March 1, 2021

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: File No. ITC-T/C-20200930-00173

Dear Ms. Dortch:

On Thursday, February 25, 2021, Peter Adderton, Director at Boost Mobile, Maurice Stucke, counsel to the Communications Workers of America (CWA) on antitrust matters, and I spoke with Joel Rabinovitz from the Office of General Counsel; Joel Taubenblatt, Charles Mathias, Garnet Hanly, and Jess Quinley from the Wireless Telecommunications Bureau; Giulia McHenry, Pat DeGraba, Glenn Woroch, Catherine Matraves, Nick Copeland, and Aleks Yankelevich from the Office of Economics and Analytics; and John Lockwood from the Wireline Competition Bureau regarding the above-captioned proceeding

In our meeting, I reiterated concerns CWA expressed in its most recent filing in the Verizon-TracFone proceeding that Verizon's acquisition of TracFone risks serious anticompetitive harms to the wireless marketplace and potential threats to the Lifeline program.[1] I stated that Verizon's filings in the transaction did not assuage these concerns.[2] I noted that Verizon and TracFone's February 11, 2021 response to CWA's January 21, 2021 filing continues the evasion tactics the companies have used since the beginning of the transaction.[3] The latest filing continues to avoid any specificity regarding Verizon's plans for TracFone's involvement in the Lifeline program post-merger and fails, again, to address fundamental antitrust concerns, such as the loss of competition for Lifeline customers, lack of competition on the wholesale level, and price increases in the wireless industry. Verizon and TracFone have repeatedly declined to be forthcoming with details about the transaction. A thorough public interest review requires answers to the many questions raised in filings and in this meeting. The Commission should issue a Request for Information to find them.

TracFone is among the largest providers of Lifeline services with approximately 1.7 million low-income subscribers in 42 states, or 22 percent of total Lifeline subscribers. By contrast, Verizon offers wireless Lifeline services to customers in parts of four states, and serves less than one percent of Lifeline subscribers. We noted Verizon's vague intentions about its plans for TracFone's 1.7 million low-income customers. Rather than providing specific commitments on the Lifeline program, as prior applicants provided in their merger review or as the FCC has

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[1] Comments of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Dec. 18, 2020).
[2] Joint Reply to Comments of America Movil, S.A.B. de C.V., TracFone Wireless, Inc., and Verizon Communications Inc., IB File No. ITC-T/C-20200930-00173 (Dec. 28, 2020).
[3] Letter of America Movil, S.A.B. de C.V., TracFone Wireless, Inc., and Verizon Communications Inc., IB File No. ITC-T/C-20200930-00173 (Feb. 11, 2021).

required in past mergers, Verizon simply repeats the same vague intention without specifics and without commitments. Absent real enforceable commitments, the proposed Verizon-TracFone transaction could curtail availability of the Lifeline program for low-income consumers from TracFone, negatively affecting millions of low-income Americans.

I highlighted the recent letter from seventeen state attorneys general arguing that the deal is not only bad for Lifeline customers relying on TracFone, but also could have much broader negative impacts on the wireless market. "Furthermore, a vertical merger of the leading Mobile Network Operator (MNO), and the leading Mobile Virtual Network Operator in an already concentrated mobile wireless market would see the last significant MVNO integrated into a national facilities-based provider," the attorneys general letter reads. "If this resulted in a decrease in the number or quality of Lifeline offerings, that could be contrary to the public interest and could have an adverse impact on consumers and the communications industry."[4]

Mr. Adderton, a wireless industry veteran and entrepreneur, explained how he continues to fight for consumers, dealers, and MVNOs, and provided detailed insight into the major carriers' ability and incentive to disadvantage these groups. Specifically, he noted, the major carriers have direct control over their MVNOs, and therefore the end consumer, by setting wholesale rates, to which the MVNOs must adhere and with which they must compete. Dependent on their much larger MNO host, and with little room to negotiate their rates, many MVNOs much smaller than TracFone have little power in a scale- and price-based battle, forcing many into survival mode or, worse, an exit from the market. Each time another MVNO exits the market is a loss in competition for consumers.

