000, did not apply, by its terms, to prepaid wireless carriers. Motion for Summary Judgment at 7-9. It argues that the 2004 amendment to the statute, and most specifically the explicit inclusion of a

requirement that prepaid wireless carriers remit the surcharge, constituted a change in the law rather than a clarification of existing law. Id. at 9-10. Petitioner argues that both cases and legislative history support its position. Petitioner is, however, incorrect, and its Motion should be denied.

In one significant respect, Staff and Petitioner find common ground. Specifically, Staff concurs fully with Petitioner that the primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. People v. Maggette, 195 Ill. 2d 336, 348; 747 N.E.2d 339, 346; 2001 Ill. Lexis 247 at 14; 254 Ill. Dec. 299 (2001); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014, 1016; 1997 Ill. Lexis 411 at 5-6; 227 Ill. Dec. 532 (1997). The Staff further notes that statutory construction is a question of law, to be decided by the court or tribunal. *See, e.g.*, Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866, 868; 1997 Ill. Lexis 425 at 4-5; 227 Ill. Dec. 384 (1997).

It is significant that legislative intent should be sought primarily from the language of the statute, Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 479; 203 N.E.2d 1282, 1287; 1994 Ill. Lexis 101 at 12-13; 203 Ill. Dec. 462 (1994); since the language of the statute is the best evidence of legislative intent, Bruso at 451; 687 N.E. 2d at 1016; 1997 Ill. Lexis 411 at 5-6, and provides the best means of deciphering it. Matsuda at 365; 687 N.E. 2d at 869; 1997 Ill. Lexis 425 at 7. Statutes must be construed as a whole, and the court or tribunal must consider each part or section in connection with the remainder of the statute. Bruso at 451-52; 687 N.E. 2d at 1016; 1997 Ill. Lexis 411 at 5-6. If the legislature's intent

can be determined from the plain language of the statute, that intent must be given effect, without further resort to other aids to statutory construction. Id. When – as is the case with WETSA - terms used in a statute are defined in the statute, those definitions govern, and statutory terms must be construed according to the statutory definitions. Robbins v. Bd. of Trustees, Carbondale Police Pension Fund, 177 Ill. 2d 533, 540; 687 N.E. 2d 39, 43; 1997 Ill. Lexis 452 at 9; 227 Ill. Dec. 116 (1997).

Thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328, 1333; 1991 Ill. App. Lexis 1133 at 13; 158 Ill. Dec. 935 (3rd Dist. 1991). As this proceeding deals exclusively with the language of Section 17 of WETSA as it read prior to January 1, 2004, it appears prudent to begin with the text of that Section as it then existed.

2. Section 17 as Enacted by P.A. 90-660, is Unambiguously Applicable to Petitioner

In WETSA's original incarnation, as enacted by Public Act 91-660, a "wireless carrier" was defined as:

> … a provider of two-way cellular, broadband PCS, geographic area 800 MHZ and 900 MHZ Commercial Mobile Radio Service (CMRS), Wireless Communications Service (WCS), or other Commercial Mobile Radio Service (CMRS), as defined by the Federal Communications Commission, offering radio communications that may provide fixed, mobile, radio location, or satellite communication services to individuals or businesses within its assigned spectrum block and geographical area or that offers real-time, two-way voice service that is interconnected with the public switched network, including a reseller of such service.

P.A. 91-660, §10, codified as 50 ILCS 751/10 (2000).

Section 17(a), at issue here, provided that:

> Except as provided in Section 45 [applying exclusively to the City of Chicago], **each wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection** that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. No wireless carrier shall impose the surcharge authorized by this Section upon any subscriber who is subject to the surcharge imposed by a unit of local government pursuant to Section 45. The wireless carrier that provides wireless service to the subscriber shall collect the surcharge set by the Wireless Enhanced 9-1-1 Board from the subscriber. The surcharge shall be stated as a separate item on the subscriber's monthly bill. The wireless carrier shall begin collecting the surcharge on bills issued within 90 days after the Wireless Enhanced 9-1-1 Board sets the monthly wireless surcharge. State and local taxes shall not apply to the wireless carrier surcharge.
>
> P.A. 91-660, §17, codified as 50 ILCS 751/17 (2000) (emphasis added).

