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January 20, 2012

VIA ECFS

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

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

Dear Ms. Dortch:

On Wednesday, January 18, 2012, Brian Lisle of Telrite Corporation ("Telrite") and the undersigned counsel on behalf of Telrite and other members of the Link Up for America Coalition ("Coalition") met with Christine D. Kurth, Policy Director and Wireline Counsel to Commissioner McDowell, to discuss proposed reforms to the Link Up component of the Commission's Low-Income Universal Service program. Our discussions were consistent with the comments and replies filed by the Coalition on August 26, 2011 and September 2, 2011, respectively, in the low-income proceeding dockets and subsequent *ex parte* presentations, including but not limited to our December 15, 2011 *ex parte* notification.

Link Up has helped Coalition members bring more than one million low-income consumers into the Lifeline program. We discussed the continued and increasing need for Lifeline and Link Up support in low-income communities and the role that Coalition members play to reach further and deeper into the low-income market than the Lifeline-only carriers. The Coalition members do this by using a community-based business model built on in-person contact and program-related education. Link Up helps low-income consumers remove the barrier presented by activation fees needed to recover higher costs experienced by smaller wireless ETCs including Coalition members.

Lifeline-only ETCs do not reach most eligible low-income consumers. We asserted that neither the goals of the Fund nor the interests of low-income consumers would be well served by effectively limiting choices in Lifeline service providers to the incumbent LECs and the large Lifeline-only wireless ETCs. Specifically, we discussed data submitted by the Coalition in its initial comments demonstrating that TracFone's penetration rate generally tops-out at about 20 percent of low-income households, leaving the vast majority of the eligible low-income market without and often unaware of Lifeline service.[1] We indicated that we had updated our data and stated that it is consistent with the initial data we filed. The data continues to support our assertion regarding the inability of Lifeline-only providers to reach the majority of low-income consumers.[2] The attached chart was prepared by CGM, LLC and it shows that TracFone's market penetration after approximately three years in service in each of its top-ten states continues to top-out at about 20 percent of low-income households (*i.e.*, 22 percent on average). This chart shows that TracFone rapidly increases its market penetration in a state over the first six months and then plateaus into a no-growth or low-growth phase thereafter. While TracFone's business model is successful at rapidly bringing Lifeline-supported service to about 20 percent of the low-income households in a market, it does not reach the remaining 80 percent (who are typically less affluent relative to those who are able to enroll in TracFone's services by phone or the Internet). We explained that Coalition members have worked hard through in-person outreach and events to locate, educate and serve those unserved low-income consumers and noted that Coalition members have been very successful in bringing low-income consumers into the Lifeline program in states where TracFone has been in the market long before Coalition members.

Voice and mobility should remain the first priority for the Low-Income Program, but low-income consumers also should have access to broadband. We stated our support for the goal of bringing broadband to low-income consumers, but cautioned that such efforts should not come at the expense of elements of the Low-Income Program, such as Link Up, that have proven successful and essential to supporting voice and mobility. We also discussed Coalition members' plans to provide mobile broadband data services as part of their existing Link Up and Lifeline supported offerings. We explained that it is certainly feasible to

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1 *See* Comments of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 17-18 (filed Aug. 26, 2011).

2 We also discussed the market penetration of Cricket, which has averaged about 37,000 lines over the last six months and represents only about one-quarter of 1 percent of the market. We noted that Cricket's current product offerings are unattractive to many, if not most Lifeline eligible customers because its products create high entry barriers for these consumers. Cricket customers are required to establish a wireless service account, purchase a phone and then apply for Lifeline credit, which can take up to 60 days for approval. The substantial out-of-pocket costs associated with Cricket's service offerings suggest that these products are not intended to be successful in the Lifeline market. *See* Notice of Oral *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 at 6 (filed Dec. 15, 2011) ("Coalition December 15th *Ex Parte*").

provide broadband data services to Lifeline customers, which would count against the customer's allotted minutes, but noted that the cost of a broadband-capable smartphone presents a significant barrier. We also noted that the Commission previously supported handset costs through Link Up funding and it should do so again, especially given that smartphones effectively function as an extension of a carrier's network.[3]

Further guidance is needed on the facilities required to retain existing and obtain new ETC designations. We explained that wireless ETCs need clarification on the facilities necessary to meet the requirements of Section 214(e)(1)(A) and revised rule Section 54.101 so that they can adjust business plans, secure adequate facilities and modify serving configurations. We noted that such guidance was necessary for pending ETC designation applications to be processed and to retain existing ETC designations.

A defined and streamlined path to forbearance from the facilities requirement should be offered. We stated that wireless ETCs also ought to be given a defined and streamlined path toward grant of forbearance from the facilities requirement in Section 214(e)(1)(A), so that they can retain existing ETC designations and obtain new ones, even when they do not have the requisite facilities needed to meet the facilities requirement. Citing pending data requests from state commissions with respect to new ETC applications and existing ETC designations – and the July 1, 2012 effective date of revised rule Section 54.101 for existing ETCs, we emphasized that the traditional 12-to-15 month forbearance process would not suffice and that streamlined resolution was needed to provide stability and predictability for ETCs and their Lifeline customers.

