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EX PARTE OR LATE FILED

November 14, 2011

FILED/ACCEPTED

NOV 14 2011

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

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

Re: **REDACTED – FOR PUBLIC INSPECTION**; WC Docket No. 11-42;
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

The Link Up for America Coalition (“Coalition”), through its attorneys, hereby submits one original and one copy of its Notice of Oral Ex Parte Presentation filed in the above-referenced docket.

In addition, pursuant to the Protective Order, the Coalition submits one copy of the Confidential version of its notice and two copies of the Redacted Confidential version of its notice. Further, the Coalition is delivering two copies of the Confidential version of its notice to Kimberly Scardino, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A465, Washington, D.C. 20554.

No. of Copies rec'd 0+4
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KELLEY DRYE & WARREN LLP

Marlene H. Dortch
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Please contact the undersigned with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Heitmann". The signature is written in a cursive style with a large, sweeping initial "J".

John J. Heitmann

cc: Sharon Gillett
Carol Matthey
Trent Karkrader
Kim Scardino
Divya Shenoy

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

Federal Communications Commission
Office of the Secretary

Re: Notice of Oral Ex Parte Presentation - WC Docket No. 11-42

Dear Ms. Dortch:

On Wednesday, November 9, 2011, David Skogen of Global Connections (“Global”), Brian Lisle of Telrite Corporation (“Telrite”), Chuck Campbell of CGM, and the undersigned on behalf of Global, Telrite and other members of the Link Up for America Coalition (“Coalition”) met with Sharon Gillett, Carol Matthey, Trent Harkrader, Kim Scardino and Divya Shenoy of the Wireline Competition Bureau to discuss proposed reforms to the Link Up component of the Commission’s Low Income Universal Service program. During the meeting, we discussed the Commission’s proposed reforms to the Link Up subsidy program. Our comments were consistent with the comments and replies filed by the Coalition on August 26, 2011 and September 2, 2011, respectively, in the above-captioned docket. Copies of documents discussed at the meeting are appended hereto for inclusion with this letter in the record of the above-captioned proceeding.¹

In response to questioning from the staff, the parties explained that Link Up is a carrier revenue replacement mechanism designed to reimburse revenue they forgo in reducing the customary charge for establishing telephone service for low income consumers, which generally takes the form of an activation fee. In response to staff’s questions regarding what costs wireless CETCs have for commencing service, we said the costs include order fulfillment, setting up the customer in customer support and other systems, network activation and provisioning, including paying the activation charge from the wireless wholesale provider, and

¹ The documents distributed at the meeting are included as Exhibit 1.

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in-person phone activation at events. In addition, Coalition members' costs for commencing service include some outreach activities.² Further, CETCs have additional costs for advertising, marketing, compliance costs, and the cost of handsets.³ The Notice of Proposed Rulemaking makes an important differentiation between outreach and marketing. "Outreach entails increasing public awareness of the program, while marketing relates to how ETCs describe and sell their USF-supported products to consumers."⁴ Although not directly addressed by the Commission, the Joint Board has strongly implied that outreach is a supportable activity for ETCs.⁵ The Commission also stressed the importance of ETC outreach activities.⁶

Regardless of the Commission's position on outreach, however, we explained that the costs related to activation also include in-person activation activities to assist customers with setting up the phone, making a test customer service call and answering questions, which normally occur at sign-up events. These costs, which per the Commission's definitions are

² Based on additional cost studies undertaken by Coalition members, such costs range from approximately **BEGIN CONFIDENTIAL \$XXXX to \$XXXX END CONFIDENTIAL**. Costs include administrative costs for account and phone setup and customer initial order fulfillment, new customer activation and provisioning and initial setup for customer support and office support services (includes setup to allow customers to access individual account information and can include invoicing setup). Coalition members have estimated outreach costs to be approximately **BEGIN CONFIDENTIAL \$XXXX END CONFIDENTIAL** of this total.