The Applicable provision here is unambiguous, stating that "**each wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection** that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State." Id. Petitioner cannot deny, and apparently does not deny, that it was a "wireless carrier" as that term was defined in Section 10 of the pre-2004 WETSA. The statutory language was plain, and contained no exceptions or exemptions from the definition of "wireless carrier" based upon the method by which the carrier's customers might pay for its service, and – as noted above- the statutory definition must, as a matter of law, be used in construing the statute. Further, Petitioner cannot argue that, under the terms of Section 17 as it

read in 2004, there were any exceptions or exclusions to the requirement that "each wireless carrier … impose a monthly wireless carrier surcharge per CMRS connection[.]" 50 ILCS 751/17(a)(2000). There were none. The statutory language was plain regarding which carriers were subject to Section 17 obligations; all of them were. Recourse to extrinsic aids to statutory construction, such as the transcripts of legislative debates, is therefore improper, at least with respect to the statute's application to Petitioner.

The aspect in which the statute, as enacted in 2000, did lack clarity was another important one – the manner in which the surcharge was to be collected from subscribers and allocated to the proper emergency telephone system boards (ETSBs). Under the pre-2004 provisions, billing, as noted above, was to be accomplished through "a separate item on the subscriber's monthly bill." 50 ILCS 751/17(a)(2000). Allocation was by no means clearly prescribed. Thus, while prepaid wireless carries were fully subject to Section 17, they were placed in the position of having no immediately apparent way to bill the surcharge or allocate it to ETSBs, under the statute.

This is not to suggest that doing so was impossible. The provision requiring the surcharge to be expressed in a separate line item can easily be read as a requirement that the surcharge be explicit, rather than included in some other charge or rate. This is the case with the Emergency Telephone Systems Act (landline 9-1-1), in which the General Assembly directed that the surcharge be collected "as a separately stated item on the subscriber's bill." 50 ILCS 750/15.3(f). Likewise, the General Assembly has in the past required

explicit, line-item billing of surcharges, as, for example, when it directed the Commission, in determining whether to create a state high cost fund, to "[i]dentify all implicit subsidies contained in rates or charges …, and determine how such subsidies can be made explicit …[.]" 220 ILCS 5/13-301(e)(2). Accordingly, one very reasonable interpretation of Section 17 as originally enacted is that it required the surcharge to be rendered explicit, which any carrier might readily do, regardless of the manner by which it collects payment from its customers.

3. The 2004 WETSA Amendments under P.A. 93-507 are Clarifying Amendments

In 2003, the General Assembly undertook to amend WETSA by enacting P.A. 93-507. P.A 93-507 amended WETSA in two significant ways. First, it added definitions for "active prepaid wireless telephone", "mobile telephone number", "prepaid wireless telephone service", and "sufficient positive balance", among others. P.A. 93-507, §5. Significantly, it did not amend the definition of "wireless carrier". Id.

Second, the General Assembly amended Section 17 of WETSA to read as follows:

> Except as provided in Section 45, each wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. In the case of prepaid wireless telephone service, this surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the MTN for each active prepaid wireless telephone that has a sufficient positive balance as of the last day of each month, if that information is available. No wireless carrier shall impose the surcharge

> authorized by this Section upon any subscriber who is subject to the surcharge imposed by a unit of local government pursuant to Section 45. The wireless carrier that provides wireless service to the subscriber shall collect the surcharge set by the Wireless Enhanced 9-1-1 Board from the subscriber. For mobile telecommunications services provided on and after August 1, 2002, any surcharge imposed under this Act shall be imposed based upon the municipality or county that encompasses the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. The surcharge shall be stated as a separate item on the subscriber's monthly bill. The wireless carrier shall begin collecting the surcharge on bills issued within 90 days after the Wireless Enhanced 9-1-1 Board sets the monthly wireless surcharge. State and local taxes shall not apply to the wireless carrier surcharge.
>
> P.A. 93-507, §5.[1]

Petitioner's theory is based almost entirely on this amendment, and is as follows. First, Petitioner argues, the inclusion of prepaid wireless service in amendments to Sections 10 and 17 means, as a matter of law, that prepaid wireless service was <u>not</u> included prior to the amendment. Second, Petitioner points to certain remarks made by members of the General Assembly as indicative of the General Assembly's purported belief that it was, through the amendment, imposing the surcharge obligations upon wireless carriers for the first time. Neither of these contentions bears closer scrutiny.

Here, as seen above, the fact that Petitioner was required to collect and remit the surcharge is not in any way clouded by ambiguity. The Petitioner was and is a "wireless carrier" within the meaning of Section 10 of WETSA. Moreover, from WETSA's enactment to the present, "each wireless carrier" has been and remains obliged to remit the surcharge for "**each CMRS connection [it serves]**

[1] P.A. 92-526, enacted in July 2002, added certain additional provisions to Section 17 that are not germane here.

that … has a telephone number within an area code assigned to Illinois by [NANPA] or has a billing address in this State." 50 ILCS 751/17(a)(2000)(emphasis added). As there is no question that Petitioner was a wireless carrier, and served CMRS connections assigned numbers in Illinois area codes. Petitioner was therefore required to remit the surcharge.

