Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

REPLY COMMENTS ON SPECIFIED ISSUES

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SUMMARY

Claims by certain commenting parties that Eligible Telecommunications Carriers should be allowed to receive Link Up support to offset their advertising and marketing expenses, customer eligibility verification and other regulatory compliance costs, other general and administrative costs of doing business, as well as to subsidize free handsets should be rejected. The Commission's Link Up rules limit Link Up support to offsetting customary charges for commencing telecommunications service for a single connection at a customer's principal place of residence. Customary charges are charges which are actually imposed by carriers on all their customers -- Lifeline and non-Lifeline -- and actually paid by those customers. The intended beneficiaries of the low-income program are the consumers who receive free or discounted telecommunications services supported by the program, not the ETCs providing those services through USF-subsidized reductions in their operating costs.

Statements by several carriers regarding TracFone's operations, specifically its rate charged to Lifeline customers for additional minutes as well as its marketing strategy are incorrect. More importantly, how TracFone or any ETC prices or markets its service is wholly irrelevant to whether other ETCs are entitled to receive Link Up subsidies from the Universal Service Fund to reduce their operating costs.

If the Commission is seriously committed to eliminating waste, fraud and abuse of the low-income program as it stated repeatedly in the Lifeline Modernization and Reform notice of proposed rulemaking, ending the abuse of the Link Up program by ETCs who receive millions of dollars annually to support activities other than connecting customers to their networks to provide service would be an excellent place to start.

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REPLY COMMENTS ON SPECIFIED ISSUES

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby replies to certain comments on the issues designated by the Commission for additional comment in a public notice issued August 5, 2011 in this proceeding. These reply comments will focus on the question of whether wireless Eligible Telecommunications Carriers ("ETCs") should be allowed to continue to receive Link Up support from the federal Universal Service Fund ("USF").[1]

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[1] As discussed in TracFone's initial comments, TracFone continues to support a broadband pilot program, albeit limited to subsidizing broadband service with USF resources. It supports a one-per-household rule, provided that the rule and its implementing procedures are sufficiently flexible to enable ETCs to address special situations such as persons residing in homeless shelters and other group living facilities and non-traditional living arrangements. TracFone also recommends that the Commission abandon the ineffective and unworkable requirement that ETCs conduct annual verifications of their Lifeline customers' continuing eligibility based on surveying statistically-valid random samples of their customers. In its place, TracFone proposes that the Commission require all ETCs to obtain from all of their Lifeline customers self-certifications under penalty of perjury that the customers remain Lifeline-eligible, remain head of household, and continue to receive Lifeline-supported service only from that ETC.

I. COMMISSION RULES PROHIBIT LINK UP SUPPORT FOR ANY PURPOSE OTHER THAN TO OFFSET CUSTOMARY CHARGES TO PROVIDE TELECOMMUNICATIONS CONNECTIONS TO CONSUMERS' PRINCIPAL PLACES OF RESIDENCE. LINK UP SUPPORT SHOULD NOT BE ALLOWED TO OFFSET MARKETING, ADVERTISING, REGULATORY COMPLIANCE AND OTHER ORDINARY BUSINESS EXPENSES.

In TracFone's initial comments, it explained why Link Up support paid to wireless ETCs who incur no bona fide connection costs and who do not customarily impose connection charges on all their customers (Lifeline and non-Lifeline) does not comply with the Commission's rules governing Link Up and represents a waste of substantial USF resources. In 2011 alone, more than $23 million in Link Up support was paid to wireless ETCs. Nonetheless, several commenters, apparently believing that FCC stands for Free Cash for Carriers, continue to assert a right to receive Link Up support from the USF to offset costs having nothing to do with connection to networks and which can best be described as ordinary business expenses -- expenses which most other carriers incur as a cost of doing business without asking for subsidization from contributors to the USF.

Receipt of Link Up support from the USF to cover standard doing business costs not associated with connecting customers to networks and not customarily imposed on all customers is directly contrary to the Commission's rules. Section 54.411(a)(1) of the Commission's rules (47 C.F.R. § 54.411(a)(1)) defines Link Up as follows:

> A reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a customer's principal place of residence. The reduction shall be half of the customary charge or $30.00, whichever is less.

