

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of)
 TracFone Wireless, Inc. (U4321C), América)
 Móvil, S.A.B. de C.V.)
)
 and)
) Application No. A. 20-11-001
 Verizon Communications, Inc.)
)
 for Approval of Transfer of Control over)
 Tracfone Wireless, Inc.)
)

**JOINT PROTEST OF PUBLIC KNOWLEDGE, THE CALIFORNIA CENTER FOR
 RURAL POLICY, ACCESS HUMBOLDT, NEXT CENTURY CITIES, THE BENTON
 INSTITUTE FOR BROADBAND & SOCIETY, COMMUNICATIONS WORKERS OF
 AMERICA, TRIBAL DIGITAL NETWORKS, AND THE OPEN TECHNOLOGY
 INSTITUTE AT NEW AMERICA TO THE JOINT APPLICATION OF TRACFONE
 WIRELESS, INC. (U4321C), AMÉRICA MÓVIL, S.A.B. DE C.V., AND VERIZON
 COMMUNICATIONS, INC.**

Andrew Jay Schwartzman
Senior Counselor
**Benton Institute for
 Broadband & Society**
 1341 G Street, NW, Fifth
 Floor
 Washington, DC 20005
 (202) 241-2408

Brian Thorn
Chief Researcher
**Communications Workers of
 America**
 501 3rd Street NW
 Washington, DC 20001

Harold Feld
Senior Vice President
Public Knowledge
 1818 N St NW, Suite 410
 Washington, D.C. 20036
 hfeld@publicknowledge.org
 (202) 861-0020

Connie E. Stewart
Executive Director
**California Center for Rural
 Policy**
 1 Harpst Street
 Arcata, CA 95521
 (707) 826-3420

Michael Calabrese
*Director, Wireless Future
 Project*
**Open Technology Institute at
 New America**
 740 15th Street, NW Suite 900
 Washington, DC 20005
 (202) 986-2700

Matt Rantannen
Director of Technology
 Southern California Tribal Chairmen's
 Association
Tribal Digital Networks
 P.O. Box 1470
 Valley Center, CA 92082

Francella Ochillo
Executive Director
Next Century Cities
 1200 18th Street NW, Suite 700
 Washington, DC 20036

Sean McLaughlin
Executive Director
Access Humboldt
 1915 J St.
 Eureka, CA 95501
 (707) 476-2873

December 7, 2020

TABLE OF CONTENTS

I.	INTRODUCTION.	2
II.	STANDARD OF REVIEW.	4
III.	THE COMMISSION SHOULD NOT GRANT THE TRANSFER UNTIL AFTER IT REVIEWS ALL ISSUES RELATED TO LIFELINE.	5
IV.	THE COMMISSION SHOULD APPLY THE CRITERIA SET FORTH IN PUBLIC UTILITIES CODE SECTION 854.	8
V.	THE TRANSACTION RAISES SIGNIFICANT COMPETITIVE CONCERNS FOR THE MOBILE MARKET IN CALIFORNIA.	12
VI.	CONCLUSION.	16

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of)
TracFone Wireless, Inc. (U4321C), América)
Móvil, S.A.B. de C.V.)
)
and)
) Application No. A. 20-11-001
)
Verizon Communications, Inc.)
)
)
for Approval of Transfer of Control over)
Tracfone Wireless, Inc.)
)
)

JOINT PROTEST OF PUBLIC KNOWLEDGE, THE CALIFORNIA CENTER FOR RURAL POLICY, ACCESS HUMBOLDT, NEXT CENTURY CITIES, THE BENTON INSTITUTE FOR BROADBAND & SOCIETY, COMMUNICATIONS WORKERS OF AMERICA, TRIBAL DIGITAL NETWORKS, AND THE OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA TO THE JOINT APPLICATION OF TRACFONE WIRELESS, INC. (U4321C), AMÉRICA MÓVIL, S.A.B. DE C.V., AND VERIZON COMMUNICATIONS, INC.

Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure, Public Knowledge, the California Center For Rural Policy, Access Humboldt, Next Century Cities, the Benton Institute For Broadband & Society, Communications Workers Of America, Tribal Digital Networks, and the Open Technology Institute At New America (collectively, the “Public Interest Parties”) protest the above-captioned Joint Application of TracFone Wireless, Inc., América Móvil, S.A.B. de C.V., and Verizon Communications, Inc. (collectively, the “Applicants”) for approval of transfer of control over TracFone to Verizon (“Application”).¹

¹ *Joint Application of TracFone Wireless, Inc. (U4321C), América Móvil, S.A.B. de C.V. and Verizon Communications, Inc. for Approval of Transfer of Control over Tracfone Wireless, Inc., Application No. A. 20-11-001 (filed November 5, 2020) (“Application”).* The Application was filed on November 5, 2020, and first appeared in the Commission’s Daily Calendar on November 9, 2020. Pursuant to Commission Rule 2.6(a), this protest is timely filed. Although the Public Interest Parties qualify for party

I. INTRODUCTION.

Applicants urge the Commission to forego substantive review of a merger between the largest facilities-based mobile wireless service provider in the country (Verizon) and “by far” the largest mobile virtual network operator (“MVNO”) in California (TracFone) despite its potentially significant price and quality effects on consumers in California, particularly Lifeline and low-income consumers.² But it is far too early to judge the merits of this transaction, especially as it pertains to Tracfone’s 230,000 Lifeline customers in California. Section 709 of the California Public Utilities Code defines communications policy for the state of California. The state’s declared policy includes: (1) “assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians”; (2) providing access to advanced communications services to “educational institutions, health care institutions, community-based organizations, and governmental institutions”; (3) encouraging “equitable provision of services” and “the ubiquitous availability of a wide choice of state-of-the-art services”; (4) “bridging the ‘digital divide’ by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians”; and (5) “promot[ing] lower prices, broader consumer choice, and avoidance of anticompetitive conduct.”³

As discussed below, section 854(a) of the Public Utilities Code obligates the Commission to fully assess the potential impact of the transaction on the public interest as defined by the

status in this proceeding by filing this protest, *see* CPUC Rule 1.4(a)(2), the Public Interest Parties separately filed a motion for party status out of an abundance of caution.

² *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042*, Investigation No. 15-11-007, Decision No. 16-12-025, 2016 WL 7243749 (Cal.P.U.C.) at *47 (“TracFone is by far the biggest of these [MVNO] operators in California.”) (“Competition Investigation”).

³ Pub. Util. Code § 709.

people of California in section 709 of the Public Utilities Code. Record evidence may eventually demonstrate that this transaction satisfies the public interest after the Commission imposes conditions. But because the Application does not adequately demonstrate that the transaction serves the public interest, the Commission must reject the Applicants' request to forego or short-circuit review.

Lifeline and value-sensitive consumers throughout California need concrete, enforceable assurances they will receive their promised benefits after the transaction, including support for continued robust competition. Section 854 not only requires prior Commission approval for large transactions involving utilities like Verizon, but also requires the Commission to consider whether the transaction provides benefits to subscribers, impairs competition, generates economic benefits, protects union and nonunion jobs, and preserves the quality of service, among other things. The Commission cannot discharge these statutory responsibilities unless all interested stakeholders have an opportunity to test the Applicants' claims through a public process. The Federal Communications Commission ("FCC") has already rejected the Applicants' request for abbreviated treatment, and the magnitude of this transaction for California's consumers—as well as CPUC policy and practice—warrant full, fair and transparent consideration of the applicants' claims before the CPUC as well.⁴

⁴ *Non Streamlined International Applications/Petitions Accepted For Filing*, FCC Public Notice, Report No. TEL-02056NS at 1 (Nov. 20, 2020). In addition to Public Interest Parties, the Applicants' FCC application was opposed by several other parties, including T-Mobile and the Communications Workers of America ("CWA"). See Public Knowledge, *et al.*, Opposition, FCC IBFS File No. ITC-T/C-20200930-00173 (Oct. 16, 2020), <https://bit.ly/2UI7iLI>; CWA Opposition, FCC IBFS File No. ITC-T/C-20200930-00173 (Nov. 16, 2020), <https://bit.ly/2IM2Uck>; T-Mobile Opposition, FCC IBFS File No. ITC-T/C-20200930-00173 (Oct. 13, 2020), <https://bit.ly/3362Yub>.

