

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
América Móvil, S.A.B. de C.V., Transferor,)
)
and)
) **IB File No. ITC-T/C-20200930-00173**
Verizon Communications Inc., Transferee,)
)
Applications for Consent to Transfer Control)
Of TracFone Wireless, Inc. Pursuant to)
Section 214 of the Communications Act)
of 1934, as amended)
)

COMMENTS OF NEXT CENTURY CITIES

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COMMENTS OF NEXT CENTURY CITIES

I. Introduction

Next Century Cities (“NCC”)¹ submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) public notice of the application for consent to the transfer of control of TracFone Wireless, Inc., to Verizon Communications Inc. pursuant to Section 214 of the Communications Act.²

Especially in the wake of the Coronavirus (“COVID-19”) pandemic, the Lifeline program plays an essential role in keeping low-income consumers connected. Some households are not connected simply because the infrastructure in their area does not exist, while others are unable

¹ Next Century cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities in 40 states that works in collaboration with local officials to ensure reliable and affordable broadband access for every community regardless of zip code while helping others realize the economic, social, and public health importance of high-speed connectivity.

² Application for Consent to Transfer Control of TracFone Wireless, Inc. Pursuant to Section 214 of the Communications Act of 1934, as Amended, Public Notice, Report No. TEL-02056NS (IB 2020) (“the Application”).

to connect because service is unaffordable. Additionally, Lifeline provides alternatives for low-income consumers who are unable to find an affordable price point in the fixed or wireless broadband marketplace. Often, in the prepaid market, providers offer devices and services at a lower price point than those on postpaid contract plans.

The potential merger between Verizon and TracFone is likely to lead to serious consequences for the low-income communities that rely on TracFone, which is currently one of the largest wireless Lifeline providers in the nation. Whereas, Verizon has historically avoided participating in the Lifeline program, and it is unclear whether it will seek to continue Lifeline services for TracFone customers.

Finally, this merger's impact on the competitive landscape of the mobile market can only be truly determined through a detailed review of the transaction. A full review will ensure that the Commission has satisfied its obligation to determine whether the transfer serves the public interest as required by section 310(d) of the Communications Act, which would not be possible with an abbreviated review of the Application.³

The Commission has already rejected the Applicants' request for expedited review. Given the lasting consequences of this transaction, the Commission must ensure that those who need to remain connected are not unfairly disadvantaged, and competition in the mobile marketplace is not stifled.⁴ Again, consent should be denied.

³ 47 U.S.C. § 310(d) (2018) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby”).

⁴ Non-Streamlined International Applications/Petitions Accepted For Filing, FCC Public Notice, Report No. TEL-02056NS at 1 (Nov. 20, 2020).

II. This Merger Could Erode Participation in the Lifeline Program, An Essential Service for Low-Income Consumers

With no end in sight for distance learning and remote work mandates, being able to get online remains critical. Unfortunately, low-income families are often forced to choose which bills they pay monthly. Between rent, medical care, food, and utilities, and internet, a household may be forced to forgo a broadband subscription.⁵

Currently the FCC estimates that over 21 million people lack access to high-speed broadband connections.⁶ Approximately 35 million Americans are eligible for the Lifeline program simply because they are already enrolled in the SNAP program.⁷ Based on the recent surge in unemployment, millions more may qualify for eligibility. Notably, only a quarter of eligible households actually participate in the Lifeline program.⁸ Increasing enrollment could significantly reduce the number of low-income households that do not have reliable fixed or mobile wireless connections, but this merger could have lasting effects on program participation and availability.

The Lifeline program provides consumers with a subsidy that they may use to purchase either broadband services or voice communications services (either through a landline or mobile)—not both.⁹ If a consumer chooses to utilize the Lifeline program to purchase a mobile phone plan, it can be used to obtain mobile data services as well.¹⁰ In some circumstances, this

⁵ Next Century Cities, American Library Association Comments, WCB Docket Nos. 17-108, 17-287 and 11-42, at 4-5 (Apr. 20, 2020).

⁶ John Busby, Julia Tanberk, *FCC Reports Broadband Unavailable to 21.3 Million Americans, BroadbandNow Study Indicates 42 Million Do Not Have Access* (Feb. 3, 2020), <https://broadbandnow.com/research/fcc-underestimates-unserved-by-50-percent>.

