

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1437**

In the Matter of	)	Citizens' Utility Board of Oregon's
	)	Motion for Leave to Reply to TracFone
TRACFONE WIRELESS, INC.	)	Wireless, Inc.'s Response to Citizens'
Application for Designation as an Eligible	)	Utility Board of Oregon's Motion for
Telecommunications Carrier	)	Scheduling Conference to Consider
	)	Further Amendment of Schedule
	)	<b>Expedited Review Requested</b>

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The Citizens' Utility Board of Oregon ("CUB") hereby seeks leave to file the enclosed Reply to TracFone' Wireless Inc.'s Response to Citizens' Utility Board of Oregon's Motion for Scheduling Conference to Consider Further Amendment of Schedule **Expedited Review Requested**.

**CUB's Proposed Reply**

CUB stands by its original scheduling request, and disagrees with TracFone's objections. CUB writes only to provide clarification of a statement made in TracFone's filing in opposition to CUB's request for a scheduling conference and to request that any scheduling conference include a discussion of the breadth of response allowed in Reply testimony for whenever that Reply is rescheduled.

The statement that CUB wishes to add clarification to is:

Tracfone offered to provide CUB and the other parties any additional information they may reasonably require about the terms and conditions of these new offerings by scheduling a telephone conference in which they may ask such questions of TracFone. In such a conference, CUB can obtain all the information it needs in a timely manner without formal discovery. *CUB rejected TracFone's offer.* (emphasis added)<sup>1</sup>

As can be seen from CUB's email responses attached to TracFone's motion CUB did not reject their offer but pointed out its limitations. In point of fact prior to the filing of the TracFone motion

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<sup>1</sup> TracFone Wireless, Inc.'s Response to Citizens' Utility Board of Oregon's Motion for Scheduling Conference to Consider Further Amendment of Schedule at 2 lines 11-15.

UM 1437      Citizens' Utility Board of Oregon's Motion for Leave to Reply to TracFone  
Wireless, Inc.'s Response to Citizens' Utility Board of Oregon's Motion for  
Scheduling Conference to Consider Further Amendment of Schedule **Expedited  
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yesterday TracFone and CUB had already scheduled a Discovery telephone conference to take place today, Wednesday, August 18, 2010 at 1:00 pm. Pacific time – see Attachment A.

Notwithstanding the telephone meeting that will take place today, there continues to be a need for additional time to review any additional documentation that TracFone is compelled to provide and to review any documentation obtained as a result of CUB’s most recent data requests related to TracFone’s Expanded filing of last Friday August 13, 2010. Additional time is also needed for the filing of supplemental testimony in regard to TracFone’s Expanded filing.

A scheduling conference to discuss additional time is especially necessary given TracFone’s position that the Reply Testimony currently scheduled for August 23, 2010 can only include responses to other parties previously filed testimony and cannot “respond further to TracFone’s Opening Testimony.” If TracFone is correct, then CUB cannot address TracFone’s Expanded filing of August 13, 2010 and since no party could previously address that issue, because the Expanded filing had had not yet been filed, there will be no testimony in the record on TracFone’s current actual offerings.<sup>2</sup> Therefore, CUB requests that it, and the other parties, not be limited to addressing the new filing at hearing without discovery of the issues it raises and testimony by all parties thereon. CUB believes that testimony is necessary to explore TracFone’s new offering, how such a menu of choices affects Lifeline customers, and the implication from TracFone’s Expanded filing that once approved TracFone could change the offering without regulatory approval – it appears that the announced offering applies to all states in which it is, and is seeking, to do business apparently not withstanding the passage of other plans in those states.

CUB also objects to TracFone’s request that CUB and the other parties be limited to addressing newly compelled discovery at hearing. CUB asserts that the ALJ’s ruling allowing “All parties [to] file reply testimony to Other parties” should be amended to include filing reply testimony to TracFone’s Opening Testimony and Reply testimony to TracFone and other parties Supplemental testimony if such is

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<sup>2</sup> TracFone Wireless, Inc.’s Response to Citizens’ Utility Board of Oregon’s Motion for Scheduling Conference to Consider Further Amendment of Schedule at 2 lines 16-22.

permitted to cover the discovery and new filing issues discussed above.<sup>3</sup>

Based upon the above, CUB respectfully reiterates its request for a scheduling conference to amend the current schedule to allow all parties, including TracFone, to file supplemental testimony on its Expanded offering and to allow all parties to review and write supplemental testimony on any discovery responses that TracFone is compelled to make in regarding to pending data requests not answered prior to the time for filing Opening Testimony.

