

September 21, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
CC Docket No. 96-45 - Federal-State Joint Board on Universal Service
WC Docket No. 03-109 - Lifeline and Link Up
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On September 14, 2011, the Link Up Coalition of America (“Coalition”) filed a notice of ex parte presentation with the Commission regarding a September 12, 2011 meeting with Kim Scardino of the Wireline Competition Bureau to discuss proposed reforms to the Link Up portion of the Low Income Universal Service program. In that presentation, the Coalition reiterated its assertion that its members -- all of whom provide wireless Lifeline service -- should continue to receive Link Up funding from the federal Universal Service Fund (“USF”) to subsidize many of their costs of doing business, including advertising and marketing, regulatory compliance and procurement of wireless handsets. By this letter, TracFone Wireless, Inc. (“TracFone”) responds to certain of the Coalition’s assertions about its members, claims about TracFone, and positions on Link Up support.

The Coalition represents that each of its members is “a facilities-based reseller with CETC status in various states.”¹ The Coalition has further described its members as “U.S. owned and based carriers that provide prepaid wireless services primarily to low income consumers.”² However, a review of the Commission’s Universal Licensing System, which lists the licensees of all wireless licenses, including those licenses necessary to provide wireless services, indicates that none of the members of the Coalition hold any wireless licenses. The fact that none of those Coalition members hold any wireless licenses leads to two alternative conclusions: 1) either those ETCs are providing wireless services supported by the USF by reselling the wireless services of other licensed carriers; or 2) those ETCs are providing Lifeline service using their own wireless facilities without being licensed to do so. If the Coalition

¹ Letter from J. Heitman to M. Dortch, September 14, 2011, at 1.

² Comments of the Link Up for America Coalition, filed in WC Docket No. 11-42, CC Docket No. 96-45, and WC Docket No. 03-109, August 26, 2011, at 2.

members are providing USF-supported services, specifically, wireless Lifeline services, by reselling other carriers' wireless services, then they are statutorily prohibited by Section 214(e)(1)(A) of the Communications Act and by Section 54.201(i) of the Commission's rules from being designated as ETCs for any purpose, including for the limited purpose of providing Lifeline service, unless and until the Commission exercises its authority to forbear from application or enforcement of the facilities-based requirement in 47 U.S.C. § 214(e)(1)(A) -- just like what is required for every other wireless reseller that has sought designation as an eligible telecommunications carrier ("ETC"). If the Coalition members are using their own facilities to provide wireless Lifeline services as facilities-based carriers, then the Commission should initiate an investigation to determine whether they are doing so using unlicensed facilities.

TracFone recognizes that some Coalition members may be certificated to acquire rights to use certain wireline facilities such as unbundled network elements acquired from wireline incumbent local exchange carriers. If the only facilities which those ETCs have the right to use or call their own are wireline unbundled network elements or other wireline facilities, then they are not using their own facilities in whole or in part to provide wireless services supported by the USF in general and wireless Lifeline services in particular. In this regard, the statement contained at page 1 of the Coalition's ex parte presentation that each Coalition member is a "facilities-based reseller" is an oxymoron. Either those companies provide wireless Lifeline services using, at least in part, their own facilities in which case they would be deemed to be facilities-based, or they are providing such services on a resale basis, *i.e.*, by reselling services of other carriers in order provide their wireless Lifeline services. In short, there is no such thing as a "facilities-based reseller." At the very least, before allowing any carriers calling themselves "facilities-based resellers" to be designated as ETCs or to continue to provide Lifeline services as ETCs, the Commission should commence a proceeding to determine whether such carriers are, in fact, facilities-based, whether such carriers are using their own facilities to provide wireless Lifeline services as ETCs, and whether such carriers should be subject to the Commission's conditions governing forbearance from the facilities-based requirement of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i).³

Beyond the question of whether these self-described "resellers" may be designated as ETCs without forbearance, TracFone disagrees with the Coalition's continued attempt to expand the scope of Link Up support to include any and all costs associated with establishing and maintaining Lifeline customers, including, but not limited to, marketing and advertising costs, regulatory compliance costs, and covering the costs of handsets. The Commission's rules are clear and specific: Link Up is a "reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a customer's principal

³ On December 1, 2010, TracFone filed a Petition for Declaratory Ruling with the Commission in which it requested that the Commission clarify that a carrier may not rely on the fact that it has wireline facilities to meet the facilities requirement for purposes of offering wireless USF-supported services, unless those wireline facilities are being used to transmit or route the wireless services that are designated for support. That petition remains pending.

