

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1437

In the Matter of)	
)	Citizens' Utility Board of Oregon's
TRACFONE WIRELESS, INC.)	Response to Tracfone Wireless, Inc.'s
Application for Designation as an Eligible)	Motion to Deny Intervention to
Telecommunications Carrier)	Citizens' Utility Board of Oregon
)	Expedited Review Requested
)	

I. INTRODUCTION.

The Citizens' Utility Board of Oregon (CUB) opposes Tracfone Wireless, Inc.'s (Tracfone's) Motion to Deny Intervention to Citizens' Utility Board of Oregon. Tracfone suggests that its motion will save the commission time and prevent delay of the proceedings, CUB finds Tracfone's filing ironic given that CUB, in efforts not to delay the proceedings, has prepared and filed its testimony today based upon the information currently available to it. CUB's recommendation that the Commission reject and deny Tracfone's Application stems from the fact that Tracfone has chosen not to provide CUB with the information it has requested through the discovery process that it, the other parties and the Commission need in order to assess whether Tracfone's Application is in the public interest.

CUB is separately filing a "Motion to Compel Tracfone to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided." The Motion to Compel and request for additional time result from Tracfone's decision not to provide discovery to CUB and not from any desire on CUB's

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part to delay this docket. CUB has attempted to work with Counsel for Tracfone, calling and seeking discussion of the offending data request responses. July 27, 2010. Tracfone's Counsel did not return CUB's telephone call responding in an email on July 29, 2010 date to say that given its disparate counsel it might take some days to arrange a phone call.¹ CUB learned of Tracfone's filing of the Motion to Deny Intervention at 4:37 p.m. on Friday July 30, 2010 – CUB moving day – on Monday August 2, 2010 in a phone call from Staff, who knowing that CUB did not have reliable internet access or phone access due to its move wanted to be sure CUB was aware of the filing. Tracfone did not discuss the filing of its motion with CUB even though it had ample opportunity to do so – including on the day of filing when it arranged for hand delivery of delayed confidential responses to prior Staff data requests.

II. TRACFONE COULD HAVE OBJECTED TO CUB'S ORIGINAL NOTICE OF INTERVENTION.

Tracfone argues in its motion that it could not object to CUB's original filing of its Notice of Intervention back in April of 2010 because CUB filed a Notice of Intervention as of right. Tracfone's Motion to Deny Intervention at 2 lines 1 to 7. Tracfone claims that because CUB intervened as of right it did not file a petition commensurate with OAR 860-012-0001. Id. This is interesting because CUB's Notice of Intervention does contain all of the information required by OAR 860-012-0001. Anyone wishing to object to CUB's authority to intervene as of right in this proceeding would have the information available to them from the first day of the filing of the Notice of Intervention to file an objection. Pursuant to OAR 860-013-0050(1)(a) and (c), Tracfone had 20 days to file a motion against the petition or 10 days to answer it. It did neither. CUB wonders what change allows Tracfone to object to CUB's intervention at this late date. The only change that CUB is aware of is that CUB has exercised its right to ask data requests

¹ EXHIBIT A.

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that shine a light on Tracfone’s business plans, or lack thereof. As a result of those data requests, has Tracfone become motivated to try and find a way to eliminate CUB and CUB’s “inconvenient” questions from the docket so as not to have to respond to any Motion to Compel that CUB might file?²

III. CUB’S AUTHORITY IS EXTREMELY BROAD AND CUB IS WELL WITHIN ITS RIGHTS TO INTERVENE AS OF RIGHT IN THIS DOCKET.

Tracfone alleges in its motion that CUB “is acting far beyond the scope of its statutory authority.”³ In support of this argument Tracfone cites to, among other provisions, ORS 774.180. Tracfone fails to cite the statute’s introductory sentence – “Notwithstanding any other provision of law” In its entirety the statute reads:

“Notwithstanding any other provision of law:

- (1) Whenever the board determines that *any agency proceeding may affect the interests of utility consumers*, Citizens’ Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.
- (2) Citizens’ Utility Board *shall* have standing to obtain judicial or administrative review of *any agency action*, and may intervene as of right as a party or otherwise participate in *any proceeding which involves the review or enforcement of any action by an agency*, if the board determines that the action *may* affect the interests of utility consumers. ORS 774.180 (emphasis added)

Tracfone states that “none of Tracfone’s customers will be ‘utility consumers.’”⁴ A “[c]onsumer” or “utility consumer means *any* natural person 18 years of age or older who is a resident of the State of Oregon.” ORS 774.010(2). Unless, Tracfone intends only to supply

² Tracfone’s Motion to Deny Intervention at 8-21.

³ Tracfone Motion to Deny Intervention at 3 lines 3-7.

⁴ Tracfone Motion to Deny Intervention at 5 lines 5-7.

Lifeline Service to natural Oregon residents under 18, it must not intend to supply its phones to Oregon utility consumers.

CUB's organic statute provides that CUB, notwithstanding any other provision of law, may intervene as of right in any agency proceeding that may affect the interests of utility customers. The Commission recognizes the breadth of this authority in its implementing rule OAR 860-012-0001(3) "Notwithstanding section (2) of this rule, *the Citizens' Utility Board may intervene in Commission proceedings as of right, pursuant to ORS 774.180*, by filing a notice of intervention containing the information required by sections (1)(a) and (b) of this rule."

Unless Tracfone is going to reverse itself and claim, contrary to its Application at 4-6 that the Commission does not have jurisdiction to hear and decide this matter, Tracfone can not now be heard to claim that this is not an appropriate OPUC proceeding into which CUB may intervene.

It is clear that the proceeding in which the parties to this docket are engaged is an OPUC proceeding which "may affect the interests of utility consumers." Persons over the age of 18 who are residents in Oregon will be impacted, for good or ill, by any decision that the Commission makes in regard to the approval or denial of Tracfone's Application. CUB has clear statutory authority to intervene in this proceeding as of right and under the rules of this Commission CUB also has authority to ask the data requests that it has already asked and to expect to receive, and to actually receive, full and complete detailed responses to those data requests - see CUB's Motion to Compel.

Tracfone also cites to ORS 774.020, ORS 774.030(3) and ORS 774.010(5) in an effort to support its thesis that CUB is acting far beyond its statutory authority. ORS 774.020 simply states the rationale behind the creation of CUB that natural persons age 18 or older who are

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residents of the state of Oregon need an effective advocate to assure that public policies affecting the quality and price of utility services reflect their needs and interests. And ORS 774.030 provides among other things that CUB can appear before legislative, administrative and judicial bodies. The main crux of Tracfone's argument seems to be that Tracfone is not a regulated utility as defined in ORS chapters 757 and 759 and as defined in ORS 774.010(5). This argument misses the mark.

Given Tracfone's argument CUB sought out one of its founding fathers and chief petitioners (Tom Novick) to ask him what the intent was when drafting ORS 774.010(5). Mr. Novick advised as follows:

3. ORS 774.010 contains five definitions. Definitions of the terms "board", "consumers or utility consumers", "district", "member" and of the term "utility". Of these five definitions only one is relevant to the question at hand - the definition of "consumer" or "utility consumer". The definition of "utility" was added for two purposes only. The first, so as to define the limited universe of regulated utilities that had to permit CUB to insert bill stuffers into utility originated mail. And, the second, to limit possible conflicts of interest on the Board should someone interested in running for the Board prove to be employed by a regulated utility or to own more than \$3000 in stocks or bonds of a regulated utility.

4. The definition of the term "consumer" or "utility consumer" in ORS 774.010 was designed to work hand in hand with ORS 774.180 – the CUB intervention statute. The idea was to permit CUB to advocate in any forum whether state or federal on behalf of Oregon customers. ORS 774.180, for that very reason, provided then, and provides now, that:

"Notwithstanding any other provision of law:

- (3) Whenever the board determines that any agency proceeding may affect the interests of utility consumers, Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.
- (4) Citizens' Utility Board shall have standing to obtain judicial or administrative review of any agency action, and may intervene as of right as a party or otherwise participate in any proceeding which involves the review or enforcement of any action by an agency, if the board determines that the action may affect the interests of utility consumers.

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Over the years the courts and many administrative bodies have upheld the right of CUB to intervene as of right, and at any point in a proceeding, see for example FERC (where CUB participates as part of NASUCA) the FCC (where CUB participates through NASUCA), federal and state Court's of Appeal (*US West Communications, Inc. v. Public Utility Commission of Oregon and Citizens Utility Board of Oregon and the American Association of Retired Persons* CA A101358) and the current BPA proceedings before the Ninth Circuit. ; IDAHO PUBLIC UTILITIES COMMISSION, et al. Petitioners BONNEVILLE POWER ADMINISTRATION Respondent. Docket Nos. 08-74927, 08-74928, 08-74929, 08-74932, 08-74933 08-74942 08-74957; AVISTA CORPORATION, et al., Petitioners, NORTHWEST REQUIREMENTS UTILITIES, et l., Intervenor, v. BONNEVILLE POWER ADMINISTRATION et al., Respondents. Nos. 09-73160, 09-73201, 09-73225, 09-73228, 09-73230, 09-73247, 09-73249, 09-73251, 09-73252, 09-73254, 09-73264, 09-73269, 09-73271, 09-73274, 09-73281; THE ASSOCIATION OF PUBLIC AGENCY CUSTOMERS, an unincorporated ad hoc organization; et al., Petitioners, v. BONNEVILLE POWER ADMINISTRATION, Respondent. Nos. 08-74725, 08-74811, 08-74900, 08-75008, 08-75091, 08-75098, 08-75099, 08-75112, 08-75113, 08-75130, 08-75132, 08-75133, 08-75161, 08-75165.

5. I have watched CUB's progress over the years and have delighted in its efforts to protect Oregon consumers. The fact that CUB can intervene as of right as a party, or otherwise participate, in *any* proceedings that may affect the interests of any natural person 18 years of age or older who is a resident of the State of Oregon (ORS 774.010 definition of "consumer" or "Utility Consumer") is what has made CUB a strong force before the Commission for consumer rights. Any Company that seeks to limit CUB's intervention is in my mind not interested in Oregon consumers and what is in the public interest for the State of Oregon. (Exhibit B - Affidavit of Tom Novick.)