⁷ Amir Nasr and Clair Park, *The Government Is Severing a Lifeline for Low-Income Americans* (Mar. 5, 2020), <https://www.newamerica.org/weekly/lifeline-low-income-americans/>.

⁸ Universal Service Administrative Company, *Lifeline Participation*, <https://www.usac.org/lifeline/learn/program-data/> (last visited Dec. 16, 2020).

⁹ Federal Communications Commission, *Lifeline Program for Low-Income Consumers*, <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Dec. 16, 2020).

¹⁰ *Id.*

may be a family's only connection to the internet as they may not be able to afford both a broadband subscription, as well as, a mobile phone plan.

In the past, the Commission has required applicants to provide multiple supplements to provide information on its transition plans for Lifeline customers.¹¹ For example, in the *AT&T/Cricket* merger, the Commission scrutinized the acquisition and ultimately required that AT&T make its LTE network available to Cricket's prepaid and Lifeline customers, with no restrictions depending on status.¹² Here, if consumers are phased out of TracFone's Lifeline services, or Verizon suddenly decides to withdraw from the program, low-income consumers could find themselves without reliable access to an internet connection or an equivalent alternative. Similar scrutiny should apply. The Commission must not apply disparate standards to mergers, especially when the parties have made no tangible assurances when the connectivity of thousands of individuals hangs in the balance.

III. The Proposed Merger Could Impose Significant Harm on Current TracFone Customers Who Currently Subscribe to Lifeline

Although the Commission stands ready to allow the nation's largest facilities-based carriers to buy the nation's largest mobile virtual network operator ("MVNO"),¹³ the proposal has far-reaching implications and warrants pause. Verizon and TracFone have historically had widely different business models that cater to very different subsets of customers. As this is the case, the Commission must not authorize this transaction until Verizon files its ETC certification plan. In turn, the plan must be approved. Commission precedent is that all wireless ETC

¹¹ See, e.g., *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent To Transfer Control of Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd. 2735, ¶ 110-16 (2014).

¹² See *id.* ¶¶ 168-71.

¹³ See Sascha Segan, *Verizon Buys Prepaid Carrier TracFone, PC MAG* (Sept. 4, 2020), <https://bit.ly/3djg77f>.

certifications must be approved before or simultaneously to a Section 214 transfer.¹⁴ Given that Verizon is inexperienced in operating as a low-cost wireless provider, the Commission cannot be sure that Verizon can do so simply because it claims that it can.

The purpose of the ETC safeguards is not to prove that a carrier is capable of administering the program. They help to ensure that the ETC fully understands what the Lifeline program is, has the ability to comply, has made the resources available to its staff to inform consumers about the program, and has robust protections in place to detect and report any non-compliance or fraud to the Commission. The prerequisite for an ETC plan to be submitted and approved will go a long way in service of a provider's continued participation in the Lifeline program. It also helps to provide certainty for Lifeline participants to know that their status in the program will not be disrupted due to the proposed merger.

The Commission's mission is clear, it must provide universal, affordable access to all Americans.¹⁵ Even with an ETC compliance plan in place, the Commission must conduct a substantive review to ensure that it is adequate. Notably, the Lifeline program is the only tool that the Commission has to provide low-cost connectivity options for those who need it most. In this case, Verizon has made no assurances that TracFone customers will be able to maintain low-cost plans, leaving some of the most vulnerable consumers without equivalent alternatives to more expensive plans when the transaction is consummated.¹⁶ Additionally, Verizon has the potential to limit customers that participate in the Lifeline program to economy plans that do not

¹⁴ *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, Public Notice, 29 FCC Rcd 9144 (WCB 2014) ("2014 Public Notice").

¹⁵ 47 U.S.C. § 151 (2018).

¹⁶ Application at 3.

include any benefits aside from those which are mandated by the program, instead choosing to reserve those devices and services for those who are willing to pay more.

The Commission should seek to clarify Verizon's position that it will make its 5G network and devices available to TracFone customers.¹⁷ Verizon has not identified whether this benefit will be available to all customers, namely whether Lifeline subscribers will be included in this promise. Excluding Lifeline subscribers from 5G network and devices will act as a disincentive for consumers to participate in the program, as they will be relegated to outdated service offerings and devices rather than being able to participate in the newest service offerings with technologically competitive devices.

