

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1437**

In the Matter of

TRACFONE WIRELESS, INC.

Application for Designation as an Eligible  
Telecommunications Carrier

**JOINT TESTIMONY OF TRACFONE, STAFF, CUB, AND OEM  
IN SUPPORT OF STIPULATION**



1 My name is Mark Tennyson. I am the Director of the Technology and Response Section  
2 of Oregon Emergency Management (“OEM”). My witness qualifications statement is  
3 included as Exhibit Joint/104 to this testimony. OEM intervened in this matter for the  
4 limited purpose of raising issues that are directly related to filings in this matter that  
5 affect or impact 9-1-1 emergency reporting systems and PSAPs in Oregon.  
6

7 Consequently, OEM’s participation in this joint testimony is similarly limited. OEM  
8 expresses no opinion – and is not qualified to testify – with regard to matters not directly  
9 pertinent to the 9-1-1 system issues addressed in this testimony.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of our joint testimony is to describe and support the stipulation  
12 (“Stipulation”) among TracFone, Staff of the Public Utility Commission of Oregon  
13 (“Staff”), CUB, and OEM, filed on June 10, 2011, and to explain why our testimony  
14 today is so different from the original testimony filed in this docket. Docket UM 1437  
15 was opened to consider TracFone’s applications for designation as an ETC and Eligible  
16 Telecommunications Provider under Oregon law (“ETP”) (collectively referred to as the  
17 “Applications” and further defined herein).  
18

19 **Q. Does the Stipulation resolve all of the issues in this proceeding?**

20 A. Yes. TracFone, Staff, CUB, and OEM (the “Parties”) agree that TracFone’s Applications  
21 for ETC and ETP status, as modified by, and subject to, the terms and conditions set forth  
22 in the Stipulation will satisfy all applicable legal requirements and will be in the public  
23 interest, and that the Commission should issue an order approving the Applications  
24 subject to the terms and conditions contained in the Stipulation.  
25  
26

1 **Q. Are all parties to the proceeding signatories to the Stipulation?**

2 A. Yes. While the Commission granted Oregon Telecommunications Association (“OTA”)  
3 permission to intervene as a party in this docket, OTA subsequently withdrew as a party  
4 to this proceeding. All remaining parties are Parties to the Stipulation.  
5

6 **II. GENERAL DESCRIPTION OF THE APPLICATION**

7 **Q. Who is TracFone?**

8 A. TracFone is a provider of pre-paid wireless telecommunications service in the United  
9 States with more than 18 million customers nationwide. TracFone’s non-Lifeline  
10 customers pre-pay for the amount of minutes of airtime they desire and can add minutes  
11 at any time. If their minutes run out, they cannot make or receive calls until they  
12 purchase additional minutes (but customers can always call 9-1-1). Some plans are  
13 offered on a 30-day or monthly basis, others are not. TracFone also offers two unlimited  
14 usage plans on a 30-day or monthly basis. Pre-paid wireless services require customers  
15 to pay in advance of usage and do not allow for payment after services are rendered.  
16 TracFone also offers separate service plans only to eligible Lifeline customers. These  
17 plans do not require any out-of-pocket payment by the customer. The services in these  
18 plans are funded by the Federal Universal Service Fund (“FUSF”). An additional \$3.50  
19 equivalent of free service is also provided at TracFone’s expense.  
20

21 **Q. What does TracFone propose to offer to Lifeline customers in Oregon?**

22 A. TracFone was the first company in the United States to offer a wireless  
23 telecommunications service to qualified Lifeline customers without charges for out-of-  
24 pocket payments from the customer. TracFone proposes to offer the same Lifeline  
25  
26

1 services to eligible customers in Oregon that it currently provides in other states.  
2 TracFone will provide, at its own expense, a fully E-9-1-1 compliant handset to  
3 customers free of charge. Initially, TracFone will provide Lifeline-supported service to  
4 customers without the need for them to establish credit or for TracFone to issue a bill  
5 each month, provided that each customer is verified as eligible for the Lifeline service by  
6 the Commission in accordance with Oregon requirements. Thus, TracFone will bring the  
7 advantages of subsidized mobile telecommunications service to segments of the  
8 population that to date may have had difficulty subscribing to wireless service, which  
9 typically requires a term commitment with a substantial early termination charge, up-  
10 front costs of purchasing a handset, and establishment of credit.  
11

12 **Q. What service plans will TracFone offer to Lifeline customers in Oregon?**

13 A. Upon certification, TracFone will offer customers a choice of three different SafeLink  
14 Wireless<sup>®</sup> Lifeline customer service plans:  
15

- 16 1) 250 free minutes each month, which do not carry over to the  
17 next month if unused, with texting available at a rate of one  
18 text per minute of airtime;
- 19 2) 125 free minutes each month, which carry over to  
20 the following month if unused, with texting available at  
21 a rate of one text per minute of airtime;
- 22 3) 68 free minutes each month, which carry over to the following  
23 month if unused, with texting available at a rate of 3 texts per  
24 each minute of airtime, plus International Long Distance calling  
25  
26

1 to over 60 destinations.

2 All minutes of airtime may be used to send or receive local calls, intrastate long distance  
3 calls, and interstate long distance calls (under the third option, the minutes may also be  
4 used to originate international calls). The minutes may also be used for roaming with no  
5 additional roaming charges, so Lifeline customers will be able to use the service  
6 wherever they travel within the United States (assuming they are in areas with wireless  
7 coverage) either within or outside the State of Oregon. The service (whichever option is  
8 selected) will include important vertical features such as call waiting, caller ID, and voice  
9 mail. Also TracFone will provide, at its own expense, all SafeLink Wireless® Lifeline  
10 customers with an E9-1-1-compliant wireless handset. Handsets will be delivered to  
11 customers upon enrollment in the program with the first month's allotment of minutes  
12 preloaded in the phone.  
13  
14

15 **Q. Will TracFone offer other calling plans to Lifeline customers that it regularly offers**  
16 **to non-Lifeline customers?**

17 A. Yes. TracFone has committed to offer Lifeline customers the ability to apply Lifeline  
18 discounts to monthly plans marketed as NET 10, and has also committed to engage in  
19 good faith discussions with Walmart to make available "Straight Talk" service plans to  
20 Lifeline customers. These commitments and service offerings are discussed in more  
21 detail below.  
22

23 **Q. How is TracFone different from other Oregon ETCs?**

24 A. TracFone is the first applicant for ETC certification in Oregon that is a reseller of  
25 wireless telecommunications services and does not own facilities used to provide  
26

1 telecommunications service. As discussed in more detail below, TracFone has received  
2 approval from the Federal Communications Commission (“FCC”) to be an ETC  
3 notwithstanding the fact that TracFone is not a facilities-based provider. TracFone has  
4 been designated as an ETC in 37 states. The differences between TracFone’s business  
5 model and those of facilities-based providers has led the FCC and other states to impose  
6 additional conditions on TracFone that they have not required of all other ETCs.  
7

8 **Q. What sorts of financial support will TracFone receive?**

9 A. TracFone will receive support only from the FUSF. TracFone will not request support  
10 from the Oregon Residential Service Protection Fund (“RSPF”).<sup>1</sup> Instead, TracFone will  
11 provide customers with an additional \$3.50 in support from its own funds and will  
12 receive Tier III support (\$1.75 per month) from the FUSF. For this reason, the Parties  
13 agree that the Commission should waive OAR 860-033-0035(1)(c), which provides that  
14 the monthly OTAP benefit includes the State of Oregon support of \$3.50, if required. In  
15 addition, TracFone will receive support from the FUSF only for serving low-income  
16 customers. It will not request or receive funds from the FUSF for the purpose of  
17 providing telecommunications service to high-cost areas.  
18

19 **III. GENERAL DESCRIPTION OF THE STIPULATION**

20 **Q. Please generally describe the Stipulation.**

21 A. In the Stipulation, the Parties agree that the Applications, modified by and subject to the  
22 terms and conditions set forth in the Stipulation, will satisfy the applicable legal  
23 requirements and that approval of the Applications subject to the terms and conditions set  
24

25 \_\_\_\_\_  
26 <sup>1</sup> TracFone has reserved the right to seek RSPF support; however, it will submit a revised ETP application to the  
Commission if it chooses to seek such support.

1           forth in the Stipulation is in the public interest. The Parties recommend that the  
2           Commission, designate TracFone as an ETC and ETP in Oregon subject to the terms and  
3           conditions set forth in the Stipulation.

