

**Before the  
PUBLIC UTILITY COMMISSION OF OREGON**

DOCKET UM 1437

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In the Matter of )

TRACFONE WIRELESS, INC. )

Application for Designation as an Eligible )  
Telecommunications Carrier )

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**TRACFONE WIRELESS,  
INC.'S PETITION FOR  
WAIVER OF RULE**

TracFone Wireless, Inc. (“TracFone”), pursuant to OAR 860-033-0001(2), respectfully requests a waiver of OAR 860-033-0035(3), a recently-adopted rule governing the activation of Lifeline benefits when an Eligible Telecommunications Provider (“ETP”) offers Lifeline service at no charge. As explained below, TracFone has in place existing measures that directly address the Commission’s concerns about waste, fraud and abuse of federal Universal Service Fund (“USF”) resources -- the purported reason for the requirements in OAR 860-033-0035(3). Moreover, unless waived, the rule improperly and unnecessarily burdens low-income Oregon households who are eligible for Lifeline-supported service and who have already have been approved by the Commission to receive Lifeline benefits from TracFone. Waiver of the rule will ensure that qualified low-income consumers can receive the Lifeline benefits to which they are entitled, while not exposing the USF to waste, fraud and abuse.

**BACKGROUND**

On May 2, 2012, the Commission issued an Order designating TracFone as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214 of the Communications Act of 1934, as amended (47 U.S.C. § 214) so that it could utilize federal USF resources to offer Lifeline services, and as an ETP under Oregon law so that it could offer services pursuant to the

Oregon Telephone Assistance Program (“OTAP”).<sup>1</sup> In the ETC Order, the Commission adopted in part, and modified in part, a Stipulation that resolved issues raised by entities that had joined in the proceeding as parties (*i.e.*, the Citizens’ Utility Board of Oregon (“CUB”) and the Oregon Office of Emergency Management). The Stipulation, as adopted in the ETC Order, provided that TracFone’s designation as an ETC and ETP be subject to certain conditions. Among those conditions was the following requirement:

When the Commission notifies TracFone of customers who meet eligibility criteria, TracFone agrees to report to the OTAP manager weekly the customers’ names, addresses, TracFone-assigned phone numbers and Commission-assigned OTAP identification numbers in an electronic format accessible by the Commission. The report will list any discrepancy, pursuant to OAR 860-033-0046(4), that prevents a customer from receiving Lifeline service (e.g., undeliverable shipment of activated handset, etc.).<sup>2</sup>

In addition, the Stipulation included a requirement that TracFone submit quarterly reports to Commission Staff and CUB regarding its provision of Lifeline service in Oregon.<sup>3</sup> Each quarterly report discloses monthly data regarding various aspects of TracFone’s Lifeline service, including customers’ usage, handsets shipped to customers, customers’ complaints, and calls to customer service. The monthly data concerning handsets include the following: (1) the number of handsets reported lost/stolen; (2) the number of customers reporting that they did not receive their handset; (3) the number of handsets reported as defective; and (4) the number of replacement handsets sent by TracFone in response to items (1) through (3). Importantly, those

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<sup>1</sup> *In the Matter of TracFone Wireless, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Docket No. UM 1437, Order No. 12-149 (Oregon Pub. Util. Comm’n: May 2, 2012) (“ETC Order”). Although the Commission designated TracFone as an ETP, TracFone has not sought and does not receive funds from any Oregon state fund to provide Lifeline service. Throughout this Petition, TracFone’s references to “Lifeline” encompass both Lifeline and OTAP service unless noted otherwise.

<sup>2</sup> ETC Order, Stipulation, ¶ 34.

<sup>3</sup> *See* ETC Order, Stipulation, ¶ 36 (referencing Exhibit F).

conditions as set forth in the Stipulation and as modified by the Commission in the ETC Order are applicable specifically to TracFone and are not requirements of general applicability to all Lifeline providers.

