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October 25, 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 October 13, 2011 letter submitted by TracFone Wireless, Inc. (“TracFone”). TracFone’s latest diatribe repeats several fatally flawed arguments and presents nothing new for the Commission’s consideration.¹ Perhaps the only worthwhile information presented by TracFone was that it has implemented self-regulatory controls similar to those found in the Coalition’s voluntary Code of Conduct. The Coalition is pleased that TracFone, the largest recipient by far of Low Income USF subsidies, is participating in the smart business/smart government self-regulatory movement. When considered in combination with the Coalition’s Interim De-Duping Process initiative, a significant majority of the Lifeline and Link Up ETC community is now engaged in important voluntary efforts to reduce waste, fraud and abuse in the Commission’s Low Income USF program.

A few short responses to some of the shrill rants contained in TracFone’s letter are required to clarify the record. First, TracFone asserts that the Coalition seeks Link Up support for something other than offsetting an ETC’s customary charge.² This claim, which appears to be based on the unfounded theory that wireless ETCs cannot have customary charges,

¹ See *Ex Parte* Presentation of TracFone Wireless, LLC, WC Docket No. 11-42 et al. (Oct. 13, 2011) (“TracFone October 13th Ex Parte”).

² TracFone October 13th *Ex Parte* at 2.

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is baseless. Coalition members do indeed use Link Up support to offset their customary charges. Moreover, the Commission has previously found that wireless ETCs are entitled to Link Up funding.³

TracFone also inexplicably claims that “[t]he Coalition neither denied nor refuted TracFone’s assertion that its members provide wireless Lifeline service exclusively on a resale basis.”⁴ While the facilities requirements for ETCs are not an issue in this proceeding (except to the extent that the Commission might provide blanket forbearance from the requirement),⁵ the Coalition repeatedly has confirmed that Coalition members are facilities-based resellers with CETC status in various states.⁶ The Coalition further referred TracFone to the Commission’s rules stating that an ETC may provide service using its own facilities or a combination of its own facilities and resale of another carrier’s services.⁷ TracFone also claims that the fact that Coalition member TAG Mobile, LLC stated in a California Public utilities Commission filing that it does not know the location of Sprint and Verizon cell towers used to provide its service in the state somehow proves that TAG Mobile does not provide service using any facilities.⁸ TracFone’s assertion is nonsense. The Commission’s rules do not require that a wireless ETC own cell towers or have licensed spectrum to provide facilities-based resale service, and neither have more than a dozen state PUCs.⁹

Finally, TracFone continues to espouse the untenably discriminatory position that low income Americans should be ineligible for carrier-initiated customary charge waivers.¹⁰ When an ETC waives half of the customary charge it is entitled to charge, it does not seek additional fund reimbursement or double-dip for Link Up support. The support is for the half of

³ See Reply Comments of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 10-11 (filed Sept. 2, 2011) (citing *Federal-State Joint Board on Universal Service*, Twenty-Fifth Order on Reconsideration, Report and Order, Order and Further Notice of Proposed Rulemaking, FCC 03-115, ¶ 18 (2003)).

⁴ TracFone October 13th *Ex Parte* at 3. The Coalition is not obligated to respond to each and every fabricated claim or contortion of the record created by TracFone. We stand by what we have said and not by what TracFone irresponsibly says we have said.

⁵ See *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 2 (Sept. 29, 2011) (“Coalition September 29th *Ex Parte*”).

⁶ See Coalition September 29th *Ex Parte* at 1-2 and *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 1 (Sept. 14, 2011).

⁷ See Coalition September 29th *Ex Parte* at 2.

⁸ See TracFone October 13th *Ex Parte* at 3-4.

⁹ See Coalition September 29th *Ex Parte* at 2.

¹⁰ See TracFone October 13th *Ex Parte* at 4.

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the customary charge an ETC is not entitled to charge the low income consumer. Whether the ETC chooses to waive the other half of the customary charge is a business decision the Commission should refrain from micro-regulating. Not only would such regulation needlessly interfere with business plans, it also would directly result in raising charges to low income Americans. Such an outcome at this point in time would be headline-worthy example of poor public policy. Moreover, it would be politically and legally unsustainable.

Contrary to TracFone's scathing but substance-free attack on the Commission and its Link Up program, the record demonstrates that elimination of Link Up funding would be counterproductive to the Commission's universal service goals. The Coalition supports the Commission's goals to eliminate waste, fraud and abuse in the program. That is why the Coalition has undertaken the extensive self-regulatory initiatives outlined in its previous filings that will result in the substantial savings to the fund. We believe that good stewardship of the fund is everyone's job.

Please feel free to contact the undersigned with any questions.

Respectfully submitted,



John J. Heitmann
Joshua T. Guyan

cc: Kim Scardino