The elements of Link Up could not be clearer: the carrier's charge must be: 1) **customary**; 2) for a single telecommunications **connection**; and 3) for a connection at the **customer's principal place of residence**. That is how Link Up is defined in the Commission's rules -- nothing more, nothing less.

Notwithstanding the facial clarity of the Commission's definition of Link Up, some parties assert in their comments a right to receive Link Up money from the USF for purposes having nothing to do with providing telecommunications connections at customer residences as well as for charges which, by their own candid admissions, are not customarily imposed on their customers.

Among those commenters arguing for continued Link Up support is a group of carriers calling itself the Link Up for America Coalition ("Coalition").[2] Another commenter advocating continued Link Up support for wireless ETCs is Nexus Communications, Inc. ("Nexus"). As TracFone noted in its initial comments, Nexus has an enormous amount of "skin in the game." Of the $19.4 million in non-tribal Link Up support paid to wireless ETCs in 2010, Nexus received nearly $17.7 million.[3]

Nexus and the Coalition both assert an entitlement to continued Link Up support for charges which are not customarily imposed on customers, and which do not offset costs of providing a single telecommunications connection at a customer's principal place of residence. In short, they ask the Commission to ignore its own clearly-stated rule so as to allow Link Up support from the USF to be paid to subsidize "outreach" costs, as well as costs of vetting customers' Lifeline eligibility and complying with the Commission's and states' requirements

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[2] Although the Coalition claims that many of its members are ETCs who "rely on" Link Up subsidies in order to provide service to more than 900,000 customers (Coalition Comments, at 2), it is not clear to what degree that is so. The Coalition's identified members include: Assist Wireless, LLC, Global Connections of America, Inc., Image Access, Inc. d/b/a NewPhone, Midwestern Telecommunications, Inc., Ready Wireless, TAG Mobile, LLC, and Telrite Corporation.

[3] TracFone Comments, at n.6.

governing Lifeline eligibility. The Coalition even claims its members use Link Up support to offset the cost of handsets provided to customers.[4]

It is important to recognize what these commenters are claiming. When they assert that Link Up support should be available to offset their "outreach" costs, they are asking for Link Up to subsidize their marketing and advertising costs. Whether an ETC uses mass marketing techniques such as television, radio and print advertising (as TracFone has utilized successfully in attracting more than 3.6 million currently-enrolled Lifeline customers) or whether an ETC prefers to use "on the ground" marketing such as sending sales and marketing agents into communities to market their Lifeline services,[5] or a combination of marketing and advertising approaches, these marketing costs (whether labeled as "outreach" or anything else) are costs of doing business. They are costs incurred by those ETCs for the express purpose of persuading potential customers to select the ETC's service (*i.e.*, to enroll in the ETC's Lifeline program) rather than in a competitor's Lifeline program. The Coalition members and other ETCs arguing for Link Up funding to subsidize their marketing costs do not spend money to go into communities merely to educate consumers about Lifeline. Nexus sends representatives to those communities to urge qualified low-income persons to enroll in **Nexus's** Lifeline program. Similarly, the ETCs who are members of the Coalition pay representatives to market their members' Lifeline programs. That is as it should be. In a competitive marketplace, competing companies need to commit resources to market their products and services. Those who do it the most effectively and whose services are perceived as providing the greatest consumer value will

[4] Coalition Comments, Exhibit 1. In jointly-filed comments, Atlantic Tele-Network, Inc., Allied Wireless Communications Corporation, Commnet of Nevada, LLC, and Choice Communications, LLC have proposed that Link Up be expanded to subsidize equipment costs. Atlantic Tele-Network *et al.* Comments, at 13.

[5] *Id.*, at 17.

capture the most customers. That is true for Lifeline; it is true for any product or service market. However, the resources committed to those marketing efforts should be the competitors' own resources, not resources provided by the USF, and ultimately provided by contributors to the USF. It is not the purpose of the USF to subsidize the marketing activities of Nexus, the Coalition members or those of any other ETC.