In April 2013, TracFone commenced providing Lifeline service to eligible low-income households in Oregon. Since commencing Lifeline service in Oregon, TracFone has complied with all conditions in the ETC Order and relevant Oregon statutes and rules governing Lifeline service.<sup>4</sup> In 2013, the Commission conducted a rulemaking proceeding to conform Oregon's Lifeline and OTAP rules to the federal requirements adopted in the Lifeline Reform Order issued by the Federal Communications Commission ("FCC").<sup>5</sup> The proposed rules included a requirement that a customer approved for Lifeline service provided at no charge must activate his or her service by telephoning the ETP after the customer receives the handset and providing the last four digits of his or her Social Security Number ("SSN"). In comments opposing the proposed rule, TracFone noted that because the Commission determines a customer's eligibility before an ETP sends a handset to approved customers the only purpose for a requirement that the customer call the ETP to activate the handset would be "to prevent handset activation in the rare event that mail is misdirected or stolen."<sup>6</sup> TracFone further noted that "if a customer fails to

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<sup>4</sup> TracFone anticipates filing a petition in the near future that will seek relief from a condition in the ETC Order that requires TracFone to offer Lifeline discounts on its NET10<sup>®</sup> service plans and seek waiver of Commission rule OAR 860-033-0010, which directs ETPs to offer reduced rates on all basic telephone service offerings.

<sup>5</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("Lifeline Reform Order"); *see In the Matter of Rule Changes Regarding Eligibility for OTAP and Other RSPF Rule Changes*, Docket No. AR 574, Order No. 13-475 (Oregon Pub. Util. Comm'n: Dec. 19, 2013) ("OTAP Order"), at 1.

<sup>6</sup> *In the Matter of Rule Changes Regarding Eligibility for OTAP and Other RSPF Rule Changes*, Docket No. AR 574, Comments of TracFone Wireless, Inc., filed Nov. 13, 2013, at 3.

receive their handset, they will contact customer service, and the loss will be noted.”<sup>7</sup> TracFone opposed the rule, in part, on the basis that it would impose a substantial burden on Lifeline providers that was not justified by any resulting benefit from the rule.<sup>8</sup> Commission Staff supported the proposed rule, stating that “[r]equiring the customer to activate the Lifeline or OTAP supported service is an important tool to prevent waste, fraud, and abuse because it helps to ensure that the eligible customer is the person that receives the handset.”<sup>9</sup>

On December 19, 2013, the Commission issued the OTAP Order in which it adopted revised Lifeline and OTAP rules. The Commission’s revised rules include the following:

**860-033-0035**

**OTAP and Lifeline Benefits**

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

The rules issued in the OTAP Order have an effective date of April 1, 2014. Application of OAR 860-033-0035(3) to TracFone is not necessary to protect the USF from waste, fraud and abuse caused by ineligible individuals receiving a handset. Moreover, a requirement that a customer previously approved for Lifeline benefits place a call to TracFone and provide the last four digits of his or her SSN prior to being able to access those benefits unfairly and unjustifiably burdens TracFone’s customers. Therefore, by this Petition, TracFone seeks a waiver of OAR 860-033-0035(3).

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<sup>7</sup> *Id.*

<sup>8</sup> *See id.*

<sup>9</sup> *Id.*, Comments of Commission Staff, filed Nov. 13, 2013, at 17.

## ARGUMENT

In adopting OAR 860-033-0035(3), the Commission stated that it concurred with Commission Staff's view that requiring a customer to call an ETP and provide the last four digits of his or her SSN to activate his or her Lifeline service helps to ensure that only eligible customers receive Lifeline benefits, thereby protecting the USF from waste, fraud, and abuse.<sup>10</sup> While that may be generally correct, as will be explained herein, due to special circumstances, including the aforementioned stipulation contained in the ETC Order, application of this rule to TracFone is not necessary to prevent waste, fraud, and abuse of the federal USF.<sup>11</sup> As explained below, the Commission has established requirements to ensure that only eligible customers receive Lifeline benefits. In addition, TracFone has implemented in Oregon and elsewhere several procedures that directly address the Commission's concern that ineligible customers might use handsets not intended for them in order to access Lifeline service. Application of OAR 860-033-0035(3) to TracFone is not required to protect USF resources and imposes an unnecessary and unfair burden on Lifeline customers already approved by the Commission.

