

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1437

In the Matter of)
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)
TRACFONE WIRELESS INC.,)
)
Application for Designation as an Eligible)
Telecommunications Carrier)
)
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RESPONSE TO TRACFONE’S SECOND AMENDED APPLICATION:

TESTIMONY

OF THE

CITIZENS’ UTILITY BOARD OF OREGON

March 23, 2011



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TRACFONE WIRELESS INC.,)	RESPONSE TO TRACFONE'S
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Application for Designation as an Eligible)	APPLICATION: TESTIMONY OF
Telecommunications Carrier)	THE CITIZENS' UTILITY BOARD
)	OF OREGON
)	
)	

1 My name is Bob Jenks, and my qualifications are listed in CUB Exhibit 101.

2 **I. INTRODUCTION**

3 As a service that is completely subsidized by state and federal Universal Service
4 Funds, the Lifeline program should seek to make the full range of services available to all
5 customers, so as to allow them to make choices that are fully informed.

6 TracFone Wireless, Inc. (hereafter, "TracFone" or "the Company") submitted an
7 Application to the Oregon Public Utility Commission ("Commission") seeking
8 certification to provide Lifeline services as an Eligible Telecommunications Carrier
9 (ETC) or Eligible Telecommunications Provider (ETP) under the brand of SafeLink
10 Wireless. CUB submitted testimony in response on August 3, 2010, suggesting that
11 TracFone's original Application should be denied. TracFone subsequently requested a

1 temporary suspension of the docket schedule and then later, on January 7, 2011, filed a
2 Supplemental Application.

3 Upon review of Tracfone's Supplemental Application, CUB is now of the opinion
4 that, subject to appropriate conditions, TracFone's Application should be approved.
5 Among the many conditions that CUB wishes to see imposed are conditions pertaining to
6 usage reporting and application for receipt of federal universal service funds; the quality
7 of customer service provided by TracFone; and the need for Commission approval for
8 changes to TracFone Lifeline Service plans.

9 **II. The Changing ETC Landscape of Multiple Mobile Providers**

10 **A. How to Treat Competing ETC Applications Fairly.**

11 TracFone filed its original Application to become an ETC on August 7, 2009.
12 Since then there have been at least three other Applications filed by other mobile carriers
13 also seeking to provide service as an ETC. Among the new filers were I-Wireless LLC,
14 which filed its Application on November 19, 2010 (UM 1509); T-Mobile USA, Inc.,
15 which filed its Application on December 8, 2010 (UM 1511); and Virgin Mobile USA,
16 LP, which filed its Application on February 1, 2011 (UM 1522). Thus, the landscape of
17 Lifeline telephone service, and of the ETCs that provide it, is changing significantly in
18 Oregon and nationwide.

19 While CUB wishes to respect TracFone's status as the first entity to request
20 mobile ETC status in Oregon, CUB is also conscious of the fact that it is important to
21 ensure a level playing field for all new mobile ETC competitors in the marketplace. One
22 potential solution to this issue is for the Commission to expeditiously process all of the
23 pending Applications, but give each the same start date for service provision.

1 **B. The Impact of Increased Lifeline Availability on Universal Service Funds.**

2 The increased availability of Lifeline service, while potentially great for low-
3 income customers, may have a severe impact on the continued availability of the entire
4 Lifeline program due to the new and massive drain on Universal Service Funds. Indeed,
5 this development may warrant a separate investigation by the Commission to develop a
6 policy for mobile ETCs to manage their overall impact on the Lifeline program and the
7 Universal Service Fund.

8 **C. CUB's Suggestions to Lessen the Impact of Increased Lifeline Availability on**
9 **the Lifeline Program and Universal Service Funds.**

10 CUB has several ideas for ways to lessen the impact of increased services upon
11 the Lifeline Program and Universal Service Funds while at the same time ensuring that
12 funds are used fairly and equitably.

13 First, the Commission should require each ETC applicant to provide a detailed
14 map of the territory in which its service is reliable. This information can be used to
15 delineate a designated service territory for each company. The maps can also be used to
16 aid customers in choosing between multiple service providers, as differing levels of
17 service quality and/or ranges can impact the decisions of customers who may need to use
18 a phone over a wide area.

19 Second, CUB recommends that the Commission require the establishment of a
20 centralized database of Lifeline customers. This database should aggregate customer
21 information from all ETCs to ensure that existing household eligibility rules can be
22 enforced. CUB suggests this because there is the potential for abuse of the system from
23 customers who apply for service with multiple ETCs to serve the same household.