As noted above, CUB's authority contains the broadest language that can appear in a statute – notwithstanding any other provision of law – CUB may intervene as of right as an interested party or otherwise participate in the proceeding. See also OAR 860-012-0001(3).

IV. CUB'S DATA REQUESTS FALL WITHIN CUB'S STATED INTENT TO "MONITOR THE PROCEEDING AND, IF NECESSARY, RAISE ISSUES THAT ARE APPROPRIATE TO THE PROCEEDING."

CUB stated in its Notice of Intervention that it would "monitor the proceeding and, if necessary, raise issues that are appropriate to the proceeding." CUB's Notice of Intervention at

3. CUB has done exactly that. CUB monitored the initial data requests to see if the issues it

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wished to have addressed were being raised and when CUB noted gaps in the data requests began submitting its own data requests. Exhibit C contains all of the Data Requests asked by CUB to date. Tracfone has objected to many of CUB's requests, partially answered others, given answers that are clearly not fully accurate to yet others and on occasion has flat out refused to answer requests. It should be noted that Tracfone has yet to file responses of any kind to some of these data requests. CUB has now raised with Tracfone its concern that Tracfone has failed to do due diligence in preparation for its Oregon filing. CUB called Tracfone and requested that it supplement its answers so that CUB would not simply be forced to recommend that the Commission reject/deny its Application. Tracfone chose not to supply the additional information instead filing its Motion to Deny Intervention.

Tracfone's complaint seems to be that CUB is going to make it prove that its Application is in the public interest. CUB believes this to be the case as the only burden it has placed on Tracfone is that of coming forward with answers to relevant questions. Tracfone complains about the number of data requests being asked in this docket. As the Commission knows only too well the number of data requests asked in this docket to date is actually on the light side for many Commission proceedings. Only this week, in a stipulation related to UE 215, Portland General Electric's General Rate case one can read that over 700 data requests were asked and answered in that docket prior to settlement – Tracfone has little to complain about.⁵ CUB believes that the sole purpose of Tracfone's Motion to Deny Intervention is an attempt to prevent Tracfone from having to honestly answer the CUB data requests.

⁵ UE 215 Joint Testimony 300 at page 2.

V. TRACFONE ALLEGES THAT THE INFORMATION ASKED OF IT BY CUB IS IN SOME CASES HIGHLY CONFIDENTIAL AND PROPRIETARY.

It is not unusual for a Company to claim that the information that may be sought by parties to a docket is highly confidential and proprietary. Some companies go so far as to seek a Highly Confidential Protective order which generally adds additional limits as to persons who may review the materials and sets forth means for the material to be reviewed and entered into the record. The Commission has made it known in the past that such protective orders are not the norm. Tracfone opted not to seek such a protective order.

If Tracfone is now claiming that some of its materials merit the imposition of a highly confidential protective order then Tracfone needs to file a motion seeking such an order. The fact that CUB would likely oppose such a request – though CUB does not remember any discussion of such a possible filing in this docket - is neither here nor there. If CUB in fact has no basis for intervening as of right in this matter then Tracfone has nothing to worry about from CUB on that score. Tracfone can not hold up as a shield, to the provision of responses to data requests, the possible confidential and proprietary nature of its materials if it is not willing to actually go out and seek such protection for them. And Tracfone can not claim that such protection negates CUB's ability to obtain and use such material except as explicitly ordered by the Commission. CUB is a frequent participant in Commission dockets, is not a competitor to the applicant company, has signed the only existing protective order and should not be denied access to the requested information. Tracfone's attempt to have CUB removed from the docket so as to prevent the review and possible submission of relevant information into the record should not be allowed to succeed.

VI. NO OTHER PARTY COULD ADEQUATELY REPRESENT THE INTEREST OF UTILITY CONSUMERS.

As stated by CUB in its Notice of Intervention, “No other party could adequately represent the interest of utility consumers.” “Utility Consumers” being “*any* natural person 18 years of age or older who is a resident of the State of Oregon.” CUB, as the statutorily designated watchdog for investor owned electric, gas and telecommunications services provided to utility consumers is experienced in these kinds of dockets, believes itself to add value to the proceedings by asking the hard questions that must be answered in order for the Commission to have a record on which to base its findings. CUB does not believe that any other party can adequately represent the interest of consumers in this docket.

VII. CONCLUSION.

Contrary to all of Tracfone’s arguments CUB is not exceeding its statutory authority by intervening in this docket. Even if it accidentally had, CUB would simply petition the Commission for authority to intervene out of time – no party could argue prejudice since each has known all along of CUB’s intent to participate in, and participation in, this docket. The fact that Tracfone would prefer that no one notice its lack of cooperation in the discovery process, inadequate data responses, and lack of regard for the regulatory process is not a justifiable basis upon which to premise a motion asking the Commission to eject another party from the docket.

CUB respectfully requests that the Commission reject Tracfone's "Motion to Deny Intervention to the Citizens' Utility Board of Oregon."

DATED this 3rd day of August, 2010.

Respectfully submitted,



G. Catriona McCracken, Attorney #933587
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org

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EXHIBIT A

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1437

In the Matter of)	
)	
TRACFONE WIRELESS, INC.)	AFFIDAVIT OF CATRIONA
Application for Designation as an Eligible)	MCCRACKEN
Telecommunications Carrier)	
<hr style="border: 0.5px solid black;"/>		

I, Catriona McCracken, being duly sworn on oath, depose and say:

1. I am a Legal Counsel for the Citizens' Utility Board of Oregon.
2. On July 27, 2010 I telephoned Lawrence Reichman hoping to discuss CUB's pending data requests and the need for supplementation of the responses by Tracfone. Mr. Reichman was not in and I left him a voicemail explaining that CUB believed Tracfone's data responses to be inadequate. I reminded Mr. Reichman that testimony was due on August 3, 2010 and that if Tracfone had not appropriately supplemented its data responses by that time that CUB would be forced to file testimony stating that in CUB's opinion Tracfone had failed to perform due diligence prior to filing its Application and that its Application should be denied.
3. I did not have any communication with Mr. Reichman on July 28, 2010.
4. *G.C.A.* On July 29, 2010 Mr. Reichman and I exchanged a series of emails which are attached hereto as *Exhibit Attachments 1, 2 and 3.*
5. Mr. Reichman had certain additional materials delivered to my office on Friday, July 30, 2010 – CUB moving day. We understand that those documents were largely copies of confidential materials previously provided to Staff.
6. Michael Weirich, Attorney for Staff, in an email to CUB dated July 29, 2010, requested that CUB's Legal Counsel advise the Commission that Staff may want to weigh-in on the discovery issues but that Attorney Weirich will not be back in the office until August 4, 2010. Attorney Weirich respectfully requests a few days from CUB's date of filing to consider this option.

7. CUB learned of the filing of Tracfone's Motion to Deny Intervention through a telephone call from Staff who, knowing that CUB was moving and did not have internet or telephone access, wanted to advise CUB that such a motion had been filed.


I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF OREGON THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY INFORMATION AND BELIEF.

Signed this 3rd day of August, 2010.



Catriona McCracken

Subscribed and sworn to before me this 3rd day of August, 2010.

Signed: 
Printed: John Taylor



My Commission expires: June 23, 2012

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EXHIBIT A

Attachment 1

Catriona McCracken

From: Reichman, Lawrence (Perkins Coie) [LReichman@perkinscoie.com]
Sent: Thursday, July 29, 2010 9:14 AM
To: Catriona McCracken
Subject: UM 1437

Catriona,

I received your voice mail yesterday. I think it would be more productive to have lead counsel on the call with you, which accounts for the delay in my getting back to you. We will call you as soon as we are able.

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

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EXHIBIT A

Attachment 2

Catriona McCracken

From: Catriona McCracken
Sent: Thursday, July 29, 2010 11:36 AM
To: 'Reichman, Lawrence (Perkins Coie)'
Cc: Bob Jenks; Ray Myers; Kevin Parks; Gordon Feighner
Subject: RE: UM 1437

Larry:

It is entirely up to Tracfone how they respond to our data requests and my telephone call to you of July 27, 2010, but I would remind you that testimony is due from intervenors on Tuesday, August 3, 2010. If CUB does not have adequate responses to its data requests I will be filing a Motion to Compel and a Motion for Extension of Time to file Testimony. An example of our concerns follows:

Staff DR 8 and 9 – Staff made these data request early in the process. Tracfone's response was that responding would require disclosure of confidential information and that it would only be answered when there was an appropriate protective order in place. That protective order has been in place for some time and CUB is yet to receive the response that Tracfone provided to Staff. CUB knows that Tracfone responded to staff – Tracfone's response to Staff DR 35 demonstrates this.

CUB DR 17 - this Data request was very similar to Staff DR 9. The response to CUB was that the information sought was not relevant and would not be provided. Obviously CUB disagrees as to the relevancy but is not appropriate for Tracfone to answer a similar question for Staff and fail to answer CUB – CUB has signed the protective order.

This failure to provide responses is limiting CUB's ability to draft testimony and CUB will note that in its Motion to Compel and in its Motion for Extension of Time to File Testimony.

Even more bothersome and inappropriate is the fact that Tracfone appears to have done no due diligence prior to its attempt to enter the Oregon market. CUB DR 5 asked for "forecasts" done to determine anticipated customers in Oregon. Tracfone's response was that it had not done any. Whether it was a "study" a "projection" an "estimate", a "forecast" is semantics. If Tracfone has data on this it should provide it otherwise CUB will be forced to write testimony stating that the company clearly has not done its due diligence and should not be allowed to do business in Oregon.

CUB requires full and complete supplemental answers to all of its testimony by Friday July 30, 2010 – CUB will not be available to review anything received over the weekend or Monday August 2, 2010 as CUB is moving its office location from the 3rd to 4th floors of our building.

All of the information necessary to prove Tracfone's due diligence is in Tracfone's possession and control. There is no other source from which CUB can obtain this material. Tracfone needs to revisit all of its responses to CUB's data requests and supplement their responses. CUB is not a competitor of Tracfone and will not use any information obtained for competitive purposes. CUB's requests are not unduely burdensome, designed to oppress, embarrass or annoy. CUB is simply seeking to have the Company demonstrate that what it desires to do is in fact within the public interest. There is no basis for Tracfone to object to CUB's requests. See ORCP 36 and the Commission rules.

