

March 13, 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 Friday, March 12, 2021, the Communications Workers of America submitted comments in response to Verizon Communications, Inc.'s proposed acquisition of TracFone Wireless,¹ the Commission's Public Notice that it is extending its review of the transaction by 90 days due to the transaction's "extraordinary complexity,"² and Verizon and TracFone's latest letter in above-captioned proceeding.³

These comments included a duplicative paragraph. Please accept the attached corrected submission as replacement.

Please contact me should you need any further information.

Respectfully submitted,

Brian Thorn
Senior Researcher
Communications Workers of America

¹ Application for Consent to Transfer Control of International Section 214 Authorization, File No. ITC T/C-20200930-00173, at 18 (filed Sept. 30, 2020).

² Federal Communications Commission, Public Notice, "Non Streamlined International Applications/Petitions Accepted for Filing" (Feb. 12, 2021), <https://docs.fcc.gov/public/attachments/DOC-369913A1.pdf>.

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).

**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,	)	
	)	
Application for Consent to Transfer Control of	)	
TracFone Wireless, Inc. Pursuant to Section 2014	)	
of the Communications Act of 1934, as Amended	)	
	)	

**Comments of
Communications Workers of America**

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March 12, 2021

Introduction

Verizon Wireless, Inc.’s (“Verizon”) proposed acquisition of TracFone Wireless, Inc. (“TracFone”) would substantially lessen competition in the wireless industry and harm millions of low-income customers, including those that rely on TracFone for Lifeline services. The Communications Workers of America (“CWA”) submits these comments in response to the Application,¹ the Commission’s *Public Notice* that it is extending its review of the transaction by 90 days due to the transaction’s “extraordinary complexity,”² and Verizon and TracFone’s latest letter in this proceeding.³ CWA represents private and public sector employees who work in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, manufacturing, and other fields.

Initially, very few had commented or even paid attention to the proposed transaction. Indeed in the waning days of the Trump administration, the same antitrust authorities that allowed the heavily criticized Sprint-T-Mobile transaction to occur (on the belief that DISH would replace the lost competition), granted early termination to this transaction, a point that the Applicants repeatedly raise in their filings.⁴ This would not be the first time that the antitrust agencies have allowed anticompetitive mergers to sail through without adequate investigation, thereby contributing to America’s current market power problem.⁵ But it is also important to note that the Commission’s review differs from the antitrust agencies. The Commission’s

¹ Application for Consent to Transfer Control of International Section 214 Authorization, File No. ITC T/C-20200930-00173, at 18 (filed Sept. 30, 2020) (“Application”).

² Federal Communications Commission, Public Notice, “Non Streamlined International Applications/Petitions Accepted for Filing” (Feb. 12, 2021), <https://docs.fcc.gov/public/attachments/DOC-369913A1.pdf>.

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). (“Verizon-TracFone Letter”).

⁴ Most recently in Verizon-TracFone Letter at 2.

⁵ Marshall Steinbaum and Maurice E. Stucke, *The Effective Competition Standard: A New Standard for Antitrust*, 87 U. CHI. L. REV. 595 (2020); Lina M. Khan, *The Ideological Roots of America’s Market Power Problem*, 127 YALE L.J. FORUM 960 (2018).

competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles. For example, while the DOJ's review is limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations, the Commission's competitive analysis under the public interest standard "is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market."⁶ Moreover, the impact of a merger on not only upstream labor markets but on U.S. employment is part of the FCC's public interest analysis.⁷ Indeed, the FCC has repeatedly confirmed that *verifiable* commitments to grow jobs in the U.S. represent a public interest benefit to be taken into account in the review of proposed mergers.⁸

As this transaction has garnered greater attention, so too it has raised greater concern for the 1.7 million Lifeline customers who subscribe to TracFone and for the 21 million customers

⁶ *Ibid.* at 8.

⁷ See, e.g., Applications of AT&T and Deutsche Telekom AG, WT Docket No. 11-65, *Order and Staff Analysis and Findings*, WT Docket No. 11-65 ¶ 259 [hereinafter *AT&T/T-Mobile Staff Analysis and Findings*]; Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, *Memorandum Opinion and Order*, MB Docket No. 10-56 (rel. Jan. 20, 2011) at ¶ 224 ("We also note the Applicants' representations that additional investment and innovation that will result from the transaction will in turn promote job creation and preservation."); Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14029-30, ¶¶ 168-69 (2005) (considering job growth claims as part of FCC analysis); Applications of Puerto Rico Telephone Authority and GTE Holdings (Puerto Rico) LLC for Consent to Transfer Control of Licenses and Authorization, File No. 03373-03384-CL-TC-98, *Memorandum Opinion and Order*, 14 FCC Rcd 3122, 3148, at 57-58 (1999) (finding that GTE's pledge not to make any involuntary terminations, except for cause, of PRTC workers employed as of a certain date would benefit the public interest); *T-Mobile/MetroPCS Order* ¶ 80 (rel. March 12, 2013) (considering T-Mobile's job claims as part of FCC analysis).

