Office Memorandum

Date: March 16, 2011

To: Gary Karger

From: Kristin A. Hanson
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Phone: 651-201-8030

Subject: 911 Revenue Bonds
Allied Radio Matrix for Emergency Response System (ARMER System)

Pursuant to Minnesota Statutes, Chapter 403 (the "911 Act"), the state is authorized to collect a fee assessed to each customer in the state who utilizes telephone services via a wireless, wire line, and voice over Internet Protocol (collectively the "911 fee"). The 911 fee is designated by Section 403.11, subd. 1 of the 911 Act to be used only for the costs of improvements and maintenance to the ARMER System (including issuance of bonds to pay such costs). Section 403.11, subd. 1(b) expressly provided that the revenue generated from this fee "must not cancel and is carried forward in subsequent years…" The 911 fee is pledged to the ARMER project for its intended use only. Section 403.275 of the 911 Act authorizes the state to issue bonds to pay for the ARMER system. Currently, the state has three 911 revenue bond issues outstanding. Section 9 of this statute provides that "the state pledges and agrees with the holders of any bonds that the state will not limit or alter the rights vested in the commissioner to fulfill the terms of any agreement made with the bond holders."

In addition, there are federal and state laws prohibiting against the impairment of contract. The bonds and related bond documents represent a contract with the bond holders. The U.S. Supreme Court has ruled that if a state modifies its own contract, then an impairment of contract exists. Although it was difficult to determine the exact costs to bondholders, by allowing the state to use revenues for other purposes "permits a diminution of pledged revenues and reserves," and this diminution of revenues impaired the contractual rights of the bond holders. There is also a Minnesota Supreme Court case addressing impairment of bond holder contract as well. The Court found that the elimination of a security provision (an excise tax to secure bonds issued to build the Metrodome) impaired the contractual rights of the bond holders.

If there is any diversion of the 911 fee, the resulting disclosure in the marketing materials for the upcoming Series 2011 bonds will almost certainly have a negative impact on the bond rating, pricing and marketability of the Series 2011 bonds. The reduced pledge will cost the state both upfront and over the life of the bonds with higher interest rates and underwriting costs. This diversion of the 911 fee would also constitute an impairment of contract for the previously issued bonds – bonds sold under one set of revenue assumptions would become subject to less favorable assumptions with no alternative revenue source to offset the reduction in 911 revenues.