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308

Karen Jaffe

From: Catriona McCracken
Sent: Tuesday, August 03, 2010 3:03 PM
To: Karen Jaffe
Subject: FW: UM 1437

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email: catriona@oregoncub.org

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From: Catriona McCracken
Sent: Thursday, July 29, 2010 1:35 PM
To: 'Reichman, Lawrence (Perkins Coie)'
Cc: Bob Jenks; Gordon Feighner; Ray Myers; Kevin Parks
Subject: RE: UM 1437

Larry:

Here is the full list of the Data Requests for which CUB objects to Tracfone's responses and requests supplemental responses:

- CUB DR 4 - CUB believes that the information requested is relevant to any determination as to the Company's health now and in the future and whether this transaction is in the public interest.
- CUB DR 5 - See prior email. It matters not what you called your "study", "estimate", "goal", "projection" the information is relevant and should be provided otherwise CUB will be forced to file testimony stating that the Company has not done the necessary due diligence
- CUB DR 6 - same as 5 above
- CUB DR 7 - How and what Tracfone pays is highly relevant to whether this transaction is in the public interest for Oregon
- CUB DR 16 - This information is necessary to determine how universal service funds are being used
- CUB DR 17 - CUB believes that the information requested is highly relevant to the ability of the Commission to make a public interest determination for Oregon
- CUB DR 18 - CUB believes that the information requested is highly relevant to the ability of the Commission to make a public interest determination
- CUB DR 19 - The financial health of Tracfone is relevant to the ability of the Commission to make a public interest determination

CUB DR 20 – What Tracfone has told everyone about its plans for Oregon is highly relevant to the ability of the Commission to make a public interest determination

CUB DR 21 – How Tracfone runs its other services is relevant to its business model and whether that model is in the public interest of the Oregon customer.

CUB DR 22 – How Tracfone runs its other services is highly relevant to its business model and whether that model is in the public interest of the Oregon customer.

CUB DR 23 - The current and future financial health of Tracfone is highly relevant to whether this project is in the public interest

CUB DR 24 – CUB is still waiting for confidential and highly confidential information to be provided to CUB – see my prior email.

CUB is still waiting for responses to:

CUB DRs 25-35 responses due today

CUB DRs 36-40 responses due Aug 9 – obviously it would be helpful if you can respond to these prior to our time for filing testimony

CUB DR 41 responses due Aug 10 – obviously it would be helpful if you can respond to this prior to our time for filing testimony

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email:catriona@oregoncub.org

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From: Reichman, Lawrence (Perkins Coie) [mailto:LReichman@perkinscoie.com]
Sent: Thursday, July 29, 2010 9:14 AM
To: Catriona McCracken
Subject: UM 1437

Catriona,

I received your voice mail yesterday. I think it would be more productive to have lead counsel on the call with you, which accounts for the delay in my getting back to you. We will call you as soon as we are able.

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: L.Reichman@perkinscoie.com

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EXHIBIT A

Attachment 3

Karen Jaffe

From: Catriona McCracken
Sent: Tuesday, August 03, 2010 2:31 PM
To: Karen Jaffe
Subject: FW: UM 1437 CUB's objections to Tracfone's responses to CUB's DRs 28, 32, and 34

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email: catriona@oregoncub.org

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

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From: Kevin Parks
Sent: Tuesday, August 03, 2010 1:36 PM
To: Catriona McCracken
Subject: FW: UM 1437 CUB's objections to Tracfone's responses to CUB's DRs 28, 32, and 34

FYI, This is similar to the info you just had me go over and add to the Motion to Compel...

From: Catriona McCracken
Sent: Friday, July 30, 2010 2:37 PM
To: Reichman, Lawrence (Perkins Coie)
Cc: BRECHERM@gtlaw.com; mercerdm@gtlaw.com; Bob Jenks; Gordon Feighner; Kevin Parks
Subject: RE: UM 1437 CUB's objections to Tracfone's responses to CUB's DRs 28, 32, and 34

CUB is now in receipt of Tracfone's responses to CUB DRs 25 to 35.

Of those responses, responses to DRs 28, 32 and 34 are incomplete and need to be supplemented.

DR 28 – Tracfone objected to DR 28 and failed to provide any response at all. CUB disagrees with Tracfone's assertion that this question is not relevant to their application. This information is highly relevant to a determination of whether what Tracfone is proposing is in the public interest. CUB requires full and complete supplemental answers to all of its testimony by Friday July 30, 2010 – CUB will not be available to review anything received over the weekend or Monday August 2, 2010 as CUB is moving its office location from the 3rd to 4th floors of our building.

All of the information necessary to analyze Tracfone's possession and control. There is no other source from which CUB can obtain this material. Tracfone needs to revisit all of its responses to CUB's data requests and supplement their responses. CUB is not a competitor of Tracfone and will not use any information obtained for competitive purposes.

CUB's requests are not unduly burdensome, designed to oppress, embarrass or annoy. CUB is simply seeking to have the Company demonstrate that what it desires to do is in fact within the public interest. There is no basis for Tracfone to object to CUB's request. See ORCP 36 and the Commission rules.

DR 32 - Tracfone objected to DR 32 and failed to provide any response at all. CUB disagrees with Tracfone's assertion that this question is not relevant to their application. This information is highly relevant to a determination of whether what Tracfone is proposing is in the public interest. CUB requires full and complete supplemental answers to all of its testimony by Friday July 30, 2010 – CUB will not be available to review anything received over the weekend or Monday August 2, 2010 as CUB is moving its office location from the 3rd to 4th floors of our building.

All of the information necessary to analyze Tracfone's possession and control. There is no other source from which CUB can obtain this material. Tracfone needs to revisit all of its responses to CUB's data requests and supplement their responses. CUB is not a competitor of Tracfone and will not use any information obtained for competitive purposes. CUB's requests are not unduly burdensome, designed to oppress, embarrass or annoy. CUB is simply seeking to have the Company demonstrate that what it desires to do is in fact within the public interest. There is no basis for Tracfone to object to CUB's request. See ORCP 36 and the Commission rules.

DR 34 – While Tracfone did put pen to paper on this one other than to object it failed to provide detailed information about its efforts to improve its customer service. Tracfone needs to fully and completely answer this question. This information is highly relevant to a determination of whether what Tracfone is proposing is in the public interest. CUB requires full and complete supplemental answers to all of its testimony by Friday July 30, 2010 – CUB will not be available to review anything received over the weekend or Monday August 2, 2010 as CUB is moving its office location from the 3rd to 4th floors of our building.

All of the information necessary to analyze Tracfone's possession and control. There is no other source from which CUB can obtain this material. Tracfone needs to revisit all of its responses to CUB's data requests and supplement their responses. CUB is not a competitor of Tracfone and will not use any information obtained for competitive purposes. CUB's requests are not unduly burdensome, designed to oppress, embarrass or annoy. CUB is simply seeking to have the Company demonstrate that what it desires to do is in fact within the public interest. There is no basis for Tracfone to object to CUB's request. See ORCP 36 and the Commission rules.

Catriona

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Citizens' Utility Board of Oregon
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Portland, OR 97205
Tel: 503-227-1984
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From: Reichman, Lawrence (Perkins Coie) [<mailto:LReichman@perkinscoie.com>]
Sent: Thursday, July 29, 2010 2:01 PM
To: Catriona McCracken

Cc: BRECHERM@gtlaw.com; mercerdm@gtlaw.com

Subject: RE: UM 1437

Catriona,

Thanks for this additional information. Would you please include TracFone's lead counsel, Rick Brecher and Debra Mercer, on correspondence in the future so there is not delay in communications if I am out of the office?

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: Thursday, July 29, 2010 1:35 PM

To: Reichman, Lawrence (Perkins Coie)

Cc: Bob Jenks; Gordon Feighner; Ray Myers; Kevin Parks

Subject: RE: UM 1437

Larry:

Here is the full list of the Data Requests for which CUB objects to Tracfone's responses and requests supplemental responses:

CUB DR 4 - CUB believes that the information requested is relevant to any determination as to the Company's health now and in the future and whether this transaction is in the public interest

CUB DR 5 - See prior email. It matters not what you called your "study", "estimate", "goal", "projection" the information is relevant and should be provided otherwise CUB will be forced to file testimony stating that the Company has not done the necessary due diligence

CUB DR 6 - same as 5 above

CUB DR 7 - How and what Tracfone pays is highly relevant to whether this transaction is in the public interest for Oregon

CUB DR 16 - This information is necessary to determine how universal service funds are being used

CUB DR 17 - CUB believes that the information requested is highly relevant to the ability of the Commission to make a public interest determination for Oregon

CUB DR 18 - CUB believes that the information requested is highly relevant to the ability of the Commission to make a public interest determination

CUB DR 19 - The financial health of Tracfone is relevant to the ability of the Commission to make a public interest determination

CUB DR 20 - What Tracfone has told everyone about its plans for Oregon is highly relevant to the ability of the Commission to make a public interest determination

CUB DR 21 - How Tracfone runs its other services is relevant to its business model and whether that model is in the public interest of the Oregon customer.

CUB DR 22 – How Tracfone runs its other services is highly relevant to its business model and whether that model is in the public interest of the Oregon customer.

CUB DR 23 - The current and future financial health of Tracfone is highly relevant to whether this project is in the public interest

CUB DR 24 – CUB is still waiting for confidential and highly confidential information to be provided to CUB – see my prior email.

CUB is still waiting for responses to:

CUB DRs 25-35 responses due today

CUB DRs 36-40 responses due Aug 9 – obviously it would be helpful if you can respond to these prior to our time for filing testimony

CUB DR 41 responses due Aug 10 – obviously it would be helpful if you can respond to this prior to our time for filing testimony

Catriona

G. Catriona McCracken
Legal Counsel
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
Tel: 503-227-1984
Fax: 503-274-2956
Email: catriona@oregoncub.org

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From: Reichman, Lawrence (Perkins Coie) [<mailto:LReichman@perkinscoie.com>]
Sent: Thursday, July 29, 2010 9:14 AM
To: Catriona McCracken
Subject: UM 1437

Catriona,

I received your voice mail yesterday. I think it would be more productive to have lead counsel on the call with you, which accounts for the delay in my getting back to you. We will call you as soon as we are able.

