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January 25, 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 Monday, January 23, 2012, Dave Skogen of Global Connections ("Global") and the undersigned counsel, on behalf of Global and other members of the Link Up for America Coalition ("Coalition"), met with Carol Mattey, Trent Harkrader, Kim Scardino and Garnet Hanly of the Wireline Competition Bureau ("Bureau"), and separately with Commissioner Mignon Clyburn and her Wireline Legal Advisor Angela Kronenberg, 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 with subsequent Coalition *ex parte* presentations.

Efforts to expand telephone subscription rates must focus on low-income communities. We discussed the continued and increasing need for Lifeline and Link Up support in low-income communities to maintain and expand nationwide telephone penetration rates. Specifically, we discussed the fact that the most effective and efficient way to maintain and increase the overall penetration rate for telephone services is to target and support low-income consumers using the Low-Income Fund. This is because, according to the Commission, 96 percent of American households have telephone service, but only 90 percent of low-income households do.[1] While there may be a very small number of wealthy households in the country that do not have telephone service and do not want it, the vast majority of the people that want telephone service – and do not have it – are low-income individuals. Thus, an increase in Lifeline participation is the best way to maintain and increase overall telephone subscription rates and to fulfill the Commission's Section 254 mandate.

While the statistics demonstrate a sizable gap between telephone service subscription rates in low-income communities and the rest of America, they fail to fully capture the significant and important role Lifeline and Link Up have in ensuring that America's poorest individuals can participate fully in our economy and reach emergency services in times of need. Amplifying these points, one commenter recently stated that the poor need these communications services for "mentoring young people, providing food bank services, job placement and work scheduling, teacher/parent school issues, medical needs, emergencies, child care needs, utility shut-offs, preventing criminal recidivism, and more."[2] The fact that the penetration rate for the Lifeline program is only 33 percent means that the Low-Income Program remains underutilized as a tool for expanding the availability of communications services to low-income communities.[3]

More than 90 percent of Coalition member enrollments take place in-person. Coalition members and other wireless ETCs have recently been able to increase Lifeline penetration by reaching deep into low-income communities. This community-based outreach and enrollment model is made possible in part by Link Up. For example, Mr. Skogen referenced a homeless shelter in Missouri that called Global looking for a carrier to send someone to the shelter to discuss Lifeline supported communications services with the residents. The shelter had already called a large Lifeline-only provider, but that provider had declined to send a representative. Global sent a representative to meet with eligible customers in-person to discuss Global's Lifeline service options.

Indeed, more than 90 percent of Coalition member enrollments take place in-person. For some Coalition members, such as TAG Mobile, Telrite and Global, the in-person

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1 *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, ¶ 11, n.18 (rel. Mar. 4, 2011) ("2011 Lifeline/Link Up NPRM"); *see also* Comments of the Link Up for America Coalition, WC Docket No. 11-42 et al. at 6 (filed Aug. 26, 2011).

2 Notice of Oral *Ex Parte* Presentation of the Rainbow PUSH Coalition, WC Docket No. 11-42 et al at 2 (filed Jan. 23, 2012) ("Rainbow PUSH Coalition January 23rd *Ex Parte*").

3 *See* 2011 Lifeline/Link Up NPRM, ¶ 25.

sign-up rate is actually closer to 100 percent.[4] These statistics almost certainly cannot be replicated by Lifeline-only ETCs who rely heavily on telephone and web-based enrollment processes, rather than on extensive community-based outreach and enrollment processes.[5]

As we have stated previously, it is this type of in-market presence that is required to reach customers not reached by the Lifeline-only ETCs or the incumbent LECs who prefer not to serve this class of customer.[6] To date, TracFone has been unable to refute record data demonstrating that its Lifeline market penetration tops-out at about 20 percent. This data submission, prepared by CGM, LLC and based on publicly available USAC data, most recently was updated in the Coalition's January 20, 2012 *ex parte* notification filing.[7] Coalition members, who voluntarily implemented in October 2011 a 60-day non-usage policy and comply with applicable annual verification requirements,[8] have been very successful in bringing low-income consumers into the Lifeline program in states where TracFone has been in the market long before they entered. This is because Coalition members devote resources to reach where TracFone and other Lifeline-only ETCs do not and to educate and serve those unserved low-

[4] Coalition member TAG Mobile's study of new accounts for 2011 show that 96 percent of enrollments occurred in-person.