³ Although the Coalition maintains that these costs should be supportable, they are excluded from the total costs provided in the previous footnote.

⁴ *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, ¶ 1 (rel. Mar. 4, 2011) ("NPRM").

⁵ *See Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Recommended Decision, FCC 10J-3, ¶¶ 62, 65-66 (2010) (recommending prescribing mandatory outreach requirements for ETCs but not for states because "unlike carriers, states do not receive low income support from the Universal Service Fund.").

⁶ *See Lifeline and Link Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, ¶ 46 (2004) ("...carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service...For low income consumers that live in remote areas, including those living on tribal lands, traveling throughout an area or setting up an information booth at a central location may be more suitable outreach methods."); and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, Recommended Decision, FCC 10J-3, ¶ 64 (2010) ("The record also provides support for the role that community-based outreach can play in educating consumers about the Lifeline and Link Up programs.").

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neither outreach nor marketing, are analogous to costs involved in traditional wireline carriers sending a truck to a new customer's home to activate, test and explain the service to the customer.

Responding to a question regarding wireless handsets, the Coalition reiterated its support for the use of Link Up funding for broadband-capable handsets as the Lifeline program is modernized to bring broadband to low income consumers. Further, the Coalition maintained that the Commission has the authority to do so. Section 254(b)(2) of the Communications Act states that "access to advanced telecommunications and information services should be provided in all regions of the Nation."⁷ Further, Section 254(b)(3) states that, "[c]onsumers in all regions of the Nation, including low income consumers...should have access to...advanced telecommunications and information services...."⁸ Support for broadband-capable wireless handsets would be reasonably ancillary to meeting these statutory goals and therefore falls within the Commission's Title I ancillary authority.⁹

In response to staff questions regarding the customary charge for commencing service, Mr. Skogen and Mr. Lisle responded that each company has a customary charge of \$60.00. On the other hand, some wireless carriers have stated that they do not have an activation fee. In further discussion, we maintained that the general industry practice is to charge activation fees to initiate service to new customers and offered Verizon Wireless's \$35.00 activation fee as an example. The Coalition included the activation fees for AT&T and Verizon Wireless, which together serve the vast majority of wireless customers in the United States, in its comments.¹⁰

⁷ 47 U.S.C. § 254(b)(2). *See also* Comments of Cox Communications, Inc., WC Docket No. 11-42 et al. at 4-7 (filed Aug. 26, 2011).

⁸ 47 U.S.C. § 254(b)(3).

⁹ *See Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010). The two-part test states that the Commission "may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities." *Comcast*, 600 F.3d at 646 (citing *Am. Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

¹⁰ *See* Comments of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 12 (filed Aug. 26, 2011). In addition, Nexus submitted information regarding a study it conducted of service activation fees in the industry, which revealed that the top five carriers and over 40 other wireless carriers charge service activation fees. *See* Comments of Nexus Communications, Inc., WC Docket No. 11-42, at pp. 16-17 (filed Apr. 21, 2011).

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Based on the staff's inquiry, the Coalition provides the following summary of standard wireless carrier activation fees.¹¹

- AT&T Mobility - \$36
- Verizon Wireless - \$35
- Sprint - \$36
- T-Mobile - \$35
- SouthernLINC - \$35
- Cincinnati Bell - \$35
- Qwest Wireless - \$35

The carriers identified above serve the overwhelming majority of wireless customers in the United States. Accordingly, it is fair to say that they represent the general industry practice in the wireless marketplace.¹²

