

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: April 15, 2014

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: April 7, 2014

TO: Public Utility Commission

FROM: Jon Cray *Jc*

THROUGH: Michael Dougherty *MD* and David Poston *DP*

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's) request for waiver of OAR 860-033-0035(3) with the modification that the waiver expire on September 30, 2014.

**DISCUSSION:**

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

The Commission may waive any of the Division 33 administrative rules upon a showing of good cause. (See OAR 860-033-0001(2)) A waiver may be initiated upon the filing of a written request or on the Commission's own motion.

Staff proposed the amendment of OAR 860-033-0035(3) in September 2013 in Docket No. AR 574. The Commission adopted the proposed rule in Order No. 13-475 entered December 19, 2014; it became effective on December 20, 2013. In adopting the new rule, 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 petition, TracFone puts forth arguments as to why application of OAR 860-033-0035(3) to TracFone is not necessary to prevent waste, fraud and abuse of Lifeline support funds. To comply with the rule, TracFone will need to modify its activation process used in other states to meet Oregon's requirements.

Staff needs some time to gather more information from TracFone, and perhaps other Lifeline providers,<sup>1</sup> to formulate a well-founded recommendation to the Commission on whether good cause exists for waiver of this rule. Without some timely action of the part of the Commission, however, TracFone risks enforcement action.

Good cause exists to waive enforcement of OAR 860-33-0035(3) for a limited period of time. Staff proposes that the Commission grant a waiver to TracFone until September 30, 2014. The limited time period will address the immediate need for a waiver and will allow adequate time for Staff to develop a recommendation as to whether there is good cause for a longer-term waiver of the rule in question, or whether alternative measures are necessary.

**PROPOSED COMMISSION MOTION:**

TracFone's request for a waiver of OAR 860-033-0035(3) be granted until September 30, 2014.

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<sup>1</sup> Virgin Mobile USA, L.P. has also filed a Petition for Waiver of the rule in Docket UM 1522.