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: L.Reichman@perkinscoie.com

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UM 1437

In the Matter of)
)
TRACFONE WIRELESS, INC.) Citizens' Utility Board of Oregon's
) Response to Tracfone Wireless, Inc.'s
Application for Designation as an Eligible) Motion to Deny Intervention to
Telecommunications Carrier) Citizens' Utility Board of Oregon
) **Expedited Review Requested**
)
_____)

EXHIBIT B

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1437

In the Matter of)	
)	
TRACFONE WIRELESS, INC.)	AFFIDAVIT OF THOMAS J.
Application for Designation as an Eligible)	NOVICK
Telecommunications Carrier)	
)	

I, Thomas J. Novick, being duly sworn on oath, depose and say:

1. I am a founding member of the Citizens' Utility Board of Oregon (CUB) and was a chief petitioner in the initiative campaign and the drafting of the legislation that ultimately became ORS Chapter 774.

2. Due to a recent challenge by TracFone, as to the breadth of CUB's ability to intervene in Commission proceedings related to telecom issues, I have been asked by CUB to provide this Affidavit describing the purpose behind the petition definitions now contained verbatim in ORS 774.010.

3. ORS 774.010 contains five definitions. Definitions of the terms "board", "consumers or utility consumers", "district", "member" and of the term "utility". Of these five definitions only one is relevant to the question at hand - the definition of "consumer" or "utility consumer". The definition of "utility" was added for two purposes only. The first, so as to define the limited universe of regulated utilities that had to permit CUB to insert bill stuffers into utility originated mail. And, the second, to limit possible conflicts of interest on the Board should someone interested in running for the Board prove to be employed by a regulated utility or to own more than \$3000 in stocks or bonds of a regulated utility.

4. The definition of the term "consumer" or "utility consumer" in ORS 774.010 was designed to work hand in hand with ORS 774.180 – the CUB intervention statute. The idea was to permit CUB to advocate in any forum whether state or federal on behalf of Oregon customers. ORS 774.180, for that very reason, provided then, and provides now, that:

“Notwithstanding any other provision of law:

- (1) Whenever the board determines that any agency proceeding may affect the interests of utility consumers, Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.
- (2) Citizens' Utility Board shall have standing to obtain judicial or administrative review of any agency action, and may intervene as of right as a party or otherwise participate in any proceeding which involves the review or enforcement of any


action by an agency, if the board determines that the action may affect the interests of utility consumers.

Over the years the courts and many administrative bodies have upheld the right of CUB to intervene as of right, and at any point in a proceeding, see for example FERC (where CUB participates as part of NASUCA) the FCC (where CUB participates through NASUCA), federal and state Court's of Appeal (*US West Communications, Inc. v. Public Utility Commission of Oregon and Citizens Utility Board of Oregon and the American Association of Retired Persons* CA A101358) and the current BPA proceedings before the Ninth Circuit. ; IDAHO PUBLIC UTILITIES COMMISSION, et al. Petitioners BONNEVILLE POWER ADMINISTRATION Respondent. Docket Nos. 08-74927, 08-74928, 08-74929, 08-74932, 08-74933 08-74942 08-74957; AVISTA CORPORATION, et al., Petitioners, NORTHWEST REQUIREMENTS UTILITIES, et l., Intervenors, v. BONNEVILLE POWER ADMINISTRATION et al., Respondents. Nos. 09-73160, 09-73201, 09-73225, 09-73228, 09-73230, 09-73247, 09-73249, 09-73251, 09-73252, 09-73254, 09-73264, 09-73269, 09-73271, 09-73274, 09-73281; THE ASSOCIATION OF PUBLIC AGENCY CUSTOMERS, an unincorporated ad hoc organization; et al., Petitioners, v. BONNEVILLE POWER ADMINISTRATION, Respondent. Nos. 08-74725, 08-74811, 08-74900, 08-75008, 08-75091, 08-75098, 08-75099, 08-75112, 08-75113, 08-75130, 08-75132, 08-75133, 08-75161, 08-75165.

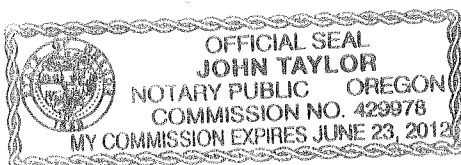
5. I have watched CUB's progress over the years and have delighted in its efforts to protect Oregon consumers. The fact that CUB can intervene as of right as a party, or otherwise participate, in *any* proceedings that may affect the interests of any natural person 18 years of age or older who is a resident of the State of Oregon (ORS 774.010 definition of "consumer" or "Utility Consumer") is what has made CUB a strong force before the Commission for consumer rights. Any Company that seeks to limit CUB's intervention is in my mind not interested in Oregon consumers and what is in the public interest for the State of Oregon.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF OREGON THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY INFORMATION AND BELIEF.

Signed this 3rd day of August, 2010,


Thomas J. Novick

Subscribed and sworn to before me this 3rd day of August, 2010.



Signed: 

Printed: John Taylor

My Commission expires: June 23 2012

UM 1437

In the Matter of)
)
TRACFONE WIRELESS, INC.) Citizens' Utility Board of Oregon's
) Response to Tracfone Wireless, Inc.'s
Application for Designation as an Eligible) Motion to Deny Intervention to
Telecommunications Carrier) Citizens' Utility Board of Oregon
) **Expedited Review Requested**
)
_____)

EXHIBIT C



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

May 18, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 1

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. Please assume that these are on-going requests if any additional information becomes available during the pendency of the case.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

1. Please provide responses to OPUC Staff Data Requests 1 – 11.

Thank you for your prompt attention to these requests.

Sincerely,

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

June 28, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 2

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. Please assume that these are on-going requests if any additional information becomes available during the pendency of the case.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

2. Please provide responses to OPUC Staff Data Requests 12 – 79.

Thank you for your prompt attention to these requests.

Sincerely,

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 9, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000.
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 3

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. Please assume that these are on-going requests if any additional information becomes available during the pendency of the case.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

3. Please provide responses to OPUC Staff Data Requests 80-98.

Thank you for your prompt attention to these requests.

Sincerely,

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 14, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 4-24

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. **Note that all responses to requests submitted in this docket must be submitted within 7 business days.** Please assume that these are on-going requests if any additional information becomes available during the pendency of the case it must be provided.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

4. How many subscribers does TracFone currently have in Oregon? Please provide current subscriber numbers, as well as estimates/forecasts for 1, 3, and 5 years from now (or similar time periods if the estimates/forecasts already exist in that format) for each of the services, including but not limited to Net10, SafeLink, TracFone, StraightTalk, Pay As You Go, or any and all other currently offered TracFone service.
5. How many customers has TracFone forecast adding to its subscriber base, should its application under this docket to become an Eligible Telecommunications Provider, and/or Eligible Telecommunications Carrier, in Oregon be granted? Please provide estimates/forecasts for 1, 3, and 5 years after eligibility to provide the proposed services commences (or similar time periods if the estimates/forecasts already exist in that format).
6. What percentage of the total Oregon customer base has TracFone forecast as likely participating in Lifeline and other subsidized services? Please provide estimates for 1, 3, and 5 years after eligibility as an ETP, and/or ETC, commences (or similar time periods if the estimates/forecasts already exist in that format).
7. Please detail TracFone's method of payment of 911, or E911 Service Fund, or other like emergency fund fees, to the proper authorities in states in which these payments are made.

8. In states where TracFone provides subsidized or free phones to Lifeline customers, what percentage of these phones are never activated?
9. Does TracFone make any attempt in any state to recover phones from customers who do not activate them or whose accounts are closed as a result of inactivity?
10. Please detail the Company's process for closing customer accounts due to inactivity. If this process differs by state, please detail each state's process.
11. Please detail the Company's process for calculating and applying rollover minutes for its customers. Include any threshold usage amounts, or any other limitations or provisions, relevant to the accumulation, usage, or loss of rollover minutes.
12. Please describe what accounting treatment is given to payments received by TracFone from state and federal subsidy programs (for each state in which such funds are received) for subscribers whose accounts have been closed due to inactivity, or subscribers whose accounts are in the process of being closed due to inactivity.
13. Please describe how TracFone's determination that 68 minutes is the appropriate number of free minutes to provide for subsidized service in Oregon will change if TracFone is eligible to receive \$3.50 in support from OTAP.
14. For each state, in which you provide Lifeline services, how many minutes are offered? Please include all pilot programs offered in any state.
15. Why does the number of subsidized minutes determined for each state differ? Please detail how the number of minutes for subsidized services was determined in other states where the number of subsidized minutes is more or less than that determined for Oregon.
16. What percentage of the outgoing calling minutes of TracFone's current SafeLink customers are to 1) interstate destinations and 2) international destinations?
17. What is the overall average monthly usage (in minutes) for SafeLink customers in each state in which the company operates, including minutes that are purchased beyond the free minutes?
18. For TracFone's non-SafeLink customers in the US, what are the average monthly minutes of use per handset for: a) voice service, and b) all services (including data)?
19. What is the average wholesale cost per minute that TracFone pays to the carriers who wireless service it resells?
20. Please identify all contacts that TracFone's employees, consultants, or representatives have made with legislators, Native American tribes, special interest groups, government agencies, or other entities regarding support for TracFone's ETC application in Oregon. Please specify the individual or group

contacted, the TracFone representative involved, and the date of such contact. Also provide a short summary of the information conveyed as well as a copy of any written material shared with the entity.

21. Please describe each calling plan that TracFone offers, including Net10, Straight Talk and others, addressing rates, terms, and various means by which customers purchase, obtain, and continue service. Also indicate which plans are priced on a monthly basis.
22. In its ETP application, TracFone listed [CONFIDENTIAL] residential, business and tribal customers that TracFone provides services to in Oregon. How many of these customers subscribe to: 1) Net10, 2) StraightTalk, and 3) other TracFone plans?
23. Relative to TracFone's response to Staff DR 10: What is the average wholesale cost to TracFone of each type of handset given to SafeLink customers?
24. Please provide any and all previous "Confidential" responses to Staff DRs 1-39, and Staff DRs 40 - 98, once the Company's responses to those DRs are produced, in accordance with Protective Order 10-189, to which CUB is a signatory.