⁸ See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd 5662, Appendix F (2007) (finding that a commitment to provide high quality employment opportunities in the U.S. by repatriating jobs previously outsourced outside the U.S. would serve the public interest). See also *AT&T/T-Mobile Staff Analysis and Findings* at ¶ 259 (stating that "the Applicants have the burden of proof regarding merger specificity, qualification, and verification" regarding claims of job creation).

that rely on the last remaining maverick in the wireless industry. In the past few months, 17 Democratic state attorneys general, as well as additional consumer groups, have raised concerns about the transaction.⁹ Also, Arizona’s and California’s Public Utilities Commissions are now reviewing the transaction, including how the deal could impact competition and TracFone’s Lifeline customers in their states.¹⁰

Rather than provide in their Application information demonstrating how the transaction will serve the public interest, convenience, and necessity, as they must, Verizon and TracFone continue to evade and distort. First, in late 2020, Applicants attempted to avoid a thorough public review of this transaction by requesting streamlined treatment. The Commission declined this request.¹¹ Since then, Applicants have avoided providing the Commission or the public with meaningful responses to the outstanding questions in the docket related to Lifeline and anti-consumer harms, which the Commission must consider in its thorough public interest review.

To the public, Verizon claims to “see Lifeline as a foundational element of our commitment in this space” and adds “if regulators or others would like to talk to us about specific commitments, I’m ready and willing, the sooner the better. We welcome those

⁹ *Ex parte* letter of Office of the Attorney General of Virginia, IB File No. ITC-T/C-20200930-00173 (Feb. 4, 2021); *See also*, *Ex parte* letter Public Knowledge to FCC, WC Docket No. 20-445, File No. ITC-T/C-20200930-00173 (Jan. 15, 2021); *Ex parte* letter of Mobile X, IB File No. ITC-T/C-20200930-00173 (Mar. 1, 2021).

¹⁰ Jon Reid, “Verizon-TracFone Deal is Early Test of New FCC Wireless Stance,” Bloomberg Law (Mar. 8, 2021). Available at: <https://news.bloomberglaw.com/tech-and-telecom-law/verizon-tracfone-deal-is-early-test-of-new-fcc-wireless-stance>

¹¹ On September 30, 2020, the International Bureau received the above-referenced Application and request for streamlining. Several parties opposed the request to streamline treatment. *See* Communications Workers of America Opposition to Petition for Streamlining and Motion to Dismiss Application as Incomplete, File No. ITC-T/C-20200930-00173 (Oct. 16, 2020). *See also* 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, File No. ITC-T/C-20200930-00173 (Oct. 16, 2020).

discussions.”¹² The Commission knows better, or should know better, than to take Verizon at its word. The Applicants in their FCC filings have steadfastly avoided any specificity regarding Verizon’s plans for TracFone’s involvement in the Lifeline program post-merger and have failed repeatedly to address fundamental antitrust concerns, such as the loss of competition for Lifeline customers, lack of competition on the wholesale level, price increases in the wireless industry, and the acquisition’s impact upstream on workers. In contrast to past mergers, where the Commission has requested, or the merging parties have offered, objective, verifiable commitments designed specifically to ensure that the benefits of the merger extend to low-income residential customers throughout all of the merging parties’ regions,¹³ the Applicants

¹² Jon Reid, “Verizon-TracFone Deal is Early Test of New FCC Wireless Stance,” Bloomberg Law (Mar. 8, 2021), <https://news.bloomberglaw.com/tech-and-telecom-law/verizon-tracfone-deal-is-early-test-of-new-fcc-wireless-stance>.

¹³ See, e.g., Closing Statement of FCC Comm’r Mignon L. Clyburn Washington, DC, 2018 WL 3046986, at *1 (OHMSV June 6, 2018) (“Historically, a Lifeline phone was the backstop connection for millions of low-income households, but we have also made strides in bringing affordable broadband connectivity through merger commitments and updates to the Lifeline program.”); Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Budget Prepay, Inc. d/b/a Budget Phone by Glob. Connection Inc. of Am. Streamlined Pleading Cycle Established, 30 F.C.C. Rcd. 11727 (2015) (merging parties noting that a significant number of customers receive Lifeline services through Budget, and that, “post-close, they will continue to receive these benefits through GCOIA at the same rates, terms, and conditions as prior to the transaction”); In the Matter of Applications of Cricket License Co., LLC, et al., Leap Wireless Int’l, Inc., & AT&T Inc. for Consent to Transfer Control of Authorizations Application of Cricket License Co., LLC & Leap Licenseco Inc. for Consent to Assignment of Authorization, 29 F.C.C. Rcd. 2735, 2736 (2014) (AT&T committing to offer specific rate plans targeted to help value-conscious and Lifeline customers); In Re Application of GTE Corp., 15 F.C.C. Rcd. 14032, 14184–86 (2000) (requiring Bell Atlantic/GTE, among other things, to (i) offer a low-income Lifeline universal service plan modeled after the Ohio Universal Service Assistance (USA) Lifeline plan that Ameritech and Ohio community groups negotiated in 1994 and incorporating elements from the December 1998 Ohio Commission Order addressing the Ohio USA plan, including providing “a discount equal to the price of basic residential measured rate service, excluding local usage, in each state, up to a maximum discount of \$10.20 per month (including all federal, state and company contributions);” (ii) permit a Lifeline customer with past-due bills for local service to restore local service after payment of no more than \$25 and an agreement to repay the balance of local charges in six equal monthly payments; (iii) not requiring Lifeline customers to pay a deposit for toll service if they elect toll restriction service, (iv) allow easier means for prospective Lifeline customers to verify their eligibility and subscribe to the Lifeline program, (iv) “publicize the program in each state with an annual promotional budget that is proportional to the annual promotional budget in Ohio;” and (v) automatically upgrade current Lifeline customers to the merging parties’ new programs where it is evident that doing so will unambiguously improve the customer’s situation); In the Matter of Applications Filed by Qwest Commc’ns Int’l Inc. & CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, 26 F.C.C. Rcd. 4194, 4211 (2011) (Commission accepting the commitments of CenturyLink to, inter alia, make discounted broadband Internet access service available to households that qualify for Lifeline service and meet certain other eligibility criteria and offer discounted computer equipment to these customers and making the