4           **Q. Please describe the genesis of the Stipulation.**

5           A. TracFone's Applications and pre-filed testimony explained why TracFone thought it had  
6           met all the applicable legal requirements for designation as an ETC and ETP and that  
7           Tracfone thought approval of the Applications was in the public interest. However,  
8           during the course of this proceeding, the other Parties identified Oregon-specific  
9           requirements and issues that needed to be addressed before the Commission could  
10          approve TracFone's Applications. Testimony submitted by Staff, CUB and OEM fully  
11          explains the concerns of those Parties. The Parties explored these issues through  
12          extensive discovery and in a number of settlement discussions. The Stipulation, filed  
13          prior to this Joint Testimony, contains the proposed resolution of the concerns raised in  
14          Staff and Intervenor testimony and during settlement discussions and includes a number  
15          of specific terms and conditions that the intervening parties and Staff believe are  
16          necessary to a finding that approval of Tracfone's Applications is in the public interest.

17          **Q. Do TracFone's Applications present any new issues for the Commission?**

18          A. Yes. There are aspects of TracFone's Applications that are different from the ETC and  
19          ETP applications this Commission has previously considered. First, TracFone is a pure  
20          reseller of wireless service; it does not own any facilities that it uses to provide  
21          telecommunications service. TracFone's underlying carriers are major providers of  
22          wireless telecommunications service in Oregon: Verizon Wireless, AT&T Mobility, and  
23          wireless telecommunications service in Oregon: Verizon Wireless, AT&T Mobility, and  
24          wireless telecommunications service in Oregon: Verizon Wireless, AT&T Mobility, and  
25          wireless telecommunications service in Oregon: Verizon Wireless, AT&T Mobility, and  
26          wireless telecommunications service in Oregon: Verizon Wireless, AT&T Mobility, and



1 T-Mobile. Second, TracFone proposes to offer limited specific service offerings, under  
2 the brand name SafeLink Wireless<sup>®</sup> Lifeline that will be available only to Lifeline  
3 customers. In addition, customers eligible for Lifeline will be able to subscribe to these  
4 services without paying out of their own pockets. (As a result of negotiations, Tracfone  
5 will offer other subsidized services through its NET 10 product, and perhaps its Straight  
6 Talk product offered through Walmart.) The issues raised by these differences have been  
7 explored through extensive discovery, addressed in pre-filed testimony, discussed in  
8 settlement conferences, and are addressed in the Stipulation, as discussed more fully  
9 below.  
10

11 **Q. Please briefly explain the first issue.**

12 A. Section 214(e)(1)(A) of the federal Communications Act of 1934, as amended, requires  
13 ETCs to provide services supported by the FUSF using their own facilities or a  
14 combination of their own facilities and resale of other providers' services. In 2005, the  
15 FCC granted TracFone's petition and agreed to forbear from application or enforcement  
16 of that requirement as to Lifeline, provided certain conditions are met (the "Forbearance  
17 Order").<sup>2</sup> The Oregon Commission's ETC designation order, Order No. 06-292 (the  
18 "ETC Order"), and its rules for ETP designation require a designated carrier to own  
19 facilities. Commission recognition of the Forbearance Order relieves TracFone of the  
20 facilities requirement. TracFone agrees to abide by the conditions in the Forbearance  
21 Order.  
22  
23

24 **Q. Please briefly explain the second issue.**

25  
26 <sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Rcd 15095 (2005).

1 A. TracFone’s Applications propose that TracFone would offer three specific service plans  
2 to Lifeline-eligible customers in Oregon, all under the brand name “SafeLink  
3 Wireless®.” Each of these service plans would be provided at no cost to the customer;  
4 that is, both the wireless handset and a specified amount of airtime each month would be  
5 provided free of charge. This proposed set of limited service offerings raised issues  
6 regarding (1) the application of certain Commission rules and statutes to TracFone’s  
7 offerings and (2) the public interest, that the Commission has not considered before.  
8

9 **Q. If the Commission rejects any part of the Stipulation, are the Parties entitled to**  
10 **reconsider their participation in the Stipulation?**

11 A. Yes. Paragraph 40 of the Stipulation<sup>3</sup> provides that if the Commission rejects all or any  
12 material portions of the Stipulation or imposes additional material conditions in  
13 approving the Stipulation, any Party that is disadvantaged by such action shall have the  
14 right, upon written notice to the Commission and all Parties within 15 business days of  
15 the Commission’s order, to withdraw from the Stipulation, pursue its rights under  
16 OAR 860-001-0350, and/or seek reconsideration or appeal of the Commission’s order;  
17 provided, however, that any Party seeking to withdraw from the Stipulation must, prior to  
18 such withdrawal, engage in good faith negotiations with the other Parties.  
19

20  
21 **Q. When would TracFone begin offering its Lifeline services in Oregon if the**  
22 **Commission approves the Stipulation?**

23 A. There are a few steps required before TracFone may offer services as an ETC. First, of  
24 course, the Commission must issue an order approving the Applications and the  
25

26 <sup>3</sup> Hereinafter, the term “Paragraph” refers to a numbered paragraph of the Stipulation.

1 Stipulation and granting the limited waivers TracFone requests. Prior to that, TracFone  
2 must complete the applicable requirements included in the Stipulation. Pursuant to  
3 Paragraph 14, TracFone must provide the Commission statements from its underlying  
4 carriers indicating: (a) the ability of such carriers to remain operational in the event of  
5 emergencies; and (b) that such carriers will treat 9-1-1 calls from TracFone customers in  
6 the same manner as those carriers treat 9-1-1 calls from their own retail customers.

7 TracFone must also submit an accurate map identifying the ILEC wire centers that define  
8 its designated service area, consistent with initial designation requirement 3.1.1 in  
9 Appendix A of the ETC Order. Pursuant to Paragraph 16, TracFone must ask each of its  
10 underlying carriers to provide outage data to the Commission so that TracFone can  
11 comply with Appendix A, recertification requirement 5.2. and submit the carriers'  
12 responses to the Commission. Pursuant to Paragraph 31, TracFone must submit to the  
13 Commission written certification that all handsets offered to customers are E9-1-1-  
14 capable and are able to provide to PSAPs the information specified under the FCC's  
15 Phase I and Phase II E911 rules.

16 Upon provision of the above required remaining items to the Commission the Parties  
17 request that consistent with Paragraph 39, the Commission approve the Stipulation and  
18 issue a designation order as soon as possible. While there is no statutory time period  
19 applicable to a Commission decision in this proceeding, TracFone would like to begin to  
20 offer its Lifeline service in Oregon at the earliest possible time. Upon issuance of an  
21 order granting designation, TracFone agrees to give Staff an opportunity to review its  
22 advertising material, as well as give Staff 60 days notice prior to actually beginning to  
23  
24  
25  
26

1 offer its Lifeline service to eligible customers. Paragraph 26.

2 **IV. PROCEDURAL HISTORY**

3 **Q. When did TracFone file its original and amended applications in this proceeding?**

4 A. On August 7, 2009, TracFone filed its Application for designation as an ETC with the  
5 Commission. TracFone filed a First Amended Application on October 27, 2009.  
6 TracFone filed an Application for approval as an ETP under OAR Chapter 860, Division  
7 033 (the "RSPF Rules"), on April 9, 2010. On August 24, 2010, TracFone requested  
8 suspension of the schedule in the docket and the Commission granted that request. On  
9 November 8, 2010, TracFone requested reactivation of the docket. TracFone filed a  
10 Second Amended Application on January 7, 2011. TracFone's Second Amended  
11 Application for designation as an ETC and its Application for approval as an ETP are  
12 together referred to herein as the "Applications."  
13

14 **Q. Did the Parties engage in discovery?**

15 A. Yes, there was extensive discovery. Staff issued 16 sets of data requests to TracFone,  
16 comprising a total of 207 individual requests (not counting subparts separately). CUB  
17 issued 14 sets of data requests to TracFone, comprising a total of 81 individual requests  
18 (not counting subparts separately). TracFone responded to these data requests, and also  
19 provided supplemental responses as requested by Staff and CUB. In addition, TracFone  
20 issued one set of data requests each to Staff, CUB, and OEM, to which those parties  
21 responded.  
22