Moreover, the very fact that "outreach" *i.e.*, marketing and advertising of Lifeline services, is directed only at potential Lifeline customers indicates that the ETCs' charges for such "outreach" are not customarily imposed, as required by Section 54.411(a)(1). The Coalition and Nexus both describe in detail all that they do to market Lifeline. Clearly they are not using the same marketing activities and incurring the same costs to market non-Lifeline services. If as those commenters suggest, they need to receive support from the USF to offset their Lifeline outreach costs and they do not engage in the same outreach and incur the same costs for their non-Lifeline customers, then presumably those carriers' non-Lifeline customers are not being assessed connection charges to offset the costs of marketing Lifeline. Stated simply, charges imposed to offset carriers' Lifeline marketing and advertising costs, and Lifeline enrollment costs, are not customary charges since they do not incur those costs in order to provide service to their non-Lifeline customers and do not require those non-Lifeline customers to pay service commencement, activation or other fees to cover the costs of the Lifeline outreach efforts.

In fact, many of the wireless ETCs claiming a continued entitlement to receive Link Up support do not actually impose their so-called "activation" fees on all their customers. In such situations, those ETCs' activation fees are not customarily-imposed charges. TracFone has addressed in prior submissions how such carriers often do not actually require their customers to pay these charges through such guises as "waivers" of the charges or issuing credits for additional airtime purchases to offset amounts owed under such so-called "customary" charges.[6] In addition, some ETCs, including Coalition members, readily admit that their Lifeline customers pay no portion of their so-called "customary charges." As an example, on August 30, 2011, TAG Mobile, LLC -- a Coalition member -- filed with the California Public Utilities Commission an advice letter seeking designation as an ETC for the limited purpose of providing Lifeline and Link Up in that state. In that advice letter, TAG Mobile makes the rather startling statement: "TAG Mobile will use Link-Up support to reduce the company's 'customary charge for commencing service' by 'half the customary charge' . . . **the remainder of which is waived for qualifying low income customers resulting in no out of pocket expense for the Lifeline customer.**"[7] On the one hand, TAG Mobile claims that its service commencement charge is customary; on the other hand, it states that certain of its customers -- its Lifeline customers -- will not actually have to pay that charge. As indicated by the underscored language, TAG Mobile will not reduce its "customary" service commencement charge by up to one-half, as required by the Commission's rules. Rather, it will totally eliminate that so-called "customary" charge in patent violation of the Commission's Link Up rules. By totally exempting customers from having to pay any portion of its "customary" service commencement charge, the charge is no longer a customary charge, and therefore, may not lawfully be supported by Link Up pursuant to Section 54.411(a)(1) of the Commission's rules.

Despite the serendipity of TAG Mobile's California advice letter being filed the same week as these reply comments are due, TAG Mobile is not unique. As previously noted by TracFone, numerous wireless ETCs do not require their customers -- Lifeline and non-Lifeline --

[6] *See, e.g.*, TracFone Wireless, Inc. Petition for Declaratory Ruling, WC Docket No. 09-197, CC Docket No. 96-45, filed December 1, 2010.

[7] TAG Mobile, LLC Advice Letter No. 2, filed with the California Public Utilities Commission August 30, 2011 at 4 (emphasis added).

to actually pay their nominal activation or service commencement charges. As such, those charges are not customary charges but appear in various service descriptions for the sole purpose of enabling those ETCs to collect $30 per customer from the USF.

II. IN THEIR ATTEMPTS TO DISCREDIT TRACFONE'S OPPOSITION TO RECEIPT OF LINK UP SUPPORT FOR OTHER THAN ITS INTENDED PURPOSE, CERTAIN COMMENTERS HAVE MISSTATED IMPORTANT FACTS ABOUT TRACFONE'S OPERATIONS AND BUSINESS STRATEGY.

Much of the focus of the Coalition's and Nexus's comments is directed at TracFone. This is not surprising. TracFone has more than 3.6 million currently-enrolled Lifeline customers and has become the largest provider of Lifeline service in the nation. It has done that without asking for or receiving a single dime of Link Up support. TracFone never has deemed it necessary to ask the USF to subsidize its advertising and marketing, its program administration, its costs of verifying customer eligibility of Lifeline, or its provision of handsets at no charge to Lifeline customers.[8] The fact that TracFone and other wireless ETCs have been able to expand their Lifeline offerings without Link Up support is the best evidence available that Link Up support is not necessary to provide Lifeline service.

