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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

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COMMISSION

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In the Matter of the Petition of)
 4 TRACFONE WIRELESS, INC.,)
 For Exemption From)
 5 WAC 480-123-030(1)(d),(f) and) DOCKET NO. UT-093012
 (g); and Designation as an) Volume I
 6 Eligible Telecommunications) Pages 1 - 16
 Carrier For the Purpose of)
 7 Receiving Lifeline Support From)
 the Federal Universal Service)
 8 Fund.)

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A prehearing conference in the above matter
 10 was held on April 12, 2010, at 12:58 p.m., at 1300
 11 South Evergreen Park Drive Southwest, Olympia,
 12 Washington, before Administrative Law Judge ANN
 13 RENDAHL.

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The parties were present as follows:

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WASHINGTON UTILITIES AND TRANSPORTATION
 16 COMMISSION, by GREGORY J. TRAUTMAN and MICHAEL A.
 FASSIO, Assistant Attorneys General, 1400 South
 17 Evergreen Park Drive Southwest, Post Office Box 40128,
 Olympia, Washington 98504; telephone (Trautman) (360)
 18 664-1187.

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TRACFONE WIRELESS, INC., by MITCHELL F.
 20 BRECHER (via bridge line), Attorney at Law, Greenberg
 Traurig, LLP, 2101 "L" Street Northwest, Suite 1000,
 Washington, DC 20037; telephone, (202) 331-3152.

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WASHINGTON INDEPENDENT TELECOMMUNICATIONS
 22 ASSOCIATION, by RICHARD A. FINNIGAN, Attorney at Law,
 2112 Black Lake Boulevard Southwest, Olympia,
 23 Washington 98512; telephone, (360) 956-7001.

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Kathryn T. Wilson, CCR

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Court Reporter

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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Good afternoon. I'm Ann
3 Rendahl, the administrative law judge presiding over
4 this proceeding. The commissioners will also be
5 presiding in this matter, but they won't be sitting
6 here at the prehearing conference with me.

7 We are here before the Commission this
8 afternoon, Monday, April the 12th, 2010, for a
9 prehearing conference in Docket No. UT-093012, which is
10 captioned: In the matter of the petition of TracFone
11 Wireless, Inc., for exemption from WAC 480-123-030,
12 sub 1, sub d, sub f, and sub g, and designation as an
13 eligible telecommunications carrier, or ETC, for the
14 purposes of receiving lifeline support from the Federal
15 Universal Service Fund.

16 At its March 11th open meeting, the
17 commissioners set this matter for hearing, and that's
18 why we are here at this prehearing conference to
19 consider the issues identified in TracFone's petition.
20 As with any prehearing before the Commission, the
21 matters we take up at a prehearing conference are the
22 parties' appearances, any petitions for intervention,
23 scheduling matters, any discovery issues, protective
24 orders, that sort of thing, and after hearing from
25 counsel for Staff on Friday, as I mentioned off the

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1 record, I understand that there is a potential
2 settlement between Staff and the Company that we can
3 talk about today.

4 So those are all the issues that I have as
5 preliminary matter, and I would like to take
6 appearances from the parties. Mr. Brecher, at the
7 Commission for first appearances in proceedings, we
8 take full appearances, meaning the name of the
9 representative, the party you represent, your mailing
10 address, your telephone number. We should probably
11 stop asking for fax numbers, but we still ask for them,
12 and e-mail addresses. So starting with TracFone,
13 Mr. Brecher, could you state your appearance?

14 MR. BRECHER: Good afternoon, Your Honor.
15 This is Mitchell F. Brecher, B-r-e-c-h-e-r. I'm a
16 shareholder in the law firm of Greenberg Traurig. I
17 represent TracFone Wireless, Inc., in this matter. My
18 business address is 2101 "L" Street Northwest, Suite
19 1000, Washington, DC, 20037. My work telephone number
20 is (202) 331-3152. For anyone using obsolete
21 technology, my fax number is (201) 261-0152. My e-mail
22 address is brecher@gtlaw.com.

23 JUDGE RENDAHL: Thank you. Mr. Brecher, when
24 the Commission sent out the notice of the prehearing
25 conference, it also included Ms. Mercer?

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1 MR. BRECHER: My apologies. She is on the
2 line.

3 JUDGE RENDAHL: Ms. Mercer, is the same
4 information correct for you except for your direct line
5 and your e-mail address?

6 MR. BRECHER: She may not be on the line; I
7 apologize. Her information would be the same except
8 for the telephone number and e-mail address. Her
9 telephone number is (202) 331-3194. Her e-mail address
10 is mercerdm@gtlaw.com. That's Debra McGuire Mercer,
11 who is also an attorney in the Greenberg Traurig law
12 firm, who will be representing TracFone Wireless with
13 me.