To the extent that the Commission determines that a new Link Up cap for wireless is necessary, the parties discussed the appropriate value. The Coalition referenced the fact that in 1987, the Joint Board established the \$30.00 Link Up cap based on national average charges of \$45.17 (for rotary service) and \$46.51 (for touch tone service) for "connecting a subscriber to the network."¹³ The national average for such connection charges, as reported by the Commission in its most recent Trends in Telephone Service Report released in September, 2010, remains essentially the same (*i.e.*, \$43.22).¹⁴ The Coalition has demonstrated above that the average wireless activation fee is approximately \$35.50. Therefore, based on the historical relationship between the industry activation charge and the appropriate Link Up cap, the Coalition submits that the wireless value should be in the same proportion as the wireline. The Link Up cap should then be approximately \$23.50 for wireless service (*i.e.*, \$45.17 is to \$30 as \$35.50 is to \$23.58). Any amount lower for wireless services would not be reasonably comparable to the revenue

¹¹ Website references for these activation fees are included together in Exhibit 2. The Cincinnati Bell activation fee is viewable at <http://www.cincinnati-bell.com/wireless/phones/>.

¹² Included as Exhibit 3 is a MyRatePlan.com cell phone and plan buying guide stating that, "[m]ost carriers charge an activation fee for setting up a new service. These fees vary, but most are around \$35."

¹³ See *MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, 2 FCC Rcd 2324, n.115 (1987) (emphasis added).

¹⁴ *Trends in Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau*, at 13-1 and Table 13.1 (Sept. 2010).

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replacement amount available for wireline ETCs and therefore would be unreasonably discriminatory.

While the Coalition believes that a continuing Link Up revenue replacement amount of \$30.00 remains justified, it would not oppose a \$24.00 amount based on the forgoing rationale in the interest of controlling costs for the fund. We explained that setting a lower dollar amount that remains as a revenue replacement mechanism as opposed to setting specific costs to be reimbursed would be a solution that achieves predictability and cost control, while reducing regulatory and administrative burdens for the Commission, USAC and wireless ETCs receiving Link Up subsidies.

Based on questions from staff, Mr. Skogen and Mr. Lisle indicated that they do in fact charge activation fees to their non-Lifeline customers, and as such, have established their baseline for Link Up subsidies.¹⁵ However, many state commissions require that ETCs waive the remaining half of their customary charge to Lifeline customers. The Coalition reiterated its position that waiving the customary charge, especially if required by a state commission, should not be prohibited and should not cause the Commission to conclude that an ETC does not have a customary charge supportable by Link Up. Many of the larger carriers referenced above waive their activation fees for promotional or other purposes.¹⁶ If carriers can waive activation fees for affluent customers, Coalition members should also be able to waive activation fees for low income customers. Denying a benefit to low income consumers that ETCs are often required or willing to provide would be contrary to the Commission's universal service goals and the purpose of the Low Income fund.

The discussion turned to the Coalition members' status as facilities-based resellers. Mr. Lisle informed the staff that Telrite uses its own facilities, including switches and transmission facilities, in combination with the facilities of wireless carriers to provide non-Lifeline and Lifeline wireless service. Commission precedent makes clear that in order to be considered facilities-based to receive ETC status, a carrier can provide service using a combination of its own facilities and the resale of another carrier's services.¹⁷ The Commission has also determined that an ETC does not have to use its own facilities to provide each of the designated services – rather a carrier must use its own facilities to provide at least one of the

¹⁵ The carriers indicated that a large majority of their customers are Lifeline.

¹⁶ See e.g., Best Buy promotional waiver of the Verizon Wireless activation fee, included as Exhibit 4.

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

Marlene H. Dortch, Secretary
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supported services.¹⁸ In addition, the facilities do not have to be located in the relevant service area – they just have to be used to provide the supported services in the service area established by the state commission.¹⁹ While the Commission requested comment in the NPRM regarding whether it should grant blanket forbearance from the facilities-based requirement in Section 214(e)(1)(A) of the Act for purposes of participating in the Link Up program,²⁰ it did not raise the question regarding whether it should change the facilities requirement to provide service as a CETC.

