

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 30, 2014

REGULAR _____ CONSENT X EFFECTIVE DATE October 1, 2014

DATE: September 24, 2014

TO: Public Utility Commission

FROM: Jon Cray 

THROUGH: Michael Dougherty  and David Poston 

SUBJECT: TRACFONE WIRELESS INC. (Docket No. UM 1437) Petition for Waiver of OAR 860-033-0035(3).

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) grant TracFone Wireless Inc.'s (TracFone's) petition for waiver of OAR 860-033-0035(3) with the modification that the waiver expire on March 31, 2015. Staff requests additional time to consider whether good cause exists for a waiver of the rule without a time limit.

DISCUSSION:

On March 25, 2014, TracFone filed a petition requesting that the Commission waive the requirements of OAR 860-033-0035(3), which states:

An Eligible Telecommunications Provider that offers OTAP or Lifeline support at no charge to the low-income customer must require the customer to call the Eligible Telecommunications Provider to activate the OTAP or Lifeline supported service. The Eligible Telecommunications Provider must require the low-income customer to provide the last four digits of his or her social security number or Tribal identification number before activating the OTAP or Lifeline service.

The Commission may waive any of the Division 33 administrative rules upon a showing of good cause. See OAR 860-033-0001(2). A waiver may be initiated upon the filing of a written request or on the Commission's own motion.

Staff proposed the amendment of OAR 860-033-0035(3) in September 2013, in Docket No. AR 574. The Commission adopted the proposed rule amendment in Order

No. 13-475 entered December 19, 2014; it became effective December 20, 2013. In adopting the new rule, the Commission concurred with Staff's supporting argument that "requiring the customer to activate the Lifeline or OTAP supported service is an important tool to prevent waste, fraud, and abuse because it helps to ensure that the eligible customer is the person that receives the handset."

In its petition, TracFone puts forth arguments as to why application of OAR 860-033-0035(3) to TracFone is not necessary to prevent waste, fraud and abuse of Lifeline support funds. To comply with the rule, TracFone will need to modify its activation process used in other states to meet Oregon's requirements.

On April 15, 2014, the Commission granted TracFone's request for a waiver of OAR 860-033-0035(3) until September 30, 2014, so that Staff may have time to gather information from TracFone and other providers¹ to formulate a well-founded recommendation to the Commission on whether good cause exists for waiver of this portion of subsection (3). See Order No. 14-123.

Staff needs additional time to gather information and confer with TracFone in order to develop its recommendation. With additional time, Staff intends to further explore the costs and benefits of compliance with the rule and consider any alternatives that would achieve the same objective. TracFone has notified Staff it has no objections to Staff's recommendation to extend the waiver. Therefore, Staff proposes that the Commission grant a waiver to TracFone until March 31, 2015.

Good cause exists to extend the waiver of this rule subsection over a limited time period to allow further time for Staff to develop its recommendation.

PROPOSED COMMISSION MOTION:

TracFone's request for waiver of OAR 860-033-0035(3) be granted until March 31, 2015.

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¹ Virgin Mobile USA, L.P. has also filed a Petition for Waiver of the rule in Docket UM 1522.