

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 8, 2010, The Appalachian Peace and Justice Network (Network or movant) filed a motion to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code (O.A.C.). In support of its motion, Network explains that it is a nonprofit corporation based in Appalachian Ohio. It represents that its members live in the service territory in which TracFone Wireless, Inc. dba Safelink Wireless (TracFone) plans to serve. According to Network, some of its members qualify for Lifeline and Linkup service and, further, that many residents of Appalachian Ohio qualify for and receive Lifeline and Linkup service.

Network represents that its membership may be adversely affected by the Commission's consideration of TracFone's request for unconditional eligible telecommunications carrier (ETC) status. Specifically, Network questions whether TracFone's proposal to provide only 68 free minutes per month and additional minutes at a rate of \$.20 per minute will advance or frustrate the public interest and the state's policies in accordance with Section 4927.02(A)(8), Revised Code. In support of its motion, Network submits that the public interest and the furtherance of universal service must be advanced by TracFone's designation as an ETC. Network opines that this includes the requirement that Lifeline plans must be "comparable" to the plans offered by incumbent local exchange carriers (ILECs) in the relevant service territory and that the service be of high quality [Memorandum at 4 citing 47 Code of Federal Regulations (C.F.R.) §54.202(a)(3) and (4)].

Consistent with Section 4903.221, Revised Code, Network submits that its intervention is timely and will not unduly prolong or delay the proceedings and that it will significantly contribute to the full development and equitable resolution of the factual issues in this

case (Memorandum at 4). Finally, Network asserts that it is uniquely situated inasmuch as it is the only party seeking intervention in this case that exclusively represents the interests of low-income rural customers who may use Lifeline services (*Id.*).

- (2) Network's motion for intervention is reasonable and should be granted.
- (3) On June 14, 2010, the office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding relative to the Commission's consideration of the continued eligibility of TracFone as an ETC for the limited purpose of provisioning Lifeline services. Specifically, OCC raises concern regarding TracFone's limited offering of 68 "free" minutes a month with additional minutes priced at \$.20 each.

Similar to its earlier comments filed in Case No. 97-632-TP-COI, *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, relative to TracFone's application, OCC advocates that the Commission begin a generic investigation into the policies, procedures, and practices that should be applicable to all carriers that seek a low-income ETC designation in order that policies are set forth on a consistent basis (Memorandum at 2). OCC notes that the Commission currently has before it two similar applications (i.e., Virgin Mobile and Nexus).

Consistent with Section 4903.221, Revised Code, OCC submits that it has a real and substantial interest in this case and that the interests of residential subscribers may be adversely affected inasmuch as this case will be a determining factor regarding whether and under what terms low-income consumers throughout the state of Ohio may have an additional opportunity for telephone service. Included within this interest is OCC's concern regarding the impact that the design of TracFone's Lifeline program has on the ultimate determination of whether TracFone should be granted permanent ETC status (*Id.* at 4). OCC asserts that it is uniquely situated due to the fact that it has been designated as the state representative of the interests of Ohio's residential utility consumers (*Id.* at 5).

- (4) OCC's motion for intervention is reasonable and should be granted.

- (5) On July 8, 2010, Communities United for Action (CUFA) filed a motion to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C. CUFA represents that it is a multi-issue community organization that brings together organizations and communities representing a variety of cultural and ethnic backgrounds and economic levels, with particular emphasis on working class neighborhoods in Cincinnati's Millcreek Valley. CUFA states that it has participated in numerous cases before the Commission and has been a primary proponent of Lifeline service in alternative regulation cases filed by Cincinnati Bell Telephone Company, and has been an active member of Cincinnati Bell's residential Lifeline Board. In support of its motion to intervene, CUFA submits that, through its membership and representation of low-income residents, it may be adversely affected by this application. Specifically, CUFA questions whether TracFone's continued ETC offerings will advance or frustrate the public interest and the state's policies pursuant to Section 4927.02(A)(8), Revised Code.
- (6) CUFA's motion for intervention is reasonable and should be granted.
- (7) On June 14, 2010, pursuant to Rule 4901-1-24(D)(3), O.A.C., OCC filed a motion for a protective order pertaining to information provided by TracFone that is subject to a protective agreement entered into between the two entities. The relevant information pertains to TracFone's quarterly reports that are required to be provided to the Commission staff. Specifically, the relevant information that is the subject of the motion for a protective order pertains to those portions of OCC's June 14, 2010, application for rehearing that incorporate the material from the TracFone quarterly reports. In support of its motion, OCC states that TracFone has asserted that the specified information is proprietary and confidential, and constitutes trade secrets under Ohio law. Additionally, according to OCC, TracFone has indicated that the relevant information: (1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain secrecy.
- (8) On June 29, 2010, TracFone filed a response supporting OCC's motion for a protective order. TracFone indicates that it too

included quarterly report information in its June 25, 2010, memorandum contra the applications for rehearing filed by OCC and The Edgemont Neighborhood Coalition and Network.

- (9) On July 6, 2010, OCC filed its reply to TracFone's response to OCC's motion for protective order. In particular, OCC points out that, in addition to concurring with OCC's motion, TracFone, in its response, also requests that the Commission consider portions of TracFone's June 25, 2010, memorandum contra OCC's application to be confidential. OCC submits that such a request must occur pursuant to a filed motion.
- (10) On July 8, 2010, TracFone filed a motion for leave to file a response to OCC's reply of July 6, 2010. TracFone submits that such a filing is necessary in order to respond to OCC's arguments and clarify the information for which it seeks protective status.
- (11) With respect to TracFone's motion for leave to file a response, the motion is denied. Specifically, the attorney examiner notes that Rule 4901-1-12, O.A.C., does not contemplate such filings. In regard to TracFone's request for the Commission to consider portions of TracFone's June 25, 2010, memorandum contra OCC's application for rehearing to be confidential, the attorney examiner finds that, consistent with Rule 4901-1-24, O.A.C., such a request must be formally filed in the context of a motion in order to be properly considered. Therefore, TracFone is directed to file the appropriate motion in order for the Commission to properly consider TracFone's request.

It is, therefore,

ORDERED, That Network's, OCC's, and CUFA's motions for intervention be granted in accordance with Findings (2), (4), and (6) respectively. It is, further,

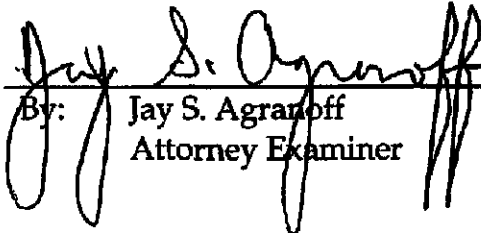
ORDERED, That TracFone's motion for leave to file a response be denied. It is, further,

ORDERED, That TracFone file a motion for a protective order consistent with Finding (11). It is, further,

ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

JRT
/dah


By: Jay S. Agranoff
Attorney Examiner

Entered in the Journal

JUL 13 2010



Renee J. Jenkins
Secretary