[5] Coalition members report that they simply do not encounter TracFone outreach and enrollment initiatives in the communities they serve. It does not appear that TracFone or the other Lifeline-only ETCs have disclosed the number of customers each educates and enrolls through face-to-face interaction, rather than through phone or web-based processes.

[6] We noted that Cricket's high up-front costs (monthly service plan and handset costs that often exceed $50.00, coupled with a delay in Lifeline subsidy) indicate that Cricket is targeting an "accidental" Lifeline customer (*i.e.*, one that would have signed up for Cricket's services with or without the subsidy). This model has to date proven to be relatively ineffective in bringing Lifeline-eligible customers into the program. *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*") and Notice of Oral *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 at n.2 and Attachment (filed Jan. 20, 2012) ("Coalition January 20th *Ex Parte*).

[7] *See id*. at 2 and Attachment.

[8] The Coalition strongly opposes replacing the current sampling-based annual verification process with an "all customer" annual verification process or re-certification process. An all customer annual verification or recertification process would impose enormous costs on the Coalition's small business members and would result in throngs of *eligible* consumers being removed from the Lifeline program – and disconnected from phone service, job opportunities and emergency services. This kind of blunt and unduly burdensome regulation is precisely the type of regulation that Democrats and Republicans alike can agree we all can do without, especially when the ranks of the nation's poor are so swollen.

income consumers through in-person outreach and events. Indeed, with Link Up and Lifeline subsidies, Coalition members have been able to bring more than one million new customers into the Lifeline program.[9]

Most customers have no other phone service at time of Lifeline enrollment. According to Nexus, "[a]pproximately 62% of Nexus' Lifeline subscribers have no phone at the time of enrollment."[10] Although no Coalition member collects this information on an ongoing basis, in response to our meeting with the Bureau staff, Coalition member Global conducted a one-day "flash" study of 356 applicants on January 24, 2012 and found that **72 percent** of its applicants for Lifeline service did not have active telephone service (wireless or wireline) at the time of enrollment in Global's Lifeline-supported wireless telephone service. Coalition member Absolute Home Phones also did a one-day "flash" study of 392 applicants on January 24, 2012 and found that **76 percent** of its applicants for Lifeline service did not have active telephone service (wireless or wireline) at the time of enrollment. Finally, Coalition member Affordable Phone conducted the same "flash" study of 118 applicants on January 24, 2012 and found that **77 percent** of its applicants for Lifeline service did not have active telephone service (wireless or wireline) at the time of enrollment. These data points demonstrate clearly that Lifeline and Link Up support are essential to meet the goal of expanding telephone service to those that do not currently have service.

In-person enrollment will be key to successful low-income broadband initiatives. 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 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

9 During the Bureau meeting, we referenced record data demonstrating that Coalition members incur real activation costs, including charges from underlying providers. *See* Notice of Oral *Ex Parte* Presentation of the Link Up for America Coalition, WC Docket No. 11-42 at 1-2 (filed Nov. 14, 2011) ("Coalition November 14th *Ex Parte*") and Coalition December 15th *Ex Parte* at 7 (confirming that almost all Coalition members do in fact pay a network activation and provisioning charge from their underlying provider.). Given its size, TracFone is unlikely to have the same costs. Indeed, TracFone does not pay any activation charges to its underlying providers. *See* Notice of Ex Parte Presentation of TracFone Wireless, Inc., WT Docket No. 11-42 et al at 3 (filed Nov. 21, 2011).

10 Notice of Oral *Ex Parte* Presentation of Nexus Communications, Inc., WC Docket No. 11-42 et al (filed Jan. 20, 2012) ("Nexus January 20th *Ex Parte*").

smartphone (which Mr. Skogen indicated is generally twice the cost of a traditional wireless handset) presents a significant barrier.

Mr. Skogen also explained that Global's in-person outreach and activation activities include showing eligible recipients how to use their new wireless phone, including, for example, how activate the phone and how to make an emergency call. He indicated that such educational activities will be even more critical when low-income consumers are able to receive a smartphone to access the Internet. Representatives will be able to show people how to access job boards and postings and set up and operate an email account through the smartphone, so that the user can stay in touch with work or the status on job interviews, among other things. The Coalition supports using Link Up to subsidize smartphone costs and the in-person outreach that will be essential to the success of any low-income broadband initiative.

