

ITEM NO. 1

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 24, 2015**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: March 18, 2015

TO: Public Utility Commission

FROM: Jon Cray 

THROUGH: Michael Dougherty 

SUBJECT: TRACFONE WIRELESS INC.: (Docket No. UM 1437) Petition for Waiver of OAR 860-033-0035(3).

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) grant TracFone Wireless Inc.'s (TracFone) petition for waiver of Oregon Administrative Rule (OAR) 860-033-0035(3), conditioned on implementation of the Company's alternate proposal to achieve the same objective on or before September 1, 2015.

DISCUSSION:

Background

On March 25, 2014, TracFone filed a petition requesting that the Commission waive the requirements of OAR 860-033-0035(3), which states:

An Eligible Telecommunications Provider that offers OTAP or Lifeline support 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 service.

Staff proposed the current language for OAR 860-033-0035(3) in September 2013, in Docket No. AR 574. The Commission adopted the proposed rule amendment in Order No. 13-475 entered December 19, 2013; it became effective December 20, 2013. In adopting the amendment, the Commission concurred with Staff's supporting argument that "requiring 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."

In its March 25, 2014 petition, TracFone explains that it was designated as an Eligible Telecommunications Carrier (ETC) in May 2012 and from that time has shipped activated handsets to Oregon customers approved by the Commission using a shipping vendor that tracks shipments. TracFone notes it had opposed adoption of the 2013 amendments to OAR 860-033-0035(3) and finds the rule is not necessary to prevent waste, fraud, and abuse. The Company states in its petition that prohibiting the shipment of activated handsets would impose an undue burden on customers by delaying service to those who have been approved for Lifeline benefits. The Company's petition further states that any risk is de minimus and mitigated by its shipping procedures. Staff notes that TracFone uses the same procedures to deliver activated handsets in each of the states where it is designated as an ETC. To comply with the rule, TracFone must modify its activation process to meet Oregon's requirements.

On April 15, 2014, the Commission granted TracFone's request for a waiver of OAR 860-033-0035(3) until September 30, 2014, so that Staff may have time to gather information from TracFone and other providers¹ to formulate a well-founded recommendation to the Commission on whether good cause exists for waiver of this portion of subsection (3). See Order No. 14-123.

On September 30, 2014, the Commission granted Staff's recommendation to extend TracFone's request for a waiver until March 31, 2015, to allow Staff additional time to confer with TracFone, further explore the costs and benefits of compliance with the rule, and consider any alternatives that would achieve the same objective. See Order No. 14-341.

After several months of engagement through discussions and responding to data requests issued by Staff and the Citizens' Utility Board of Oregon (CUB), TracFone proposed changes to its existing activation process for Oregon:

¹ On March 10, 2015, the Commission granted Virgin Mobile USA, L.P.'s Petition for Waiver of the rule in Docket UM 1522, conditioned on implementation of the Company's alternate process and protections by April 1, 2015. See Order No. 15-069.

1. Upon notice of customer eligibility from the Commission, TracFone will continue to ship activated handsets to Oregon Lifeline customers. However, the handsets shipped to Oregon will be preloaded with only 20 minutes of airtime that may be used over a maximum of 60 days.
2. TracFone will include with the handset specific instructions directing the Oregon Lifeline customer to call a designated toll-free number, which will connect them to an Interactive Voice Response (IVR) system. The IVR system will require the customer to provide personal identifying information, specifically, the last four digits of their Social Security Number (SSN), to validate their identities. After the Lifeline customer's identity is verified, TracFone will provide the customer with the full allotments and will not be subject to the 60 day expiration period for the 20 minutes of airtime initially provided.

TracFone, at its own expense, commits to implement the procedures described above on or before September 1, 2015. Additional time is needed in the interim for the Company to develop and implement the systems and procedures needed for compliance in Oregon.

Staff's Analysis

Before the Commission adopted the amendment of OAR 860-033-0035(3) in Docket No. AR 574, Eligible Telecommunications Providers (ETPs) that offered Lifeline service at no charge, shipped wireless handsets to the customer without confirmation that the handset was actually delivered to the intended recipient. Without this confirmation, the ETP could seek and receive low-income support even if the handset was intercepted or received by someone other than the eligible Lifeline customer. Therefore, akin to credit card activations and to prevent waste, fraud, and abuse, Staff recommended that the ETP require the eligible customer to confirm his or her identity by providing the last four digits of his or her SSN or Tribal identification number in order to activate the Lifeline or OTAP supported service.

The objective of OAR 860-033-0035(3) is to confirm that the handset was actually received and activated by the intended Lifeline recipient. Under the specific terms of the rule, a low-income customer must be required to provide the last four digits of his or her social security number or Tribal identification number before activating the OTAP or Lifeline service. Although TracFone's proposed alternative may not comply with the letter of the rule, i.e. a customer will receive a handset activated for service, the Company's proposal achieves the same objective. TracFone will continue to deliver handsets that are activated for use with 20 minutes of airtime, but the Company will not claim low-income support until after the customer completes the IVR identity-verification

process. TracFone's proposal addresses the increased risk of waste, fraud, and abuse when the customer:

- is a resident of a homeless shelter, transitional house, etc.;
- no longer resides at the address he or she listed on the application and does not report the address change to the ETP for the delivery of the handset; or
- does not report that the phone was never received (which may occur because the customer pays nothing for the handset or the service and therefore has little incentive to follow-up on delivery).

Staff finds that TracFone's alternate proposal will meet the objective of OAR 860-033-0035(3) by requiring a customer to provide the last four digits of his or her SSN to complete the activation of his or her Lifeline service following receipt of a handset. Therefore, good cause exists to waive this rule for TracFone, provided that the Company implements its proposed process on or before September 1, 2015. CUB also supports TracFone's proposal.

PROPOSED COMMISSION MOTION:

Grant TracFone's request for waiver of OAR 860-033-0035(3), conditioned on implementation of the Company's alternate process and protections described herein on or before September 1, 2015.