here have offered none. That is particularly concerning when TracFone accounts for 22 percent of total Lifeline subscribers. Although Verizon boasts in its filings of its proud history with Lifeline, Verizon, our country's largest MNO, provides wireless Lifeline services in only 4 states, and accounts for less than one percent of all Lifeline wireless subscribers. That is shameful and an abdication of its obligations as a corporate citizen.

Applicants have also failed to provide meaningful responses to the antitrust concerns raised in the Commission record. The antitrust concerns further increased when T-Mobile recently announced its decision to shut down its 3G CDMA network by 2022. Since a majority of Boost retail's 9 million wireless customers use T-Mobile's 3G service, Boost customers "would have to obtain a new device, a new SIM card or receive a software download in order to continue receiving wireless services" from Boost.¹⁴ As DISH recently warned its investors, DISH depends primarily on T-Mobile in providing services to its retail wireless subscribers, and any system failure related to T-Mobile's wireless network, interruption in the services provided by T-Mobile, including the shutdown of its CDMA Network on or around January 1, 2022 and/or the termination of the MNSA could negatively impact its subscriber activations, its subscriber churn rate and its subscriber base, which in turn could have a material adverse effect on its business, financial condition and results of operations.

commitments binding and enforceable conditions of its approval); FCC Approves SBC-Ameritech Merger Subject to Competition-Enhancing Conditions, 15 F.C.C. Rcd. 8652 (1999) (imposing conditions on merging parties to, inter alia, offer enhanced Lifeline plans, including offering a low-income Lifeline universal service plan to low-income residential subscribers in each of its states); In the Matter of Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations from S. New England Telecommunications Corp., Transferor to SBC Commc'ns, Inc., Transferee, 13 F.C.C. Rcd. 21292 (1998) (noting that among the conditions imposed involved the promotion of Lifeline service).

¹⁴ DISH 2020 10-K at 26.

The Trump administration staked the wallets of millions of Americans on the prospect of DISH becoming a significant competitive constraint on the three remaining MNOs when approving the Sprint-T-Mobile merger. Now DISH is warning investors about significant disruptions to its wireless business, Boost's subscriber base, and its competitiveness: "the circumstances surrounding T-Mobile's shutdown of its CDMA Network and [DISH's] efforts in responding to such shutdown could have a material adverse effect on [DISH's] business, financial condition and results of operations."¹⁵ In addition, a report from Wall Street investment analysts at MoffetNathanson Research raised broader concerns about DISH's prospects for building out a competitive wireless network. First, the analysts suggest DISH's costs to build out its network to 70 percent of the country within five years, as it must do under the Department of Justice's consent decree that was part of the government's remedy to the T-Mobile-Sprint transaction, will be significantly higher than DISH's projected \$10 billion. Second, the report questions how DISH will compete in a retail versus wholesale model. DISH's participation in the CBRS auction suggests an approach focused on regional opportunities in wholesale and enterprise, raising questions about whether and when consumers will benefit from DISH's 5G network.¹⁶

It gets worse. While all of this is happening, wireless prices for eight straight months have remained at elevated levels, while millions of Americans are struggling financially, with no relief in sight. In this context, TracFone is the only remaining independent MVNO with significant scale, which can leverage its 21 million subscribers for better terms with the MNOs.

¹⁵ DISH 2020 10-K at 26.

¹⁶ Monica Allevan, "DISH's 5G buildout revolves around wholesale vs. retail – report," FierceWireless (Oct. 1, 2020), <https://www.fiercewireless.com/wireless/dish-s-5g-buildout-revolves-around-wholesale-vs-retail-report>.

The elimination of TracFone as an independent competitor will harm millions of Lifeline and low-income customers, fatten the margins of the remaining MNOs, and widen the digital divide.

Rather than explain why mobile prices are increasing, instead of decreasing as they were for years before the Sprint/T-Mobile merger, the Applicants initially claimed that contrary to the evidence the industry is not susceptible to collusion and is competitive. Rather than explain how the merger's purported efficiencies are verifiable, merger-specific, and are likely to benefit the pre-paid and Lifeline wireless customers, whom Verizon has ignored for years, the Applicants claim they do not have to since the efficiencies defense "is used to rebut a *prima facie* showing that a proposed merger will result in a significant increase in concentration in the relevant market."¹⁷ Not only do they get the legal standard wrong for section 7 of the Clayton Act, including the incipency standard,¹⁸ they fail to acknowledge their burden to prove that their transaction is in the public interest.

While the Applicants make rosy claims about the MVNO wholesale market being robustly competitive, they fail to acknowledge that even the Trump administration's antitrust enforcers rejected this claim. Because Verizon and TracFone cannot explain how eliminating the last maverick in a highly concentrated market will increase competition and lower prices (which instead are increasing after the recent Sprint-T-Mobile merger), the Applicants seek to shift the

¹⁷ Verizon-TracFone Letter at 2, fn. 4.

