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September 29, 2011

VIA ECFS

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

Re: Notice of Written Ex Parte Presentation – WC Docket Nos. 11-42, 03-109
and CC Docket No. 96-45

Dear Ms. Dortch:

The Link Up for America Coalition (“Coalition”), through its attorneys, hereby responds to the *ex parte* presentation of TracFone Wireless, Inc. (“TracFone”) dated September 21, 2011 in which TracFone raises irrelevant issues, mischaracterizes statements made by the Coalition, mischaracterizes the law (often by suggesting its own skewed views somehow have become the law) and makes baseless claims regarding certain Coalition members.¹

First, TracFone challenges Coalition members’ status as facilities-based resellers by arguing that there is no such thing.² TracFone claims that Coalition members must be using unlicensed facilities because they do not hold wireless licenses.³ TracFone is misinformed and its claims are misplaced. As stated in the Coalition’s September 14, 2011 *ex parte* presentation, Coalition members are facilities-based resellers with CETC status in various states.⁴ Section

¹ See *Ex Parte* Presentation of TracFone Wireless, LLC, WC Docket No. 11-42 et al. (Sept. 21, 2011) (“TracFone *Ex Parte*”).

² See *id.* at 2.

³ See *id.* at 2-3.

⁴ See *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 1 (Sept. 14, 2011) (“Coalition September 14th *Ex Parte*”).

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214(e)(1)(A) clearly authorizes ETCs to use their own facilities along with the resale of another carrier's services.⁵

Moreover, at least fourteen state public utility commissions (including Puerto Rico) have analyzed the mix of facilities and resold services that Coalition members use to provide wireless service and made the determination to grant CETC status based on those facts. These decisions of more than a dozen state public utility commissions are not anomalous. They were based on diligent fact-gathering and sound legal analysis regarding the services offered by Coalition members. Further, the decisions were made pursuant to requirements of the Commission's rules. Section 54.201(b) of the rules requires that a "state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service are designated by the state commission."⁶

While the Commission requested comment in the Lifeline/Link Up notice of proposed rulemaking regarding whether it should grant blanket forbearance from the facilities-based requirement in Section 214(e)(1)(A) for purposes of participating in the Link Up program,⁷ it did not raise the essentially opposite question regarding whether it should require the use of FCC-licensed wireless spectrum to provide service as a CETC. TracFone admits that to re-visit the facilities requirement for CETCs would require that the Commission commence a separate proceeding.⁸ The Coalition submits that it would not be a productive use of the Commission's time and resources to initiate a new proceeding aimed at second-guessing more than a dozen state public utility commissions' factually and legally sound CETC decisions.

Next, TracFone re-asserts its argument that outreach costs are not reimbursable through Link Up.⁹ Like TracFone's facilities-based argument, this, too, is a red herring. As the Coalition has previously explained, because Link Up is a revenue replacement mechanism, neither the Commission nor the states regulate in a manner that would require such revenues to cover specific costs and not others, particularly marketing costs. Nevertheless, the Coalition has submitted data in the record demonstrating that there are substantial costs involved in the process of getting customers and activating them as new customers. The Coalition also has noted that

⁵ 47 U.S.C. § 214(e)(1)(A); *see also* 47 C.F.R. § 54.201(d)(1).

⁶ 47 C.F.R. § 54.201(b).

⁷ *See Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, FCC 11-32, ¶ 308 (rel. Mar. 4, 2011)

⁸ *See TracFone Ex Parte* at 2.

⁹ *See id.* at 2-3.

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CenturyLink explained that marketing costs were factored into its activation charges and asserted that the same likely was true for most carriers.¹⁰

TracFone again incorrectly argues that the Coalition “misstates TracFone’s rates for additional minutes.”¹¹ Nothing could be further from the truth. Included with the Coalition’s comments in this proceeding was a printout of TracFone’s SafeLink Wireless Terms and Conditions of Service from its website dated August 22, 2011 showing the \$0.20 rate.¹² TracFone recognizes that it did not update its website to reflect its new \$0.10 rate, but the fact remains that TracFone’s \$0.10 rate was established on August 25, 2011, and not made known to the Commission and parties to this proceeding until TracFone filed its reply comments on September 2, 2011.¹³ TracFone continued to advertise \$0.20 per minute rates on its website for weeks after it claimed it had reduced its rates.¹⁴ The Coalition is happy to see that this proceeding has resulted in TracFone reducing its rates for Lifeline customers, but the Coalition did not at any time misstate TracFone’s publicly advertised rates.

