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	)	
	)	
Proposed Transfer of Control of TracFone Wireless, Inc. to Verizon Communications, Inc.	)	GN Docket No. 21-112
	)	

Reply Comments of Communications Workers of America

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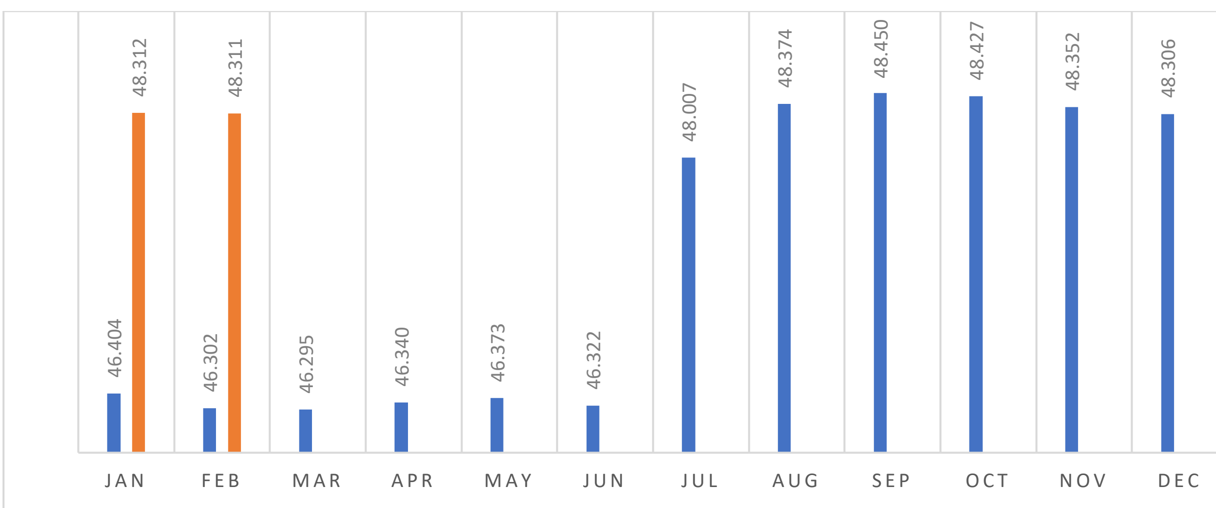
It has been six months since Verizon Wireless, Inc.'s ("Verizon") application for its proposed acquisition of TracFone Wireless, Inc. ("TracFone").[1] Applicants have had six months to demonstrate that this transaction as currently structured is in the public interest. They have failed. The more this deal is analyzed, the greater the concerns, including the merger's likely harm to the millions of Lifeline wireless and pre-paid customers reliant on TracFone for what competition remains after the Sprint/T-Mobile merger.

As a recent International Monetary Fund report notes, America has a market power problem: "The connection between rising market power and declining business dynamism partly reflects the role of M&As, especially by dominant firms."[2] While a few companies have profited, workers and consumers have paid the price, as the report notes. For wireless services, that price is starkly depicted in the increase in average wireless prices after the Sprint/T-Mobile 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

[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] Ufuk Akcigit et al., Rising Corporate Market Power: Emerging Policy Issues, Int'l Monetary Fund Staff Discussion Note, at 10 (Mar. 2021), https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2021/03/10/Rising-Corporate-Market-Power-Emerging-Policy-Issues-48619.

Thus, as the IMF report notes, regulators and competition authorities need to be increasingly vigilant due to the growing risks of underenforcement in merger control. Against this background, Verizon, the dominant wireless provider in a highly concentrated industry, now argues that eliminating the last remaining maverick with any scale will somehow benefit consumers and workers.

