

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 400

**Staff Testimony in Response to
TracFone's Second Amended Application**

March 23, 2011

**CERTAIN INFORMATION CONTAINED IN STAFF EXHIBIT 400,
PAGES 17 AND 33 OF
UM 1437 IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE
ORDER NO. 10-189 IN UM 1437. YOU MUST HAVE SIGNED
APPENDIX B OF THE PROTECTIVE ORDER IN
DOCKET UM 1437 TO RECEIVE THE
CONFIDENTIAL VERSION.**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Jon Cray. I am the Program Manager for the Residential Service
4 Protection Fund (RSPF) of the Public Utility Commission of Oregon
5 (Commission). My business address is 550 Capitol Street NE Suite 215,
6 Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in Exhibit Staff/201. For the
10 previous four and a half years, I have served as the manager for the Oregon
11 Telephone Assistance Program (OTAP), also known as Lifeline, and I
12 administer the day-to-day operations of the OTAP. I am also responsible for
13 evaluating applications from carriers seeking Eligible Telecommunications
14 Provider (ETP) designation for the provision of OTAP services, and for making
15 recommendations to the Commission regarding the applications. The ETP
16 applications that I evaluated include those from one landline carrier (ComSpan)
17 and two wireless carriers (AT&T Mobility and LCW Wireless dba Cricket).
18 Additionally, I monitor and enforce compliance among all thirty-three ETPs in
19 Oregon, including four wireless carriers and twenty-nine landline companies.
20 My duties also include supervising 3.3 full-time equivalent (FTE) personnel who
21 perform specific functions pertaining to OTAP as described on pages 36 and
22 37.

23 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. The purpose of my testimony is to provide to the Commission an analysis of
2 whether TracFone demonstrates that it meets the Oregon requirements for
3 designation as an ETP.

4 **Q. DID YOU PREPARE AN EXHIBIT FOR THIS DOCKET?**

5 A. Yes. I prepared Exhibit Staff/401 through Exhibit Staff/408.

6 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

7 A. My testimony is organized as follows:

8	Background.....	3
9	ETP Requirements.....	9
10	Potential Impacts on the OTAP.....	33
	Recommendation.....	38

BACKGROUND**Q. WHAT IS AN ELIGIBLE TELECOMMUNICATIONS PROVIDER (ETP)?**

a. The definition of an ETP is set forth in OAR 860-033-0005(3). Generally speaking, an ETP is a landline or wireless carrier, designated by the Commission that meets requirements for participation in the Oregon Telephone Assistance Program (OTAP).

Q. WHY DOES TRACFONE SEEK ETP DESIGNATION?

a. TracFone seeks ETP designation primarily so that it can meet Eligible Telecommunications Carrier (ETC) designation requirements in Oregon. TracFone must obtain ETC status in order to claim reimbursement from the federal universal service fund (FUSF) for the Lifeline services it seeks to offer in Oregon. One of the ETC requirements in Oregon is that an ETC must offer Lifeline and OTAP services. However, in order to offer OTAP services, a carrier must be designated as an ETP by the Commission. Therefore, without ETP and ETC designation, TracFone would be unable to offer Lifeline services in Oregon or to receive reimbursement for those services from the FUSF low-income fund.

Q. WHAT IS THE OREGON TELEPHONE ASSISTANCE PROGRAM (OTAP)?

A. The OTAP provides support to ETPs in Oregon to enable them to offer reduced local exchange rates to eligible low-income residential customers. Support from the OTAP supplements the Lifeline support available from the FUSF. The OTAP is the state-mandated corollary of the federal Lifeline program. See C.F.R. 47 § 54.400-417. The OTAP is set forth and explained in both state

1 statute and in Commission rules. See generally Oregon Laws 1987, chapter
2 290, Sections 1 through 8; Oregon Administrative Rules (OAR) Chapter 860,
3 Division 033.

4 **Q. WHAT IS THE MAXIMUM BENEFIT AVAILABLE TO AN OTAP ELIGIBLE**
5 **CUSTOMER?**

6 A. The maximum combined support an eligible customer can receive is \$13.50 -
7 \$3.50 from the OTAP and \$10.00 of Lifeline support from the FUSF. Federal
8 Lifeline support is comprised of four tiers as follows:

9 **Tier I** support is equal to the incumbent local exchange carrier's
10 federal tariffed subscriber line charge or end-user common line
11 charge. The maximum Tier 1 support is \$6.50.

12 **Tier II** support is an additional \$1.75 per month of federal Lifeline
13 support if the carrier certifies that it will pass through the full
14 amount of Tier 2 support to qualifying customers.

15 **Tier III** support is an additional amount of federal Lifeline support
16 equal to one-half the amount of any state-mandated Lifeline
17 support, up to a maximum of \$1.75 per month.

18 **Tier IV** support is an additional federal Lifeline support of up to \$25
19 per month available to residents of tribal lands provided that the
20 amount does not reduce the basic local residential rate to less than
21 \$1.00. This is known as Tribal Lifeline service.

22 Since the OTAP provides \$3.50 of state-mandated Lifeline support, it enables
23 an ETP to obtain \$1.75 in Tier III federal support without any carrier
24 contribution. There are several states that do not provide matching state
25 support to ETCs as Oregon does. In those states, Tier III support can be
26 obtained if a carrier provides \$3.50 on its own volition as a matching
27 contribution to the federal support.

1 **Q. DO ALL OTAP CUSTOMERS IN OREGON RECEIVE THE MAXIMUM \$13.50**
2 **OF BENEFITS?**

3 A. No. The benefits vary based on the Subscriber Line Charge (SLC) of the
4 incumbent local exchange carrier (ILEC), which comprises the first tier of FUSF
5 support. All ILECs in Oregon except Qwest and United Telephone (dba
6 CenturyLink) currently charge SLCs that are at the maximum allowed \$6.50.
7 Therefore, OTAP qualified customers in those ILEC areas receive total OTAP
8 benefits of \$13.50 per month. Qwest's SLC is currently \$6.47, so the OTAP
9 benefit in Qwest's area totals \$13.47. United Telephone's SLC is \$6.30, so the
10 OTAP benefit in its area totals \$13.30.

11 **Q. HOW IS THE OTAP BENEFIT DETERMINED FOR CUSTOMERS OF ETPS**
12 **THAT ARE NOT ILECS?**

13 A. OTAP benefits for customers of non-ILEC ETPs are the same as those for
14 customers of the ILECs in the same areas. That is, the benefits for customers
15 of ILEC and non-ILEC ETPs are the same within a given ILEC service area.

16 **Q. HOW DOES THE OTAP BENEFIT WORK?**

17 A. OTAP benefits generally appear in the form of a discount or reduced rate on
18 the customer's phone bill. The discount is equal to the OTAP benefit.
19 Customers can choose to have the discount applied to any ETP's service
20 offering that includes local calling, including bundled or packaged services. An
21 OTAP customer can receive only one discount per month, so they must choose
22 which ETP they want for OTAP discounted services.

23 **Q. WHO IS ELIGIBLE FOR OTAP BENEFITS?**

1 A. OTAP eligibility requirements are set out in OAR 860-033-0030. An
2 individual must be receiving benefits from the federal food stamp program or
3 from another Commission-approved low-income public assistance program
4 for which eligibility requirements do not exceed 135 percent of the poverty
5 level. Those programs are Temporary Assistance to Needy Families
6 (TANF), Supplemental Security Income, certain Medicaid programs and
7 certain state medical programs. Applications for benefits must be submitted
8 to the Commission and OTAP staff verifies eligibility with the Department of
9 Human Services (DHS) to ensure that only those customers who meet
10 eligibility criteria receive benefits. Continuing eligibility is monitored on a
11 monthly basis.

12 **Q. HOW IS THE OTAP FUNDED?**

13 A. It is funded through the RSPF program and the corresponding RSPF
14 surcharge imposed on retail subscribers who have telecommunications
15 service with access to the telecommunications relay service in this state.

16 **Q. HOW IS AN ETP REIMBURSED FOR THE BENEFITS IT PASSES ON TO**
17 **CUSTOMERS?**

18 A. The ETP submits reports to the Universal Service Administrative Company, an
19 independent, non-profit corporation designated by the FCC to administer the
20 FUSF, for federal Lifeline reimbursements, and to the Commission for OTAP
21 benefit reimbursements. The reimbursements are equal to the allowable
22 discounts given to eligible customers.

1 **Q. PLEASE DESCRIBE THE TYPES OF SERVICES THAT TRACFONE**
2 **CURRENTLY OFFERS IN OREGON.**

3 A. TracFone offers wireless services that are “prepaid”. That is, the customer
4 must purchase a TracFone handset and pay for usage (airtime minutes) either
5 by ordering online using a credit card or buying TracFone calling cards.
6 TracFone has no local service centers or outlets of its own, but retails its
7 services through stores such as Walmart and Sears. TracFone has several
8 service offerings that are available on a monthly basis, such as Net10 and
9 Straight Talk. Both plans also offer unlimited service for a flat monthly charge.