ARGUMENT

II. STANDARD OF REVIEW.

Section 854 of the Public Utilities Code governs this transaction and has two discrete requirements. First, section 854(a) requires prior authorization from the Commission for any transaction that results in the merger, acquisition, or a direct or indirect change in control of a public utility.⁵ “The Commission has broad discretion to determine if it is in the public interest to authorize a proposed transaction pursuant to Public Utilities Code section 854, subdivision (a).”⁶ Furthermore, “where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.”⁷

Second, the Commission must consider specific, enumerated criteria as part of its public interest analysis “where any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000).”⁸ These factors ask whether the transaction: provides benefits to subscribers, impairs competition, generates economic benefits, protects union and nonunion jobs, and preserves the quality of service. The Commission has consistently found that “[i]n order to determine whether the transaction is in the public interest pursuant to Section 854(a), it is reasonable for the

⁵ Pub. Util. Code § 854(a). Wireless carriers are “telephone corporations” and therefore public utilities under Public Utilities Code Sections 216, 233 and 234.

⁶ *Decision Granting Conditional Approval of the Acquisition of PacificCorp by MidAmerican Energy Holdings Company*, Decision No. 06-02-003, at 23 (2006).

⁷ *Joint Application of Citizens and GTE to Sell and Transfer Assets*, Decision No. 01-06-007, 2001 Cal. PUC LEXIS 390, *24.

⁸ Pub. Util. Code §§ 854(b) and (c).

Commission to assess the public interest factors enumerated in Section 854(c) and undertake an analysis of antitrust and environmental considerations [in Section 854(b)].”⁹

III. THE COMMISSION SHOULD NOT GRANT THE TRANSFER UNTIL AFTER IT REVIEWS ALL ISSUES RELATED TO LIFELINE.

TracFone is an Eligible Telecommunications Carrier and an authorized California Lifeline provider.¹⁰ Tracfone is the single largest provider of wireless Lifeline service nationwide, with 1.7 million customers, 230,000 of which are in California.¹¹ As a result, the transaction raises significant public interest concerns regarding the potentially damaging effects the transaction may impose on Lifeline recipients and other low-income subscribers in California. These public interest concerns alone warrant full review of the transaction. As the Commission explained earlier this year, the California Legislature “contemplated a significant role for the Commission in closing the digital divide in California and in bringing advanced communications services, including broadband internet access, to all Californians.”¹² The Commission has a duty to verify the claims of Verizon,¹³ which by its own admission has little experience in marketing or running a low-cost pre-paid Lifeline business.

⁹ *Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI*, D.05-11-029, Conclusion of Law 8 (2005); *see also Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV Pipe Line, L.L.C., Kinder Morgan, Inc., and Knight Holdco LLC For Review and Approval Under Public Utilities Code Section 854 of The Transfer of Control of SFPP, L.P. and CALNEV Pipe Line, L.L.C.*, D.07-05-061 at 24 (2007). (“The Section 854 Application represents that no Applicant meets this financial threshold but recognizes that even when Section 854(b) and (c) do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide context for a public interest assessment.”).

¹⁰ *See* CPUC Resolution T-17566, 2017 Cal. PUC LEXIS 256, at *3 & n.3 (May 25, 2017).

¹¹ Application at 19.

¹² *Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service*, Rulemaking 18-07-006, 2020 WL 4365427 (Cal.P.U.C.) (July 16, 2020).

¹³ *See* Pub. Util. Code § 854(a); *see also id.* § 709 (“the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians . . . (c) To

For example, Verizon promises in the Application that it “will not require any TracFone customers to move to a more expensive plan when the transaction closes.”¹⁴ Even accepting this at face value, the statement promises nothing for *after* the transaction closes. Similarly, Verizon promises to make available to TracFone customers its 5G network and wealth of new devices.¹⁵ But Verizon does not explicitly include Lifeline subscribers in this promise, nor does Verizon indicate at what price or subject to what limitations Verizon will make its 5G network available to Tracfone customers. Verizon could well decide for business reasons to charge supplemental fees, throttle performance, cap data consumption, or limit availability of 5G or new devices to non-Lifeline customers to discourage participation in the program.

Alternatively, Verizon could—even consistent with its promise not to force any of its customers into more expensive plans—withhold these promised benefits from low-cost plans whether or not they participate in Lifeline. This sort of market segmentation is routine in the business world. TracFone currently has strong commercial incentives to make the maximum variety of equipment and services available to its customers because the company’s entire business model is structured around serving low-income, price sensitive customers. Once TracFone becomes part of Verizon, however, Verizon will have the incentive to limit low-cost customers to “no frills economy” plans while reserving the “first class” devices and services for those willing to pay more under its flagship Verizon brand.

encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services. (d) To assist in bridging the ‘digital divide’ by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians . . . (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct. (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.”).

¹⁴ Application at 4.