### **A. The Commission's Rules Ensure That Only Eligible Customers Are Approved for Lifeline Service.**

The Commission has promulgated rules, consistent with the FCC's rules governing Lifeline, that ensure that only qualified low-income households receive Lifeline service. In

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<sup>10</sup> See OTAP Order, at 8.

<sup>11</sup> While OAR 860-033-0035(3) refers to ETPs that offer OTAP or Lifeline, the stated purpose for the rule only refers to the Lifeline program. See Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact, ¶ 6, filed in Docket No. AR 574, September 13, 2013 ("In order to confirm the delivery of the handset, the proposed rule changes require customers to call ETCs before the Lifeline benefits can be activated."). In contrast, the stated purpose for other rule amendments refers to both Lifeline and OTAP (*id.*, ¶¶ IV, V) or only to OTAP (*id.* ¶ III). TracFone does not seek any funds from the Residential Service Protection Fund ("RSPF"), which funds the OTAP benefit. Therefore, to the extent that the purpose of OAR 860-033-0035(3) is to protect the RSPF from waste, fraud, and abuse, it has no bearing on TracFone as an ETP that does not receive any funds from the RSPF.

particular, Commission rules provide that low-income consumers seeking to obtain Lifeline benefits must submit an application on a Commission-approved form to the Commission. In order to be eligible to receive such benefits, the consumer (or a dependent or member of the consumer's household) must (a) receive benefits from a qualified public assistance program; (b) receive benefits from a Commission-approved low-income public assistance program for which eligibility requirements do not exceed 135 percent of the Federal Poverty Guidelines; or (3) have household income that is at or below 135 percent of the Federal Poverty Guidelines.<sup>12</sup> The Commission may require an applicant to produce documentation to prove program-based or income-based Lifeline eligibility and provide his or her SSN.<sup>13</sup>

The Commission determines whether the applicant is eligible for Lifeline by reviewing the application and documentation of eligibility and by accessing databases regarding participation in qualified assistance programs. The Commission then advises the relevant ETP that the applicant has been approved to receive Lifeline. The Commission also verifies a Lifeline customer's continuing eligibility on a monthly, quarterly, or annual basis.<sup>14</sup> In accordance with the Commission's rules, TracFone does not commence Lifeline service to any customers until the Commission has confirmed that the customer is eligible for Lifeline benefits. The fact that the Commission is directly involved in determining whether to approve applicants for Lifeline service should alleviate any concerns about ineligible customers receiving Lifeline service.

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<sup>12</sup> OAR 860-033-0030(1)(a)-(c).

<sup>13</sup> OAR 860-033-0030(3) and (4). FCC rules also require Lifeline providers to review applicants' eligibility documentation. 47 C.F.R. § 54.410.

<sup>14</sup> OAR 860-033-0030(10).

**B. TracFone's Compliance with the FCC Rules Governing Activation of Lifeline Service Protects the USF from Waste, Fraud, and Abuse While Not Unfairly and Unnecessarily Burdening Lifeline Customers.**

TracFone, as an ETC that does not collect charges from its Lifeline customers, is subject to a federal rule governing when it may begin to receive USF support. Specifically, the FCC's rules provide:

An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers:

- (1) Shall not receive universal service support for a subscriber to such Lifeline service until the subscriber activates the service by whatever means specified by the carrier, such as completing an outbound call.<sup>15</sup>

Under the FCC's rules, TracFone may send an activated handset to an approved Lifeline customer, but may not seek reimbursement from the USF for providing Lifeline service to that customer until that customer actually uses the service. TracFone complies with this rule by not seeking USF support until a Lifeline customer places an outbound call on his or her handset. Thus, any risk that the handset is not properly activated by the customer is borne by TracFone, not by the USF. The FCC's rule strikes a fair balance by enabling approved Lifeline customers to immediately use their Lifeline benefits, while prohibiting ETCs from receiving Lifeline support from customers who do not use the Lifeline service.<sup>16</sup>

OAR 860-033-0035(3) goes beyond the scope of the FCC rule by precluding an ETP from providing a Lifeline customer with a handset that can be used to place calls, purportedly to prevent waste, fraud, and abuse in the Lifeline program. While the Commission's concern with

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<sup>15</sup> 47 C.F.R. § 54.407(c)(1).