Thank you for your prompt attention to these requests.

Sincerely,



Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org

4. How many subscribers does TracFone currently have in Oregon? Please provide current subscriber numbers, as well as estimates/forecasts for 1, 3, and 5 years from now (or similar time periods if the estimates/forecasts already exist in that format) for each of the services, including but not limited to Net10, SafeLink, TracFone, StraightTalk, Pay As You Go, or any and all other currently offered TracFone service.

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. This information solely relates to TracFone's non-Lifeline service, which is not the subject of this proceeding. TracFone also objects that this request is beyond the jurisdiction of the Commission in that it seeks information regarding TracFone's services that are not subject to the regulatory authority of the Commission. Section 759.036 of the Oregon Revised Statutes provides the Commission with authority to regulate "telecommunications services". However, Section 759.005(8)(a) specifically excludes radio common carriers, such as TracFone, from the definition of telecommunications services. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.

5. How many customers has TracFone forecast adding to its subscriber base, should its application under this docket to become an Eligible Telecommunications Provider, and/or Eligible Telecommunications Carrier, in Oregon be granted? Please provide estimates/forecasts for 1, 3, and 5 years after eligibility to provide the proposed services commences (or similar time periods if the estimates/forecasts already exist in that format).

Response

TracFone has not developed a forecast of the additional customers it would serve if it was designated as an ETC and ETP in Oregon.

6. What percentage of the total Oregon customer base has TracFone forecast as likely participating in Lifeline and other subsidized services? Please provide estimates for 1, 3, and 5 years after eligibility as an ETP, and/or ETC, commences (or similar time periods if the estimates/forecasts already exist in that format).

Response

TracFone has not developed a forecast of the percentage of its Oregon customer base that would likely participate in Lifeline. Although TracFone has no such forecasts, it is hopeful that it will be able to increase the level of Lifeline participation by qualified low-income Oregon households above the 10.7 percent level contained in Federal Communications Commission data.

7. Please detail TracFone's method of payment of 911, or E911 Service Fund, or other like emergency fund fees, to the proper authorities in states in which these payments are made.

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier in Oregon. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq.

8. In states where TracFone provides subsidized or free phones to Lifeline customers, what percentage of these phones are never activated?

Response

All phones that TracFone provides to its SafeLink Wireless® Lifeline customers are activated prior to being sent to the customers.

9. Does TracFone make any attempt in any state to recover phones from customers who do not activate them or whose accounts are closed as a result of inactivity?

Response

See response to Data Request 8 regarding the activation of phones. If TracFone de-enrolls a SafeLink Wireless® customer from Lifeline based on application of its non-usage policy, the customer may keep the handset.

10. Please detail the Company's process for closing customer accounts due to inactivity. If this process differs by state, please detail each state's process.

Response

TracFone does not close a customer account due to inactivity. Under TracFone's non-usage policy, customers are de-enrolled from Lifeline. Therefore, those customers no longer receive Lifeline benefits. The non-usage policy, developed in consultation with state commissions and with the FCC, applies in all states in which TracFone provides Lifeline service.

11. Please detail the Company's process for calculating and applying rollover minutes for its customers. Include any threshold usage amounts, or any other limitations or provisions, relevant to the accumulation, usage, or loss of rollover minutes.

Response

TracFone's handset contains software that discloses the number of airtime minutes remaining on the handset. At the end of each month, any airtime minutes on the handset remain on the handset and carry over to the following month. There are no threshold usage amounts or limitation of a customer's ability to carry over unused airtime minutes to succeeding months.

12. Please describe what accounting treatment is given to payments received by TracFone from state and federal subsidy programs (for each state in which such funds are received) for subscribers whose accounts have been closed due to inactivity, or subscribers whose accounts are in the process of being closed due to inactivity.

Response

When TracFone de-enrolls a SafeLink Wireless® customer from Lifeline under its non-usage policy, it immediately ceases requesting reimbursement from the federal universal service fund for that customer. Therefore, there is no accounting treatment that is applicable. TracFone does not receive payments from any state subsidy programs related to its Lifeline service.

13. Please describe how TracFone's determination that 68 minutes is the appropriate number of free minutes to provide for subsidized service in Oregon will change if TracFone is eligible to receive \$3.50 in support from OTAP.

Response

TracFone has not yet determined the total number of free minutes it would provide if it was eligible to receive \$3.50 in support from OTAP. However, in the event that TracFone was eligible to receive \$3.50 from OTAP, it would pass through that support in the form of free airtime minutes.

14. For each state, in which you provide Lifeline services, how many minutes are offered? Please include all pilot programs offered in any state.

Response

See Exhibit 14 for the standard number of airtime minutes provided under TracFone's Lifeline service. TracFone is currently offering the following number of minutes to Lifeline customers on a promotional basis: Alabama - 120 minutes; Florida - 150 minutes; Illinois - 200 minutes; and Louisiana - 250 minutes.

Exhibit 14

[The content of this block is extremely faint and illegible due to low contrast and heavy noise. It appears to be a large block of text or a table, but the specific details cannot be discerned.]

TracFone's SafeLink Wireless® Lifeline Offerings

State	Monthly Minutes
Alabama	68
Connecticut	64
D.C.	55
Delaware	68
Florida	68
Georgia	68
Illinois	60
Louisiana	68
Maine	68
Maryland	64
Massachusetts	80
Michigan	68
Missouri	68
Nevada	60
New Hampshire	68
New Jersey	68
New York	68
North Carolina	68
Ohio	68
Pennsylvania	68
Puerto Rico	68
South Carolina	68
Tennessee	68
Texas	68
Virginia	68
West Virginia	68
Wisconsin	60

15. Why does the number of subsidized minutes determined for each state differ? Please detail how the number of minutes for subsidized services was determined in other states where the number of subsidized minutes is more or less than that determined for Oregon.

Response

TracFone determines the amount of Lifeline benefits by calculating the Lifeline support it will receive from the federal Universal Service Fund. Assuming that the federally-mandated Subscriber Line Charge (SLC) in a state is \$6.50 -- the maximum allowable SLC pursuant to the FCC's rules, TracFone would receive \$10.00 of Lifeline support pursuant to the FCC's rules. This amount is calculated as follows: Tier One support (\$6.50) plus Tier Two (\$1.75) plus Tier Three (\$1.75, conditioned on the ETC providing an additional \$3.50 Lifeline benefit from its own resources). In states where TracFone receives \$10.00, it calculates the Lifeline benefit by adding \$3.50 to the \$10.00 (totaling \$13.50). TracFone then divides the Lifeline benefit by \$0.20 -- its standard per minute rate for service -- and then rounds that result up to the next full minute. That results in a total Lifeline benefit of 68 minutes per month ($\$13.50/\$0.20 = 67.5$).

TracFone calculates the Lifeline benefit at a statewide level based upon a weighted average of the SLCs of the ILECs in each state. As a result, TracFone provides a uniform Lifeline benefit throughout each state in which it provides Lifeline service, even though the amount of available Tier One support may vary within the state. However, the number of Lifeline minutes provided each month can vary across states. In states in which the weighted average SLC is less than \$6.50, the number of free monthly minutes is lower than 68. The number of monthly minutes is greater than 68 in states that require an ETC to provide additional discounts to Lifeline customers. For example, in Massachusetts, TracFone provides 80 minutes each month because in Massachusetts

TracFone must provide an additional \$6.00 Lifeline benefit from its own resources to be entitled to receive the full federal Lifeline reimbursement of \$10.00. Therefore, in Massachusetts, TracFone provides a Lifeline benefit of \$16.00, which results in a Lifeline subscriber receiving 80 minutes each month ($\$16.00/\$0.20 = 80$). In all states, TracFone passes through the complete amount of federal USF funding it receives to its Lifeline customers in the form of free minutes or wireless airtime.

16. What percentage of the outgoing calling minutes of TracFone's current SafeLink customers are to 1) interstate destinations and 2) international destinations?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.

17. What is the overall average monthly usage (in minutes) for SafeLink customers in each state in which the company operates, including minutes that are purchased beyond the free minutes?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.

18. For TracFone's non-SafeLink customers in the US, what are the average monthly minutes of use per handset for: a) voice service, and b) all services (including data)?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. This information solely relates to TracFone's non-Lifeline service, which is not the subject of this proceeding. TracFone also objects that this request is beyond the jurisdiction of the Commission in that it seeks information regarding TracFone's services that are not subject to the regulatory authority of the Commission. Section 759.036 of the Oregon Revised Statutes provides the Commission with authority to regulate "telecommunications services". However, Section 759.005(8)(a) specifically excludes radio common carriers, such as TracFone, from the definition of telecommunications services. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.

19. What is the average wholesale cost per minute that TracFone pays to the carriers whose wireless service it resells?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. TracFone further objects that the information sought by this data request is highly confidential and commercially sensitive. The prices paid by TracFone to its underlying vendors are the result of arm's length commercial negotiations between TracFone and those vendors. Those rates are not subject to regulation at either the federal or state level. Moreover, TracFone's underlying carriers do not permit TracFone to disclose this information even pursuant to a protective order.

20. Please identify all contacts that TracFone's employees, consultants, or representatives have made with legislators, Native American tribes, special interest groups, government agencies, or other entities regarding support for TracFone's ETC application in Oregon. Please specify the individual or group contacted, the TracFone representative involved, and the date of such contact. Also provide a short summary of the information conveyed as well as a copy of any written material shared with the entity.

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq.

21. Please describe each calling plan that TracFone offers, including Net10, Straight Talk and others, addressing rates, terms, and various means by which customers purchase, obtain, and continue service. Also indicate which plans are priced on a monthly basis.

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. Without waiving its objection, a description of the calling plans offered under TracFone's brand names was provided as Exhibit 24 in response to Commission Staff's data request DR-24 and is attached to this Response as Exhibit 21. Additional information about TracFone's service plans are available at its website (www.tracfone.com).

