

March 12, 2021

Ms. 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:

Free Press respectfully submits this letter in the above-captioned proceeding in support of a request made to the Commission to collect the additional information necessary to determine whether to grant Verizon Communications Inc.’s application to acquire TracFone Wireless, Inc. and, if the Commission should approve the application, use such additional information to craft conditions sufficient to prevent the potential harms to competition and the Lifeline program identified by several commenters.

**I. Free Press Agrees that the Commission Should Issue a Request for Information in Support of Its Review of the Present Application, and Further Urges the Commission to Allow that Collection to be Available to Interested Parties Pursuant to a Protective Order.**

Free Press writes in support of several recommendations offered in the recent filings from the Attorney General of Virginia, Mark R. Herring,<sup>1</sup> and the Communications Workers of America’s (“CWA’s”) latest filings,<sup>2</sup> but especially its request to the Commission to issue a “standard Request for Information (RFI) seeking documents and narrative responses addressing the transaction’s probable harms.”<sup>3</sup> The insufficiency—and apparent evasiveness<sup>4</sup>—of the applicants’ rebuttals to fully assuage the valid concerns raised by various public interest commenters<sup>5</sup> necessitates a more fulsome record. Furthermore, the potential impact this

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<sup>1</sup> See Letter from Mark R. Herring, Attorney General of the Commonwealth of Virginia, *et al.*, to Federal Communications Commission, IB File No. ITC-T/C-20200930-00173, at 1 (filed Feb. 4, 2021) (signed by 17 state Attorneys General).

<sup>2</sup> See Communications Workers of America *Ex Parte* Notice, IB File No. ITC-T/C-20200930-00173, at 3 (filed Mar. 1, 2021) (“CWA Ex Parte”).

<sup>3</sup> *Id.*

<sup>4</sup> See *id.* (citing to steadfast avoidance by Verizon to answer key questions).

<sup>5</sup> See generally Comments of Public Knowledge, Open Technology Institute, the California Center for Rural Policy, Next Century Cities, Access Humboldt, Tribal Digital Networks &

transaction could have on prices for low-income people, and on their continued ability to access the Lifeline program, requires more data and information, including proprietary data and information, to allow the Commission to proceed with any certainty.

Free Press has long advocated for greater transparency in the Commission's proceedings to ensure that the public, and its advocates, can benefit from the same collection or aggregation of, and access to critical information used by the Commission to make determinations in the public interest.<sup>6</sup> Doing so here would enable public interest advocates to independently assess the Commission's analysis and determinations, as a means to strengthen them or point out aspects to the problems that the Commission might miss.<sup>7</sup>

Further, proprietary information collected under this proposed RFI should be available to qualified reviewers pursuant to a protective order. The Commission regularly collects competitively sensitive information and grants access to it pursuant to protective orders and is capable of conducting these collections on a limited or *ad hoc* basis.<sup>8</sup> Free Press, like other public interest commenters in this proceeding, has extensive experience in reviewing transactions using competitively sensitive information and such parties could thus provide an independent analysis to verify the commitments made under this application. The need for more information is particularly pressing for a deal that will, if consummated, touch on the interests of low-income subscribers in the Lifeline program. Facets of the transaction thus may require a close examination for disparate impacts on communities of color—an analysis Free Press or others are well-positioned to provide with full access to all pertinent information.

## **II. If this Application is Granted, Free Press Urges the Commission to Devise Robust and Lasting Protections to Ensure Competition and Safeguard the Lifeline Program.**

Should this application be granted, we agree with CWA<sup>9</sup> and others that conditions will be necessary to safeguard against potential anti-competitive and Lifeline program harms brought about at the consummation of this transaction. We decline here to prescribe specific conditions in so far as we seek to base such recommendations upon a thorough review of the information collected pursuant to the proposed RFI. Doing so will not only allow the Commission to tailor

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Benton Institute for Broadband and Society (filed Dec. 18, 2020) (“Public Interest Parties Comments”).

<sup>6</sup> See Free Press *Ex Parte* Notice, WC Docket No. 11-10, at 2 n.2 (filed July 11, 2019).

<sup>7</sup> Cf. Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 18-238 (filed Mar. 5, 2019) (showing independent researcher detected flawed Form 477 data submission).

<sup>8</sup> See, e.g., *Wireline Competition Bureau and Office of Economics and Analytics Make Inmate Calling Services Database Available to Eligible Individuals Pursuant to Protective Order*, WC Docket No. 12-375, Public Notice, DA 20-1128 (Sept. 24, 2020) (describing a mandatory data collection in support of a rulemaking and the Commission's helpful aggregation of this data in one place).