23 **Q. Did the Parties pre-file written testimony and exhibits?**

24 A. Yes. TracFone filed direct testimony in support of its original application on June 11,  
25  
26

1 2010, and the other Parties filed responsive testimony on August 3, 2010. TracFone filed  
2 supplemental testimony and exhibits on August 23, 2010, with respect to changes in its  
3 proposed service offerings. The Parties subsequently agreed that, in view of changes in  
4 its service offerings announced by TracFone on or about August 16, 2010, TracFone  
5 would file a Second Amended Application and that the Parties could respond with  
6 additional testimony. Thus, on January 7, 2011, TracFone filed its Second Amended  
7 Application and the direct testimony of Jose Fuentes and exhibits in support of the  
8 Second Amended Application. On March 23, 2011, Staff, CUB, and OEM filed  
9 responsive testimony and exhibits. TracFone filed reply testimony on April 12, 2011.  
10

11 **Q. What are the legal standards that apply to TracFone's Application?**

12 A. The federal requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(2) and  
13 rules of the FCC, 47 C.F.R. § 54.101(a) and 54.202(a). The Oregon requirements for  
14 ETC designation were established by the Commission in the ETC Order. One of those  
15 requirements is to offer Lifeline and OTAP services. In order to offer Lifeline and OTAP  
16 services in Oregon, an ETC must receive designation as an ETP. ETP requirements are  
17 found in the Commission rules.  
18

19 **Q. What do the FCC's rules require for certification as an ETC?**

20 A. The FCC's rules require that ETCs offer a number of specific services and functionalities.  
21 The rules also require that ETCs commit to meeting several specific obligations.  
22 TracFone addressed each of these requirements and its ability to meet them in its  
23 Application and pre-filed testimony. The FCC requirements are very similar to the  
24 Commission's requirements and are addressed in the context of the Commission's  
25  
26

1 requirements. The Parties refer the Commission to TracFone's discussion of these items  
2 in the Applications for specific information.

3 **Q. What additional requirements has the FCC imposed on TracFone?**

4 A. In the Forbearance Order and in subsequent orders, the FCC imposed additional  
5 requirements on TracFone, which TracFone addressed in its Applications and pre-filed  
6 testimony. TracFone agrees to meet these additional requirements as conditions of  
7 designation in Oregon.  
8

9 **Q. What are the Commission requirements for ETC designation in Oregon?**

10 A. The Commission established requirements for ETC designation in Oregon in the ETC  
11 Order. While generally mirroring the FCC requirements, there are differences. Since the  
12 release of that order, the Commission has required all carriers that wish to be designated  
13 in Oregon to meet those requirements.  
14

15 The ETC Order sets forth a number of requirements for both initial certification as an  
16 ETC and ongoing certification. TracFone addressed these requirements in its Application  
17 and pre-filed testimony. There was no dispute in this case about TracFone's ability to  
18 meet several of these requirements and these requirements are not discussed further in  
19 this testimony. However, Staff and CUB raised concerns about TracFone's inability to  
20 meet some of the other ETC requirements and those concerns are identified and discussed  
21 in detail in Staff and CUB's testimony and are addressed in the Stipulation in the manner  
22 described below.  
23

24 **Q. What are the Commission's requirements for ETP designation?**  
25  
26

1 A. The requirements for ETP designation are found in OAR 860-033-0001 through 860-  
2 033-0100. Staff initially expressed several concerns regarding TracFone's ability and  
3 willingness to meet the requirements. Those concerns are detailed in Staff testimony and  
4 are the subject of waiver requests included in this Stipulation.  
5

6 **V. THE STIPULATION**

7 **Q. Please describe the settlement discussions among the Parties.**

8 A. On May 26, 2010, the Parties held a workshop/settlement conference. The Parties held  
9 further settlement conferences, both in person and via teleconference, on July 13, 2010,  
10 March 29, 2011, April 19, 2011, April 20, 2011, May 25, 2011, and June 7, 2011. The  
11 settlement conferences have been open to all parties to this docket.

12 **Q. Please describe some of the major issues addressed in the settlement discussions and**  
13 **the Stipulation.**

14 A. Many significant issues were raised and discussed, most of which resulted in agreements  
15 reflected in the Stipulation. One major issue that was discussed was how to ensure that  
16 TracFone's certification as an ETC and ETP would be in the public interest. The  
17 following are some of the more important issues discussed during the proceeding:  
18

- 19
- Explicit definition of TracFone's designated service area;
  - The level of benefits TracFone would provide to Lifeline customers;
  - Access by TracFone customers to emergency services and support for the provision of such services;
  - The existence of an obligation of TracFone's Lifeline customers to pay the RSPF surcharge and an alternative payment by TracFone to contribute to the Commission's costs of verifying the initial and ongoing eligibility of Oregon residents to receive Lifeline services;
- 20  
21  
22  
23  
24  
25  
26

- 1           • The Lifeline customer application process;
- 2           • Proration of customer benefits and Lifeline support to TracFone for partial
- 3           months of service;
- 4           • Methods to minimize the potential for waste, fraud and abuse associated with
- 5           TracFone's Lifeline offering; and,
- 6           • Monitoring of changes in service offerings and advertising.

7           **Q. Please explain the issue relating to describing TracFone's designated service area.**

8           A. The ETC Order requires applicants for designation as an ETC to clearly identify their  
9           proposed designated service area through (1) a map showing the requested designated  
10           service area overlaid on the boundaries of ILEC wire centers and (2) a list of ILEC wire  
11           centers included in the designated service area, indicating whether each will be fully or  
12           partially included. With its Application, TracFone filed a "Waiver Request" requesting  
13           that the Commission waive these requirements because TracFone did not have  
14           information that related its proposed wireless service area to ILEC wire centers. Because  
15           TracFone resells the services of other wireless carriers, it does not maintain, nor does it  
16           have access to, detailed information regarding exactly where its customers can receive  
17           wireless service or coverage, particularly as it relates to the boundaries of ILEC wire  
18           centers.  
19

20           **Q. How did the Parties resolve this issue in the Stipulation?**

21           A. During the course of the proceeding, Staff directed TracFone to provide a map of ILEC  
22           wire centers that enabled TracFone to construct a map that overlays its service area on the  
23           boundaries of ILEC wire centers. TracFone was also able to develop a list of ILEC wire  
24           centers that are fully or partially included within its service area.  
25  
26



1 Consistent with the ETC Order's preference for exclusion of partially-served wire  
2 centers, and in light of the fact that as a reseller TracFone cannot offer service where its  
3 underlying carriers do not provide coverage, the Parties agreed to limit initial designation  
4 to only those wire centers with full coverage. TracFone may submit a subsequent request  
5 in the future to include other areas and will discuss with Staff how to implement an  
6 appropriate approach. In addition, the wire centers of a few rural ILECs where TracFone  
7 cannot provide coverage throughout the ILEC's entire study area were also excluded.  
8 Accordingly, the Parties agreed that the list of ILEC wire centers attached to the  
9 Stipulation as Exhibit A constitutes the designated service area for which TracFone  
10 requests certification at this time. A map indicating the location of these wire centers was  
11 not completed prior to finalization of the Stipulation. However, by the terms of the  
12 Stipulation, TracFone must provide such a map prior to receiving designation.  
13  
14

15 **Q. Are there any other issues relating to the designated service area?**

16 A. Yes. TracFone is not requesting designation to serve Tribal areas in Oregon as an ETC at  
17 this time. This is because the FCC's rules currently require an ETC to charge customers  
18 in Tribal lands a minimum of \$1.00 per month for Lifeline service. TracFone does not  
19 have a mechanism in place to bill and collect this minimum charge. In addition, residents  
20 of Tribal Lands are entitled to \$25 of subsidized service, and TracFone currently does not  
21 offer a plan that reflects the larger support amount and correspondingly more minutes  
22 than its standard Lifeline offerings. The Parties agreed to exclude wire centers containing  
23 Tribal lands from TracFone's designated service area at this time.  
24

25 **Q. Please explain the issue relating to the level of benefits TracFone would provide and**  
26

1           **how that was resolved.**

2           A.     To date, all ETCs designated in Oregon provide the Lifeline benefits as a discount to their  
3                   standard charges for the services provided. TracFone's proposed Lifeline service is not  
4                   based on that approach. TracFone has designed a service that is offered without any out-  
5                   of-pocket cost to only Lifeline-eligible customers.<sup>4</sup> A primary interest of Staff and CUB  
6                   was to ensure that the product or products offered reflect the value of the Lifeline support  
7                   that TracFone will receive from the FUSF, and the \$3.50 that TracFone will contribute.  
8                   TracFone's original application proposed only one SafeLink Wireless® service plan that  
9                   included 68 minutes of airtime per month, including calls to international destinations  
10                  (currently plan 3 as described above). CUB and Staff thought that TracFone should offer  
11                  a greater number of minutes. In response to comments like these in Oregon and  
12                  elsewhere, in August 2010, TracFone announced two new SafeLink Wireless® service  
13                  options that would be available nationwide in addition to the 68-minute plan. One of  
14                  those options includes 250 free minutes of airtime per month, which may also be used for  
15                  text messaging. CUB and Staff are satisfied that the new plans proposed by TracFone  
16                  provide adequate value for the level of Lifeline support customers are entitled to receive.

