

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1437**

4 In the Matter of

5 **TRACFONE WIRELESS, INC.**

6 Application for Designation as an Eligible
7 Telecommunications Carrier.

**TRACFONE WIRELESS, INC.'S
RESPONSE TO CITIZENS' UTILITY
BOARD OF OREGON'S MOTION FOR
SCHEDULING CONFERENCE TO
CONSIDER FURTHER AMENDMENT
OF SCHEDULE**

8
9
10
11 TracFone Wireless, Inc. ("TracFone") respectfully submits this response in opposition to
12 the motion of the Citizens' Utility Board ("CUB") for a scheduling conference to consider further
13 amendment of the case schedule (the "Motion"). The Commission should deny CUB's Motion
14 because none of the reasons CUB asserts in support of the Motion justify any further revisions,
15 let alone any delay, in the schedule of this proceeding.

16 **A. TracFone's Announcement of Expanded Service Offerings Does Not Justify a**
17 **Revision to the Schedule.**

18 On August 13, 2010, TracFone filed a Notice of Expanded Lifeline Offering (the
19 "Notice") in which TracFone notified the Commission and parties in this proceeding that it was
20 beginning to provide a choice of three service plans to its Lifeline customers nationwide, which
21 include a significant increase in the number of free minutes of wireless service per month (from
22 68 to as many as 250 minutes per month). CUB's Motion purports to be based solely upon
23 TracFone's filing of this Notice, arguing that this "adds significant new facts to this proceeding
24 requiring additional time for discovery and testimony." Motion at 1.

25 At the outset, TracFone notes that it is ironic that CUB's immediate reaction to
26 TracFone's announcement of expanded Lifeline offerings – involving both a significant increase

1 in the free minutes of use provided to customers as well as the introduction of a choice of three
2 plans – is to request a delay in this proceeding. One of CUB's (and Staff's) primary criticisms of
3 TracFone's application is that the value TracFone provides to customers, in terms of free minutes
4 of use, is too low. TracFone has now addressed that concern (providing even more free minutes
5 than CUB and Staff suggested in their testimony) and instead of welcoming this change, CUB
6 now uses it as an excuse to delay the schedule.

7 In any event, TracFone's recent announcement of expanded service offerings for
8 TracFone's SafeLink® Lifeline customers nationwide does not require additional discovery or
9 any further delay in this proceeding. The changes TracFone announced are quite
10 straightforward. In addition, any questions CUB has about the new offerings can be answered in
11 an expeditious and informal way. TracFone offered to provide CUB and the other parties any
12 additional information they may reasonably require about the terms and conditions of these new
13 offerings by scheduling a telephone conference in which they may ask such questions of
14 TracFone. In such a conference, CUB can obtain all of the information it needs in a timely
15 manner without formal discovery. CUB rejected TracFone's offer. *See Exhibit A.*

16 Even if CUB needs formal discovery on these new offerings, it does not need a revision
17 to the schedule to present such additional evidence on August 23. First, the testimony that is due
18 on August 23 allows CUB to respond to the *other parties* only – it does not allow CUB to
19 respond further to TracFone's opening testimony. CUB does not show why it needs additional
20 discovery from TracFone before it can respond to the *other parties'* testimony. Second, CUB
21 will have an opportunity to present additional evidence during cross-examination of TracFone at
22 the hearing on September 20.

23 **B. TracFone Opposes Further Delay in This Proceeding.**

24 TracFone opposes any additional delay in the schedule of this proceeding. TracFone
25 filed its Application on August 7, 2009 – more than one year ago – and TracFone lost many
26

1 months in its effort to offer Lifeline service in Oregon because of the Commission's delay in
2 commencing formal proceedings. Indeed, the Commission did not schedule an initial prehearing
3 conference for more than *eight months* after TracFone filed its Application. This proceeding has
4 already taken an inordinate amount of time, delaying TracFone's ability to provide Oregon
5 consumers the choice of TracFone's free wireless Lifeline service – a service never before
6 available to Oregon low-income households from any provider.

7 The Commission itself has recognized this delay, and indicated in no uncertain terms that
8 this proceeding must be concluded this year. As stated in the Administrative Law Judge's Ruling
9 dated July 12, 2010: "The Commissioners have advised me that this docket must be completed
10 by December 15, 2010." The parties have already agreed to a post-hearing briefing schedule
11 consistent with this decision. Any delay in the schedule will make it extremely unlikely that this
12 proceeding can be completed in the timeframe the Commission has required. CUB completely
13 fails to acknowledge the Commission's decision or even to address this issue in its Motion.

14 **C. CUB's Additional Reasons Do Not Support Further Delay.**

15 Although the Motion is ostensibly based solely upon TracFone's filing a notice of the
16 expanded offerings on August 13, 2010 (Motion at 1), CUB provides two other reasons why a
17 delay in the schedule is required. Motion at 2. CUB's additional arguments are based on the
18 pendency of two other motions that have been filed in this case, which CUB asserts must be
19 decided before the case may proceed: TracFone's motion to deny CUB intervention and CUB's
20 motion to compel production. Neither of those motions supports any revision to the case
21 schedule.