The proposed Verizon-TracFone transaction is a clear example of this dynamic, Mr. Adderton continued, whereby a major carrier with its scale and market power seeks to acquire the largest remaining maverick MVNO, immediately reducing the independent competition, value, and consumer choice for which Tracfone is famous. How, Mr. Adderton asked the Commission staff, could the Verizon-TracFone transaction as currently proposed lead to more value for consumers, better conditions for dealers, and more economically sustainable conditions for other MVNOs? What incentive will Verizon have to help other MVNOs after it acquires their rival, TracFone? The wireless market needs more MVNOs, Mr. Adderton concluded, not fewer; more mavericks, not fewer; and more choice for wireless consumers in America, not less.

Mr. Stucke discussed the antitrust implications of Mr. Adderton's points. He warned of Verizon's ability and incentive to disadvantage rival MVNOs through foreclosure and raising their costs, should the deal close. Further, he discussed how Verizon's acquisition of TracFone, a maverick MVNO, would likely diminish competition and harm consumers, especially those dependent on the maverick TracFone's scale to reduce prices. For vertical issues, Mr. Stucke noted how these concerns were shared by the United States in *Sprint/T-Mobile* that competition among the three MNOs was too weak to prevent anticompetitive harm to the MVNOs and their customers. For horizontal issues, Mr. Stucke noted that wireless prices before the merger were steadily

[4] *Ex parte* letter of Office of the Attorney General of Virginia, IB File No. ITC-T/C-20200930-00173 (Feb. 4, 2021).

declining every year for at least a decade. After T-Mobile was allowed to acquire Sprint, mobile wireless prices in mid-2020 increased suddenly. The average price of mobile services in the last six months of 2020 was 4.3 percent higher than the average price for the first six months, and the average mobile price in January 2021 remained elevated.[5] In addition, Mr. Stucke urged the Commission to examine not only the transaction's impact on the wholesale level and consumers, but also its impact upstream on labor markets.

Finally, Maurice and I presented three recommendations.

First, the Commission should issue a standard Request for Information (RFI) seeking documents and narrative responses addressing the transaction's probable harms. Verizon and TracFone have steadfastly avoided answering many key questions that are essential to understanding the public interest of the transaction. Answers to these questions in the record are a prerequisite to any thorough public interest review of the transaction. Further, the Commission should require the Applicants to submit their internal analysis of projected employment growth as part of the record in this proceeding so that the Commission and the public can properly evaluate this transaction's impact on jobs and wages.

Second, if the Commission considers approving this transaction, it should impose protections for Lifeline customers. Among the proposed conditions outlined in CWA's Comments, the Commission should require Verizon to commit to participate in the Lifeline program for a minimum of 5 years with at least the same level of geographic and service offerings as TracFone currently provides; to commit to make 5G networks and equipment available to Lifeline and pre-paid customers on the same basis as made available to Verizon's post-paid customers; and to maintain the existing packages available to Lifeline customers for a minimum of 5 years.

Third, again if the Commission should approve this transaction, it should impose conditions to mitigate anticompetitive harms in the wireless industry, including the conditions proposed in CWA's Comments.

In accordance with Section 1.1206(b) of the Commission's rules, I am filing this letter with your office. If you have questions, please contact me at 202-434-1131.

Respectfully submitted,

Brian Thorn
Senior Researcher
Communications Workers of America

cc: Joel Rabinovitz
Joel Taubenblatt

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[5] US Bureau of Labor Statistics, Wireless telephone services in U.S. city average, all urban consumers, not seasonally adjusted. https://beta.bls.gov/dataViewer/view/timeseries/CUUR0000SEED03

Charles Mathias
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