<sup>16</sup> FCC and Commission rules similarly require ETCs offering Lifeline service at no charge to discontinue Lifeline service to customers who have not used the service for a period of 60 consecutive days. *See* 47 C.F.R. § 54.407(c)(2); OAR 860-033-0035(12).

preventing waste, fraud, and abuse in the Lifeline program is valid and commendable, in the case of TracFone, those concerns are misplaced. TracFone receives funds from the federal USF as reimbursement for providing Lifeline benefits to eligible low-income households in the Oregon program. TracFone does not seek reimbursement from the Oregon RSPF for its provision of OTAP benefits. As such, the FCC has a direct and legitimate concern about preventing waste, fraud, and abuse of USF resources. The FCC has addressed that concern by promulgating a rule that allows ETCs to seek reimbursement from the USF for a Lifeline customer only after that customer actually uses the Lifeline service. Given the facts that TracFone only seeks funds from the federal USF and that TracFone complies with the FCC's rule governing when ETCs may seek USF funds after a customer receives a handset, waiver of the Commission's rule governing the same issue is appropriate for TracFone.

Waiver of OAR 860-033-0035(3) is also justified because the factual assumptions underlying the rule have no relevance to TracFone. The Commission has promulgated OAR 860-033-0035(3) to address the risk that a handset could be delivered to or intercepted by someone other than the customer the Commission approved for Lifeline.<sup>17</sup> However, the Commission has never claimed that a significant number of handsets are being delivered to or intercepted by ineligible individuals or that ETPs are not adequately accounting for such a possibility. In TracFone's experience, there is no factual basis for such claims. Indeed, the risk that TracFone's handsets are not delivered to the intended Lifeline-eligible recipients is negligible. TracFone's quarterly reports submitted to the Commission in compliance with the ETC Order show that during the period of April through December 2013, a very small percentage of the handsets TracFone shipped (1.7 percent) were reported as not being received

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<sup>17</sup> See OTAP Order, at 8.



by the addressee.<sup>18</sup> After looking into whether the handsets at issue were in transit, delayed, or returned to its shipping facility due to an address error, TracFone sent replacement handsets to approximately 59 percent of those customers who reported that they had not received a handset. Thus, of the total number of handsets TracFone shipped to customers, only one percent of those handsets represented replacement handsets sent in response to a report that a handset had not been received. As explained below, TracFone has procedures in place to address this *de minimis* risk and to ensure that it does not seek Lifeline support for handsets that are not successfully delivered to approved Lifeline customers. Requiring TracFone's Lifeline customers -- customers who have already been determined by the Commission to be eligible to receive Lifeline service - - to call TracFone and to verify their identity by providing their SSN (last four digits) before the handsets can be used is an unnecessary and unjustified obstacle to commencement of their Lifeline service.

**C. TracFone's Handset Shipment Procedures Protect the Federal USF from Waste, Fraud, and Abuse.**

TracFone has experienced very few instances of Lifeline customers reporting that they have not received the free handset that is provided as part of TracFone's Lifeline service. In the event that a customer reports that a handset was not received, TracFone has procedures in place to ensure that persons other than the qualified and approved Lifeline customers are not able to use the handset. Therefore, application of OAR 860-033-0035(3) to TracFone is not necessary to protect the federal USF from waste, fraud, and abuse that could result when a handset is delivered to an individual who is not eligible for Lifeline.

TracFone uses a reliable shipping service to deliver handsets to Lifeline customers.

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<sup>18</sup> The data regarding undeliverable handsets reported in TracFone's quarterly reports is collected from TracFone's weekly customer reports submitted to the OTAP manager in accordance with paragraph 34 of the Stipulation.