¹⁵ Application at 16.

Indeed, for Verizon, this transaction is about expanding into a new market without cannibalizing its post-paid business.¹⁶ It will have incentive to move customers from pre-paid to the more lucrative post-paid. Without a thorough examination of Verizon’s business strategy and commitment of resources to Lifeline—which requires a standard rather than streamlined application-review process—the Commission cannot determine whether the transfer will produce the benefits Verizon claims or will eliminate a vital Lifeline participant.

Furthermore, even if Verizon’s representations are taken at face value, the Commission cannot accept the risk to Lifeline and low-income subscribers that Verizon may once again change business plans. No one doubts Verizon was serious about entering the streaming video market when it announced Go90 in 2015, but that did not prevent Verizon from needing to shutter the business a mere three years later.¹⁷

While business failures are not generally a cause for Commission concern, the consequences of a failure of the largest wireless Lifeline provider (and largest low-cost carrier) are far more serious for California’s low-income consumers than the failure of a would-be competing streaming service. As the name of the program implies, the Lifeline program literally saves people’s lives by providing access to 911 and wireless emergency alerts to those who otherwise could not afford it.

¹⁶ See, e.g., GlobalData, *Verizon needs Tracfone to round out its wireless value proposition* (Sept. 15, 2020) (“Verizon has long needed a secondary brand and value proposition that it can use to serve the prepaid wireless market without cannibalizing its premium flagship brand.”), <https://bit.ly/3nQEBJ1>; MSNBC, *Verizon CEO Hans Vestberg on acquisition of pre-paid phone provider Tracfone* (Sept. 14, 2020) (quoting Verizon CEO Hans Vestberg: “We want to play in all the segments for the consumers of the United States . . . We can do that for different parts of the segments . . . The first year of operations we believe we’re going to be EPS accretive on this . . . In today’s environment, you see more potential when it comes to the prepaid . . .”), <https://cnb.cx/2J6rGE2>.

¹⁷ Nick Statt, *Verizon is shutting down its original video app Go90*, The Verge (June 28, 2018), <https://bit.ly/2Iv9e7g>.

IV. THE COMMISSION SHOULD APPLY THE CRITERIA SET FORTH IN PUBLIC UTILITIES CODE SECTION 854.

In their attempt to limit the Commission’s review of the proposed transaction, the Applicants first offer a half-hearted argument that the Commission should completely forego review of the transaction. The applicants go so far as to suggest that filing their application was not necessary,¹⁸ a suggestion undermined by the Applicants having filed an application in the first place. In support of their demand that the Commission not review the transaction, the Applicants cite Decision 95-10-032 and reference past MVNO transactions for their assertion.¹⁹ These arguments are unavailing. Despite inferences to the contrary by the Applicants, Decision 95-10-032, which was released 25 years ago at the infancy of the wireless industry, does not strictly exempt all commercial mobile radio service (“CMRS”) providers from compliance with section 854. Rather, the Decision requires CMRS providers to provide advance notice to the Commission of transfers of control, at which point the Commission will make a determination as to whether further information or a formal application under section 854 is necessary.²⁰ The decision states that, “[u]nless the CMRS provider is notified within the 14 or 30 day period by the Commission or its staff that further information is needed *or that a formal application is required*, the CMRS provider shall not require any commission preapproval to consummate the transaction.”²¹

¹⁸ Application at 12 (“the Commission did not require applications for, or engage in formal review under Section 854 of, T-Mobile’s acquisition of MetroPCS (now Metro) in 2013, AT&T’s acquisition of Leap Wireless (the parent of Cricket) in 2014, or DISH’s recent acquisition of Boost Mobile.”).

¹⁹ D. 95-10-032, 1995 WL 696091 (Cal.P.U.C.) (“Decision 95-10-032”).

²⁰ Decision 95-10-032, Ordering Paragraph 3.

²¹ Decision 95-10-032, Ordering Paragraph 3 (emphasis added). The Commission also concluded that “[t]he transfer of ownership interests in a CMRS entity is not tantamount to entry, and Commission jurisdiction over such transactions is not preempted . . .” D.95-10-032, Conclusion of Law 9.