place of residence.”⁴ The Coalition asserts that the costs to be covered by Link Up support include connection costs, as well as the “[a]dministrative costs of establishing an account, including verification, certification and recordkeeping.”⁵ The Coalition also claims that “outreach” costs (“outreach” is the Coalition’s term for advertising and marketing) are among the costs that can be covered by Link Up support.⁶ TracFone does not dispute that the purpose of Link Up support is to reimburse ETCs for reducing their connection charges, to the extent those charges are customary charges (i.e., charges that are actually imposed on and paid by all customers, not charges that are not actually paid by many customers -- Lifeline and non-Lifeline -- through such guises as waivers or reductions) for initially connecting a customer to the carrier’s network at the customer’s place of residence. However, the Coalition improperly and without any legal basis, attempts to characterize costs completely unrelated to establishing a customer’s connection to the carrier’s network as being eligible for reimbursement through Link Up support.

Administrative costs, such as certification, verification, and recordkeeping arise from the Commission’s and state commissions’ regulatory requirements established to ensure that all recipients of Lifeline benefits are qualified to receive such benefits. By seeking to have their marketing and advertising costs subsidized by the USF through Link Up support, the Coalition members are utilizing federal USF funding to cover portions of their ordinary business expenses, including their costs of competing with other service providers for potential Lifeline customers’ business, rather than using those funds to reduce for their low income consumers their customary charges for connecting those customers to the carriers’ networks at the customers’ principal places of residence as required by Section 54.411(a)(1). The fact that advertising of USF-supported services using media of general distribution is required by Section 214(e)(1)(B) of the Communications Act does not qualify those advertising costs to be covered by Link Up support nor does it transform a cost of doing business as an ETC into a cost for “commencing telecommunication service for a single telecommunications connection.” As an ETC, TracFone, like the Coalition members, is subject to the requirement of Section 214(e)(1)(B) that it advertise its USF-supported services using media of general distribution. It expends millions of dollars annually to comply with that statutory requirement. Yet it is not permitted to receive Link Up support for that purpose and has never sought to have its Section 214(e)(1)(B) compliance costs paid for by Link Up funding.

The Coalition also misstates TracFone’s rates for additional minutes. How TracFone or any other ETC prices its services is wholly irrelevant to whether ETCs in general and wireless Lifeline provider ETCs in particular should be allowed to receive Link Up subsidies for costs not incurred in connecting customers to their services at the customers’ principal places of residence. Accordingly, rate comparisons are not germane to this proceeding. Since the Coalition has built

⁴ 47 C.F.R. § 54.411(a)(1).

⁵ Letter from J. Heitman to M. Dortch, September 14, 2011, Preserving Link Up for Low Income Americans, at 7.

⁶ Id.

so much of its case for Link Up support on a comparison of its members' rates with those of TracFone, TracFone is compelled to correct the record regarding its services and its pricing. As TracFone explained in its reply comments in this proceeding filed on September 2, 2011, and supported by a declaration from its Senior Vice President - Lifeline services, TracFone's Lifeline customers may purchase additional airtime minutes at a rate that does not exceed \$0.10 per minute. That \$0.10 per minute rate is available in every State where TracFone provides Lifeline service as an ETC. Lifeline customers may also choose to purchase additional airtime minutes at a rate less than \$0.10 per minute to the extent a lower rate is available to non-Lifeline customers. The Terms and Conditions of Service on the SafeLink Wireless[®] website provide that all Lifeline customers can purchase additional airtime minutes for \$0.10 per minute.⁷

In addition, the Coalition incorrectly states that unused additional minutes purchased by TracFone's Lifeline customers will not carry over to the following month. The enrollment form available on the SafeLink Wireless[®] website states the following regarding the 250 minute plan: "If you choose this plan, your unused minutes will be removed/wiped out and will not carry-over on your next monthly minutes delivery. **However, if you purchase and redeem additional minutes cards, all unused minutes will carry over for three consecutive months.**"⁸ This language could not be clearer: additional minutes purchased by Lifeline customers at the \$0.10 rate will carry over for three consecutive months.