TracFone's shipping vendor provides detailed tracking information for each package containing a handset from the point when TracFone provides the package to the shipping vendor until the package has been delivered to the residence of the approved Lifeline customer. When a Lifeline customer calls TracFone to report that a handset has not been received, TracFone is able to check whether the tracking information to determine whether the package is in transit or delayed. TracFone also receives a notice from the shipping vendor if a package has been returned to TracFone's shipping facility as undeliverable. Therefore, when a Lifeline customer complains that a handset has not been received, TracFone can determine whether the package is in transit or was returned to TracFone's shipping facility. If TracFone is unable to locate the package, then it will immediately deactivate the handset in the package so that it cannot be used by someone who is not the intended Lifeline customer. This process ensures that the handset cannot be used for Lifeline service and that TracFone will not seek Lifeline support for service associated with the handset. TracFone will then send a replacement handset to a Lifeline customer who reports that he or she has not received a handset only after confirming that the handset is not in transit and verifying the identity and address of the customer. In all cases in which a replacement handset is shipped, TracFone deactivates the handset that was originally shipped, thereby eliminating any risk that TracFone would seek Lifeline support for service provided to someone who is not eligible for Lifeline and not properly enrolled in the Lifeline program.

TracFone's quarterly reports indicate that TracFone's handsets successfully reach its Lifeline customers in virtually all cases. Thus, TracFone's record does not provide any basis for the Commission's decision to promulgate OAR 860-033-0035(3) in general. Moreover, TracFone's record indicates that there is no justification for applying the requirements of OAR 860-033-0035(3) to TracFone, and that waiver of the rule in these circumstances would be

appropriate and would serve the public interest. Even though TracFone has experienced an insignificant number of instances in which a customer reported that he or she did not receive a sent handset, TracFone guards against the negligible risk that an ineligible person or that any person other than the intended recipient will receive and use the handset by (1) using a shipping vendor that tracks each package until it arrives at a Lifeline customer's residence and (2) deactivating all handsets that are reported as not received when those handsets are not determined to be in transit to the customer or not located at TracFone's shipping facility. These facts demonstrate that waiver of OAR 860-033-0035(3) as applied to TracFone is justified.<sup>19</sup>

### **CONCLUSION**

As demonstrated above, waiver of the rule which requires that a Lifeline customer receiving service at no charge call his or her ETP to activate service will not subject the USF to waste, fraud, and abuse. Given that the Commission approves all Lifeline applicants, there is no factual basis to support the application of such a requirement to TracFone. Moreover, TracFone has procedures in place to eliminate the risk that an ineligible individual will receive and use a handset. Finally, grant of this waiver will enable TracFone's low-income customers to access their Lifeline benefits without delay and without risk to the USF. Based on the foregoing, TracFone asks the Commission to grant this petition for waiver of OAR 860-033-0035(3).

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<sup>19</sup> See Declaration of Javier Rosado, TracFone's Sr. Officer - Alternative Business Units, provided as Attachment 1.

Respectfully submitted,

s/ Lawrence H. Reichman

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*Counsel for TracFone Wireless, Inc.*

March 25, 2014

# ATTACHMENT 1

## DECLARATION

1. I am employed by TracFone Wireless, Inc. ("TracFone") as Senior Officer - Alternative Business Units, and I am responsible for, amongst other programs, TracFone's federal Lifeline program administered under the brand name SafeLink Wireless<sup>®</sup>. My business address is 9700 NW 112 Avenue, Miami, FL 33178. I have been employed with TracFone since 2006. I have personal knowledge of the facts set forth below.

2. In my capacity as Senior Officer – Alternative Business Units, I am an authorized officer of TracFone. I am providing this declaration in support of TracFone Wireless, Inc.'s Petition for Waiver of Rule ("Petition") filed in Docket UM 1437.

3. I have read TracFone's Petition. I confirm that all information contained in the Petition is true and correct to the best of my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on March 25, 2014

A handwritten signature in black ink, appearing to read "Javier Rosado", written over a horizontal line.

Javier Rosado

## CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of March, 2014, served the foregoing TRACFONE WIRELESS, INC.'S PETITION FOR WAIVER OF RULE upon all parties of record in this proceeding by causing a copy to be sent by electronic mail to the following:

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