Link Up eligibility should not be tethered to forbearance from the facilities requirement. We emphasized that Commission grant of forbearance from the facilities requirement for ETCs should not render an ETC ineligible to receive Link Up subsidies. There is no difference between the Lifeline and Link Up aspects of the Low-Income Program that would require carriers to use their own facilities in order to effectively utilize Link Up funding versus Lifeline funding. Commission rules make plain that eligibility for Link Up funding is not dependent on facilities, but rather on a carriers' reduction of its customary charge.[4]

A modified definition of Customary Charge should allow ETCs to waive, reduce or eliminate the charge for the benefit of low-income consumers. Coalition members' customary charges are based on real and substantial costs such as administrative costs for account and phone setup and customer initial order fulfillment, new customer activation and

3 *See* Notice of Oral *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 at 3 (filed Nov. 14, 2011) ("Coalition November 14th *Ex Parte*").

4 *See* Coalition December 15th *Ex Parte* at 4-5.

provisioning, and initial setup for customer support and office support services.[5] The act of waiving, reducing or eliminating the remainder of the customary charge does not make the charge something other than a customary charge. The Commission should not proscribe this practice (sometimes mandated by the states), as it benefits low-income consumers with no detrimental impact on the Fund.

If the Commission decides to reduce the Link Up reimbursement, it should be done in a proportional and technology neutral manner. We discussed the Coalition's willingness to accept a reduced Link Up cap for wireless ETCs and indicated that the Coalition had submitted data to support appropriate benchmarks. We stated that the appropriate benchmark for wireless carriers is the general industry practice to charge an activation fee of $35.00 or $36.00. Based on the original calculation of the Link Up cap for wireline, a proportional wireless cap would be in the range of $24.00.[6] Finally, we noted that pre-paid wireless service plans often shift up-front costs into service plan charges, fees and handset charges and thus do not provide an appropriate benchmark.[7]

A National Database will effectively address most cases of waste, fraud and abuse. We reiterated our support for national database solutions to prevent duplicate enrollments and to verify eligibility. We also noted that in the interim, Coalition members are taking important steps to reduce waste, fraud and abuse, including implementing a voluntary Code of Conduct, ongoing development and implementation of an Interim De-Duping Process and participation in the Commission's Industry Duplicate Resolution Process.

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5 *See* Notice of Oral *Ex Parte* Presentation of Windstream Communications, WC Docket No. 11-42 et al at 6 (filed Dec. 21, 2011) (arguing that "ETCs incur real costs in commencing telephone service even where service initiation does not require new installation at the customer premises. These include costs associated with making the access line available to the customer, provisioning services, processing orders, verifying credit, setting up the account, activating billing and activating the line at the wire center.").

6 *See* Coalition November 14th *Ex Parte* at 4-5.

7 *See* Coalition December 15th *Ex Parte* at 6-7.

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,

John J. Heitmann

cc: Commissioner Robert McDowell
Christine Kurth
Angie Kronenberg
Zachary Katz
Michael Steffen
Sharon Gillett
Carol Mattey
Patrick Halley
Trent Harkrader
Kim Scardino
Garnet Hanly

Attachment – TracFone Subscribership Growth Over Time

TracFone	2011-04 Line Count	2011-05 Line Count	2011-06 Line Count	2011-07 Line Count	2011-08 Line Count	2011-09 Line Count	2011-10 Line Count	2011-11 Line Count	Total Line Count Since Inception	Mo. Growth Rate M1-6	Mo. Growth Rate M7 to Current	Months in Operation	Growth Count M12 to Current (23 months avg)	Est. of Total Eligible Households	TracFone's Est. Market Penetration Rate at 6mo.	TracFone's Current Est. Market Penetration Rate
FL	442,120	443,504	445,142	451,479	453,922	452,862	445,978	448,944	3,583,951	83%	1%	39	5,188	1,959,807	16%	23%
NY	304,621	304,590	313,390	317,290	313,371	327,747	327,449	327,151	2,535,609	194%	0%	34	-40,327	2,698,400	11%	12%
OH	365,891	372,665	382,010	388,657	391,587	399,759	397,972	398,866	3,097,407	100%	2%	28	87,958	1,106,971	25%	35%
MI	238,972	236,892	236,307	237,857	239,048	246,833	246,341	246,953	1,929,203	170%	0%	33	-43,745	1,218,069	20%	19%
GA	265,950	268,117	274,901	283,826	288,936	297,869	300,060	302,267	2,281,926	410%	2%	35	49,529	1,063,429	17%	26%
NC	203,352	202,390	202,017	203,121	204,533	211,995	214,412	215,575	1,657,395	69%	0%	33	-12,841	1,046,617	19%	19%
TN	158,662	158,558	158,583	159,527	159,091	155,538	156,556	156,639	1,263,154	258%	2%	40	-5,539	820,241	11%	19%
PA	227,223	231,164	236,656	242,485	245,016	252,346	253,386	256,487	1,944,763	92%	4%	34	76,965	1,209,086	8%	20%
MA	175,948	180,386	182,280	184,114	184,581	187,758	189,924	192,115	1,477,106	191%	3%	35	48,723	659,771	17%	28%
VA	114,050	114,625	116,784	118,352	122,136	124,994	127,538	128,971	967,450	59%	1%	38	309	543,141	17%	22%
Total	2,496,789	2,512,891	2,548,070	2,586,708	2,602,221	2,657,701	2,659,616	2,673,968	20,737,964				166,220	12,325,533	16%	22%
Average	249,679	251,289	254,807	258,671	260,222	265,770	265,962	267,397	2,073,796	163%	1%	35	723			