TracFone also disagrees with the Coalition's pejorative and incorrect characterization of its business as having a "cream-skimming model."⁹ The Coalition appears to be referencing its position, first expressed in the Coalition's Reply Comments, filed on September 2, 2011, that TracFone is "able to quickly sign up certain (relatively, more affluent) customers in a market with advertising and online sales." The very concept of "affluent" Lifeline customers is itself oxymoronic. Lifeline support is available only to low-income households who qualify based on income or based on enrollment in qualifying low-income assistance programs such as Medicaid, Supplemental Nutrition Assistance Program (formerly Food Stamps), the School Lunch program, etc. There are no "affluent" Lifeline customers. None of TracFone's or any other ETC's Lifeline customers are affluent, or even relatively affluent. To qualify for Lifeline a customer

⁷ See excerpt from Terms and Conditions of Service provided as Attachment 1. TracFone acknowledges that information posted on its website was not corrected in a timely manner to reflect the price reduction for additional minutes purchased by Lifeline customers, and apologizes for any confusion that delayed correction may have caused. The website has now been corrected. More importantly, TracFone has consistently represented to state commissions that additional minutes would be available at the rate of \$0.10 and that is the price being charged for those minutes.

⁸ See Lifeline enrollment form, available at <https://www.safelinkwireless.com/Safelink/CreateEnrollment> and provided as Attachment 2 (emphasis added).

⁹ Letter from J. Heitman to M. Dortch, September 14, 2011, Preserving Link Up for Low Income Americans, at 13.

must have household income at or below 135% of the Federal Poverty Guidelines or participate in a public assistance program. TracFone's customers must meet these thresholds to receive Lifeline service just as do the prospective Lifeline customers of the Coalition members. The Coalition's assertion that TracFone is "cream-skimming" the market for Lifeline services has no basis in fact. Moreover, the very notion that some wireless reseller ETCs should be entitled to Link Up support from the USF based on how low income their Lifeline customers may be relative to other ETCs' Lifeline-eligible low-income customers is inherently illogical.

Finally, TracFone notes that its assertions in its Reply Comments regarding the per minute rates charged by certain members of the Coalition are supported by information available on those members' websites. TracFone stated that 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 (above TracFone's \$0.10 rate for its Lifeline customers).¹⁰ The Coalition acknowledges that Stand Up Wireless does offer 40 additional minutes at the \$0.125 rate, but points out that for \$30 a customer can receive 500 minutes, *i.e.*, a per minute rate of \$0.06, and that a per minute rate of \$0.05 also is available. As noted on Stand Up Wireless's website, that \$0.05 per minute rate is only available if the customer purchases 1,000 minutes for \$50.00.¹¹ In other words, in order to avail themselves of that \$0.05 per minute rate, Stand Up Wireless's low-income Lifeline customers must make purchases of additional airtime in the amount of \$50 per purchase. TracFone also correctly stated NewPhone's rates in its Reply Comments.¹²

For the reasons stated herein as well as for those set forth by TracFone in prior submissions in this proceeding, the Commission's current rules governing Link Up limit that support to offset facilities-based ETCs' customary charges for connecting customers to their networks at the customers' principal places of residence. Such funds are not to be used to subsidize ordinary business expenses such as advertising and marketing, regulatory compliance, and customer telephone equipment. If the Commission committed to modernizing the low-income Universal Service programs and to eliminating waste, fraud, and abuse of USF resources, then it should enforce its current rules governing Link Up and limit Link Up support to offset ETCs' customary charges for connecting Lifeline customers to their networks.

¹⁰ TracFone Wireless, Inc.'s Reply Comments on Specified Issues, filed in WC Docket No. 11-42, CC Docket No. 96-45, and WC Docket No. 03-109, September 2, 2011, at 8.

¹¹ See Stand Up Wireless rates, provided as Attachment 3.

¹² 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> and provided as Attachment 4. The rates cited in the Coalition's ex parte presentation are based on an informational tariff. A link to the informational tariff is found on a website for NewPhone's wireline service that only provides details and an application forms for NewPhone's wireline Lifeline service.

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

cc: Ms. Kimberly Scardino
Ms. Cindy Spier
Ms. Jamie Susskind
Mr. Jonathan Lechter
Mr. Robert Finley
Ms. Divya Shenoy

Attachment 1

SAFELINK WIRELESS™

Terms and Conditions of Service

Please read these SAFELINK WIRELESS Terms and Conditions of Service carefully. SAFELINK WIRELESS is a service of TracFone Wireless, Inc. ("TracFone Wireless"). These SAFELINK WIRELESS Terms and Conditions of Service are a legally binding agreement between you and TracFone Wireless. They contain important information about your legal rights and require that certain disputes be resolved through Arbitration instead of a court trial. TracFone Wireless reserves the right to change or modify any of these SAFELINK WIRELESS Terms and Conditions of Service at any time and at its sole discretion. Any changes or modifications to these SAFELINK WIRELESS Terms and Conditions of Service will be binding upon you once posted on the SAFELINK WIRELESS website at www.safelink.com. You should check the SAFELINK website regularly for updates to these terms.

