

No. 85094-6-I

IN THE COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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TRACFONE WIRELESS, INC.,  
Petitioner/Appellant,

v.

CITY OF RENTON,  
Defendant/Respondent.

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APPELLANT TRACFONE WIRELESS, INC.'S STATEMENT  
OF ADDITIONAL AUTHORITIES

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Grant Degginger, WSBA No. 15261  
Scott Edwards, WSBA No. 26455  
Taylor Washburn, WSBA No. 51524  
Lane Powell PC  
1420 Fifth Avenue, Suite 4200  
Seattle, WA 98111-9402  
Telephone: 206.223.7000  
deggingerg@lanepowell.com  
edwardss@lanepowell.com  
washburnt@lanepowell.com  
*Attorneys for TracFone Wireless, Inc.*

TracFone submits this Statement under RAP 10.8 to address questions raised at oral argument regarding the standard of review when a party appeals a city hearing examiner's summary judgment ruling via writ of review.

Under Renton's Municipal Code, a writ of review is the only avenue to appeal a hearing examiner's decision. RMC 5-26-19 (CP 3502). Thus, "there is no dispute that a writ of review is the proper procedure for obtaining judicial review of the hearing examiner's decision regarding the city's tax assessment." *Foss Maritime Co. v. City of Seattle*, 107 Wn. App. 669, 672 (2001); *General Motors Corp. v. City of Seattle*, 107 Wn. App. 42, 47 (2001) ("judicial review of a hearing examiner's decision is authorized by statutory writ of review under RCW 7.16").

A city hearing examiner's decision granting summary judgment is reviewed *de novo*. *Sound Inpatient Physicians, Inc. v. City of Tacoma*, 21 Wn. App. 590, 594

(2022) (“Because this case was resolved [by a Tacoma hearing examiner] on cross-motions for summary judgment, we review the superior court’s decision reversing the hearing examiner *de novo*”). The hearing examiner’s legal conclusions are likewise reviewed *de novo*. *City of Seattle v. T-Mobile West Corp.*, 199 Wn. App. 79, 82 (2017); *Seattle Housing Authority v. City of Seattle*, 3 Wn. App. 532, 537-38 (2018).

On *de novo* review, this Court must reverse the Hearing Examiner’s award of summary judgment for Renton because the record contains conflicting evidence as to a material issue of fact—specifically, whether TracFone sells airtime to retailers at wholesale for the purpose of resale. Amended Opening Brief at 47-58, 72-75; Reply at 13-29.

This Court must also reverse the Hearing Examiner’s decision on *de novo* review if it concludes, as a

matter of law, that RCW 35A.82.060 does not authorize the City to impose telephone utility tax on TracFone's sales of prepaid wireless airtime. Amended Opening Brief at 33-47; Reply at 7-12; *see also Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353 (2007) (scope of RCW 35A.82.060 is a question of law subject to *de novo* review).

*I certify in compliance with RAP 18.7 that the body and footnotes of this Statement of Additional Authorities contains 344 words.*

Respectfully submitted on January 26, 2024.

LANE POWELL PC

By: s/Scott M. Edwards

Grant S. Degginger, WSBA No. 15261

Scott M. Edwards, WSBA No. 26455

Taylor Washburn, WSBA No. 51524

1420 Fifth Avenue, Suite 4200

Seattle, Washington 98111-9402

deggingerg@lanepowell.com

edwardss@lanepowell.com

washburnt@lanepowell.com

*Attorneys for TracFone Wireless, Inc.*

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury of the laws of the State of Washington that on January 26, 2024, I caused to be served a copy of the attached Statement of Additional Authorities to the following person(s) in the manner indicated:

Kari L. Sand Julia Norwood Ogden Murphy Wallace 901 Fifth Ave., Suite 3500 Seattle, WA 98164 <a href="mailto:ksand@omwlaw.com">ksand@omwlaw.com</a> <a href="mailto:jnorwood@omwlaw.com">jnorwood@omwlaw.com</a>	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Andrea Bradford Julia Doherty P. Stephen DiJulio Lee Marchisio Adrian Urquhart Winder 1111 Third Ave., Suite 3000 Seattle, WA 98101 <a href="mailto:andrea.bradford@foster.com">andrea.bradford@foster.com</a> <a href="mailto:julia.doherty@foster.com">julia.doherty@foster.com</a> <a href="mailto:steve.dijulio@foster.com">steve.dijulio@foster.com</a> <a href="mailto:lee.marchisio@foster.com">lee.marchisio@foster.com</a> <a href="mailto:adrian.winder@foster.com">adrian.winder@foster.com</a>	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery

DATED: January 26, 2024

s/Angela Craig  
Angela Craig, Legal Assistant

**LANE POWELL PC**

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Sender Name: Angela Craig - Email: craiga@lanepowell.com

**Filing on Behalf of:** Scott M Edwards - Email: edwardss@lanepowell.com (Alternate Email: )

Address:  
1420 Fifth Avenue  
Suite 4200  
Seattle, WA, 98101  
Phone: (206) 223-7741

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