

NENA
The 9-1-1 Association
1700 Diagonal Road | Suite 500 | Alexandria, VA 22314

Mr. James Torgler
911 Emergency Assist
July 2nd, 2012

Dear Mr. Torgler:

I have been informed by a number of NENA members that their PSAPs received communications from your company inviting them to activate accounts your company has pre-established for their centers. In exchange for activating these accounts, your company represents that it will "donate" 50¢ per local subscriber per month to each participating PSAP, and that it will provide participating PSAPs with access to a database containing subscriber-provided personal information such as emergency contact instructions and medical data. In addition, your marketing materials represent that your product will allow "911 dispatchers" to contact emergency contacts such as parents or friends.

Please understand that NENA does not endorse commercial products or services. When requested by our membership, NENA may propound questions to companies such as yours so that we can act as a clearinghouse for information that broadly affects PSAP operations. With respect to your service, "911 Emergency Assist," we have concluded that PSAPs would benefit from further information in regard to five specific issues: liability, training, consumer marketing, PSAP marketing, and the propriety of accepting what you describe as "donations" in exchange for participating in your company's service. The paragraphs that follow detail our concerns and questions. We would appreciate a prompt response, and will be happy to pass along your answers to our members.

First, our members have expressed concern that participating in your service could expose 9-1-1 authorities, PSAP managers, and telecommunicators to civil liability in the event that they utilize, fail to utilize, or improperly utilize your service. Your marketing materials describe a contractual or quasi-contractual relationship between public safety agencies and your company in which agencies receive "donations" in exchange for activating accounts with, accepting additional data from, performing tasks for, and promoting your company. Nowhere in your publicly-available collateral, however, do you make available the terms under which PSAPs undertake these obligations. For example, you do not make available the terms under which your company will defend, insure, indemnify, and otherwise protect against liability agencies or agency employees who use your service. NENA's members would appreciate your disclosure of any and all terms of service, agreements, etc., particularly including any terms that may expand, limit, or otherwise impact the liability of your company or agency users of your service (including their employees, agents, contractors, and assigns) for harms suffered by consumers.

Second, although your website and marketing collateral include references to training materials, those materials are not available for download. Your collateral implies that these materials may only be accessed from within a pre-created agency account. Many agencies, however, are unwilling to access these accounts because of the possibility that doing so would make them party to an agreement with your firm, the terms of which are not disclosed in advance, and the possibility that doing so could subject them to expanded liability on the basis of use, non-use, or improper use of your service with no guarantee of liability protection from your company. In order to evaluate any product or service offered in the marketplace, PSAPs and 9-1-1 authorities must have unfettered access to training materials. NENA's members would therefore appreciate your disclosure of the training materials your company has prepared for use by participating agencies.

Third, certain marketing representations your company makes on its public websites and mail collateral imply the coming availability of your service without qualification as to time, geographic scope, or agency participation. Other representations concern technical aspects of the functioning of wireless and VoIP E9-1-1 service in terms that are arguably confusing or inaccurate. NENA's members are concerned that such representations have the potential to mislead the public into believing that your service will function as-advertised even in areas where relevant agencies decline to utilize your service, and that other representations could mislead the public as to the hard-won capabilities of Phase I and Phase II wireless E9-1-1 service. Our members would appreciate an explanation of how your company intends to market the 911 Emergency Assist product so as to avoid consumer confusion as to the availability and functionality of your service in each jurisdiction or PSAP service area, and as to the capabilities of existing E9-1-1 systems.

Fourth, other marketing representations your company makes in collateral materials mailed to PSAPs arguably imply that an agency, PSAP, or jurisdiction has already agreed to participate in your service and need only activate its account to begin receiving benefits offered by your company. In concert with our members' grave liability concerns and the issues noted above with respect to a lack of publicly-available contract and training information, these representations raise questions about the legitimacy of your company. NENA's members would appreciate an explanation of how your company intends to market the 9-1-1 Emergency Assist service so as to avoid confusion on the part of state agencies, 9-1-1 authorities, and PSAPs that could lead to unintended consequences such as the assumption of liability for non-use or misuse of your service.

Finally, your marketing representations indicate that your company will pay to participating PSAPs 50¢ per month for each subscriber within the jurisdiction served by that PSAP, and describe a marketing model in which public safety agencies recommend or otherwise publicize the 9-1-1 Emergency Assist service to the public. Although you characterize these payments as "donations," it is unclear why they would not qualify as contract payments under the model you describe. In addition, your marketing materials make no reference to varying state laws concerning whether and under what circumstances public agencies may accept payments from private companies in exchange for providing a service to third-party subscribers. Our members would appreciate your disclosure of the legal research developed by your company to support the characterization of payments to public entities as "donations," and to support the propriety of your business model in each jurisdiction where you intend to offer service.

When we spoke by phone, you indicated your company's willingness to work with the 9-1-1 community to address our members' concerns. I look forward to your response. As indicated, I will share the materials you make available with NENA's membership. Should additional questions arise, I will forward them for your consideration.

Sincerely,

Trey Forgety
NENA Director of Government Affairs