Exhibit 21

1. The first part of the document discusses the background and context of the project. It mentions the date of the meeting and the participants involved.

2. The second part of the document details the objectives and goals of the project. It outlines the specific tasks to be completed and the timeline for each.

3. The third part of the document provides a summary of the key findings and conclusions. It highlights the main points discussed during the meeting and the next steps to be taken.





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NO BILLS NO CONTRACTS NO SURPRISES YOU'RE IN CONTROL

[ACTIVATE / REACTIVATE PHONE](#)

[BUY AIRTIME](#)

[ADD AIRTIME](#)

[BUY PHONES AND MORE](#)

[TRACFONE PROGRAMS](#)

[SERVICE & SUPPORT](#)

Please make your Value Plan selection, and then click on the Enroll button at the bottom right of the screen.

Individual Plan: It's one of the lowest priced monthly plans in the market today! Automatically receive Minutes on your TracFone every month! It's easy, convenient and at a great price.

50 Minutes Value Plan
\$3.99 / month
[View Details](#)

125 Minutes Value Plan
\$19.99 / month
[View Details](#)

200 Minutes Value Plan
\$29.99 / month
[View Details](#)

Family Plan: Take advantage of one of the lowest priced monthly plans on the market for your entire family and save! Automatically receive Minutes for every TracFone in your home every month.

Family Value Plan
First Phone- 50 Minutes
\$3.99* / month
Each Additional Phone -40 Minutes
\$5.99 / month
[View Details](#)

TracFone Service Protection Plan: Enroll today and automatically receive a 30-day service extension when you need it most! Enrollment is FREE! You pay the \$5.99 fee only if you reach your Service End Date.

30 Service Days
\$5.99** / as needed
[View Details](#)



As a Value Plan member you can buy Minutes in bundles of 50 or 100 MINUTES whenever you want!



Compare the value plan benefits

*Enroll the first TracFone for \$6.99/mo and each additional TracFone in the Family Value Plan (up to four) is just \$5.99/mo.

**With the TracFone Service Protection Plan a 30 day service extension is granted every time a customer is Past Due. The \$5.99 fee for the service is only charged if the customer reaches the Service End Date. Customers already enrolled in Service Protection (previously called Value Plan) will continue paying the original price of \$4.99/mo each time they are Past Due.

[Terms and Conditions](#) [Value Plan FAQ](#)



THE CELL PHONE THAT PUTS YOU IN CONTROL

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BUY AIRTIME



Select Option

Check-Out

Transaction Summary

One Year and Double Minute Cards



Double Minutes for the Life of your TracFone

365 Days of Service

800 minutes

only **\$119.99**

Quantity:

LIMITED TIME OFFER: Buy our Double Minute for Life + 1 Year Card for only \$119.99 (regular price \$ 139.99) and get Double Minutes on all future cards. These minutes have already been doubled for your convenience*



400 Minutes &

365 Days of Service

only **\$99.99**

Quantity:



Double Minutes for Life Card

0 Minutes & 0 Days of Service

only **\$19.99**

Quantity:

LIMITED TIME OFFER: Buy our Double Minute for Life Card for only \$19.99 (regular price \$49.99) and get Double Minutes on all future Airtime Cards with the exception of our One year + Double Minutes Card*

Pay As You Go



450 Minutes &

90 Days of Service

only **\$79.99**

Quantity:



200 Minutes &

90 Days of Service

only **\$39.99**

Quantity:



120 Minutes &

90 Days of Service

only **\$29.99**

Quantity:



60 Minutes &

90 Days of Service

only **\$19.99**

Quantity:

Web Exclusives



PowerPlus Card
1500 MINUTES &
365 DAYS OF SERVICE

only \$199.99

Quantity

EXCLUSIVE



1000 Minutes &
30 Days of Service

only \$149.99

Quantity

EXCLUSIVE



30 Minutes &
30 Days of Service

only \$9.99

Quantity

EXCLUSIVE

Promotional Code (Optional)

Purchase Selection

If you have a Promotional Code that you would like to use at this time,
please enter it below. (OPTIONAL)

Minutes: 000

Price: \$0.00

[HELP](#)
(Only one Promotional Code per transaction)

*Eligible Promotional Minutes will be added at the end of this transaction.

Now, please enter the information requested below:

TracFone Telephone Number

[HELP](#)

OR

Serial Number (also called IMEI)

[HELP](#)



Purchase and use of TRACFONE Prepaid Wireless Airtime is subject to the Terms and Conditions of Service. TRACFONE Prepaid Wireless Airtime cards have no cash redemption value. Airtime rate plans are subject to change without prior notice. All sales of airtime are final. No refunds will be given.

New Airtime card price reductions and extended days of service are currently being tested in order to deliver the combinations that best suit your needs. These offers are for a limited time and cannot be combined with any other offer or promotion.

*The Double Minute benefit does not apply to minutes that have not been purchased, such as bonus minutes provided with a special TracFone promotional code or bonus minutes automatically added to the TracFone. The 800 minutes included with the One Year + Double Minute card will not double. The Double Minute benefit may only be added once, only applies to one TracFone cell phone and may not be transferred to another TracFone.





How It Works

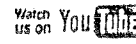
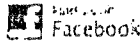
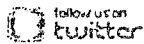
Let's get Started!

- 1 Buy and activate your NET10 phone.**
On the web or by calling 1-877-TEN-CENT (1-877-836-2368).
- 2 Buy Airtime as you need it.**
When you need more Minutes, you can buy Airtime Cards on the web, in one of our retail locations or by calling 1-877-TEN-CENT (1-877-836-2368).
Buy and add an Airtime Card before the Service and Date displayed on your phone screen to keep your NET10 service active.
- 3 Call anywhere, anytime for only 10¢ per minute and text messaging is only 5¢ a message.**



Track your Minutes

- Gives you the power, not the phone company.
- Displays exact airtime balance.
- Reminds you when a NET10 Airtime card must be added.
- Minutes carry over with active service.
- Minutes expire with service deactivation.





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[Español](#)

Please make your Monthly Plan selection, and then click on the Enroll button at the bottom right of the screen.

EASY MINUTES is the easy way to enjoy Automatic Monthly wireless service for 10¢ per minute, without signing an annual contract or paying hidden fees.

150 Easy Minutes Plan
\$15 / month
[View Details](#)

250 Easy Minutes Plan
\$25 / month
[View Details](#)

400 Easy Minutes Plan
\$40 / month
[View Details](#)

ENROLL

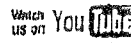
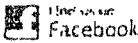
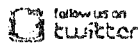
As an Easy Minutes member you can buy Minutes in bundles of 50, 100, or 150 MINUTES whenever you want! If you are a NET10 Unlimited member, you have the option of selecting a 50 or 100 UNLIMITED Minute Bundles.

ADD A MINUTES BUNDLE!

[Easy Minutes Terms and Conditions](#)



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Search NET10

Español



Local, Long Distance or Roaming

200 minutes



This card adds 30 days of service to your service end date

Price: \$20



300 minutes



This card adds 60 days of service to your service end date

Price: \$30



600 minutes



This card adds 60 days of service to your service end date

Price: \$45



900 minutes



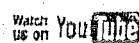
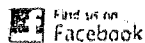
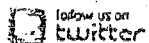
This card adds 90 days of service to your service end date

Price: \$60




Airtime denominations may vary at retail.

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SEARCH

SHOP
ACTIVATE/REGISTER
REFILL/ENROLL
HOW IT WORKS
SUPPORT
LOG IN / MY ACCOUNT
CHECK YOUR BALANCE
SHARE / BOOK-MARK


Service Plan

	ALL YOU NEED	UNLIMITED 1 MONTH	UNLIMITED 3 MONTHS	UNLIMITED 6 MONTHS	UNLIMITED 1 YEAR
PRICE	\$30	\$45	\$135	\$270	\$540
SERVICE DAYS	30 Days	30 Days	90 Days	180 Days	365 Days
MINUTES	1,000 Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide
TEXT OR PICTURE MESSAGES	1,000 Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide	Unlimited Nationwide
MOBILE WEB ACCESS	30 MB	Unlimited	Unlimited	Unlimited	Unlimited
CALL TO 411	Included at no extra charge	Unlimited	Unlimited	Unlimited	Unlimited
CONTRACTS	No	No	No	No	No
AUTO REFILL OPTION	Yes	Yes	Yes	Yes	Yes



NEED TO ACTIVATE & PURCHASE A PLAN

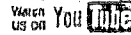
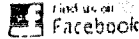
[CLICK HERE](#)



NEED TO REFILL YOUR CURRENT ACCOUNT

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22. In its ETP application, TracFone listed [CONFIDENTIAL] residential, business and tribal customers that TracFone provides services to in Oregon. How many of these customers subscribe to: 1) Net10, 2) StraightTalk, and 3) other TracFone plans?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. This information solely relates to TracFone's non-Lifeline service, which is not the subject of this proceeding. TracFone also objects that this request is beyond the jurisdiction of the Commission in that it seeks information regarding TracFone's services that are not subject to the regulatory authority of the Commission. Section 759.036 of the Oregon Revised Statutes provides the Commission with authority to regulate "telecommunications services". However, Section 759.005(8)(a) specifically excludes radio common carriers, such as TracFone, from the definition of telecommunications services. TracFone further objects that the information sought by this data request is highly confidential, proprietary, and commercially sensitive.

23. Relative to TracFone's response to Staff DR 10: What is the average wholesale cost to TracFone of each type of handset given to SafeLink customers?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq. TracFone further objects that the information sought by this data request is highly confidential and commercially sensitive. TracFone's arrangements with vendors of handsets which it purchases to provide to customers are the result of arm's length commercial negotiations between TracFone and those handset vendors. Moreover, TracFone's handset manufacturers do not permit TracFone to disclose this information even pursuant to a protective order.

24. Please provide any and all previous "Confidential" responses to Staff DRs 1-39, and Staff DRs 40 - 98, once the Company's responses to those DRs are produced, in accordance with Protective Order 10-189, to which CUB is a signatory.

Response

TracFone will provide to CUB all confidential responses to Staff DRs 1-39 and 40-98 that TracFone provides pursuant to the terms of Protective Order 10-189. To date, TracFone has not provided any confidential responses to Staff DRs 1-39 and 40-98 pursuant to the terms of Protective Order 10-189.