Nonetheless, it is interesting how much those commenters profess to know about TracFone's Lifeline operations. Notwithstanding that self-professed knowledge of TracFone's business, much of the information contained in their comments is incorrect. For example, at page 11 of its comments, the Coalition alleges that some ETCs who claim not to need Link Up support "may attempt to pass the charges to consumers as part of higher top up rates similarly to

[8] If the Commission were to conclude that other ETCs' costs of doing business were entitled to Link Up support, then TracFone would have no choice other than to seek Link Up support since it incurs the same costs as those ETCs and principles of competitive neutrality and non-discrimination compel a conclusion that it is no less entitled to receive support to offset those costs than are other ETCs.

TracFone." At page 16 the Coalition "supports" that assertion by stating that TracFone charges $0.20 per minute. That assertion is both inaccurate and irrelevant for several reasons.

First, whatever per minute rates are charged by TracFone or any other ETC are wholly irrelevant to whether Link Up support should be available to subsidize marketing and advertising and other general administrative costs. Wireless rates are not regulated and wireless ETCs, including TracFone, the Coalition members, and others, charge rates based on their perception of the market for those services. Second, the Coalition is wrong. TracFone's rate for additional minutes of airtime purchased by SafeLink Wireless® Lifeline customers is $0.10 per minute -- not $0.20 as alleged. Attached to these reply comments is a declaration from Javier Rosado, TracFone's Senior Vice President - Lifeline Services, which confirms that TracFone's rate for additional minutes to Lifeline customers never exceeds $0.10. Indeed, the Coalition asserts that its members' per minute rates (which, according to their comments are made possible by their receipt of Link Up support) range between one-half and one-quarter of TracFone's rates for additional minutes.[9] However, that assertion also is incorrect. One Coalition member – Global Connections of America, Inc. d/b/a Stand Up Wireless -- offers its Lifeline customers 40 additional minutes for $5.00 -- a rate of $0.125 per minute.[10] Another Coalition member -- Image Access, Inc. d/b/a New Mobile -- offers its Lifeline customers 30 minutes for $10.00 -- a $0.33 per minute rate (more than 300 percent higher than TracFone's standard $0.10 per minute rate for additional Lifeline minutes).[11] Those Image Access $0.33 minutes expire one week after

[9] Coalition Comments, at 16-17

[10] *See* Stand Up Wireless, Add More Airtime, *available at* http://www.standupwireless.com/add_more_minutes.

[11] Image Access, Inc. d/b/a NewPhone advises its Lifeline customers that additional minutes can be purchased through AirLink Mobile Cards. *See* NewPhone Wireless Phone Service, Frequently Asked Questions, *available at* http://www.newphonewireless.net/faq.html and AirLink Mobile Rate Plans, available at http://www.airlinkmobile.com/rates.php.

purchase. Image Access Lifeline customers willing to purchase 90 additional minutes may do so for $20.00 -- a rate of $0.22 per minute. Those minutes expire two weeks after purchase. In contrast, additional minutes purchased by SafeLink Wireless® customers remain usable for never less than 30 days and often for 90 days after redemption.

The point of these comparisons is not to make claims regarding the value proposition of those ETCs' Lifeline offerings. The marketplace will do that. Rather, it is to refute the inherently illogical and unsupported assertion that those Coalition members should continue to receive Link Up support so that they can offer ostensibly lower per minute rates -- which are not in fact lower than those provided by TracFone to its Lifeline customers without subsidization through Link Up.

