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	)	

TRACFONE WIRELESS, INC.'S MOTION FOR PROTECTIVE ORDER

TracFone Wireless, Inc. ("TracFone"), by its attorneys and pursuant to Chapter 4901-1-24 of the Ohio Administrative Code, hereby files this Motion for Protective Order in accordance with the Commission's Entry in this docket dated July 13, 2010. By this Motion, TracFone seeks confidential treatment by the Commission, pursuant to a Protective Order, of certain confidential, competitively sensitive, and proprietary information contained in its Memorandum Contra Application for Rehearing, filed June 24, 2010. A redacted version of the Memorandum Contra was filed with the Commission and served on all parties. A confidential version was filed under seal with the Commission.

On June 14, 2010, the Office of the Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing of the Commission's May 13, 2010 Entry. OCC's Application for Rehearing includes confidential information contained in TracFone's quarterly reports provided to Commission Staff in accordance with the Commission's Orders in this docket and provided to OCC pursuant to a protective agreement. OCC filed a motion for protective order that remains pending. On June 29, 2010, TracFone filed a response supporting OCC's motion for a protective order and requesting the Commission to include confidential information contained in Memorandum Contra in any protective order issued in response to OCC's motion. The

Commission has directed TracFone to file a separate motion for protective order regarding its Memorandum Contra.

Rule 4901-1-24(D) of the Commission's Rules permits the Commission or an attorney examiner to issue an order to protect the confidentiality of information to the extent that state or federal law prohibits release of the information. Ohio law provides that trade secrets are protected from public disclosure. Ohio Revised Code, § 1333.61(D)) states:

> (D) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> > (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
> >
> > (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The information for which TracFone seeks protection is contained in or derived from quarterly reports provided to Commission Staff in accordance with the Commission's November 18, 2009 Entry in Case No. 97-632-TP-COI, the original docket for this matter. The November 18, 2009 Entry orders TracFone to "informally provide the quarterly reports to the Commission staff." See OAC 4901-1-24(G) ("the requirements of this rule [regarding motions for protective orders] do not apply to information submitted to the commission staff"). Therefore, the quarterly reports are treated as confidential by Commission Staff and are not disclosed to the public. The information contained in TracFone's quarterly reports is highly confidential and competitively sensitive. The information, which describes the airtime usage and purchase activities of TracFone's Lifeline customers, if disclosed to the public, would provide existing and potential

competitors with an unfair advantage by giving them access to proprietary TracFone sales data that is not generally known. Such access would give current and prospective competitors an unwarranted economic advantage in developing and marketing Lifeline services, as well as non-Lifeline services, to consumers in Ohio and elsewhere. Moreover, the information has independent economic value to TracFone because TracFone relies on its customers' usage and purchasing data to assess the effectiveness of its service plans and to determine and to revise, as necessary, its marketing and sales strategies.

TracFone provided the information to Commission Staff with the understanding that it would be treated as confidential. Furthermore, the information in the quarterly reports was provided to OCC pursuant to a Protective Agreement. TracFone has not provided the information in the quarterly reports to any other third party nor is it subject to any legal obligation to disclose this information to any public entity. As such, the information contained in TracFone's Memorandum Contra is not readily available to persons external to TracFone and is subject to reasonable efforts to maintain its secrecy.

TracFone seeks confidential treatment for the following information on pages 8 and 9 of its Memorandum Contra: (1) the percentage of TracFone's Lifeline customers who deplete the 68 minutes by the end of the month; (2) the percentage of TracFone's Lifeline customers who purchase additional airtime minutes; (3) the total amount paid by Lifeline customers for those additional minutes; (4) the value of the airtime cards purchased by Lifeline customers who buy additional airtime minutes; and (5) TracFone's characterization of the percentages in items (1) and (2).

This information in items (1), (2), and (3) is contained in the quarterly reports or can be calculated from the quarterly reports. Specifically, the Commission's November 18, 2009 Entry

asks TracFone to report the number of Lifeline customers (Entry, Finding (4)(c)); the percentage of customers who deplete the 68 minutes by the end of the month (Entry, Finding (4)(h)); the number of customers who purchase additional minutes (Entry, Finding (4)(j)); and the average number of additional minutes purchased (Entry, Finding (4)(k)). The information in item (1) (percentage of TracFone's Lifeline customers who deplete the 68 minutes by the end of the month) is reported in response to Finding 4(h). The information in item (2) (the percentage of TracFone's Lifeline customers who purchase additional airtime minutes) is calculated by dividing the response to Finding (4)(j) by the response to Finding (4)(c). The information in item (3) (the total amount paid by Lifeline customers for additional minutes) is calculated by multiplying the response to Finding 4(k) by TracFone's standard per minute rate of $0.20. The information in item (5) (TracFone's characterization of the percentages in items (1) and (2)) describes the percentages in terms of magnitude.

Regarding item (4), the confidential information at issue is the denomination of the airtime card purchased by those Lifeline customers who purchase additional minutes. The denomination of the airtime card referenced by TracFone in its Memorandum Contra reflects a value that is within $2.00 of the average cost for additional minutes provided in item (3). Lifeline customers can only add time by purchasing airtime cards, so the denomination of the airtime card purchased by customers is a direct inference from the average cost to customers for those additional minutes.

CONCLUSION

Based on the foregoing, the information in the Memorandum Contra for which TracFone seeks confidential treatment is contained in or is directly derived from TracFone's confidential quarterly reports submitted to Commission Staff. TracFone respectfully requests the

Commission to grant its Motion for Protective Order and to issue an order protecting the portions of its Memorandum Contra identified as confidential from public disclosure.

Respectfully submitted,

TRACFONE WIRELESS, INC.

/s Mitchell F. Brecher
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July 19, 2010

CERTIFICATE OF SERVICE

I, Raymond Lee, a Legal Secretary with the law firm of Greenberg Traurig, LLP, hereby certify that a copy of the foregoing TracFone Wireless, Inc.'s Motion for Protective Order was served electronically to the persons listed below, on this 19th day of July 2010.

/s Raymond Lee
Raymond Lee

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Summary: Motion TracFone Wireless, Inc.'s Motion for Protective Order electronically filed by Mrs. Debra M Mercer on behalf of TRACFONE WIRELESS, INC.