22 First, the Commission has already ruled on (and denied) TracFone's motion to deny CUB
23 intervention, so that motion does not justify any change in the schedule.

24 Second, CUB's pending motion to compel does not justify a change in the schedule.
25 TracFone has fully complied with all of its obligations in responding to CUB's data requests and
26

1 does not expect that the Commission will order it to produce additional documents or
2 information. Even if the Commission does order TracFone to produce additional documents or
3 information, CUB will have that in time to offer the information at the September 20 hearing.
4 As discussed above, CUB does not need any additional discovery from TracFone to respond to
5 the *other parties'* testimony on August 23.

6 Moreover, any time constraint CUB may feel is of its own making. CUB served the data
7 requests that are the subject of CUB's motion to compel starting on July 14, 2010. *See* Motion,
8 Exhibit A, Attachment 4. CUB does not explain why it could not have served such requests
9 more promptly following its intervention in this proceeding on April 9, 2010, or even after
10 TracFone filed its direct testimony on June 11, 2010. CUB should not be allowed to rely on its
11 own delay in issuing discovery as a basis for extending the schedule.

12 Finally, CUB's motion to compel itself asks for additional time to analyze any additional
13 information TracFone may be required to provide and to file supplemental testimony. While
14 TracFone intends to oppose CUB's motion to compel, it notes that CUB has already asked for the
15 same relief of a change in the schedule in connection with its motion to compel, and thus this
16 basis of the Motion is duplicative of that request. The Commission does not need to hold a
17 separate conference to consider this request, particularly before it rules on CUB's motion to
18 compel.

19 ///

20 ///

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. CONCLUSION

For the foregoing reasons, TracFone respectfully requests that the Commission deny CUB's motion for a scheduling conference.

DATED: August 17, 2010

PERKINS COIE LLP

By: 

Lawrence H. Reichman, OSB No. 860836
LReichman@perkinscoie.com
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW
Suite 1000
Washington, D.C. 20037
(202) 331-3100

Counsel for TracFone Wireless, Inc.

Reichman, Lawrence (Perkins Coie)

From: Catriona McCracken [Catriona@oregoncub.org]
Sent: Friday, August 13, 2010 1:52 PM
To: Reichman, Lawrence (Perkins Coie); brecherm@gtlaw.com; jon.cray@state.or.us; Gordon Feighner; rickfinn@localaccess.com; Bob Jenks; kay.marinos@state.or.us; mercerdm@gtlaw.com; Ray Myers; Kevin Parks; michael.weirich@doj.state.or.us; bwolf@ota-telecom.org; steven.wolf@doj.state.or.us
Subject: RE: CUB Motion for Scheduling Conference Expedited Review Requested

Thanks Larry and Mitchell – as also discussed in our phone call, while CUB is not rejecting your offer to have conversations, CUB still believes that there is a need to delay the schedule in order to allow time for any such conversations to occur - as you know CUB's main witness is out three days next week and all of the following week. Indeed, CUB believes that any such conversation would best be had in the form of a face to face workshop discussion. Additionally, as also discussed, conversations are not testimony and the upshot of any conversation may be a need for additional discovery and supplemental testimony potentially from each party. CUB acknowledges your opposition to our proposed motion and will so note but CUB will be filing its motion on Monday, notwithstanding your opposition, given CUB's belief that additional time is needed to review, obtain discovery, and write testimony on the new facts revealed in your filing of this morning.

I hope everyone has a good weekend – looks like it will be a hot one in Oregon.

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email:catriona@oregoncub.org

***** CONFIDENTIALITY NOTICE *****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Reichman, Lawrence (Perkins Coie) [mailto:LReichman@perkinscoie.com]
Sent: Friday, August 13, 2010 1:36 PM
To: Catriona McCracken; brecherm@gtlaw.com; jon.cray@state.or.us; Gordon Feighner; rickfinn@localaccess.com; Bob Jenks; kay.marinos@state.or.us; mercerdm@gtlaw.com; Ray Myers; Kevin Parks; michael.weirich@doj.state.or.us; bwolf@ota-telecom.org; steven.wolf@doj.state.or.us
Subject: RE: CUB Motion for Scheduling Conference Expedited Review Requested

Dear Catriona,

As we discussed a short while ago, TracFone opposes any further delay in this docket which may have the effect of delaying the date by which TracFone may offer its Lifeline service to Oregon customers, and therefore respectfully opposes this proposed motion. To the extent that CUB or the other parties have questions about any of the

terms or conditions of the expanded Lifeline offerings TracFone announced this morning, we would be pleased to convene a conference call at the earliest opportunity to answer such questions. We suggest this would be a more expeditious and efficient way for you to obtain any desired information or clarification while maintaining the current schedule.

