

1                                   **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**  
3   **UM 1437**

4 In the Matter of  
5 TRACFONE WIRELESS, INC.  
6 Application for Designation as an Eligible  
7 Telecommunications Carrier.

STAFF RESPONSE TO TRACFONE  
WIRELESS, INC.'S MOTION TO DENY  
INTERVENTION TO CITIZENS' UTILITY  
BOARD OF OREGON

8           Staff of the Public Utility Commission of Oregon (“Staff”) opposes Tracfone Wireless,  
9 Inc.’s Motion to Deny Intervention to Citizens’ Utility Board of Oregon (“Motion”) because it is  
10 untimely and misdirected.

11           The Citizens’ Utility Board (“CUB”) filed its Notice of Intervention on April 9, 2010,  
12 and began sending discovery requests to Tracfone in May 2010. Tracfone’s Motion was filed  
13 110 days after CUB filed its Notice of Intervention.

14           Tracfone’s assertion is not well taken that its delay is excusable because CUB’s  
15 participation is more extensive than Tracfone had anticipated. In its Notice of Intervention, CUB  
16 stated that it intended to, “where necessary, raise issues that are appropriate to the proceeding.”  
17 (CUB Notice 2.) Tracfone should not be heard to complain, at this late date, about CUB’s  
18 decision to raise issues and the Commission should reject Tracfone’s Motion on the ground that  
19 it is untimely.

20           Assuming *arguendo* that CUB should not have requested intervention in this proceeding  
21 under OAR 860-012-0001(3) because that section allows CUB to intervene in a Commission  
22 proceeding as of right as permitted in ORS 774.080, the appropriate remedy is not to remove  
23 CUB from the case. Instead, the Commission should authorize CUB’s intervention under OAR  
24 860-012-0001(1).

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1           The Commission is statutorily authorized to allow persons (which includes organizations)  
2 to participate in its proceedings.<sup>1</sup> The Notice of Intervention that CUB filed in April 2010  
3 included all the information required of a petition to intervene under ORS 860-012-0001(1), even  
4 though a Notice of Intervention filed under OAR 860-012-0001(3) need only include CUB's  
5 address and that of its counsel. The Notice of Intervention is sufficient to support intervention  
6 under OAR 860-012-0001(1).

7           Notably, the Commission asks potential intervenors to identify whether they have "[a]ny  
8 special knowledge or expertise \* \* \* that would assist the Commission in resolving the issues in  
9 the proceeding."<sup>2</sup> As CUB states in its Notice of Intervention, it has participated in Commission  
10 proceedings since its inception in 1985 and this Commission is undoubtedly aware of CUB's  
11 expertise in utility regulatory matters. Even assuming CUB's participation is not necessary to

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25 <sup>1</sup> ORS 756.525.

26 <sup>2</sup> OAR 860-012-0001(1)(f).

1 protect the interests of utility ratepayers, allowing CUB's intervention under OAR 860-012-  
2 0001(1) is appropriate because it may assist the Commission in resolving the issues presented in  
3 the case. Furthermore, CUB's intervention will not prejudice Tracfone because CUB has been  
4 participating in this docket since April 2010.<sup>3</sup>

5 For these reasons, staff asks that TracFone's motion be denied.

6 DATED this 10<sup>th</sup> day of August 2010.  
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8 Respectfully submitted,

9 JOHN R. KROGER  
10 Attorney General

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12 Michael T. Weirich, #82425  
13 Assistant Attorney General  
14 Of Attorneys for the Public Utility Commission  
15 of Oregon  
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23 <sup>3</sup> See ORS 756.535 ("At any time before the final taking of evidence in a proceeding, any person  
24 may apply to the commission for permission to appear and participate in the proceeding. The  
25 commission shall determine the interest of the applicant in the proceeding and shall grant the  
26 application, subject to the appropriate conditions, if the commission determines that such  
appearance and participation will not unreasonably broaden the issues or burden the record, and  
otherwise may deny the application.").

1 **CERTIFICATE OF SERVICE**

2 I certify that on August 10, 2010, I served the foregoing Response upon the parties in this  
3 proceeding by electronic mail and by sending a true, exact and full copy by regular mail, postage  
4 prepaid, or by hand-delivery/shuttle, to the parties accepting paper service.

5 **W**

6 **CITIZENS' UTILITY BOARD OF OREGON**

7 GORDON FEIGHNER (C)  
8 ENERGY ANALYST  
9 610 SW BROADWAY, SUITE 308  
10 PORTLAND OR 97205  
11 gordon@oregoncub.org

12 ROBERT JENKS (C)  
13 EXECUTIVE DIRECTOR  
14 610 SW BROADWAY STE 308  
15 PORTLAND OR 97205  
16 bob@oregoncub.org

17 G. CATRIONA MCCrackEN (C)  
18 LEGAL COUNSEL/STAFF ATTY  
19 610 SW BROADWAY - STE 308  
20 PORTLAND OR 97205  
21 catriona@oregoncub.org

22 RAYMOND MYERS (C)  
23 ATTORNEY  
24 610 SW BROADWAY - STE 308  
25 PORTLAND OR 97205  
26 ray@oregoncub.org

KEVIN ELLIOTT PARKS (C)  
STAFF ATTORNEY  
610 SW BROADWAY STE 308  
PORTLAND OR 97205  
kevin@oregoncub.org

**W**

**GREENBERG TRAUIG, LLP**  
MITCHELL F BRECHER  
2101 L STREET NW, SUITE 1000  
WASHINGTON DC 20037  
brecher@gtlaw.com

DEBRA MCGUIRE MERCER  
2101 L STREET NW, SUITE 1000  
WASHINGTON DC 20037  
mercerdm@gtlaw.com

**LAW OFFICE OF RICHARD A FINNIGAN**

RICHARD A FINNIGAN (C)  
ATTORNEY AT LAW  
2112 BLACK LAKE BLVD SW  
OLYMPIA WA 98512  
rickfinn@localaccess.com

**OREGON DEPARTMENT OF JUSTICE**

STEVEN A WOLF  
ASSISTANT ATTORNEY GENERAL  
1162 COURT STREET NE  
SALEM OR 97301-4096  
steven.wolf@doj.state.or.us

**OREGON TELECOMMUNICATIONS ASSN**

BRANT WOLF  
EXECUTIVE VICE PRESIDENT  
777 13TH ST SE - STE 120  
SALEM OR 97301-4038  
bwolf@ota-telecom.org

**W**

**PERKINS COIE LLP**

LAWRENCE REICHMAN  
ATTORNEY FOR QWEST  
1120 NW COUCH ST - 10 FL  
PORTLAND OR 97209-4128  
lreichman@perkinscoie.com

**PUBLIC UTILITY COMMISSION OF OREGON**

JON CRAY  
RSPF PROGRAM MANAGER  
550 CAPITOL ST NE, SUITE 215  
SALEM OR 97301  
jon.cray@state.or.us

KAY MARINOS (C)  
PO BOX 2148  
SALEM OR 97308-2148  
kay.marininos@state.or.us



Neoma Lane  
Legal Secretary  
Department of Justice  
Regulated Utility & Business Section