While Petitioner is correct in asserting that courts view an amendment to an unambiguous law as evidence of legislative intent to change the law, Motion for Summary Judgment at 9, an amendment to a statute that is in some respect ambiguous can be interpreted as intending to clarify ambiguity. People v. Bowden, 313 Ill. App. 3d 666, 670; 730 N.E.2d 138, 142; 2000 Ill. App. Lexis 394 at 11; 246 Ill. Dec. 458 (4th Dist. 2000). The ambiguity or lack of clarity in the statute – which the General Assembly was clearly addressing in P.A. 93-507 – was with regard to how to bill for, and allocate, the surcharge. There was no intent to change the law to include prepaid wireless carriers, because such carriers already fell squarely and unambiguously within the definition of "wireless carrier" under Section 10. The legislative amendment addresses the ambiguity in the statute relating to the manner of collection of the surcharge and demonstrates a legislative intent to establish a method for collection of the surcharge from customers who do not receive monthly bills or necessarily have a billing address.

Petitioner refers the Commission to Garibaldi v. Applebaum, 194 Ill. 2d 438; 742 N.E. 2d 279; 2000 Ill. Lexis 1689; 252 Ill. Dec 29 (2000), for the proposition that "where the General Assembly amends a statute to add particular

requirements – such as the definitions and procedures relating to 'prepaid wireless telephone service' contained in PA 93-507 – the pre-existing law must not have included such items or conditions." Motion for Summary Judgment at 10. Garibaldi in fact stands for the fundamental proposition that "[t]he legislature's enactment of this particular requirement suggests [] that the legislation effected a change in the law." Garibaldi at 451-452; 742 N.E. 2d at 285-86; 2000 Ill. Lexis 1689 at 18-19. Staff does not dispute that an amendment to a statute might suggest that legislature intended to change the statute. However, the relevant inquiry is how the amendment changes the statute. In this case, the amendment to WETSA did not change the fact that Petitioner was, and is, a wireless carrier. In Garibaldi, the amendment to the Hospital Licensing Act there at issue, 210 ILCS 85/10.4, provided the plaintiff, a physician, with entirely new due process rights to a notice and hearing when negatively affected by an exclusive service contract between a hospital and a competitor, which rights had – without question – not heretofore existed. Garibaldi at 451-452; 742 N.E. 2d at 285-86; 2000 Ill. Lexis 1689 at 18-19. Accordingly, the statute in question was a remedial statute subject to liberal construction in favor of the party to whom such remedy was granted. *See* City of Springfield v. Bd. of Election Comm'rs, 105 Ill. 2d 336, 341; 473 N.E.2d 1313, 1315; 1985 Ill. Lexis 182 at 7; 85 Ill. Dec. 508 (1985) (remedial statutes liberally construed to effect redial purposes). Moreover, the creation of unambiguously new rights was a clear change in the law.

In contrast, P.A. 93-507 is clearly intended to remove a certain ambiguity from WETSA by articulating a method by which prepaid wireless carriers could

bill the surcharge to end users. This does not constitute any indication of intent on the part of the General Assembly to retroactively exclude Petitioner from the requirements of the pre-amended WETSA.

Other rules of statutory construction lend support to the proposition that Petitioner was subject to Section 17 prior to the enactment of P.A. 93-507. In construing statutes, courts attempt to determine the objectives the statutes sought to accomplish and the evils they desired to remedy. City of Springfield at 341; 473 N.E.2d at 1315; 1985 Ill. Lexis 182 at 7. Legislative policies and findings, as set forth in the preamble or statements of legislative policy, are useful in determining the proper scope of a statute. Geri's West v. Ferrall, 153 Ill. App. 3d 579, 583; 505 N.E.2d 1348, 1351; 1987 Ill. App. Lexis 2197 at 6; 106 Ill. Dec. 557 (2nd Dist. 1987). It is well established that statutes intended to promote the public welfare are to be liberally construed. Ranquist v. Stackler, 55 Ill. App. 3d 545, 551; 370 N.E. 2d 1198, 1201; 1977 Ill. App. Lexis 3853 at 13; 13 Ill. Dec. 171 (1st Dist. 1977). Here, the legislative purpose, as set forth in Section 5 of WETSA, has remained in affect as originally enacted in 1999. P.A. 91-660, §5. The General Assembly first notes that:

> Wireless carriers are required by the Federal Communications Commission (FCC) to provide E9-1-1service in the form of automatic location identification and automatic number identification pursuant to policies set forth by the FCC.
>
> 51 ILCS 751/5
>
> The General Assembly further stated that:

> Public safety agencies and wireless carriers operating wireless 9-1-1 and wireless E9-1-1 systems[2] **require adequate funding** to recover the costs of designing, purchasing, installing, testing, and operating enhanced facilities, systems, and services necessary to comply with the wireless E9-1-1 requirements mandated by the Federal Communications Commission and to maximize the availability of wireless E9-1-1 services throughout the State of Illinois
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> Id.

