Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon Communications Inc.	)	GN Docket No. 21-112
	)	
and	)	
	)	
América Móvil, S.A.B. de C.V.	)	IBFS File No. ITC-T/C-20200930-00173
	)	
For Consent To Transfer Control of	)	
International Section 214 Authorization	)	

MEMORANDUM OPINION AND ORDER

Adopted: November 19, 2021 **Released: November 22, 2021**

By the Commission: Commissioner Carr concurring and issuing a statement.

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Heading Paragraph #

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we approve, subject to conditions, the application of Verizon Communications Inc. (Verizon), América Móvil S.A.B. de C.V. (América Móvil), and TracFone Wireless, Inc. (TracFone) (together, the Applicants) for Commission consent to the transfer of control of TracFone's international section 214 authorization from América Móvil to Verizon.

2. As a result of the transaction, TracFone will become a direct subsidiary of Verizon. TracFone offers prepaid services to more than 20 million customers, including offering prepaid services to approximately 1.7 million Lifeline customers.[1] The Applicants assert that the transaction will benefit underserved consumers by allowing Verizon and TracFone to better serve customers in the prepaid segment.[2] The Applicants maintain that the transaction will deliver public interest benefits in the form of more choices, better service, and new features and devices, including 5G, to underserved communities and TracFone's generally value-conscious customers.[3]

3. Commission staff has conducted an exhaustive review of the record filings in this proceeding, including reviewing thousands of pages of pleadings, documents, and information request responses, as well as conducting a thorough economic analysis of the potential harms and benefits. Based on our extensive review and analysis of the record, we find that the proposed transaction has the potential to cause some public interest harms. In particular, TracFone is one of the most significant participants in the Lifeline program, and the evidence points to potential harm to TracFone's Lifeline-eligible and other low-income customers, especially in geographic markets outside Verizon's coverage area. In addition, Verizon, as a result of the transaction, may have an increased incentive to raise the costs of mobile virtual network operators (MVNOs) that compete directly against TracFone for Lifeline and other low-cost prepaid customers and for which Verizon is their wholesale provider.

4. However, we adopt a number of demanding conditions herein to address these public interest harms and to ensure the realization of certain public interest benefits. These include strong conditions to protect low-income consumers from price increases and to ensure that TracFone remains a supportive Lifeline participant. Given the likelihood that any violation of these conditions would harm low-income consumers, we also require more than seven years of oversight. Finally, we create strong, independent enforcement mechanisms—including both an internal and an independent compliance officer who are empowered to proactively monitor conditions, ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations—particularly from Lifeline subscribers. We find that these and the other conditions imposed herein adequately address the concerns

[1] Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization, File No. ITC-T/C-20200930-00173, at 18 (Sept. 30, 2020) (Application).

[2] *Id*. at 22.

[3] *Id.* at 2.

and potential harms identified in the record such that, considering that the transaction also will yield some benefits (in the form of lower marginal costs) for TracFone, on balance, we are able to find that the proposed transaction serves the public interest.

II. VERIZON'S COMMITMENTS

5. Verizon has made certain commitments to ensure that this transaction will serve the public interest by addressing the potential public interest harms and helping to realize the asserted public interest benefits.[4] We make these commitments conditions of our approval of the proposed transaction. We briefly summarize many of the major commitments here, which address Lifeline and low-income consumers, customer migration and transition, wholesale services, unlocking devices, compliance and reporting, and assumption of liability.[5]

6. *Lifeline Commitments*. Verizon commits to continue to offer TracFone's Lifeline-supported services over the same service area where TracFone currently offers Lifeline service for a minimum of seven years following the close of the transaction.[6] In addition, Verizon will offer a free, compatible device or SIM in certain circumstances where customers are being required to transition to Verizon's network. Subject to certain specific limitations, Verizon will continue to offer and advertise existing Lifeline plans and will not add new co-pays to TracFone's existing Lifeline plans offered at no cost to prepaid customers for at least three years. Within six months after the transaction closes, Verizon also will make available to existing and new Lifeline prepaid customers a 5G plan and will offer a range of cost-effective 5G devices to existing and new Lifeline customers. Verizon will also maintain a specified level of marketing and advertising expenditures for Lifeline and will establish and maintain a dedicated website with information about the Lifeline program and a dedicated customer service line for Lifeline customers.

7. *Customer Migration and Transition Commitments*. For at least three years after the close of the transaction, Verizon will maintain TracFone's existing MVNO agreements to serve customers outside Verizon's network coverage (including Puerto Rico), and it will maintain existing TracFone rate plans for new and existing customers. During this period, in order to assist customers in the transition, Verizon will maintain an exclusive, toll-free customer service line; conduct outreach, advertise, and display all plans on a dedicated website; and separately notify all TracFone customers of the transaction. In addition, during this period, Verizon will notify customers at least twice before they are transitioned to Verizon's network and, in certain circumstances, will provide a free compatible device in order to prevent interruption or degradation of service.

8. *Unlocking Devices Commitment.* Subject to certain conditions and limitations, Verizon commits to extending its 60-day unlocking period to all 700 MHz C Block devices purchased from TracFone after closing and activated on the Verizon network, subject to a two-year waiver of the automatic unlocking requirement to allow manual unlocking for those TracFone devices that currently do not have automatic unlocking capabilities. Verizon will provide notice to affected TracFone customers of its unlocking policy.

9. *Wholesale Service Commitment.* Verizon commits to provide MVNOs that have current contracts with Verizon an option to extend, subject to the limitations specified below, their existing

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[4] Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Nov. 18, 2021) (Verizon Nov. 18, 2021 Commitment Letter).

[5] After extensive discussion with Commission staff, Verizon has made a set of commitments that staff believes sufficiently mitigate the potential public interest harms. *See* Verizon Nov. 18, 2021 Commitment Letter; Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Nov. 17, 2021) (Verizon Nov. 17, 2021 *Ex Parte* Letter). Verizon's full commitments, which we adopt as conditions to our approval are discussed in more detail in section VIII below and set forth in Appendices B and C.

[6] Unless otherwise specified, the time periods described in this order begin after this transaction closes.

MVNO wholesale agreements, on the same terms and conditions, on a month-to-month basis until three years after the transaction closes.

10. *Compliance and Reporting Commitments.* For seven years and six months following the close of the transaction, Verizon commits to paying for and retaining both an internal company compliance officer and an independent compliance officer to ensure compliance with these commitments. For seven years, Verizon will also submit publicly available semi-annual reports describing its compliance that includes information regarding Lifeline and non-Lifeline customers.

11. *Assumption of Liability Commitments*. Without prejudicing contractual indemnification rights between Verizon and América Móvil, Verizon assumes liability for any forfeitures, restitution, or other obligations that may be imposed by the Commission or the Universal Service Administrative Company (USAC) on TracFone and its subsidiaries, and any successors or assigns, unless such liability has been resolved by TracFone prior to the closing of the transaction. In addition, Verizon will comply with any agreements with the Commission or USAC, including following any compliance plans, or other obligations, agreed to by TracFone, its subsidiaries, or any successors or assigns.

III. BACKGROUND

A. Description of the Applicants

12. Verizon is a publicly traded Delaware corporation headquartered in New York, New York.[7] It is a holding company that, through its subsidiaries, offers voice, data and video services nationwide.[8] Verizon states that it is "one of the world's leading providers of communications, technology, information and entertainment products and services"[9] and that its wireless division, Cellco Partnership d/b/a Verizon Wireless, "provides nationwide voice and data services to nearly 120 million total wireless connections, including nearly 94 million consumer wireless customers."[10] Verizon further states that it operates in both the prepaid and postpaid markets for wireless services, and that, as of December 2020, approximately 96% of its consumer retail connections were postpaid connections.[11] Verizon asserts that it has "the largest 4G LTE network of any US wireless service provider."[12] Verizon reported 2020 operating revenues of approximately $128 billion, with an operating income of approximately $29 billion, and total assets of approximately $316 billion.[13]

13. TracFone is a Delaware corporation headquartered in Miami, Florida.[14] It is an indirect, wholly-owned subsidiary of América Móvil,[15] a public stock corporation with variable capital organized under the laws of Mexico, with its principal executive offices in Mexico City, Mexico.[16] TracFone

[7] Verizon Communications Inc., SEC Form 10-K (filed Feb. 25, 2021) (Verizon Form 10-K).

[8] *Id.* at 4.

[9] *Id.*

[10] Application at 7.

[11] Verizon Form 10-K at 4.

[12] Application at 7.

[13] Verizon Form 10-K at 54, 56.

[14] Application at 20.

[15] TracFone is a wholly owned subsidiary of AMX USA Holding, S.A. de C.V., which is a wholly owned subsidiary of Sercotel, S.A. de C.V. Sercotel, in turn, is a direct wholly owned subsidiary of América Móvil. Application at 7 & n.13.

[16] Application at 7. América Móvil reports operations worldwide, but largely focuses on Latin America, with the largest portion of its income coming from operations in Mexico. América Móvil S.A.B. de C.V., SEC Form 20-F (filed Apr. 28, 2021) (América Móvil Form 20-F).

operates only in the United States. It offers prepaid plans under the names SafeLink Wireless, Straight Talk Wireless, Net10 Wireless, Walmart Family Mobile, Total Wireless, Go Smart Mobile, Page Plus, and Simple Mobile.[17] TracFone states that these brands account for more than 20 million prepaid wireless customers in the U.S.,[18] and that it provides Lifeline services to close to two million customers.[19] TracFone further states that it is not a facilities-based mobile network operator and does not hold wireless radio licenses.[20] Rather, TracFone is an MVNO that uses the networks of mobile network operators (MNOs) to provide its services.[21] América Móvil reported 2020 operating revenues of approximately $50 billion in total ($9 billion of which was in the United States), 2020 total operating income of approximately $8 billion ($535 million of which was in the United States), and total assets of approximately $81 billion (U.S.-only assets were not disclosed).[22]

B. Description of the Transaction

14. On September 13, 2020, the Applicants entered into a purchase agreement (Agreement) pursuant to which Verizon will purchase TracFone from América Móvil for approximately $3.125 billion in cash and approximately $3.125 billion in Verizon common stock.[23] Following consummation, TracFone will become a 100% owned direct subsidiary of Verizon.[24] All of TracFone's subsidiaries will become indirect subsidiaries of Verizon.[25] No changes to the Board of Directors for either company will result from consummation of the Agreement.

15. The Applicants assert that the proposed transaction will generate substantial public interest benefits to TracFone customers and will enhance competition in the U.S. wireless marketplace. Specifically, they claim that the transaction "will allow Verizon to bring its resources to TracFone,"[26] including "access to a wider variety of Verizon-compatible devices, new technologies and service options (like 5G), and more international roaming options,"[27] expanded distribution points,[28] and increased "customer choice and competition"[29] without any "material impact on the broader mobile telephony/broadband services market."[30]

[17] Application at 7.

[18] *Id.* at 8; *see also* Safelink Wireless, *About Us*, https://www.safelinkwireless.com/Enrollment/Safelink/en/Web/www/default/index html#!/aboutUs (last visited Nov. 16, 2021) (stating that "TracFone is the largest 'No-Contract' cellular service provider in the U.S.").

[19] América Móvil and TracFone May 14, 2021 RFI Response at 6.

[20] Application at 8.

[21] *Id.*

[22] América Móvil Form 20-F at 27, F-6.

[23] Application at 9.

[24] *Id.* at 9, Appx. A.

[25] *Id.* at 9.

[26] *Id.* at 11.

[27] *Id.* at 11-12.

[28] *Id.* at 13.

[29] *Id.* at 14.

[30] *Id.* at 16.

C. Transaction Review Process

16. On September 30, 2020, Verizon and América Móvil filed an application for consent to transfer control of TracFone,[31] which holds a single international section 214 authorization,[32] from América Móvil to Verizon. As part of the application, the Applicants requested streamlined processing procedures.[33] Three parties opposed the Applicants' streamlined treatment request.[34] On October 23, 2020, the Applicants filed a response to the streamlining oppositions,[35] and subsequently, replies were filed.[36] On November 20, 2020, the Commission released a public notice stating that this application is not subject to streamlined processing procedures under the Commission's rules and that parties may file comments.[37] Six comments were filed during this comment period,[38] and the Applicants filed a Joint Reply on December 28, 2020.[39] On February 4, 2021, 17 State Attorneys General requested that the Commission obtain additional information from the Applicants.[40] On February 12, 2021, a public notice was released stating that the Commission has not yet issued an order acting on this application because it raises issues of extraordinary complexity and thus an additional 90-day period for review is necessary.[41]

17. On March 30, 2021, the Wireless Telecommunications Bureau (WTB) released a public notice to announce the opening of a docket and to specify the *ex parte* procedures.[42] In response to the

[31] *See generally Id.*

[32] IBFS File No. ITC-214-20030401-00162.

[33] Application at 11.

[34] Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Oct. 13, 2020); Public Knowledge et al., Opposition to Petition for Streamlining and Motion to Dismiss Application as Incomplete (rec. Oct. 16, 2020) (Public Knowledge et al. Oct. 16, 2020 Opposition); Communications Workers of America (CWA), Opposition to Petition for Streamlining and Motion to Dismiss Application as Incomplete (rec. Nov. 19, 2020) (CWA Nov. 19, 2020 Opposition).

[35] Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Senior Vice President, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Oct. 23, 2020) (Applicants' Streamlining Response).

[36] Public Knowledge et al., Reply to Applicants' Streamlining Response (rec. Oct. 30, 2020) (Public Knowledge et al. Oct. 30, 2020 Reply); Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Oct. 29, 2020).

[37] *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)*, GN Docket No. 21-112, Public Notice, Report No. TEL-02056NS, 2020 WL 6866833, 1 (Nov. 20, 2020).

[38] The commenters are listed in Appx. A.

[39] América Móvil, S.A.B. de C.V., TracFone Wireless, Inc., and Verizon Communications Inc., Joint Reply to Comments, GN Docket No. 21-112 (rec. Dec. 28, 2020) (Applicants' Dec. 28, 2020 Joint Reply).

[40] Letter from Mark R. Herring, Attorney General, Commonwealth of Virginia, Office of the Attorney General et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-112 (filed Feb. 4, 2021) (State Attorneys General Feb. 4, 2021 *Ex Parte* Letter). This letter was signed by the state attorneys general for the District of Columbia and the following states: Virginia, Nevada, Rhode Island, Oregon, Minnesota, Delaware, Connecticut, New York, Michigan, Washington State, Massachusetts, Iowa, Vermont, North Carolina, Colorado, and New Mexico.

[41] *Non-Streamlined International Applications/Petitions Accepted for Filing,* GN Docket No. 21-112, Public Notice, Report No. TEL-02075NS, 2021 WL 537493 (Feb. 12, 2021).

[42] *Federal Communications Commission Establishes Docket for Proposed Transfer of Control of Tracfone Wireless, Inc. to Verizon Communications Inc.*, GN Docket No. 21-112, Public Notice, 36 FCC Rcd 6557 (WTB Mar. 30, 2021). Prior to the release of this public notice, the application and subsequent filings were submitted via the International Bureau Filing System (IBFS) under the File No. ITC-T/C-20200930-00173. After the docket was opened on March 30, 2021, all of these filings became available under GN Docket No. 21-112.

Public Notice, the Commission received numerous comments and *ex parte* filings as well as several reply comments.[43] On April 14, 2021, WTB and the Office of Economics and Analytics (OEA) issued Information Requests to each of the Applicants[44] and simultaneously issued a Protective Order, which limited access to proprietary or confidential information and more strictly limited access to certain competitively sensitive information.[45] On July 21, 2021, five U.S. Senators sent a letter to Chairwoman Rosenworcel to urge the Commission to thoroughly review the proposed transaction.[46] On August 11, 2021, Chairwoman Rosenworcel responded by letter to each of these five U.S. Senators.[47]

18. In addition, on August 11, 2021, Verizon filed a letter in which it made certain commitments that included Verizon's commitment to continue to offer TracFone's current Lifeline-supported services for a minimum of three years following the close of the transaction.[48] Public Knowledge and CWA, et al. contemporaneously filed a letter which stated that "these conditions adequately address their concerns and withdraw their objections to the [t]ransaction contingent on the Commission's incorporation of all of Verizon's commitments as enforceable and mandatory in the final order of this proceeding."[49]

19. After extensive discussion with Commission staff, on November 18, 2021, Verizon filed a letter detailing its transaction commitments that today, we make conditions of our approval.[50] Verizon's letter expands upon its previous commitments by offering, among other things, to continue Lifeline for seven years and to provide more fulsome protections to address customer transition concerns.[51]

D. Department of Justice Review

20. The Antitrust Division of the U.S. Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.[52] The Antitrust Division's review is limited solely to an

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[43] The comments and replies filed on or before and after March 30, 2020 and *ex parte* filings are listed in Appx. A.

[44] *Verizon Communications Inc. General Information Request*, GN Docket No. 21-112 (WTB/OEA Apr. 14, 2021) (Verizon Apr. 14, 2021 Information Request); *América Móvil, S.A.B. de C.V. General Information Request*, GN Docket No. 21-112 (WTB/OEA Apr. 14, 2021).

[45] Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization, GN Docket No. 21-112, Protective Order, 36 FCC Rcd 7281 (WTB/OEA Apr. 14, 2021) (Protective Order). Material set off by double brackets {[ ]} is confidential information, as described in the Protective Order, and is redacted from the public version of this order. The unredacted version of the order will be available upon request to persons qualified to view it under the Protective Order.

[46] Letter from U.S. Senators Richard Blumenthal, Dianne Feinstein, Edward J. Markey, Sheldon Whitehouse, and Ron Wyden, U.S. Senate, to Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112 (filed July 21, 2021) (Senators' July 21, 2021 *Ex Parte* Letter).

[47] Letter from Honorable Jessica Rosenworcel, Chairwoman, FCC, to Honorable Richard Blumenthal, Senator, U.S. Senate, GN Docket No. 21-112 (filed Aug. 11, 2021). This same letter was also sent to U.S. Senators Dianne Feinstein, Edward J. Markey, Sheldon Whitehouse, and Ron Wyden.

[48] Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Aug. 11, 2021) (Verizon Aug. 11, 2021 *Ex Parte* Letter).

[49] Letter from Kathleen Burke, Public Knowledge, Brian Thorn, CWA, Andrew Jay Schwartzman, Benton Institute for Broadband & Society, Connie E. Stewart, California Center for Rural Policy, Sean Taketa McLaughlin, Access Humboldt, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112 (filed Aug. 11, 2021) (Public Interest Groups Aug. 11, 2021 *Ex Parte* Letter).

[50] Verizon Nov. 18, 2021 Commitment Letter; *see also* Verizon Nov. 17, 2021 *Ex Parte* Letter.

[51] Verizon Nov. 18, 2021 Commitment Letter.

[52] 15 U.S.C. § 18.

examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed transaction between Verizon and América Móvil, and on November 24, 2020, it granted an early termination of the Hart-Scott-Rodino waiting period for Verizon's proposed acquisition of TracFone.[53]

IV. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

21. Pursuant to section 214(a),[54] we must determine whether the proposed transfer of control to Verizon of a section 214 authorization held by TracFone will serve the public interest, convenience, and necessity.[55] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[56] If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[57] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[58] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[59]

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[53] FTC, *Early Termination Notices*, Transaction No. 20201618: Verizon Communications Inc., América Móvil, S.A.B. de C.V. (Nov. 24, 2020), https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20201618.

[54] 47 U.S.C. § 214(a).

[55] *See, e.g.*, *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*).

[56] *See, e.g.*, *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisitions L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 (2019) (*T-Mobile-Sprint Order*); *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent To Transfer Control of Licenses and Authorizations*, WC Docket No. 16-403, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9585, para. 8 (2017) (*CenturyLink-Level 3 Order*); *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations, et al.*, WT Docket No. 13-193, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB/IB 2014) (*AT&T-Leap Order*).

[57] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 40; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[58] *See, e.g.*, *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*); *General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 483, para. 15 (2004) (*News Corp.-Hughes Order*); *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[59] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*); *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

22. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[60] which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets,[61] accelerating private sector deployment of advanced services,[62] promoting a diversity of information sources and services to the public,[63] and generally managing the spectrum in the public interest.[64] Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.[65] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[66]

23. The Commission's competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[67] The Commission, like the DOJ, considers how a transaction would affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction.[68] However, the Commission's competitive analysis under the public interest standard is broader, and may, for example, consider whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.[69]

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[60] *Western Union Division, Commercial Telegrapher's Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949); *see AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; *see also FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

[61] 47 U.S.C. §§ 521(6), 532(a); *see, e.g., Applications for Consent to the Transfer of Control of Licenses and Authorizations by Time Warner, Inc. and America Online, Inc. to AOL Time Warner Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6555-56, para. 22 (2001) (*AOL-Time Warner Order*).

[62] 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services").

[63] 47 U.S.C. §§ 521(4), 532(a); *see Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994) ("[I]t has long been a tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.") (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668, n.27 (1972)) (internal quotation marks omitted).

[64] 47 U.S.C. §§ 301, 303, 307, 309, 310(d).

[65] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; *Adelphia-TWC Order*, 21 FCC Rcd at 8218, para. 24; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, para. 26.

[66] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; *Application of Comcast Corp., General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4248, para. 23 (2011) (*Comcast-NBC Universal Order*); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, para. 26.

[67] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585-86, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15; *see also Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

[68] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 20; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, para. 27; *see also Applications of Sprint Nextel Corp. and SoftBank Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations*, IB Docket No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9652, para. 25 (2013) (*SoftBank-Sprint Order*).