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of July, 2010, served the foregoing TRACFONE WIRELESS, INC.'S RESPONSES TO CITIZENS' UTILITY BOARD OF OREGON'S DATA REQUESTS 4-24 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):

Public Utility Commission of Oregon
Attn: Vikie Bailey-Goggins
PUC.datarequests@state.or.us
PO Box 2148
Salem, OR 97308-2148

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
mercerdm@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 308
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

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

By



Lawrence Reichman, OSB No. 860836
PERKINS COIE LLP

Attorneys for TracFone Wireless, Inc.



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 20th, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 25 – 35

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. **Note that all responses to requests submitted in this docket must be submitted within 7 business days.** Please assume that these are on-going requests if any additional information becomes available during the pendency of the case it must be provided.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

25. If a prepaid wireless customer has no minutes remaining on their account, what happens when someone calls them?
26. If a prepaid wireless customer has no minutes remaining on their account, is that phone still able to call 911?
27. Is there a maximum number of rollover minutes that can be accrued on a SafeLink account?
28. According to the SafeLink Terms and Conditions of Service, customers must have their phones on for the first few days of each month to receive their free minutes. If customers do not have their phones on, they will need to "self-retrieve" their free minutes. For each state where SafeLink services are currently offered, please provide the following:
 - a. For the most recent 12 month period where data is available, please provide the number of customers each month that did not automatically receive their free minutes because the phone was not turned on during the first few days of

- the month. What percentage of overall SafeLink customer in that state does this represent?
- b. Of these customers, how many do not then self-retrieve these free minutes?
 - c. Of the customers who do not receive their free minutes in the beginning of the month, and do not self-retrieve, how many contact TracFone customer service to request their free minutes?
29. According to the Terms and Conditions, a customer will be charged at least 1 minute for any call that goes to a link that is busy or has no answer. Is this correct?
30. According to the Terms and Conditions, TracFone is allowed to pursue liquated damages in the amount of not less than \$5,000 for each phone that is sold by the customer.
- a. How many times has TracFone sought liquated damages from a customer?
 - b. In how many of these cases did TracFone successfully recover damages from a customer?
31. TracFone highlights the work of Keep USF Fair on its NET 10 website. Keep USF Fair refers to TracFone's support for a "by the minute" proposal for USF.
- a. Please provide a copy of the "by the minute" proposal for USF which TracFone supports.
 - b. How would TracFone contribute to the federal USF under this proposal?
32. Consumer websites (blogs, forums, etc.) list complaints about TracFone's and Safelink's service quality. Most frequently mentioned are particularly long holds for customer service representatives and the difficulty customers have in getting broken phones replaced.
- a. What metrics does TracFone use to record and analyze its customer service performance? Please provide those metrics for the most recently available 24 month period.
 - b. What is the average length of time that a customer is likely to be on hold with the TracFone customer service center before that customer is able to talk to a live representative?
 - c. What percentage of calls to the TracFone customer service center last more than 30 minutes?
 - d. How many complaints does TracFone receive each year concerning broken phones?
 - e. What is the average amount of time that a customer must wait before receiving a replacement phone?

33. Has TracFone ever been reprimanded or faced penalties for not achieving customer service standards in any of the states in which it operates?
34. What actions are currently being taken by TracFone to improve the quality of customer service?
35. Please provide responses to Staff Data Requests 100-113.

Thank you for your prompt attention to these requests.

Sincerely,



Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org

Before the
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET UM 1437

In the Matter of)
)
)

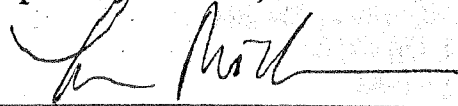
TRACFONE WIRELESS, INC.)
)
)

Application for Designation as an Eligible)
Telecommunications Carrier.)
)
_____)

TRACFONE WIRELESS,
INC.'S RESPONSES TO
CITIZENS' UTILITY BOARD
OF OREGON'S DATA
REQUESTS 25-35

TracFone Wireless, Inc. ("TracFone") provides the following responses to Citizens'
Utility Board of Oregon's Data Requests 25-35.

Respectfully submitted,



Lawrence Reichman, OSB No. 860836
PERKINS COIE LLP
1120 N.W. Couch Street
10th Floor
Portland, OR 97209-4128
(503) 727-2107

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.

July 29, 2010

25. If a prepaid wireless customer has no minutes remaining on their account, what happens when someone calls them?

Response

The call does not get connected.

26. If a prepaid wireless customer has no minutes remaining on their account, is that phone still able to call 911?

Response

Yes. The phone can always be used to call 911, provided that the phone's battery is charged.

27. Is there a maximum number of rollover minutes that can be accrued on a SafeLink account?

Response

No.

SafeLink is a payphone service provided by the State of Michigan. The service is available to all Michigan residents who are on a state-issued identification card. The service is provided at no cost to the user. The service is available at all payphone locations throughout the state. The service is available for a maximum of 10 minutes per call. The service is available for a maximum of 10 minutes per day. The service is available for a maximum of 10 minutes per month. The service is available for a maximum of 10 minutes per year.

The service is available for a maximum of 10 minutes per call. The service is available for a maximum of 10 minutes per day. The service is available for a maximum of 10 minutes per month. The service is available for a maximum of 10 minutes per year.

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28. According to the SafeLink Terms and Conditions of Service, customers must have their phones on for the first few days of each month to receive their free minutes. If customers do not have their phones on, they will need to "self-retrieve" their free minutes. For each state where SafeLink services are currently offered, please provide the following:

- a. For the most recent 12 month period where data is available, please provide the number of customers each month that did not automatically receive their free minutes because the phone was not turned on during the first few days of the month. What percentage of overall SafeLink customer in that state does this represent?
- b. Of these customers, how many do not then self-retrieve these free minutes?
- c. Of the customers who do not receive their free minutes in the beginning of the month, and do not self-retrieve, how many contact TracFone customer service to request their free minutes?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier in Oregon. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq.

29. According to the Terms and Conditions, a customer will be charged at least 1 minute for any call that goes to a link that is busy or has no answer. Is this correct?

Response

The terms and conditions provide: "For outbound calls, you may be charged airtime for incomplete and/or busy-no answer calls." However, it is TracFone's policy not to deduct minutes of use for uncompleted calls or for calls which receive busy signals.

30. According to the Terms and Conditions, TracFone is allowed to pursue liquidated damages in the amount of not less than \$5,000 for each phone that is sold by the customer.

- a. How many times has TracFone sought liquidated damages from a customer?
- b. In how many of these cases did TracFone successfully recover damages from a customer?

Response

- a. TracFone has not sought liquidated damages from any of its customers.
- b. Not applicable.

31. TracFone highlights the work of Keep USF Fair on its NET 10 website. Keep USF Fair refers to TracFone's support for a "by the minute" proposal for USF.

- a. Please provide a copy of the "by the minute" proposal for USF which TracFone supports.
- b. How would TracFone contribute to the federal USF under this proposal?

Response

- a. See Exhibit 31.
- b. The "by the minute" proposal was presented to the FCC as an alternative to a numbers-based USF contribution methodology. The "by the minute" USF contribution method would apply only to pay-as-you-go prepaid wireless service for which there is no direct, monthly billing relationship between a carrier and the end user. If a numbers-based USF contribution methodology number fee was adopted, under TracFone's "by the minute" proposal the number fee (e.g., \$1.00 per working number each month) would be divided by the CTIA-reported average wireless customer usage (e.g., 800 minutes per month) to calculate a per minute USF fee. In this example, the per minute USF fee would be \$0.00125 per minute (\$1.00 divided by 800). The prepaid wireless carrier would be assessed USF contributions by taking the total number of prepaid minutes times the per minute factor. AT&T, Verizon, and CTIA have indicated their support for TracFone's "by the minute" proposal.

Exhibit 31

TracFone Wireless, Inc.

Prepaid Wireless "By the Minute" USF Contribution Proposal

June 13, 2007

- "Pay-as-you-go" prepaid wireless services that do not have a direct monthly billing relationship with end users should not be subject to a flat, monthly USF fee based on working telephone numbers, connections or similar method.
- A monthly per number charge of \$1.00¹ would substantially increase TracFone's USF contribution requirements. A number fee would disproportionately burden low volume prepaid wireless services and would not be competitively neutral.
- TracFone's "pay-as-you-go" customers are both lower-volume and lower-income consumers. Approximately 50% of TracFone's customers report incomes of \$25,000 or less. On average, TracFone customers use less than 80 minutes of service per month. Only about 11 of these minutes are interstate calls (less than 14%).
- Others have recognized that a numbers-based plan would not be appropriate for prepaid wireless service providers and their consumers. On March 3, 2006, Verizon Communications and Verizon Wireless filed the following recommendation with the Commission:

It is more difficult for prepaid wireless providers to pass through a monthly per number assessment because they do not send monthly bills to customers. Since prepaid wireless customers do not buy service by the month but instead buy blocks of minutes, often in low amounts, a per-month assessment is infeasible. The FCC should either preserve the current revenues-based assessment for prepaid wireless, or adopt a per-number assessment that reflects the unique characteristics of this service.

[Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, Docket 96-45, filed March 3, 2006, at 3]

¹ A coalition of major carriers lobbying for the number plan estimates "the per-number fee would likely be no higher than \$1.20 per month." Unless fund growth is restrained, the actual fee could be higher.

- The Boucher – Terry USF Bill (H.R. 2054) currently contains a Low-Volume Carrier provision that states:

(C) LOW VOLUME EXCEPTION.—The Commission shall not materially increase the contributions of communications service providers whose customers typically make a low volume of calls on a monthly basis.

- Senator Steven’s USF bill (S. 101) contains a similar Low-Volume Carrier provision:

(C) ADJUSTMENTS.—The Commission shall adjust the contribution for communication service providers for their low-call volume, non-business customers.