¹⁸ Under Section 7 of the Clayton Act, the plaintiff must only show that the merger *may* substantially lessen competition or tend to create a monopoly. 15 U.S.C. § 18. The term "may be" in the statute requires only "an appreciable danger" of harm to competition. *United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36, 49 (D.D.C. 2011) (quotation omitted). Therefore, the plaintiff need not establish "with certainty" that anticompetitive effects would occur. *United States v. Energy Solutions*, 265 F. Supp. 3d 415, 436 (D. Del. 2017). Section 7 reaches "incipient" harms, *Brown Shoe v. United States*, 370 U.S. 294, 318 n. 32 (1962), and as the Supreme Court "ha[s] observed many times, [is] a prophylactic measure, intended primarily to arrest apprehended consequences of intercorporate relationships before those relationships could work their evil." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 485 (1977).

burden in asserting that CWA and Public Knowledge “largely retread” earlier concerns. This is true – but such persistence would be unnecessary if the Applicants were forthcoming with the necessary information to evaluate the transaction.

The Applicants certainly have had the time and resources to explain why eliminating the last remaining independent MVNO of any significant scale in an already highly concentrated industry where consumers are now paying on average higher wireless prices is in the public interest. The Commission has provided Applicants ample time to respond to the numerous and important issues raised in the record, including the concerns of multiple state attorneys general. Applicants simply have declined to do so.

The Commission has a responsibility to protect the public interest, which in the case of this transaction means protecting the millions of vulnerable Lifeline customers and lower-income customers that rely on TracFone’s pre-paid services from the probable harms of this transaction. Accordingly, the Commission, which has acknowledged the extraordinary complexity of the transaction, must issue a standard Request for Information (RFI) seeking documents and narrative responses addressing the transaction’s numerous probable harms raised in the record by CWA, the state attorneys general, market participants, public interest groups, and others.

I. The Commission Must Protect Lifeline Consumers

In its latest filing, Applicants write that “Verizon has consistently stated that it will maintain TracFone’s ETC status and will continue to offer Lifeline service through TracFone where it will offer service through its own network,” citing its past filings.¹⁹ In each filing, Verizon provides a single sentence claiming that it “intends” or “plans” to continue providing

¹⁹ Verizon-TracFone letter at 3.

Lifeline services where it provides wireless service. As CWA has been saying for months, a statement of intention is not an adequate plan for the 1.7 million Lifeline customers that rely on TracFone's service for connectivity. CWA has provided significant examples of why the Commission should be skeptical of Verizon's supposed intentions²⁰ and recent wireless transactions provide strong evidence that nonbinding commitments are inadequate to protect the public interest.²¹

In December 2020, the Applicants claimed that their merger would increase competition among MNOs for Lifeline customers: "In fact, the [Verizon/TracFone] transaction will be a benefit to the Lifeline program because it will introduce another major facilities-based provider to compete for that segment of the marketplace."²² This is disingenuous, as Verizon knows, because MNOs, including Verizon, have demonstrated no interest in providing Lifeline services to a significant number of customers. MNOs are neither substantially participating in the Lifeline wireless program, nor are they substantially growing their participation in the program. And why is that? Verizon blames low MNO participation in Lifeline on the Commission. In their Feb. 11, 2021 letter, the Applicants cite Verizon's 2021 report, which highlights the lack of competition and options for Lifeline wireless and broadband customers (emphasis added):

People may face hurdles in getting signed up even if they are eligible, delays in receiving their benefit, or finding services that meet their needs. ***And they have only limited choices in providers. Today there are complicated regulations mandating record keeping and document productions, multiple annual audits, and more. Because of the complexity of the Lifeline rules, many of the largest broadband providers in the nation***

²⁰ *Ex parte* letter of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Jan. 21, 2021).

²¹ Jon Brodtkin, "'We knew T-Mobile couldn't be trusted,' union says after 5,000 job cuts," *Ars Technica* (Mar. 1, 2021), <https://arstechnica.com/tech-policy/2021/03/t-mobile-promised-more-jobs-after-merger-then-cut-5000-jobs-instead/>.

²² 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).

*have declined to participate in the program.*²³

Indeed, one of those providers that has declined to participate in the program is Verizon. Over the months of this transaction, Verizon has never explained why it still limits its wireless Lifeline program to parts of North Dakota and three other states. Verizon never explained why it had fewer wireless Lifeline subscribers in January 2020 (approximately 44,206) than it did in January 2018. Verizon never explained why it accounts for only .9 percent of the low-income claims by the Lifeline program in 2019²⁴ – a frankly abysmal statistic for the nation’s largest wireless provider.

Verizon’s response to these questions has been to attack CWA’s and others’ legitimate concerns²⁵ or just ignore them rather than providing a substantive response. Why then should the Commission entrust Verizon with over a million Lifeline customers that rely on TracFone, precisely because Verizon, AT&T, and T-Mobile have opted not to compete for their business? If Verizon blames Commission regulations for low MNO participation, why should the Commission take Verizon at its word that it will maintain Lifeline services for TracFone customers, if the transaction closes, without a change in Lifeline regulations? AT&T Mobility’s wireless subscribers increased from 2018 to 2020, but the number of Lifeline subscribers now stands at only about 10,000 customers. As for T-Mobile, it paid in late 2020 a \$200 million fine

²³ Verizon, Accelerating America: affordability, adoption, access at 9 (Jan. 22, 2021), <https://www.verizon.com/about/news/accelerating-america-affordability-adoption-access>.