[69] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 21; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575-76, para. 27. *Cf. Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 415 (2004)

(continued)

24. Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions to ensure that the public interest is served by the transaction.[70] Specifically, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[71] Indeed, our extensive regulatory and enforcement experience informs our actions under this authority.[72] In exercising this authority to carry out our responsibilities under the Act and related statutes, we have imposed conditions to confirm specific benefits or remedy harms likely to arise from transactions.[73]

25. We note that the Commission and the DOJ each has independent authority to examine the competitive impacts of proposed wireless mergers and transactions.[74] The DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.[75] The DOJ review is consequently limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.[76]

V. POTENTIAL PUBLIC INTEREST HARMS

26. We find that the proposed transaction will not violate any statutory provisions or Commission rules and so turn to the other potential public interest harms. We have performed an extensive review and thorough economic analysis of the proposed transaction to determine any potential public interest harms. In our examination of the potential competitive effects, following long-standing Commission precedent, we first define the relevant product and geographic markets and the input market for spectrum, and we then identify the current market participants. Second, we evaluate likely price effects as a result of the proposed transaction. After our rigorous and in-depth review, while we find that significant unilateral effects are unlikely, for the reasons explained below, we cannot conclude that certain groups of consumers or certain segments of the market, such as very low-income consumers, might not be

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("The 1996 Act is, in an important respect, much more ambitious than the antitrust laws. It attempts '*to eliminate the monopolies* enjoyed by the inheritors of AT&T's local franchises.' Section 2 of the Sherman Act, by contrast, seeks merely to prevent *unlawful monopolization*. It would be a serious mistake to conflate the two goals.") (emphasis in original) (quoting *Verizon Commc'ns v. FCC*, 535 U.S. 467, 476 (2002) (internal citations omitted)).

[70] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Comcast-NBC Universal Order*, 26 FCC Rcd at 4249, para. 25; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, para. 27; *see also Application of WorldCom, Inc. and MCI Commc'ns Corp. for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998) (*WorldCom-MCI Order*) (stating that the Commission may attach conditions to the transfers); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

[71] 47 U.S.C. § 214(c); *see, e.g.*, *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674, para. 22 (2007); *Adelphia-TWC Order*, 21 FCC Rcd at 8219, para. 26; *WorldCom-MCI Order*, 13 FCC Rcd at 18031-32, para. 10.

[72] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Comcast-NBC Universal Order*, 26 FCC Rcd at 4249, para. 25; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20575, para. 27.

[73] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Adelphia-TWC Order*, 21 FCC Rcd at 8219, para. 26; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42.

[74] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585-86, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

[75] 15 U.S.C. § 18; *see, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 21; *Comcast-NBC Universal Order*, 26 FCC Rcd at 4248, para. 24; *News Corp.-Hughes Order*, 19 FCC Rcd at 484, para. 17; *see also AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

[76] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 21; *Comcast-NBC Universal Order*, 26 FCC Rcd at 4248, para. 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652, para. 25; *see also AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

harmed by the transaction. However, Verizon's commitments to address potential harms to Lifeline-eligible and other low-income consumers, and to ensure a stable, orderly, and streamlined migration of TracFone customers to Verizon's network, which we adopt as conditions of our approval, will minimize potential harms to consumers seeking low-cost plans. Third, as part of our competitive analysis, we also evaluate whether the proposed transaction may lessen competition by making coordination among rival service providers more likely. Finally, we address the potential for vertical harms as a result of the transaction and find that Verizon, post-transaction, may have an increased incentive to raise the wholesale costs of MVNOs that compete directly with TracFone for prepaid customers. We find, however, that Verizon's commitment to extend the existing wholesale agreements of certain MVNOs should mitigate this potential harm.

A. Market Definitions and Market Participants

27. *Product Market.* Consistent with recent Commission precedent, we define the relevant product market as a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[77]

28. The Applicants, adopting the mobile telephony/broadband services market definition, argue that the proposed transaction will not harm competition for mobile telephony/broadband services for consumers and will enhance competition in the prepaid segment.[78] Several commenters support defining separate product markets or otherwise conducting separate analyses for narrower categories of services in addition to evaluating a combined mobile telephony/broadband services market.[79] The Applicants respond that separately examining prepaid and postpaid consumer markets runs counter to existing Commission precedent and the facts of the marketplace.[80]

29. After carefully reviewing the record, we find no reason to depart from the Commission's current product market definition, particularly given the Commission's previous recognition that the

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[77] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10601, para. 55; *SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent to Assign Licenses and Spectrum Lease Authorizations and to Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, WT Docket No. 15-262, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3636, para. 11 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23; *see also Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6224, para. 234 & n.623 (2014) (*Mobile Spectrum Holdings Report and Order*).

[78] Application at 14.

[79] Public Knowledge et al. Oct. 16, 2020 Opposition at 10-11 (asserting that Verizon and TracFone are the largest facilities-based mobile wireless service provider and the largest MVNO in the country, respectively, and the Commission should analyze the changes in competitive dynamics that would arise under a combination of these companies); CWA Mar. 12, 2021 Comments at 14-15 (arguing post competitive harm in the prepaid segment and in the wholesale market where the MNO market is too concentrated to protect independent MVNOs from anti-competitive actions); Communication Workers of America, First Comments, GN Docket No. 21-112, at 9-11, 18 (rec. Dec. 18, 2020) (CWA Dec. 18, 2020 Comments) (asserting that the transaction results in anticompetitive harm in the MVNO market impacting wireless competition and the prepaid segment where the MVNOs compete; further, if fewer MVNOs enter the market, consumers may pay the price with fewer options and less innovation). The American Antitrust Institute (AAI) argues for defining separate markets for prepaid retail services and for wholesale services, and maintains there is a distinct prepaid wireless market of lower-income consumers that in many cases require Lifeline wireless services. American Antitrust Institute *Ex Parte* Reply Comments at 2-3 (Apr. 2, 2021) (AAI Apr. 2, 2021 *Ex Parte* Reply).

[80] Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2-3 (Apr.16, 2021) (Applicants' Apr. 16, 2021 *Ex Parte* Letter).

mobile/telephony broadband services market encompasses differentiated services (e.g., voice-centric or data-centric), devices (e.g., feature phone, smartphone, tablet, etc.), and contract features (e.g., prepaid vs. postpaid),[81] which are distinctions that wireless providers often recognize in their internal analyses of the marketplace.[82] We note that the parties proposing narrower relevant product markets have failed to provide any quantitative analysis or other persuasive evidence to support their arguments. Thus, consistent with Commission precedent, we will consider product differentiation in the offering of prepaid or value-conscious wireless services as appropriate in our analysis of the likely competitive effects.[83]

30. *Geographic Market.* Consistent with Commission precedent, we further find that the geographic market for wireless transactions is local.[84] The Commission also has found, however, that a proposed transaction's competitive effects should also be evaluated at the national level where a proposed transaction exhibits certain national characteristics that provide cause for concern.[85] No commenter proposed changes to our evaluation of the relevant geographic markets, so we find no reason to deviate from Commission precedent.

31. *Input Market for Spectrum.* In proposed transactions involving facilities-based mobile wireless service providers, the Commission typically examines the input market for spectrum in reviewing the impact of the transaction on spectrum concentration.[86] Because this transaction involves no transfer of spectrum, there is no need to evaluate the input market for spectrum in the instant transaction.

32. *Market Participants*. In reviewing proposed transactions involving facilities-based mobile wireless providers, the Commission typically has focused its initial analysis of market concentration on facilities-based providers of mobile-telephony/broadband services.[87] The Commission

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[81] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10603, para. 60; *AT&T- Leap Order*, 29 FCC Rcd 2735, 2747-48, para. 26; *see also Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2336, para. 41 (WTB/IB 2013) (*T-Mobile-MetroPCS Order*).

[82] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10603, para. 60.

[83] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10604, para. 63; *AT&T-Leap Order*, 29 FCC Rcd at 2747, para. 26. Consistent with previous Commission determinations, we find that mobile telephony/broadband services provided to enterprise and government customers is a relevant product market for antitrust analysis; however, TracFone does not offer enterprise or government services, and thus, evaluation of this product market is not applicable to the instant transaction.

[84] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605, para. 66; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636-37, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2332, para. 29.

[85] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10606, para. 66; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2332, para. 29.

[86] The input market for spectrum includes the following bands: cellular, PCS, SMR, 700 MHz, AWS-1 (1710-1755 and 2110-2155 MHz), BRS, WCS, 600 MHz, AWS-4 (2000-2020 MHz and 2180-2200 MHz), H Block, EBS, AWS-3, and the 3.7 GHz band. *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10607, para. 70; *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 2965, para. 31, Fig. II.A.10. (2020) (*2020 Communications Marketplace Report*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2384, para. 88 (2020).

[87] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16*; AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37; *see also 2020 Communications Marketplace Report*, 36 FCC Rcd at 2949-51, paras. 9, 12.

also has recognized that MVNOs may provide additional competitive constraints, however,[88] and we will consider the role of all MVNOs in our analysis of this transaction.

B. Competitive Effects of the Proposed Transaction

33. The market for mobile telephony/broadband services in the United States is differentiated: Service providers compete not only on the basis of price, but also on non-price variables, such as plan terms and conditions, call quality, geographic coverage, and customer service.[89] In this market, three facilities-based service providers have been described as "nationwide": AT&T, T-Mobile, and Verizon Wireless.[90] In addition to the three nationwide facilities-based service providers, there are a number of regional and local facilities-based service providers,[91] such as U.S. Cellular and C Spire. There are also dozens of other facilities-based mobile wireless service providers throughout the United States, many of which provide service in a single, often rural, geographic area.[92] In addition, dozens of MVNOs beyond TracFone provide service to retail customers. Further, cable companies such as Altice, Comcast, and Charter have begun to enter the mobile wireless market through MVNO arrangements.[93]

34. The proposed transaction would combine the second largest facilities-based service provider in the United States with the largest MVNO. Because Verizon and TracFone both sell mobile telephony services in the same geographic areas, the proposed transaction has a horizontal component. Horizontal transactions raise potential competitive concerns when the combined entity post-merger has the incentive and the ability, either unilaterally or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.[94] Further, the proposed

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[88] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16 & n.48*; AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37; *see also 2020 Communications Marketplace Report*, 36 FCC Rcd at 2951, para. 12. MVNOs do not own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based service providers and resell these services. *2020 Communications Marketplace Report*, 36 FCC Rcd at 2951, para. 12.

[89] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10612, para. 83; *AT&T-Leap Order*, 29 FCC Rcd at 2756, para. 49; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336, para. 41; *AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket No. 04-70, et al., Memorandum Opinion and Order, 19 FCC Rcd 21522, 21570, para. 116 (2004) (*Cingular-AT&T Wireless Order*). While service providers can change some of these conduct variables, for example, price, relatively quickly, other variables—particularly non-price variables, such as quality and coverage—require investments in spectrum or infrastructure and are not easily modified. *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10612, para. 83 & n.259; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37 & n.173; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336, para. 41 & n.100; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570, para. 116.

[90] *2020 Communications Marketplace Report*, 36 FCC Rcd at 2949-50, para. 9; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10613, para. 83.

[91] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10613, para. 84.

[92] *Id.* at 10613, para. 84.

[93] *2020 Communications Marketplace Report*, 36 FCC Rcd at 2951-52, para. 13.

[94] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611, para. 79; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2744-46, para. 21; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2330, para. 21; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20608, para. 97. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition. U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines (Aug. 19, 2020), § 6 at 20 (*2010 DOJ/FTC Horizontal Merger Guidelines*), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010. In the case of the provision of mobile wireless services, in addition to increasing prices, this might take the form of delaying improvements in service quality, adversely adjusting the features of a service offering without changing the price of the plan or reducing the rate of new product development or other innovation in a relevant market. *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17 & n.51; *AT&T-Leap Order*, 29 FCC Rcd at 2756-57, para. 49.

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transaction raises vertical issues because Verizon provides wholesale services to TracFone as well as to other MVNOs.

1. Initial Screen

35. In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis.[95] The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI),[96] and the change in the HHI in the relevant geographic market.[97] We do not apply the HHI screen for the reasons outlined below. The second part of the screen, which is applied on a county-by-county basis, identifies local markets where the merged entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.[98] We do not apply the spectrum screen as there is no transfer of spectrum implicated by the instant transaction.

36. The Applicants argue that in calculating market shares, including for market concentration metrics, the Commission attributes MVNO customers to their host facilities-based providers.[99] Following that methodology, the Applicants find that the HHI would increase by 20-27 points in a combined postpaid/prepaid market and decrease by 28-119 points in a standalone prepaid market.[100] In contrast, various commenters raise concerns about increased post-transaction

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Coordinated effects arise when firms take actions that are profitable for each of them only as a result of the accommodating reactions of others. A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. *2010 DOJ/FTC Horizontal Merger Guidelines*, § 7 at 24-25; *see also Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17 & n.51; *AT&T-Leap Order*, 29 FCC Rcd at 2756-57, para. 49. Either or both unilateral and coordinated effects may arise from a proposed transaction, and the distinction between them is not always clear cut. *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17 & n.51; *AT&T-Leap Order*, 29 FCC Rcd at 2757, para. 49.

[95] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *Sprint-Shentel-NTELOS*, 31 FCC Rcd at 3635-36, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752-53, 2755-56, paras. 39, 41, 47; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6140-41, para. 13.

[96] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *Sprint-Shentel-NTELOS Order*, 31 Rcd at 3638-39, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41; *2010 DOJ/FTC Horizonal Merger Guidelines* at § 5.3; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6140-41, 6221-22, para. 13 & n.34, para. 225 & n.604.

[97] The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87 & n.277; *Sprint-Shentel-NTELOS*, 31 FCC Rcd at 3638-39, para. 17 & n.50; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6140-41, para. 13 & n.34.

According to the *2010 DOJ/FTC Horizontal Merger Guidelines*, an HHI above 2500 indicates a market with a high degree of concentration, and mergers resulting in concentration above this level that increase the HHI by more than 200 points are presumed likely to enhance market power. *2010 DOJ/FTC Horizontal Merger Guidelines*, § 5.3 at 18-19 (Under the *2010 DOJ/FTC Horizontal Merger Guidelines*, lesser concentration levels and increases may also raise competitive concerns.). *Id.* The *2010 DOJ/FTC Horizontal Merger Guidelines* are commonly relied upon by the courts. *See, e.g.*, *FTC v. Heinz*, 246 F.3d at 716, 720.

[98] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *Sprint-Shentel-NTELOS*, 31 FCC Rcd at 3638-39, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6222-23, para. 228.

[99] Application at 5 & n.10.

[100] Applicants' Apr. 16, 2021 *Ex Parte* Letter at 4. The range of HHIs depends on the assumptions made about DISH. *Id.*

concentration.[101] The American Antitrust Institute (AAI) argues that the Applicants' attribution of market shares to host facilities-based providers is misleading because it ignores the market power that prepaid MVNOs can exercise by pricing above their wholesale cost.[102] Focusing on the prepaid market, AAI finds that the transaction would increase concentration by more than 300 HHI points.[103]

37. Increased market concentration arising from any proposed transaction is an indicator of potential harm to competition, although it is important to note that market concentration measures are merely the beginning of the competitive analysis.[104] In previous transactions involving facilities-based mobile wireless providers (Mobile Network Operators or MNOs), the Commission typically has attributed the customers of MVNOs to the underlying MNO when calculating initial concentration measures.[105] This approach is inappropriate, however, for transactions between an MNO and an MVNO because it effectively treats the MVNO as fully under the control of the MNO and thus might underestimate the transaction's competitive impact.[106] A potential alternative approach is to treat the MVNO as a fully independent competitor.[107] However, this is also inappropriate because MVNOs' network access costs are higher than the MNO's own costs, which limits their competitive impact.[108] Thus, neither approach accurately measures the likely competitive impact of MVNOs.[109] Accordingly, we do not apply the HHI screen. However, as discussed below, there are other generally accepted initial screens available to evaluate the likelihood of potential adverse unilateral effects.[110]

2. Unilateral Effects

38. As noted above, horizontal transactions raise potential competitive concerns when the combined entity may have the incentive and the ability unilaterally to raise prices, lower quality, or otherwise harm competition in a relevant market.[111] Unilateral effects arise when firms find it profitable

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[101] Public Knowledge et al. Dec. 18, 2020 Comments at 12; Letter from Matthew A. Brill, Counsel, Mobile X, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Mar. 1, 2021) (Mobile X Mar. 1, 2021 *Ex Parte* Letter); AAI Apr. 2, 2021 *Ex Parte* Reply at 7.

[102] AAI Apr. 2, 2021 *Ex Parte* Reply at 6-7.

[103] *Id.* at 5.

[104] *2010 DOJ/FTC Horizontal Merger Guidelines*, §§ 2.1, 5.3 at 3, 19.

[105] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10610, para. 78; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16 & n.48; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37.

[106] By treating MVNOs as wholly controlled subsidiaries, we ignore the ability of MVNOs to set their own retail price, thereby ignoring any pre-transaction market power that they hold. *See, e.g.*, AAI Apr. 2, 2021 *Ex Parte* Reply at 6-7; Opening Testimony of Mark A. Israel on behalf of TracFone Wireless, Inc., California Public Utility Commission, 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., Application 20-11-001, Mar. 12, 2021, at 21-22, paras. 39-40 (Dr. Israel Testimony on behalf of TracFone), https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2011001/3436/371909249.pdf (last visited Nov. 18, 2021).

[107] This is AAI's preferred approach. AAI Apr. 2, 2021 *Ex Parte* Reply at 5.

[108] Dr. Israel Testimony on behalf of TracFone at 24, para. 44.

[109] *Id.* at 21-22, para. 40.

[110] *See 2010 DOJ/FTC Horizontal Merger Guidelines*, § 6.1, at 21 ("Diagnosing unilateral price effects based on the value of diverted sales need not rely on market definition or the calculation of market shares and concentration. The Agencies rely much more on the value of diverted sales than on the level of the HHI for diagnosing unilateral price effects in markets with differentiated products.").

[111] *2010 DOJ/FTC Horizontal Merger Guidelines*, §§ 1, 6 at 1-2, 20-22.

to raise prices or otherwise exercise market power following a horizontal merger without regard to the anticipated actions or responses of other firms.[112]

39. The Applicants claim that Verizon is committed to serving TracFone's customers and to competing vigorously in the prepaid segment through low price options and plans.[113] Various commenters argue, however, that by eliminating the largest independent MVNO, the proposed transaction potentially leads to higher retail prices.[114] Commenters also claim that the transaction would result in fewer provider choices, lower quality, and reduced innovation.[115] More generally, commenters claim that the acquisition would increase the market power of the three nationwide MNOs, which would harm competition.[116]

40. The Applicants counter that the transaction would lower TracFone's costs and promote price competition.[117] They contend that a robust Verizon presence in the prepaid segment will generate a new competitive dynamic for value-conscious consumers through low price options and plans.[118] The Applicants claim that the transaction would make TracFone a stronger competitor vis-à-vis the Metro and Cricket brands, in part, by eliminating the need for extensive arm's length negotiations.[119] Several commenters support approval of this transaction based in part on additional consumer choice among prepaid providers operated by a facilities-based provider.[120]

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[112] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10625, para. 111; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9166, para. 84; *2010 DOJ/FTC Horizontal Merger Guidelines*, §§ 1, 6 at 2, 20-22.

[113] Application at 18.

[114] Public Knowledge et al. Oct. 16, 2020 Opposition at 11; Next Century Cities Dec. 18, 2020 Comments at 11; Mobile X Mar. 1, 2021 *Ex Parte* Letter at 1; Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 3.

[115] AAI Apr. 2, 2021 *Ex Parte* Reply at 2; Public Knowledge et al. Dec. 18, 2020 Comments at 7-8; Letter from Brian Thorn, Senior Researcher, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Mar. 1, 2021) (CWA Mar. 1, 2021 *Ex Parte* Letter); Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 2.

[116] CWA Nov. 19, 2020 Opposition at 21 ("Post-merger, the leading MVNOs will now be aligned with, or controlled by, the three current [facilities-based providers]."); AAI Apr. 2, 2021 *Ex Parte* Reply at 2 ("The acquisition would cement an oligopoly in the pre-paid wireless market between Verizon, T-Mobile, and AT&T. . . Both the pre-paid and post-paid wireless markets in the U.S. would thus be fundamentally restructured in the space of two years, to the detriment of competition and consumers."); Letter from Claire Par, New America's Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (OTI Apr. 12, 2021 *Ex Parte* Letter) ("As corporate market power grows, providers' interest in serving low-income consumers diminishes as firms are incentivized to increase prices.").

[117] Applicants' Dec. 28, 2020 Joint Reply at 8.

[118] *Id.* at 5.

[119] *Id.* at 8-9; Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (Feb. 11, 2021) (Applicants' Feb. 11, 2021 *Ex Parte* Letter); Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, FCC, GN Docket No. 21-112, at 2 (Mar. 5, 2021) (Applicants' Mar. 5, 2021 *Ex Parte* Letter); Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Apr. 7, 2021) (Applicants' Apr. 7, 2021 *Ex Parte* Letter); Letter from Eduardo Diaz Corona, Chief Executive Officer, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1-2 (filed Sep. 30, 2021); *see also* Dr. Israel Testimony on behalf of TracFone at 16-18, paras. 27-32.

[120] *See* Letter from Chiling Tong, President and CEO, and Dr. Karen Eng, Chair, National Asian /Pacific Islander American Chamber of Commerce and Entrepreneurship, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-

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41. In its review of proposed transactions, the Commission previously has calculated upward pricing pressure (UPP) indices as an additional preliminary screen for potential unilateral effects.[121] We calculate here the net upward pricing pressure index that was first proposed by Farrell and Shapiro.[122] To calculate the net UPP, we estimated the diversion rates between the merging firms' products, the merging firms' profit margins, and the marginal-cost efficiencies that are expected to result from the merger.[123] The UPP index for TracFone is:

$$UPP_T = D_{T\rightarrow V} \times (P_V - C_V) - E_T \times C_T$$

where $D_{T\rightarrow V}$ is the "diversion ratio" from TracFone to Verizon, or the fraction of customers leaving TracFone that would choose wireless service from Verizon following a price increase by TracFone, P_V is the pre-transaction price of Verizon products, C_T and C_V are, respectively, the marginal costs of the TracFone and Verizon products, and E_T is TracFone's credited marginal cost efficiencies.[124] The first

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112, at 1 (filed Sept. 29, 2021) (National ACE Sept. 29, 2021 *Ex Parte* Letter); Letter from Yanira Cruz, President and CEO, National Hispanic Council on Aging, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Oct. 13, 2021) (NHCOA Oct. 13, 2021 *Ex Parte* Letter); Letter from Dr. Justin Véléz-Hagan, Executive Director, National Puerto Rican Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Sept. 28, 2021) (NPRCOC Sept. 28, 2021 *Ex Parte* Letter); Letter from Ken Lee, CEO, OCA–Asian Pacific American Advocates, to The Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112, at 2 (filed Sept. 24, 2021) (OCA Sept. 24, 2021 *Ex Parte* Letter); Letter from Alice Rodriguez, Chairwoman, Board of Directors, and Ramiro A. Cavazos, President and CEO, U.S. Hispanic Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Oct. 5, 2021) (USHCC Oct. 5, 2021 *Ex Parte* Letter).