- If the Commission is going to adopt a numbers-based USF contribution methodology, TracFone urges the Commission to consider the following alternative methodology for “pay-as-you-go” prepaid wireless:
 - This alternative USF contribution method would apply only to pay-as-you-go prepaid wireless service for which there is no direct, monthly billing relationship between a carrier and the end user.
 - The newly adopted number fee would be converted to a “by the minute fee” for this class of service.
 - Assume the new number fee is \$1.00 per working number each month.
 - Assume that the CTIA reports the average wireless customer usage as 800 minutes per month.
 - The per minute USF fee would be calculated by dividing \$1.00 by 800, which equals \$0.00125 per minute.
 - The prepaid wireless carrier would be assessed USF contributions by taking the total number of prepaid minutes times the per minute factor (\$0.00125 in this example).
- Under this approach, the USF assessment applicable to a prepaid wireless customer using the same number of minutes per month as the average postpaid wireless customer would be the same, i.e., \$1.00 for 800 minutes of use.

- While the postpaid wireless customer would pay the \$1.00 fee as a surcharge on his or her monthly bill, in the case of prepaid wireless, the fee would be paid by the prepaid service provider, because there is no billing relationship between the prepaid carrier and the customer.

This approach is fair, equitable, non-discriminatory and competitively neutral and would be a good option in the event that the FCC decides to move USF Contributions to a "numbers-based" system.

* * * * *

32. Consumer websites (blogs, forums, etc.) list complaints about TracFone's and Safelink's service quality. Most frequently mentioned are particularly long holds for customer service representatives and the difficulty customers have in getting broken phones replaced.
- a. What metrics does TracFone use to record and analyze its customer service performance? Please provide those metrics for the most recently available 24 month period.
 - b. What is the average length of time that a customer is likely to be on hold with the TracFone customer service center before that customer is able to talk to a live representative?
 - c. What percentage of calls to the TracFone customer service center last more than 30 minutes?
 - d. How many complaints does TracFone receive each year concerning broken phones?
 - e. What is the average amount of time that a customer must wait before receiving a replacement phone?

Response

TracFone objects to this data request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the legal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an Eligible Telecommunications Carrier in Oregon. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005). Moreover, this information is not relevant to the determination of whether TracFone meets the requirements of the Commission's rules governing designation as an Eligible Telecommunications Provider under OAC 860-033-0001, et seq.

33. Has TracFone ever been reprimanded or faced penalties for not achieving customer service standards in any of the states in which it operates?

Response

No.

34. What actions are currently being taken by TracFone to improve the quality of customer service?

Response

TracFone continually reviews the performance of its customer service department and makes any necessary changes to ensure that calls are answered and issues resolved in a prompt and professional manner.

35. Please provide responses to Staff Data Requests 100-113.

Response

TracFone has provided CUB with its responses to Staff Data Requests 100-113.

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of July, 2010, served the foregoing TRACFONE WIRELESS, INC.'S RESPONSES TO CITIZENS' UTILITY BOARD OF OREGON'S DATA REQUESTS 25-35 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):

Public Utility Commission of Oregon
Attn: Vikie Bailey-Goggins
PUC.datarequests@state.or.us
PO Box 2148
Salem OR 97308-2148

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

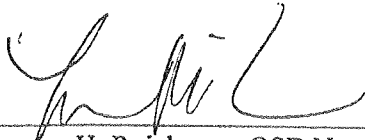
Mitchell F. Brecher
brecherm@gtlaw.com
Debra McGuire Mercer
mercerdm@gtlaw.com
Greenberg Traurig, LLP
2101 L Street NW, Suite 1000
Washington, DC 20037
(Electronic mail only)

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 Ste 308
Portland, OR 97205
(Electronic mail only)

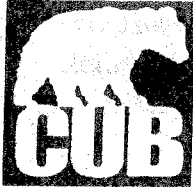
Steven A. Wolf
steven.wolf@doj.state.or.us
Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

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

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

By 
Lawrence H. Reichman, OSB No. 860836
PERKINS COIE LLP

Attorneys for TracFone Wireless, Inc.



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 27th, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 36 – 40

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. **Note that all responses to requests submitted in this docket must be submitted within 7 business days.** Please assume that these are on-going requests if any additional information becomes available during the pendency of the case it must be provided.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

36. Does TracFone attempt to call SafeLink customers who are about to have their service deactivated?
37. If TracFone customer service representatives attempt to call a SafeLink customer who is about to be deactivated, and the customer answers, does this count as activity for that account, thereby reclassifying it as an active account?
38. If TracFone customer service representatives attempt to call a SafeLink customer who is about to be deactivated, and the customer does not answer and the call goes to voicemail, does this count as activity for that account, thereby reclassifying it as an active account?
39. Refer to TracFone's response to Staff DR 67. Please provide all of the quarterly reports submitted to the Ohio and Wisconsin PUCs since TracFone began providing SafeLink service in those jurisdictions.

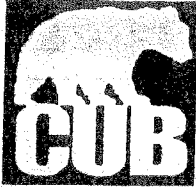
40. On a state by state basis, for as long as TracFone has provided SafeLink service in each jurisdiction, please provide the actual number of, and percentage of, SafeLink customers who never receive additional minutes after their first month of service, no matter the reason.

Thank you for your prompt attention to these requests.

Sincerely,



Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 28th, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 41

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. **Note that all responses to requests submitted in this docket must be submitted within 7 business days.** Please assume that these are on-going requests if any additional information becomes available during the pendency of the case it must be provided.

If you have any questions, please call us at (503) 227-1984.

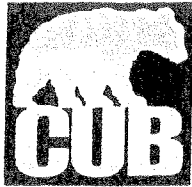
Please provide responses electronically only, and in the original electronic format.

41. Please provide copies of TracFone's responses to Staff DRs 115-118.

Thank you for your prompt attention to these requests.

Sincerely,

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org



Citizens' Utility Board of Oregon

610 SW Broadway, Suite 308
Portland, OR 97205
(503) 227-1984 • fax (503) 274-2956 • cub@oregoncub.org • www.oregoncub.org

July 28th, 2010

DEBRA MCGUIRE MERCER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

MITCHELL F BRECHER
GREENBERG TAURIG, LLP
TRACFONE WIRELESS, INC
2101 L STREET, NW, SUITE 1000
WASHINGTON, DC 20037

Re: UM 1437 Data Request 42 – 45

Please send responses to the following data requests to Gordon Feighner at gordon@Oregoncub.org, or, for confidential material, at the address above. **Note that all responses to requests submitted in this docket must be submitted within 7 business days.** Please assume that these are on-going requests if any additional information becomes available during the pendency of the case it must be provided.

If you have any questions, please call us at (503) 227-1984.

Please provide responses electronically only, and in the original electronic format.

42. Calls made by CUB staff to TracFone's SafeLink customer service line (1.800.378.1684) on the morning of July 28, 2010, received a message saying that due to the high volume of calls, the line was not currently accepting calls, and advised to call back later. Does TracFone keep track of how many calls to the customer service line receive this message? If so, please provide the actual number of calls that receive the message and the percentage of calls that receive the message.
43. TracFone's response to Staff DR 53 claims that calls to the SafeLink customer service line are answered within 1 minute, on average. Does this mean that calls are answered by the automated menu system within 1 minute?
44. What is the average length of time callers to the SafeLink customer service line are on hold once they choose a menu option that leads to a live customer service representative?

45. If a customer does not receive SafeLink minutes one month (due to the phone not being turned on or for any other reason), but the customer remains active, does that customer automatically receive SafeLink minutes the next month?

Thank you for your prompt attention to these requests.

Sincerely,

A handwritten signature in black ink, appearing to read 'G R F', with a horizontal line extending to the right.

Gordon Feighner
Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway Ste 308
Portland, OR 97205
(503) 227-1984
gordon@oregoncub.org

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT
NO. 1000

1960

BY
J. H. GOLDSTEIN
AND
R. F. STEIN
DEPARTMENT OF CHEMISTRY
UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS

UM 1437 – CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of Aug., 2010, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S RESPONSE TO TRACFONE WIRELESS, INC. MOTION TO DENY INTERVENTION TO CITIZENS' UTILITY BOARD OF OREGON. Expedited Review Requested** in docket UM 1437 upon each party listed in the UM 1437 PUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending an original and 1 copy by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

W GREENBERG TRAURIG, LLP
MITCHELL F BRECHER
2101 L STREET NW, STE 1000
WASHINGTON DC 20037

W GREENBERG TRAURIG, LLP
DEBRA MCGUIRE MERCER
2101 L STREET NW, STE 1000
WASHINGTON DC 20037

DEPARTMENT OF JUSTICE
MICHAEL T WEIRICH
ASSISTANT ATTORNEY
1162 COURT ST NE
SALEM OR 97301-4096

LAW OFFICE OF RICHARD A FINNIGAN
RICHARD A FINNIGAN
2112 BLACK LAKE BLVD SW
OLYMPIA WA 98512

OREGON TELECOM. ASSN
BRANT WOLF
777 13TH ST SE - STE 120
SALEM OR 97301-4038

PUBLIC UTILITY COMMISSION OF OREGON
KAY MARINOS
PO BOX 2148
SALEM OR 97308-2148

W PERKINS COIE LLP
LAWRENCE REICHMAN
1120 NW COUCH ST - 10 FL
PORTLAND OR 97209-4128

PUBLIC UTILITY COMMISSION OF OREGON
JON CRAY
550 CAPITOL ST NE, SUITE 215
SALEM OR 97301

UM 1437 - Certificate of Service CITIZENS' UTILITY BOARD OF OREGON'S RESPONSE TO TRACFONE WIRELESS, INC. MOTION TO DENY INTERVENTION TO CITIZENS' UTILITY BOARD OF OREGON. EXPEDITED REVIEW REQUESTED.

**OREGON DEPARTMENT OF
JUSTICE**
STEVEN A WOLF
1162 COURT STREET NE
SALEM OR 97301-4096

Respectfully submitted,



Kevin E. Parks, OSB #096728
Staff Attorney
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 400
Portland, OR 97205
(503)227-1984
kevin@oregoncub.org

UM 1437 - Certificate of Service CITIZENS' UTILITY BOARD OF OREGON'S
RESPONSE TO TRACFONE WIRELESS, INC. MOTION TO DENY
INTERVENTION TO CITIZENS' UTILITY BOARD OF OREGON.
EXPEDITED REVIEW REQUESTED.