Further guidance is needed on the facilities required to retain existing and obtain new ETC designations. We also emphasized 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 is dependant on eligibility under the Link Up rules – it 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.[11] We also noted that the reason that TracFone does

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

not receive Link Up is because it does not meet the requirements of the Commission's rules for Link Up (*i.e.*, it does not have a customary charge), not because it received forbearance from the ETC facilities requirement.

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 described previously by the Coalition[12] and other parties in the docket.[13] 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 as it benefits low-income consumers with no detrimental impact on the Fund. Currently, Georgia, West Virginia, Mississippi, Minnesota and New Jersey all require that ETCs waive the remainder of the customary charge, and other states are likely to follow suit.

A modified definition of Customary Charge should not include arbitrary thresholds. Coalition members apply the customary charge to both Lifeline and non-Lifeline customers, but generally non-Lifeline customers are a small percentage of their base because their marketing is focused on low-income consumers that are eligible for Lifeline support. This focus serves the purposes of the Low-Income Program. Any requirement that ETCs maintain a certain percentage of non-Lifeline customers or collect a customary charge from a certain percentage of their customers would be arbitrary and capricious. Whether mandated or voluntary, customary charge waivers, reductions or credits benefit low-income consumers and do not indicate that excessive support is being provided.

If the Commission decides to reduce the Link Up reimbursement, it should be done in a proportional and technology neutral manner. During our meeting with the Bureau, 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 referenced our previous explanation 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

12 *See* Coalition November 14th *Ex Parte* at 1-3.

13 *See e.g.*, 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.").

tone service) for "connecting a subscriber to the network."[14] 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).[15] The Coalition has demonstrated that the average wireless activation fee is approximately $35.50.[16] 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 value. The Link Up cap should then be approximately $24.00 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 replacement amount available for wireline ETCs and would have to be justified with an alternate rational basis.

We also discussed whether Link Up could be transitioned away from a service activation revenue replacement mechanism to a customer acquisition fee, as proposed by Nexus.[17] We indicated that the Coalition would not oppose such an approach. Bringing telephone service to those without it is the purpose of the Low-Income Fund and that purpose could be served by paying carriers a one-time fee for the marketing, outreach and education activities necessary to bring eligible customers into the program. We also discussed, however, that a dramatic reduction in the Link Up subsidy would require a complete re-evaluation of each competitive ETC's business plan, in order to address the need to dramatically decrease costs in a manner likely to reduce handset quality, distribution and outreach methods, and/or the number of free minutes included in service plans (which will require revisiting obligations undertaken in, and imposed by, the various states). This process would require at least six months, and likely much longer to avoid undue disruption to the Coalition's small business members and their low-income customers.

Further, we emphasized the difficulty in collecting any minimum charge amount from customers and asserted that imposing new charges on low-income consumers was not a feasible means to supplement a dramatic reduction in Link Up support. In addition to the difficulty that low-income Americans would have in paying any such fee (40 percent of Americans have no discretionary income),[18] collecting these amounts at in-person events would be administratively infeasible. Many people in the low-income community do not have credit

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14 *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).

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

16 *See* Coalition November 14th *Ex Parte* at 3-4.

17 *See* Nexus January 20th *Ex Parte* at 3-4.

18 *See* Rainbow PUSH Coalition January 23rd *Ex Parte* at 2.

cards or bank accounts and so the transaction fees for non-cash transactions would impose substantial costs. Many low-income people live paycheck-to-paycheck primarily using cash for transactions. Collecting cash at the events that Coalition members hold would present significant security risks and costs. Further, any monthly charge would have to be collected up front for the year because it would be virtually impossible to collect on a monthly basis, which would further exacerbate feasibility and security issues. In short, the imposition of minimum charges is a clear way to drive away eligible consumers and to reduce the likelihood of getting low income consumers connected to the network. Here, too, the regulatory solution proposed is both too burdensome and likely to undermine rather than promote achievement of the Commission's statutory mandate.

A National Database will effectively address most cases of waste, fraud and abuse. The Coalition reiterates its support for national database solutions to prevent duplicate enrollments and to verify eligibility. We stand ready to participate in the creation and implementation of essential and efficient database solutions. Indeed, 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.

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

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cc: Commissioner Mignon Clyburn
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