²⁴ Federal Communications Commission, “Universal Service Monitoring Report,” (2020). Available at: <https://docs.fcc.gov/public/attachments/DOC-369262A1.pdf>

²⁵ For example, Verizon and TracFone claim that CWA “distorts” a *Wall Street Journal* article from 2015. Verizon-TracFone letter at 4. CWA included quotes directly from the reporting – “They are torturing us,” one Brooklyn resident said of Verizon in response to repeated attempts to correct Verizon’s mistake – and the Commission can and should review the reporting itself to decide who is distorting what. Yuliya Chernova, “Verizon Drops Customers from Low-Income Program,” *Wall Street Journal* (Apr. 23, 2015), <https://www.wsj.com/articles/verizon-drops-customers-from-low-income-program-1429806581>.

for Sprint’s earlier false claims under its Lifeline program²⁶ and now offers the program in only 9 states and Puerto Rico.²⁷ The Commission must acknowledge that major MNOs are not substantially offering wireless service within the Lifeline program, and Verizon has provided no reason why this would change post-transaction. As a result, the program increasingly relies on TracFone, which accounted for 22.8 percent of the Lifeline claims in 2019,²⁸ and far smaller MVNOs. The Commission must protect these Lifeline consumers.

Let’s not kid ourselves. The Commission cannot and should not expect Verizon to suddenly compete for Lifeline customers post-merger when it has historically ignored them. The MNOs’ fundamental business model is to upsell customers’ plans and protect the significant profit margins from their post-paid customers. As the U.S. Court of Appeals for the D.C. Circuit stated in 2019, millions of people rely on TracFone and other non-facilities-based providers precisely “because the largest facilities-based providers are unwilling to participate in a program that is unprofitable for them.”²⁹ Given the MNOs’ incentives, the lack of competition today with only three MNOs remaining in the United States, and the disruption to Boost when T-Mobile ceases 3G, this merger will further widen the digital divide and harm millions of Lifeline and lower-income customers, who are still reeling from the pandemic.

Verizon claims that its acquisition of TracFone will “lower TracFone’s costs and promote price competition in the value segment.”³⁰ But TracFone’s Commission filings from a few months before Verizon and TracFone filed their Application make it clear that these are not the

²⁶ Bevin Fletcher, “T-Mobile to pay \$200M in Sprint Lifeline settlement,” *Fierce Wireless* (Nov. 4, 2020), <https://www.fiercewireless.com/regulatory/t-mobile-settles-sprint-lifeline-investigation-for-200m>

²⁷ <https://www.t-mobile.com/offers/lifeline-program>.

²⁸ *Ibid.*

²⁹ *Nat’l Lifeline Ass’n v. Fed. Comm’n Comm’n*, 921 F.3d 1102, 1113 (D.C. Cir. 2019).

³⁰ Verizon-TracFone Letter at 2.

main issues challenging TracFone’s subscribership. Rather, it was the increase in the mobile broadband minimum service standards (MSS) from 2 gigabytes per month to 3 gigabytes per month under then-FCC Chair Pai and the Trump administration that caused significant decline in TracFone's subscribership between 2019 and 2020. “All these factors” – referring to fewer company resources due to the FCC increasing the MSS – “contributed to the fact that from 2019 to 2020, when the MSS increased from 2GB to 3GB per month, TracFone experienced a 37 percent decline in average monthly enrollment. Since 2016, when the MSS was first adopted and later implemented, TracFone has lost 2.9 million participants in ‘9.25-only states,’ where only the federal \$9.25 Lifeline subsidy is available.”³¹ Ultimately, according to TracFone’s filings prior to this transaction, the way to increase the competitive force of TracFone would be to strengthen the Lifeline program, not further consolidate the wireless industry.

In this proceeding, Verizon maintains that it is “committed to ensuring all Americans have access to broadband,” presumably as a sign of its support for the Lifeline program.³² Outside of the proceeding, however, Verizon is advocating for reforms that would devastate the program. Verizon is calling for Congress to remove the Universal Service Fund fee from customers’ bills and make Universal Service Fund (USF) programs dependent on Congressional appropriation.³³ Few would disagree that the USF contribution mechanism requires modernization, but advocating this change in USF funding should be understood for what it is – an attempt to destabilize the Lifeline program and other essential USF programs by making their

³¹ Comments of TracFone Wireless on National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service Standard and Voice Support Phase-Down, WC Docket Nos. 11-42, 09-197, 10-90 (Sept. 14, 2020) at 4.

³² Verizon-TracFone Letter at 4.

³³ Verizon, “Accelerating America: affordability, adoption, access” (Jan. 22, 2021), <https://www.verizon.com/about/news/accelerating-america-affordability-adoption-access>.

funding a political football for Congress. The Commission should consider this question in its review: If Verizon intends to maintain TracFone's participation in the Lifeline program, as it claims, why would it also advocate for a program reform that makes Lifeline's funding much less certain? Rather than a sign that Verizon supports the Lifeline program, Verizon's USF funding proposal should add to the Commission's skepticism toward Verizon's vague commitment to the Lifeline program and the customers it serves.