The transactions that the Applicants cite are distinguishable for other reasons, too. They were significantly smaller than the proposed transaction, and did not have the same potential impact on California consumers, especially low-income consumers. Indeed, the current transaction involves the largest facilities-based mobile wireless service provider in the country and by far the largest MVNO in California.²² The proposed transaction creates a fundamental change in the structure of the industry by eliminating the last substantial MVNO. The next largest independent MVNO, Consumer Cellular, has approximately 4,000,000 subscribers compared to TracFone’s 21,000,000.²³ If this transaction were approved, then all large independent MVNOs would be eliminated and integrated with a national facilities-based provider (or would-be facilities-based provider).²⁴ The Commission must carefully study the implications of this significant change.

After asserting with little authority and for no especially persuasive reason that the Commission should completely forego review of the transaction, the Applicants appear to concede that the proposed transaction is subject to Commission review,²⁵ but assert that the transaction is not subject to public-interest factors enumerated in sections 854(b) and 854(c), including whether the transaction provides benefits to subscribers, impairs competition, generates economic benefits, protects union and nonunion jobs, and preserves the quality of service. The Applicants argue these factors are irrelevant here because “TracFone’s gross

²² Competition Investigation at *47.

²³ See, e.g., Mike Dano, Consumer Cellular fielding interest from buyers—sources, LightReading (Aug. 11, 2020), <https://bit.ly/377ICC8>.

²⁴ See Letter from Kathleen Ham, Senior Vice President, T-Mobile, to Marlene S. Dortch, Secretary, FCC, IBFS File No. ITC-T/C-20200930-00173 (filed Oct. 13, 2020).

²⁵ Application at 12 (“And that review must be limited to the public interest standard under Section 854(a) . . .”).

California revenues have not exceeded \$500 million in either of the past two calendar years, and both América Móvil and Verizon are holding companies with no California revenues.”²⁶

These arguments strain credulity. Tellingly, Applicants attempt to rely on the complex corporate structures of América Móvil and Verizon to say these companies fall under the \$500 million threshold, as opposed to actually stating that they do not exceed the revenue threshold. Indeed, it is especially disingenuous for Verizon, a company that had total gross annual revenue of \$131.9 *billion* in 2019,²⁷ and stores throughout California, to claim that it does not have any revenue in California, the largest state in the country by population.

Even if the transaction somehow were deemed not to meet the \$500 million threshold, the Commission regularly uses the standard public-interest criteria—which incorporates antitrust, consumer protection, labor, and environmental factors—to determine whether the transaction serves the public interest under section 854(a).²⁸ Transactions of less than \$500 million are not beyond Commission reach. Far from it. If a transaction exceeds \$500 million, the Commission must examine the enumerated criteria. But the Commission need not turn a blind eye when the transaction’s value is slightly smaller or obscured through complex corporate structures. Given the size and scale of the proposed transaction and its potential impact on California consumers, the Commission cannot reasonably be expected to approve the hallmarks of public interest—

²⁶ Application at 2.

²⁷ Verizon ends 2019 with highest 4Q wireless adds in six years, increased cash flow and revenue growth (January 20, 2020), <https://vz.to/36W3zQt>.

²⁸ *Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV Pipe Line, L.L.C., Kinder Morgan, Inc., and Knight Holdco LLC For Review and Approval Under Public Utilities Code Section 854 of The Transfer of Control of SFPP, L.P. and CALNEV Pipe Line, L.L.C.*, D.07-05-061 at 24 (2007) (a transfer of control application where the Commission stated “[t]he Section 854 Application represents that no Applicant meets this financial threshold but recognizes that even when Section 854(b) and (c) do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide context for a public interest assessment.”).

competition, jobs, environment, and prices—without the hallmarks of reliable evidence—namely document production, additional filings, expert reports, and the like. This process represents standard procedure for the Commission in mega-mergers like this one, and the Commission’s statutory obligation to evaluate the public interest requires no less.

The Applicants ask the Commission to waive consideration of the public-interest factors even if the transaction meets the \$500 million threshold.²⁹ The Applicants also ask the Commission waive the provision of the Public Utilities Code requiring conditions if the transaction does not serve the public interest.³⁰ In support, the Applicants cite factors used in the SBC-AT&T decision—namely, “the (i) specific characteristics of the merger applicants; (ii) the state of and the impact on the market as a whole; and (iii) the likelihood that competitive pressures and [the Commission’s] regulatory regime will cause benefits achieved through the combination to flow through to consumers.”³¹

The precedent Applicants cite is inapt for several reasons. First, regarding the “specific characteristics of the applicants,” unlike in the SBC-AT&T merger, where “California's interests [were] not uniquely affected,”³² the combination of the largest facilities-based mobile wireless service provider in the country and by far the largest MVNO in California could have a dramatic impact on consumers, particularly TracFone’s 230,000 Lifeline customers in California. Second, regarding “the state of and the impact on the market as a whole,” as discussed below, the

²⁹ Application at 12.