By enrolling in the SAFELINK WIRELESS Program (the "SAFELINK WIRELESS Program" or "SAFELINK Program") and by using the SAFELINK WIRELESS service (the "SAFELINK WIRELESS Service" or "SAFELINK Service"), you ("You"), the participant, acknowledge and agree to the following terms and conditions:

1. SAFELINK WIRELESS PROGRAM DESCRIPTION.

SAFELINK WIRELESS Service is funded by the Universal Service Fund Lifeline program and administered by the Universal Service Administrative Company. In order to qualify for enrollment in the SAFELINK WIRELESS Program, a person must meet certain eligibility requirements set by each state where the SAFELINK Program is offered. These requirements are based on a person's participation in a state or federal support program(s) or by meeting certain income requirements based upon the Income Poverty Guidelines as defined by the US Government. Federal law limits the availability of the SAFELINK Program. The SAFELINK Program allows one (1) enrollment per "household" and only the "head of household" may apply. The SAFELINK Program permits only one Lifeline benefit per household, therefore, no person currently living in the household may receive Lifeline benefits from any other Lifeline program. Applicants for the SAFELINK Program must complete an application form, provide supporting documentation that they meet the eligibility requirements and certify, under penalty of perjury, that they:

- Are eligible for and currently receive benefits from the public assistance program(s) identified in the application form.
- Are a "head of household."
- Do not currently receive Lifeline support for a telephone line serving their residential address and no other resident in their household participates in the Lifeline program. If the applicant is already participating in another Lifeline program, then the applicant agrees to cancel their current household Lifeline support provider in order to enroll in the SAFELINK Program.
- Are not claimed as a dependent on another person's federal or state income tax return.
- Will notify SAFELINK Wireless by calling 1-800-SAFELINK if and when they no longer qualify for any of the public assistance programs identified in their application form.
- Will notify SAFELINK Wireless of any change of address by calling 1-800-SAFELINK.
- Reviewed the information contained in their application and it is true and correct to the best of their knowledge and belief.

7. AIRTIME CARDS.

Your SAFELINK WIRELESS phone will only operate when you have airtime minutes available on the SAFELINK WIRELESS phone. If you run out of your free monthly allotment of airtime, you may purchase and add additional airtime to your phone. See the instructions above for adding airtime. SAFELINK WIRELESS customers may purchase and use any SAFELINK WIRELESS or TracFone Wireless airtime cards, including Double Minute Airtime cards, for their SAFELINK WIRELESS phone. PLEASE NOTE: Customers who are enrolled in any Double Minutes for Life program will receive double minutes ONLY on their purchased airtime. The free monthly minutes provided to customers enrolled in the SAFELINK Program and any Bonus or Promotional Minutes WILL NOT DOUBLE.

Each TracFone Wireless airtime card includes a set number of minutes and service days that begin to run from the date you add the airtime to your SAFELINK WIRELESS phone. Bonus and promotional minutes will not double with any TracFone Wireless Double Minute airtime cards. TracFone reserves the right to modify, adjust and/or eliminate the extra Bonus minutes at any time in its discretion. SAFELINK customers may purchase airtime at the rate of 10¢ or less per unit. TracFone reserves the right to adjust its airtime rates at any time in its sole discretion.

For each TracFone Wireless airtime card or PIN purchased at our regular price and added to a SAFELINK phone, the SAFELINK customer will receive the following:

Minutes on Face of TracFone Card (Purchased at Regular Price)	Total Minutes Provided	Service Days	Cards Cost	Other
30	100	30 or 45	\$9.99	N/A
60	200	90	\$19.99	N/A
90	250	90	\$24.99	N/A
120	300	90	\$29.99	N/A
200	400	90	\$39.99	N/A
450	900	90	\$79.99	N/A
One Year Service Card	500 or 800	365	\$99.99	N/A
One Year plus Double Minute	800	365	\$119.99	Double minutes for the life of your phone on all airtime that you purchase. Not transferable to another handset even if your phone is damaged, lost or stolen. The minutes included with this card have already been doubled for your convenience. YOUR FREE MONTHLY MINUTES FROM SAFELINK WILL NOT DOUBLE. BONUS, PROMOTIONAL AND OTHER NON-PURCHASED MINUTES WILL NOT DOUBLE.
Double Minute Card	0	0	\$19.99	Double minutes for the life of your phone on all airtime that you purchase. Card is not transferable to another handset even if your phone is damaged, lost or stolen. YOUR FREE MONTHLY MINUTES FROM SAFELINK WILL NOT DOUBLE. BONUS, PROMOTIONAL AND OTHER NON-PURCHASED MINUTES WILL NOT DOUBLE.