Finally, Mr. Campbell responded to questions regarding the Coalition’s Interim De-Duping process that will significantly reduce incidents of duplication in the Lifeline and Link Up programs. Mr. Campbell explained that the Active Line Edit is a check for duplicates within each carrier. He further explained that the Pooled, Pre-Sale, Dupe-Check Database will determine if any potential customer is a Lifeline customer of any other carrier that is part of the pooled process. Mr. Campbell and Mr. Skogen also explained that there is an initial, real-time dupe-check performed at the time the customer requests service to make sure that the customer is not currently receiving service from a provider participating in the voluntary program. A second check is performed before the CETC submits a customer for Link Up reimbursement.

The Link Up program provides revenue replacement to carriers to initiate important wireless services for low income consumers. These services provide low income consumers the same benefits of mobility that more affluent members of society enjoy. Now more than ever there are increasing numbers of low income consumers who can benefit from the wireless service provided by Coalition members with the support of the Low Income fund. Nevertheless, the Coalition understands the Commission’s goal to control disbursements from the fund. To that end, the Coalition has implemented its Code of Conduct and Interim De-Duping process to reduce waste, fraud and abuse in the program during the period before the Commission can implement a permanent database solution. Further, the Coalition stands ready to work with the Commission on the issue of establishing an appropriate wireless Link Up revenue replacement cap based on the industry standard activation fees described herein.

¹⁸ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 169 (1997).

¹⁹ See 47 C.F.R. § 54.201(g).

²⁰ See *NPRM*, ¶ 308.

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KELLEY DRYE & WARREN LLP

Marlene H. Dortch, Secretary
November 14, 2011
Page Seven

In accordance with the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Heitmann". The signature is written in a cursive style with a large, sweeping initial "J".

John J. Heitmann
Joshua T. Guyan

cc: Sharon Gillett
Carol Matthey
Trent Harkrader
Kim Scardino
Divya Shenoy

EXHIBIT 1

Preserving Link Up for Low Income Americans

WC Docket No. 11-42

Link Up for America Coalition
November 9, 2011

Link Up for America Coalition

- The Coalition members include the following facilities-based wireless CETCs:
 - Assist Wireless, Global Connections of America, Midwestern Telecommunications, NewPhone, Ready Wireless, Tag Mobile, Telrite/Life Wireless, Absolute Home Phones and Affordable Phone
- Our goals are to preserve Link Up for low income Americans and to be good stewards of the Fund by eliminating waste, fraud and abuse
- Coalition members have instituted a voluntary Code of Conduct and Interim De-Duping Process that will save the Fund millions prior to implementation of a permanent data base solution
 - TerraCom and YourTel also have committed to these voluntary self-regulatory programs

Link Up Is a Success Story

- **Link Up was established to remove low income consumer penetration barriers presented by customary activation charges**
 - The Commission repeatedly has touted the success of Link Up, calling it “critical” as recently as March
- **Link Up is a revenue replacement mechanism**
 - It is not presently a “cost reimbursement” program
 - Wireless CETCs use Link Up subsidies to reduce their customary charges
 - Coalition members have driven subscription rates up using legitimate business plans incorporating in-market outreach and extensive in-person customer activation programs
- **Link Up is competitively neutral and technology neutral**
 - It’s not unfair to TracFone
 - It’s not a wireline only program

Where We Stand

- **The Coalition does not support the elimination or limitation of Link Up**
 - The record does not support eliminating Link Up as it would drive down penetration rates for low income consumers
 - The record does not support reducing the current subsidy caps
 - FCC data indicates that customary charges have remained about the same
 - Limiting support to “truck rolls” would upend Commission precedent and largely eliminate Link Up
 - Limiting Link Up support for wireless ETCs would be neither competitively nor technology neutral

Where We Stand

- **The Coalition supports modernization of Link Up**
 - A permanent data base solution will address most Link Up waste, fraud and abuse
 - We agree that costs matter
 - We have taken a closer look at cost factors and amounts...focusing on data not rhetoric
 - Coalition members have significant customer activation costs
 - A safe harbor mechanism could provide predictability and cost control, and reduce administrative burdens for the FCC, USAC and wireless CETCs
 - The Commission should expand Link Up for broadband
 - Implementation of reforms must include guidance to avoid administrative uncertainty and allow CETCs sufficient time to change customer-facing materials and business plans