It is the Commission's responsibility to ensure that this transaction is in the public interest, and that means protecting Lifeline customers from the potential harms of this transaction. When, as here, Applicants provide "very little in the way of detailed description of their customer transition plans, and the steps it plans to take to transition . . . Lifeline customers," the Commission has found the information on customer migration "insufficient under its public interest review."³⁴ Without this information and firm commitments, the Commission could not conclude that the transaction's benefits outweighed the harm.³⁵

As the concerns over this transaction mount and given Verizon's steadfast refusal to offer any specific assurances on Lifeline, it is questionable whether commitments at this juncture will be satisfactory, especially when one considers the harm to millions of Boost subscribers if they are also displaced. Now may be the time for the Commission to undo the damage of the Sprint/T-Mobile merger rather than trying to add more behavioral fixes.³⁶ At the very minimum, the

³⁴ In the Matter of Applications of Cricket License Co., LLC, et al., Leap Wireless Int'l, Inc., & AT&T Inc. for Consent to Transfer Control of Authorizations Application of Cricket License Co., LLC & Leap Licenseco Inc. for Consent to Assignment of Authorization, 29 F.C.C. Rcd. 2735, 2736 (2014).

³⁵ *Ibid.*

³⁶ See, e.g., Hal Singer, "The Terrible T-Mobile/Sprint Merger Must Be Undone: It should have never been allowed, and it has led to anticompetitive behavior. The Antitrust Division needs to roll it back," *Wired* (Feb. 25, 2021), <https://www.wired.com/story/opinion-the-terrible-t-mobilesprint-merger-must-be-undone/>

Commission should explore adopting the following conditions to protect the millions of Lifeline customers:

- A commitment by Verizon 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
- A commitment 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.
- A commitment to maintain the existing packages available to Lifeline customers for a minimum of 5 years.
- A commitment to continue to market to, and provide customer services for, Lifeline and pre-paid customers, including non-English speaking customers, at least at the same level as TracFone provides today.
- A commitment by Verizon to assume liability for any forfeitures or restitution that may be imposed by the Commission on TracFone, unless such liability has been resolved by TracFone before the closing of the transaction.
- Whatever other conditions the record demonstrates are necessary to protect Lifeline and other low-income pre-paid subscribers.

II. The Commission Must Protect Wireless Industry Consumers

CWA raised both the vertical and horizontal anticompetitive concerns posed by this transaction. One concern is Verizon's incentive to disadvantage rival MVNOs through foreclosure and raising their costs. With only 4.08 million pre-paid customers currently, Verizon has an incentive to provide wholesale services to numerous MVNOs, including the leading MVNO TracFone and other MVNOs. When these MVNOs currently compete against each other in the pre-paid segment, Verizon presumably has little reason to favor one client over another. But in acquiring TracFone, the largest MVNO, Verizon's incentives will change. Verizon will become both the largest pre-paid provider with about 25 million customers and the largest post-paid provider. Verizon's share in the pre-paid segment would rise from 5 percent to about 34

percent compared with an estimated 28 percent for T-Mobile and 25 percent for AT&T. Verizon will also dominate the post-paid segment, with an estimated 41 percent share, versus 29 percent for T-Mobile and 28 percent for AT&T.

One risk is that Verizon, post-merger, would have a greater incentive to favor its own MVNO TracFone and disadvantage the other MVNOs that currently rely upon Verizon for wholesale mobile wireless services. The concern is that Verizon could raise the price to rival MVNOs, degrade service, or otherwise favor TracFone. Other MNOs may not offer competitive wholesale rates, as they too have the incentive to favor their own pre-paid brands and not lose customers to a maverick MVNO. With only three MNOs left, the wholesale market is too concentrated to protect independent MVNOs from anti-competitive actions.

In its recent meeting with FCC staff, the CWA presented additional evidence regarding how the MNOs can control pricing by the MVNOs and use other anticompetitive actions to deter MVNOs from stealing their customers.³⁷ An MNO can control the MVNOs' retail pricing by, among other things, its wholesale pricing and data rates. The MVNOs, unlike the MNOs, operate on far lower margins. Consequently, an MVNO needs scale to get better wholesale rates to secure more customers. No other MVNO besides TracFone with its 21 million subscribers has this scale.

These concerns are real as the United States found in Sprint/T-Mobile that competition among the three remaining MNOs was too weak to prevent anticompetitive harm to the MVNOs and their customers. If the threat of switching to Verizon and AT&T could not protect MVNOs that relied on T-Mobile, the Commission cannot expect competition to somehow protect the

³⁷ *Ex parte* letter of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Mar. 1, 2021).

independent MVNOs that rely on Verizon after it acquires TracFone, the leading pre-paid MVNO provider.

One response by the Applicants is that no MVNO has publicly complained.³⁸ But why would any MVNO publicly raise these concerns when doing so could be their death sentence? Depending on the contract terms, an MNO can terminate an MVNO with as little as several months' notice and can require the MVNO and its customers to transition off of its network within six months. This imposes high switching costs for an MVNO. (Indeed, DISH is now warning investors of this significant disruption to its business and the significant risk of losing many customers.) When an MVNO switches to another MNO, it can lose about 30 percent of its customers who stay with the MNO host. Consequently, few MVNOs in the United States would want to raise these concerns publicly, especially given a divided Commission's blessing of the Sprint/T-Mobile merger.