³⁰ Pub. Util. Code § 853(b) (“The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest.”).

³¹ Application at 13. D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *30 (Nov. 18, 2005) (“SBC-AT&T”).

³² SBC-AT&T at *35.

transaction raises significant competitive concerns, including the potential for increased retail prices, due to the elimination of TracFone, which has the fourth largest subscribership of wireless services in the United States.³³ Third, as for whether benefits of the transaction will “flow through to consumers,” as discussed above, the transaction raises significant public interest concerns for California consumers, particularly Lifeline recipients and other low-income subscribers.

In short, the Applicants have made no plausible argument to avoid Commission review and evaluation of the normal competition, consumer-protection, labor, and environmental factors under section 854. If the public interest factors do not support this transaction, the Commission must impose conditions pursuant to section 853(b).

V. THE TRANSACTION RAISES SIGNIFICANT COMPETITIVE CONCERNS FOR THE MOBILE MARKET IN CALIFORNIA.

This transaction raises significant competition concerns that the Commission may only address through a full review, with opportunity for all stakeholders to challenge the transaction and make their case. Again, the Public Interest Parties do not at this time take a position on the competitive impact. It may be that competitive concerns are of such significance that no conditions will cure them, or it may be that Verizon will adequately address these concerns. Or it may be that the competitive harms may be remedied with appropriate conditions. Only two things can be said for certain at this time: (1) the burden of proving that the transfer serves the public interest lies with Applicants;³⁴ and (2) the Commission cannot satisfy its obligation to

³³ *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd. 10578, ¶ 75 (Oct. 16, 2019) (“T-Mobile-Sprint Merger Order”).

³⁴ *Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction*, Decision No.10-10-01, at 16 (Oct. 14, 2010).

ensure that the transfer serves the public interest as required by section 854(a) if it conducts only an abbreviated or perfunctory review of the Application.

Competition is the cornerstone of a healthy wireless market, and a thorough review here ensures that the Transaction will serve the public interest. The review process exists to investigate and prevent potential competitive harms, and purchasing TracFone could give Verizon the incentive and ability to inflict these harms. MVNOs like TracFone help “increase the range of differentiated services offered to consumers within the broader mobile telephony/broadband services product market,” and acquire capacity that allows them to “compete downstream against facilities-based service providers’ service offerings.”³⁵ In other words, MVNOs “provide additional constraints against any anticompetitive behavior.”³⁶ Verizon and TracFone are the largest facilities-based mobile wireless service provider and the largest MVNO in California (and the country), respectively.³⁷ Verizon controls around 40% of the mobile wireless services market.³⁸ Likewise, TracFone has the fourth largest subscribership of wireless services in the United States.³⁹ The Commission should analyze the changes in competitive dynamics that would arise under a combination of these companies.

This Transaction threatens other horizontal injuries. Verizon already commands a prepaid presence through Verizon Prepaid and Visible.⁴⁰ By Verizon’s own math, this Transaction

³⁵ T-Mobile-Sprint Merger Order, ¶ 63 and n.196, 78.

³⁶ *Id.* ¶ 78.

³⁷ See Sascha Segan, *Verizon Buys Prepaid Carrier TracFone*, PC MAG (Sept. 4, 2020), <https://bit.ly/3djg77f>.

³⁸ See Michael Hodel, *Verizon’s Solid Wireless Position Should Create Near-Term Opportunities to Take Share*, MORNINGSTAR (Sept. 14, 2020), <https://bit.ly/36UCChD>.

³⁹ T-Mobile-Sprint Merger Order, ¶ 75.

⁴⁰ *Id.* at 4.

would give it the largest prepaid retail business in the United States.⁴¹ That change represents a sizable swing in market share, and the Commission should determine whether eliminating the largest wholesale wireless service consumer could give Verizon the largest base of prepaid subscribers, leading to higher retail prices and removing a significant source of wholesale business from the marketplace.

The resulting increase in concentration also may incentivize and allow Verizon to charge higher rates to mobile network operators seeking to resell services to TracFone customers through a foreclosure strategy. And it could limit the capacity for MVNOs competing with TracFone and raise their prices, passing additional costs on to consumers in California. The Commission should examine carefully these potential issues.