Under the Commission's "sliding scale approach" for weighing any potential public interest harms against any potential public interest benefits,[3] 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."[4] 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."[5] Ultimately, the

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[3] *See, e.g.,* Applications of Deutsche Telekom AF, T-Mobile USA, Inc., and MetroPCS Communications Inc. for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order and Declaratory Ruling,* WT Docket No. 12-301 ¶ 14 (rel. March 12, 2013); 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 ¶ 28 (rel. Aug. 23, 2012); 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 and BellSouth Corporation Application for Transfer of Control, *Memorandum Opinion and Order,* 22 FCC Rcd at 5756 ¶ 203 (2007).

[4] 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").

[5] *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 ¶¶ 228-9 (rel. Jan. 20, 2011); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket 04-70, *Memorandum Opinion and Order* ¶ 91 (rel. Oct. 26, 2004).

Applicants bear the burden of proving, by a preponderance of the evidence, that their proposed transaction, on balance, will serve the public interest.[6] Applicants have failed to do so.

Instead, in late 2020, Applicants attempted to avoid a thorough public review of this transaction by requesting streamlined treatment. The Commission declined this request.[7] Since then, Applicants have avoided providing the Commission or the public with meaningful responses to the outstanding questions raised by the attorneys general from multiple states, CWA, market participants (including an owner of an MVNO), and public interest groups.[8] These concerns relate to Lifeline and anti-consumer harms, which the Commission must consider in its public interest review. While the Applicants failed to submit public responses to outstanding questions about the transaction in the Commission's docket, Verizon tells the press that it is waiting for the Commission to call.[9] This approach to regulatory public interest review is counter to the spirit of long-established procedural rules and practice.

The bottom line is that Applicants cannot bear their burden through silence. Nor can they shift their burden to the Commission or members of the public. Applicants must explain and

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

[7] 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).

[8] Comments of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Mar. 12, 2021); Comments of Free Press, IB File No. ITC-T/C-20200930-00173 (Mar. 12, 2021); Comments of Public Knowledge, Access Humboldt, Benton Institute for Internet and Society, Next Century Cities, and the Open Technology Institute at New America, IB File No. ITC-T/C- 20200930-00173 (Mar. 12, 2021); *Ex parte* letter of the National Federation of the Blind, IB File No. ITC-T/C- 20200930-00173 (Mar. 3, 2021); *Ex parte* letter of Mobile X, IB File No. ITC-T/C- 20200930-00173 (Mar. 1, 2021); and *Ex parte* letter of the Office of the Attorney General of Virginia, IB File No. ITC-T/C- 20200930-00173 (Feb. 4, 2021); and Comments of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Jan. 21, 2021).

[9] John Hendel, "Verizon 'willing to make binding commitments' to secure Tracfone merger, executive says," Politico Pro Technology (Mar. 19, 2021).

provide credible evidence that eliminating the last remaining maverick in this highly concentrated industry will actually benefit the public when all the evidence in the record shows the contrary. Consequently, the Commission cannot approve this merger when Applicants failed to prove, by a preponderance of the evidence, that their proposed transaction, on balance, will serve the public interest.

The Commission has a responsibility to the 1.7 million Lifeline customers who subscribe to TracFone and the 21 million customers who rely on the last remaining maverick in the wireless industry. Over the previous six months, Applicants have steadfastly avoided any specificity regarding Verizon's plans for TracFone's involvement in the Lifeline program post-merger. They 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. The only reasonable conclusion is that Applicants have no intention of providing this information without a Commission request.

Accordingly, the Commission should issue a standard Request for Information seeking documents and narrative responses addressing the transaction's probable harms, as CWA and others have requested.[10] Moreover, given the profound 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

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[10] Comments of Communications Workers of America, IB File No. ITC-T/C-20200930-00173 (Mar. 12, 2021); Comments of Free Press, IB File No. ITC-T/C-20200930-00173 (Mar. 12, 2021); and Comments of Public Knowledge, Access Humboldt, Benton Institute for Internet and Society, Next Century Cities, and the Open Technology Institute at New America, IB File No. ITC-T/C- 20200930-00173 (Mar. 12, 2021).

participants. At a minimum, the 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 offers 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.

Respectfully submitted,

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