17  
18  
19           **Q.     Are there any other issues that relate to the level of benefits provided?**

20           A.     Yes. OAR 860-033-0010 requires an ETP to offer discounts on all service offerings that  
21                   include "basic telephone service." The Parties disagree about whether this rule applies to  
22                   TracFone's services, based on the definition of "basic telephone service." TracFone does  
23                   not believe the rule is applicable and also thinks that its offering of a choice of three,  
24

25  
26           

---

<sup>4</sup> This is different than the services to be offered under the brand name NET 10, or possibly Straight Talk through Walmart.

1 custom-designed, Lifeline-only plans, each of which includes a package of all features  
2 provided with TracFone's voice service, including call waiting, caller ID and voice mail,  
3 satisfies the purpose of the rule. Staff wanted TracFone to agree to also provide Lifeline  
4 discounts on all calling plans that it currently offers to non-Lifeline customers, as all  
5 other ETCs in Oregon are required to do.  
6

7 **Q. How did the Parties resolve this issue?**

8 A. As reflected in Paragraph 28 of the Stipulation, TracFone has agreed to allow Lifeline  
9 customers to apply Lifeline discounts on its monthly "NET 10" service plans by no later  
10 than March 31, 2012. TracFone also agreed to engage in good faith negotiations with  
11 Walmart, which sells TracFone service plans under the name "Straight Talk," to allow  
12 Lifeline customers to apply the Lifeline discount to those plans. Paragraph 29. Straight  
13 Talk is currently available to non-Lifeline customers at \$45 per month for unlimited  
14 voice, text and web access. TracFone will report to Staff quarterly with respect to the  
15 progress of such negotiations. See Paragraph 29. Accordingly, the Parties agreed to  
16 support TracFone's request that the Commission waive OAR 860-033-0010 to the extent  
17 that TracFone will be unable to provide discounts on all its services prior to designation.  
18

19 **Q. Are there any additional commitments regarding the benefits to TracFone's Lifeline**  
20 **customers?**

21 A. Yes. TracFone has committed that its Lifeline customers will be able to purchase  
22 additional airtime minutes at a rate no higher than \$0.10 per minute. The \$0.10 per  
23 minute rate will be available to Oregon Lifeline customers in connection with the  
24 purchase of any TracFone prepaid airtime card, whether available for purchase at retail  
25  
26

1 vendor locations or for online purchase through TracFone's website ([www.tracfone.com](http://www.tracfone.com)).  
2 This will include a minimum minute upgrade of 100 minutes of additional usage for  
3 \$9.99 (plus applicable taxes) for online purchases. *See* Paragraph 24. TracFone also  
4 agreed to display this information prominently on its SafeLink Wireless® website  
5 ([www.safelink.com](http://www.safelink.com)). *Id.*

6  
7 **Q. Please describe the issue relating to access by TracFone customers to emergency**  
8 **services.**

9 A. OEM and Staff wanted to ensure that TracFone's customers would have adequate access  
10 to emergency services by dialing 9-1-1. Providing such access to 9-1-1 is also required  
11 by the FCC's rules and the Forbearance Order. TracFone committed to the other Parties  
12 that its customers will have the same access to emergency services as do the customers of  
13 the underlying carriers. This is guaranteed in the stipulation by: (1) TracFone's  
14 commitment to provide E9-1-1 capable handsets to all of its customers (Paragraph 31)  
15 and (2) TracFone's submission of statements from each of its underlying carriers  
16 indicating (a) their ability to remain operational in the event of emergencies and (b) that  
17 they will treat 9-1-1 calls from TracFone customers in the same way they treat such calls  
18 from their own retail customers (Paragraph 14).

19  
20  
21 **Q. Are there any other issues relating to access to emergency services?**

22 A. Yes, there are two. The first is that the FCC's Forbearance Order requires TracFone to  
23 obtain certification from affected Public Safety Answering Points ("PSAPs") that  
24 TracFone provides access to 9-1-1. The FCC issued a subsequent order allowing  
25 TracFone to self-certify that it provides such access under certain conditions. TracFone  
26

1 has made the self-certification in this case in conformance with the FCC conditions, and  
2 its validity is not disputed by any Party. In addition, OEM initially raised a concern  
3 about PSAPs' ability to contact TracFone's customers in what are known as "exigent  
4 circumstances;" OEM is now satisfied on that topic.

5  
6 **Q. What is the second additional issue?**

7 A. The second additional issue relates to financial support for the 9-1-1 system. As a  
8 provider of pre-paid wireless service, TracFone has asserted that it is not subject to  
9 collecting and/or remitting the 911 tax from its customers. Staff and OEM believe that  
10 TracFone's new Lifeline customers could put significant increased burdens on the 911  
11 system without contributing to the corresponding increase in costs. In response to this  
12 concern, TracFone agrees that it will cooperate with OEM to support legislation that  
13 would establish competitively neutral and non-discriminatory means for collection of the  
14 9-1-1 tax from consumers of non-billed services such as prepaid wireless services.  
15  
16 Paragraph 30.

17 **Q. Please explain the issue regarding the existence of an obligation of TracFone's**  
18 **Lifeline customers to pay the RSPF surcharge and an alternative payment by**  
19 **TracFone to contribute to the Commission's costs of verifying the initial and**  
20 **ongoing eligibility of Oregon residents to receive Lifeline services.**

21  
22 A. One of the issues raised by Staff was whether TracFone's Lifeline customers would be  
23 required to pay the RSPF surcharge that is assessed pursuant to 1987 Or. Laws c. 290 § 7,  
24 appearing as a note following ORS 759.690, and OAR 860-033-0006. TracFone  
25 maintained that its Lifeline customers would not be subject to the RSPF surcharge  
26

1 because, among other reasons, they would not be “paying retail subscriber[s]” as the term  
2 is used in the statute. TracFone also asserted that it could not collect the RSPF surcharge  
3 from its customers in the manner required by the Commission’s rules (OAR 860-033-  
4 0006(3)) because it does not render bills to those customers, nor does it charge anything  
5 to those customers for the basic Lifeline service.  
6

7 Staff disagreed with TracFone’s analysis as to its proposed Lifeline service offerings.

8 Staff and CUB also asserted that even if TracFone’s customers are not required to pay the  
9 RSPF surcharge, the public interest requires that TracFone or its customers contribute to  
10 the costs the Commission incurs to perform initial and ongoing verification of the  
11 eligibility of Oregon residents for Lifeline service.  
12

13 **Q. How is this issue resolved in the Stipulation?**

14 A. In Paragraph 19, TracFone agreed to pay the RSPF surcharge to the Commission for each  
15 of its enrolled Oregon Lifeline customers on behalf of those customers. The surcharge  
16 currently is \$0.12 per month per instrument. TracFone has committed to make this  
17 payment for at least two years following the effective date of a Commission order  
18 approving TracFone’s Applications. TracFone further agreed that it will contribute to  
19 the Residential Service Protection Fund, through the Commission, an  
20 additional amount per month for each of its enrolled Oregon Lifeline customers to help  
21 offset any incremental costs to the RSPF program. The amount of the additional  
22 contribution will be the difference between \$0.20 per month per Oregon Lifeline  
23 customer and the amount of the RSPF surcharge. Thus, the initial additional contribution  
24 amount per month per Oregon Lifeline customer will be \$0.08. TracFone agreed that it  
25  
26

1 will make the additional contribution amount for a period not less than two years from  
2 the date of ETC and ETP designations, subject to certain conditions discussed below.