[121] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10636, para. 129 & n.447; *AT&T-Leap Order*, 29 FCC Rcd at 2740, paras. 70-71; *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, 26 FCC Rcd 16184, 16325-26, Appx. C, para. 20 (WTB 2011) (*AT&T-T-Mobile Staff Report*). As the *2010 DOJ/FTC Horizontal Merger Guidelines* explain, "Adverse unilateral price effects can arise when the merger gives the merged entity an incentive to raise the price of a product previously sold by one merging firm and thereby divert sales to products previously sold by the other merging firm, boosting the profits on the latter products. Taking as given other prices and product offerings, that boost to profits is equal to the value to the merged firm of the sales diverted to those products. The value of sales diverted to a product is equal to the number of units diverted to that product multiplied by the margin between price and incremental cost on that product." *2010 DOJ/FTC Horizontal Merger Guidelines*, § 6.1 at 21. *See also* Joseph Farrell, & Carl Shapiro, *Antitrust evaluation of horizontal mergers: An economic alternative to market definition*, 10 The BE Journal of Theoretical Economics 1 at 7-9 (2010) (Farrell and Shapiro (2010)).

[122] Farrell and Shapiro (2010) at 2. As Farrell and Shapiro observe,"[t]his involves comparing two opposing forces: the loss of direct competition between the merging parties, which creates upward pricing pressure, and marginal-cost savings from the merger, which create (offsetting) downward pricing pressure." *Id.*; *see also* Roy J. Epstein & Daniel L. Rubinfeld, *Understanding UPP*, 10 The B.E. Journal of Theoretical Economics 3 (Epstein and Rubinfeld (2010)). Dr. Israel, in his testimony before the California Public Utility Commission, agreed that "mergers are often evaluated by considering the 'first-order effects' – i.e., by balancing upward pricing pressure against marginal cost efficiencies." Rebuttal Testimony of Mark A. Israel on behalf of TracFone Wireless, Inc., California Public Utility Commission, 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., Application 20-11-001, Apr. 9, 2021, at 19, para. 27 (Dr. Israel Rebuttal Testimony on behalf of TracFone), https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2011001/3528/377541152.pdf (last visited Nov. 18. 2021).

[123] *See, e.g.*, Epstein and Rubinfeld (2010) at 3 ("[t]he comparative strengths of these effects depend on the underlying profit margins for each product, the diversion of demand from product 1 to product 2, and the magnitude of the efficiencies.").

[124] *See 2010 DOJ/FTC Horizontal Merger Guidelines*, § 6.1 at 21; Farrell and Shapiro (2010) at 12. Efficiencies of E_T imply that the post-transaction marginal cost for TracFone would be $(1 - E_T) \times C_T$.

part of the expression represents the upward pricing pressure on TracFone's services,[125] while the second part of the expression represents the opposing downward pricing pressure due to merger efficiencies. The UPP expression for Verizon is analogous.

42. *Diversion Rates.* Since 2004, the Commission has relied on porting data from the Local Number Portability (LNP) database to calculate diversion ratios in evaluating mobile wireless transactions.[126] Unfortunately, our LNP data do not permit us to distinguish MVNO customer ports from the ports of the underlying facilities-based service providers that those customers use; thus, we cannot use the LNP data to calculate customer switching rates for this transaction.[127] Further, the Applicants do not themselves provide customer switching rates.[128] To calculate customer switching, we used instead market-share based diversion rates (i.e., we will assume that diversion is proportional to subscriber market shares). Market-share-based diversion rates previously have been employed in calculating diversion ratios when better data are unavailable.[129] Moreover, this approach is conservative, as it likely overstates true diversion between Verizon and TracFone which, in turn, implies that our estimated upward pricing pressure will overstate true upward pricing pressure.[130] Staff calculated market-share-based

[125] The term $D_{T\to V} \times (P_V - C_V)$ represents, in absolute terms, the value of diverted sales to Verizon, and it is higher when either the diversion ratio is higher or the margin between price and marginal cost is higher. Steven C. Salop and Serge Moresi, Updating the Merger Guidelines: Comments at 19 (2009), https://ssrn.com/abstract=2756487.

[126] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10626, para. 112; *AT&T-Leap Order*, 29 FCC Rcd at 2759-60, paras. 55, 70 & n.197, n.199, n.248; *AT&T-T-Mobile Staff Report*, 26 FCC Rcd at 16212-13, 16216-18, 16319-23, para. 51 & n.148, paras. 55-56, Appx. C, paras. 8-15; *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13948, para. 75 & n.288 (2009) (*AT&T-Centennial Order*). The LNP data include each instance of a customer porting (i.e., transferring) a phone number from one mobile provider to another, and indicate both the origin and destination provider. *AT&T-Centennial Order*, 24 FCC Rcd at 13948, para. 75 & n.288.

[127] Mobile service providers can receive telephone numbering resources only in those areas in which they own spectrum, and because MVNOs generally do not hold any spectrum, they are therefore precluded from directly obtaining telephone numbering resources. MVNOs requiring telephone numbering resources must therefore contract with mobile service providers to receive those numbers. Our data do not distinguish MNO numbers subject to an MVNO contract from other MNO numbers. *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7615, para. 97 (2000).

[128] For example, the Applicants' porting data do not permit us to separate out the TracFone brand in a way that would allow us to fully capture diversion between Verizon and TracFone. *See, e.g.*, VZ-DOJHSR-001341 (Verizon, "Verizon Prepaid" worksheet, 2018Q1-2020Q2); VZ-DOJHSR-001451, (Verizon, "Porting Data" worksheet, Aug. 1, 2018 to Sep. 1, 2020); VZ-DOJHSR-002607, at 52 (Verizon, {["]}); VZ-DOJHSR-007886, at 73 (Verizon, {[").]}).

[129] *See, e.g.*, Carl Shapiro, *Mergers with Differentiated Products*, 10 Antitrust 24 at 25-26 (1996). *See also AT&T-T-Mobile Staff Report*, 26 FCC Rcd at 16321, Appx. C, para. 11. Market-share-based diversion also underpins the logit model of differentiated product competition that is commonly used to study mergers. *See, e.g.*, Nathan H. Miller & Gloria Sheu, *Quantitative Methods for Evaluating the Unilateral Effects of Mergers*, 58 Review of Industrial Organization 149 (2021); Gregory J. Werden, Luke M. Froeb, and Timothy J. Tardiff, *The Use of the Logit Model in Applied Industrial Organization*, 3 International Journal of the Economics of Business 95 (1996); Gregory J. Werden & Luke M. Froeb, *The Effects of Mergers in Differentiated Products Industries: Logit Demand and Merger Policy*, 10 J.L. Econ. & Org. 408 (1994).

[130] The Applicants argue that Verizon and TracFone focus on serving distinctly different retail segments, and commenters do not dispute this claim. *See, e.g.*, Applicants' Dec. 28, 2020 Joint Reply at 11; Applicants' Apr. 7, 2021 *Ex Parte* Letter at 2; Public Knowledge et al. Oct. 30, 2020 Reply at 11-12; CWA Nov. 19, 2020 Opposition at 21. This suggests that customers switch across Verizon and TracFone in proportions that are likely below their respective market shares. Dr. Israel argued that "as a result of the substantial differentiation between [the Applicants'] products, substitution between Verizon and TracFone in response to a small price increase . . . would surely be tiny, as [customers] would have many closer options to turn to." Dr. Israel Testimony on behalf of

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diversion from Verizon to TracFone as {[ ]}% and from TracFone to Verizon as {[ ]}%, respectively.[131] These values are inserted for $D_{i \to j}$ in the UPP calculation.

43. *Margins.* Following Commission precedent, we estimate profit margins by calculating a customer lifetime value (CLV) margin[132] using the Applicants' data.[133] Staff calculated CLV margins for Verizon and TracFone as {[ ]}% and {[ ]}%, respectively,[134] which implies price-cost margins for Verizon and TracFone of ${[ ]} and ${[ ]}, respectively.[135] These values are inserted for $(P_i - C_i)$ in the UPP calculation.

44. *Efficiencies*. A merger with vertical elements such as is the case here may generate efficiencies through the elimination of double marginalization, which the Commission has previously credited.[136] The Applicants argue that a combined Verizon/TracFone would benefit from "owner's economics," (i.e., elimination of double marginalization), which will lower TracFone's costs and enable it

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TracFone at 26, para. 49. Internal documents comport with this view. VZ-CA-000044, at 7-9 {[( )]}; VZ-DOJHSR-000346, at VZ-DOJHSR-000352 { ( ]}; VZ-DOJHSR-000202, at 8 {[ ]}.

[131] Staff derived MNO market shares from public subscribership data on mobile telephony/broadband services and MVNO market shares from Applicant documents. VZ-DOJHSR-007886, at 60-61. To the extent possible, our calculations exclude enterprise and government customers because of our finding that this is a separate, relevant product market. To assess potential credit constraints that would prevent certain consumers from switching to postpaid service following a price increase, staff also used credit-score distribution data to modify the market-share-based diversion estimates. This alternative methodology did not alter our conclusions.

[132] To calculate a CLV margin for a company i, we use the formula: $M_i^{CLV} = \left(\frac{ARPU_i - CCPU_i}{Churn_i} - CPGA_i\right) \times \frac{Churn_i}{ARPU_i}$ where M_i^{CLV} is the CLV margin for company i, $ARPU_i$, our measure of price, represents average revenue per user (i.e., the average monthly price that a subscriber pays), $CCPU_i$ represents cash cost per user (i.e., the average monthly per subscriber cost) and $CPGA_i$ represents the cost per gross add (i.e., the one time subscriber acquisition cost). In addition to accounting for the incremental costs of serving individual customers, CLV margins account for one-time subscriber acquisition and upgrade costs over the customer lifetime. *T-Mobile-Sprint Order*, 34 FCC Rcd at 10637, para. 132 & n.453; *AT&T-T-Mobile Staff Report*, 26 FCC Rcd at 16324, Appx. C, paras. 17-18.

[133] Verizon May 14, 2021 RFI Response, Exhibit 7e; América Móvil and TracFone May 14, 2021 RFI Response, Exhibits 7a and 7b; Verizon July 2, 2021 Supplemental RFI Response, Revised Exhibit 7e.

[134] In order to back out C_V, the marginal costs of the Verizon product in our expression for UPP above, we assumed that our CLV margin corresponded to a "simple margin" in which the marginal cost effectively incorporates both $CCPU$ and $CPGA$. That is, we set $M_V^{CLV} = (P_V - C_V)/P_V$, so that $C_V = P_V(1 - M_V)$, where M_V^{CLV} is Verizon's CLV margin. Setting P_V to Verizon's ARPU and using our estimate of M_V yields corresponding Verizon marginal cost ${[ ]}. The analogous marginal cost for TracFone is ${[ ]}.

[135] As in previous transactions, our estimate of price is ARPU, based on Applicants' data for dates that correspond with cost and other data that we use in our CLV estimates. *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10637, para. 132 & n.453. The ARPU for Verizon and TracFone is ${[ ]} and ${[ ]}, respectively.

[136] *See, e.g.*, *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6501, para. 373 (2016) (*Charter-Time Warner Cable Order*); *Comcast-NBC Universal Order*, 26 FCC Rcd at 4335, para. 237 (finding that the elimination of double marginalization will result in some benefits for consumers); *News Corp.-Hughes Order*, 19 FCC Rcd at 544-45 paras. 154-56 (agreeing that vertical integration can reduce prices by reducing double marginalization).

to better compete for prepaid customers against rival providers' flanker brands.[137] Dr. Israel argues that TracFone purchases wholesale network access at prices substantially above Verizon's network cost and that the transaction would allow it instead to realize lower costs by internalizing Verizon's incremental network costs when setting prices.[138]

45. We quantify the cost reductions from the elimination of double marginalization using the Applicants' data. TracFone's standalone monthly wholesale costs of ${[ ]} per subscriber are based on the weighted average cost that TracFone incurs on its current and recent customers across all MNOs from which it purchases network access.[139] The estimate of monthly on-network costs of ${[ ]} per subscriber that Verizon incurs on TracFone customers consists of network, and{[ ]} expenses for current and recent customers.[140] The difference of ${[ ]} represents the estimated magnitude of the elimination of double marginalization.[141] This value is entered for E x C in the UPP calculation. We note that Dr. Israel also quantified the cost reducing effect of elimination of double marginalization.[142] Compared to Dr. Israel's estimate, our estimated savings from the elimination of double marginalization are smaller, which will lead to a higher estimate for net UPP.

46. *Net Upward Pricing Pressure Calculation*. Based on our estimates, we have calculated net upward pricing pressure for TracFone of {[ ]}< 0.[143] Because we do not have data to calculate Verizon's likely efficiencies, we can estimate the upward pricing pressure only. Our estimate is {[ ]} which is necessarily positive, since we account for no offsetting efficiencies. However, this

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[137] Applicants' Dec. 28, 2020 Joint Reply at 7-8; Applicants' Mar. 5, 2021 *Ex Parte* Letter at 2; Applicants' Apr. 7, 2021 *Ex Parte* Letter at 1; Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (May 18, 2021) (Applicants' May 18, 2021 *Ex Parte* Letter) ("Combining Verizon and TracFone will eliminate this double marginalization and generate owner's economics, resulting in a substantial reduction of TracFone's incremental costs[.]"); *see also* Verizon May 14, 2021 RFI Response at 4-5.

[138] Dr. Israel Testimony on behalf of TracFone at 8-10, paras. 15-18.

[139] We note that TracFone's marginal cost of ${[ ]} and Verizon's marginal cost of ${[ ]} also factor in non-network costs, including recurring and one-time acquisition costs, and so are higher than, respectively, TracFone's wholesale costs and Verizon's on-network costs. Non-network recurring costs could include channel, commission, and call support and one-time acquisition costs include equipment subsidies, promotions and concessions, offsets of activations and upgrade fees, content promotion, bad debt, and advertising, as well as channel, commission and call support. América Móvil and TracFone May 14, 2021 RFI Response, Exhibit 7a; Verizon July 2, 2021 Supplemental RFI Response, Revised Exhibit 7e.

[140] To the extent that {[ ]} should not be included as a network cost, this estimate may be too high, and consequently, our estimate of elimination of double marginalization may be too low.

[141] Dr. Israel notes that, to the extent that lower TracFone prices attract customers who would otherwise be getting network service from Verizon, then the lost Verizon wholesale access revenue associated with that MVNO customer would offset the incremental profit associated with attracting that customer to TracFone. In this case, the pre-merger wholesale price paid by TracFone would be replaced by the opportunity cost of reduced wholesale revenue for Verizon, thus undoing the elimination of double marginalization, and leaving effective marginal costs largely unchanged. This opportunity-cost effect arises only in cases where the customer attracted by TracFone comes from another MVNO using the Verizon network. Dr. Israel Testimony on behalf of TracFone at 13-14, para. 23. Incorporating this countervailing effect into our analysis reduces the magnitude of elimination of double marginalization to ${[ ]}.

[142] Dr. Israel Rebuttal Testimony on behalf of TracFone at 15, 37, paras. 22, 52.

[143] Excluding efficiencies, TracFone's UPP is calculated as diversion from TracFone to Verizon multiplied by the margin between price and incremental cost on that product, or {[ ]}. We obtain our net UPP estimates by subtracting the efficiencies calculated above.

corresponds to less than {[ ]}% of Verizon's pre-transaction average revenue per user (ARPU), indicating that even though we did not consider potential efficiencies, the transaction is unlikely to raise significant unilateral effects concerns with respect to Verizon's pricing.[144] We note that our net UPP calculations for both TracFone and Verizon are likely too high. First, we have not accounted for any potential merger efficiencies except for the elimination of double marginalization for TracFone. Second, as discussed above, our estimates of diversion between the Applicants' brands are likely too high because we rely on market-share-based diversion, which does not account for the Applicants' claimed differentiation between TracFone and Verizon services, and we also do not factor in customers' ability to leave the market following a price increase.

47. While, on balance, we find that significant unilateral effects are unlikely, our analysis is based on the potential average impact on consumers. We cannot conclude that certain groups of consumers, such as very low-income consumers, might not be harmed by the transaction. For example, Applicant documents indicate that ARPU for some TracFone plans would go up, while going down for others, and that on average, ARPU would increase between 2021 and 2025 as a result of the transaction, while ARPU per GB is anticipated to decline.[145] While an increase in average ARPU[146] could result from consumers choosing to consume higher end plans, which could make them better off, consumers who do not value additional data could be left worse off if they face higher prices.[147] We find, however, that Verizon's commitments as set out in section VIII that address potential harms to Lifeline-eligible and other low-income consumers, and ensure a stable, orderly, and streamlined migration,[148] which we adopt as conditions of our approval, will minimize potential harms to consumers seeking low-cost plans.

3. Coordinated Effects

48. Coordinated effects arise when competing firms, on recognizing their interdependence, take actions that are profitable for them only as a result of the accommodating reactions of the other firms.[149] A market typically is more vulnerable to coordinated conduct if there are few significant

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[144] The *2010 DOJ/FTC Horizontal Merger Guidelines* indicate that a merger is unlikely to raise significant unilateral effects concerns if the value of diverted sales (i.e., upward pricing pressure) is proportionately small. While the guidelines define proportionately ("in proportion to the lost revenues attributable to the reduction in unit sales resulting from the price increase"), they do not define small. However, a threshold level of 5% is commonly considered. *2010 DOJ/FTC Horizontal Merger Guidelines*, § 6.1 at 21; *see also* Carl Shapiro, Deputy Assistant Attorney General for Economics, Antitrust Div., U.S. Dept. of Justice, Remarks as Prepared for the American Bar Association Section of Antitrust Law Fall Forum at 25 (Nov. 18, 2010), http://www.justice.gov/atr/public/speeches/264295.pdf; Farrell and Shapiro (2010) at 14.

[145] *See, e.g.*, VZ-VZ-0000824 ("Cost per GB" worksheet); VZ-DOJHSR-000160, at VZ-DOJHSR-000166 (as compared to VZ-DOJHSR-000160 at VZ-DOJHSR-000163); *see also* Verizon May 14, 2021 RFI Response at 7-8, 64; Rebuttal Testimony of Verizon Communications Inc., Apr. 9, 2021 at 17-18.

[146] *See, e.g.*, VZ-CA-003684; VZ-DOJHSR-000160, at VZ-DOJHSR-000161, VZ-DOJHSR-000164; VZ-DOJHSR-000954, at VZ-DOJHSR-000993, VZ-DOJHSR-000995; VZ-DOJHSR-001061, at VZ-DOJHSR-001073; VZ-DOJHSR-001454, at 12; VZ-DOJHSR-002396, at 10; VZ-VZ-0001133 ("Summary - Standalone Case" and "Summary by Brand" worksheets, Gross ARPU Tables); VZ-VZ-0000126, at 7; VZ-VZ-0000213, at 8; VZ-VZ-0000221; VZ-VZ-0000591, at 12, 39; VZ-VZ-0000649, at 9; VZ-VZ-0000867, at 40; VZ-VZ-0000952 at 10; VZ-VZ-0001454, at 7; VZ-DOJHSR-002085, at 9; VZ-DOJHSR-002465, at 9. Additionally, Applicants anticipate offering {[ ]} to incentivize competitors' customers to TracFone. *See, e.g.*, Verizon May 14, 2021 RFI Response at 26; VZ-CA-003867; VZ-DOJHSR-000954, at VZ-DOJHSR-000996; VZ-DOJHSR-002396, at 11; VZ-VZ-0000952, at 11.

[147] Dr. Israel Rebuttal Testimony on behalf of TracFone at 25-26, paras. 35-37.

[148] For example, Verizon's commitment to maintain existing TracFone rate plans will give cost-conscious consumers sufficient time to decide whether to accept a post-transaction TracFone service plan or to switch to an alternative low-cost provider.

[149] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10654-55, para. 178; *T-Mobile-MetroPCS Order*, 28 FCC Rcd

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competitors, relatively homogeneous products, and if consumers find it relatively easy to switch between firms.[150] In contrast, coordinated effects are less likely if, for example, the relevant market is marked by leapfrogging technological innovation, so that responses by rivals leave the gains from successful innovation largely intact, or if the market elasticity of demand is relatively high.[151] For the reasons discussed below, we find that this instant transaction is unlikely to significantly increase the risk of coordinated effects.

49. Commenters raise two coordinated effects concerns. First, commenters argue that, because post-transaction, all significant MVNOs would be vertically integrated with the nationwide facilities-based providers, the vertically integrated MVNOs could coordinate to exclude or otherwise harm competing, standalone MVNOs or adopt parallel strategies to discourage postpaid customers from migrating to lower-cost prepaid plans.[152] Second, commenters claim that coordination would be more likely because the transaction would remove an independently-competing maverick MVNO from the market.[153]

50. The Applicants deny that there is a risk of coordinated effects.[154] The Applicants argue that wireless competition is largely driven by the economic imperative of filling the networks of facilities-based providers, that the transaction should increase AT&T's and T-Mobile's incentives to pursue agreements with other MVNOs to make up for TracFone traffic they could lose to Verizon, and that DISH soon plans to be a fourth facilities-based service provider with wholesale services as a significant part of its business plan.[155] The Applicants further note that Verizon has expanded its wholesale arrangements with Comcast and Charter since announcing its deal with TracFone.[156] The Applicants argue that retail mobile wireless telecommunications is not particularly vulnerable to coordination because of product and service differentiation and the rapidly changing nature of mobile wireless technological offerings and asymmetric capacity utilization among providers.[157] Finally, the Applicants claim that coordination would not be a concern because as an MVNO, TracFone is constrained in its ability to compete independently against facilities-based service providers and there would be no reduction of independent competitors.[158]

51. We find that this transaction is unlikely to significantly increase the risk of coordinated effects. Post-transaction, there will remain, in addition to the prepaid brands offered by the three nationwide MNOs, prepaid brands offered by regional MNOs and by numerous independent MVNOs,

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at 2336-37, para. 43; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570, para. 114; *see also 2010 DOJ/FTC Horizontal Merger Guidelines*, § 7 at 24-25.

[150] *2010 DOJ/FTC Horizontal Merger Guidelines*, § 7.2 at 25-27; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10655, para. 179.

[151] *2010 DOJ/FTC Horizontal Merger Guidelines*, § 7.2 at 25-27; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10655, para. 179.

[152] Public Knowledge et al. Oct. 16, 2020 Opposition at 12; CWA Nov. 19, 2020 Opposition at 20-21; Public Knowledge et al. Dec. 18, 2020 Comments at 13; CWA Dec. 18, 2020 Comments at 20.

[153] CWA Nov. 19, 2020 Opposition at 21; CWA Dec. 18, 2020 Comments at 20; CWA Mar. 12, 2021 Comments at 7.

[154] Applicants' Dec. 28, 2020 Joint Reply at 3.

[155] *Id.* at 3, 13, 14.

[156] *Id.* at 12.

[157] *Id.* at 14.

[158] Applicants' Apr. 16, 2021 *Ex Parte* Letter at 4.

including Boost and the other MVNOs served by Verizon.[159] These MVNOs will continue to have the incentive and ability to compete for prepaid customers, including cost-conscious customers, which will likely continue to constrain opportunities for coordination on prepaid plans by the three nationwide MNOs. Further, at the wholesale level, contracts between MNOs and MVNOs are complex and specific to the needs of the MVNO that is party to the negotiation, generally last for a period of years, and generally are subject to strict non-disclosure agreements.[160] These features of the wholesale contracts make it difficult for MNOs to coordinate on the terms of wholesale contracts to harm rival stand-alone MVNOs, and the transaction does not affect these features of wholesale contracts except between Verizon and TracFone.[161] Moreover, Verizon's commitment, which we accept as a condition to our approval, to extend its existing agreements with certain MVNOs for at least three years limits its ability to coordinate to raise wholesale prices.

4. Vertical Harms in Wholesale Services

52. The proposed transaction raises concerns regarding whether the addition of TracFone to Verizon's portfolio of wireless brands increases the likelihood of foreclosure or price increases by Verizon in the wholesale market. We find that, in general, the acquisition of TracFone is unlikely to increase Verizon's incentive to raise the cost of those MVNOs that do not compete directly with TracFone. Further, we find that Verizon's commitment to extend the wholesale agreements of MVNOs that are in direct competition with TracFone mitigates our concerns regarding an increase in the incentive to raise the costs of such MVNOs.

53. Various commenters argue that the acquisition of TracFone could increase Verizon's incentive post-transaction to increase wholesale prices or degrade wholesale service quality provided to MVNOs, particularly those offering prepaid service in competition with TracFone.[162] AAI contends that the increase in Verizon's market share among prepaid subscribers makes it more advantageous for Verizon to disadvantage rival prepaid brands.[163] Commenters further contend that entry barriers may increase or Verizon may foreclose rivals and new entrants from network access altogether.[164] CWA also

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[159] Independent prepaid MVNO competitors like Freedom Pop, Google Fi, H2O Mobile, and Mint Mobile provide cost-conscious consumers with low cost options for mobile wireless service. *See, e.g.*, FreedomPop, *Build the Plan That is Right for You*, https://www.freedompop.com/plans (last visited Nov. 16, 2021); Mint Mobile, *Plans*, https://www.mintmobile.com/plans/ (last visited Nov. 16, 2021). Independent prepaid MVNOs other than TracFone that Verizon serves, include {[ ]}. Verizon May 14, 2021 RFI Response at 76.

[160] Based on staff analysis of wholesale agreements filed in the record.

[161] A market typically is less vulnerable to coordinated conduct if, for instance, products are relatively non-homogeneous, prices are less transparent, and sales are large and infrequent, as is the case at the wholesale level. *2010 DOJ/FTC Horizontal Merger Guidelines*, § 7.2 at 25-27.

[162] *See, e.g.*, AAI Apr. 2, 2021 *Ex Parte* Reply at 7; CWA Dec. 18, 2020 Comments at 13; Public Knowledge et al. Oct. 16, 2020 Opposition at 12; Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 3.

[163] AAI Apr. 2, 2021 *Ex Parte* Reply at 7-8 ("[C]ombining Verizon's existing pre-paid subscribers with Tracfone subscribers will give Verizon the largest base of pre-paid subscribers of any of the Big 3. Verizon's much larger share of the pre-paid market, coupled with control of a critical input (network access) will increase the company's bargaining power vis-à-vis rival MVNOs and incentive to disadvantage rival pre-paid brands."); *see also* Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 3 (filed Oct. 13, 2021) (T-Mobile Oct. 13, 2021 *Ex Parte* Letter) ("The Commission should inquire into the impact that the transaction could have on other MVNOs to whom Verizon currently supplies wholesale services once it owns and controls their competitor, TracFone.").

[164] CWA Dec. 18, 2020 Comments at 13, 18 (asserting that entry barriers are already significant in the MVNO segment and that the proposed merger could increase entry barriers); Public Knowledge et al. Dec. 18, 2020 Comments at 12-13 ("All significant MVNOs will be vertically integrated with facilities-based carriers. Every

(continued….)

argues that the Commission must assess the transaction's potential to soften competition given Verizon's access to competitively-sensitive information.[165]

54. The Applicants respond that the transaction will not affect future wholesale agreements with MVNOs or the renegotiation of existing MVNO agreements.[166] Verizon maintains it provides capacity on its network to approximately {[ ]} MVNOs in addition to TracFone,[167] and that it recently signed wholesale agreements with additional MVNOs, but these MVNOs have not yet launched service.[168] Verizon further maintains that its business strategy is to expand the use of its network, including through wholesale opportunities such as existing and new MVNO agreements that supply revenue-generating traffic.[169] Verizon argues that post-transaction it will still have strong incentives to sell wholesale services to MVNOs.[170]

55. Dr. Israel argues that Verizon will continue to sell wholesale network access because the remaining MVNOs are sufficiently differentiated from Verizon and TracFone.[171] Dr. Israel notes that, besides TracFone, cable companies are the primary MVNOs that Verizon serves, and he argues that the cable companies' ability to bundle wireline and wireless services generates a competitive value that Verizon cannot match and thus it will continue to have an incentive to offer wholesale network access post-merger.[172] The Applicants argue that AT&T and T-Mobile will have additional incentives to compete for MVNO resellers following this transaction as Verizon seeks to migrate TracFone customers from those networks.[173] Regarding access to competitively sensitive information, the Applicants respond that Verizon has safeguards and procedures to prevent inappropriate disclosure of its MVNO customers' confidential information, such as firewalls between its wholesale and retail systems.[174]

56. As the Commission has long recognized, a vertical merger may increase a merged firm's incentive to "raise rivals' costs either by foreclosing supply of the input it sells downstream competitors or by raising the price at which it sells the input to competitors."[175] The integrated firm will foreclose or

(Continued from previous page)
facilities-based carrier will have incentive to exclude all other MVNOs, including potential new entrants, from its network."); CWA Mar. 12, 2021 Comments at 15.

165 CWA Dec. 18, 2020 Comments at 19 (arguing that Verizon currently provides wholesale services to many independent MVNOs and can glean competitively-sensitive information that it can supply to TracFone including data usage metrics across various geographic markets).

166 Verizon May 14, 2021 RFI Response at 77.

167 *Id.* at 76.

168 *Id.* at 76, 78.

169 *Id.* at 77.

170 *Id.* (asserting that Verizon's business strategy is focused on finding new opportunities and generating new revenue by striking arrangements to load traffic on Verizon's network, including wholesale arrangements with MVNOs).

171 Dr. Israel Testimony on behalf of TracFone at 28, para. 54.

172 *Id.* at 28-29, para. 54.

173 Verizon May 14, 2021 RFI Response at 79-80; *see also* Dr. Israel Testimony on behalf of TracFone at 30, paras. 55-56 (noting that the other nationwide facilities-based providers continue to sell wholesale network access despite controlling substantial prepaid brands).

174 Applicants' Dec. 28, 2020 Joint Reply at 27 (stating that Verizon provides antitrust and confidential information sharing training to its employees and instructs its employees in its wholesale business unit not to share MVNO confidential information with Verizon employees in other business units unless doing so is necessary to facilitate Verizon's contractual obligations to the MVNO).

175 *NewsCorp-Hughes Order*, 19 FCC Rcd at 510, para. 78; *see also Comcast-NBC Universal,* 26 FCC Rcd at 4250-51, para. 29.

raise input prices if the profits gained in the downstream (retail) market exceed the profits lost in the upstream (wholesale) market.[176] The changes to Verizon's incentives to foreclose access or raise wholesale prices to particular MVNOs hinge therefore on the degree of substitutability (i.e., the diversion rate) between TracFone and the non-TracFone MVNOs that Verizon supplies.

57. In general, we agree with the Applicants that there is a high degree of differentiation between TracFone and the largest MVNOs that Verizon supplies. Specifically, TracFone, Comcast, and Charter, combined, make up the vast majority (roughly {[ ]}) of Verizon's wholesale connections,[177] and the acquisition of TracFone is unlikely to increase the incentive of Verizon to raise the cost of those cable MVNOs who do not compete directly with TracFone. Both Comcast and Charter are focused on reaching their cable subscribers who prefer to bundle their wireless and wireline services.[178] In addition, both cable companies offer postpaid wireless services, a fact which further differentiates their offerings from those of TracFone.[179] By supplying the cable companies with network access, Verizon is able to appeal to a segment of the market where Verizon has only limited reach.[180]

58. Subscribers of the remaining MVNOs make up a small percentage of Verizon's wholesale subscribers, and some of those subscribe to MVNO providers that do not compete directly with TracFone.[181] There are, however, a few MVNOs that Verizon supplies that do offer low-cost prepaid services in direct competition with TracFone, and Verizon may have an increased incentive to raise the costs of those direct competitors. However, Verizon's commitment to extend the wholesale agreements of such MVNOs, which we accept as a condition to our approval, mitigates that concern.[182]

5. Potential Harms to Lifeline Customers

59. While we find that the transaction as proposed has the potential to cause certain public interest harms to Lifeline customers, Verizon's commitments mitigate the potential harms and help ensure that Lifeline subscribers experience the claimed public interest benefits of the transaction. We agree with commenters' concerns that TracFone continue to provide Lifeline service and that TracFone's Lifeline

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[176] Michael H Riordan and Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 Antitrust L. J. 528 (1995).

[177] TRAC-CPUC-00000032 at 28-29, para. 54. Dr. Israel reports that {[ ]} of Verizon's wholesale subscribers are "Non-cable MVNOs other than TracFone." Additionally, together, TracFone and Comcast comprised approximately {[ ]} of Verizon's wholesale revenue. VZ-VZ-0000778, at 3 (indicating that {[ )]}.

[178] *2020 Communications Marketplace Report*, 36 FCC Rcd at 2951-52, para. 13.

[179] Kelly Hill, *Comcast and Charter's MVNOs are Disrupting the Postpaid Market, Tutela Finds* (Oct. 11, 2019), https://www.rcrwireless.com/20191011/test-and-measurement/comcast-and-charters-mvnos-are-disrupting-the-postpaid-market-tutela-finds. "[T]he entrance of cable companies into the market have pushed MVNO service into the more lucrative postpaid segment; and multi-network MVNOs are innovating on the network side of the equation, rather than solely differentiating on price or customer service." *Id.*

[180] Whereas Verizon Wireless is a nationwide competitor, Verizon's fixed broadband footprint reaches only 11.5% of households and 11.5% of households where Comcast or Charter likewise offer fixed broadband service of at least 25/3 Mbps. FCC, *Fixed Broadband Deployment Data from FCC Form 477, Data as of June 30, 2020*, https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477 (last visited Nov. 16, 2021).

[181] For example, of the remaining approximately {[.]} VZ-DOJHSR-001316, at VZ-DOJHSR-001322 { ( )]}; TRAC-CPUC-00000095. In addition, {]}. VZ-DOJHSR-001316, at VZ-DOJHSR-001322; TRAC-CPUC-00000095.

[182] *See infra* section VIII.E.

consumers not be forced from inexpensive prepaid services to higher-cost plans as a result of this transaction.[183] Moreover, although we find some potential public interest benefits likely to arise from the transaction due to the addition of a second facilities-based Lifeline service provider, these potential benefits by themselves are insufficient to outweigh the potential harms to Lifeline consumers. As described below, Verizon has made a number of commitments intended to address concerns raised in the record concerning Lifeline, which we accept and make conditions to our approval of the proposed transaction. For example, Verizon has committed to continuing to offer TracFone's current Lifeline-supported services for a minimum of seven years following the close of the transaction. Before any TracFone Lifeline customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device is not compatible with the Verizon network. Below we evaluate the record, including conditions proposed by commenters and commitments made by Verizon to benefit Lifeline customers.

60. Commenters argue that the elimination of TracFone as an independent competitor will harm the approximately 1.7 million Lifeline consumers served by TracFone, and they urge the Commission to impose conditions to ensure that Lifeline services are protected and maintained post-transaction.[184] Next Century Cities, for example, asserts Lifeline is a critical service that provides alternatives for low-income consumers, and it asserts that, if TracFone's Lifeline services are phased out or Verizon suddenly decides to withdraw from the program, low-income consumers could find themselves without reliable access to an Internet connection or an equivalent alternative.[185] Commenters urge the Commission to impose protections to safeguard the Lifeline program,[186] and note that the transaction eliminates a substantial Lifeline MVNO.[187] In addition, commenters argue that the Commission should ensure that there are post-transaction compliance and structural safeguards in place for Verizon's participation in the Lifeline program.[188] CWA questions Verizon's statements that it will maintain TracFone's eligible telecommunications carrier (ETC) status and whether it will continue to

[183] Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 3; Letter from Joshua Stager, Amir Nasr, Sarah Morris of New America's Open Technology Institute and Yosef Getachew, Jonathan Walter of Common Cause, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (OTI and Common Cause Aug. 23, 2021 *Ex Parte Letter*); Senators' July 21, 2021 *Ex Parte* Letter (stating that it is important that the FCC secures long-term and enforceable commitments to ensure that Lifeline and budget plans remain accessible, competitive, and responsive to the needs of consumers).

[184] State Attorneys General Feb. 4, 2021 *Ex Parte* Letter at 1-2 (requesting conditions requiring Verizon to provide Lifeline services to customers at an affordable rate and at a quality that is commensurate with modern standards or requiring it to offer for a period of years, Lifeline service packages that are at least commensurate with, if not more, consumer friendly than, TracFone's existing lowest-cost Lifeline packages); *see also* CWA Mar. 12, 2021 Comments at 6-14; OTI Apr. 12, 2021 *Ex Parte* Letter at 3.

[185] Next Century Cities Dec. 18, 2020 Comments at 2, 4-7; *see also* Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 3; OTI and Common Cause Aug. 23, 2021 *Ex Parte* Letter at 2-3.

[186] Senators' July 21, 2021 *Ex Parte* Letter; Free Press *Ex Parte* Letter at 3; The Leadership Conference Apr. 6, 2021 Comments at 2; Letter from Kathleen Burke, Policy Counsel, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed May 21, 2021) (Public Knowledge May 21, 2021 *Ex Parte* Letter); Letter from Joshua Stager, Deputy Director, Broadband & Competition Policy, New America's Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, 4-5 (filed July 22, 2021) (OTI July 22, 2021 *Ex Parte* Letter).

[187] Public Knowledge et al. Oct. 16, 2020 Opposition at 2-3. Public Knowledge et al. Oct. 30, 2020 Reply at 7 (Applicants may not serve all TracFone customers post-transaction given the coverage footprints that might be lost if TracFone were to exclude the AT&T and T-Mobile networks; and the types of service offerings and speeds that Verizon might provide to TracFone Lifeline subscribers).

[188] Public Knowledge et al. Oct. 16, 2020 Opposition at 6.

offer services to existing and future Lifeline customers following consummation of the transaction.[189] CWA also notes the importance of Lifeline especially during the recent pandemic.[190] Commenters assert that the transaction creates a risk that Verizon could degrade the services relied upon by low-income consumers that would deepen the digital divide.[191] The Applicants argue that the transaction will increase competition for Lifeline customers by introducing a second facilities-based competitor for wireless Lifeline customers.[192] Verizon claims that it will seek to transfer TracFone's ETC designation, maintain TracFone's ETC status, and continue to offer Lifeline service through TracFone.[193]

61. *Lifeline Coverage Availability*. TracFone has ETC status in approximately 43 states, the District of Columbia, and Puerto Rico.[194] The Applicants acknowledge, however, that Verizon's network coverage does not extend to all populated areas where TracFone customers are located.[195] According to the Applicants, TracFone provides service to its Lifeline customers primarily through its SafeLink brand with some customers receiving service over Verizon's network.[196] The Applicants explain that, for the SafeLink customers who already ride on Verizon's network, migration is not necessary.[197] For the SafeLink customers that are not currently served by Verizon's network, the Applicants maintain that TracFone will continue to operate as an MVNO, and that these customers will continue to receive Lifeline service over non-Verizon networks for a certain period of time.[198] The Applicants state that approximately {[ ]} of TracFone's SafeLink subscribers live outside of Verizon's coverage area with the majority of these SafeLink subscribers located in {[ ]}.[199] The Applicants maintain that, in the areas where TracFone offers Lifeline service over non-Verizon networks and Verizon lacks an underlying network, Verizon post-transaction will continue existing wholesale arrangements for an extended time period.[200] Regarding customers in Puerto Rico, the Applicants state that TracFone and Claro have reached a preliminary agreement to extend their wholesale agreement {[ ]}.[201] The Applicants argue that by extending its agreement with Claro, TracFone has ensured that it can continue to provide service in Puerto Rico without interruption.[202]

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[189] CWA Dec. 18, 2020 Comments at 8.

[190] CWA Mar. 12, 2021 Comments at 11 (arguing that the Lifeline program increasingly relies on TracFone, which accounted for 22.8% of the Lifeline claims in 2019); *see also* Letter from Brian Thorn, Senior Researcher, Communications Workers of America, et al. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 10 (filed Jan. 21, 2021) (CWA Jan. 21, 2021 *Ex Parte* Letter).

[191] CWA Nov. 19, 2020 Opposition at 6-9.

[192] Verizon May 14, 2021 RFI Response at 19; Applicants' Dec. 28, 2020 Joint Reply at 16 & n.57.

[193] Application at 18. The Applicants filed TracFone's Amended Compliance Plan, which reflects Verizon's proposed ownership of TracFone. TracFone Wireless, Inc., Amended Compliance Plan, WC Docket Nos. 09-197, 11- 42, CC Docket No. 96-45 (filed Dec. 15, 2020). Verizon currently markets and offers wireless federal Lifeline in the service areas of ten rural partnership markets. Verizon May 14, 2021 RFI Response at 31.

[194] Verizon May 14, 2021 RFI Response at 32.

[195] *Id.* at 47.

[196] *Id.* at 30.

[197] *Id.*.

[198] *Id.* The Applicants assert that the majority of TracFone's Lifeline customers are served by TracFone over T-Mobile's network. *Id*.

[199] *Id.* at 37-38.

[200] *Id.* at 39.

[201] América Móvil and TracFone July 7, 2021 RFI Supplemental Response at 2; *see also* Verizon May 14, 2021 RFI Response at 34-35.

[202] América Móvil and TracFone July 7, 2021 RFI Supplemental Response at 2.

62. *Conditions Recommended by Commenters.* Commenters argue that, despite Verizon's assurances that it will continue to offer Lifeline services through TracFone, significant conditions are needed to protect existing TracFone Lifeline customers, including requiring Verizon to commit to offer Lifeline service and to maintain existing packages available to Lifeline subscribers for a minimum period of five years.[203] Commenters assert that Verizon's participation in the Lifeline program must be of sufficient duration because the transaction eliminates TracFone as one of the few major providers that focuses on low-income consumers.[204] Commenters argue that the Applicants' commitments should detail its participation in Lifeline post-transaction.[205]

63. Several U.S. Senators urge the Commission to take a number of steps to protect Lifeline subscribers including: requiring Verizon's participation in the Lifeline program with at least the same level of geographic and service offerings as TracFone currently provides; making 5G networks and equipment available to Lifeline on the same basis and same timetable as made available to Verizon's postpaid customers; maintaining the existing service packages of TracFone subscribers, including Lifeline products; and marketing to, and providing customer services for, Lifeline customers including non-English speaking customers, at least at the same level as TracFone provides today.[206] Free Press also urges the Commission to adopt enforceable, robust, and lasting protections.[207] Public Knowledge maintains that the Commission should require Verizon to keep customers, particularly Lifeline customers, on non-Verizon networks if that is the only way to ensure adequate quality of service for those customers.[208] Public Knowledge and CWA argue that Verizon may pressure subscribers into more expensive plans,[209] and Public Knowledge questions Verizon's dedication to servicing Lifeline and low-income subscribers.[210] Several organizations and public interest groups have filed in support of the transaction arguing that Verizon's participation will increase competition for Lifeline services.[211]

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[203] OTI and Common Cause Aug. 23, 2021 *Ex Parte* Letter at 2; *see also* CWA Mar. 12, 2021 Comments at 14 (arguing for a commitment by Verizon to: participate in the Lifeline program for a minimum of five years with at least the same level of geographic and service offerings as TracFone currently provides; 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; maintain the existing packages available to Lifeline customers for a minimum of five years; continue to market to, and provide customer services for, Lifeline customers, including non-English speaking customers, at least at the same level as TracFone provides today; 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; and other conditions the record demonstrates are necessary to protect Lifeline subscribers); Public Knowledge May 21, 2021 *Ex Parte* Letter at 3-4; CWA Jan. 21, 2021 *Ex Parte* Letter at 3 (asserting that conditions are necessary because existing rules are insufficient to prevent a provider from ceasing to offer Lifeline offerings); CWA Mar. 1, 2021 *Ex Parte* Letter at 3.

[204] OTI and Common Cause Aug. 23, 2021 *Ex Parte Letter* at 2-3 (arguing that TracFone has been a key provider of Lifeline services as other companies have shifted their business models to target a more affluent customer bases).

[205] *Id.* at 3 (asserting that the Applicants' commitment to maintain TracFone's marketing budget lacks granularity and raises questions about the extent to which the merged company would continue marketing to non-English speakers or provide necessary customer support).

[206] Senators' July 21, 2021 *Ex Parte* Letter at 2.

[207] Free Press Mar. 12, 2021 *Ex Parte* Letter at 2-4 (asserting that Verizon's commitments to the Lifeline program must be capable of being verified).

[208] Public Knowledge May 21, 2021 *Ex Parte* Letter at 3; Public Knowledge et al. Dec. 18, 2020 Comments at 3.

[209] Public Knowledge May 21, 2021 *Ex Parte* Letter at 3; *see also* CWA Dec. 18, 2020 Comments at 8.

[210] Public Knowledge et al. Oct. 30, 2020 Reply at 7 (asserting that the Commission should scrutinize Verizon's promises to make its 5G network and new devices available to TracFone customers).

[211] Letter from Asian Americans Advancing Justice and the National Council of Asian Pacific Americans, to The Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112, at 2 (filed Oct. 5, 2021) (AAJC and

(continued….)

64. *Verizon Commitments.* On August 11, 2021, Verizon and several commenters simultaneously filed letters setting forth conditions that had been negotiated between Verizon and several public interest groups.[212] Then on November 18, 2021, Verizon submitted more detailed commitments to address remaining public interest concerns.[213] Regarding Lifeline services, Verizon commits to, directly or through its affiliates, offer TracFone's current Lifeline-supported services for a minimum of seven years following the close of the transaction.[214] Verizon commits to ensure continued service for existing and new Lifeline customers for the entirety of that period either via its own network or through MVNO agreements.[215] Verizon commits that all of its Lifeline service offerings will meet or exceed the Lifeline minimum service standards (MSS) in place throughout this time period. Verizon commits to not adding new co-pays to TracFone's existing Lifeline plans offered at no cost to prepaid customers for at least three years after the transaction closes.[216] Verizon further commits, for at least seven years, to maintain Lifeline marketing and advertising expenditures at a level that equals or exceeds the average of TracFone's marketing and advertising expenditures for the three calendar years preceding filing of the application.[217] In addition, Verizon commits that, within six months after the transaction closes, Verizon will make available a TracFone service plan to Lifeline prepaid customers that includes 5G service[218] and that it will offer a range of cost-effective 5G devices available to TracFone customers.[219] Regarding

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NCPA Oct. 5, 2021 *Ex Parte* Letter); Letter from Mario H. Lopez, President, Hispanic Leadership Fund, to The Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112, at 1 (filed Sept. 21, 2021) (HLF Sept. 21, 2021 *Ex Parte* Letter); Letter from Amy L. Hinojosa, President and CEO, MANA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Sept. 27, 2021) (MANA Sept. 27, 2021 *Ex Parte* Letter); Letter from Robert Branson, President and CEO, Multicultural Media, Telecom and Internet Council; Representative Billy Mitchell, President National Black Caucus of State Legislators; Representative Karen Camper, President National Organization of Black Elected Legislative Women; Ron Busby, President and CEO US Black Chambers, Inc.; and Reverend Jesse Jackson, Sr., Founder and President Rainbow PUSH Coalition, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Oct. 1, 2021) (MMTC et. al. Oct. 1, 2021 *Ex Parte* Letter); Comment from Kayne Jones, President and CEO, National Caucus and Center on Black Aging at 1 (Oct. 20, 2021) (NCBA Oct. 20, 2021 Comment); NHCOA Oct. 13, 2021 *Ex Parte* Letter at 2; Justin G. Nelson, Co-Founder & President, National LGBT Chamber of Commerce, Chance E. Mitchell, Co-Founder & CEO, National LGBT Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Oct. 6, 2021) (NLGBTCC Oct. 6, 2021 *Ex Parte* Letter); NPRCOC Sept. 28, 2021 *Ex Parte* Letter at 1; Letter from Marc Morial, President and CEO, National Urban League, Rev. Al Sharpton, President and CEO, National Action Network and Melanie Campbell, President & CEO, National Coalition for Black Civic Participation, and Convener, Black Women's Roundtable, to The Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112, at 2 (filed Sept. 23, 2021) (National Urban League et al. Sept. 23, 2021 *Ex Parte* Letter); OCA Sept. 24, 2021 *Ex Parte* Letter at 1.

[212] Verizon Aug. 11, 2021 *Ex Parte* Letter at 1; Public Interest Groups Aug. 11, 2021 *Ex Parte* Letter. Public Knowledge and CWA stated that they would withdraw their objections to the merger contingent upon the Commission's incorporation of all of Verizon's commitments as mandatory and enforceable commitments. Public Interest Groups Aug. 11, 2021 *Ex Parte* Letter at 3 (stating that while the Public Interest Groups are conditionally withdrawing their objections, the groups may remain active in relevant state proceedings, and Verizon's commitments merely meet the federal floor of regulatory requirements, but more searching review may be required under the law and policy of each state where the transaction is under review).

[213] Verizon Nov. 18, 2021 Commitment Letter.

[214] *Id.*

[215] *Id.*

[216] *Id.* (stating that nothing in this commitment shall prevent Verizon from pursuing compensation through state or federal device reimbursement programs so long as no unrecovered costs are passed on to Verizon's Lifeline subscribers).

[217] *Id.*

[218] *Id.*; *see also* Verizon Aug. 11, 2021 *Ex Parte* Letter at 2.

[219] Verizon Nov. 18, 2021 Commitment Letter.

enforcement, Verizon states that it will submit publicly-available semi-annual reports to the Commission covering the seven-year period.[220] In addition, Verizon's independent compliance officer will submit compliance reports following Verizon's semi-annual reports and will monitor compliance for a seven and a half year period.[221]

65. *Lifeline Term Length*. Verizon argues that one of the main benefits of the transaction is the addition of another facilities-based competitor into the Lifeline program to compete for the Lifeline segment of the market.[222] While Verizon initially stated its intention to continue TracFone's Lifeline service offerings for three years, it subsequently extended this commitment to seven years, as set forth below. We find that this commitment sufficiently mitigates concerns expressed in the record concerning Verizon's commitment to the Lifeline program. We require Verizon to ensure continued service for existing and new Lifeline customers for at least seven years from the close of the transaction over the same service area where TracFone currently offers Lifeline service either through the Verizon network or as an MVNO. Verizon may seek a waiver of this commitment in areas where it does not have its own network if it is unable to extend a necessary MVNO agreement under commercially reasonable terms. Before any TracFone Lifeline customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device[223] is not compatible with the Verizon network.

66. *Maintain Existing Plans*. Verizon states that it will continue to offer and advertise existing TracFone Lifeline rate plans for at least three years after the transaction closes unless the plan no longer meets the Lifeline MSS standards. Verizon may substitute better terms for any existing plan provided that the monthly price and any co-pays do not increase. Nothing in these commitments prevents Verizon from offering additional Lifeline plans with different terms. Verizon will continue to offer and advertise and will not add new co-pays to TracFone's existing Lifeline plans that currently are offered at no cost to prepaid customers for at least three years. In the event the Commission increases the Lifeline MSS, Verizon will offer at least one plan in compliance with these new requirements at no cost to Lifeline eligible consumers for at least three years. Nothing in this commitment shall prevent Verizon from seeking a waiver of the commitment to offer a no-cost plan should an increase in Lifeline MSS significantly raise compliance costs. In addition, nothing in this commitment shall prevent Verizon from pursuing compensation through state or federal device reimbursement programs so long as no unrecovered costs are passed on to Verizon's Lifeline subscribers.

67. *Marketing and Advertising*. Verizon commits to maintain marketing and advertising expenditures for Lifeline at levels that equal or exceed the average of Tracfone's marketing and advertising expenditures for the three calendar years prior to the filing of the instant application for at least seven years following the close of the transaction. During this period, Verizon also commits that it will market and advertise through similar channels as TracFone. Verizon commits to maintain a new, dedicated website with information about the Lifeline program, how to apply for Lifeline, and a list of its

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[220] Verizon Nov. 18, 2021 Commitment Letter. Regarding Lifeline, Verizon's semi-annual report to the Commission will include the current number of Lifeline customers, data regarding TracFone customers that have been transitioned to Verizon's network from other networks, and the number of Lifeline customers that are receiving 5G. The report will list all states where TracFone offers a Lifeline-supported service, and will provide a state-by-state breakdown of amounts spent on advertising and other marketing activities associated with Lifeline. Verizon may file proprietary information with the Commission on a confidential basis, making it available only to representatives of parties to the transaction docket who have signed the relevant protective order (either during the pendency of the proceeding or thereafter) provided that Verizon shall also file a public version redacting the proprietary information to be available for review by the public. *Id.*

[221] Verizon Nov. 18, 2021 Commitment Letter.

[222] Joint Reply at 16 & n.57.

[223] "Existing device" refers to the customer's device as of the closing date.

Lifeline plans and instructions for obtaining any necessary replacement devices and/or SIM cards. A link to the new, dedicated Lifeline website should appear on the home page of the Verizon.com and TracFone websites. The website will be clearly accessible in each language that TracFone has used in its own marketing and advertising. The Verizon.com home page will contain a link to "TracFone" under the "Shop" category that directly links to the home page of TracFone's website (containing the information detailed in these commitments). The search function on Verizon's home page will also lead to a "Lifeline" page that includes the details of TracFone's offerings, including a link to the dedicated Lifeline customer service line and the new, dedicated Lifeline website. Verizon will maintain a dedicated customer service line for Lifeline customers, staffed by trained customer service agents able to address customer inquiries concerning how to apply for Lifeline, Lifeline offerings, and transition issues, including instructions for obtaining any necessary replacement devices and/or SIM cards. The telephone number for this customer service line will be displayed on the home page of TracFone's website and on Verizon's new, dedicated Lifeline website. Verizon will target Lifeline advertisements to Lifeline eligible subscribers, using the same languages, similar advertising and outreach media, and grassroot efforts that TracFone used.

68. Given that TracFone customers will be transitioned from other networks in many different states, customer outreach and service efforts will be critical to ensure that the Lifeline customers, in particular, will have transition information that is easy to locate and understand. Accordingly, we accept Verizon's marketing and advertisement commitments and make them conditions to our approval.

69. *5G Condition*. Consistent with the requests of various public interest groups, Verizon has agreed that within six months after the transaction closes, it will make available to existing and new Lifeline prepaid customers the lowest cost plan that includes 5G service and meets Lifeline MSS that is offered by any of its subsidiaries or affiliates and will offer a range of cost-effective 5G devices to existing and new Lifeline customers for a minimum of seven years after the close of the transaction.[224] Within six months of closing, Verizon will furnish to the Wireless Telecommunications Bureau a list of devices that currently meet these criteria, which shall be used for comparison during the length of this commitment.[225] We accept Verizon's commitment and make it a condition to our approval.

70. *Enforcement Monitoring*. New America's Open Technology Institute asserts that the conditions must include rigorous enforcement mechanisms to protect low-income consumers from harm.[226] OTI and Common Cause assert that the Commission should appoint an ombudsman or compliance officer who is empowered to proactively monitor the conditions to ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations, particularly from Lifeline subscribers.[227] We agree and accept Verizon's commitment to pay for both an internal compliance officer and an independent, external compliance officer to monitor its compliance with its commitments that today become conditions to our approval.

71. *Assumption of Tracfone Liability*. The Applicants argue in their Joint Reply that the Commission should not include any pending notices of liability against Tracfone as part of this section

[224] Verizon Nov. 18, 2021 Commitment Letter; *see also* Verizon Aug. 11, 2021 *Ex Parte* Letter at 2. Subsequently, additional organizations supported Verizon's 5G Lifeline commitment. *See* Letter from Mario H. Lopez, President, Hispanic Leadership Fund, to The Honorable Jessica Rosenworcel, Chairwoman, FCC, GN Docket No. 21-112, at 1 (filed Sept. 21, 2021) (HLF Sept. 21, 2021 *Ex Parte* Letter); NHCOA Oct. 13, 2021 *Ex Parte* Letter at 2; NPRCOC Sept. 28, 2021 *Ex Parte* Letter at 1; OCA Sept. 24, 2021 *Ex Parte* Letter at 1.

[225] Verizon Aug. 11, 2021 *Ex Parte* Letter at 1.

[226] OTI July 22, 2021 *Ex Parte* Letter (recommending the appointment of an ombudsman or compliance officer empowered to monitor the conditions to ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations, particularly from Lifeline subscribers); *see also* OTI and Common Cause Aug. 23, 2021 *Ex Parte* Letter at 2.

[227] OTI and Common Cause Aug. 23, 2021 *Ex Parte* Letter at 2.

214 transfer.[228] Regarding any other enforcement actions the Commission or any other government agency has pending against the Applicants, we continue to investigate possible violations of the Commission's rules and our grant of the Application is without prejudice to any enforcement actions the Commission or any other government agency may deem appropriate in light of any facts uncovered in any investigations of possible violations of law.[229] Nevertheless, out of an abundance of caution, we accept Verizon's commitment and condition our grant of the Application on Verizon and its successors, assigns, and transferees, assuming liability for any forfeitures, restitution, or other obligations that may be imposed by the Commission or USAC on TracFone and its subsidiaries, and any successors or assigns, unless such liability has been resolved by TracFone prior to the closing of the transaction, and on Verizon complying with any agreements with the Commission or USAC, including following any compliance plans, or other obligations, agreed to by TracFone, its subsidiaries, or any successors or assigns.[230]

VI. POTENTIAL PUBLIC INTEREST BENEFITS

72. After assessing the potential competitive harms of the proposed transaction, we next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits. As discussed below, after a thorough analysis, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, including the elimination of double marginalization. Because of these anticipated benefits, in addition to Verizon's numerous commitments, we find that overall the transaction is in the public interest.

73. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[231] Moreover, the Commission will find a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction and likely could not be accomplished in the absence of the transaction[232]—and verifiable.[233] Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[234] Further, the Commission is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost"[235] as, in general, reductions in marginal cost are more likely to result in

[228] Joint Reply at 18 & n.66.

[229] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10598, para. 46.

[230] Verizon Nov. 18, 2021 Commitment Letter (without prejudicing the contractual indemnification rights between Verizon and América Móvil); *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10598, para. 46.

[231] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 57.

[232] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *2010 DOJ/FTC Horizontal Merger Guidelines*, § 10 at 29-31; *see also CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[233] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[234] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58. In addition, "the magnitude of benefits must be calculated net of the cost of achieving them." *See, e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[235] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

lower prices for consumers. In addition, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.[236]

74. The Applicants claim that a number of transaction-specific benefits will result from Verizon's acquisition of TracFone. The Applicants generally contend that a combined Verizon and TracFone will enable TracFone to better compete for value-conscious customers than a standalone TracFone.[237] We have performed extensive and careful analysis of these claimed benefits. In this section, we discuss the record and the Applicants' claimed benefits from: (1) improved economic efficiency from owner's economics;[238] (2) greater device purchasing power to enable better plan and device offerings;[239] (3) other non-network efficiencies; (4) improvements in device subsidies;[240] (5) access to Verizon devices and advanced 5G technologies;[241] (6) elimination of negotiation delays;[242] (7) increased distribution;[243] (8) access to the high-quality Verizon network;[244] (9) the addition of fixed wireless offerings;[245] (10) improved international roaming benefits;[246] and (11) other services. Verizon claims that, taking into account all synergies and efficiencies, the transaction will generate approximately {[ ]} million in network synergies and {[ ]} million in net operational synergies {[ ]}.[247]

75. *Elimination of Double Marginalization.* The Applicants assert that the replacement of the Verizon-TracFone MVNO agreement with direct ownership will eliminate double marginalization, resulting in a substantial reduction of incremental network costs to serve TracFone's customers.[248] Verizon asserts that these cost savings will be passed through to consumers and that the cost savings will be significant on a per consumer per GB basis, about {[ ]}.[249]

76. After a careful review, we find that the elimination of double marginalization will reduce the costs of serving TracFone customers. We further find, however, that the Applicants have not

[236] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[237] Verizon May 14, 2021 RFI Response at 4.

[238] *Id.*

[239] Application at 2, 11-12; Verizon May 14, 2021 RFI Response at 4.

[240] Verizon May 14, 2021 RFI Response at 11.

[241] Application at 2, 11-13.

[242] Verizon May 14, 2021 RFI Response at 11-13.

[243] Application at 3, 13.

[244] *Id.*

[245] Verizon May 14, 2021 RFI Response at 17.

[246] Application at 2, 12-13.

[247] Verizon May 14, 2021 RFI Response at 24-25. Verizon maintains that its projections are based on a model it created to estimate the value of the transaction, using actual data provided by TracFone combined with Verizon's own assessments. *Id.* at 24-27 (asserting that their internal model estimated TracFone's overall operational costs if it continued as a standalone company as compared to TracFone's overall operational costs after the transaction); *see also* VZ-VZ-0000824 ("Operational Synergies Walk (Acquisition Case vs. Stand Alone Case)").

[248] Verizon May 14, 2021 RFI Response at 4-5, 21-22 (maintaining that the transaction will reduce costs to serve TracFone customers from the wholesale prices that TracFone currently pays to Verizon to Verizon's incremental network costs to serve Verizon customers on its network, and as TracFone customers on other networks migrate to Verizon's network over time, the other MNO/TracFone double marginalization will also be eliminated and the cost of serving those customers will decrease).

[249] Verizon May 14, 2021 RFI Response at 7-8.

provided enough information for us to determine exactly how these cost savings would flow through to particular service offerings.[250] We therefore credit the benefit of owner's economics, but recognize the effect may not be uniform across all service offerings.

77. *Greater Device Purchasing Power.* The Applicants assert that the transaction will improve their device buying power, which should allow the combined firm to develop new opportunities to reach price-conscious consumers.[251] The Applicants claim that cost savings from volume discounts will contribute to a decline in general and administrative and other costs that will total approximately {[ ]}.[252] The Applicants assert that TracFone has less purchasing power in negotiations with device manufacturers than competing brands AT&T/Cricket and T-Mobile/Metro, which limits TracFone's ability to offer deep discounts on devices.[253] The Applicants also claim greater device purchasing power in combination with "owner's economics" will enable improved plan and device offerings,[254] including 5G devices.[255]

78. We agree that greater bargaining power is a creditable benefit of the transaction. Verizon's larger subscriber base (94 million subscribers compared with 20 million subscribers for TracFone),[256] means that TracFone customers likely will benefit from the greater bargaining power of the merged entity post-transaction. In addition, the combined entity may gain somewhat increased bargaining power compared with pre-transaction Verizon as a result of the addition of the TracFone subscribers.[257]

79. *Other Non-Network Efficiencies.* The Applicants also report several other sources of non-network efficiencies. According to the Applicants, there will be cost savings from improvements to TracFone's {[ ]}.[258] They also report a decline in general and administrative and other costs that will total approximately {[ ]}.[259]

80. We do not find these other non-network efficiencies to be cognizable benefits of the transaction. As the Applicants have not provided further explanation on how these efficiencies will come about, we cannot verify the claimed quantifications. Additionally, the Applicants acknowledge that these claimed efficiencies are balanced out by a planned {[

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[250] While the Verizon Model does include cost reductions from the elimination of double marginalization, it is not possible to causally link these with any additional changes in Verizon and TracFone's expenditure or pricing therein as these are not linked by formulas. VZ-VZ-0000824 ("Operational Synergies Walk (Acquisition Case vs. Stand Alone Case)" and "TracFone Revenue Per GB"); VZ-VZ -0001133 ("Summary - Standalone Case", "Summary - Current Case", "Other Network Costs", "VZ Network Costs").

[251] Verizon May 14, 2021 RFI Response at 8-9.

[252] *Id.* at 26; *see also* VZ-VZ-0001133 ("Summary-Standalone Case," "Summary-Current Case").

[253] Verizon May 14, 2021 RFI Response at 8-9.

[254] *Id.* at 4, 56.

[255] *Id.* at 10-11, 23.

[256] Application at 7-8.

[257] VZ-DOJHSR-000395, at 10 ("Verizon Communications Inc. Attachment 4(c)9"). Verizon estimates that buying TracFone will add an additional {[ ]} units {[. .]}

[258] Verizon May 14, 2021 RFI Response at 26; *see also* VZ-VZ-0001133 ("Summary-Standalone Case," "Summary-Current Case," and "Other G&A and Customer Care").

[259] Verizon May 14, 2021 RFI Response at 26; *see also* VZ-VZ-0001133 ("Summary-Standalone Case," "Summary-Current Case").

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]}.[260]

81. *Improved Handset Subsidies.* Verizon claims that post-transaction it will make a significant investment in device subsidies, expected to increase with the transaction {[

]}.[261] Verizon claims additional handset subsidies will total approximately {[ ]}.[262] Further, Verizon expects to use {[ ]}.[263]

82. We do not find improved handset subsidies to be a cognizable benefit of the transaction. While we recognize efficiencies from the transaction will increase the competitive incentives of the joint-entity post-transaction, the Applicants have not provided enough information for us to conclude that they have an incentive to increase handset subsidies specifically. Further, the Applicants have not provided detailed plans for how the subsidy increases will be implemented.[264]

83. *Access to Devices and Advanced 5G Technologies*. The Applicants maintain that the transaction will give TracFone consumers access to "a wider variety of Verizon-compatible devices,"[265] and it lists "more low cost devices (with both 4G LTE and 5G)," "hotspots," "jetpacks," "children's watches," "a 4G fixed wireless device" and "low cost flip phones with app store capabilities" as examples.[266] The Applicants claim this will be implemented because of the "minimal incremental" cost of allowing TracFone consumers access to "certain devices in Verizon's device portfolio."[267]

84. In addition, the Applicants maintain that the transaction will allow Verizon to bring new devices and technical advances to TracFone consumers more quickly, such as their "full 5G experience."[268] The Applicants acknowledge that TracFone currently makes available certain 5G devices and some 5G service to customers. However, they note that {[

]}.[269] The Applicants contend that, while TracFone has made available 5G devices and some 5G services to its customers, the transaction will enable TracFone to

[260] Verizon May 14, 2021 RFI Response at 26; *see also* VZ-VZ-0001133 ("Summary-Standalone Case," "Summary-Current Case," and "Other G&A and Customer Care").

[261] Verizon May 14, 2021 RFI Response at 10-11.

[262] *Id.* at 24.

[263] *Id.* at 11.

[264] Verizon plans for handset subsidies vary across internal documents. VZ-VZ-0001133 ("Summary – Case Comparison," "Summary – Current Case," and "Equipment_Subsidy.") {[ ]}. VZ-DOJHSR-000224 at 9 ("Verizon Communications Inc. Attachment 4(c)41"). {[ ]}. VZ-DOJHSR-00057 at 4-5 ("Verizon Communications Inc. Attachment 4(c)7"). {[ ]}.

[265] Application at 2.

[266] Application at 12. Verizon also claims it is "evaluating" for introduction to TracFone consumers the categories of "5G Mobile hotspots," "Wearables," "Tablets and laptops" and "Fixed wireless / broadband home connections." Verizon May 14, 2021 RFI Response at 55.

[267] Applicants' Dec. 28, 2020 Joint Reply at 9.

[268] Verizon May 14, 2021 RFI Response at 16.

[269] *Id.*

realize Verizon's economies of scale in purchasing 5G devices, which when {[ ]} will make such devices more affordable for TracFone customers.[270]

85. We find that giving TracFone consumers, including consumers with disabilities, access to Verizon's more extensive current portfolio of devices is a partially creditable benefit of the transaction.[271] We agree it will be relatively low cost for Verizon to give access to its current devices to Tracfone consumers post-transaction. However, we cannot verify how extensively Verizon will provide such access from the record presented, or whether some TracFone consumers will be excluded from certain 5G devices.

86. In contrast, we do not find access to future advanced 5G technologies to be a creditable benefit of the transaction. The record does not allow us to verify that Verizon will expand access to future 5G technology to TracFone consumers post-transaction. The Applicants also have not supplied detailed plans on how these 5G technologies will be developed and implemented. While we acknowledge improved device bargaining power, we lack the information to conclude that better device deals will lead to an improved selection of 5G devices in the future for TracFone customers.

87. *Elimination of Negotiation Delays*. The Applicants maintain that the transaction will eliminate the time associated with arm's length negotiations inherent in the MVNO model.[272] This will allow TracFone to implement innovations or new competitive offerings for value-conscious customers more quickly.[273]

88. While the transaction will eliminate most third-party negotiations, we find that the Applicants both have failed to quantify this benefit and have failed to identify the specific kinds of innovations and new service offerings that, absent the transaction, would be delayed by required third-party negotiations.

89. *Distribution*. The Applicants assert that Verizon plans to revise and expand TracFone's existing distribution approach following the transaction, by broadening its physical footprint to thousands of other distribution outlets, including in urban and diverse communities and rural areas.[274] Verizon contends that it will seek to maintain TracFone's relationships with existing retail partners, while expanding TracFone distribution to an additional {[ ]}. Verizon further claims that it intends to {[ ]}. Specifically, Verizon claims that it intends to {[ ]}. In addition, Verizon plans to {[ ]}.[275] Further, Verizon states that it is {[ ]}.[276]

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[270] *Id.* at 16-17.

[271] *See infra* section VII.E. (addressing the accessibility of low-cost devices to people who are blind).

[272] Verizon May 14, 2021 RFI Response at 11-13, 23.

[273] *Id.*

[274] *Id.* at 13.

[275] *Id.* at 13-14; VZ-VZ-0001133 ("Summary - Current Case"). The Verizon Model submitted in response to our Request for Information appears to report only {[ ]}. VZ-VZ-0000213 at 8 ("Project Sycamore"). The {[ ]} figure appears in a presentation reporting transaction financials that are slightly different from the Verizon Model—we believe this is a different version of that model, going through revision during the transaction appraisal process.

[276] Verizon May 14, 2021 RFI Response at 13-14.

90. We partially credit the benefit of expanded distribution, as these plans are quite detailed in the record, but we cannot verify how committed Verizon is to completion of those plans.[277] Verizon maintains it has the incentive to expand distribution for TracFone, because the transaction will give better "margins and access to capital" to TracFone.[278] This argument implies that but-for a constraint in resources, TracFone had the incentive to increase density, but we cannot verify this fact from the record.

91. *Access to the Verizon Network*. Verizon maintains that TracFone's value-conscious customers will benefit from access to Verizon's network and new technologies and services, such as 5G.[279] Some commenters support approval of this transaction based, in part, on TracFone's access to Verizon's network.[280] Verizon asserts that there are several key reasons why access to Verizon network benefits value-conscious consumers.[281] First, Verizon maintains that the company has made and continues to make capital investments in its wireless network for its customers, including recent spectrum purchases that will double its existing mid-band spectrum holdings by adding an average of 161 megahertz of C-Band spectrum nationwide.[282] Second, Verizon states that its network can easily handle the addition of the 7.6 million TracFone customers nationwide who are not already on the Verizon network.[283] Third, Verizon maintains that transitioning to the Verizon network will be a significant benefit for TracFone customers migrating from another provider to Verizon because the company's overall network strength suggests that a customer moving to Verizon's network is likely to be more satisfied than a customer who migrates to another network.[284] The Applicants argue that customer satisfaction is demonstrated in the churn rate for TracFone customers currently riding on Verizon's network, which TracFone has indicated is {[ ]}.[285]

92. We do not find access to Verizon's network to be a cognizable benefit of the transaction. Assuming for purposes of this analysis that the Applicants' claims concerning the superiority of the Verizon network are true, the Applicants have failed to adequately explain why, absent the merger, TracFone could not have transferred more of its customers to Verizon's network.

93. *Fixed Wireless*. Verizon asserts that it intends to improve access to fixed wireless broadband home Internet solutions for TracFone customers.[286] Specifically, the Applicants assert that Verizon and TracFone may make these services {[

[277] VZ-DOJHSR-000395, at 10 ("Verizon Communications Inc. Attachment 4(c)9"). {[ ]}.

[278] Verizon May 14, 2021 RFI Response at 13.

[279] Application at 3, 12-13.

[280] *See* MMTC et al. Oct. 1, 2021 *Ex Parte* Letter; National ACE Sept. 29, 2021 *Ex Parte* Letter at 1; NLGBTCC Oct. 6, 2021 *Ex Parte* Letter at 1; NPRCOC Sept. 28, 2021 *Ex Parte* Letter at 1; National Urban League et al. Sept. 23, 2021 *Ex Parte* Letter at 2; USHCC Oct. 5, 2021 *Ex Parte* Letter at 1; Letter from Albert Zapanta, President and CEO, United States–Mexico Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Sept. 24, 2021) (U.S.-Mexico COC Sept. 24, 2021 *Ex Parte* Letter).

[281] Verizon May 14, 2021 RFI Response at 15.

[282] *Id.*

[283] *Id*.

[284] *Id.* at 16.

[285] *Id.*

[286] Application at 12; *see also* Verizon May 14, 2021 RFI Response at 17-18.

]}.[287] The Applicants maintain that the fixed wireless offerings may help {[ ]}.[288]

94. We do not find new fixed wireless service to be a creditable benefit of the transaction. We find that the Applicants have failed to adequately demonstrate that Verizon has concrete plans to develop fixed wireless for TracFone or that the transaction creates a strong incentive for Verizon to do so. The Applicants also have not demonstrated that TracFone, absent the transaction, could not enter into an agreement with Verizon or another facilities-based provider that would allow TracFone to offer fixed wireless service to its customers.

95. *International Roaming*. The Applicants argue that TracFone customers will have expanded services and plans such as international roaming.[289] Verizon states that TracFone brands that do not have an international roaming option will have that option available to their customers once they are migrated to the Verizon network if the customer elects to add an international roaming plan.[290] Several commenters support approval of this transaction based, in part, on international roaming.[291]

96. We do not find increased access to international roaming to be a creditable benefit of the transaction. The Applicants have failed to demonstrate that TracFone, absent the merger, could not have negotiated to include international roaming in its wholesale agreements with one or more of its host facilities-based providers.

97. *Other Services.* Verizon claims that it will deliver other technology improvements to TracFone subscribers, including Verizon's robocall protections and a call filter service to postpaid and prepaid customers.[292] Verizon also claims that other advances that may be available to prepaid customers after the close of the transaction, including {[ ]}.[293] The Applicants note that, for TracFone customers who currently ride on other networks, their access to certain services and features will depend on when they migrate to the Verizon network, and that the timing of the availability of services and features is not certain.[294]

98. We find the claimed public interest benefit of increased access to technology improvements and other new services to be too speculative to be cognizable. The Applicants have failed to provide sufficient information or documents for us to verify this claim.

VII. OTHER PUBLIC INTEREST ISSUES

A. Roaming

99. Roaming service is a service that one mobile wireless provider purchases from another mobile wireless provider to enable the first provider's subscribers, when traveling outside its service area, to use the facilities of the roaming provider to place and receive calls, continue in-progress calls, and transmit and receive data.[295] The Commission has previously determined that the availability of both

[287] Verizon May 14, 2021 RFI Response at 17.

[288] *Id.*

[289] Application at 12-13, 17; *see also* Verizon May 14, 2021 RFI Response at 17-18.

[290] Verizon May 14, 2021 RFI Response at 18.

[291] *See, e.g.*, NHCOA Oct. 13, 2021 *Ex Parte* Letter at 2; NGLCC Oct. 6, 2021 *Ex Parte* Letter at 1; U.S.-Mexico COC Sept. 24, 2021 *Ex Parte* Letter at 1.

[292] Verizon May 14, 2021 RFI Response at 18.

[293] *Id.*

[294] *Id.*

[295] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10708, para. 293; *see also Reexamination of Roaming*

(continued)

voice and data roaming arrangements is critical to promoting seamless consumer access to mobile services nationwide, to promoting innovation and investment, and to promoting facilities-based competition among providers.[296] The Commission also has established a special dispute-resolution framework to ensure that providers negotiate in good faith to develop commercially reasonable terms for data roaming agreements and to confirm that host providers are properly implementing such agreements when supplying roaming services.[297]

100. Various commenters ask for the Commission to determine the implications of the transaction on, among other things, roaming.[298] Separately, NTCH argues that wholesale service that nationwide facilities-based providers sell to TracFone is technically identical to roaming services provided to smaller facilities-based service providers, but that the nationwide service providers refuse to offer roaming at the comparably lower rates that TracFone pays for wholesale.[299] NTCH asserts that this wholesale price discrepancy allowed major service providers to enable TracFone to engage in predatory pricing in the low cost prepaid market, by undercutting smaller facilities-based providers that must pay high roaming rates and inducing them to exit the market.[300] NTCH claims that following the exit of independent, financially distressed service providers, remaining facilities-based service providers could raise rates to or foreclose other MVNOs, eliminating sources of competition.[301] As such, NTCH argues that the Commission should deny the proposed transaction.[302]

101. Responding to NTCH, the Applicants argue that NTCH repeats unsuccessful roaming arguments it has long made and that the Commission has examined and rejected these concerns.[303] The Applicants argue that, to the contrary, NTCH shows that the transaction is in the public interest by underscoring that post-transaction, TracFone would better serve value-conscious consumers, maintaining

(Continued from previous page)
Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order, 26 FCC Rcd 5411 (2011), *aff'd sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012) (*Data Roaming Order*).

[296] *Data Roaming Order*, 26 FCC Rcd at 5418-23, paras. 13-21; *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4182, para. 2 (2010).

[297] *See, e.g.*, *Data Roaming Order*, 26 FCC Rcd at 5448-53, paras. 74-87; 47 CFR § 20.12(e)(1); *see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Declaratory Ruling, 29 FCC Rcd 15483 (WTB 2014) (granting T-Mobile petition regarding Commission review of data roaming disputes).

[298] T-Mobile Oct. 13, 2020 *Ex Parte* Letter at 4 ("what are the implications, with respect to international roaming or otherwise"); Public Knowledge et al. Oct. 30, 2020 Reply at 7 ("[T]he Applicants do not say whether post-transaction TracFone service will include roaming on other carriers' networks."); Next Century Cities Dec. 18, 2020 Comments at 7 ("[I]f TracFone consumers are prohibited from roaming on other networks, this may interfere with service . . . . Service concerns coupled with concerns regarding the competitive nature of the mobile market are enough for the Commission to press pause on this request.").

[299] NTCH Mar. 10, 2021 *Ex Parte* Letter at 1.

[300] *Id.* at 2.

[301] *Id.*

[302] *Id.*

[303] Letter from Alejandro Cantú Jiménez, General Counsel, América Móvil, William H. Johnson, Senior Vice President, Verizon, and Richard B. Salzman, Executive Vice President and General Counsel, TracFone, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1 (filed Mar. 15, 2021) (Applicants' Mar. 15, 2021 *Ex Parte* Letter).

that a “combined TracFone and Verizon will do even better” than TracFone alone could to offer value-conscious customers “attractive pre-paid offers.”[304]

102. We find that concerns about the availability of domestic roaming service post-transaction will be addressed adequately by the Commission’s general roaming policies and rules, which are designed to ensure that entities can obtain roaming agreements on reasonable terms and conditions. Accordingly, we find that no special roaming-related conditions are necessary. In the event that a service provider encounters difficulties in obtaining reasonable roaming services or roaming rates, it can file complaints with the Commission pursuant to our established roaming rules.[305]

B. Employment

103. We decline to impose conditions related to employment as part of our approval of the proposed transaction. Based on the record and our extensive analysis, we find that while the proposed transaction has the potential to eliminate some jobs, the transaction likely will have limited impacts on telecommunications workers in the United States.

104. Five U.S. Senators urge the Commission to ensure that Verizon and TracFone employees are not harmed as the Applicants consolidate operations.[306] Although the Applicants have not claimed that the transaction will create new jobs, they do claim that TracFone employees would enjoy Verizon’s generous employee benefits package and workplace diversity and inclusion after the merger.[307] The Applicants further assert that Verizon values the deep experience of TracFone employees,[308] and does not plan workforce reductions post-transaction,[309] and that it anticipates leveraging generous Verizon employee benefits and {[ ]} to retain TracFone employees.[310]

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[304] *Id.*

[305] *Data Roaming Order*, 26 FCC Rcd at 5448-53, paras. 74-87; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10710, para. 297 (finding roaming conditions unnecessary because general roaming policies, rules, and dispute resolution process provide adequate protection).

[306] Senators’ July 21, 2021 *Ex Parte* Letter at 1, 3.

[307] Application at 13; *see also* Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Sept. 22, 2021) (Verizon Sept. 22, 2021 *Ex Parte* Letter).

[308] Applicants’ Dec. 28, 2020 Joint Reply at 17.

[309] Verizon May 14, 2021 RFI Response at 20; Applicants’ May 18, 2021 *Ex Parte* Letter at 7.

[310] Verizon May 14, 2021 RFI Response at 4; Applicants’ Feb. 11, 2021 *Ex Parte* Letter at 5; VZ-CA-011022, at VZ-CA-011117, n.386 (Joint Applicants’ Post-Hearing Reply Brief (CONFIDENTIAL VERSION) before The Public Utilities Commission of the State of California, Nov. 5, 2020) ({

”]}); VZ-VZ-0000325 (Verizon, “Labor” worksheet, Synergy Total); VZ-VZ-0001450 (Verizon, “Delta” worksheet,Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ-VZ-0001451 (Verizon, “Delta” worksheet, Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ-VZ-0000326, at VZ-VZ-0000327 (Verizon, “Sycamore Model Delta Review”); VZ-DOJHSR-002396, at VZ-DOJHSR-002407 (Verizon, “Acquisition Case Non-Network Synergies”).

105. Several commenters support approval of this transaction based on the commitment that Verizon has expressed regarding workplace diversity and retaining TracFone employees.[311] Specifically, the National Urban League, National Action Network, and the National Coalition of Black Civic Participation support the transaction.[312] The National Urban League supports Verizon's diversity related commitment, along with Verizon's other merger commitments, as conditions to the transaction. Verizon states that the company is committed to fostering an inclusive environment with diversity in its employees and in its suppliers.[313] Verizon states that it will extend its diversity, equity and inclusion policies, programs, and practices to TracFone employees upon the close of the transaction.[314]

106. CWA argues that further information from the Applicants is required in order for the public to assess the impact of the transaction on the labor markets.[315] CWA raises a specific concern about monopsony power of employers and its subsequent effect on wage suppression in highly concentrated labor markets.[316] CWA further urges the Commission to ensure no employee of Verizon or TracFone loses a job or faces reduced benefits or wages as a result of this transaction.[317] The Applicants counter that CWA's concern about labor market monopsony power is general and that its claim of concentrated labor markets ignores the fact that the wireless job growth and wireless job wages are more than 50% higher than the average job.[318] In response, CWA expresses skepticism of these data[319] and presents another study in which researchers find that the lowest wage decile of all telecommunications workers have seen real wage declines of 12% since the 1970s.[320] CWA also argues that TracFone relies almost exclusively on third-party contractors who will face a high risk of job loss and downward pressure

[311] *See, e.g.*, MANA Sept. 27, 2021 *Ex Parte* Letter; MMTC et. al. Oct. 1, 2021 *Ex Parte* Letter at 1; NLGBTCC Oct. 6, 2021 *Ex Parte* Letter at 1; National Urban League et al. Sept. 23, 2021 *Ex Parte* Letter at 2-3; OCA Sept. 24, 2021 *Ex Parte* Letter at 2.

[312] National Urban League et al. Sept. 23, 2021 *Ex Parte* Letter at 2-3.

[313] Verizon Sept. 22, 2021 *Ex Parte* Letter at 1.

[314] *Id*.

[315] CWA Dec. 18, 2020 Comments at 4; CWA Jan. 21, 2021 *Ex Parte* Letter at 11-12; Letter from Brian Thorn, Senior Researcher, Communications Workers of America, et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Feb. 16, 2021) (CWA Feb. 16, 2021 *Ex Parte* Letter).

[316] CWA Jan. 21, 2021 *Ex Parte* Letter at 10-12. CWA further references studies where researchers predict that the merger between T-Mobile and Sprint would lead to a decline in weekly earnings for retail wireless workers by 1-3% on average, and by as much as 7% in the most affected labor markets. CWA Mar. 12, 2021 Comments at 19-20. *See* Adil Abdela and Marshall Steinbaum, Economic Policy Institute and the Roosevelt Institute, *Labor market impact of the proposed Sprint-T-Mobile merger* (Dec. 17, 2018), https://files.epi.org/pdf/159194.pdf; *see also* Press Release, 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/.

[317] CWA Dec. 18, 2020 Comments at 5; CWA Jan. 21, 2021 *Ex Parte* Letter at 12.

[318] Applicants' Feb. 11, 2021 *Ex Parte* Letter at 5; *see also* CTIA, The Wireless Industry: An American Success Story, https://www.ctia.org/the-wireless-industry/wireless-industry (last visited Nov. 16, 2021) (noting that the wireless industry supports 4.7 million jobs, and every wireless job creates an additional 7.7 jobs throughout the broader economy).

[319] CWA Mar. 12, 2021 Comments at 19-21.

[320] *Id.* at 19; *see also* John Schitt and Jori Kandra, Economic Policy Institute, *Decades of slow wage growth for telecommunications workers* (Oct. 5, 2020), https://files.epi.org/pdf/209752.pdf.

on wages.[321] The Applicants counter by reiterating their commitment to retaining TracFone employees and integrating their knowledge of the prepaid segment into Verizon with no workforce reductions.[322]

107. Verizon claims that TracFone has a {[ ]}.[323] Verizon estimates a {[ ]} in call center operating expenses during 2021-2025 through merger synergies.[324] Verizon also estimates the impact of the transaction on labor costs and expects {[ ]} to retain TracFone employees over the next five years.[325] Verizon outlines a specific retention plan targeting {[ ]} for the transaction.[326] Verizon provides further details of compensation commitments to TracFone employees {[ ]}.[327]

108. We find that extrapolating job loss estimates from the T-Mobile/Sprint merger is inappropriate for this transaction given the significant difference in the type and scale of the two mergers. While we agree with CWA that the transaction has the potential to eliminate some jobs, the impact is likely to be insignificant because the number of employees potentially impacted is likely to be {[ ]}.[328] We agree with CWA with regards to the potential reduction in call center jobs that are

[321] CWA Mar. 12, 2021 Comments at 20-21.

[322] Applicants' May 18, 2021 *Ex Parte* Letter at 7.

[323] VZ-VZ-0000560 (Verizon, "Human Resources") {]}.

[324] VZ-DOJHSR-000661, at VZ-DOJHSR-000666 (Verizon, "Sycamore: Acquisition Financials").

[325] VZ-VZ-0000325 (Verizon, "Labor" worksheet, Synergy Total); VZ-VZ-0001450 (Verizon, "Delta" worksheet, Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ-VZ-0001451 (Verizon, "Delta" worksheet, Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ- VZ-0000326, at VZ-0000327 (Verizon, "Sycamore Model Delta Review"); VZ-DOJHSR-002396, at VZ-DOJHSR-002407 (Verizon, "Acquisition Case Non-Network Synergies"). Across these internal documents, Verizon budgets {[ ]}.

[326] VZ-VZ-0000326, at VZ-VZ-0000327 (Verizon, "Sycamore Model Delta Review"). Verizon identifies {]}.

[327] VZ-DOJHSR-002085, at VZ-DOJHSR-002092 (Verizon, "Appendix: Summary of Key Terms") {["]}.