<sup>9</sup> CWA *Ex Parte* at 3.

conditions in a manner that creates sufficient incentives for compliance but to identify other important public interest issues too, such as the potential for a disparate impact the transaction might have on communities of color.

We agree with the need at minimum for conditions to account for potential anticompetitive harms arising from this transaction. Free Press argued that the consummation of the T-Mobile and Sprint merger would result in higher prices for consumers, and recent increases in prices appear to support that prediction.<sup>10</sup> We are seeing prices rise, all the while carriers are making record profits. It is all the more critical for the Commission to do so at a time when people are especially reliant on staying connected during a pandemic and the long economic recovery ahead. The current record is unconvincing in allaying concerns regarding the impact of vertical integration might have on prices, as identified by commenters,<sup>11</sup> and answers could be available if the Commission undertakes an additional information collection.

As we have explained to the Commission, the nature of the Lifeline program warrants the utmost certainty because significant changes in the Lifeline marketplace directly impact vulnerable or marginalized communities that rely on Lifeline as, too often, their sole means to remain connected in a Digital Age.<sup>12</sup> Enforceable conditions to ensure Verizon's continued commitment to Lifeline would be critical were this deal approved. Free Press, as well as several other commenters in this docket, are long-time defenders of the Lifeline program and proponents of affordable connectivity choices for low-income users. Verizon stresses that it has consistently repeated a voluntary commitment to continue TracFone's participation in the Lifeline program.<sup>13</sup> The act of repeating a commitment is insufficient to address the concerns of the public interest advocates: particularly when the commenters have raised concerns with the incentives underlying those commitments. The proposed RFI would permit the Commission to verify these commitments as well as give Verizon an opportunity to describe in detail the extent of this commitment in a manner that can be verified and, if it comes to it, to be held to those commitments as structural conditions.

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<sup>10</sup> Written Testimony of Matthew F. Wood, Vice President & General Counsel, Free Press Action, before the U.S. House of Representatives Committee on Energy Commerce, Subcommittee on Communications and Technology, at 15 (Feb. 17, 2021), <https://docs.house.gov/meetings/IF/IF16/20210217/111199/HHRG-117-IF16-Wstate-WoodM-20210217-U2.pdf>. Following the close of the T-Mobile and Sprint merger last April, the “wireless CPI spiked 4.1 percent in 2020,” which is striking considering “no annual increase in this index had exceeded 1 percent since BLS began tracking it in 1998.” While we declined to suggest a causal relationship, taken together with four other worrying metrics described in the testimony, prices are rising no matter what the cause.

<sup>11</sup> See Public Interest Parties Comments at 12-16.

<sup>12</sup> See, e.g., Comments of Free Press, WC Docket Nos. 11-42 & 09-197, at 2-4 (filed Sept. 14, 2020) (explaining the need for certainty in the Lifeline program).

<sup>13</sup> See Letter from America Movil, S.A.B. de C.V., TracFone Wireless, Inc., and Verizon Communications Inc., to Marlene Dorch, Secretary, Federal Communications Commission, IB File No. ITC-T/C-20200930-00173, at 3 (filed Feb. 11, 2021).

Indeed, continuing to participate in the Lifeline program is the barest commitment, and it does not speak to Verizon's plans for its program participation five or ten years from now. Such a bare assertion does not inform the Commission as to whether Verizon's interest in value-conscious consumers may lead to upselling services to Lifeline applicants and subscribers they might not need, nor to how Verizon plans to leverage its own advertising assets to raise awareness of the Lifeline program or other such questions. We welcome Verizon's own proposal for "discussions with the Commission to elaborate on [its] commitment to Lifeline and address any questions the Commission may have."<sup>14</sup> The details of such elaborations should be in the record, including the underlying data in support of these details and the case as to why the incentives, if any, are present to rely on those commitments.

In potentially approving this transaction, the Commission must be certain that the impact on the Lifeline marketplace, the program, and its subscribers will be beneficial, or at the very least articulate a case for why there will be no harm. For these reasons, we urge the Commission to issue an RFI as soon as practical, to permit commenters to access the resulting answers pursuant to a protective order, and to make a determination on grant only when it has all the relevant information it needs. And we agree that conditions may be necessary to safeguard the Lifeline program as all too quickly shifting fortunes can see the applicants' stated interest in the wellbeing of low-income customers yield to shareholders' interests and bottom lines.

Respectfully submitted,

Leo Fitzpatrick, Policy Counsel  
Matthew F. Wood, VP of Policy

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<sup>14</sup> Letter from America Movil, S.A.B. de C.V., TracFone Wireless, Inc., and Verizon Communications Inc., to Marlene Dorch, Secretary, Federal Communications Commission, IB File No. ITC-T/C-20200930-00173, at 2 (filed Mar. 5, 2021).