Where We Stand

▪ Customary charges

- We agree that customary charges are the stated charges ordinarily imposed on customers in a state and are not imposed only on Lifeline/Link Up customers
- We do not agree that customary charges should be defined to exclude charges waived, reduced or eliminated
 - Many states require CETCs to waive customary charges not covered by the Link Up subsidy
 - Waivers, reductions and credits/elimination of these charges benefit low income consumers and serve the goal of the fund
 - Restrictions on CETCs' ability to waive, reduce or credit customary charges would be unreasonably discriminatory...further, it would be bad public policy
- The Commission should focus on what's good for low income consumers and not on what's good for TracFone
 - TracFone and others chose not to rely on Link Up
 - Coalition members and their low income customers are using Link Up as it was intended to be used

Setting the Record Straight on Costs

- **Link Up is not now and never has been limited to the costs of “truck rolls” or other physical installation of facilities**
 - Such a limitation would effectively eliminate Link Up for wireless providers
- **Parties claiming reduced customer activation costs have not provided data to support their claims**
 - Coalition data shows that costs remain substantial
 - FCC statistics show that activation charges remain about the same
 - Most wireline and wireless carriers impose activation charges on new customers
 - TracFone and Leap/Cricket are exceptions

Setting the Record Straight on Costs

- TracFone, Cricket and others are wrong with respect to costs contemplated by the current Link Up revenue recovery mechanism – a whole lot more than “flipping the switch” was contemplated
 - Activation, provisioning and connection costs, including systems and switch set-up, as well as in-person activation programs
 - Administrative costs of establishing an account, including verification, certification and recordkeeping
- The Tribal Order extended the realm of costs contemplated by the Link Up revenue recovery mechanism to include
 - Truck rolls/facilities installation
 - Handsets (partial; reconsidered several years later)
- The 2010 Joint Board Recommended Decision implies that outreach costs are contemplated by the current Link Up revenue recovery mechanism
 - The Act and FCC rules require outreach
- TracFone is wrong with respect to costs that could or should be covered under a modernized Link Up program
 - The Commission can and should choose to expand Link Up support for broadband-capable handsets

TracFone Argument & Fact Checker

- TracFone: Link Up is only for connections
 - FCC: Link Up is for the replacement of foregone revenue from activation charges applied to recover service commencement costs, including (but not limited to) administrative costs
- TracFone: Link Up is only for residential/landline phone lines
 - FCC: Link Up is available for wireless ETCs
- TracFone: Link Up is not intended to cover outreach
 - Joint Board: ETCs have outreach requirements because Link Up/Lifeline subsidies go to them
 - CenturyLink: our activation charges include recovery for overhead, including marketing

TracFone Argument & Fact Checker

- TracFone: CETC activation charges can't be customary, because they factor in costs associated with serving Lifeline customers or are imposed only on Lifeline customers
 - FCC: no rules prohibiting the establishment of charges based on average costs to serve different classes of customers
 - Coalition: we do not impose activation charges exclusively on Lifeline customers
- TracFone: customary charges cannot be customary, if they are waived
 - States: customary charges shall be waived
 - Coalition: this does not make the charge something other than customary
 - AT&T: agrees that state waiver requirements should not render an ETC ineligible for Link Up funding

TracFone Argument & Fact Checker

- TracFone: Our success in signing-up Lifeline customers shows that Link Up is not needed
 - FCC: Link Up is critical
 - Joint Board: Link Up is essential
 - Low Income Consumers: none who have been connected in part due to Link Up funding are likely to agree with TracFone
 - Coalition: our success in signing up the Lifeline customers shows that Link Up is essential to realizing universal service goals
 - Coalition: TracFone's cream-skimming model has limited reach and appeal
 - Our outreach and in-person activation programs involve and employ people in poor communities, providing in-person education about the Lifeline/Link Up program and in-person instruction about how to use our handsets
 - The Commission and the Joint Board have recognized that this type of outreach is essential to achieving the universal service goals set forth in the Act
 - In-person activation is a higher cost model worthy of Link Up support