1 TracFone's Confidential Exhibit 39 indicates that TracFone denied over [BEGIN
2 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] applications in the first quarter of
3 2010 on the basis that there was already a Lifeline account for the household.¹ It stands to
4 reason that this problem will be more pervasive if there are multiple ETCs that do not
5 have records of each others' customer bases. Oregon should get out ahead of the issue
6 and create a centralized database.

7 CUB suggests that the database could be managed by Staff or by an independent
8 third party, and should be funded with contributions made by all eligible ETCs in
9 Oregon. This database could go a long way towards conserving scarce dollars in the
10 Lifeline Program and Universal Service Fund by ensuring that only eligible customers are
11 receiving the benefits of Lifeline service.

12 **III. TracFone's Supplemental Application and CUB's Proposed** 13 **Conditions**

14 While TracFone's Supplemental Application filing is greatly superior to its original
15 Application filing, CUB still has concerns about the Company's planned utilization of the
16 Lifeline Program and Universal Service Funds. These concerns are addressed below.

17 **A. Date of Shipment - Application for Lifeline Program/Universal Service Funds.**

18 CUB remains concerned about the equity of TracFone's policies regarding
19 activation and shipping. TracFone currently activates a phone prior to shipping and
20 provides an entire month's worth of usage on the phone at that time, regardless of the
21 time of the month that the phone is shipped. This "month" of service is then included in
22 TracFone's aggregate customer roll that is sent to the Universal Service Fund in

¹ CUB Confidential Exhibit 102, page 9.

1 application for Lifeline Program funding. While this system is reasonably fair if a phone
2 is shipped during the first half of a month, it is not appropriate if a phone is shipped
3 during the second half of a month – the customer derives little or no benefit from a phone
4 shipped on the 25th or even the 20th of any given month. Thus, circumstances will exist
5 where TracFone will be collecting funds for “services” that do not benefit customers.

6 For example, if a phone is activated and shipped on March 29th, it is not likely
7 that the customer will receive it until the first week of April, at which point the customer
8 will need to retrieve his or her minutes for April from TracFone. TracFone, however, will
9 have already collected funds for this customer for March from the Lifeline
10 Program/Universal Service Fund, even though the customer was not in possession of the
11 phone during the entire month of March.

12 CUB’s solution to avoiding this issue is for the PUC to disallow the application
13 for reimbursement from the Lifeline Program/Universal Service Fund for phones that are
14 activated and shipped on or after the 20th of the month.

15 **B. The Need for Quarterly Operations Reporting.**

16 TracFone has been providing detailed reports regarding its SafeLink operations in
17 Wisconsin, Ohio, and elsewhere to comply with Commission orders in those states.
18 These reports include detailed information on the number of new and existing customers
19 using the service, the average monthly amount of usage per customer, the percentage of
20 customers who exhaust all of their minutes each month, and other information that is
21 useful for the Commissions to monitor the success of TracFone’s ETC operations.
22 Information pertaining to the Company’s customer rolls will give Staff and CUB a better
23 understanding of the impact of TracFone’s ETC operations on the Universal Service

1 Fund. Information regarding customer usage patterns should provide insight into the
2 usefulness of the service for customers, as well indicate specific customer service issues.

3 CUB respectfully requests that the Commission require TracFone to submit to the
4 Commission, and the Citizens' Utility Board of Oregon, a report each quarter that follows
5 the same template as the reports required by the Ohio Commission (see CUB
6 Confidential Exhibit 102). This report should be submitted each quarter, beginning with
7 the first month or portion of a month in which TracFone begins offering SafeLink
8 wireless service in Oregon, and should submitted to the Commission, and the Citizens'
9 Utility Board of Oregon, within 30 days of the conclusion of each quarter.

10 **C. The Need for Service Quality Reporting and a Penalty System for Poor**

11 **Customer Service.**

12 CUB noted significant issues with TracFone's customer service in the CUB
13 Response testimony filed in response to TracFone's original Application. TracFone's
14 Confidential response to CUB Data Request 68² details the number of disconnected calls
15 to the Company's customer service center for the months of August-November 2010. For
16 each of these months over [BEGIN CONFIDENTIAL] ■■■% [END CONFIDENTIAL]
17 of calls to the customer service center were disconnected due to a high volume of calls.

18 The aggregate average of disconnected calls over these four months was over [BEGIN
19 CONFIDENTIAL] ■■■%. [END CONFIDENTIAL]

20 CUB believes that this level of customer service is unacceptable, and that
21 TracFone must be required to improve its customer service. To this end, CUB proposes
22 that the Commission require TracFone to reduce the level of disconnected calls to below

² CUB Confidential Exhibit 103.