3 **Q. What will happen after that two-year period?**

4 A. TracFone may commence a proceeding to determine the applicability of the RSPF  
5 surcharge to TracFone's Lifeline customers; however, TracFone has agreed that the  
6 decision in any such proceeding will not apply before the date that is two years after the  
7 effective date of a Commission order approving TracFone's Applications. Also, in the  
8 event it is determined that TracFone is liable for payment of RSPF surcharges for non-  
9 Lifeline customers, TracFone will not be required to make the additional contribution for  
10 any period for which TracFone pays the RSPF surcharge for its non-Lifeline customers.  
11 In addition, if the law governing application of the RSPF surcharge changes, the Parties  
12 agree to meet and discuss whether TracFone should be required to continue to make the  
13 additional contribution. In addition, Staff may recommend that the Commission pursue  
14 legislation in the 2012 session of the Oregon Legislature to clarify or modify application  
15 of the RSPF surcharge. TracFone will continue to pay the amount agreed upon in the  
16 Stipulation until one of these events results in a clear change in the legal obligation.

17  
18  
19 **Q. Is TracFone requesting a waiver of any rules in this regard?**

20 A. Yes, TracFone is requesting a waiver of OAR 860-033-0006(3)-(9), which provides for  
21 an RSPF surcharge and establishes general requirements in relation to the surcharge,  
22 including the submission of remittance reports and payments. The waiver relates only to  
23 non-Lifeline customers. Notwithstanding this waiver request, TracFone agreed to follow  
24 the rules to remit payments described in Paragraph 19 and related reports according to the  
25  
26

1 time frames and processes set forth in OAR 860-033-0006(4)–(9). Paragraph 20. In  
2 view of TracFone’s agreement to make the payment described above and to comply with  
3 these procedures, the other Parties support this request.

4 **Q. Please describe the issue regarding the Lifeline application process.**

5 A. In most, but not all, other states in which TracFone offers Lifeline service, TracFone  
6 itself receives a customer’s application and verifies the applicant’s eligibility for Lifeline  
7 benefits initially, and annually thereafter. In Oregon, the Commission receives  
8 applications and verifies the applicant’s initial and monthly continuing eligibility for  
9 Lifeline benefits. The application form the Commission generally uses, however,  
10 requires the applicant to provide information including his or her existing telephone  
11 number with the ETC from whom he or she wants Lifeline service; the form also requires  
12 the applicant to be the person named on that provider’s bill. These requirements could  
13 restrict potential TracFone customers from applying because they do not have active  
14 service or an assigned phone number, and TracFone does not render a bill. Staff and  
15 CUB agreed that these requirements on the application form limit the ability of Oregon  
16 citizens to apply for Lifeline service from carriers such as TracFone.

17 **Q. How was this issue resolved?**

18 A. Staff agreed to revise the application form for applicants for Lifeline service so that it  
19 (1) requires that the applicant’s name be on the phone account, not the phone bill and  
20 (2) does not require that the applicant currently have telephone service from its desired  
21 ETC at the time of the application. See Paragraph 21. The Commission will still receive  
22 the information it needs to verify the applicant’s eligibility for Lifeline service and the  
23  
24  
25  
26



1 application will not impede customer access to TracFone's Lifeline service.

2 **Q. Please explain the issue relating to proration of customer benefits and Lifeline**  
3 **support to TracFone for partial months of service.**

4 A. OAR 860-033-0035(2) requires ETPs to provide the OTAP benefit for a "billing period"  
5 and to prorate the benefit if a customer is eligible for less than an entire billing period.  
6 TracFone, as a provider of prepaid service, does not issue bills and does not have billing  
7 periods. Customers enrolled in TracFone's SafeLink Wireless® Lifeline program receive  
8 the same number of free minutes of service, irrespective of when during the month the  
9 customers are enrolled. For example, a customer selecting TracFone's 250 minute plan  
10 who enrolls on May 1 will receive 250 minutes. Another customer selecting the same  
11 250 minute plan who enrolls on May 15 also will receive 250 minutes. TracFone is also  
12 technically unable to prorate the Lifeline benefit to customers, and is not required to do  
13 so in any of the other states where it provides Lifeline service. On this basis, TracFone  
14 originally requested a waiver of OAR 860-033-0035(2).  
15

16 The Parties agreed that the pro-rating rule applies to funds from the OTAP program. As  
17 TracFone will not claim these funds, no waiver is needed. However, Staff and CUB had  
18 a remaining concern that TracFone would receive an entire month's worth of FUSF  
19 Lifeline support even when TracFone provides a customer with service for less than a full  
20 month.  
21

22 **Q. How is this issue resolved in the Stipulation?**

23 A. TracFone agreed that it would not request Lifeline support for a handset that it ships to an  
24 Oregon customer on or after the twentieth (20th) day of any calendar month. See  
25  
26

1 Paragraph 22. This does not prohibit TracFone from shipping a handset during that time;  
2 however, if TracFone does so, it will not request FUSF support for that partial month.

3 The Parties agree that this is a reasonable resolution of the concern Staff and CUB raised.

4 **Q. Please explain the issue regarding the potential for waste, fraud and abuse**  
5 **associated with TracFone's Lifeline offering.**

6  
7 A. CUB and Staff raised a concern that TracFone could continue to receive Lifeline support  
8 even if its customers fail to use their phone for an extended period of time. While the  
9 Parties agree such a situation would not be of concern if the customer chooses not to  
10 make any calls (for example, if the customer uses the phone only for emergencies or is  
11 traveling abroad or in the hospital for an extended period), it would be of concern if the  
12 phone were not used for a different reason (e.g., if the customer loses the phone.) To  
13 address this concern, TracFone agreed to implement a policy used in all other states  
14 where it provides Lifeline service as an ETC. Under that policy, after 60 days of non-  
15 usage (no calls or text messages are made or received), TracFone de-enrolls the customer  
16 and ceases to request Lifeline benefits for that customer. TracFone then attempts to  
17 contact that customer over a 30-day period by various methods and will re-enroll the  
18 customer if he or she requests re-enrollment in that time. If TracFone is unable to re-  
19 enroll a customer, it will deactivate the phone (which can still be used to make 9-1-1  
20 calls). TracFone agreed to implement this non-usage policy in Oregon. See Paragraph  
21 23, and Exhibit D.

22  
23  
24 Other measures are included in the Stipulation to address concerns regarding the potential  
25 for waste, fraud and abuse. The primary measure is the requirement to follow OTAP  
26

1 procedures for verification of the eligibility of Lifeline customers, on an initial and  
2 continuing monthly basis. OTAP procedures will also ensure only one resident of a  
3 household is receiving Lifeline benefits, and only from one Lifeline provider.<sup>5</sup>

4 **Q. Please explain the issue regarding monitoring of changes in service offerings and**  
5 **TracFone's advertising.**

6  
7 A. After being satisfied that TracFone's proposed Lifeline service offerings provide fair  
8 value to customers in light of the amount of support TracFone would receive, CUB and  
9 Staff raised a concern that TracFone not change its service plans in such a way that  
10 decreases the level of benefit available. Because it would be impossible to predict all of  
11 the changes TracFone may make to its service plans in response to a competitive  
12 marketplace, the Parties agreed that TracFone would submit all material revisions to its  
13 Lifeline service offerings to Staff and to CUB for review at least thirty (30) calendar days  
14 before implementing them in Oregon. *See* Paragraph 27. TracFone agreed that it would  
15 discuss any concerns Staff and CUB might have and work in good faith to resolve them.  
16 *Id.* TracFone also agreed to give Staff at least 60 calendar days advance notice before it  
17 begins offering Lifeline services in Oregon. *See* Paragraph 26.

18  
19 **Q. What agreement did TracFone make with respect to advertising?**

20  
21 A. In response to Staff's request, TracFone agreed to submit proposed advertising to Staff at  
22 least twenty-one (21) calendar days in advance of publishing the advertisement. *See*  
23 Paragraph 26. Staff intends to ensure that that advertising be accurate and reflect Oregon  
24 eligibility requirements. TracFone also agreed that it would discuss any concerns Staff  
25

26 <sup>5</sup> See 1997 Universal Service Order, 12 FCC Rcd at 8957, para. 341.