10 **Q. PLEASE DESCRIBE THE LIFELINE PLANS THAT TRACFONE**
11 **PROPOSES TO OFFER IN OREGON.**

12 A. TracFone markets its Lifeline offerings under the brand name SafeLink
13 Wireless. TracFone originally proposed to offer only one Lifeline plan in
14 Oregon. That plan included a free handset and 68 minutes of free calling per
15 month. The plan came under attack by several consumer groups, including
16 the National Association of State Utility Consumer Advocates. Staff and the
17 Citizens’ Utility Board of Oregon (CUB) expressed concerns about the
18 inadequacy of the plan in earlier testimony. Then, in August of 2010,
19 TracFone announced that it was adding two additional free calling options to
20 the first plan. The three Lifeline offerings are generally the same in every
21 state where TracFone is an ETC. TracFone only offers “free” Lifeline plans.
22 TracFone provides a free handset and a certain number of free minutes per
23 month depending on the plan chosen.

1 **Plan 1** includes 250 free minutes each month (with no carryover of
2 unused minutes), with texting included at a rate of one text per minute
3 of airtime.

4
5 **Plan 2** includes 125 free minutes each month (which can be carried
6 over to the next month if unused), with texting included at a rate of
7 one text per minute of airtime.

8
9 **Plan 3** is the original plan that includes 68 free minutes each month
10 (with carryover to the following month if unused), with texting included
11 at a rate of 3 texts per minute of airtime, plus international calling to
12 over 60 destinations. (However, eligible customers in Massachusetts
13 receive 80 free minutes with this plan according to the terms and
14 conditions posted on TracFone's website).

15
16 If the Lifeline customers need more minutes beyond those provided for free,
17 they will be allowed to purchase additional usage cards at a rate of \$0.10 per
18 minute. However, TracFone does not describe the minimum number of
19 minutes that must be purchased on each card.

20

21

ETP REQUIREMENTS**Q. WHAT ARE THE REQUIREMENTS FOR ETP DESIGNATION?**

A. The requirements for ETP designation are specified in OAR 860-033-0005(3), which also defines an ETP as:

a provider of telecommunications service, including a cellular, wireless or other common carrier that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area by having met the following eligibility criteria:

- (a) Offers services under 47 C.F.R. § 54.101 (2008) using either its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another Eligible Telecommunications Carrier throughout the service area). Pursuant to 47 C.F.R. § 54.201(f) (2008), the requirement of using its "own facilities" includes, but is not limited to, purchasing unbundled network elements from another carrier;
- (b) Advertises the availability of and the charges for such services using media of general distribution; and
- (c) Demonstrates that it will comply with OAR 860-033-0005 through 860-33-0100.

Q. DID TRACFONE FILE AN ETP APPLICATION INDICATING THAT IT AGREED TO ABIDE BY ALL APPLICABLE OTAP RULES?

A. Yes. TracFone filed a signed ETP application on April 9, 2010, indicating it understood and agreed to abide by all applicable Commission rules and state laws. In addition, TracFone agreed to comply with all the conditions outlined (#1- 9) in its ETP application as a prerequisite for obtaining designation from the Commission. See Exhibit 401.

1 **Q. DOES TRACFONE MEET THE DEFINITION OF AN ETP?**

2 A. No. TracFone requests waivers of specific rules. I address each section of
3 the rule that defines an ETP below and I assess the basis for each waiver
4 request offered by TracFone. I also note that I have been advised by the
5 Department of Justice that the Commission cannot waive the Oregon
6 Administrative Rules associated with ETP status unless the law (e.g. the rule
7 itself, another rule, etc.) allows otherwise. Counsel also advised that, in some
8 cases, what TracFone calls a waiver may actually be a declaration that a rule
9 does not apply.

10 **Q. DOES TRACFONE MEET THE REQUIREMENTS IN SECTION (A) OF OAR**
11 **860-033-0005(3)?**

12 A. No. Section (a) states that an ETP is to provide supported services using either
13 its own facilities or a combination of its own facilities and resale of another
14 carrier's services. TracFone has no facilities of its own. It offers its services in
15 Oregon by contracting to use the facilities of three different carriers – Verizon
16 Wireless, AT&T Mobility and T-Mobile.

17 **Q. DOES TRACFONE REQUEST A WAIVER OF SECTION (A) OF OAR 860-**
18 **033-005(3)?**

19 A. No. TracFone does not include this rule in its list of waiver requests in Exhibit 2
20 of its most recent application.

21 **Q. DOES THE LANGUAGE IN SECTION (A) RELATE TO A SIMILAR**
22 **REQUIREMENT FOR ETC DESIGNATION?**

1 A. Yes. Owning facilities is a requirement for ETC status in Oregon. Ms. Marinos
2 discusses this issue in further detail in her testimony addressing ETC
3 designation requirements. See Staff/300, Marinos/22-25.

4 **Q. WILL TRACFONE MEET THE DEFINITION OF SECTION (B) OF OAR 860-**
5 **033-0005(3)?**

6 A. Yes, in part. TracFone states that it will advertise, market and promote the
7 availability of its proposed free Lifeline plans in Oregon using print and
8 broadcast media that target low-income populations, if granted ETP
9 designation by the Commission. However, the OARs associated with ETP
10 status require TracFone to offer OTAP benefits on all its service offerings.
11 Therefore, TracFone should commit to advertise the availability of OTAP on all
12 services it offers, not just the three Lifeline services it proposes in its
13 application.

14 **Q. WILL TRACFONE MEET THE DEFINITION OF SECTION (C) OF OAR 860-**
15 **033-0005(3)?**

16 A. No. OAR 860-033-0005(3)(c) arguably requires an ETP to comply with OAR
17 860-033-0005 through 860-033-0100. However, TracFone states on page 2 of
18 its second amended application that there are specific OARs that are not
19 applicable to it and certain OARs with which it cannot comply. Consequently,
20 TracFone includes a list of specific OARs for which it requests waivers in
21 Exhibit 2 of that application. I address each of TracFone's waiver requests in
22 the context of each rule below.

1 **Q. WILL TRACFONE COMPLY WITH OAR 860-033-0006 through OAR 860-**
2 **033-0009?**

3 A. No. These rules relate to the RSPF surcharge. TracFone requests a waiver of
4 OAR 860-033-0006, the rule addressing applicability of the surcharge. The
5 other rules relate to reports and various administration aspects of the
6 surcharge. TracFone premises its waiver request on an assertion that the
7 RSPF surcharge is not applicable to TracFone's proposed free Lifeline
8 services.

9 **Q. WHAT IS THE PURPOSE OF THE RSPF SURCHARGE?**

10 A. The RSPF is a legislatively approved fund in the Oregon State Treasury that
11 supports the OTAP, as well as the Telecommunication Devices Access
12 Program (TDAP) and the Oregon Telecommunications Relay Service (OTRS).

13 **Q. HOW IS THE RSPF SURCHARGE ASSESSED?**

14 A. 860-033-0006(3) states that "Each telecommunications provider must: (a)
15 collect the RSPF surcharge by charging the specific amount to each retail
16 subscriber with access to the telecommunications relay service, including
17 OTAP eligible subscribers." OAR 860-033-0005(9) defines the RSPF
18 surcharge as "a specific amount up to 35 cents per month collected from each
19 paying retail subscriber who has telecommunications service with access to the
20 telecommunications relay service, except as provided in OAR 850-033-
21 0006(2)."

22 **Q. DOES TRACFONE CURRENTLY COLLECT AND REMIT THE RSPF**
23 **SURCHARGE FROM ITS CUSTOMERS IN OREGON?**

1 A. No. TracFone currently offers only prepaid wireless services, and the
2 application of the RSPF surcharge to prepaid wireless carriers is a legal matter
3 of current debate. Therefore, I will not address it in my testimony.

4 **Q. DO YOU EXPECT THE LEGAL DEBATE TO BE RESOLVED SOON?**

5 A. Possibly. The Commission has proposed Senate Bill 146 before the 2011
6 Legislative Assembly. See Exhibit 402. That bill proposes to mandate prepaid
7 wireless service providers like TracFone to collect and remit the RSPF
8 surcharge from all its customers who have access to the telecommunications
9 relay service. Landline and other wireless carriers' customers of post-paid
10 services already contribute to the RSPF.

11 **Q. PLEASE DISCUSS TRACFONE'S REQUEST TO WAIVE THE RULES**
12 **RELATING TO THE RSPF SURCHARGE ON ITS PROPOSED LIFELINE**
13 **SERVICE OFFERINGS.**

14 A. TracFone requests a waiver of the RSPF rules not for its current prepaid
15 services, but rather for the free Lifeline services it proposes to offer if it
16 receives ETP designation. TracFone argues that the RSPF surcharge
17 would not be applicable to the free Lifeline services.