TracFone's per minute rate for additional minutes is not significant for yet another reason. Fewer than five percent of TracFone's Lifeline customers purchase additional minutes in any month. For the vast majority of TracFone's SafeLink Wireless® Lifeline customers, the 250 minutes which TracFone provides is more than sufficient to meet their needs as evidenced by the fact that fewer than five percent purchase additional minutes, notwithstanding the favorable $0.10 minute rate available to TracFone's Lifeline customers.[12]

[12] The issue before the Commission is whether Link Up support should be available to wireless ETCs to offset carriers' customary charges for commencing telecommunications service for a single connection at a consumer's principal place of residence. It is not the Commission's role to judge the comparative value of competing ETCs' Lifeline plans. However, according to publicly-available data on ETC websites, no ETC member of the Coalition offers a free Lifeline service plan comparable to TracFone's 250 minute plan. Those ETCs' Lifeline plans range from a high of 100 free minutes per month (Global Connection, Inc. d/b/a Stand Up Wireless, and Midwestern Telecommunications) to 68 free minutes per month (Image Access, Inc. d/b/a New Mobile, TAG Mobile, and Telrite Corporation).

The Coalition also informs the Commission that TracFone's business model focuses primarily on "low income households with Internet access."[13] The Coalition does not notify the Commission where it obtained its information about TracFone's business model, nor does it provide any citation to support its representations about how TracFone conducts its business. In fact, the Coalition is wrong. In June 2011, TracFone commissioned a study of its Lifeline customer base by Options Marketing Research & Consulting. Among other matters, that survey confirmed what TracFone already knew about its Lifeline customers. Few have Internet access. Specifically, the study concluded that only eleven percent of TracFone's Lifeline customers have Internet access in their homes. Stated conversely, nearly 90 percent of TracFone's Lifeline customers do not have in-home Internet access. It is possible that those potential TracFone Lifeline customers might have Internet access available to them at work. Unfortunately, most TracFone Lifeline customers do not have places of work to go to. As TracFone indicated in a prior submission in this proceeding, approximately thirteen percent of its enrolled Lifeline customers are employed full-time and only about eleven percent are employed on a part-time basis.[14] Therefore, few TracFone Lifeline customers have Internet access either at home or at work, belying the Coalition's claim that TracFone markets Lifeline service primarily through the Internet.

How one ETC elects to market its Lifeline program is wholly irrelevant to whether Link Up funds should be provided to subsidize how other ETCs elect to market their Lifeline

[13] Coalition Comments, at 13.

[14] Letter from Mitchell F. Brecher to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in WC Docket No. 11-42, CC Docket No. 96-45, and WC Docket No. 03-109, May 9, 2011, at 2.

programs. For the record, TracFone's "limited outreach program"[15] has enabled it to enroll more than 3.6 million current Lifeline customers and it has been able to achieve that level of Lifeline enrollment without receipt of Link Up support to subsidize those outreach efforts. It is difficult to imagine more compelling evidence of the lack of a need for Link Up funding to support Lifeline outreach than the fact that an ETC has in less than three years as a designated ETC enrolled more than 5 million Lifeline customers, of which more than 3.6 million are currently enrolled, all without receiving Link Up funding to support those efforts.

III. THE PURPOSE FOR LINK UP SUPPORT IS NOT TO OFFSET AN ETC'S ELIGIBILITY CERTIFICATION AND OTHER REGULATORY COMPLIANCE COSTS, NOR IS LINK UP SUPPORT NEEDED TO AVOID IMPOSITION OF EARLY TERMINATION FEES.

Some commenters favoring continued Link Up support for purposes other than customary network connection charges claim that they need Link Up support because their service representatives collect Lifeline applicant information regarding low-income program eligibility and to access a data base for the purpose of preventing unlawful duplication of service.[16] Enrollment eligibility requirements and the one-per-household requirement are program rules established by the Commission and by state commissions. In short, such ETCs are claiming a need for Link Up support from the USF to offset their costs of complying with valid Commission and state eligibility and enrollment requirements. Nowhere in the Commission's Link Up rules or in the 1987 order establishing those rules or anywhere else is there any suggestion that an appropriate use of Link Up is subsidize ETCs' costs of complying with federal and state Lifeline eligibility rules. Compliance with applicable legal and regulatory requirements

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[15] Coalition Comments, at 13. The Coalition further advises the Commission that there "are limits to the potential success of such programs . . . ."

[16] *See*, *e.g.*, Nexus Comments, at 11.

is the responsibility of each ETC. The costs for such compliance are to be borne by each ETC, not by the USF.