1 might have and work in good faith to resolve them. *Id.*

2 **Q. Does the Stipulation address issues of service quality?**

3 A. Yes, in several ways. First, the Stipulation memorializes TracFone's policy to ensure that  
4 its customers have a working handset that they can use from their residence. Paragraph  
5 25. TracFone's underlying carriers utilize different network technologies and customers  
6 may have a much stronger signal at their residence from one type of network than from  
7 the other. Thus, if TracFone activates a customer's Lifeline service on a network using  
8 one wireless technology (i.e., either GSM or CDMA) and the customer is unable to  
9 utilize the service from his or her residence, TracFone will replace the handset with one  
10 utilizing the other technology, provided that the customer resides in an area where service  
11 is available from a carrier which utilizes the other technology. If service is not available  
12 using either technology, TracFone will report that case to the Commission and the  
13 customer may chose another Lifeline provider. By way of example, if TracFone activates  
14 a customer on a network of a carrier which utilizes CDMA technology and the customer  
15 complains that the underlying carrier's coverage is not satisfactory at his or her residence,  
16 then TracFone will provide the customer with a GSM handset and will activate the  
17 customer's Lifeline service on a GSM network, if a GSM provider has coverage where  
18 the customer resides. TracFone will provide monthly reports to the Commission with  
19 respect to handsets replaced under this policy. In addition, TracFone will replace the  
20 handset of a Lifeline customer at no charge one time during the first year of service if it is  
21 not working for any reason. *See* Paragraph 25.

22  
23  
24  
25 **Q. What other terms of the Stipulation address service quality?**

1 A. Staff and CUB want to receive information that will allow them to monitor TracFone's  
2 customer service and other issues. Accordingly, the Parties have developed a list of  
3 information that TracFone will provide on a quarterly basis to both Staff and CUB. *See*  
4 Paragraph 36, Exhibit F. This list is based on information that TracFone provides to  
5 other state commissions and includes a few other measures unique to Oregon.  
6  
7 TracFone also agreed that its Lifeline customers may make customer service calls by  
8 dialing "611" without deducting any of their airtime minutes. *See* Paragraph 33.

9 **Q. Has TracFone made any commitment regarding Commission Staff access to**  
10 **TracFone personnel?**

11 Yes, in Paragraph 32, TracFone agreed to make available adequate personnel for daily  
12 communications with Staff regarding Lifeline questions and concerns and Lifeline  
13 reporting issues. TracFone will also make available adequate personnel for raising issues  
14 to appropriate levels of authority above the customer service representative level for  
15 resolution, including but not limited to issues related to loss prevention. The personnel  
16 made available will have the authority to deactivate a customer's phone. TracFone will  
17 provide designated personnel's contact information including but not limited to e-mail  
18 addresses and telephone numbers to the RSPF manager.

19  
20 **Q. What other reports has TracFone agreed to provide the Commission?**

21  
22 A. In addition to complying with the reporting rules in the RSPF Rules, TracFone has made  
23 a number of other commitments to provide reports and information to the Commission.  
24 Pursuant to OAR 860-033-0046, TracFone has agreed to notify the RSPF manager on a  
25 weekly basis of the information for newly enrolled customers and to also notify the RSPF  
26

1 manager of any discrepancy that prevents a customer from receiving Lifeline (e.g., an  
2 undeliverable shipment of activated handset, customer refused package, etc.) in an  
3 electronic format accessible by the Commission. Paragraph 34. TracFone also agreed to  
4 report to Staff all customers receiving Lifeline in a given month, including the customers'  
5 names, addresses, phone numbers and Commission-assigned OTAP identification  
6 numbers. Paragraph 35. TracFone agreed to identify on the report customers whose  
7 addresses, phone numbers or plans have changed in TracFone's records. *Id.* TracFone  
8 also agreed to provide Staff a copy of Oregon-specific, monthly Lifeline Worksheets  
9 (Form 497) that it submits to the Universal Service Administrative Company from which  
10 it claims or seeks low-income reimbursement or support. Paragraph 37.

11  
12 **Q. Please explain the commitment in Paragraph 30.**

13 A. OEM raised an issue in this proceeding about the application of the 9-1-1 tax to  
14 TracFone's Lifeline customers. TracFone does not believe that the 9-1-1 tax would  
15 apply. The parties ultimately agreed that because the Department of Revenue is  
16 responsible for collection of the 9-1-1 tax, this proceeding was not the appropriate forum  
17 in which to pursue determination of the issue. OEM introduced legislation in the 2011  
18 session of the Oregon Legislature intended to clearly impose the 9-1-1 tax on customers  
19 situated similarly to TracFone's Lifeline customers, as well as others, and intends to  
20 pursue such legislation in the 2012 legislative session if required. In Paragraph 30,  
21 TracFone agrees to cooperate with OEM to support legislation that would establish  
22 competitively neutral and non-discriminatory means for collection of the 9-1-1 tax from  
23 consumers of non-billed services such as prepaid wireless services.  
24  
25  
26

1 **Q. Please explain why the Commission should waive, in whole or in part, the rules and**  
2 **other requirements identified in Paragraph 16 and Exhibit C of the Stipulation.**

3 A. As previously discussed, certain of the RSPF Rules and requirements in the ETC Order  
4 cannot be met by TracFone given its business model. Some of these rules and  
5 requirements are discussed elsewhere in this testimony. The Parties agreed to request  
6 that the Commission waive the following additional requirements to the extent indicated:  
7

- 8 • OAR 860-033-0030(6), to the extent it requires that the name of the applicant  
9 appear on the billing statement on the condition that the name of the applicant  
10 appears on TracFone's account with the customer;
- 11 • Order No. 06-292, Appendix A, Initial Requirement 4.2, to the extent it  
12 requires TracFone to show signal strengths;
- 13 • Order No. 06-292, Appendix A, Recertification Requirement 2.1.1, to the  
14 extent it requires an ETC to describe how the ETC complies with 47 C.F.R.  
15 § 54.202(a)(1)(i);
- 16 • Order No. 06-292, Appendix A, Recertification Requirement 5.2, on the  
17 condition that TracFone provide, or request that its underlying carriers  
18 provide, to the Oregon Commission the same data for Oregon outages that the  
19 underlying carriers submit to the FCC pursuant to 47 C.F.R. § 54.209(a)(2);  
TracFone will make such requests, and submit the carriers' responses, prior to  
ETC designation; and
- 20 • Order No. 06-292, Appendix A, Recertification Requirement 6.2, to the extent  
21 it requires an ETC to report service troubles by wireless switch, provided that  
22 TracFone will report to the Commission data regarding service quality  
23 complaints received by it from Oregon customers.

19 **Q. Please explain why the Commission should waive OAR 860-033-0030(6) to the**  
20 **extent described above.**

21 A. This rule provides that “[t]he name of the applicant [for OTAP benefits] must appear on  
22 the billing statement for the telecommunications service in order for the recipient to  
23 qualify for OTAP benefits.” The rule also provides that the Commission may waive this  
24 requirement for good cause. As described earlier in our testimony with respect to the  
25  
26

1 application process, the Parties agree that applying this requirement to TracFone would  
2 limit the ability of Oregon consumers to apply for Lifeline service from TracFone  
3 because TracFone does not issue bills to its customers. Accordingly, the Parties agreed  
4 that the Commission should modify the application process to require only that the name  
5 of the applicant appear on TracFone's *account* with the customer.  
6

7 **Q. Please explain why the Commission should waive Initial Requirement 4.2 to the**  
8 **extent described above.**

9 A. Initial Requirement 4.2 requires applicants for ETP designation to show the extent of  
10 their current network coverage and, for wireless applicants only, also signal strengths.  
11 TracFone resells wireless services of other carriers, and does not have access to their  
12 coverage maps depicting signal strength. Given that TracFone does not have access to  
13 this information, that it is reselling the services of three major wireless carriers, and that it  
14 has provided a significant amount of information describing its service area, the Parties  
15 agree the Commission should waive this requirement.  
16

17 **Q. Please explain why the Commission should waive Recertification Requirement 2.1.1**  
18 **to the extent described above.**

19 A. This subsection requires a wireless ETC to “[r]eport on number of unfulfilled service  
20 requests during the past calendar year, noting location of each such request, and  
21 description of ETC’s attempts to provide service; [and provide] a brief description of how  
22 the ETC ensures that every request for service that cannot be immediately fulfilled is  
23 recorded and processed further under the 6-step process set forth in 47 C.F.R. §  
24 54.202(a)(1)(i).” TracFone seeks a waiver only to the extent this requires an ETC to  
25  
26



1 describe how the ETC complies with 47 C.F.R. § 54.202(a)(1)(i). TracFone does not  
2 own and operate a network. As a reseller, TracFone does not have the ability to expand  
3 or make any changes to the networks of its underlying carriers. It is for this reason that  
4 the proposed designated service area is limited to only those areas where TracFone has  
5 represented that it can provide coverage. Therefore, the Parties agree the Commission  
6 should grant TracFone a waiver of this requirement.  
7

8 **Q. Please explain why the Commission should waive Recertification Requirement 5.2 to**  
9 **the extent described above.**

10 A. This subsection requires a wireless ETC to file an annual outage report consistent with  
11 47 C.F.R. § 54.209(a)(2). Section 54.209(a)(2) requires the annual outage report to  
12 include information detailing: (A) the date and time of onset of the outage; (B) a brief  
13 description of the outage and its resolution; (C) the particular services affected; (D) the  
14 geographic areas affected by the outage; (E) steps taken to prevent a similar situation in  
15 the future; and (F) the number of customers affected. TracFone typically does not  
16 receive outage information from its underlying carriers in Oregon or elsewhere.  
17 Therefore, TracFone sought a partial waiver of this requirement to the extent that it is  
18 unable to provide all of the information required by Section 54.209(a)(2) of the FCC's  
19 rules (47 C.F.R. § 54.209(a)(2)). That FCC rule requires ETCs designated by the FCC to  
20 provide certain outage information to the FCC. TracFone complies with its obligations  
21 under that FCC rule by having its underlying carriers submit the outage information  
22 directly to the FCC with letters indicating that the information is being submitted on  
23 behalf of TracFone pursuant to Section 54.209(a)(2). TracFone agrees to make requests  
24  
25  
26

1 to its underlying carriers to provide outage reports in fulfillment of this condition.

