

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Petition of TracFone     )  
Wireless, Inc., dba Safelink Wireless for     )  
Designation as an Eligible                     ) Case No. 10-614-TP-UNC  
Telecommunications Carrier.                     )

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**MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility customers of the State of Ohio, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this proceeding concerning the Commission's consideration of the continued eligibility of TracFone Wireless, Inc., dba Safelink Wireless ("TracFone") for limited designation as an eligible telecommunications carrier ("ETC") in the State of Ohio. TracFone, which offers its Lifeline customers a mere 68 "free" minutes a month, with additional minutes priced at 20¢ each, was granted a one-year conditional designation as an ETC in May 2009 in Case No. 97-632-TP-COI<sup>1</sup>; on May 13, 2010, the Commission continued the designation pending further review, opened this docket, and closed the 97-632 docket.<sup>2</sup>

The grounds for OCC's intervention are more fully set forth in the accompanying Memorandum in Support.

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<sup>1</sup> *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts* ("97-632"), Supplemental Finding and Order (May 21, 2009).

<sup>2</sup> Entry, Case Nos. 97-632-TP-COI and 10-614-TP-UNC (May 13, 2010) ("May 13 Entry").

Respectfully submitted,

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/s/ David C. Bergmann

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

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**I. INTRODUCTION**

The Commission has the authority to certify ETCs to operate in the State of Ohio; such ETCs receive support from the federal universal service fund. In the exercise of that authority, the Commission has previously designated TracFone as a “low-income-only” ETC that seeks to receive only low-income funding and not so-called “high-cost funding.”<sup>3</sup> OCC participated in TracFone’s initial application for ETC status.<sup>4</sup>

In the past, the Commission has considered these applications under 97-632.<sup>5</sup> Only recently has the Commission given such applications separate case numbers of their own. OCC’s intervention was recently granted in two other cases regarding such applications.<sup>6</sup> OCC is moving to intervene in this new docket for TracFone.

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<sup>3</sup> 97-632, Supplemental Finding and Order (May 21, 2009); see also 97-632, Supplemental Finding and Order (January 26, 2010) (American Broadband and Telecommunications).

<sup>4</sup> See, e.g., 97-632, Entry on Rehearing (July 8, 2009) at 1.

<sup>5</sup> OCC moved to intervene in 97-632 on October 27, 2005, in conjunction with the application of BudgetPhone to be certified as an ETC for its prepaid telephone service.

<sup>6</sup> *In the Matter of Virgin Mobile USA, L.P. Petition for Limited Designation as a Nonrural Eligible Telecommunications Carrier*, Case No. 10-429-TP-UNC, Entry (May 13, 2010); *In the Matter of the Application of Nexus Communications dba TSI for Designation as an Eligible Telecommunications Carrier in the State of Ohio for the Limited Purpose of Offering Lifeline and Link-Up Service to Qualifying Households*, Case No. 10-432-TP-UNC, Entry (May 13, 2010).

In the May 13 Entry, the Commission noted,

that, pursuant to TracFone's Compliance Plan, the company was directed to maintain specified data regarding its Lifeline operations and to submit such information to the Commission staff on a quarterly basis (Supplemental Finding and Order at 12). Currently, TracFone has submitted two such quarterly reports for the Commission staff's review.<sup>7</sup>

OCC has received information from TracFone (pursuant to a protective agreement) that was submitted to the PUCO staff. This information confirms and reinforces concerns that OCC expressed in comments on the TracFone application.<sup>8</sup> Those concerns are reiterated and more fully explained in OCC's Application for Rehearing of the Commission's May 13 Entry, also being filed on June 14, 2010.

In comments filed on the TracFone application, OCC recommended that the Commission begin a generic investigation into policies, procedures and practices that should be applicable to carriers that seek "low-income" ETC designation.<sup>9</sup> The Commission now has pending the continuing review of TracFone's designation, and two new such applications – for Virgin Mobile and for Nexus. It is important for policies pertaining to such applications to be set on a consistent basis, rather than ad hoc with each application.<sup>10</sup> OCC therefore renews its request for a generic investigation for "low-income" ETCs,<sup>11</sup> but has addressed the issues in its above-referenced Application for Rehearing.

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<sup>7</sup> May 13 Entry at 2.

<sup>8</sup> 97-632, OCC Comments (May 11, 2009) at 2-3.

<sup>9</sup> E.g., 97-632, OCC Comments (May 11, 2009) at 4.

<sup>10</sup> OCC shares the Commission's concerns regarding 9-1-1 and Telephone Relay Service funding (May 13 Entry at 2) and the certification and verification processes (id.).

<sup>11</sup> OCC has made this same request in each of its related motions to intervene.

## II. INTERVENTION

Pursuant to R.C. Chapter 4911, OCC moves to intervene under its legislative authority to represent the interests of telephone consumers in Ohio. OCC advocated for the interests of consumers regarding TracFone's initial ETC application.<sup>12</sup>

The interests of residential customers may be "adversely affected" by this case, as contemplated in the law governing intervention,<sup>13</sup> since this case will be a determining factor in whether and under what terms low-income consumers throughout the state of Ohio may have an additional opportunity for telephone service. OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest includes helping to ensure that TracFone's service, which is offered to low-income consumers and has a discount that is funded by other consumers, indeed furthers the state policy to "[p]rotect the affordability

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<sup>12</sup> OCC also advocated for consumers regarding the American Broadband & Telecommunications application for ETC status in 97-632.

<sup>13</sup> R.C. 4903.221.

of telephone service for low-income subscribers through the continuation of lifeline assistance programs.”<sup>14</sup> The General Assembly deemed the interests of residential customers worthy of protection through legislative authority in R.C. Chapter 4911. OCC should be permitted to intervene to protect these interests.

Second, the positions advanced by OCC regarding the impact of the design of TracFone’s Lifeline programs have an actual, and not just “probable,” relation to the merits of the case, as can be demonstrated by the ultimate determination of whether TracFone should be granted permanent ETC status. This includes the concerns based on information provided to the PUCO staff, as noted above.

Third, OCC’s participation will not unduly prolong or delay the proceeding, for which there is no statutory timeline. In fact, OCC’s intervention will provide insights based upon its expertise that will assist the Commission in its evaluation of TracFone’s proposal.

Fourth, OCC’s advocacy for consumers will significantly contribute to the full development and equitable resolution of the issues herein. Therefore, OCC’s intervention is consistent with and supported by the statute.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case. The nature and extent of OCC’s interest lies in assuring that the provision of TracFone’s Lifeline service is in the public interest.

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<sup>14</sup> R.C. 4927.02(A)(8).

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>15</sup>

For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. Therefore, OCC’s Motion to Intervene should be granted.

### **III. CONCLUSION**

For all the reasons stated above, the PUCO should grant OCC’s Motion to Intervene.

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<sup>15</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via first class U.S. Mail, postage prepaid, this 14<sup>th</sup> day of June 2010.

/s/ David C. Bergmann

David C. Bergmann

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