For now, Verizon's claims that it will make available new services and devices to current TracFone customers are simply that—claims. Verizon has stated little that should instill confidence in a current TracFone customer that their plan will not significantly change after the consummation of this merger. However, TracFone's MVNO status, one of the most serious consequences of this merger, has been overlooked by both parties as Verizon already believes it provides services to a large majority of TracFone's customers.¹⁸

TracFone operates as an MVNO, which denotes that it is not pinned to one provider's network to provide service. TracFone customers benefit from Verizon, AT&T, and T-Mobile's networks depending on which provider serves a particular area. However, if TracFone consumers are prohibited from roaming on other networks, this may interfere with service, particularly for Lifeline subscribers who have baseline service packages. Service concerns coupled with concerns regarding the competitive nature of the mobile market are enough for the Commission to press pause on this request.

¹⁷ *Id.* at 11-12.

¹⁸ Application at 4.

IV. The Proposed Merger Raises Significant Concerns About State of Competition in the Mobile Marketplace

The Commission has the benefit of viewing an application in light of whether the application's approval satisfies the public interest standard, rather than the more limited standard utilized by the Federal Trade Commission ("FTC") and Department of Justice ("DOJ") in their merger review.¹⁹ The FTC's approval of Verizon's acquisition of TracFone does not mean the Commission must or should follow suit.²⁰ On the contrary, the Commission should prioritize the importance of low-priced mobile broadband and telephone services over further consolidation of an already densely concentrated market.

A healthy competitive market offers a myriad of benefits, including reductions in price and improvements in service quality.²¹ Conversely, reductions in competition can enable anticompetitive behavior in already saturated markets.²² When considering the TracFone application, the Commission's analysis should include the impact of the approval on market concentration in the MVNO and facilities-based wireless markets independently and, specifically, in light of the facilities-based providers' increased bargaining power over independent MVNOs in the wake of Verizon's acquisition.²³ Competition in the MVNO market directly impacts not only consumers' ability to purchase devices and service, but also the quality of service that consumers receive.²⁴

¹⁹ See 47 U.S.C. § 214(a).

²⁰ See Federal Trade Comm'n, 20201618: Verizon Communications Inc.; America Movil, S.A.B. de C.V. (Nov. 24, 2020), <https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20201618> (granting America Movil's application for transfer of TracFone to Verizon).

²¹ See generally Fed. Trade Comm'n, *Competition Counts: How Consumers Win When Businesses Compete*, <https://www.ftc.gov/sites/default/files/attachments/competition-counts/zgen01.pdf>.

²² See *id.*

²³ See Public Knowledge, Open Technology Institute, and the Benton Institute for Broadband and Society Opposition to Petition for Streamlining and Motion to Dismiss Application as Incomplete 12-13 (Oct. 16, 2020), https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-449389&f_number=ITCT/C2020093000173 ("Opposition").

²⁴ See *id.*

The level of competition among facilities-based providers, which further consolidated last year when the Commission and the DOJ greenlit the *Sprint/T-Mobile* merger, strongly influences competition in the MVNO market.²⁵ Even before the *Sprint/T-Mobile* merger, the industry was already concentrated in the hands of four providers. That then number shrunk from four to three. As a condition of the merger, Sprint was required to divest its prepaid business out of concerns that keeping the service in T-Mobile's hands following the merger would produce anticompetitive effects.²⁶ The same anticompetitive effects that DOJ sought to avoid with the conditions it placed on the *Sprint/T-Mobile* deal would persist here if the Commission were to approve TracFone's application. Verizon and TracFone simply make up too much of the market independently to combine into a single competitor while retaining the current benefits of competition in the marketplace.

Some prepaid services are offered by independent MVNOs while others are operated by facilities-based providers. TracFone, as the largest MVNO in the country, has been a price-leader in both devices and service offerings, serving an estimated 21 million customers including 1.7 million Lifeline consumers.²⁷ Relative to prepaid services offered by facilities-based providers, independent MVNOs face the unique challenge of relying on wholesale purchasing from facilities-based providers for network coverage.²⁸ Though facilities-based providers do purchase capacity from each other for areas outside of their networks, they largely use their own

²⁵ See Press Release, Dep't of Justice, Justice Dep't Settles T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish (July 26, 2019), <https://www.justice.gov/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package>.

²⁶ See *id.*

²⁷ See Opposition at 3, 10-11.