18 **Q. WHAT ARE TRACFONE'S ARGUMENTS AS TO WHY IT IS NOT**
19 **REQUIRED TO PAY THE RSPF SURCHARGE?**

20 A. TracFone's first argument is that its Lifeline customers are not "paying retail
21 customers" since the services are free to them and paid for by the federal
22 USF and TracFone. Its second argument is that its Lifeline customers are
23 not "retail subscribers" because they are not obligating themselves to pay

1 anything for the service because it is free. Its third argument is that
2 TracFone has no billing mechanism to collect the surcharge. Its fourth
3 argument is that its Lifeline services are not telecommunications services
4 under ORS 759.005(8)(a). Lastly, TracFone argues that it does not render
5 bills on which to identify the surcharge and therefore does not have a
6 mechanism in place to collect the surcharge. See Exhibit 2, p. 2-3 of
7 TracFone's Second Amended Application.

8 **Q. WITHOUT GETTING INVOLVED IN LEGAL ARGUMENTS, DO YOU HAVE**
9 **A COMMENT ABOUT TRACFONE'S ARGUMENTS?**

10 A. The fact that TracFone's Lifeline customers would pay nothing for their
11 service does not negate the fact that their service is indeed being paid for
12 and that they are subscribers. The fact that TracFone has no billing
13 mechanism to collect surcharges is also irrelevant. TracFone can subtract
14 the equivalent of the surcharge from the free minutes or require customers
15 to pay the surcharge. Alternatively, TracFone can pay the surcharge on
16 behalf of its customers just as it states it does by contributing its own \$3.50
17 rather than accepting OTAP's \$3.50.

18 **Q. PLEASE ADDRESS TRACFONE'S ASSERTION THAT ITS PROPOSED**
19 **LIFELINE SERVICES ARE NOT TELECOMMUNICATIONS SERVICES.**

20 A. TracFone asserts that its proposed Lifeline services are not
21 telecommunications services under ORS 759.005(8)(a). The definition of
22 telecommunications services under OAR 860-033-0005 is, however, the
23 definition that this Commission has applied to other wireless ETPs. It

1 defines “the offering of telecommunications as defined in C.F.R. § 54.5 (10-
2 1-08 Edition) for a fee directly to the public, or to such classes of users as to
3 be effectively available directly to the public, regardless of the facilities
4 used.” TracFone’s proposed Lifeline services meet that definition. If
5 TracFone is correct in its assertion that its proposed service offerings are
6 not telecommunications services, then it should explain how it can be
7 offered under the OTAP program and how TracFone can be granted ETP
8 designation.

9 **Q. DO ALL OTHER ETPS IN OREGON ASSESS THE RSPF SURCHARGE**
10 **ON THEIR OTAP CUSTOMER OFFERINGS?**

11 A. Yes. It is a requirement under OAR 860-033-0006(3).

12 **Q. ARE ANY OF THE OREGON ETPS PROVIDING WIRELESS SERVICES?**

13 A. Yes. For example, Cricket provides prepaid wireless services for which it
14 collects and remits RSPF surcharges on behalf of its OTAP qualifying
15 customers.

16 **Q. WILL TRACFONE COMPLY WITH OAR 860-033-0010?**

17 A. No, TracFone will not comply with this rule and requests a waiver. TracFone is
18 not proposing to provide reduced rates on all its service offerings in Oregon.

19 **Q. WHAT IS THE IMPORTANCE OF THIS RULE?**

20 A. Specifically OAR 860-033-0010 states:

21 The Oregon Telephone Assistance Program (OTAP) is designed to
22 provide a reduced rate or discount for an [ETP]’s basic service,
23 whether sold separately or in combination with other services, to
24 low-income customers who meet eligibility requirements. An [ETP]
25 must offer OTAP reduced rates or discounts with all service

1 offerings that include basic telephone service. Reduced rates or
2 discounts apply to the single line, or service that is functionally
3 equivalent to a single line, serving the eligible recipient's principal
4 residence.
5

6 This rule sets out three basic aspects of the OTAP service. The first is that the
7 OTAP benefit takes the form of "a reduced rate or discount" on an ETP's basic
8 telephone service. The second is that an ETP must offer the OTAP benefit on
9 all service offerings that include basic telephone service. The third is that the
10 OTAP benefit applies to a single line serving the OTAP recipients principal
11 residence.

12 **Q. WHAT IS THE BASIS FOR TRACFONE'S REQUEST OF A WAIVER OF**
13 **THIS RULE?**

14 A. TracFone's arguments seem to be directed at the second requirement in this
15 rule – that OTAP benefits must be made available on all an ETP's service
16 offerings that include basic service. To that end, TracFone asserts that it does
17 not offer basic telephone service as defined in ORS 759.005(8)(a). It also
18 asserts that it does not provide "local exchange telecommunications service"
19 because it does not provide "telecommunications service" as defined by
20 Oregon Statutes. TracFone argues that since ORS 759.005(8)(a) specifically
21 excludes radio common carriers (like TracFone), the term "basic telephone
22 service" in the rule at issue cannot possibly apply to TracFone's services. See
23 Exhibit 2, p. 3-4 of TracFone's Second Amended Application.

24 **Q. DO YOU AGREE WITH TRACFONE'S ARGUMENTS?**

1 A. No. Basic telephone service for purposes of OTAP is defined in OAR 860-033-
2 0005(1) as the definition found in OAR 860-032-0190, and for OTAP recipients
3 also includes access to toll-limitation services. Under that definition, basic
4 telephone service largely follows the definition of supported services for FUSF,
5 with the key component being that it provides local exchange calling and gives
6 access to, but does not include, Extended Service Area, and services such as
7 long distance, operator, directory assistance and 911. See C.F.R. § 54.101
8 a(1) through a(9).

9 **Q. DO YOU AGREE THAT TRACFONE'S OFFERING OF THE THREE**
10 **LIFELINE/OTAP PLANS IT PROPOSES COMPLIES WITH THE INTENT**
11 **OF THIS RULE?**

12 A. No. The rule is intended to ensure that low-income customers are able to
13 choose calling plans that best suit their needs, as other customers with
14 higher incomes are able to do. The rule prohibits an ETP from limiting the
15 choices available to OTAP customers, which TracFone's proposal will do.
16 TracFone has [REDACTED] customers in Oregon who subscribe to its other
17 service offerings, including but not limited to Net10 and Straight Talk. See
18 Exhibit 403.

19 **Q. IF THE COMMISSION GRANTS A WAIVER OF OAR 860-033-0010 FOR**
20 **TRACFONE, WOULD OTHER ETPS AND THEIR CUSTOMERS BE**
21 **ADVERSELY AFFECTED?**

22 A. Yes. Such a waiver could confer preferential treatment on TracFone since
23 other ETPs, including wireless ETPs provide the discount to all of their

1 monthly service options in Oregon. If the Commission allows TracFone to
2 restrict OTAP service offerings to only those that TracFone chooses, it will
3 open the door to requests from other ETPs to do the same and thus, limit
4 the available choices to Lifeline customers.

5 **Q. DO TRACFONE'S PROPOSED FREE LIFELINE OFFERS FIT THE OAR'S**
6 **DEFINITION OF A "REDUCED RATE" OR "DISCOUNT" FOR ITS BASIC**
7 **SERVICE OFFERINGS?**

8 A. No. However, it is difficult to determine given the free service offering. I
9 can point out that the other ETPs designated in Oregon have applied the
10 OTAP benefits as discounts on their current services, which result in a
11 reduced rate to the OTAP customer. Theoretically, the discount could take
12 a bill to zero.

13 **Q. WITH A FREE SERVICE OFFERING, HOW CAN THE COMMISSION BE**
14 **CERTAIN THAT ALL THE SUPPORT FUNDS ARE FLOWED THROUGH**
15 **TO THE CUSTOMER?**

16 A. It can't. Unlike the OTAP approach that requires an ETP to give a discount
17 or credit off all its existing non-Lifeline service offerings, TracFone's free
18 model does not ensure, on its face, that customers will receive all the
19 benefits of the subsidy that TracFone receives from the FUSF.

20 **Q. DOES TRACFONE OFFER THE SAME PLANS AND NUMBER OF FREE MINUTES**
21 **IN EACH STATE?**

22 A. Yes. Given that each state receives the same plan but differing levels of
23 support, it is hard to see how it is possible for TracFone to pass through all

1 of a single state or district's support to low-income customers in that state or
2 district. For instance, in Washington, D.C., TracFone receives \$3.87 in
3 FUSF Tier I support for each Lifeline customer. In most Oregon territories,
4 TracFone would receive \$10.00 per month per Lifeline customer. This begs
5 the question of why Oregon Lifeline customers aren't receiving more free
6 minutes.

7 **Q. WILL TRACFONE COMPLY WITH REQUIREMENTS IN OAR 860-033-0030?**

8 A. Yes, in part. OAR 860-033-0030 pertains to OTAP eligibility requirements for
9 customers, application requirements, eligibility verification requirements, and
10 ETP billing requirements. The rule requires that customers submit a completed
11 application for OTAP benefits to the Commission, and the Commission must
12 verify an individual's eligibility on an ongoing basis. This rule forms the basis of
13 the OTAP administrative procedures. TracFone agrees to follow the
14 administrative procedures, including the requirement that the Commission
15 verify an OTAP recipient's continuing eligibility. However, unless TracFone
16 issues a bill, then sub-requirement (6) that the name of the OTAP recipient
17 must appear on the billing statement for the service receiving the OTAP benefit
18 cannot be met.

19 **Q. DID TRACFONE REQUEST A WAIVER OF SUB-REQUIREMENT (6)?**

20 A. Yes, and the rule allows the Commission to waive this requirement, if good
21 cause exists. TracFone requests a waiver of this requirement on the grounds
22 that it "does not render bills or issue billing statements." Although "bills" in the
23 traditional sense are not rendered to prepaid wireless customers, such service

1 providers nonetheless have some equivalent of an account to which to credit
2 advance payments for services.

3 **Q. DO YOU RECOMMEND THE COMMISSION GRANT THE WAIVER?**

4 A. Yes. I recommend the Commission grant the waiver on the condition that the
5 OAR 860-033-0030(6) requirement be understood to apply to a customer's
6 account information in cases where bills are not rendered to customers.

7 **Q. WILL TRACFONE COMPLY WITH OAR 860-033-0035 PERTAINING TO**
8 **OTAP BENEFITS?**

9 A. There are five subparts to this rule, but only (1) and (2) pertain to ETP
10 obligations. TracFone will not comply with either.

11 **Q. WHAT DOES OAR 860-033-0035(1) REQUIRE?**

12 A. OAR 860-033-0035(1) states:

13 A residential customer qualifying for the OTAP benefit pays a reduced
14 monthly rate, as established by the Commission, for basic service,
15 whether sold separately or in combination with other services, provided
16 by an [ETP]. The monthly OTAP benefit includes:

- 17
- 18 (a) The federal baseline Lifeline support equal to the Eligible
19 Telecommunications Carrier tariff rate for the federal [subscriber
20 line] charge for primary residential lines;
- 21
- 22 (b) An additional federal Lifeline support of \$1.75 in accordance
23 with C.F.R. § 54.403 (2008);
- 24
- 25 (c) The State of Oregon support of \$3.50; and
- 26
- 27 (d) An additional federal Lifeline support, in an amount equal to
28 one-half the amount of support provided by the State of Oregon
29 up to a federal maximum of \$1.75, available to the [ETP]s that
30 provide OTAP benefits to qualifying low-income recipients;
- 31
- 32 (e) For each qualifying low-income individual living on federally
33 recognized tribal lands, provided that this support does not bring

1 the basic local rate below \$1.00 per month:(A) an additional
2 federal Lifeline support, in an amount up to \$25.00 per month,
3 available for each eligible resident of tribal lands; and (B) a total
4 of up to \$35.00 each month, including first and second tier
5 federal support amounts per primary residential connection,
6 available for each eligible resident of tribal lands on basic local
7 exchange service, as prescribed in 47 C.F.R. § 54.403 (2008).
8

9 **Q. IN WHAT WAYS WILL TRACFONE NOT COMPLY WITH OAR 860-033-**
10 **0035(1)?**

11 A. There are four important areas in this rule for which TracFone will not comply.
12 The first is that the customer qualifying for the OTAP benefit pays a “reduced
13 monthly rate.” The second is the reduced monthly rate applies to basic
14 service, whether sold separately or in combination with other services,
15 provided by an ETP. These same requirements appear in OAR 860-033-0010
16 and are addressed above in discussions regarding that rule. The third and
17 most significant area of non-compliance relates to the monthly additional OTAP
18 benefit of \$3.50 from the state of Oregon. The fourth area pertains to Tribal
19 Lifeline benefits.

20 **Q. DID TRACFONE REQUEST A WAIVER OF 860-033-0035(1)?**

21 A. No, TracFone did not request a waiver of this rule.

22 **Q. PLEASE EXPLAIN THE ISSUE REGARDING THE ADDITIONAL \$3.50**
23 **BENEFIT PROVIDED BY OTAP.**

24 A. It appears that TracFone will not claim \$3.50 of monthly support available
25 from the OTAP based on its understanding that it may not be eligible to seek
26 monthly support from OTAP because it is not obligated to contribute to the

1 RSPF. See Exhibit 404. However, TracFone further states that, “if [it] is
2 eligible to receive \$3.50 in support from OTAP, it will claim that support and
3 include that amount in its calculation of monthly free minutes offered in
4 Oregon. TracFone also states that it “has no plans to [neither] seek
5 reimbursement from OTAP nor modify the number of [free] minutes provided
6 [because its] lifeline offerings are available on a uniform basis in all states
7 where TracFone is a designated ETC, except for the customers enrolled in
8 the first plan [in Massachusetts] receive 80 free minutes rather than 68, in
9 order to comply with a state-specific requirement.” See Exhibit 405.

10 **Q. IF TRACFONE DOES NOT CLAIM THE ADDITIONAL \$3.50 BENEFIT**
11 **PROVIDED BY OTAP, HOW CAN IT OBTAIN THE TIER III MATCHING**
12 **SUPPORT FROM THE FUSF?**

13 A. TracFone proposes to provide its own \$3.50 of monthly support.

14 **Q. IF TRACFONE ACCEPTED THE ADDITIONAL \$3.50 PROVIDED BY**
15 **OTAP, COULD IT OFFER GREATER BENEFITS TO OREGON LOW-**
16 **INCOME CUSTOMERS?**

17 A. Yes, it could. Since TracFone provides \$3.50 of its own money to benefit
18 OTAP customers, it could take the OTAP additional \$3.50 of support and
19 provide even greater benefits (\$7.00 worth) to OTAP customers. This would
20 mean that OTAP customers would receive either more free minutes than
21 TracFone is currently proposing to offer or a greater subsidy on TracFone’s
22 other service offerings.

23 **Q. DOES TRACFONE’S REJECTION OF STATE FUNDS HURT CUSTOMERS?**

1 A. Perhaps. TracFone could certainly increase benefits provided to Oregon
2 customers but it is unclear if it would also simultaneously reduce its
3 contribution \$3.50 worth of free minutes. The OTAP was established for the
4 benefit of low-income customers and it seems most consistent to provide all
5 eligible customers with the maximum allowed benefits.

6 **Q. WILL TRACFONE PROVIDE TRIBAL LIFELINE SERVICE?**

7 A. TracFone's first and second applications do not state whether TracFone will
8 offer Tribal Lifeline service, nor does it specifically state whether TracFone
9 seeks to be designated on Tribal Lands. However, it appears that TracFone
10 requested not to be designated on Tribal Lands in its designation requests to
11 the FCC. See Staff/100, Marinos/23. If TracFone is designated on Tribal
12 Lands, it appears that "TracFone's Lifeline plans will not vary for residents of
13 tribal lands and residents on non-tribal lands." See Exhibit Staff/110.

14 **Q. PLEASE EXPLAIN THE TRIBAL LANDS DISCOUNT ISSUE.**

15 A. Under the low-income FUSF program, qualifying low-income customers living
16 on Tribal Lands are eligible for a discount of up to \$25 per month on their
17 telephone service. This is more than double the \$10 of federal support
18 available for customers who do not reside on Tribal Lands. Tribal benefits
19 cannot bring the rate for service below one dollar; eligible customers must pay
20 at least one dollar for any Tribal Lifeline benefit they receive. Given
21 TracFone's response to data request 28 contained in Marinos/110, TracFone
22 will not provide the additional monthly support and perhaps cannot issue a
23 \$1.00 bill for Tribal Lifeline participants.

1 **Q. WHAT DOES STAFF RECOMMEND REGARDING THIS REQUIREMENT?**

2 A. Since TracFone is still unable to clearly identify the areas in which it requests
3 designation, this issue remains unresolved. Should TracFone be designated
4 on Tribal Lands, the Commission should require TracFone to offer the larger
5 Tribal discount available by offering more minutes to qualifying residents of
6 Tribal Lands. It should not grant a waiver of this requirement. The available
7 \$25.00 of Tribal Lifeline support is two and a half times the amount available
8 for non-tribal Lifeline support (\$10.00). Therefore, the minutes available for
9 Tribal Lifeline should be approximately two and a half times that amount.

10 **Q. WILL TRACFONE COMPLY WITH THE BENEFIT PRORATION**

11 **REQUIREMENT IN OAR 860-033-0035(2)?**

12 A. No, but it seeks a waiver. OAR 860-033-0035(2) states:

13 The OTAP benefit is provided for each billing period that a customer is
14 determined eligible for assistance. When a customer is determined
15 eligible for less than an entire billing period, the benefit is prorated.
16

17 TracFone seeks a waiver of this OAR on the basis that it does not issue bills
18 and does not have billing periods. TracFone claims it “is technically unable to
19 prorate the Lifeline benefit to customers, and does not do so in any of the more
20 than 30 jurisdictions where it operates as an ETC.” Furthermore, TracFone
21 states it “provides its Lifeline customers with a full month of Lifeline benefit
22 without regard to when during the month a customer enrolls in Lifeline.” See
23 Exhibit 2, p. 4-5 of TracFone’s Second Amended Application.

1 **Q. ON WHAT DATE DO INITIAL BENEFITS BECOME AVAILABLE TO A NEW**
2 **OTAP CUSTOMER?**

3 A. OAR 860-033-0035(3) requires that initial OTAP benefits become effective on
4 the date the Commission receives the signed OTAP application from an eligible
5 customer. Therefore, the customer's ETP receives reimbursement based on
6 the same date. The lack of a rendering of a bill is not sufficient cause for a
7 waiver. If TracFone wishes to give the customer an entire month's worth of
8 free service, it may do so. However, it is not entitled to an entire month of
9 support reimbursement if the customer was not eligible for benefits during the
10 entire month.

11 **Q. DOES THE FCC REQUIRE PRORATION FOR FEDERAL LIFELINE**
12 **SUPPORT?**

13 A. There is disagreement among parties regarding proration for federal Lifeline
14 support. The Wireline Competition Bureau at the FCC sought public comment¹
15 on a letter it received from the USAC requesting clarification that federal
16 Lifeline support must be prorated in cases where customers are not eligible for
17 an entire month of Lifeline benefits. On March 4, 2011, the FCC released a
18 Notice of Proposed Rulemaking proposing to "codify the rule that all ETCs
19 must report partial or prorate dollars when claiming reimbursement for Lifeline
20 customers who receive service for less than a month". See Exhibit Staff/309.
21 The FCC's intent all along has apparently been to require prorating of Lifeline

¹ See Wireline Competition Bureau Seeks Comment on Universal Service Administrative Company Letter Seeking Guidance on FCC Form 497 for Low-Income Universal Service Program, WC Docket No. 03-139, Public Notice, DA 10-401 (rel. Mar. 10, 2010).

1 support. TracFone should be required to prorate OTAP support as all other
2 ETPs in Oregon do. In data request 161, Staff requested that TracFone submit
3 evidence to demonstrate that the FCC does not require it to prorate federal
4 Lifeline support. In response, TracFone provided no evidence that USAC
5 agreed that TracFone is not subject to reporting customers on a partial or
6 prorated basis. See Exhibit 406.

7 **Q. DOES OAR 860-033-0045 APPLY TO TRACFONE?**

8 A. This rule pertains to OTAP compensable expenses. If the Commission
9 decides that TracFone is not required to claim and pass through support from
10 the OTAP, this rule would not apply.

11 **Q. WHAT ARE THE OTAP REQUIREMENTS IN OAR 860-033-0046?**

12 A. This rule establishes requirements related to OTAP accounting, auditing and
13 reporting that ETPs must abide by.

14 **Q. WILL TRACFONE COMPLY WITH ALL OTAP REQUIREMENTS IN OAR**
15 **860-033-0046?**

16 A. Yes.

17 **Q. WHAT ARE THE OTAP REPORTING REQUIREMENTS AND HOW ARE**
18 **THEY USED?**

19 A. The OTAP reporting requirements include an "Active OTAP Customer Report",
20 "Order Activity Report", and "No Match Report" as described below.

21 OTAP staff compares the ETPs' **Active OTAP Customer Report** with
22 the records in the Commission database to verify that the ETP
23 enrolled only Commission-approved customers in Lifeline. Also,
24 OTAP staff uses the Active OTAP Customer Report to confirm that
25 ETPs do not enroll an ineligible customer in Lifeline.

1
2 OTAP staff uses the **Order Activity Report** to update records in the
3 Commission database and maintain its integrity of reliable data by de-
4 enrolling Lifeline customers whose service with the ETP was
5 disconnected.
6

7 The **No Match Report** is used to identify customers that the
8 Commission has determined as eligible for OTAP, but that the ETP
9 believes are not eligible for OTAP and OTAP staff notifies each such
10 customer and presents an opportunity for the customer to rectify the
11 discrepancy.
12

13 These reports are essential in ensuring that disbursements from both the OTAP
14 and FUSF are documented, justifiable and in compliance with rules established
15 by the Commission and the FCC. Despite the fact that TracFone does not plan
16 to seek reimbursement from the OTAP, ensuring integrity of the federal Lifeline
17 program is fundamental to the Commission's stewardship of the FUSF, and the
18 Commission should be committed to protecting the interests of all
19 telecommunications customers who contribute to the FUSF.

20 **Q. WILL TRACFONE COMPLY WITH OAR 860-033-0050 and OAR 860-033-**
21 **0055 THAT REQUIRE AN ETP TO PROVIDE LINK-UP AMERICA**
22 **SERVICES?**

23 A. No. However, these rules do not apply to TracFone since TracFone does not
24 charge for connection or installation. Link-Up America is described in C.F.R. §
25 54.411 and has two components. A carrier can request reimbursement for the
26 cost of initializing an eligible low-income customer's telecommunications
27 service up to one-half of the customary cost or up to \$30.00. The second
28 component of Link-Up America allows low-income customers a deferred

1 payment schedule for commencing telecommunications service without
2 incurring interest charges.

3 **Q. WILL TRACFONE COMPLY WITH OAR 860-033-0100 THAT REQUIRES AN**
4 **ETP TO PROVIDE TOLL LIMITATION SERVICE?**

5 A. This requirement is met by the nature of the service and a waiver is not
6 necessary. This requirement is also a requirement for ETC status.

7 **Q. PLEASE EXPLAIN.**

8 A. This requirement was meant to address a concern largely related to landline
9 phone service. Specifically, many low-income customers were having their
10 local service shut off by the ILECs due to non-payment of long distance or toll
11 charges. Toll limitation service is to be made available if the customer wishes.
12 TracFone's service offerings already have a toll limitation feature in that calls
13 must be paid for before they can be made, rather than after. TracFone
14 requests a waiver of this rule if the Commission deems one is necessary.

15 **Q. DOES THE COMMISSION HAVE A RULE THAT REQUIRES STAFF**
16 **REVIEW OR APPROVAL OF AN ETP'S LIFELINE ADVERTISEMENTS?**

17 A. No. However, TracFone has agreed "to provide copies of advertisements to
18 Commission Staff and to consider recommendations from Commission Staff as
19 it has agreed to in other states." See TracFone/1, Fuentes24. I suggest that
20 the Commission require TracFone to notify staff of marketing campaigns in
21 advance so that staff can prepare for the anticipated increased workload (e.g.
22 customer phone calls and applications). In addition, the Commission should
23 require TracFone to submit all advertising materials, including television and

1 radio Public Service Announcements, for staff review to ensure accuracy of all
2 content specific to Oregon eligibility requirements prior to its use.

3 **Q. DOES TRACFONE ASK FOR ANY OTHER MODIFICATIONS TO OTAP**
4 **ADMINISTRATIVE PROCEDURES OR REQUIREMENTS?**

5 A. Yes, TracFone asks that two modifications be made to the OTAP application
6 form that all customers must use to apply for OTAP benefits.

7 **Q. WHAT IS THE FIRST MODIFICATION?**

8 A. On the OTAP application, applicants must indicate that they understand that
9 their name must be on the phone bill in order to receive OTAP benefits on that
10 provider's service. This relates back to the requirement in OAR 860-033-
11 0030(6) that the OTAP recipient's name must be listed on the phone bill to
12 which the OTAP benefit is applied. If the Commission grants the requested
13 waiver of that rule, then OTAP staff would modify the application accordingly to
14 state that the eligible Lifeline customer's name must be on the account.

15 **Q. WHAT IS THE SECOND REQUESTED MODIFICATION TO THE OTAP**
16 **APPLICATION?**

17 A. The second modification that TracFone requests that an applicant for OTAP
18 benefits must first have phone service from an ETP in order to request
19 benefits. Accordingly, the applicant must list on the application the name of the
20 phone service provider and the applicant's telephone number to which the
21 benefits will be applied.

22 **Q. WHAT IS TRACFONE'S BASIS FOR A CHANGE IN THIS PROCEDURE?**

1 A. TracFone asserts that the requirement for active service at the time of
2 application puts TracFone at a competitive disadvantage because it “attracts
3 new customers to its Lifeline service, rather than relying solely on its current
4 non-Lifeline customer base.” TracFone further asserts that without a change
5 “individuals who wish to receive Lifeline benefits from TracFone will be unable
6 to do so.” See Exhibit 2, p. 8 of TracFone’s Second Amended Application.

7 **Q. DO YOU AGREE WITH TRACFONE’S BASIS FOR ASSERTING THAT THIS**
8 **REQUIREMENT PUTS TRACFONE AT A DISADVANTAGE COMPARED TO**
9 **OTHER ETPS?**

10 A. No. Other wireless ETPs have attracted new customers who take the service
11 in order to use their OTAP benefits on a wireless service. TracFone would not
12 be disadvantaged in signing up new Lifeline customers relative to other
13 wireless ETPs that must, and do, follow the same rules and procedures. In
14 fact, if TracFone was the only ETP relieved of this requirement, TracFone
15 would gain an advantage over other ETPs providing OTAP services in the
16 currently required manner.

17 **Q. DOES TRACFONE EXPLAIN HOW THIS REQUIREMENT WOULD**
18 **PROHIBIT IT FROM OFFERING LIFELINE BENEFITS TO CUSTOMERS?**

19 A. No. Staff requests that TracFone fully explain why it cannot meet this
20 requirement.

21 **Q. DO YOU AGREE THAT THERE MAY BE OTHER REASONS WHY THE**
22 **ACTIVE NUMBER REQUIREMENT SHOULD BE RECONSIDERED OR**
23 **CHANGED?**

1 A. The requirement should be reviewed to determine whether it acts as an
2 impediment to any ETP's ability to enroll OTAP customers. However, such a
3 determination is more properly made in the context of a docket that looks at the
4 need to update or modify all aspects of the OTAP and applicable rules.
5 TracFone is not the only applicant proposing to offer free prepaid wireless
6 services and therefore, the views of other applicants should be taken into
7 consideration before a program change is made.

8 **Q. HAS OTAP STAFF HAD ANY PAST EXPERIENCE WITH AN ETP'S**
9 **MODIFICATION OF THE ACTIVE NUMBER REQUIREMENT?**

10 A. Yes. A former ETP, VCI Company (VCI), modified the OTAP application for
11 customers who did not have service but sought Lifeline assistance. VCI
12 instructed customers to submit the OTAP application first to VCI rather than to
13 OTAP staff. VCI assigned and documented a phone number on the
14 application and then sent it to OTAP staff for eligibility verification. Based on
15 staff audits, the Commission identified evidence of fraud and abuse by VCI that
16 cast suspicion on the accuracy of reimbursements from the OTAP and FUSF
17 for approximately 58,000 customers. These included customers that: a) never
18 started service despite being assigned a phone number by VCI, b) had
19 discontinued service, c) were served by other carriers, or d) were counted
20 more than once for reimbursement. As a result of the investigation, the OPUC
21 issued an order² on September 26, 2007, requiring VCI to remit to the OPUC
22 \$203,391.97 in state sponsored OTAP funds. This translated into an

² See Docket No. UM 1288, Order No. 07-424, entered 09-26/07.

1 overpayment of \$581,000 in USAC federally disbursed Lifeline monies from the
2 FUSF. The lesson learned from the VCI experience is that the Commission
3 should proceed with caution when modifying existing procedures and
4 safeguards designed to ensure that all ETPs, including TracFone, accurately
5 and appropriately claim reimbursement.

6 **Q. SHOULD THE COMMISSION PERMIT TRACFONE TO USE ITS OWN ETP**
7 **APPLICATION INSTEAD OF THE STANDARD OTAP APPLICATION, AS**
8 **TRACFONE HAS REQUESTED?**

9 A. No. In lieu of a modification of the OTAP application, TracFone proposes that
10 the Commission allow it to use its own Lifeline application form. The form
11 would instruct customers to submit the form to the Commission for eligibility
12 verification. Staff opposes TracFone's proposed alternative. OAR 860-033-
13 0030 mandates that applicants sign and submit a written authorization (OTAP
14 application) to the Commission. Legal counsel advised staff that the
15 Commission does not have the authority to waive this OAR and TracFone did
16 not request a waiver. If the Commission were to allow the circulation of
17 different versions of OTAP applications as developed by various ETPs,
18 customer confusion is likely to result and the administrative integrity of the
19 OTAP is likely to suffer.

20

POTENTIAL IMPACTS ON THE OTAP

1
2 **Q. WILL TRACFONE'S PARTICIPATION IN THE OTAP RESULT IN**
3 **INCREASED COSTS TO THE PROGRAM?**

4 A. Yes. Regardless of whether TracFone claims the available additional \$3.50
5 provided through the OTAP, direct and indirect program administration costs
6 will increase based on estimates of how many new OTAP customers TracFone
7 will enlist.

8 **Q. HOW MANY CUSTOMERS ARE CURRENTLY BENEFITING FROM OTAP**
9 **AND HOW MANY ADDITIONAL CUSTOMERS DO YOU PROJECT**
10 **TRACFONE WILL ADD TO OTAP?**

11 A. As of February 2011, there were 57,675 Lifeline customers in Oregon as
12 opposed to 46,149 in February 2010. This equates to a 25% increase in
13 Lifeline subscribership. In response to CUB's data request 5, TracFone
14 estimates it will dramatically increase Lifeline subscribership in Oregon by
15 [REDACTED] or [REDACTED] in the first year alone. See Exhibit 407.

16 **Q. CAN THE CURRENT OTAP STAFF ACCOMMODATE OR MANAGE THE**
17 **ANTICIPATED GROWTH TRACFONE PROJECTS IT WILL BRING TO**
18 **OTAP?**

19 A. No. With 3.3 FTE, OTAP is operating at or near capacity. TracFone's own
20 estimates of the increased usage of OTAP help demonstrate the need for
21 additional resources, should TracFone be designated to offer Lifeline services.

1 **Q. HOW DOES LIMITED OTAP STAFFING RESOURCES AFFECT THIS**
2 **COMMISSION'S DECISION REGARDING TRACFONE'S ETC AND ETP**
3 **DESIGNATION?**

4 A. The need for additional resources is not a reason to decline TracFone's
5 application. I raise the issue because TracFone will not be paying the RSPF
6 fee, which is used to fund the OTAP and because TracFone itself appears to
7 recognize that staffing resources are a concern. I hope the information I am
8 providing can be useful in a discussion among the parties.

9 **Q. PLEASE EXPLAIN.**

10 A. TracFone has agreed to pay a fee for the Commission's initial verification of a
11 new customer's Lifeline eligibility. TracFone states that:

12 [its] current Lifeline verification costs using its third party vendor is \$0.07
13 per transaction...[and that it] is willing to pay an amount up to \$0.15 per
14 transaction to account for the fact that the Oregon system would identify
15 whether an applicant is enrolled in a low-income benefits program. That
16 amount, which is more than double the per-transaction verification fee
17 which TracFone currently pays, should be more than sufficient to cover
18 any additional costs incurred in verifying applicants' enrollment in
19 qualifying programs.

20
21 (See Exhibit 408.)
22

23 **Q. WHAT IS THE COST TO RSPF FOR VERIFYING A CUSTOMER'S INITIAL**
24 **AND ONGOING (MONTHLY) ELIGIBILITY FOR LIFELINE THEREBY**
25 **COMPLYING WITH OAR 860-033-0030?**

26 A. I estimated that it costs \$0.23 for OTAP to certify a customer's initial eligibility.
27 See Exhibit 409.

1 **Q. IS \$0.23 SUFFICIENT TO COVER ALL OTAP ADMINISTRATIVE RELATED**
2 **COSTS?**

3 A. No.

4 **Q. PLEASE EXPLAIN.**

5 A. It does not account for the direct (e.g. staffing, supplies, etc.) and indirect costs
6 (e.g. Information Systems services, etc.) of OTAP administration. It also does
7 not factor into the cost for the Commission to perform an ongoing
8 comprehensive eligibility and verification process.

9 **Q. PLEASE DESCRIBE THE COMMISSION'S COMPREHENSIVE ELIGIBILITY**
10 **AND VERIFICATION PROCESS.**

11 A. OTAP staff dedicates approximately 50% to 60% of their time analyzing,
12 customer applications, manually entering them into the Commission database,
13 and reviewing the DHS database to determine if the recipient meets eligibility
14 requirements for the OTAP. OTAP staff reviews these computerized records
15 to ensure consistency and accuracy of information. If a customer is
16 determined to be eligible, OTAP staff records and updates telephone company
17 data and distributes weekly reports of new enrollees to the ETPs. OTAP staff
18 also analyzes and reviews the currently ninety-nine reports submitted by ETPs
19 (on a monthly or quarterly basis depending on the number of Lifeline
20 customers it has) pursuant to OAR 860-033-0046 to ensure that
21 disbursements from both the OTAP and FUSF are documented, justifiable and
22 in compliance with rules established by the Commission and the FCC. As part
23 of the OTAP quality assurance program, OTAP staff manually verify a

1 recipient's continued eligibility for OTAP or to investigate and resolve
2 discrepancies in data through five internal reports produced by the
3 Commission's Information Systems. At least 30% to 40% of OTAP staff time
4 is dedicated to responding to public inquiries via inbound and outbound phone
5 support in which staff explains Oregon Administrative Rules, Oregon Revised
6 Statutes, eligibility criteria, the application and program processes, policies,
7 and procedures as well as available benefits. Finally, the approximate
8 remaining 10% is reserved for other RSPF program support and assistance.

9 **Q. HOW CAN THE COMMISSION ABSORB OR COMPENSATE FOR THE**
10 **COST OTAP WILL INCUR IF IT DESIGNATES TRACFONE'S ETP**
11 **PETITION?**

12 A. Because I project the costs associate with OTAP are likely to more than
13 double, I will be required to review the surcharge rate and the balance in the
14 RSPF fund prior to the established month of review as stipulated in OAR 860-
15 033-0006 and recommend increased rates to the Commission in order to
16 ensure the RSPF fund has adequate resources to sustain the expenditures
17 and services of all telephone assistance programs of the RSPF, including the
18 OTAP. The additional resources would likely require Legislative approval
19 which may delay the Commission's ability to respond to the initial growth in
20 OTAP assuming TracFone offers Lifeline services in Oregon. Absent
21 additional resources, the Commission runs the risk of failing to provide the
22 necessary assistance and comprehensive eligibility and verification process for
23 new and existing OTAP customers.

1 **Q. ARE THERE ANY OTHER CONCERNS YOU WANT THE COMMISSION TO**
2 **BE AWARE OF?**

3 A. Yes. There are two petitions for ETP designation before the Commission.
4 These applicants are prepaid wireless service providers similar to TracFone
5 that have a free Lifeline business model. As discussed by Ms. Marinos, the
6 Commission may wish to revisit its rules and requirements associated with
7 ETC and ETP requirements in light of this newer business model. See Exhibit
8 Staff/300, Marinos/5-6.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1

RECOMMENDATION

2

Q. WHAT IS YOUR RECOMMENDATION REGARDING TRACFONE'S

3

REQUEST FOR ETP DESIGNATION?

4

A. At this time, TracFone fails to demonstrate that it meets all the requirements for

5

ETP designation. Therefore, I recommend the Commission deny TracFone's

6

request for ETP designation.

7

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8

A. Yes.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 401

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

Oregon Telephone Assistance Program (OTAP) Application
for Eligible Telecommunications Provider (ETP) to provide OTAP Services

TRACFONE WIRELESS, INC.

Part I. Application Information and Service Plan

1. Contact information pertaining to your designated staff who would be handling OTAP communications:

Name: Jose Fuentes

Address: 9700 N.W. 112th Avenue

City: Miami State: Florida Zip: 33178

Phone number: (305) 715-3727 Fax: (305) 640-2070.

E-Mail: jfuentes@tracfone.com

2. The number of residential, business and tribal basic service customers served by the applicant as of December 31, of the most recent calendar year.

As of December 31, 2009, TracFone had [CONFIDENTIAL] residential customers in Oregon.

Part II. Conditions to Provide OTAP Services to Qualifying Oregonians

These conditions apply in addition to the general conditions of certification. Violating these conditions, or misrepresenting information provided to PUC in the course of administering the OTAP programs may result in cancellation of your authority to provide OTAP Services and/or an order requiring you to refund with interest and penalties of any OTAP support distributed under false information.

1. The applicant agrees to offer reduced residential rates with all service offerings that include basic telephone or cellular service to eligible low-income customers pursuant to the Oregon Telephone Assistance program (OTAP).
2. The applicant understands that only PUC may approve OTAP benefits for the consumer and provide benefits to OTAP consumers after PUC has notified the applicant of their eligibility. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission (OAR 860-033-0045 (1) (d)).

3. The applicant agrees that they will ensure the consumer will see their OTAP credit within 30 days from the date that the applicant has been notified of the consumer's eligibility status, and to remove consumers within 30 days after they no longer qualify for OTAP benefits.
4. The applicant agrees that they will submit reports for reimbursement quarterly (if they have less than 1,000 OTAP consumers) or monthly (if they have more than 1,000 OTAP consumers). Reports are expected to be submitted even if there are zero consumers (OAR 860-033-0045 (1)).
5. An OTAP recipient is required to be the named subscriber to the local telecommunication service in order for that household to qualify for OTAP benefits. PUC may waive this requirement if it determines that good cause exists. Applicant agrees to comply with reimbursing OTAP consumers who are not named subscribers at the Commission's request.
6. The applicant agrees to apply Commission assigned OTAP identification numbers to its OTAP customers' accounts.
7. Based upon accounting procedures approved by the Commission, the applicant agrees to maintain accounting records so that costs associated with OTAP can be separately identified. Records must be provided to the Commission upon request.
 - a. **Active OTAP Customer Report:** The applicant agrees to submit an Active OTAP Customer Report listing the names of all customers with the Commission assigned identification number receiving the OTAP benefits. Applicants with 1,000 or more OTAP customers must submit the report monthly to the Commission Applicants with fewer than 1,000 OTAP customers must submit the report quarterly to the Commission.
 - b. **Order Activity Report:** The applicant agrees to submit an Order Activity Report listing the names of all OTAP customers with the Commission assigned identification number whose service was disconnected. The applicant is aware that the Commission may require additional information such as a listing of all OTAP customers whose telephone numbers or addresses have changed.
 - c. **No Match Report:** The applicant agrees to notify the Commission of any discrepancy that prevents a customer from receiving the OTAP benefit after the Commission has notified the applicant of customers who meet eligibility criteria on a weekly basis.
8. The applicant agrees to ensure that confidential information (including phone number, addresses, contact information, etc.) of OTAP recipients is protected (OAR 360-033-0030 (5)). The applicant agrees to maintain a written policy to ensure that the applicant's staff does not breach the confidentiality of OTAP

consumers, and to do background checks on employees who have access to customer records.

9. The applicant agrees to have in place database encryption and firewall technologies to protect customer service information stored electronically.

s/JAF

APPLICANT UNDERSTANDS ALL OF THE ABOVE CONDITIONS AND AGREES TO ABIDE BY ALL APPLICABLE COMMISSION RULES, STATE LAW AND THE CONDITIONS OF CERTIFICATION. PLEASE INITIAL BOX AT LEFT.

/s/ Jose A. Fuentes
Signature of person authorized to represent applicant

Director of Government Relations
Title

Jose A. Fuentes
Printed Name

April 9, 2010
Date

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 402

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

Senate Bill 146

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber for Public Utility Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Extends scope of Residential Service Protection Fund surcharge to include fixed interconnected voice over Internet protocol service and prepaid telecommunications service.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Residential Service Protection Fund; creating new provisions; amending section 7,
3 chapter 290, Oregon Laws 1987; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Section 7, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 622,
6 Oregon Laws 1991, section 8, chapter 872, Oregon Laws 1991, section 1, chapter 231, Oregon Laws
7 1993, section 387, chapter 79, Oregon Laws 1995, section 1, chapter 451, Oregon Laws 1995, and
8 section 2, chapter 408, Oregon Laws 2001, is amended to read:

9 **Sec. 7. (1) For purposes of this section:**

10 (a) **"Customer" means a person that has telecommunications service with access to the**
11 **telecommunications relay service through local exchange service, cellular service or other**
12 **wired or wireless means, including fixed interconnected voice over Internet protocol service.**

13 (b) **"Fixed interconnected voice over Internet protocol service" means any Internet pro-**
14 **tol enabled service that offers real-time two-way voice communications requiring a**
15 **broadband connection from the user's location and permits users generally to receive calls**
16 **that originate on the public switched telephone network and to terminate calls to the public**
17 **switched telephone network.**

18 (c) **"Prepaid telecommunications service" means any telecommunications service paid for**
19 **by the customer prior to activation or use of the service.**

20 (d) **"Prepaid telecommunications service provider" means any telecommunications ser-**
21 **vice provider that sells prepaid telecommunications service on a wholesale or retail basis.**

22 [(1)] (2)(a) In order to fund the programs provided in sections 2 to 6 and 9 to 14, chapter 290,
23 Oregon Laws 1987, the Public Utility Commission shall develop and implement a system for assess-
24 ing a surcharge in an amount not to exceed 35 cents per month against each paying retail [*sub-*
25 *scriber*] **customer** [*who has telecommunications service with access to the telecommunications relay*
26 *service*]. The surcharge shall be applied on a telecommunications circuit designated for a particular
27 [*subscriber*] **customer**. One [*subscriber*] **customer** line shall be counted for each circuit that is ca-
28 pable of generating usage on the line side of the **public** switched **telephone** network regardless of
29 the quantity of customer premises equipment connected to each circuit. For providers of central
30 office based services, the surcharge shall be applied to each line that has unrestricted connection

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 to the telecommunications relay service. These central office based service lines that have restricted
2 access to the telecommunications relay service shall be charged based on software design. **Except**
3 **for prepaid telecommunications service, the surcharge shall be assessed on each customer**
4 **connection for cellular, wireless, fixed interconnected voice over Internet protocol or other**
5 **radio common carriers.** *[For cellular, wireless or other radio common carriers, the surcharge shall*
6 *be applied on a per instrument basis, but]* **The surcharge** applies only to *[subscribers]* **customers**
7 whose place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

8 (b) **The surcharge must be assessed on each customer connection provided and billed by**
9 **each telecommunications service provider and on any prepaid telecommunications service**
10 **offered by each prepaid telecommunications service provider.**

11 (c) **Each customer is liable to the telecommunications service provider for payment of**
12 **any surcharge properly imposed under this section. The telecommunications service provider**
13 **is not liable for any uncollected surcharge, and does not have an obligation to take legal**
14 **action to enforce the collection of any surcharge that is unpaid by its customers.**

15 (d) **Each telecommunications service provider that periodically bills customers for its**
16 **services must bill each customer for the surcharge.**

17 (e) **For customers that are not billed periodically, including but not limited to customers**
18 **that purchase prepaid telecommunications service, the telecommunications service provider**
19 **must include in the price of the service the surcharge for each month during which the**
20 **customer is authorized to use the service. A prepaid telecommunications service provider**
21 **must remit to the Residential Protection Service Fund an amount equal to the surcharge**
22 **after collecting the amount using one of the following options:**

23 (A) **On a monthly basis, the prepaid telecommunications service provider must collect**
24 **an amount equal to the surcharge from each active prepaid telecommunications service**
25 **customer whose account balance is equal to or greater than the surcharge; or**

26 (B) **The prepaid telecommunications service provider must divide the provider's total**
27 **intrastate monthly revenue by the national average monthly revenue for each prepaid tele-**
28 **communications service customer of the national prepaid telecommunications service in-**
29 **dustry to determine the number of the provider's prepaid customers. The prepaid**
30 **telecommunications service provider must then pay on a monthly basis an amount to the**
31 **Residential Service Protection Fund equal to the number of the provider's prepaid custom-**
32 **ers, multiplied by the amount of the surcharge.**

33 (f) **The commission may adopt by rule the method for calculating the national average**
34 **monthly revenue for each prepaid telecommunications service customer of the national pre-**
35 **paid telecommunications service industry.**

36 (g) **If a customer receives prepaid wireless telecommunication services at no cost to the**
37 **customer, the provider of the services must remit an amount equal to the surcharge for each**
38 **month during which the customer is authorized to use the service.**

39 [(2)] (3) **The surcharge imposed by subsection [(1)] (2) of this section does not apply to:**

40 (a) **Services upon which the state is prohibited from imposing the surcharge by the Constitution**
41 **or laws of the United States or the Constitution or laws of the State of Oregon.**

42 (b) **Interconnection between telecommunications utilities, telecommunications cooperatives,**
43 **competitive telecommunications services providers certified pursuant to ORS 759.020, radio common**
44 **carriers and interexchange carriers.**

45 [(3)] (4) **The commission annually shall review the surcharge and the balance in the Residential**

1 Service Protection Fund and may make adjustments to the amount of the surcharge to ensure that
2 the fund has adequate resources but that the fund balance does not exceed six months of projected
3 expenses.

4 [(4)] (5) Moneys collected pursuant to the surcharge [*shall*] **may** not be considered in any pro-
5 ceeding to establish rates for telecommunication service.

6 [(5)] (6) The commission shall direct telecommunications public utilities to identify separately
7 in bills to customers for service the surcharge imposed pursuant to this section.

8 **SECTION 2.** The amendments to section 7, chapter 290, Oregon Laws 1987, by section 1
9 of this 2011 Act become operative January 1, 2012.

10 **SECTION 3.** This 2011 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
12 on its passage.

13

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 403

**Exhibits in Support
Of Testimony**

March 23, 2011

STAFF EXHIBIT 403

IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE

ORDER NO. 10-189. YOU MUST HAVE SIGNED

APPENDIX B OF THE PROTECTIVE ORDER IN

DOCKET UM 1437 TO RECEIVE THE

CONFIDENTIAL VERSION

OF THIS EXHIBIT.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 404

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR-89 In response to Staff DR16, TracFone states it “will not claim \$3.50 of monthly support available from OTAP”. Please explain why TracFone will not claim this support that will provide extra free minutes to the eligible customer in addition to using \$3.50 from its own resources.

Response

TracFone explained in its first supplemental response to DR-16 that in its initial response to DR-16, TracFone stated that it will not claim \$3.50 of monthly support available from OTAP. TracFone provided that response based on its understanding that it may not be eligible to seek monthly support from OTAP because it is not obligated to contribute to the RSPF. If TracFone is eligible to receive \$3.50 in support from OTAP, it will claim that amount of support and include that amount in its calculation of monthly free minutes offered in Oregon.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 405

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR 168 Please determine the total number of additional free minutes TracFone would provide for each of its SafeLink Wireless plans if it passed through the \$3.50 support from the Oregon Telephone Assistance Program (OTAP) even though TracFone has stated it will not seek reimbursement from OTAP in Staff DR-16, DR-30 and DR-89. Please explain and provide the data TracFone uses to derive the additional free minutes from the \$3.50 in OTAP support for each of its SafeLink Wireless plans.

Response

TracFone has no plans to seek reimbursement from OTAP nor modify the number of minutes provided. TracFone's Lifeline offerings are available on a uniform basis in all states where TracFone is a designated ETC, except for the Commonwealth of Massachusetts where customers enrolled in the first plan receive 80 free minutes rather than 68, in order to comply with a state-specific requirement.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 406

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR 161 On page 29 of his January 7, 2011 testimony, Mr. Fuentes claims that TracFone was advised by both the FCC and USAC that prorating did not apply to TracFone's Lifeline offer. Please provide the documentation from both the FCC and USAC that supports Mr. Fuentes' statement.

Response

In 2008, another ETC filed with the FCC an appeal of a USAC audit in which that ETC alleged, among other things, that it had no way to report to USAC which customers were enrolled in Lifeline for partial months and that it should therefore receive full Lifeline support even though some customers received only partial month benefits. This appeal by another ETC prompted TracFone to make an informal inquiry to USAC regarding TracFone's practice of providing full month benefits to Lifeline customers, no matter when during a month the customers were initially enrolled. USAC indicated to TracFone that it agreed that, since all TracFone Lifeline customers receive full month benefits, it would not be required to report customers on a partial month or pro rated basis.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 407

**Exhibits in Support
Of Testimony**

March 23, 2011

STAFF EXHIBIT 407

IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE

ORDER NO. 10-189. YOU MUST HAVE SIGNED

APPENDIX B OF THE PROTECTIVE ORDER IN

DOCKET UM 1437 TO RECEIVE THE

CONFIDENTIAL VERSION

OF THIS EXHIBIT.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 408

**Exhibits in Support
Of Staff Testimony**

March 23, 2011

DR-100 All ETCs collect and/or remit the RSPF surcharge that funds the OTAP benefit and its associated administrative costs. Is TracFone willing to pay a fee for the Commission's OTAP/Lifeline certification and monthly verification of individuals' eligibility to receive OTAP/Lifeline benefits if it is not required to collect and/or remit the RSPF surcharge? What does TracFone consider to be an appropriate amount? Explain the rationale and provide all supporting data that TracFone uses to estimate what it considers to be an appropriate amount.

Response

TracFone is willing to pay certification and verification costs which reflect the actual costs of the necessary process to comply with applicable state requirements. TracFone does not have knowledge of the administrative costs that are incurred by the Commission when it initially certifies an individual's eligibility for OTAP/Lifeline benefits and conducts a monthly verification of eligibility. Moreover, TracFone utilizes state-managed data bases to verify customer eligibility in several other states, including Texas, Maryland, and Florida. Therefore, TracFone is unable to provide an estimate of an appropriate amount based on what it pays other states. TracFone's current Lifeline eligibility verification costs using its third party vendor is \$0.07 per transaction. That vendor provides TracFone with all the information it needs to confirm a Lifeline applicant's eligibility and the accuracy of the information contained in a prospective Lifeline customer's enrollment application, but does not disclose whether the applicant is enrolled in a qualifying low-income benefits program. TracFone is willing to pay an amount up to \$0.15 per transaction to account for the fact that the Oregon system would identify whether an applicant is enrolled in a qualifying low-income benefits program. That amount, which is more than double the per-transaction verification fee which TracFone currently pays, should be more than sufficient to cover any additional costs incurred in verifying applicants' enrollment in qualifying programs.

CASE: UM 1437
WITNESS: Jon Cray

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 409

**Exhibits in Support
Of Testimony**

March 23, 2011

STAFF EXHIBIT 409

IS CONFIDENTIAL AND SUBJECT TO PROTECTIVE

ORDER NO. 10-189. YOU MUST HAVE SIGNED

APPENDIX B OF THE PROTECTIVE ORDER IN

DOCKET UM 1437 TO RECEIVE THE

CONFIDENTIAL VERSION

OF THIS EXHIBIT.