1 5%. If the six-month average of disconnected calls exceeds 5%, the Commission should
2 reserve the right to impose a penalty on TracFone by requiring the Company to forfeit a
3 percentage of the USF funds received for provision of service to Oregon customers equal
4 to the percentage by which the 5% threshold is exceeded. For example, if the level of
5 disconnected calls is 7.5%, TracFone should be required to forfeit 2.5% of the funds it
6 receives from the USF each month until the level of disconnected calls is reduced to
7 below 5%.

8 Upon receipt of a notice of penalty, TracFone should have the ability to show
9 cause as to why these service penalties should not be automatically imposed. The
10 Commission should also have discretion to waive or reduce these penalties if TracFone
11 can show why the penalties should not be imposed, or can demonstrate that it has already
12 implemented a plan, satisfactory to the Commission, that will improve service quality and
13 at least meet the minimum service quality provisions set forth by the Commission.

14 **D. The Need for Commission Approval of Changes to Lifeline Service Plans.**

15 TracFone's response to CUB Data Request 51³ indicates that the Company does
16 not believe it is required to seek Commission approval to change the terms of its
17 SafeLink service plans, so long as the number of minutes provided to customers is not
18 reduced. While CUB does not necessarily disagree with the notion that an increase in
19 benefits to customers would not require Commission approval, there are potential
20 situations in which data and voice offerings could change in a way that could result in a
21 net loss to some customers. If, for example, the number of text messages available on a
22 plan is increased at the expense of minutes, or vice versa, there may be a negative impact

³ CUB Exhibit 104.

1 on some customers with particular usage patterns. CUB respectfully requests that the
2 Commission require TracFone to submit an application, for review by the Commission,
3 detailing any requested changes in TracFone’s Lifeline program, aka SafeLink Wireless,
4 service plans so that the Commission may determine whether the requested changes are
5 in the public interest. In other words, TracFone should be required to notify the
6 Commission 30 days in advance of any proposed changes to its Oregon plans, through
7 the filing of an application requesting plan changes, and the Commission should then
8 have the power to suspend any proposed SafeLink plan offered in Oregon that the
9 Commission believes requires additional investigation.

10 **IV. Conclusion**

11 CUB appreciates the progress TracFone has made over the course of this docket, both in
12 terms of the Company’s service plan offerings and its willingness to work with the
13 Parties to provide necessary information for the Parties to review its Supplemental
14 Application. That said, CUB continues to believe that it is necessary for the Commission
15 to impose the conditions described above in order for TracFone’s Supplemental
16 Application to meet the “public interest” standard.⁴ CUB has listed only the conditions
17 most important to CUB. CUB notes, however, that other parties, such as Staff and OEM
18 will likely also be suggesting additional conditions. It is, therefore, CUB’s intent to
19 review those conditions and the testimony filed in support of those conditions and then in
20 our Opening Brief respectfully request that the Commission, impose upon TracFone a
21 final set of recommended conditions necessary in order for TracFone’s Supplemental

⁴ ORS 759.020(4) et seq. See OPUC Commission Order No. 06-292.

- 1 Application to meet the “public interest” standard and for TracFone’s Application to
- 2 serve as an ETC in Oregon to be approved.

WITNESS QUALIFICATION STATEMENT

NAME: Bob Jenks

EMPLOYER: Citizens' Utility Board of Oregon

TITLE: Executive Director

ADDRESS: 610 SW Broadway, Suite 308
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EDUCATION: Bachelor of Science, Economics
Willamette University, Salem, OR

EXPERIENCE: Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, and UM 1209. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

MEMBERSHIP: National Association of State Utility Consumer Advocates
Board of Directors, Environment Oregon Research and Policy Center
Telecommunications Policy Committee, Consumer Federation of America
Electricity Policy Committee, Consumer Federation of America

CUB Exhibit 102 is confidential and subject to
Protective Order OPUC 10-189.

CUB Exhibit 103 is confidential and subject to
Protective Order OPUC 10-189.

51. If TracFone's Oregon Application is approved, does the Company believe it would be able to change the number of minutes offered in SafeLink plans without regulatory approval?

Response

Yes. TracFone believes that once it is approved as an ETC in a state, it may change the terms and conditions regarding the number of free minutes offered without obtaining regulatory approval, so long as the benefit being provided to Lifeline customers is not reduced.

UM 1437 – CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of March., 2011, I served the foregoing RESPONSE TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON 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 - RESPONSE TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON