

**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 214)
of the Communications Act of 1934, as Amended)

**COMMENTS OF PUBLIC KNOWLEDGE, ACCESS HUMBOLDT, BENTON
INSTITUTE FOR INTERNET AND SOCIETY, NEXT CENTURY CITIES, AND THE
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

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I. INTRODUCTION

Public Knowledge, Access Humboldt, Benton Institute for Internet and Society, Next Century Cities, and the Open Technology Institute at New America (collectively “Public Interest Parties”), file these comments in response to the Public Notice released by the Commission seeking comment on the Section 214 applications filed by Verizon and Tracfone (collectively “Applicants”).¹ As the Public Notice stated, this transaction “raises issues of enormous complexity.” To resolve this complexity, the Commission must take the steps that it takes with every significant and complex transaction—request necessary documents and information to resolve the issues and ensure that their resolution serves the public interest.

Contrary to the position Applicants now take in their *ex partes*, the questions here go beyond those considered by the Department of Justice. Rather, as Applicants themselves acknowledged in their Application, the Commission must determine whether the transfer of the 214 license would serve the public interest. Further, as Applicants have previously acknowledged, while the government bears the burden of proof under the narrower antitrust standard, it is the *Applicants* who must prove that the transfer will result in positive benefits consistent with the goals of the Communications Act.

Public Interest Parties have set forth in previous filings the real, concrete concerns arising out of this transaction. Commenters have repeatedly drawn the Commission’s attention to the incentives of Applicants to reduce service to Lifeline customers and pre-paid low-income customers. Even setting aside these incentives, the fact that Verizon could simply abandon Tracfone’s Lifeline customers if it loses interest in this market segment warrants conditions to prevent this possibility. This transaction will fundamentally restructure the industry by removing

¹ Non Streamlined International Applications/Petitions Accepted For Filing, Section 214 Applications (47 C.F.R. §§ 63.18, 63.24); Section 310(b) Petitions (47 C.F.R. § 1.5000), Public Notice (rel. Feb. 12, 2021) [hereinafter “Public Notice”].

the largest remaining independent MVNO. Verizon has addressed these concerns with vague reassurances but no enforceable commitments. Indeed, when asked directly by the California Administrative Law Judge assigned to this matter if Verizon’s “intent” to offer Lifeline post transaction could be read as a “commitment,” Verizon declined to answer affirmatively.² Indeed, Applicants’ repeated refusal to provide further information or make commitments which could address the concerns raised by Public Interest Parties have only served to increase these concerns and the level of scrutiny the Commission should apply.

Nor are these concerns limited to Public Interest Parties. The State of California Public Utilities Commission (CPUC) has designated this matter for a full investigation, including discovery, submission of expert testimony, and a hearing before an administrative law judge.³ Thirteen state Attorneys General have expressed similar concerns in a letter filed in this proceeding.⁴ And the Commission has apparently found these concerns sufficiently serious to remove this proceeding from streamlined consideration.

Only the Commission can compel Applicants to provide more detailed answers and supporting documentation to resolve these concerns. Public Interest Parties cannot do more at this point than urge the Commission to request the materials from the Applicants and propound formal interrogatories to address the concerns raised multiple times already in the record. In

² Transcript at 21-22.

³ Cal. Pub. Util. Comm’n, Assigned Commissioner’s Scoping Memo and Ruling, In the Matter of the 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. (issued on Feb. 24, 2021), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M367/K038/367038440.PDF> [hereinafter “Scoping Memo”].

⁴ Letter from State Att’y Gen., Re: Verizon – TracFone Transaction - Availability of Lifeline Services to Low-Income Consumers - File No. ITC-T/C-20200930-00173 (Feb. 4, 2021), https://licensing.fcc.gov/myibfs/download.do?attachment_key=3869325.

addition, it would greatly assist matters—and be consistent with Commission past practice—to designate this matter with an ECFS docket number and an entry on the FCC’s official transaction page. The International Bureau’s Filing System (IBFS) is difficult to use for non-practitioners, and this creates barriers to public participation in the docket.

II. DUE TO THE POTENTIAL IMPACT THIS TRANSACTION HAS ON LIFELINE AND THE WIRELESS MARKET, THE COMMISSION MUST REQUEST MORE INFORMATION FROM THE PARTIES.

The Commission has a statutorily mandated obligation to ensure that the Verizon-Tracfone transaction will serve “the public interest, convenience, and necessity.”⁵ The Commission itself has acknowledged this obligation, stating that “[t]hese principles look to the impact of practices on consumers and the public interest, not just on competitors. They are designed to be fact-based and data-driven.”⁶ Moreover, applicants themselves “have the burden of demonstrating on the public record that their proposed transaction is in the public interest”⁷ and the Commission must ensure that parties meet this burden.

To this end, the Commission needs more data from the Parties to review the proposed transaction and meet its obligation to ensure that this transaction will serve the public interest. As Public Interest Parties requested in earlier comments,⁸ and in keeping with the Parties burden to prove the public interest benefit of their proposed transaction, the Commission must ask the Parties for the following information under the penalty of perjury:

⁵ 47 U.S.C. §§ 214(a) & 310(d).

⁶ Jon Sallet, FCC Transaction Review: Competition and the Public Interest, Fcc.gov (Aug. 12 , 2014), <https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest>.

⁷ *Id.*

⁸ Comments of Public Knowledge, Open Technology Institute, the California Center for Rural Policy, Next Century Cities, and the Benton Institute for Broadband and Society, File No. ITC-T/C-20200930- 00173 at 19 (Dec. 18, 2020) [hereinafter “Public Interest Comments”].

1. Provide an organization chart and personnel directory in effect, for Verizon as a whole and for each of Verizon's facilities or divisions involved in any activity relating to any relevant product or any relevant service.
2. Provide all plans, analyses, and reports, including any documentation, methodologies, and assumptions used in any underlying models, discussing the claimed network spectrum capacity challenges and the spectrum requirements of Verizon in these areas.
3. Provide all plans, analyses, and reports (including any surveys conducted by Verizon or a third party) discussing how customers view and value Verizon's network quality, service plans, pricing, and promotions (including local promotions), including any competitive changes as a result of service offerings by Verizon, and any contemplated or actual competitive changes to Verizon's service plans, pricing or promotions as a response to other service providers' offerings.⁹
4. Provide all merger simulations, econometric modeling, or similar analyses, including those regarding market concentration or pricing, that have been undertaken by the Applicants or any consultant or expert hired by the Applicants to analyze the effect of the proposed transaction, including all documents and data used in these analyses.¹⁰
5. Provide Verizon's monthly data, including data on subscribers, additions, revenues, and costs.¹¹
6. Provide copies of any agreements that the Applicants have entered into related to the proposed transaction.¹²
7. Provide an answer to the question of whether TracFone holds a domestic section 214 authorization and, if so, does it intend to transfer it? If not, what became of it following TracFone's acknowledgement during the 2013 Page Plus transaction that it held a domestic 214 authorization?

The Commission is the only entity that can request this information in order to fully ascertain what impact this transaction will have on the public interest. Despite the Public Notice's acknowledgement that this transaction poses "complex issues,"¹³ the Commission does not offer any more details, nor does it seek additional materials from the Parties or indicate that it will probe the Parties for this critical information. In contrast, the California Public Utilities

⁹ Letter to T-Mobile, Information Request, WT Docket No. 12-301, at 3 (Dec 20, 2012).

¹⁰ *Id.* at 2.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ Public Notice, *supra* note 1.

Commission (“CPUC”) has taken active steps to address the lack of information available to evaluate the complicated public interest issues raised by this transaction. CPUC issued a comprehensive scoping memo that includes a list of issues that the Commission needs to consider at a national level.¹⁴ Additionally, CPUC has scheduled evidentiary hearings and required the Parties to address the issues raised in the scoping memo.¹⁵ As the federal agency overseeing this transaction, the FCC has an even greater obligation to fully investigate the impact of this proposed transaction on consumers and the wireless market, to ensure the public interest is served. The Commission has the broad authority to fully investigate this transaction and to ensure that the interest of consumers, beyond just those living in California, are considered as part of this transaction.

III. THE COMMISSION MUST OPEN A DOCKET FOR THE VERIZON TRACFONE PROCEEDING TO BETTER FACILITATE PUBLIC INPUT.

The Commission must open a docket for the Verizon Tracfone merger to better enable public input on this major transaction and to ensure the public interest is served should the Commission determine that this transaction can move forward.

As a matter of process, an official docket will increase the likelihood that the FCC will receive valuable public input. The difficulty of following and submitting comments to IBFS is no secret. As compared to the Commission’s Electronic Comment Filing System (“ECFS”) for docketed proceedings, IBFS does not have the functionality to readily track new filings by parties commenting on the application. While ECFS has its challenges, it does offer interested parties the ability to track new filings and provides a means by which the wider public can readily access information in the proceeding. Moreover, ECFS is more familiar to non-practitioners that may offer valuable input on the impact of this transaction.

¹⁴ Scoping Memo, *supra* note 3 at 2-3.

¹⁵ *Id.* at 4.

The Verizon Tracfone merger represents a major transaction with the potential to shift the entire wireless market. The impact this transaction poses to the wireless industry deserves the full consideration a docketed proceeding will encourage. Thus, the Commission should open a docket for this transaction.

IV. THE COMMISSION MUST ENGAGE THE TRANSACTION TEAM TO BETTER UNDERSTAND THE IMPACTS OF THIS TRANSACTION ON THE WIRELESS MARKET AND VALUE-CONSCIOUS CONSUMERS, INCLUDING LIFELINE SUBSCRIBERS

In order for the Commission to better evaluate the potential impact of the proposed merger on the public and the wireless market, engagement by the Commission's Transaction Team is essential. The Transaction Team, which is comprised of attorneys with a broad understanding of administrative, antitrust and corporate expertise, ensures that the bureaus charged with reviewing transactions like the instant one, have the expertise to evaluate the veracity of the claims made by parties to the transaction and to weigh the contrary evidence offered by those that oppose the transaction. This process not only allows for a rigorous evaluation to ensure the transaction is in the public interest and does not raise competition concerns, it also allows the Commission to identify concerns and craft conditions to address concerns, such as those offered in the comments filed by various public interest groups in this proceeding.¹⁶

Involvement by the Transaction Team in the instant case will assist the Wireless Bureau and the Wireline Bureau in better understanding the potential impact of this transaction on competition in the MVNO market, as well as the broader wireless market, and help ensure consumers, particularly those that rely on the Lifeline program, are not harmed by the acquisition of Tracfone by Verizon. As the Applicants admit, this merger is focused on the value-conscious

¹⁶ Public Interest Comments, *supra* note 8 at 5.

segment of the wireless market, which Tracfone has traditionally sought to serve.¹⁷ This is not a segment of the market that has a number of choices. Thus, understanding the potential effects of this merger on choice in the market for price sensitive consumers is a metric that the Transaction Team is best able to surmise given the multidisciplinary composition of the team. Armed with the additional information we call for the Commission to request as part of this comment, Public Interest Parties believe that the Transaction Team is in the best position to assist the Commission in determining whether this merger is in the public interest.

IV. CONCLUSION

In order to fulfill the Commission's obligation to ensure that the Verizon-Tracfone transaction truly serves the public interest, Public Interest Parties ask the Commission to request essential information from the Parties, open an ECFS docket for the transaction, and engage the transaction team. By doing so, the Commission can fulfill its statutory duty and evaluate the full impact this transaction poses to the public and wireless market.

Respectfully submitted,

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¹⁷ Application for Consent to Transfer Control of International Section 214 Authorization, File No. ITC-T/C20200930-00173 at 2 (Sept. 30, 2020).

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