TracFone also falsely asserts that the Coalition incorrectly stated that additional minutes purchased by TracFone’s Lifeline customers will not carry over to the following month.¹⁵ Once again, the Coalition’s assertion was true as of the date it was made and it was based on publicly available terms posted on TracFone’s website. Those terms clearly stated that TracFone wipes-out any additional minutes purchased on 250 minute plans upon the next 250 minute delivery.¹⁶ TracFone’s subsequent modification of its website does not make the Coalition’s statement incorrect. Once again, the Coalition is pleased to see that its advocacy has resulted in TracFone responding by offering better terms to low income consumers.

¹⁰ See Reply Comments of CenturyLink, WC Docket No. 11-42 et al. at 5 (Sept. 2, 2011).

¹¹ See TracFone *Ex Parte* at 3.

¹² See Comments of the Link Up for America Coalition, WC Docket No. 11-42 et al. at Exhibit 4 (filed Aug. 26, 2011) (“Coalition Comments”).

¹³ See Reply Comments of TracFone Wireless, LLC, WC Docket No. 11-42 et al. at Declaration of Javier Rosado (filed Sept. 2, 2011).

¹⁴ See Coalition September 14th *Ex Parte* at 2-3, first attachment (screen shot including SafeLink Extra Minutes Rates (\$19.99 to buy 60 minutes and get 100 minutes), and third attachment (Coalition presentation at 11 (same))).

¹⁵ See TracFone *Ex Parte* at 4.

¹⁶ See Coalition September 14th *Ex Parte* at 2-3, second attachment (screen shot including term: “If you choose [the 250 minute] plan, all unused minutes (including purchased cards and free minutes) will be removed/wiped out and will not carry-over on your next monthly minutes delivery”), and third attachment (Coalition presentation at 11 (same))).

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TracFone further argues that there are no affluent Lifeline customers and so TracFone cannot be engaged in “cream-skimming.”¹⁷ Of course no Lifeline customer is objectively affluent, but TracFone cannot credibly argue all Lifeline customers have the same financial status relative to each other. Some have more financial resources than others and as such they are more affluent relative to those others. The Coalition’s comments demonstrated how TracFone enters a market and enlists customers quickly for about six months and then essentially levels off, leaving behind many Lifeline eligible consumers that require more grassroots-based outreach efforts to enlist.¹⁸ Coalition members are engaging in those grassroots outreach efforts to increase Lifeline penetration among low-income communities.

Finally, TracFone curiously decides to compare its rates with those of Stand Up Wireless.¹⁹ TracFone argues that Stand Up Wireless has a higher per minute rates than TracFone’s newly established \$0.10/minute rate. The only product for which that is true is the Stand Up Wireless \$5.00 top up, which provides 40 additional minutes, a per minute rate of \$0.125. The rate is higher because of the low purchase price of the product. (Similarly, TracFone/SafeLink Wireless’s new rates only go below \$0.10 per minute when the customer purchases 900 minutes.) Of course, SafeLink Wireless does not offer a \$5.00 top-up product. It’s lowest priced top-up product is \$10.00. The Stand Up Wireless \$10.00 top-up provides the same 100 minutes as the new SafeLink Wireless product. Stand Up Wireless’ \$20.00 top-up provides 250 minutes, a per minute rate of \$0.08. For that price, a SafeLink Wireless customer would receive only 200 minutes, a per minute rate of \$0.10. Therefore, the only product for which Stand Up Wireless does not have the same or (more often) better per minute rate than SafeLink Wireless, is a product that SafeLink Wireless does not sell. TracFone is correct that as customers purchase greater numbers of minutes, the Stand Up Wireless per minute rate continues to get lower and lower, eventually reducing to \$0.05 per minute.

TracFone also claims that it has correctly stated NewPhone’s rates, which it claims are from an AirLink Mobile webpage referenced on a NewPhone Wireless webpage.²⁰ NewPhone Wireless has no customers and its website is in beta testing. NewPhone, a separate provider, has Lifeline/Link Up customers and its rates are contained in its Louisiana Wireless Services Informational Tariff.²¹ As stated previously, NewPhone offers top-up rates as low as \$0.071 per minute.

¹⁷ See TracFone *Ex Parte* at 4-5.

¹⁸ See Coalition Comments at 17-18.

¹⁹ See TracFone *Ex Parte* at 5.

²⁰ See *id.*

²¹ See Coalition September 14th *Ex Parte* at 12. NewPhone’s Louisiana tariff is available at <http://www.newphone.com/A3F9229Dd01.pdf>.

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In accordance with the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceedings.

Respectfully submitted,



John J. Heitmann
Joshua T. Guyan

cc: Kim Scardino