14 JUDGE RENDAHL: I just wanted to clarify for
15 the fax number it starts 201, not 202?

16 MR. BRECHER: I apologize, 202.

17 JUDGE RENDAHL: Thank you, Mr. Brecher. Is
18 there anyone for TracFone that you would like to have
19 us send a courtesy e-mail when we send out courtesy
20 e-mail copies of notices and orders in this case?

21 MR. BRECHER: Yes. You can send them to
22 Mr. Blackmon, who is in the room, and I believe you
23 have his contact information. If you do not, he can
24 provide it, and if you would be so kind as to send
25 e-mails to TracFone's executive vice president and

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1 general counsel, and that's Richard B. Salzman,
2 S-a-l-z-m-a-n. His e-mail address is
3 rsalzman@tracfone.com, and also if you would send
4 copies to TracFone's deputy general counsel; that is
5 Leighton Lang, L-e-i-g-h-t-o-n. His e-mail address is
6 llang@tracfone.com.

7 JUDGE RENDAHL: Thank you. And yes, we do
8 have Mr. Blackmon's e-mail address. For Commission
9 staff?

10 MR. TRAUTMAN: Greg Trautman, assistant
11 attorney general for Commission staff. My address is
12 1400 South Evergreen Park Drive Southwest, Post Office
13 Box 40128, Olympia, Washington, 98504. My telephone
14 number is (360) 664-1187. My fax number is
15 (360) 586-5522, and my e-mail address is
16 gtrautma@utc.wa.gov.

17 JUDGE RENDAHL: Thank you very much.

18 MR. FASSIO: And also for Commission staff,
19 Michael Fassio, assistant attorney general. Same
20 address and fax number as Mr. Trautman. My phone
21 number is (360) 664-1192, and e-mail address is
22 mfassio@utc.wa.gov.

23 JUDGE RENDAHL: For WITA?

24 MR. FINNIGAN: Richard Finnigan appearing on
25 behalf of the Washington Independent Telecommunications

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1 Association. My address is 2112 Black Lake Boulevard
2 Southwest, Olympia, Washington, 98512. Phone is (360)
3 956-7001. Fax is (360) 753-6862. E-mail is
4 rickfinn@localaccess.com.

5 JUDGE RENDAHL: Mr. Finnigan, is there anyone
6 for WITA that you would like to have on the courtesy
7 e-mail list?

8 MR. FINNIGAN: Not at the present time. If
9 that changes, I'll let you know.

10 JUDGE RENDAHL: Is there anyone for Staff you
11 would like to have on the courtesy e-mail list?

12 MR. TRAUTMAN: Mark Vasconi and Jing Liu.

13 JUDGE RENDAHL: Is there anyone on the bridge
14 line or in the hearing room who wishes to state an
15 appearance as a party in the proceeding? Ms. Brandon,
16 I understand you are calling in for Community Voice
17 Mail, but I understood from your comments that you
18 didn't necessarily want to be a full party to the
19 proceeding; is that correct?

20 MS. BRANDON: Yes, that's correct. I just
21 wanted to be available if there were any questions.

22 JUDGE RENDAHL: So I'm not going to take an
23 appearance for Community Voice Mail today; is that
24 acceptable?

25 MS. BRANDON: Yes, that's acceptable, Your

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1 Honor.

2 JUDGE RENDAHL: Is there anyone else on the
3 bridge line or in the hearing room who wishes to state
4 an appearance as a party in this proceeding? Hearing
5 nothing, I would like to talk about WITA's intervention
6 in this matter. I guess first, Mr. Finnigan, if you
7 could, understanding the change in the scenario now
8 that there is a pending settlement, does WITA still
9 wish to intervene in the proceeding?

10 MR. FINNIGAN: Your Honor, I learned of the
11 potential settlement this morning, and circumstances
12 prevented me from discussing it with my client because
13 of schedule and doctor visits and things like that, so
14 I will have to discuss it with my client and make sure
15 I understand fully what the settlement entails. I
16 think I do, but at this stage, I can't tell you.

17 JUDGE RENDAHL: So at this point, you would
18 still wish to state the intervention?

19 MR. FINNIGAN: Yes, please.

20 JUDGE RENDAHL: Is there any objection by any
21 of the parties, Staff or the Company, to the
22 intervention by WITA in this proceeding?

23 MR. TRAUTMAN: No, Staff does not object.

24 JUDGE RENDAHL: Mr. Brecher?

25 MR. BRECHER: No, Your Honor, TracFone has no

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1 objection.