Attachment 2

* Social Security Number (Last Four) Confirmation
As the field is masked,
we use the confirmation to make sure
that you are inserting the right value.

* Choosing your plan

Safelink Wireless has 3 Plans available to choose from. Select ONE of the plans listed below.

Plan Features	68 FREE Monthly minutes	125 FREE Monthly minutes	250 FREE Monthly minutes
Choose your plan (check one)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Local Calls	✓	✓	✓
National Long Distance	✓	✓	✓
Voice Mail	✓	✓	✓
Nationwide Text	✓ (0.3 minutes per text)	✓ (1 minute per text)	✓ (1 minute per text)
Roaming at no Additional Cost	✓	✓	✓
Free 911	✓	✓	✓
411 Directory Assistance at no Additional Cost	✓	✓	✓
Carry-Over Minutes from Month to Month	✓	✓	✗ **
100+ International Long Distance Destinations*	✓	✗	✗

* List of destinations available at www.Safelink.com
** If you choose this plan, your unused minutes will be removed/wiped out and will not carry-over on your next monthly minutes delivery. However, if you purchase and redeem additional minutes cards, all unused minutes will carry over for three consecutive months.



[Click here if you cannot read the image below](#)

* Enrollment Validation



Please enter the text from the image above, without spaces. Letters are not case-sensitive.

Next

Attachment 3



Government Supported Wireless Service

APPLY NOW!

ENTER YOUR ZIP CODE: [GO](#)

LEARN
About StandUP Wireless

APPLY
Get StandUP Service

MANAGE
Existing StandUP Account

RENEW
Annual Program Verification



MANAGE Add More Airtime

NEED TO ADD MORE MINUTES?

CLICK HERE NOW TO LOAD MINUTES ONLINE!

\$5	= 40	
\$10	= 100	Minutes
\$20	= 250	Minutes
\$30	= 500	Minutes
\$50	= 1000	Minutes

Purchased airtime minutes can be used for voice calling or text messaging.



Or you can top up anytime at any one of the following locations:

Click one to see top up options and procedure.





[CLICK HERE FOR](#)

[CLICK HERE FOR](#)

[CLICK HERE FOR](#)

Are You Eligible

TO RECEIVE **FREE WIRELESS SERVICE?**



[Click Here Now](#)

To Find Out!

COVERAGE MAP



NATIONWIDE COVERAGE AREA

REFERRAL PROGRAM

100 FREE BONUS MINUTES

SPECIAL OFFERS

LIMITED TIME DEALS FOR BIG SAVINGS!

info@StandUPwireless.com or **1.800.544.4441**

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Attachment 4

(Redirected from [Intro](#))

Frequently Asked Questions

What do I get?

First of all, we give you a **FREE** cell phone and charger along with 68 minutes **FREE** each month w/ roll over.

What if I want more minutes?

No problem, additional minutes can be purchased through AirLink Mobile Cards which puts you in control of your wireless spending, allowing you to talk while you pay less.

How would I check my balance of minutes and what if I need customer service?

To check remaining minutes, just dial 877-234-1216 and for customer service, dial 504-274-1636

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- HOW TO BUY
- COVERAGE MAP
- FAQ

AIRLINK MOBILE RATE PLANS

UNLIMITED NIGHTS & WEEKENDS STARTING AT 7PM

Get Unlimited Night and Weekend minutes starting at 7 PM so you can talk all you want during the times you call the most!

- No Credit Checks
- No Contracts
- No Roaming Charges Nationwide
- No U.S. Long Distance Charges
- Switch and Keep Your Phone Number

PLAN FEATURES	\$10	\$20	\$30	\$50
ANYTIME MINUTES	30	90	150	350
NIGHT & WEEKEND MINUTES	UNLIMITED	UNLIMITED	UNLIMITED	UNLIMITED
EXPIRATION PERIOD	7 DAYS	14 DAYS	30 DAYS	30 DAYS
NATIONWIDE CALLING AREA	✓	✓	✓	✓
US LONG DISTANCE	✓	✓	✓	✓
CALLER ID	✓	✓	✓	✓
CALL WAITING	✓	✓	✓	✓
3 WAY CALLING	✓	✓	✓	✓

TEXT MESSAGE PACKS

CARD COST	TEXT MESSAGES	EXPIRATION PERIOD	COST PER TEXT	<i>Basic Text Messaging Rate: 20¢ per message</i>
\$5	200	30 Days	2.5¢	
\$10	1000	30 Days	1¢	

MOBILE WEB

\$2.50 Per MB
1 MB = approximately 100 average web pages