Nonetheless, there are complainants from market participants. Peter Adderton, the founder of Boost Mobile and Mobile X, a new MVNO, in his February 25, 2021 meeting with the FCC explained how this merger would exacerbate harms associated with increased concentration in the mobile marketplace.³⁹ According to his counsel's March 1, 2021 letter to the Commission, the market participant explained how this merger would likely cause many low-income and credit-challenged customers to pay even more for poorer quality wireless plans.

At the margin, MVNOs can provide some competitive pressure on the MNOs' subscription plans, especially as millions of Americans are currently unemployed. As we see with Lifeline, MVNOs can offer far greater choices to lower-income consumers. Post-merger,

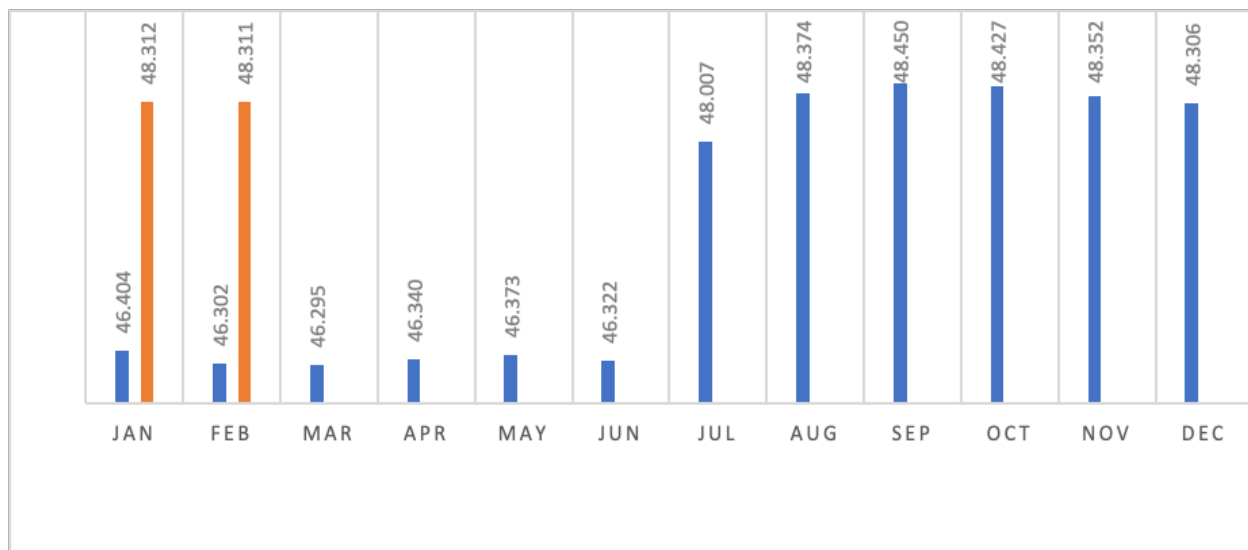
³⁸ Verizon-TracFone letter at 3.

³⁹ *Ex parte* Mobile X, IB File No. ITC-T/C-20200930-00173 (Mar. 1, 2021).

TracFone will no longer be an independent maverick. In such a highly concentrated market, one can expect the risk of tacit collusion and mobile pricing to increase further.

Wireless prices before the merger were steadily 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 and February 2021 remained elevated.⁴⁰ The price hike is especially troublesome given T-Mobile and Sprint's promise not to increase prices post-merger.

2020-2021 Wireless Prices



Source: US Bureau of Labor Statistics: Wireless telephone services in U.S. city average, all urban consumers, not seasonally adjusted

⁴⁰ 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>

III. The Commission Should Examine Not Only the Transaction’s Impact on the Wholesale Level and Consumers, but Also Its Impact Upstream on Labor Markets

CWA raised concerns about monopsony power in the wireless industry, citing recent scholarship in the antitrust field. Rather than providing a substantive response, Verizon dismisses CWA’s concerns as “generalized claims.” Generalizable claims are exactly the point of much economic and social scientific research – to understand the impacts of decisions, so that we might avoid them, or at least not make them again. The monopsony concerns are real and the Commission should seek a substantive response from Verizon about how it will address them.

Verizon claims that CWA “ignores employment realities in the US wireless marketplace,” citing a report from CTIA, The Wireless Industry – a trade organization on whose 2021 Board of Directors representatives from Verizon and TracFone sit – that presents a distorted picture of the wireless industry.⁴¹ Yet again, the Commission should view Verizon’s claims, and the data they rely on, with skepticism. To take just one example, the report cites the “BLS Quarterly Census of Employment and Wages (2017 average),” but does not disclose which occupations the authors included in this measure.⁴² This is essential information to understand the validity of the report and therefore Verizon’s claims. By contrast, when the Economic Policy Institute – a nonprofit, nonpartisan think tank – analyzed the same data focusing on telecom workers, researchers found that the lowest wage decile of all telecom workers have seen real wage declines of 12 percent since the 1970s, a much more dismal reality than Verizon would

⁴¹ Verizon-TracFone Letter at 5.