Thanks,
Larry

Lawrence Reichman | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2019
FAX: 503.346.2019
E-MAIL: LReichman @perkinscoie.com

From: Catriona McCracken [mailto:Catriona@oregoncub.org]
Sent: Friday, August 13, 2010 11:43 AM
To: brecherm@gtlaw.com; jon.cray@state.or.us; Gordon Feighner; rickfinn@localaccess.com; Bob Jenks; kay.marinis@state.or.us; mercerdm@gtlaw.com; Ray Myers; Kevin Parks; Reichman, Lawrence (Perkins Coie); michael.weirich@doj.state.or.us; bwolf@ota-telecom.org; steven.wolf@doj.state.or.us
Subject: CUB Motion for Scheduling Conference Expedited Review Requested

CUB is in receipt of TracFone's Wireless Inc.'s filing of this morning regarding expansion of its Lifeline offering.

Given that this presents parties with a whole new set of facts to analyze, that the next, and final, round of testimony is scheduled for August 23, 2010, that CUB's main witness is out three days next week and all of the following week on vacation, that CUB has yet to receive a ruling on its Motion to Compel and Supplemental Motion to Compel and that TracFone has still to receive a ruling on its Motion to Deny Intervention to CUB, that there is insufficient time to write and receive responses to data requests and that depositions in this matter are all scheduled for after the current testimony date, CUB will be requesting a scheduling conference to consider amending the schedule to allow for sufficient time for discovery of all types to occur before the next round of testimony is due. Intervenors and Staff please let me know by close of business today whether you have any objection to, or edits for, CUB's motion which is attached hereto. Larry and Mitchell please advise of the Company's position on this motion. If I do not hear back from anyone I will so note in the motion.

Thank you.

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email: catriona@oregoncub.org

***** CONFIDENTIALITY NOTICE *****

8/17/2010

Exhibit A
Page 2 of 3

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Anderson, Diane M. (Perkins Coie) [mailto:DAnderson@perkinscoie.com]
Sent: Friday, August 13, 2010 10:00 AM
To: PUC.FilingCenter@state.or.us
Cc: brecherm@gtlaw.com; jon.cray@state.or.us; Gordon Feighner; rickfinn@localaccess.com; Bob Jenks; kay.marin@state.or.us; Catriona McCracken; mercerdm@gtlaw.com; Ray Myers; Kevin Parks; Reichman, Lawrence (Perkins Coie); michael.weirich@doj.state.or.us; bwolf@ota-telecom.org; steven.wolf@doj.state.or.us
Subject: TracFone Wireless, Inc. / UM 1437 / TracFone Notice of Expanded Lifeline Offering / Reichman

Attached for filing with the PUC Filing Center is TracFone Wireless, Inc.'s Notice of Expanded Lifeline Offering. A hard copy will follow by U.S. mail, as indicated on the certificate of service. If you have any difficulty with the attachment, please feel free to contact me.

<<TracFone Notice of Expanded Lifeline Offering.PDF>>

Diane Anderson | Perkins Coie LLP

LEGAL SECRETARY TO:

Lawrence Reichman | Cody M. Weston | Nicholle Winters

Nathan Christensen | Michelle Servo

1120 N.W. Couch Street, 10th Floor

Portland, OR 97209-4128

☎: 503.727.2107

📠: 503.727.2222

✉: DAnderson@perkinscoie.com



Please consider the environment before printing this email. Thank you.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August, 2010, served the foregoing **TRACFONE WIRELESS, INC.'S RESPONSE TO CITIZENS' UTILITY BOARD OF OREGON'S MOTION FOR SCHEDULING CONFERENCE TO CONSIDER FURTHER AMENDMENT OF SCHEDULE** upon all parties of record in this proceeding by causing a copy to be sent by electronic mail and U.S. mail to the following addresses (as indicated below):

Richard A. Finnegan
rickfinn@localaccess.com
Law Office of Richard A. Finnegan
2112 Black Lake Blvd. SW
Olympia, WA 98512

Michael T. Weirich
michael.weirich@doj.state.or.us
Assistant Attorney
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

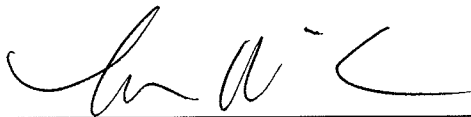
Kay Marinos
kay.marinos@state.or.us
Jon Cray
jon.cray@state.or.us
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Mitchell F. Brecher
brecherm@gtlaw.com
Debra McGuire Mercer
mercerm@gtlaw.com
Greenberg Traurig, LLP
2101 L Street NW, Suite 1000
Washington, DC 20037
(Electronic mail only)

Gordon Feighner
gordon@oregoncub.org
Robert Jenks
bob@oregoncub.org
G. Catriona McCracken
catriona@oregoncub.org
Raymond Myers
ray@oregoncub.org
Kevin Elliott Parks
kevin@oregoncub.org
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 400
Portland, OR 97205
(Electronic mail only)

Steven A. Wolf
steven.wolf@doj.state.or.us
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Brant Wolf
bwolf@ota-telecom.org
Oregon Telecommunications Association
777 13th Street SE, Suite 120
Salem, OR 97301-4038

By: 
Lawrence H. Reichman, OSB No. 860836
PERKINS COIE LLP
Counsel for TracFone Wireless, Inc.