The Commission's competition review should also extend to potential vertical effects. MVNOs like TracFone do not own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based service providers and resell these services.⁴² Through wholesale agreements, MVNOs "often increase the range of services offered to consumers" by providing services to consumers that companies like Verizon do not serve.⁴³ The Commission should ask whether this Transaction would incentivize Verizon to raise wholesale prices or degrade the quality of wholesale services because of its newfound market share. Verizon points out that it already provides service to a majority of TracFone's customers.⁴⁴ This statement ignores the key distinction that TracFone, currently a company legally separate from Verizon and

⁴¹ *Verizon to acquire TracFone Wireless, Inc.*, Verizon (Sept. 14, 2020) (announcing that TracFone currently has around 21 million customers), <https://vz.to/3743JHa>; Application at 10 (noting that T-Mobile and AT&T have 20 million and 18 million prepaid customers, respectively).

⁴² *Communications Marketplace Report et al.*, Report, 33 FCC Rcd. 12558, ¶ 7 (2018).

⁴³ T-Mobile-Sprint Merger Order, ¶ 285.

⁴⁴ Application at 10.

with its own market power, employs an independent strategy to purchase services not only from Verizon but also from AT&T, T-Mobile, and other providers. While roughly 13 million TracFone customers already use the Verizon network, the Application states repeatedly that Verizon will migrate the remaining 8 million TracFone customers from AT&T and T-Mobile to Verizon.⁴⁵ And the era of MVNOs pitting facilities-based operators against one another for the benefit of low-income consumers will effectively have come to an end.

The proposed transaction will fundamentally change the wireless market. No other large, independent purchasers of wholesale network capacity will remain to serve consumers. Instead, all significant MVNOs will be vertically integrated with facilities-based carriers, and every facilities-based carrier will have incentive to exclude all other MVNOs, including potential new entrants, from its network. This consolidation will also increase the likelihood of coordinated effects, where MVNOs consciously adopt parallel strategies to protect their valuable post-paid customers from migrating to lower cost pre-paid. Rather than a source of price competition, the pre-paid market would become the equivalent of the airline “no frills economy class” while treating post-paid as “first class.”

The Commission must consider the dangers that such an outcome will occur if it allows the transaction to proceed regardless of Verizon’s current intentions. This inquiry is not a matter of trust, but a matter of economic analysis and the responsibility of the Commission under section 854 to maintain what few sources of competition still exist in an already highly concentrated wireless market. Even if the Commission ultimately permits the transfer, it has a statutory responsibility to understand the markets it regulates so that it can ensure that granting

⁴⁵ Application at 16.

the transfer will serve the public interest.⁴⁶ As a result, this transaction is unsuitable for abbreviated or “streamlined” treatment.

VI. CONCLUSION

WHEREFORE, the Commission should deny the request for streamlining and fully review the proposed transaction through application of the criteria set forth in section 854, including subsections (b) and (c).

Respectfully submitted.

Andrew Jay Schwartzman
Senior Counselor
Benton Institute for Broadband & Society
1341 G Street, NW, Fifth Floor
Washington, DC 20005
(202) 241-2408

/s/ Harold Feld
Senior Vice President
Public Knowledge
1818 N St NW, Suite 410
Washington, D.C. 20036
hfeld@publicknowledge.org
(202) 861-0020

Connie E. Stewart
Executive Director
California Center for Rural Policy
1 Harpst Street
Arcata, CA 95521
(707) 826-3420

Michael Calabrese
Director, Wireless Future Project
Open Technology Institute at New America
740 15th Street, NW Suite 900
Washington, DC 20005
(202) 986-2700

Sean McLaughlin
Executive Director
Access Humboldt
1915 J St.
Eureka, CA 95501
(707) 476-2873

Francella Ochillo
Executive Director
Next Century Cities
1200 18th Street NW, Suite 700
Washington, DC 20036

⁴⁶ See Pub. Util. Code § 854(a); see also *id.* § 709 (“the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians . . . (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services. (d) To assist in bridging the ‘digital divide’ by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians . . . (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct. (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.”).

Brian Thorn
Chief Researcher
Communications Workers of America
501 3rd Street NW
Washington, DC 20001

Matt Rantannen
Director of Technology
Southern California Tribal Chairmen's
Association
Tribal Digital Networks
P.O. Box 1470
Valley Center, CA 92082

December 7, 2020