Even more inappropriate is the claim that Link Up support enables Lifeline customers to avoid hidden charges and early termination fees.[17] To claim that Link Up funding makes it possible for consumers of prepaid wireless services to avoid early termination fees disregards the fact that prepaid wireless service is a pay-as-you-go service. Customers purchase as much service as they need when they need it. THERE ARE NO EARLY TERMINATION FEES. This is true without regard to whether the prepaid service is offered as part of a Lifeline program or whether it is provided on a non-Lifeline basis. The reason why prepaid wireless services are not subject to early termination fees is not dependent on whether companies offering such services receive Link Up support for their Lifeline customers.

CONCLUSION

As described in these reply comments, as well as in TracFone's prior comments, Section 54.411(a)(1) contains an explicit and specific definition of Link Up. Link Up support is available to offset carriers' customary charges for a single telecommunications connection at the customer's principal place of business. If the Commission were to determine that Link Up support should be expanded to subsidize such other ETC costs as advertising and marketing, regulatory compliance, and general administrative costs, or to subsidize telecommunications equipment such as wireless handsets, the rules would need to be revised to allow for such expanded Link Up support. Supporting charges that are not customarily imposed and which do not offset charges for connection at a customer's principal place of residence are not permitted by the current Link Up rules.

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[17] *Id.*, at 13.

More importantly, the Commission's notice of proposed rulemaking issued in this proceeding delivers a clear -- and often repeated message -- waste, fraud and abuse of the low-income program supported by the USF must be curtailed. If the Commission is in fact seriously committed to eliminating such wasteful utilization of USF resources, then it should take responsible steps to ensure that Link Up funding is available only for its intended purpose -- to offset customary connection charges. Whether the connection activities take place at the subscriber's premises or whether they take place elsewhere (such as at a carrier central office) is not critical. What is critical is that Link Up support only be provided to ETCs for the purpose of offsetting customary charges for connecting customers to telecommunications networks.

As noted by the Free State Foundation in its comments, a primary strength of the low-income USF programs is that subsidies are targeted to those low-income persons that need them.[18] TracFone agrees. However, when ETCs receive Link Up support to subsidize their marketing and advertising costs, to offset their costs of compliance with valid Commission regulations, and to cover other general and administrative costs, the intended beneficiaries of that support -- low-income consumers -- are not receiving the benefit of the subsidy. The beneficiary in such circumstances is the ETC. For the reasons set forth in these reply comments, as well as those previously stated by TracFone, TracFone respectfully urges the Commission to take an important proactive step to eliminate waste, fraud and abuse of the low-income program while preserving and advancing the program's important goals. Specifically, the Commission should limit Link Up support to offset customary charges actually imposed by ETCs and paid by consumers for connecting consumers to telecommunications networks at the consumers' principal place of residence.

[18] Free State Foundation Comments, at 2.

Respectfully submitted,

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Its Attorneys

September 2, 2011

DECLARATION

In accordance with 47 C.F.R. § 1.16, Javier Rosado states as follows:

1. I am Senior Vice President Lifeline Services of TracFone Wireless, Inc. ("TracFone"). My business address is 9700 N.W. 112th Avenue, Miami, FL 33178.

2. In my capacity as Senior Vice President Lifeline Services, I am an authorized officer of TracFone. I am providing this declaration in support of TracFone's Reply Comments on Specified Issues, filed in WC Docket No. 11-42, WC Docket No. 03-109, and CC Docket No. 96-45.

3. This declaration confirms that TracFone's rate for additional minutes of airtime purchased by all SafeLink Wireless® Lifeline customers will not exceed $0.10 per minute. Pursuant to my direction, this rate became effective for all SafeLink Wireless® Lifeline customers in all states where SafeLink Wireless® service is available on August 25, 2011. The $0.10 per minute rate had been available to SafeLink Wireless® customers in selected states prior to that date.

4. SafeLink Wireless® Lifeline customers may purchase additional airtime at a rate that is less than $0.10 per minute to the extent that a rate less than $0.10 per minute is available to any TracFone customer.

5. TracFone is in the process of revising its terms and conditions to state that the rate for additional minutes of airtime purchased by all SafeLink Wireless® Lifeline customers will not exceed $0.10 per minute.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2011

Javier Rosado