[328] VZ-VZ-0000325 (Verizon, "Labor" worksheet, Synergy Total); VZ-VZ-0001450 (Verizon, "Delta" worksheet, Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ-VZ-0001451 (Verizon, "Delta" worksheet, Salary Related True-Up and Retention Bonus Sept Version Total-May Version Total); VZ-VZ-0000560 (Verizon, "Human Resources"); VZ-VZ-0000326, at VZ-VZ-0000327 (Verizon, "Sycamore Model Delta Review"); VZ-DOJHSR-002396, at VZ-DOJHSR-002407 (Verizon, "Acquisition Case Non-Network Synergies"); VZ-DOJHSR-002085, at VZ-DOJHSR-002092 (Verizon, "Appendix: Summary of Key Terms").

currently outsourced to third-party vendors by TracFone. However, the record indicates that the majority of the TracFone call center agents are currently located in {[ ]} and the estimated call center work {[ ]} is a small fraction of the telecommunications workforce.[329] The transaction likely will have limited impacts on telecommunications workers in the United States. Consequently, we decline to impose any additional job-related conditions to our approval of the transaction.

109. Finally, we note that Verizon filed in the FCC record a letter committing to extending its diversity and inclusion policies, practices, and programs to all TracFone employees.[330] We acknowledge and applaud Verizon's commitment to diversity and inclusion, which aligns with the Commission's own continuing effort to advance digital equity for all,[331] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality.[332]

C. Customer Migration and Transition

110. Our analysis of the record indicates that without certain conditions to address customer migration and transition, TracFone customers face an uncertain transition period, lack meaningful information to make informed choices, and could also be without compatible devices upon the transition. As described in more detail below, in order to address these and other concerns, we accept Verizon's commitments as conditions to our approval to mitigate unforeseen risks that may be contrary to the public interest benefits.

111. *Migration and Transition Plans.* The Applicants state that Verizon already serves as the underlying facilities-based provider for "almost 64 percent, or 13.3 million, of TracFone's more than 20 million customers," and that the "remaining 36 percent (approximately 7.6 million customers) are spread out across the networks of T-Mobile (19 percent), AT&T Mobility (16 percent), and other carriers (one percent)."[333] Verizon notes that it will not need to migrate TracFone customers already on Verizon's network,[334] and it maintains that Verizon will operate as an MVNO for the remaining customers on AT&T, T-Mobile, and other networks until those customers are migrated to Verizon's network.[335] For TracFone customers outside Verizon's network footprint, the Applicants state that they are pursuing agreements with at least one MNO.

112. Verizon estimates that "the transition period to migrate all of TracFone's customers onto Verizon's network" will last about {[ ]}.[336] Verizon explains that during this period, TracFone will allow new TracFone subscribers to {[ ]} for a period that is {[ ]} but which Verizon anticipates will be {[ ]}.[337]

[329] VZ-VZ-0000560 (Verizon, "Human Resources").

[330] Verizon Sept. 22, 2021 *Ex Parte* Letter at 2.

[331] Section 1 of the Communications Act of 1934, as amended, provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[332] *See, e.g.*, *Schools and Libraries Universal Support Mechanism,* Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 21-107, para. 8 (rel. Oct. 1, 2021).

[333] Application at 4.

[334] Verizon May 14, 2021 RFI Response at 41.

[335] Application at 6.

[336] Verizon May 14, 2021 RFI Response at 42.

[337] *Id.* at 42.

113. Verizon maintains that, during the transition period, it will continue to serve TracFone customers not on Verizon's network over the same network serving them today through existing MVNO arrangements.[338] It claims that "TracFone's contracts with its underlying network partners" (serving over 95% of TracFone customers relying on non-Verizon networks) ensure that there will be an "orderly transition period."[339] The record shows that, except under very limited circumstances, TracFone's reseller agreements with AT&T, T-Mobile, and US Cellular ensure "a smooth glide path for TracFone customers, even in the event that TracFone's corporate ownership changes and TracFone and/or the MNOs seek to terminate their contractual relationships."[340]

114. Some TracFone customers will remain outside Verizon's network footprint post-transaction. Internal documents show that there are approximately {[ ]} TracFone customers outside Verizon's network footprint.[341] Most of these customers—about {[ ]}, and the remaining are spread throughout the United States.[342] For Puerto Rico customers, TracFone represents that it has a "preliminary agreement" to extend its wholesale network service contract with Claro for {[ ]}.[343] TracFone maintains that, by extending its agreement with Claro, it has "ensured that it can continue to provide service in Puerto Rico without interruption."[344]

115. *Commitments Recommended by Commenters*. As discussed above, certain public interest commenters initially objected to the transaction, but withdrew their objections after securing Verizon's initial August 11 commitments, which included—with respect to transition—agreeing to negotiate in good faith with other MNOs to avoid service disruption to a significant number of TracFone customers and increasing the range of cost-effective 5G devices.[345] The Open Technology Institute at New America and Common Cause (OTI and Common Cause), however, remained skeptical of the "potential loopholes" in Verizon's August 11 commitments.[346] For example, they argue that the commitments do not address the possibility that Verizon may "raise rates or abandon prepaid customers."[347] They also are concerned about "whether AT&T and T-Mobile would continue supporting TracFone service on their networks" under Verizon ownership.[348] Finally, they recommend that the Commission "appoint an ombudsman or compliance officer . . . to proactively monitor the conditions, ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations . . . ."[349]

116. Other commenters also express concern about customer transition. Mobile X states that "Verizon has pledged to migrate" customers to its own network, but "it has acknowledged the likelihood

[338] Verizon July 2, 2021 Supplemental RFI Response at 3.

[339] *Id.* at 2; *see also* Application at 4.

[340] América Móvil and TracFone July 7, 2021 Supplemental RFI Response at 2.

[341] VZ-VZ-0000551, VZ-VZ-0000557.

[342] VZ-VZ-0000551, VZ-VZ-0000557.

[343] América Móvil and TracFone July 7, 2021 Supplemental RFI Response at 2.

[344] *Id.*

[345] Public Interest Groups Aug. 11, 2021 *Ex Parte* Letter at 1-2; Verizon Aug. 11, 2021 *Ex Parte* Letter at 1-2. The Public Interest Groups' withdrawal was contingent on the Commission accepting those commitments as binding and enforceable commitments. Public Interest Groups Aug. 11, 2021 *Ex Parte* Letter at 2.

[346] OTI-Common Cause Aug. 23, 2021 *Ex Parte* Letter at 3.

[347] *Id.*

[348] *Id.*

[349] *Id.* at 2.

of extraordinary churn . . . given the need for many such customers to purchase new handsets."[350] One commenter worries that Verizon will eliminate the non-Lifeline "low cost service" that he has used for "over 10 years."[351] The American Antitrust Institute states that the post-transaction customer migration could result in Verizon's "diverting subscribers of rival MVNOs to its new TracFone brand (at higher prices)."[352] And as discussed above, five U.S. Senators seek commitments such as making 5G networks and equipment available to Lifeline and prepaid customers; maintaining subscribers' existing packages, and "[m]arketing to, and providing customer service for, Lifeline and prepaid customers, including non-English speaking customers, at least at the same level as TracFone provides today."[353]

117. *Verizon's Customer Migration and Transition Commitments.* Verizon states that it plans to "encourage a gradual and orderly migration," and to "not 'flash cut' customers currently receiving service on non-Verizon networks at closing."[354] Verizon asserts that its "goal [post-transaction] is to maintain and grow TracFone's customer base"[355] and to "provide incentives for customers riding on other networks to choose to migrate to Verizon."[356] But Verizon also states that, "[g]iven the high level of competition for, and customer churn among, prepaid customers, some current TracFone customers will opt to take service from other companies rather than accept promotions to migrate to Verizon's network."[357]

118. Verizon has made certain commitments to facilitate customer transition and migration over a three-year period, summarized here.[358] Verizon will maintain TracFone's existing MVNO agreements to serve customers outside Verizon's network coverage for at least three years.[359] Verizon will negotiate in good faith to extend the terms of TracFone's existing MVNO agreements to at least three years from the transaction closing if doing so would be necessary to avoid service disruption to TracFone customers. Nothing in this commitment requires Verizon to modify the rates, terms, or conditions of any agreement it assumes from TracFone. Before requiring TracFone customers to transition to Verizon's network, Verizon will send at least two toll-free text messages, e-mails, or voicemail notifications, separated by at least two weeks, to all transitioning customers, unless prohibited by law, containing specific information. Verizon will also maintain an exclusive, toll-free customer service line and a dedicated website for at least three years after closing, subject to certain specifications. For at least three years after closing, and before any TracFone customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or a SIM card replacement to that customer if the customer's existing device[360] is not compatible with the Verizon

[350] Mobile X Mar. 1, 2021 *Ex Parte* Letter at 1. For this reason, Mobile X proposes that approval of the transaction be conditioned on "Verizon's divestiture of TracFone subscribers who currently are served by third-party networks. Doing so would curb the potentially costly disruptions to these consumers by allowing them to remain on the AT&T and T-Mobile networks." *Id.* at 2.

[351] Glenn Wegner Comments, GN Docket No. 21-112, at 1 (rec. July 20, 2021) (Wegner Comments).

[352] AAI Apr. 2, 2021 *Ex Parte* Reply at 8.

[353] Senators' July 21, 2021 *Ex Parte* Letter at 3.

[354] Verizon May 14, 2021 RFI Response at 40.

[355] *Id.* at 51.

[356] *Id.* at 41.

[357] *Id.*

[358] Verizon Nov. 18, 2021 Commitment Letter.

[359] Nothing in this commitment is intended to conflict with or limit Verizon's commitment above to continue service for existing and new Lifeline customers for at least seven years after the transaction closes via its own network or through MVNO agreements.

[360] "Existing device" refers to the customer's device as of the closing date.

network. Finally, for at least three years after the close of the transaction, Verizon will maintain existing TracFone rate plans and allow existing and new customers to continue on those plans.

119. We find that TracFone customers should have a reasonable amount of time to learn about and complete their migration process, whether they remain on Verizon's network or an alternative wireless provider. They should also have an easily-accessible method to review information on the transaction, including their options. The three-year transition period and other Verizon commitments, which we accept as conditions to our approval, will ensure that customers have adequate time to consider their options, including any migration offers from Verizon, and to complete the migration process, without incurring unnecessary or unexpected changes or charges in their rate plans, or diminished service.

120. We likewise find Verizon's commitments with respect to customer outreach, marketing, and notification necessary to inform customers of their transition options. To avoid undue interruption to TracFone customers' service during the transition process, the transition period must include an opportunity for TracFone customers on non-Verizon networks to receive direct communication from Verizon to inform them of the transaction, convey options, and provide a sufficient amount of time for those customers to consider these options, including switching to another wireless provider by the end of the transition period. We find that a three-year transition period will provide sufficient time for customers to become sufficiently informed and choose their preferred path forward based on publicly available information. We also find that a three-year transition period will mitigate issues with fixed-duration customer plans (e.g., one-year plans). The conditions ensure that such customers will have sufficient notice of upcoming changes to their service, and sufficient opportunity to consider these changes. We therefore find that Verizon's commitments, which we accept as conditions of approval, are essential to provide a stable, orderly, and streamlined migration to the benefit of TracFone's customers.

121. Finally, given the importance of ensuring that Verizon complies with its commitments, we agree with OTI and Common Cause that a monitor is required to ensure that customers are not harmed by the transaction. Accordingly, we accept Verizon's commitment to pay for and retain both an internal company compliance officer and an independent, external compliance officer to monitor compliance, as described in more detail below.[361]

D. Handset Unlocking

122. The Applicants contend that prepaid wireless providers lock handsets for a limited period of time because the practice "enables device discounts that help price-sensitive consumers access critical communications service, while ensuring a period of service fees to allow recovery of the devices' real, undiscounted costs."[362] The Applicants acknowledge that Verizon's 700 MHz C Block license requirements prohibit C Block licensees—including Verizon—from "locking" handsets that use 700 MHz C Block frequencies, or otherwise block or restrict customers' use of applications on those devices.[363] In

[361] A simultaneous provision for both a company compliance officer and an independent compliance officer has been part of the conditions in prior transactions that the Commission has approved. *See, e.g.*, *Charter-Time Warner Cable Order*, 31 FCC Rcd 6327, 6553-57 (Appx. B: Conditions, IX.: Compliance Program and Reporting); *AT&T-DIRECTV Order*, 30 FCC Rcd 9131, 9279, para. 398, 9297-9300 (Appx. B: Conditions, VII.: Compliance Program and Reporting); *Independent Compliance Officer Identified in Accordance with Charter-Time Warner-Bright House Merger Condition*, Public Notice, 31 FCC Rcd 8996 (WCB 2016); *Independent Compliance Officer Identified in Accordance with AT&T-DIRECTV Merger Condition*, MB Docket No. 14-90, Public Notice, 30 FCC Rcd 11556 (MB 2015).

[362] Verizon May 14, 2021 RFI Response at 58; *see also* Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 1-2 (filed Nov. 3, 2021) (Verizon Nov. 3, 2021 *Ex Parte* Letter).

[363] Verizon Nov. 3, 2021 *Ex Parte* Letter at 1-2; *see also* 47 CFR § 27.16(e); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, 22 FCC Rcd 15289, 15358-74, paras. 189-230 (2007).

2019, Verizon obtained a limited waiver of the locking prohibition that permits it to implement a temporary, 60-day lock on the handsets.[364] Under the waiver, Verizon must automatically unlock its handsets after the 60-day period.[365] TracFone is not bound by similarly narrow unlocking requirements. Instead, pursuant to an Enforcement Bureau 2015 settlement, TracFone implements a 12-month handset locking policy.[366] The Applicants state that TracFone's policy permits it to "offer subsidized devices by accounting for revenues anticipated by its 12-month device locking policy," "protect its investment in these devices," and "stem the risk of loss through arbitrage."[367]

123. The Applicants recognize the locking period asymmetry between Verizon and TracFone for certain subsidized devices. They contend that "after closing, customers acquiring TracFone devices that operate on the C Block will be subject to a greatly reduced—from one year to 60 days—locking period."[368] They clarify that for customers "using Apple devices, unlocking will happen automatically."[369] But because non-Apple TracFone devices "will not be capable of unlocking automatically, Verizon will need some temporary relief from the C Block unlocking obligations for TracFone customer devices that include 700 MHz C Block frequencies."[370]

124. To that end, Verizon commits to certain unlocking obligations. Within 30 days of the close of the transaction, Verizon will extend its 60-day unlocking policy to all 700 MHz C Block devices purchased from TracFone after closing and activated on the Verizon network, subject to a two-year waiver of the automatic unlocking requirement to allow manual unlocking for those TracFone devices that do not have automatic unlocking capabilities currently. Within 30 days after closing, Verizon will notify all TracFone customers of its new unlocking policies. In addition, beginning 30 days after closing, Verizon will notify TracFone customers of its unlocking policies upon activation of a new 700 MHz C Block device that will operate on the Verizon network. For 700 MHz C Block TracFone devices that operate on the Verizon network and are capable of unlocking automatically (e.g., Apple devices), they will unlock automatically 60 days after activation. For 700 MHz C Block TracFone devices that operate on the Verizon network and lack an automatic unlocking capability, Verizon will provide customers with manual means to unlock the device 60 days after activation. When the 60-day period expires, Verizon will provide clear and easy to follow instructions to those customers as to how they can manually unlock their devices. No later than 24 months after closing, any new 700 MHz C Block TracFone device that Verizon offers and that operates on Verizon's network will be capable of automatically unlocking. Finally, Verizon will report the total number of locked TracFone devices and, of that number, the total number of devices that have the ability to automatically unlock within 60 days of closing and again on the first and second anniversary of the closing. No commenter has raised concerns with respect to handset unlocking.

125. We find Verizon's unlocking commitments to be in the public interest and grant a further limited waiver of Verizon's 700 MHz C Block license requirements on our own motion. Generally, the Commission may waive its rules with a showing of good cause.[371] The Commission may exercise its

[364] *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Order, 34 FCC Rcd 5134, 5136-39, paras. 8-15 (WTB 2019) (*Verizon Handset Unlocking Partial Waiver Order*).

[365] *Verizon Handset Unlocking Partial Waiver Order*, 34 FCC Rcd at 5137, para. 11.

[366] *See TracFone Wireless, Inc.*, File No.: EB-IHD-15-00018098, Order and Consent Decree, 30 FCC Rcd 6938 (EB 2015).

[367] Verizon May 14, 2021 RFI Response at 59.

[368] *Id.*; *see also* Verizon Nov. 3, 2021 *Ex Parte* Letter at 1.

[369] Verizon Nov. 3, 2021 *Ex Parte* Letter at 3.

[370] Verizon May 14, 2021 RFI Response at 59; *see also* Verizon Nov. 3, 2021 *Ex Parte* Letter at 3.

[371] 47 CFR § 1.3.

discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[372] The Commission may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[373] WTB has already determined that a limited waiver of the handset unlocking rule is in the public interest and allowed Verizon to automatically unlock devices 60 days after device activation.[374] Here, we grant a further limited waiver: for 24 months after closing, Verizon may unlock those TracFone devices that lack automatic unlocking capability by providing manual unlocking means to customers seeking to unlock their devices. The reduced unlocking period for TracFone devices (from 12 months to 60 days) will reduce barriers to migrating between wireless providers. At the end of the 60 days from activation for devices purchased from TracFone after closing and activated on the Verizon network, customers with non-Apple TracFone devices that lack automatic unlocking capability will be able to unlock their devices manually. We are further persuaded by Verizon's statement that, due to contractual obligations and the supply chain cycle, TracFone requires 24 months to bring its devices into compliance with Verizon's automatic unlocking obligations. We therefore find Verizon's commitments, in addition to our further limited waiver, to be in the public interest.

E. Handset Accessibility

126. In support of the Applicants' assertion that the transaction will generate substantial public interest benefits, they state that Verizon will deliver to TracFone customers a wider variety of devices, including "low cost flip phones with app store capabilities."[375] Two commenters express concern, however, that the proposed transaction may affect the availability of accessible feature phones for people who are blind. The American Council of the Blind (ACB) asks that we consider the accessibility of "wireless handsets, especially basic and feature phones."[376] The National Federation of the Blind (NFB) highlights that the *2020 Biennial Report to Congress* on accessibility noted that accessibility gaps continue to exist, including with respect to "the availability of accessible mobile phones with low-end features, functions, and prices for people who are blind . . . ."[377] NFB urges the Commission to condition transaction approval upon Verizon making "accessible any mobile devices scheduled for release following the acquisition."[378]

127. In the Joint Reply, the Applicants represent that they "recognize the critical importance of making mobile services accessible to people with disabilities."[379] They note that "all of the mobile

[372] *Northeast Cellular Telephone Co., L.P. et al. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

[373] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[374] *Verizon Handset Unlocking Partial Waiver Order*, 34 FCC Rcd at 5137, para. 11.

[375] Application at 12 (stating that the "transaction will allow Verizon to expand the portfolio of Verizon compatible devices available to TracFone, such as more low-cost devices").

[376] American Council of the Blind Comments, GN Docket No. 21-112, at 1 (Dec. 16, 2020) (ACB Dec. 16, 2020 Comments). Feature phones are "used with wireless services and include (1) phones used primarily or exclusively for voice communications and (2) phones used for voice communications and text messaging, with little or no computing capabilities." *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010,* Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 35 FCC Rcd 11227, 11234, para. 16 (CGB 2020) (*2020 Biennial Report to Congress*).

[377] *2020 Biennial Report to Congress*, 35 FCC Rcd at 11229, para. 3; *see also* Letter from John G. Paré Jr., Executive Director, National Federation of the Blind, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 21-112, at 2 (filed Mar. 2, 2021) (NFB Mar. 2, 2021 *Ex Parte* Letter).

[378] NFB Dec. 18, 2020 Comments at 2; *see also* NFB Mar. 2, 2021 *Ex Parte* Letter at 2 (requesting that "Verizon's acquisition of TracFone be approved only if Verizon be required to make accessible any mobile devices scheduled for release following the acquisition.").

[379] Applicants' Dec. 28, 2020 Joint Reply at 19.

phones that Verizon and TracFone offer are hearing aid compatible"[380] and that "TracFone already employs numerous accessibility features in its devices, including for individuals who are hard of hearing, visually impaired, or otherwise disabled."[381] For its current and future business plans, Verizon provides to handset manufacturers a set of requirements "intended to make the devices that Verizon offers usable and effective for everyone, including the visually impaired."[382] In response to a specific request for information from the Commission, as set out in the footnote below,[383] the Applicants introduced into the record a list of current low-cost feature phones that are for sale on the Verizon website and stated that these phones are accessible to people who are blind or visually impaired.[384]

128. We agree with commenters that handsets must continue to be accessible post-transaction.[385] Based on our review of the record, we find that this transaction does not appear likely to adversely affect handset accessibility. Sections 255, 716, and 718 of the Communications Act govern accessibility requirements, including for handsets,[386] and the Applicants must comply with these sections.

VIII. REMEDIES

129. The Commission's review of a proposed transaction entails a thorough examination of the potential public interest harms and any verifiable, transaction-specific benefits, including any commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose additional remedial conditions to address potential harms likely to result from the proposed transaction or to help ensure the realization of any promised potential benefits.[387] If, on balance, after taking into consideration these additional remedial conditions, the potential benefits

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[380] *Id.*

[381] *Id.* at 20.

[382] *Id.*

[383] Verizon Apr. 14, 2021 Information Request at 3, Question 11.e (requesting Verizon to "[p]rovide a list of all Company devices that are accessible and (1) operable by people without vision; (2) operable by people with low vision and limited or no hearing; (3) operable by people with visual acuity between 20/70 and 20/200, without relying on audio output; and (4) operable by people with little or no color perception").

[384] Verizon May 14, 2021 RFI Response at 60, Exhibit 11e (listing devices that Verizon currently offers its customers).

[385] ACB Dec. 16, 2020 Comments at 1 (explaining the continued importance of feature phones to people who are blind, especially during the pandemic).

