

ISSUED: August 16, 2010

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1437

In the Matter of

TRACFONE WIRELESS, INC.

Application for Designation as an Eligible  
Telecommunications Carrier.

RULING

**DISPOSITION: MOTION TO DENY INTERVENTION DENIED**

In this proceeding, TracFone Wireless, Inc. (TracFone) seeks designation as an Eligible Telecommunications Carrier (ETC). On April 9, 2010, the Citizens' Utility Board of Oregon (CUB) filed a Notice of Intervention under ORS 774.180 to become a party. Tracfone opposes CUB's participation, and submitted a motion to deny intervention to CUB on the grounds that CUB lacked authority to intervene because the interests of utility consumers are not an issue in this proceeding. Both CUB and Public Utility Commission of Oregon Staff (Staff) filed responses opposing TracFone's motion to deny intervention. On August 10, 2010, TracFone filed a motion for leave to file reply and proposed reply in support of its motion to deny intervention.<sup>1</sup>

Parties' Positions

In its motion, TracFone argues that CUB's statutory authority to represent utility consumers before this Commission does not extend to this proceeding because TracFone is not a "utility" and its customers are not "utility consumers." TracFone further states that the designation of TracFone as an ETC

will have no impact whatsoever on the rates or services of those entities operating in Oregon which are utilities and which are subject to Commission regulation, including rate regulation. The federal Universal Service Fund, including those portions of that fund which are used to support Lifeline service, is financed entirely by contributions made by providers of interstate telecommunications services. The Commission has no authority to regulate the rates for interstate telecommunications services, *i.e.*, the services upon which contributions to the federal Universal Service Fund are based. No Oregon utility ratepayer interest will be affected by TracFone's

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<sup>1</sup> TracFone requests that the Commission accept its reply memorandum in support of its motion to deny intervention to CUB. TracFone states that a reply is warranted so that the Commission may make a fully informed ruling on TracFone's motion. Tracfone's request is granted.

designation as a Lifeline-only ETC under the federal Lifeline program.<sup>2</sup>

TracFone concludes that the legislature's purpose in creating CUB was to establish an advocate for individual consumers of "utilities" in proceedings affecting the quality and price of "utility services," and that neither utilities nor utility services are implicated here.

CUB responds that TracFone's motion should be denied because CUB has broad authority to represent the interests of utility "consumers," defined as "any natural person 18 years of age or older who is a resident of the state of Oregon."<sup>3</sup> CUB further argues that TracFone should have raised this matter when CUB first intervened in this proceeding.

Staff argues that TracFone's motion is untimely and that, assuming CUB should not have intervened as of right, the appropriate remedy is to authorize CUB's intervention under OAR 860-012-0001(1), the administrative rule governing general petitions to intervene.

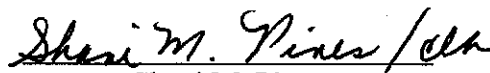
#### Resolution

Chapter 774 of the Oregon Revised Statutes governs the Citizens' Utility Board. Under ORS 774.180(1), CUB may intervene as of right as an interested party or otherwise participate in a proceeding whenever the board determines that an agency proceeding "may affect the interests of utility consumers."

TracFone's motion rests on the claim that no Oregon ratepayer interests are implicated by the company's application for ETC status in Oregon. This is incorrect. Although the federal Universal Service Fund is supported by contributions made by interstate telecommunications service providers, these providers, which include telecommunications utilities in this state such as Qwest Corporation, pass these contribution costs on to their customers in the form of a line-item surcharge. Any Oregon citizen who receives interstate services from a telecommunications utility contributes to the federal universal service fund. As such, Oregon citizens, and the Citizens' Utility Board charged with representing those citizens' interests, have an interest in the use of those funds.

CUB may intervene as a party in proceedings that may affect the interests of utility consumers. *See* ORS 774.180(1). Because Oregon utility consumers contribute to the federal Universal Service Fund, CUB did not exceed its mandate by intervening in this docket. TracFone's motion to deny intervention to CUB is denied.

Dated this 16<sup>th</sup> day of August, 2010, at Salem, Oregon.

  
Shani M. Pines  
Administrative Law Judge

<sup>2</sup> TracFone Motion to Deny Intervention at 5 (Jul 30, 2010).

<sup>3</sup> CUB Response to Motion to Deny Intervention at 3, citing ORS 774.010(2) (Aug 3, 2010).