Leap/Cricket Argument & Fact Checker

- Leap/Cricket: Link Up was not designed to replace foregone revenues irrespective of costs
 - Coalition: we agree; we provided sample cost data and we encourage the FCC to look at it and to seek more of it in a further rulemaking proceeding
- Leap/Cricket: Customer activation costs have decreased significantly over time
 - Coalition: saying the same thing repeatedly does not make it so – there is no evidence in the record to support this claim
- Leap/Cricket: there is no justification for keeping Link Up given declining costs and increased flexibility in establishing per minute charges to recover costs (in other words – raise per minute rates for low income consumers)
 - Coalition: record evidence does not support Cricket's declining cost assertion
 - Coalition: sure, we can raise rates, but some customers won't be able to pay higher rates and subscription levels will go down – what's good for Leap/Cricket isn't good for low income consumers, us or the Commission

What the Commission Should Do

- **Adopt a permanent data base solution**
- **Preserve Link Up in its current form**
 - Reject proposals to eliminate Link Up
 - Reject proposals to reduce the subsidy cap
 - Clarify that customary charges can include those that are waived, reduced or eliminated for the benefit of low income Americans
 - Reject calls to impose new facilities requirements on wireless CETCs
- **Issue an FNPRM**
 - We support modernization of Link Up, based on data and solid understanding of how various proposals will increase subscribership
 - We encourage the Commission to thoughtfully revisit current subsidy caps by taking a closer look at cost data, business models and the low income consumer
 - We support extending Lifeline and Link Up to support broadband, including support for broadband-capable handsets

Thank You

Link Up for America Coalition

c/o John Heitmann
Kelley Drye & Warren LLP
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202.342.8544

LINK UP FOR AMERICA COALITION
VOLUNTARY LIFELINE AND LINK UP CODE OF CONDUCT

The members of the Link Up for America Coalition¹ have agreed to voluntarily comply as of October 1, 2011 with the following principles designed to protect against waste, fraud and abuse of the Lifeline and Link Up programs,² specifically to combat duplication of benefits.

First, member marketing materials clearly state that the service is Lifeline-supported.

Second, members explain in clear and plain language to new customers that they may not receive more than one Lifeline supported service.

Third, members require all Lifeline applicants to provide information for an internal name and address duplicate cross-check.

Fourth, members require all Lifeline applicants to confirm on the application form that he or she is not receiving Lifeline supported service from any other Lifeline provider.

Fifth, members require all Lifeline applicants to self-certify that they receive Lifeline services only from the member.

Sixth, members make the ultimate decision regarding certification and verification to enroll a subscriber for Lifeline service.

Seventh, members fully cooperate with the Commission, USAC and state public utility commissions to detect and resolve duplicate Lifeline claims.

Eighth, members make available subscriber data to USAC and state public utility commissions upon request to protect against duplication.

Ninth, if a member discovers that a customer is receiving duplicate service, it will inform the customer that it must choose one service provider.

Tenth, members de-enroll Lifeline subscribers that the member knows are no longer eligible or that do not use their Lifeline service for more than 60 days after notice and a 30 day grace period, or as otherwise required by a state public utility commission.

¹ Current Coalition members are Assist Wireless, Global Connections of America, Midwestern Telecommunications (MTI), NewPhone, Ready Wireless, Tag Mobile and Telrite (Life Wireless). The Coalition welcomes other Lifeline and/or Link Up recipients to voluntarily comply with these principles. Additional ETCs voluntarily committing to comply with these principles include: TerraCom and YourTel.

² References to Lifeline are inclusive of the Link Up program.