⁴² CTIA, “The Wireless Industry: An American Success Story” (last visited Mar. 11, 2021), fn. 5. Available at: <https://www.ctia.org/the-wireless-industry/wireless-industry>.

have the Commission believe, and one that coincides with the rise and increasing dominance of wireless services.⁴³

When reviewing the T-Mobile-Sprint merger, economists found that the transaction would substantially increase concentration in numerous local wireless industry retail labor markets, increasing the monopsony power of employers in purchasing labor power of retail wireless workers, thereby depressing workers' wages and benefits through reduced competition for labor.⁴⁴ More specifically, the economists found that, if the Sprint-T-Mobile merger were approved, average weekly earnings for retail wireless workers would decline by between 1 and 3 percent in most affected labor markets with earnings falling by as much as 7 percent in the most-affected labor markets. For the 50 most-affected labor markets, those percent changes correspond to a decline in annual earnings of between \$520 and \$3276 on average.⁴⁵ These findings are even more concerning now that the number of national wireless retail employers has declined from four to three. Absent collective bargaining as a means to counter employer concentrated power, retail wireless workers will be worse off following the Verizon-TracFone transaction, just as they continue to be after the T-Mobile-Sprint transaction.

Finally, Verizon highlights its claim that the company "looks forward to welcoming TracFone's employees to the Verizon family, and that TracFone's employees will enjoy Verizon's generous employee benefit package and benefit from Verizon's well-earned reputation

⁴³ John Schitt and Jori Kandra, "Decades of slow wage growth for telecommunications workers," Economic Policy Institute (Oct. 5, 2020). Available at: <https://files.epi.org/pdf/209752.pdf>

⁴⁴ Adil Abdela and Marshall Steinbaum, "Labor market impact of the proposed Sprint-T-Mobile merger," Economic Policy Institute and the Roosevelt Institute (Dec. 17, 2018), <https://files.epi.org/pdf/159194.pdf>

⁴⁵ *Ibid.* See also Economic Policy Institute, "Sprint-T-Mobile merger would escalate market power in the industry, worsen wireless retail workers' wages," (Dec. 17, 2018), <https://www.epi.org/press/sprint-t-mobile-merger-market-power-wages/>

for workplace diversity and inclusion.”⁴⁶ However, as Verizon knows, TracFone relies almost exclusively on third-party dealers, who will not be “welcomed” into Verizon’s compensation and benefits packages. Workers at third-party retailers are more disempowered than those at carrier-operated stores because of their remoteness from the corporate parent. As a result, these workers are at a higher risk of job loss and downward pressure on wages than those at carrier-operated stores. Still, “welcoming employees into the family” is representative of the vague, noncommittal language that Verizon and TracFone have tried to pass off to the Commission as substantive since first filing their Application. Indeed, the euphemism is so open to interpretation that perhaps Verizon intends to imply that “welcoming” workers into their company means closing those workers’ stores, as T-Mobile used the phrase when it closed the Sprint store on Connecticut Ave., NW in Washington, DC following the T-Mobile-Sprint merger.



⁴⁶ Verizon-TracFone Letter at 5.

Conclusion

Absent significant offsetting efficiencies or other substantial public interest benefits, a transaction that increases the concentration in an already highly concentrated industry and eliminates a significant remaining maverick is unlikely to serve the public interest.

Under the Commission's "sliding scale approach" for weighing any potential public interest harms against any potential public interest benefits,⁴⁷ the Commission requires that "as the harms to the public interest become greater and more certain, the degree and certainty of the public benefits must also increase commensurately."⁴⁸ Where the potential harms are "both substantial and likely, the Applicant's demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."⁴⁹ Ultimately, the Applicants here bear the burden of proving, by a preponderance of the evidence, that their proposed transaction, on balance, will serve the public interest.⁵⁰ Despite the passage of months and multiple opportunities, the Applicants have failed to do so.

⁴⁷ See, e.g., *T-Mobile/Metro PCS Order* ¶ 14; *Cellco Partnership d/b/a Verizon Wireless and SpectrumCo and Cox TMI for Consent to Assign AWS Licenses et al., Memorandum Opinion and Order and Declaratory Ruling*, WT Docket No. 12-4 (rel. Aug. 23, 2012) ¶ 28; *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company for Consent to Assign and Transfer Licenses*, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Applications of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, *Order*, 26 FCC Rcd at 17598-99 ¶ 23; *AT&T/BellSouth Order* ¶ 203.

⁴⁸ In *Re Applications of Teleport Commc'ns Grp. Inc., Transferor, & AT&T Corp., Transferee*, 13 F.C.C. Rcd. 15236 n. 150 (1998) quoting In *re Applications of NYNEX Corp., Transferor, & Bell Atl. Corp., Transferee*, 12 F.C.C. Rcd. 20063, ¶ 157 (1997) ("As the harms to the public interest become greater and more certain, the degree and certainty of the public benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest, convenience and necessity").

⁴⁹ See, e.g., *Applications of AT&T and Deutsche Telekom AG*, WT Docket No. 11-65, *Order and Staff Analysis and Findings*, WT Docket No. 11-65 ¶ 127; *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, *Memorandum Opinion and Order*, MB Docket No. 10-56 (rel. Jan. 20, 2011) at ¶¶ 228-9; *Cingular/AT&T Wireless Order* ¶ 91.

⁵⁰ See, e.g., In *re Echo Star Communications Corp.*, 17 FCC Rcd 20559 (2002).

Accordingly, the Commission should issue a standard Request for Information seeking documents and narrative responses addressing the transaction's probable harms. Given the serious implications of the proposed transaction, if the Commission considers approving the transaction, it should, at a minimum, impose conditions on the transaction that protect Lifeline customers, workers, and MVNO market consumers.

Respectfully submitted,

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