DATED this 18<sup>th</sup> day of August, 2010.

Respectfully submitted,



G. Catriona McCracken, Attorney #933587  
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<sup>3</sup> Prehearing Conference Memorandum, ALJ Grant, April 22, 2010 at 1.

## Catriona McCracken

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**From:** Catriona McCracken  
**Sent:** Tuesday, August 17, 2010 12:05 PM  
**To:** 'BRECHERM@gtlaw.com'; LReichman@perkinscoie.com  
**Subject:** RE: UM 1437: Discovery

You are correct I was thinking PDT. 1:00 PDT it is then.

Catriona

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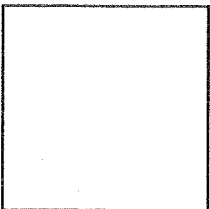
**From:** BRECHERM@gtlaw.com [<mailto:BRECHERM@gtlaw.com>]  
**Sent:** Tuesday, August 17, 2010 11:54 AM  
**To:** Catriona McCracken; LReichman@perkinscoie.com  
**Subject:** RE: UM 1437: Discovery

Catriona

I am assuming that your time availability tomorrow in your e-mail is PDT, which would be 2 pm and 4 pm EDT. If that is so, then I can be available, with a preference for 4 pm EDT/1 pm PDT.

Rick

Mitchell Brecher  
Shareholder  
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**From:** Catriona McCracken [mailto:Catriona@oregoncub.org]  
**Sent:** Tuesday, August 17, 2010 2:46 PM  
**To:** Reichman, Lawrence (Perkins Coie)  
**Cc:** Brecher, Mitchell (Shld-DC-TelCom)  
**Subject:** RE: UM 1437: Discovery

Good morning Larry and Rick:

I am happy to speak with you but this week my schedule is extremely tight. I am available tomorrow, Wednesday, August 18, 2010 at 11 a.m. or at 1:00 p.m. Thursday and Friday I am participating in a federal mediation session.

Catriona

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**From:** Reichman, Lawrence (Perkins Coie) [mailto:LReichman@perkinscoie.com]  
**Sent:** Tuesday, August 17, 2010 11:32 AM  
**To:** Catriona McCracken  
**Cc:** BRECHERM@gtlaw.com  
**Subject:** UM 1437: Discovery

Catriona,

Rick Brecher and I would like to find some time this week to discuss the discovery requests that are the subject of CUB's motion to compel to see if we can resolve some or all of CUB's concerns. In addition, we would like to discuss our concerns over CUB's responses to TracFone's data requests to see if we can avoid having to file a motion to compel ourselves. Can you please suggest some times that would work for you for a telephone conference?

Thanks,  
Larry

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## UM 1437 – CERTIFICATE OF SERVICE

I hereby certify that, on this 18<sup>th</sup> day of Aug., 2010, I served the foregoing CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR LEAVE TO REPLY TO TRACFONE WIRELESS, INC.'S RESPONSE TO CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR SCHEDULING CONFERENCE TO CONSIDER FURTHER AMENDMENT OF SCHEDULE **EXPEDITED REVIEW REQUESTED** in docket UM 1437 upon each party listed in the UM 1437 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending an original and 1 copy by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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UM 1437 - CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR LEAVE TO REPLY TO TRACFONE WIRELESS, INC.'S RESPONSE TO CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR SCHEDULING CONFERENCE TO CONSIDER FURTHER AMENDMENT OF SCHEDULE **EXPEDITED REVIEW REQUESTED**



**OREGON DEPARTMENT OF  
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Respectfully submitted,



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UM 1437 - CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR LEAVE TO  
REPLY TO TRACFONE WIRELESS, INC.'S RESPONSE TO CITIZENS' UTILITY  
BOARD OF OREGON'S MOTION FOR SCHEDULING CONFERENCE TO  
CONSIDER FURTHER AMENDMENT OF SCHEDULE **EXPEDITED REVIEW**  
**REQUESTED**