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March 10, 2021

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

Re: Ex parte submission in ITC-T/C-20200930-00173
Verizon acquisition of TracFone, Inc.

Dear Ms. Dortch:

I am writing on behalf of NTCH, Inc. (NTCH) to bring to the Commission's attention a circumstance which bears upon its determination of whether to act favorably on this proposed acquisition by Verizon Communications, Inc. (Verizon) of TracFone. For almost a decade, NTCH and other small competitive mobile service providers have complained to the Commission and the Department of Justice that Verizon charges roaming rates to other carriers that are unreasonably high.¹ For many years, Verizon and Sprint were the only two national wireless carriers that used the CDMA protocol, thus limiting the availability of roaming largely to those two carriers for competing CDMA carriers. As NTCH further explained, Verizon's geographic coverage was so much more extensive than Sprint's that in much of the U.S., Verizon alone was available as a roaming partner. This gave Verizon both the power and the incentive to charge prohibitively high roaming rates that made it difficult for smaller CDMA carriers to offer their own customers roaming service when they were outside their home markets.

At the same time, Verizon and AT&T provided wholesale (MVNO) rates to TracFone and its affiliated entities such as Straight Talk at very favorable rates. This enabled TracFone to target its resale service at the pre-paid, lower end of the cellular marketplace by offering package rates for voice, data and SMS that were well below what the majors offered their own customers. This is, of course, the market niche that NTCH and other small carriers themselves focused on. NTCH and others pointed out that the service provided to TracFone was technically identical to the roaming service provided to competing carriers. The chief differences -- the volume of voice minutes and data volume used by TracFone and the related billing arrangements -- did not bear on the actual cost of the service being provided. When the smaller carriers sought roaming rates similar to the rates offered by the majors to TracFone, however, the majors refused to accommodate those requests.

¹ See, for example, *NTCH, Inc. v. CellCo Partnership*, Amended Complaint filed July 1, 2014, Case No. EB-13-MD-006; *Flat Wireless, LLC v. CellCo Partnership*, Complaint filed June 12, 2015, Case No. EB-15-MD-005; *Youghiogheny Communications, LLC*, Reply to Joint Opposition to Petition to Deny AT&T Acquisition of Cricket Communications, Docket 13-193. Initial Brief of Petitioners in Case Nos. 18-1271 and 18-1273, D.C. Cir., filed April 4, 2019.

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This created a market distortion called “predatory pricing by proxy.” The major carriers were able to maintain their premium brand profiles by focusing on the more lucrative post-paid market while not vigorously competing directly for the prepaid, low cost market. They did not have to do that because TracFone did it for them. It is not surprising, then, that in the last twenty-five years, the cellular marketplace has shrunk from a vibrant marketplace with hundreds of independent small and regional carriers to one dominated by four -- now three -- national carriers. Small independent wireless carriers have largely disappeared from the scene unless they are affiliated with local telcos who receive ETC support for their wireless operations.

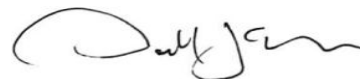
This is precisely what NTCH warned would happen.

Under the predatory pricing by proxy model, the dominant facilities-based carrier uses an MVNO proxy to wipe out independent competing carriers by giving the MVNO effective roaming rates that those carriers cannot possibly match. The proxy can undercut the prices of small facilities-based carriers in ways that would be transparently predatory and unlawful for the dominant carrier to do directly. The MVNO -- here TracFone -- can be profitable in the short term, but it is essentially an economic puppet of the facilities-based carrier. Once the independent, financially distressed, competing carriers have been removed from the scene by being bought out, selling their spectrum, seeking bankruptcy protection or just giving up, the MVNO has served its purpose. The facilities-based carrier can then simply raise its rates to the MVNO sharply, stop offering wholesale services entirely, or acquire the MVNO’s customer base or its whole operation for itself. If the rates charged to the MVNO are raised sufficiently, the MVNO really has no viable business option but to sell out. The dominant carrier has now eliminated sources of disruptive competition without having to do the dirty work itself.

The complaints lodged by NTCH and others over the years were cursorily denied or dismissed by the Commission and the courts. Yet everything that NTCH predicted has now come to pass. The proposed TracFone acquisition is the culmination of a long but inevitable process. The mobile wireless marketplace now consists of three national carriers with a potential fourth who seems to be struggling to get facilities-based operations off the ground. The small independent carrier community is down to a handful and getting smaller all the time. Predictably, the majors compete less and less on price, leaving rates to customers flat or even rising. It is too late for the Commission to correct the mistakes it made in the past that have reduced cellular competition to a small and highly profitable triad. The Commission and the other federal guardians of competition need to wake up to the rather transparent industry dynamics that -- deliberately or not -- lead necessarily to diminished competition. Approval of this transaction should be denied.

Respectively submitted,
NTCH, Inc.

By:



Donald J. Evans
Its Attorney