2 Paragraph 16(d). TracFone will submit the carriers' responses to its requests prior to  
3 ETC designation.

4 **Q. Please explain why the Commission should waive Recertification Requirement 6.2 to**  
5 **the extent described above.**

6  
7 A. This subsection requires a wireless ETC to report service troubles per 100 handsets by  
8 wireless switch. As a reseller, TracFone does not own or operate any switches, and  
9 therefore, cannot report troubles by wireless switch. Furthermore, TracFone's underlying  
10 carriers do not provide TracFone with trouble reports in this form. TracFone has agreed  
11 to provide the required data on an aggregate basis for Oregon, but will not be able to  
12 report it disaggregated by switch. Paragraph 16(e). Therefore, the Parties agree that the  
13 Commission should waive this requirement only to the extent that reporting is switch-  
14 specific.  
15

16 **Q. Are the waivers of these rules and requirements consistent with demonstrating that**  
17 **approval of TracFone's Application is in the public interest?**

18 A. Yes. Waiver of these requirements is appropriate to enable TracFone to provide  
19 SafeLink Wireless® service to qualified low-income Oregon households. In  
20 combination with approving the other terms and conditions included in the Stipulation,  
21 granting these waivers is consistent with the public interest.  
22

23 **Q. Is the Commission required to waive any other rules to grant TracFone's**  
24 **Application?**

25 A. Yes. As discussed in this testimony, the Parties request that the Commission also waive  
26

1 application of OAR 860-033-0006(3)-(9), 860-033-0010, 860-033-0030(6), and 860-033-  
2 0035(1) and (2), but only to the extent discussed.

3 **Q. Are there any issues with respect to the Commission's ability to waive these rules?**

4 A. Staff, OEM and CUB understand that the Commission may waive a rule only if, a statute,  
5 that rule or another rule specifically provides that the Commission may waive the rule.  
6 For example, OAR 860-033-0030(6) expressly provides: "The Commission may waive  
7 this requirement if it determines that good cause exists." The other three rules mentioned  
8 above are not subject to such express waiver provisions. TracFone does not understand  
9 the Commission's authority to be so limited.  
10

11 **Q. Why and how do the Parties propose the Commission waive these rules?**

12 A. The Parties agree that good cause exists for the Commission to waive these other rules  
13 for the reasons discussed above. The Parties recognize that the RSPF Rules were  
14 developed assuming that providers are facilities-based, and charge customers some  
15 amount of money for their services and render bills to do so. Accordingly, the Parties  
16 agree that the Commission should open a rulemaking proceeding to consider the above-  
17 discussed specific revisions to the RSPF Rules in light of changes to the  
18 telecommunications marketplace in general and changes to the market for provision of  
19 Lifeline services in particular.  
20  
21 Pending completion of such a rulemaking proceeding, the Parties request that the  
22 Commission issue a temporary rule expressly establishing the Commission's authority to  
23 waive the specific rules discussed herein, for good cause shown, and then exercise the  
24 authority granted by that rule in issuing an order granting TracFone's Application subject  
25  
26

1 to the terms and conditions set forth in the Stipulation. See Paragraph 17.

2  
3 **VI. CHANGE IN CUB'S POSITION**

4 **Q. CUB, please explain the change in CUB's position from the original testimony it**  
5 **filed in this docket until today where you are supporting the Stipulation filed in this**  
6 **matter.**

7 A. CUB did not like TracFone's original application, offered phone plan or attitude to the  
8 Commission and Intervenors. CUB felt that that the offered plan was too expensive and,  
9 among many other things, did not have adequate customer support. CUB was also  
10 concerned that TracFone would not work well with Commission Staff. CUB's initial  
11 Reply testimony in this docket, CUB/100, Jenks/22 noted what CUB was looking for  
12 from providers who want to become ETCs and ETPs in Oregon to provide lifeline  
13 cellular service:  
14

15 The PUC Staff will take a serious look at the proposal, as will  
16 representatives of customers. The provider will have to answer  
17 questions and will have to *prove* that its application is in the public  
18 interest. To meet this burden of proof, an applicant must be willing  
19 to work with parties and to provide responsive answers to  
20 questions that relate to its provision of service. Basic questions  
21 about the service, such as how many minutes, paid for with USF  
22 funds, are never received by customers, need to be answered.

23 CUB is appreciative of the fact that TracFone took to heart CUB's testimony and the  
24 testimony of Staff and other intervenors, changed its offerings, responded to CUB's data  
25 requests and worked with Staff and Intervenors to resolve noted issues. Today, CUB is  
26 supportive of TracFone's designation as an ETC and ETP provider and thinks that the  
plans offered are in the public interest subject to the terms and conditions set forth in the

1 Stipulation.

2  
3 **VII. CONCLUSION**

4 **Q. What do the Parties recommend regarding the Stipulation?**

5 A. The Parties recommend that the Commission adopt the Stipulation as the basis for  
6 resolving all the contested issues in this proceeding, and that the Commission grant  
7 TracFone's designation as an ETC and ETP in Oregon subject to the terms and conditions  
8 of the Stipulation.

9 **Q. Does this conclude your joint testimony?**

10 A. Yes.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## **JOSÉ A. FUENTES**

### **Public Relations, Communications, Public Affairs, Strategic Development**

Successful Government and Public Relations expert with 15 years of experience in managing media relations, directing crisis communications, building press relationships, and spearheading lobbying for a number of public relations and governmental organizations including the previous Presidential Administration. Maximize media coverage and create strategic communications plans. Organize press conferences and media events to support legislative initiatives. Write press releases, statements, and talking points and deliver press briefings. Proven leader committed to providing superior government and public relations in a variety of contexts. Fluent in Spanish.

---

Strategic Planning • Team Building • Leadership • Crisis Communications • Document Creation  
New Business Development • Public Relations • Event Management • Press Releases  
Media Placement • Media Relations • Meeting Planning • Public Speaking • Issues Management

---

### **PROFESSIONAL EXPERIENCE**

#### **TracFone Wireless Inc., Miami, Florida • 2008 - Present**

A telecommunications company with 600 employees.

#### **Director of Government and Public Relations**

Direct, manage and responsible for the launch of the company's newest Lifeline brand of service SafeLink Wireless in all fifty states and territories. Forge, nurture and manage government relations with various agencies throughout the United States. Develop and execute all public relations strategies for SafeLink Wireless. Identify and develop relationships with non-profit organizations that help serve the low-income population. Provide phone, radio and television interviews with international, national, state, local and media outlets.

#### **FLORIDA HOUSE OF REPRESENTATIVES, Tallahassee, Florida • 2006-2007**

A governmental organization with 10,000 employees serving the State of Florida.

#### **Director of Communications**

Built and maintained positive media relations as Spokesman for the Speaker of the House. Managed media scheduling, organized press conferences and roundtable events, and fielded interview requests. Wrote and approved press releases, statements, talking points, and opinions for news organizations on Speaker's behalf and delivered press conference background briefings to media state-wide. Negotiated strategic media placement and coverage to maximize Speaker's exposure for select issues and markets. Engaged in phone, radio, and television interviews with local, state, and national media outlets. Counseled Speaker on critical issues management and response to media inquiries. Managed crisis communications with media sources to enhance Speaker leadership.