2 JUDGE RENDAHL: Having read the petition for
3 intervention and understanding that WITA does not wish
4 to broaden the issues in the proceeding and
5 understanding that we now have a potential settlement,
6 I would encourage you, Mr. Finnigan, to talk with your
7 client and see if WITA still wishes to pursue the
8 intervention. I will grant it now, but there is
9 nothing preventing WITA if it wishes to withdraw from
10 the proceeding to do so. So I grant the intervention
11 as it stands.

12 MR. FINNIGAN: Thank you, Your Honor.

13 JUDGE RENDAHL: So I would like to hear from
14 the parties, from TracFone and from Staff, about the
15 potential settlement, and I don't see a need to
16 schedule a full proceeding here. At most, we would
17 need to set a date for the settlement documents to be
18 filed. Following the Commission's procedural rules on
19 settlements, we will need either supporting documents
20 to support the settlement or testimony.

21 I encourage you to talk after the prehearing
22 and talk about what you think might be appropriate to
23 file. The rules are flexible. They don't absolutely
24 require testimony to be filed. I think if you can file
25 sufficient supporting documents to do so, I think that

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1 might be sufficient, and then at most schedule a
2 tentative hearing for the commissioners to hear the
3 settlement if they choose to have a hearing on the
4 matter.

5 Given the history of this matter, that it's
6 been before the open meeting at least twice with
7 substantial staff memoranda and comments by the Company
8 and Staff, Community Voice Mail, and others, there may
9 not need to be a hearing in this matter, but until we
10 see the settlement documents, I can't say one way or
11 the other whether the commissioners will want a
12 hearing.

13 With that, I would like to know a little bit
14 more about the settlement and what the potential
15 schedule parties might have in mind.

16 MR. TRAUTMAN: Thank you, Your Honor. This
17 is Greg Trautman for Commission staff. I will speak
18 briefly. As to the supporting documentation, I think
19 the rules allow for a narrative in place of testimony.

20 JUDGE RENDAHL: They do.

21 MR. TRAUTMAN: As for the settlement, and
22 Mr. Brecher can speak more fully to this, my
23 understanding is that the Company has agreed to all the
24 conditions that were proposed by Staff during the open
25 meeting process and that the Company is also agreeable

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1 to the concern expressed by Chairman Goltz that would
2 address customer care minutes and not counting them
3 against the customer's allotment of minutes if the
4 calls were made via 611, and also addressing the
5 Chairman's desire to have a one-year approval. It
6 would be subject to review after a year; although, the
7 designation would not cease unless the Commission
8 specifically took that action a year down the road, and
9 that was my understanding, that the Company was
10 agreeable to those conditions as well as those that
11 have been proposed by Commission staff and the
12 conditions that have also been imposed by the FCC.

13 JUDGE RENDAHL: Mr. Brecher?

14 MR. BRECHER: I couldn't have said it better
15 myself. That's basically correct. The background,
16 Your Honor, is this: That TracFone has been working
17 with the Staff of the Commission for some number of
18 months, and during that period of time, Staff has
19 negotiated with TracFone a number of -- I don't want to
20 use the word "concessions", but changes, alterations to
21 the lifeline program that in Staff's view would improve
22 the program for Washington consumers.

23 And at the last Commission meeting where this
24 was on the agenda, and I believe it was in March -- I
25 don't remember the exact date -- the commissioners

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1 voted to approve it subject to writing an order a few
2 weeks later. One of those conditions, and I believe it
3 was Chairman Goltz's concern, was about the Company
4 practice of charging or debiting minutes for calls to
5 customer service, and it was based on that issue and
6 TracFone's refusal or unwillingness to concede on that
7 point that the Commission voted to schedule this for a
8 hearing.

9 Following that hearing designation, TracFone
10 revisited the issue, spoke with its technical folks,
11 spoke with some of its vendors to find out what was
12 doable and what could be done and has concluded that it
13 will be able to offer calls to customer service without
14 debiting minutes provided that the customers who are
15 making those calls used a 691 dialing code, which most
16 wireless providers use to access their customer service
17 systems.

18 So that's really the only open issue that
19 gave rise to the designation of a hearing. We think
20 that there is really no need for a hearing at this
21 point since TracFone and Staff are in agreement on all
22 other aspects of the proposal, and based on that, we
23 would like to submit for your consideration and for the
24 commissioner's consideration a settlement agreement
25 that will memorialize that.