The General Assembly next found that:

> The revenues generated by the wireless carrier surcharge enacted by this Act are **required** to fund the efforts of the wireless carriers, emergency telephone system boards, qualified governmental entities, and the Department of State Police to **improve the public health, safety, and welfare** and to serve a public purpose by providing emergency telephone assistance through wireless communications.
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> Id. (emphasis added).

This being the case, the General Assembly stated that it was its intent, in enacting WETSA, to implement a "cohesive, statewide" wireless emergency number by, inter alia, "provid[ing] for a reasonable fee on wireless telephone subscribers to accomplish [statutory] purposes." Id.

It is clear from the forgoing that the General Assembly had no intention whatever of exempting prepaid wireless carriers from the obligations imposed by Section 17. The General Assembly recognized that "adequate funding" and "revenues" were "required" to provide E9-1-1 services to wireless customers, which the General Assembly deemed necessary to "improve the public health, safety and welfare." To provide such funding, the General Assembly determined that "wireless telephone subscribers", without qualification, should pay a

[2] The Wireless Carrier Reimbursement Fund was created to reimburse carriers for expenditures associated with wireless e9-1-1 compliance. 50 ILCS 751/30; 50 ILCS 751/35.

surcharge. None of this suggests that the General Assembly intended to, or in fact did, exempt a large group of subscribers from the surcharge. Indeed, it suggests that the General Assembly intended the surcharge to apply ubiquitously. This argues strongly against the construction Petitioner seeks to place on the statute. Moreover, the statute, which is clearly one intended to promote public welfare, must be liberally construed in a manner which insures adequate funding and increased public safety. This, too, argues against Petitioner.

4. Legislative Debates Pertaining to Enactment of P.A. 93-507 Should Be Given Little or No Weight in Construing P.A. 91-660

Petitioner relies, in support of its argument, on certain transcribed debates of General Assembly sessions in which P.A. 93-507 was considered. It considers these statements to "unequivocally" demonstrate a legislative intent to impose upon prepaid wireless carriers an obligation to which they had not hitherto been subject. Motion for Summary Judgment at 9. Petitioner is incorrect about the utility and propriety of using such remarks to construe the pre-existing statute. The remarks by members of the General Assembly made with regard to P.A. 93-507 are inapplicable in construing the original enactment – P.A. 91-660. This is because what is at issue here is not the construction to be placed on WETSA in its post – P.A. 93-507 incarnation, but rather what construction should be given it in its pre – P.A. 93-507 form.

In construing a statute, it is clearly *improper* to consider statements made *after* the passage of the statute. *See* Morel v. Coronet Insurance Co., 117 Ill. 2d

18, 25; 509 N.E.2d 996, 999; 1987 Ill. Lexis 193 at 10-11; 109 Ill. Dec. 157 (1987) (statements of legislators made four years after enactment of a statute do not constitute evidence of legislative intent); Warren v. Borger, 184 Ill. App. 3d 38, 44-45; 539 N.E.2d 1284, 1288; 1989 Ill. App. Lexis 803 at 13; 132 Ill. Dec. 478 (5th Dist. 1989) (statements of individual legislators, made after the passage of a statute, reflect only the viewpoint of those legislators, and not necessarily that of the legislature as a whole on the date the statute was passed); *see also* State Wholesale Grocers v. Great A&P Tea Co., 154 F. Supp. 471 (N.D. Ill. 1957); *reversed in part on other grounds*, 258 F. 2d 831 (7th Cir. 1958) (the court observed that "a book subsequently written by a legislator, even though he be a co-author of the [Clayton] Act, and with all respect to his good intentions in writing such a book, should be given no consideration by a court in determining whether there has or has not been a violation of the Act.").