#### **MIAMI-DADE COUNTY, Miami, Florida • 2005-2006**

A governmental organization with over 30,000 employees serving Miami-Dade County.

#### **Director of Public and Intergovernmental Affairs**

Supervised 7 employees as member of the Mayor's senior staff. Lobbied on Mayor's behalf to the State Legislature, U.S. Congress, and U.S. Senate for issues including homeland security funding, hurricane relief assistance, and homestead exemption rate increases. Represented Mayor with key local, civic, and business leaders in Miami-Dade area.

**WHITE AND PARTNERS, Herndon, Virginia • 2004-2005**

A national advertising and PR firm with 30+ employees.

**Director of Public Relations**

Managed 10 accounts including automobiles, B2B computer providers, healthcare, and hotels, as well as major client The Department of Defense. Launched PR and electronic, print, and broadcast media initiatives to increase brand awareness and drive company growth. Analyzed and improved brand strategy by performing market research and competitive analysis. Supervised 6 employees.

**US AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), Washington, DC • 2003-2004**

An international development organization with 15,000 employees.

**Director of Communications**

Spearheaded media inquiries targeting Afghanistan and Iraq reconstruction as Chief Spokesperson for the Agency. Managed controversial crisis communications with major worldwide media and advised senior staff on critical issues management. Fielded press inquiries on a range of subjects Iraq Reconstruction, Afghanistan Reconstruction, Sudan, Africa, and hurricanes. Wrote statements, talking points, and questions/answers for top USAID administrators. Directed strategic event management in major media markets with national and international policy implications and interfaced extensively with Spanish media outlets. Supervised 8 employees.

**Deputy Director of Vice Presidential Advance**

Directed all internal operations and logistics for the office. Liaised with key governmental bodies regarding event planning, including Department of Defense, United States Secret Service, CIA, Media Production, White House Communications Agency, and State Department. Delivered briefings to the Vice President on national and international events. Trained volunteers on policies and procedures. Supervised 5 employees and 100+ volunteers.

**OTHER ROLES:** Deputy Site-Press Lead/Operations Director, Presidential Inaugural Committee (2000-2001); Press Officer, Bush-Cheney Transition Team (2000); Lead Press Advance Representative to Secretary Dick Cheney, Bush-Cheney 2000 (2000); Grassroots Coordinator, NRA Institute for Legislative Action (2000); and Program Manager, New America Alliance (1999-2000), House Foreign Relations Committee (1997-1999), Bob Dole for President (1995-1996).

**EDUCATION**

**Bachelor of Arts in Criminology, Minor in Business Law**  
University of Miami, Coral Gables, Florida  
One year of legal coursework at the Appalachian School of Law

---

---

**WITNESS EXPERIENCE**

Provided oral and/or written testimony regarding TracFone Wireless, Inc.'s SafeLink Wireless® Lifeline service in the following proceedings:

**Idaho Public Utilities Commission:** In the Matter of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications, Case No. TFW-T-09-01, February 25, 2011 (written direct testimony); March 23, 2011 (written rebuttal testimony), March 31, 2011 (oral testimony).

**Indiana Utility Regulatory Commission:** In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households, Docket No. 41052-ETC-54, July 20, 2010 (written direct testimony); October 13, 2010 (written revised direct testimony); January 27, 2011 (oral testimony).

**Massachusetts Department of Telecommunications and Cable:** TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers, D.T.C. 09-9, April 13, 2010 (oral testimony).

**Nevada Public Utilities Commission:** Application of TracFone Wireless, Inc. d/b/a SafeLink Wireless to be designated as an Eligible Telecommunications Carrier in the State of Nevada pursuant to NAC 704.6804 and Section 254 of the Telecommunications Act of 1996, Docket No. 09-10037, February 24, 2010 (written direct testimony).

**New Mexico Public Regulation Commission:** In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New Mexico for the Limited Purpose of Offering Lifeline Service to Qualified Households, Case No. 09-00300-UT, April 28, 2010 (written supplemental direct testimony); April 29, 2010 (written amended supplemental direct testimony); April 30, 2010 (written second supplement to direct testimony); May 28, 2010 (written rebuttal testimony); June 3, 2010 (written first supplement to rebuttal testimony); June 7, 2010 (written second supplement to rebuttal testimony); June 9, 2010 (oral testimony); September 27, 2010 (written third supplement to direct testimony); November 2, 2010 (written supplemental rebuttal testimony); November 9, 2010 (oral testimony).

**Utah Public Service Commission:** In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households, Docket No. 09-2511-01, March 2, 2010 (written direct testimony); April 20, 2010 (written rebuttal testimony); June 7, 2010 (oral testimony).



### WITNESS QUALIFICATION STATEMENT

NAME: Kay Marinos  
EMPLOYER: Public Utility Commission of Oregon  
TITLE: Program Manager, Competitive Issues  
ADDRESS: 550 Capitol St NE Suite 215  
Salem, Oregon 97301-2551  
EDUCATION: PhD/ABD and MA in Economics  
University of Hawaii, 1981  
BA in Economics  
Hofstra University, 1975

#### PROFESSIONAL EXPERIENCE:

Program Manager, Competitive Issues, Public Utility Commission of Oregon, 2007  
– Present

Manage group responsible for telecommunications competitive issues, competitive provider certifications, carrier agreements, wholesale service quality, Eligible Telecommunications Carrier (ETC) designations, federal universal service programs and ILEC service territory allocations. Staff member of Federal-State Joint Board on Universal Service.

Senior Telecommunications Analyst, Public Utility Commission of Oregon, 2004 - 2007

Responsible for federal ETC designations, annual ETC recertifications, and universal service issues. Developed ETC requirements adopted by the Commission and served as expert witness in Docket UM 1217.

Senior Consultant, Verizon Communications, 2000 -2003

Managed special project teams to ensure compliance with regulatory and legal requirements in various aspects of national telecommunications business, including new product development, interconnection, proprietary information and billing.

Senior Specialist, Bell Atlantic & NYNEX, 1988 - 2000

As subject matter expert, performed wide range of analytic functions to develop and support company's objectives in federal regulatory proceedings. Major issues included Telecom Act implementation, competitive markets, interconnection, pricing flexibility, price caps, rate restructuring, cost recovery, and cost allocation.

Manager, National Exchange Carrier Association, 1984 -1988

Managed development of telecom industry forecasts of interstate usage and dedicated access services used to determine nationwide carrier pool rates.

Business Research Analyst, GTE Hawaiian Telephone, 1982 - 1983

Developed revenue and demand forecasts for budgeting and network planning.

Economist & Planner, State of Hawaii, 1978 – 1982

Managed energy conservation and emergency planning projects, lectured in economics at the University of Hawaii, and supervised economic and demographic studies for urban redevelopment in industrial area of Honolulu.

### WITNESS QUALIFICATION STATEMENT

**NAME:** Bob Jenks

**EMPLOYER:** Citizens' Utility Board of Oregon

**TITLE:** Executive Director

**ADDRESS:** 610 SW Broadway, Suite 400  
Portland, OR 97205

**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, UM 1209, UE 178, UE 179, UE 180, UE 189, UE 196, UE 204, UE 207, UE 208, UE 210, UE 215, UE 217, UE 219, UG 153, UG 163, UG 170, UG 181, UM 1234, UM 1264, UM 1283, UM 1286, UM 1354, UM 1416, UM 1431. Participated in the development of a variety of Least Cost Plans including providing analysis of the costs of carbon regulation, analysis of new coal plants, and analysis of the closure of the Boardman coal plant. Participated in proceedings analyzing and establishing conditions on electric, natural gas, and telecommunication mergers. Provided analysis related to expanding energy efficiency programs and renewable energy in Oregon. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications, including issues related to energy efficiency standards, electric deregulation, renewable portfolio standards, and utility taxes. Lobbied the Oregon Congressional delegation on behalf of CUB.

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:** Oregon Energy Planning Council  
Oregon Department of Energy Advisory Committee  
Oregon Department of Environmental Quality Fiscal Advisory Committee  
for BART rulemaking  
National Association of State Utility Consumer Advocates

Joint/103

Fuentes, Marinos, Poston, Jenks, Tennyson/2

Board of Directors, Environment Oregon Research and Policy Center

**WITNESS QUALIFICATION STATEMENT**

NAME: Mark Tennyson

EMPLOYER: Office of Emergency Management  
Oregon Military Department

TITLE: Director, Technology and Response Section / State 9-1-1 Program

ADDRESS: Anderson Readiness Center  
3225 State Street  
Salem, OR 97301