²⁸ See Michelle Connolly, *Competition in Wireless Telecommunications: The Role of MVNOs and Cable's Entry into Wireless*, 9 (Oct. 8, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3249157.

infrastructure to provide service to their prepaid customers in areas where their networks are built out.²⁹

Moreover, Verizon’s acquisition of TracFone would disturb the existing state of competition for wholesale network capacity by changing its status as an independent MVNO. Rather than making capacity purchasing decisions based on which facilities-based provider offers the best pricing and quality, the bulk of TracFone’s service would be provided by Verizon if the merger is approved. That arrangement could lead to higher prices for remaining wholesale purchasers who will lose bargaining power at the loss of the largest independent MVNO. Ultimately, those higher prices for service capacity would be passed on to consumers in the form of higher subscription rates. For low-income consumers who are already facing the economic effects of COVID-19, increased prices could make prepaid service entirely unaffordable, leaving them without access to vital telephone and internet services.

The MVNO business model also allows providers to offer low prices for service because they can purchase capacity from each of the three facilities-based providers.³⁰ This business structure is one of many reasons that, at the time of the *Sprint/T-Mobile* merger, opponents raised serious concerns that consolidation of the two smallest facilities-based competitors would disrupt competition and reduce bargaining power for independent MVNOs, leading the DOJ to condition merger approval on Sprint divesting its prepaid service.³¹ Here, the merger of the largest

²⁹ *See id.*

³⁰ *See* Monica Allevan, *Boost Founder Bucks Waves, Fights New MVNO Battle* (Sept. 21, 2020), <https://www.fiercewireless.com/operators/boost-founder-bucks-waves-fights-new-mvno-battle>.

³¹ *See e.g.* Common Cause, Consumer Union, New America’s Open Technology Institute, Public Knowledge, and Writers Guild of America, *West Joint Petition to Deny 25-29* (Aug. 27, 2018), <https://advocacy.consumerreports.org/wp-content/uploads/2018/09/T-Mobile-Sprint-Petition-to-Deny-CC-CU-OTI-PK-WGA.pdf> (“Joint Petition to Deny”); *see also* Press Release, Dep’t of Justice, *Justice Dep’t Settles T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish* (July 26, 2019), <https://www.justice.gov/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package>.

facilities-based provider and largest independent MVNO would reduce competition in an already tightly concentrated market, which could have disastrous results for low-income consumers who disproportionately rely on prepaid mobile services.³²

Mobile telephone and internet services are among the least competitive industries in the nation, characterized by high barriers to entry including limited spectrum licenses, infrastructure access, and common carrier authorizations. Beyond high barriers to entry, building a mobile network is both expensive and time consuming. The three facilities-based providers illustrate the challenge, having spent the last two decades developing their networks to the point where they can sustain low speed internet services for nearly all of the United States.³³

Finally, granting TracFone's application would only make it harder for new companies entering the market, particularly at a time when the market is trying to sustain a new entrant, Dish, as a condition of the *Sprint/T-Mobile* agreement. Further consolidation of the few existing competitors in the market would also impact independent MVNOs ability to sustain their business models. Since facilities-based providers have an incentive to increase the number of subscribers to their more profitable postpaid plans, decreases in MVNO competition could mean market wide reductions in prepaid service offerings, lifeblood for people with low incomes to connect with friends and family through mobile telephone and internet services.³⁴

V. Conclusion

The Commission's statutory goal to provide universal, affordable access has never been more important. As the COVID-19 pandemic has ushered in a new era of working, learning, and

³² See Joint Petition to Deny at 24-28.

³³ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, FCC Rcd 8986, 9005, ¶ 35 (April 24, 2020) (“approximately all of the American population lives in geographical areas covered by mobile LTE with a minimum advertised speed of at least 5/1 Mbps.”).

³⁴ See Opposition at 7-8.

interacting online, the Commission's actions should center the needs of the nation's most disadvantaged populations, even if others are able to adapt.

The efficiencies that accompany the union of the country's largest MVNO and largest facilities-based provider offers are dwarfed by the enormous risk to Lifeline and low-income customers. They could lose access to resources more vital than ever for work, education, and healthcare. Further, the expansive impact of this merger could not easily, if ever, be undone. It is up to the Commission to ensure that affordable services are available to people who need them to comply with social distancing guidelines while remaining connected with loved ones and essential services.