Warren v. Borger is apposite here. In Warren v. Borger, the matter turned on the proper construction to be given to Section 2B of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2B, which provides that sales made in connection with an in-home solicitation are subject to a three-day right of cancellation on the part of the purchaser. Warren at 41; 539 N.E.2d at 1286; 1989 Ill. App. Lexis 803 at 3-4. The General Assembly had, after enacting Section 2B, amended it on several occasions. Id. at 44; 539 N.E.2d at 1289; 1989 Ill. App. Lexis 803 at 12. The court observed that:

> Because [the] legislative debates [cited by one of the parties] pertain to the enactment of amendments to section 2B as opposed to its original enactment, these debates cannot be accorded the weight of contemporaneous legislative history.

Id. at 44; 539 N.E.2d at 1289; 1989 Ill. App. Lexis 803 at 13.

The Commission is confronted here by a very similar state of affairs. Petitioner seeks to construe P.A. 90-660 through legislative debates relating to P.A. 93-507. The Commission should decline to give them weight, just as the Warren v. Borger court did.

The Petitioner may rely on Maiter v. Chicago Bd. of Education, 82 Ill. 2d 373; 415 N.E. 2d 1034; 1980 Ill. Lexis 426; 47 Ill. Dec. 721 (1980) or upon Client Follow-Up Co. v. Hynes, 75 Ill. 2d 208; 390 N.E. 2d 847; 1979 Ill. Lexis 453; 28 Ill. Dec. 488 (1979) in support of the notion that, when determining legislative intent, consideration ought to be given the declaration of a legislator made after the enactment of the statute. However, neither Maiter nor Client Follow-Up Co. avail it. In Maiter, the court stated, in *dicta*, "public statements made by those who are in a position to clarify legislative meaning carry weight, and are helpful to this court." Maiter at 385-86; 415 N.E. 2d at 1040; 1980 Ill. Lexis 426 at 14-15. However, the public statements referred to in Maiter were made in recorded legislative committee hearings, related to prior bills on the same subject, *and were made prior to the enactment in question*. Id.

Likewise, Client Follow-Up Co. is thoroughly distinguishable. In Client Follow-Up Co., the court, in determining the proper construction to place upon a provision of the Illinois Constitution of 1970, gave consideration to public statements of Samuel W Witwer, the President of the Illinois Constitutional Convention of 1970, and John Karns, who was the Chairman of the Convention's Revenue and Finance Committee. Client Follow-Up Co. at 224-25; 390 N.E. 2d

at 854; 1979 Ill. Lexis 453 at 21-24. These statements, while in several cases published in a newspaper of general circulation, were in all cases made *prior to the public referendum* in which the citizens of Illinois voted to adopt the Constitution. Id. The court observed that, in light of Witwer's and Karns' respective positions as drafters and framers of the Constitution, their statements regarding the meaning of provisions in the then-proposed Constitution would carry great weight with the voters, when they considered whether to adopt the Constitution. Id.

It is clear, therefore, that the statement of a legislator regarding legislative intent, made *after* the enactment of the statute in question, is entitled to little or no consideration when construing the statute. *Cf*. 2A N. Singer, Sutherland Statutory Construction § 48.19 (6th Ed. 2000)(post-enactment statements by a legislator *do not* form a part of the legislative history of the enactment). Obviously, such statements cannot have affected other legislators' perceptions regarding the scope and application of a proposed statute, or their deliberations regarding whether to adopt it.

Here, the same rule clearly applies. The legislative intent of the 91st General Assembly cannot be determined by the remarks of members of the 93rd General Assembly. Such remarks relate in no way to the matter at issue here, which was whether Petitioner was subject to Section 17 of WETSA by its terms, as those terms existed prior to January 1, 2004. As seen above, Petitioner clearly was a "wireless carrier" within the plain, clear, and unambiguous meaning of Section 17(a) as originally enacted. In short, the members' remarks cited by

Petitioner have little bearing on the construction of Section 17 as enacted by P.A. 91-660. Accordingly, summary judgment in its favor should be denied.

Finally, TracFone argues that the WETSA amendments changed the law by "extend[ing] WETSA to prepaid wireless telephone service." Motion for Summary Judgment at 10. This is simply not the case. There was no "extension", inasmuch as Section 17 of WETSA always applied to Petitioner as a wireless carrier within the meaning of Section 10. The change of law in question was a change in the specified methods by which Petitioner could bill the surcharges to its end users. By asserting otherwise, Petitioner is doing precisely what it asks the Commission to refrain from doing: "reading the post-amendment meaning of WETSA into the original statute." Motion for Summary Judgment at 10-11. Petitioner's Motion should be denied.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that the Petition herein be dismissed, summary judgment for Staff be granted, that the relief sought in the Petition be denied, and that such other relief be granted as is equitable in the premises.

Respectfully submitted,

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April 6, 2007

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