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1 The only thing that I feel like I must
2 mention, and I hope that people understand this, is
3 that there are occasions in this wireless business
4 where customers call customer service to complain about
5 problems with their handsets, particularly with their
6 program. With TracFone service, TracFone sends the
7 prepaid minutes to the phone. When there is a problem
8 with that, that problem cannot be troubleshooted when
9 the customer is on line.

10 So for those kind of customer service issues,
11 it will be necessary to contact TracFone from another
12 telephone just so TracFone can troubleshoot and correct
13 the problem, but the general rule will be that calls
14 from 611 will not be subject to charges.

15 JUDGE RENDAHL: I would expect to the extent
16 that what that latest information that that doesn't
17 change the situation for Staff that the parties would
18 prepare a written settlement agreement with -- I know,
19 Mr. Brecher, you are not as familiar with our
20 procedural rules, but they require the parties to
21 submit some basis for why the settlement should be
22 approved either through a narrative statement that
23 explains the public interest, etcetera, for why this
24 should be resolved in this way or through written
25 testimony.

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1 It does provide alternatives, so it's not, as
2 I said, it does not require written testimony, and our
3 rules also allow the Commission to evaluate or consider
4 settlements without a hearing if they find that the
5 information provided with the settlement is sufficient
6 to do so on a paper record. I imagine that will be the
7 situation in this case given the history of this matter
8 before the Commission, but I cannot speak for the
9 commissioners without consulting with them until after
10 the settlement agreement is filed.

11 So what I would like to do today is set a
12 date for the settlement documents to be filed and set a
13 date for a tentative settlement hearing with the
14 commissioners, and I say tentative because I don't know
15 if we are going to need it. We don't need to do that
16 on the record, so I'm going to allow us to go off the
17 record to have some scheduling discussions, and then we
18 will go back on the record and put those dates in the
19 transcript.

20 MR. BRECHER: Before we go off the record,
21 Your Honor, I may have misspoken. When I was
22 discussing the dialing code, I may have inadvertently
23 referred to a 691 dialing code. If I did, that was in
24 error. The dialing code for accessing customer service
25 is 611.

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1 JUDGE RENDAHL: Thank you for clarifying that
2 for the record. I see some nodding heads and smiles,
3 so that must make people happy. If everybody is
4 amenable, we will go off the record and have some
5 scheduling discussions and then go back on the record
6 and finalize things for today. Hearing nothing, we
7 will be off the record while we have some scheduling
8 discussions.

9 (Discussion off the record.)

10 JUDGE RENDAHL: While we were off the record,
11 we had some discussion about the schedule for filing
12 settlement and supportive documents. The parties
13 agreed to file the settlement itself on or by Friday,
14 April 23rd, 2010, with the narrative and any other
15 supporting documents on Wednesday, April the 28th.
16 Those are by close of business, five p.m., Pacific
17 time, and I will be conferring with the commissioners'
18 assistants as to whether the morning of May 12th or the
19 afternoon of Tuesday, May 25th, is workable for a
20 settlement hearing in this matter. I don't think we
21 need more than half a day for a hearing in this matter
22 if we do need a hearing, and I may also -- we will
23 leave it at that. Then the Commission would take the
24 matter under advisement whether there is a hearing or
25 not after the last scheduled day.

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1 What I will do is issue a prehearing
2 conference order in this matter within the next day or
3 two providing the schedule and all of the appropriate
4 filing information, the rules the Commission follows.
5 Also, it will include all the contact information you
6 all provided in your appearances, and two other quick
7 questions. I don't imagine you need them in this case,
8 but in other cases, we talk about whether there is a
9 protective order or discovery needed. I don't imagine
10 we need that here. I'm hearing nothing, so I'm
11 assuming until requested, we would not invoke the
12 discovery rule or a protective order.

13 MR. FINNIGAN: Your Honor, if for some
14 strange reason the settlement didn't get completed,
15 would we be scheduling another prehearing conference at
16 that time?

17 JUDGE RENDAHL: Yes. So if the parties don't
18 meet the settlement filing date and indicate that the
19 matter is no longer settled, then we will reconvene a
20 prehearing conference and set a schedule for the case.
21 I'm hoping for all of our sakes that doesn't occur, but
22 there is always those possibilities, so yes, we would
23 reconvene the prehearing conference. Anything else we
24 need to address this afternoon?

25 If you would like to order a transcript for

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1 this proceeding, please contact our court reporter.
2 Mr. Brecher, you can stay on the line and talk with
3 Kathy Wilson, our court reporter with Continental
4 Reporting. Otherwise, hearing nothing, this prehearing
5 conference is adjourned.

6 (Prehearing adjourned at 1:25 p.m.)

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