[386] 47 U.S.C. § 255 (requiring providers of telecommunications service and manufacturers of telecommunications equipment or customer premises equipment to ensure that such services and equipment are accessible to and usable by individuals with disabilities, if readily achievable); 47 U.S.C. § 617 (requiring providers of advanced communications services and equipment to ensure that their services and equipment are accessible to and usable by individuals with disabilities, unless doing so is not achievable); 47 U.S.C. § 619 (requiring mobile phone service providers and manufacturers to make Internet browsers built into mobile phones accessible to and usable by people who are blind or have a visual impairment, unless doing so is not achievable); *see generally 2020 Biennial Report to Congress*, 35 FCC Rcd 11227.

[387] *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, et al.*, WT Docket No. 12-4, et al., Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10739-40, para. 111 (2012); *AT&T-Centennial Order*, 24 FCC Rcd 13915, 13929, para. 30. Regarding remedying harms, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes. *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8747, para. 101 (2010).

associated with the proposed transaction outweigh any remaining potential harms, the Commission will find that the proposed transaction serves the public interest.

130. Verizon has made numerous commitments to address any public interest harms and ensure the realization of certain public interest benefits. We find that, in light of Verizon's commitments, which we accept and make conditions to our approval, the public interest benefits of the proposed transaction outweigh the public interest harms, such that overall, the proposed transaction is in the public interest. The commitments contained in this Order and in Appendix B, which we accept and make conditions, along with the conditions detailed in Appendix C (compliance program and reporting conditions), comprise the conditions of our approval (Conditions).

A. Lifeline

131. We find above that the transaction as proposed has the potential to cause some public interest harms, particularly to Lifeline customers and particularly in areas where TracFone's resale services are outside Verizon's network. We thus find it necessary to impose as conditions the commitments Verizon has made regarding the Lifeline program to mitigate these potential harms and to ensure that Lifeline subscribers experience the asserted public interest benefits.

132. Verizon, directly or through its affiliates, will continue offering Lifeline services for at least seven years from the close of the transaction over the same service area where TracFone currently offers Lifeline service. Verizon will ensure that all of Verizon/TracFone's Lifeline service offerings will meet or exceed the Lifeline MSS in place throughout this time period. Verizon will ensure continued service for existing and new Lifeline customers for the entirety of that period either via its own network or through MVNO agreements. Verizon may seek a waiver of this commitment in areas where it does not have its own network if it is unable to extend a necessary MVNO agreement under commercially reasonable terms. Before any TracFone Lifeline customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device[388] is not compatible with the Verizon network.

133. We also accept Verizon's commitment that it will continue to offer and advertise existing TracFone Lifeline rate plans for at least three years after the transaction closes unless the plan no longer meets Lifeline MSS standards. Verizon may substitute better terms for any existing plan provided that the monthly price and any co-pays do not increase. Nothing in these commitments prevents Verizon from offering additional Lifeline plans with different terms. In addition, we accept Verizon's commitment that it will continue to offer and advertise and will not add new co-pays to TracFone's existing Lifeline plans that currently are offered at no cost to prepaid customers for at least three years after the transaction closes. In the event the Commission increases the Lifeline MSS, Verizon must offer at least one plan in compliance with these new requirements at no cost to Lifeline eligible consumers for at least three years. Nothing in this commitment prevents Verizon from seeking a waiver of the commitment to offer a no-cost plan should an increase in Lifeline MSS significantly raise compliance costs. Further, this commitment does not prevent Verizon from pursuing compensation through state or federal device reimbursement programs as long as no unrecovered costs are passed on to Verizon's Lifeline subscribers.

134. Within six months after the transaction closes, Verizon will make available to existing and new Lifeline prepaid customers the lowest cost plan that includes 5G service and meets Lifeline MSS that is offered by any of its subsidiaries or affiliates and will offer a range of cost-effective 5G devices to existing and new Lifeline customers for a minimum of seven years after the close of the transaction. Within six months, Verizon will furnish to WTB a list of devices that currently meet these criteria, which shall be used for comparison during the length of this commitment.

135. Consistent with its commitment, we also require Verizon, for at least seven years after the close of the transaction, to maintain marketing and advertising expenditures for Lifeline at levels that

[388] "Existing device" refers to the customer's device as of the closing date.

equal or exceed the average of TracFone's marketing and advertising expenditures for the three calendar years before the Applicants filed the application for consent to transfer control. During this time period, Verizon will market and advertise through similar channels as TracFone. Verizon will maintain a new, dedicated website with information about the Lifeline program, how to apply for Lifeline, and a list of its Lifeline plans and instructions for obtaining any necessary replacement devices and/or SIM cards. A link to the new, dedicated Lifeline website will appear on the home page of the Verizon.com and TracFone websites. The website also will be clearly accessible in each language that TracFone has used in its own marketing and advertising. The Verizon.com home page will contain a link to "TracFone" under the "Shop" category that directly links to the home page of TracFone's website (containing the information detailed in these commitments). The search function on Verizon's home page will also lead to a "Lifeline" page that includes the details of TracFone's offerings, including a link to the dedicated Lifeline customer service line and the new, dedicated Lifeline website. Verizon will maintain a dedicated customer service line for Lifeline customers, staffed by trained customer service agents able to address customer inquiries concerning how to apply for Lifeline, Lifeline offerings, and transition issues, including instructions for obtaining any necessary replacement devices and/or SIM cards. The telephone number for this customer service line will be displayed on the home page of TracFone's website and on Verizon's new, dedicated Lifeline website. Verizon will target Lifeline advertisements to Lifeline eligible subscribers, using the same languages, similar advertising and outreach media, and grassroot efforts that TracFone used.

B. Assumption of Liability

136. Without prejudicing contractual indemnification rights between Verizon and América Móvil, we make a condition of our approval that Verizon and its successors, assigns, and transferees will assume liability for any forfeitures, restitution, or other obligations that may be imposed by the Commission or USAC on TracFone and its subsidiaries, and any successors or assigns, unless such liability has been resolved by TracFone prior to the closing of the transaction, and to comply with any agreements with the Commission or USAC, including following any compliance plans, or other obligations, agreed to by TracFone, its subsidiaries, or any successors or assigns.

C. Customer Migration and Transition

137. The record indicates that TracFone customers face an uncertain transition period and may also lack compatible devices upon transition. Verizon makes the following commitments to mitigate these concerns, which we accept and impose as conditions to our approval. These conditions will promote the public interest.

138. First, Verizon will maintain TracFone's existing MVNO agreements to serve customers outside Verizon's network coverage (including Puerto Rico) for a minimum of three years after close of the transaction. Nothing in this commitment is intended to conflict with or limit Verizon's commitment above to continue service for existing and new Lifeline customers for at least seven years after the transaction closes via its own network or through MVNO agreements. Verizon will negotiate in good faith to extend the terms of TracFone's existing MVNO agreements to at least three years from the transaction closing if doing so would be necessary to avoid service disruption to TracFone customers. Verizon may seek a waiver of this condition if it is unable to negotiate an extension at commercially reasonable terms. Nothing in this commitment requires Verizon to modify the rates, terms, or conditions of any agreement it assumes from TracFone.

139. Second, before requiring any TracFone customers to transition to Verizon's network, Verizon will send at least two toll-free text messages, e-mails, or voicemail notifications, separated by at least two weeks, to all transitioning customers, unless prohibited by law. The notification will provide access to the following information: the migration date; a description of any steps the customer must take to be transitioned; a statement that the current plan which the customer uses will remain available for at least three years after the close of the transaction; and information concerning the toll-free phone and dedicated website that are available for additional information on the transition.

140. Third, for at least three years after the close of the transaction, Verizon will maintain an exclusive, toll-free customer service line for all TracFone customers, staffed by trained customer service agents able to address customer inquiries regarding transition issues. The telephone number for this customer service line will be displayed on the first page of TracFone's home page (which will be directly linked on Verizon's home page, as discussed in the Lifeline commitments above). The telephone number will also be displayed on any physical transition-related material.

141. Fourth, Verizon will conduct outreach, advertising, and displaying of all TracFone plans on a dedicated website for three years after the close of the transaction. The website will: (a) clearly indicate transition deadlines for those three years; (b) clearly explain that customers will be able to maintain their current plans for three years and display the relevant expiration dates; (c) be clearly accessible in each language that TracFone used to provide notifications prior to the transaction close; (d) disclose availability of other network providers in a customer's area; and (e) prominently display the exclusive toll-free customer service line. Verizon will include a prominently-featured, easy-to-locate link to the dedicated website on TracFone's home page (which will be directly linked on Verizon's home page, as discussed in the Lifeline commitments above). Verizon and TracFone will also prominently display the link to the dedicated website on all physical transition-related material.

142. Fifth, for at least three years after the close of the transaction, before any TracFone customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device[389] is not compatible with the Verizon network.

143. Sixth, for at least three years after the close of the transaction, Verizon will maintain existing TracFone rate plans and allow existing and new customers to continue on those plans.

D. Handset Unlocking

144. To comply with its 700 MHz C Block license obligations, within 30 days of the close of the transaction, Verizon will extend its 60-day unlocking policy to all 700 MHz C Block devices purchased from TracFone after closing and activated on the Verizon network, subject to a two-year waiver of the automatic unlocking requirement to allow manual unlocking for those TracFone devices that do not have automatic unlocking capabilities currently. Within 30 days after closing, Verizon will notify all TracFone customers of its new unlocking policies. In addition, beginning 30 days after closing, Verizon will notify TracFone customers of its unlocking policies upon activation of a new 700 MHz C Block device that will operate on the Verizon network. For 700 MHz C Block TracFone devices that operate on the Verizon network and are capable of unlocking automatically (e.g., Apple devices), they will unlock automatically 60 days after activation. For 700 MHz C Block TracFone devices that operate on the Verizon network and lack an automatic unlocking capability, Verizon will provide customers with manual means to unlock the device 60 days after activation. When the 60-day period expires, Verizon will provide clear and easy to follow instructions to those customers as to how they can manually unlock their devices. No later than 24 months after closing, any new 700 MHz C Block TracFone device that Verizon offers and that operates on Verizon's network will be capable of automatically unlocking. Finally, Verizon will report the total number of locked TracFone devices and, of that number, the total number of devices that have the ability to automatically unlock within 60 days of closing and again on the first and second anniversary of the closing.

E. Wholesale Service

145. As we note above, commenters argue that the acquisition of TracFone could increase Verizon's incentive post-transaction to increase wholesale prices or degrade wholesale service quality

[389] "Existing device" refers to the customer's device as of the closing date.

provided to MVNOs, particularly those offering prepaid service in competition with TracFone.[390] To address and mitigate this vertical harm to low-cost prepaid MVNOs that compete with TracFone, Verizon has committed to provide those MVNOs who have current contracts with Verizon an option to extend their existing MVNO wholesale agreements, on the same terms and conditions, continuing on a month-to-month basis until three years after the transaction closes. This option does not apply to MVNOs whose agreements expire beyond three years after the transaction closes nor to any terms that would apply to the provision of fixed wireless services.[391] In the event that the MVNO contract in question specifies different terms from year to year, the MVNO may extend the contract based on the terms in effect during the last year of the contract. We accept this commitment and make it a condition of our approval.

F. Compliance Officers and Reporting

146. These conditions serve an important role in securing the public interest benefits and mitigating the potential public interest harms of this transaction. Accordingly, to ensure that Verizon complies with the order's conditions, we accept and make a condition of our approval Verizon's commitment to pay for and retain both an internal company compliance officer and an independent compliance officer to monitor compliance with the commitments, as described in this order, for a period of seven years and six months following the close of the transaction.[392] In addition, Verizon must submit publicly available semi-annual reports to the Commission describing its compliance with these commitments that includes certain information regarding Lifeline and non-Lifeline customers for seven years, as specified below and in Appendix C.[393] The independent compliance officer must submit compliance reports to the Commission after each semi-annual report that describe Verizon's efforts to meet these commitments as set forth in Appendix C.[394] Verizon also must report any material noncompliance shortly after discovery of such noncompliance.[395] Further details on Verizon's compliance and reporting conditions are contained in Appendix C. Enforcement responsibilities remain the sole province of the Commission.

147. Verizon's reports will include: (1) the current number of Lifeline and non-Lifeline prepaid subscribers as of the end of the reporting period; (2) data regarding TracFone customers that have been transitioned to Verizon's network from other networks, including the number of devices that have successfully transferred, as of the end of the reporting period; (3) the availability of 5G for Lifeline customers, including which geographic service areas have access to Verizon's 5G network and the number of Lifeline customers subscribing to a 5G service as of the end of the reporting period; and (4) all states where TracFone offers a Lifeline-supported service and a state-by-state breakdown of amounts spent on advertising and other marketing activities associated with Lifeline.

148. Verizon may file proprietary information with the Commission on a confidential basis, making it available only to representatives of parties that have signed the relevant protective order (either during the pendency of the proceeding or thereafter) provided that Verizon shall also file a public version redacting the proprietary information to be available for review by the public.

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[390] *See, e.g.*, AAI Apr. 2, 2021 *Ex Parte* Reply at 7-8; CWA Comments at 13; Public Knowledge et al. Oct. 16, 2020 Opposition at 12; Public Interest and Civil Rights Groups Apr. 6, 2021 Comments at 3.

[391] For avoidance of doubt, an MVNO agreement provision that allows for negotiating a replacement agreement under certain conditions does not constitute an expiration of that agreement.

[392] *See infra* Appx. C (Compliance Program and Reporting).

[393] *See infra* Appx. C (Reporting Requirements).

[394] While these reports will be made publicly available, some of the information may include material that is confidential and may be submitted for confidential treatment under Commission rules.

[395] *See infra* Appx. C (Independent Compliance Officer and Company Obligation to Report Noncompliance).

G. Enforcement

149. Any material failure to comply with any condition identified in the order, including Appendices B and C, may result in the following: (1) an appropriate forfeiture penalty under applicable law; (2) extension of the duration of any condition; and (3) any other appropriate sanctions and remedies allowed under the Communications Laws, including, but not limited to, an award of damages for the benefit of consumers for any harm incurred, issuance of cease-and-desist orders, modification of the conditions, and issuance of an order requiring appropriate remedial action.[396] A violation of any of these conditions will be a violation of the order.

IX. CONCLUSION

150. After carefully reviewing the record in this proceeding and performing a thorough and extensive analysis, we find that the transaction will lower TracFone's costs to provide service and improve its ability to offer prepaid and Lifeline services. These benefits, combined with Verizon's robust commitments, which we accept as conditions of our approval, ensure that the proposed transaction will serve the public interest, convenience, and necessity. Accordingly, we approve the transaction.

X. ORDERING CLAUSES

151. ACCORDINGLY, having reviewed the Application and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, the Application for Consent to Transfer Control of TracFone Wireless, Inc.'s international section 214 authorization from América Móvil, S.A.B. de C.V. to Verizon Communications Inc. is GRANTED to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein, including Appendices B and C.

152. IT IS FURTHER ORDERED that the conditions incorporated herein shall continue to apply until they expire by their own terms as expressly stated or as otherwise provided in Appendices B and C.

153. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.3 of the Commission's rules, 47 CFR § 1.3, that Verizon's request for a partial temporary waiver of section 27.16(e) of the Commission's rules, 47 CFR § 27.16(e), IS GRANTED to the extent specified herein.

154. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 CFR § 1.106, may be filed within thirty days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[396] The enforcement and compliance programs established in these conditions are intended to supplement the Commission's usual enforcement and investigative powers, which remain fully applicable, and do not replace such powers.

APPENDIX A

Commenters

Filings in Opposition to the Petition for Streamlining and Replies

Communications Workers of America, Opposition Comments (rec. Nov. 19, 2020)
Public Knowledge, Open Technology Institute at New America Foundation, and the Benton Institute for Broadband and Society, Opposition Comments, (rec. Oct. 16, 2020); Reply to Applicants' Response (rec. Oct. 30, 2020)
T-Mobile USA, Inc., Opposition Comments, (rec. Oct. 13, 2020), Reply to Applicants' Response (rec. Oct. 29, 2020)
Verizon Communications Inc., TracFone Wireless, Inc., and América Móvil, S.A.B. de C.V., Reply to Opposition Comments (rec. Oct. 23, 2020)

Comments and Reply Comments Filed on or Before March 30, 2020

American Council of the Blind, Comments (rec. Dec. 16, 2020)
Communication Workers of America, First Comments (rec. Dec. 18, 2020); Second Comments (rec. Mar. 12, 2021)
National Federation of the Blind, Comments (rec. Dec. 18, 2021)
Next Century Cities, Comments (rec. Dec. 18, 2020)
Public Knowledge, Access Humboldt, Benton Institute for Broadband and Society, California Center for Rural Policy, Next Century Cities, Open Technology Institute at New America, Tribal Digital Networks, and, Joint Comments (rec. Dec. 18, 2020)
T-Mobile USA, Inc., Comments (rec. Dec. 18, 2020)
Verizon Communications Inc., América Móvil, S.A.B. de C.V., and TracFone Wireless, Inc., Joint Reply (rec. Dec. 28, 2020)

Comments and Reply Comments Filed After March 30, 2020

Anthony Schettler, Comments (rec. Apr. 9, 2021)
American Antitrust Institute, Reply (rec. Apr. 2, 2021)
Communication Workers of America, First Comments (rec. Dec. 18, 2020); Reply Comments (rec. Mar. 2, 2021)
Glenn Wegner, Comment (rec. Jul. 20, 2021)
National Wireless Independent Dealer Association (rec. Aug. 27, 2021)
Open Technology Institute at New America, Comments (rec. Apr. 12, 2021)
Public Knowledge, Access Humboldt, Benton Institute for Broadband and Society, Next Century Cities, and the Open Technology Institute at New America, Joint Comments (rec. Mar. 12, 2021)
The Leadership Conference on Civil and Human Rights, Comments (rec. Apr. 6, 2021)

Filers of *Ex Parte* Submissions and Letters

Attorneys General (17) Joint *Ex Parte* Filing from: Mark R. Herring, Attorney General of Virginia; Aaron D. Ford, Attorney General of Nevada; Peter Neronha, Attorney General of Rhode Island; Ellen F. Rosenblum, Attorney General of Oregon; Keith Ellison, Attorney General of Minnesota; Kathy Jennings, Attorney General of Delaware; William Tong, Attorney General of Connecticut; Karl A. Racine, Attorney General for the District of Columbia; Letitia James, Attorney General of New York; Dana Nessel, Michigan Attorney General; Bob Ferguson, Washington State Attorney General; Maura Healey, Massachusetts Attorney General; Tom Miller, Attorney General of Iowa; Thomas J. Donovan, Jr., Vermont Attorney General; Josh Stein, North Carolina Attorney General; Tom Miller, Attorney General of Iowa; Philip Weiser, Colorado Attorney General; and Hector Balderas, New Mexico Attorney General
Asian Americans Advancing Justice (AAJC)
Free Press, American Civil Liberties Union (ACLU), Benton Institute for Broadband & Society, Center for American Progress Center for Rural Strategies Color of Change Communications Workers of

Hispanic Technology & Telecommunications Partnership, LGBT Tech, Multicultural Media, Telecom & Internet Council (MMTC), National Association of State Utility Consumer Advocates (NASUCA), National Consumer Law Center, Next Century Cities, National Digital Inclusion Alliance, National Hispanic Media Coalition, New America's Open Technology Institute, The Pew Charitable Trusts' Broadband Research Initiative, Public Knowledge, The Greenlining Institute, The Utility Reform Network (TURN), U.S. Hispanic Chamber of Commerce, Worth Rises (Joint *Ex Parte* filing)
Communications Workers of America, Boost Mobile (Joint *Ex Parte* filing)
Common Cause, Access Humboldt, Access Now, Advocates for Basic Legal Equality, Asian Americans Advancing Justice | Asian American Justice Center (AAJC), Center for Accessible Technology, Center for Rural Strategies, Communications Workers of America, Free Press, Libraries Without Borders, Media Justice, National Consumer Law Center (on behalf of its low-income clients), National Council of Asian Pacific Americans, National Hispanic Media Coalition, New America's Open Technology Institute, Next Century Cities, Open Media, Public Citizen, Public Knowledge, The Benton Institute for Broadband & Society, The Greenlining Institute, The Utility Reform Network (TURN), United Church of Christ, OC Inc., (Joint *Ex Parte* filing)
Communications Workers of America and Public Knowledge (Joint *Ex Parte* filing)
Free Press
Hispanic Leadership Fund (HLC)
MANA–A National Latina Organization
Multicultural Media, Telecom and Internet Council (MMTC), National Black Caucus of State Legislators, National Organization of Black Elected Legislative Women, U.S. Black Chambers, Inc., Rainbow PUSH Coalition (Joint Letter)
Mobile X
National Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship (National ACE)
National Caucus and Center on Black Aging (NCBA)
National Council of Asian Pacific Americans (NCAPA)
National Federation of the Blind
National Hispanic Council on Aging (NHCOA)
National LGBT Chamber of Commerce (NLGBTCC)
National Puerto Rican Chamber of Commerce
National Urban League, National Action Network, and the National Coalition of Black Civic Participation (Joint Letter)
NTCH Inc.
OCA–Asian Pacific American Advocates
Open Technology Institute at New America
Open Technology Institute at New America and Common Cause (Joint Letter)
Public Knowledge
Public Knowledge, Access Humboldt, Benton Institute for Broadband & Society, California Center for Rural Policy, Communications Workers of America (Joint Letter)
U.S. Senators Richard Blumenthal, Diane Feinstein, Edward J. Markey, Sheldon Whitehouse, and Ron Wyden, Joint Letter to FCC Chairwoman Jessica Rosenworcel
United States Hispanic Chamber of Commerce (USHCC)
United States–Mexico Chamber of Commerce
Verizon Communications Inc.
Verizon Communications Inc., TracFone Wireless, Inc., and América Móvil, S.A.B. de C.V.

APPENDIX B
Verizon's Commitments

verizon✓

1300 I Street, NW
Suite 500 East
Washington, DC 20005

William H. Johnson
Senior Vice President
Federal Regulatory & Legal Affairs

November 18, 2021

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Application for Consent to Transfer Control of International Section 214 Authorization, GN Docket No. 21-112

Dear Ms. Dortch:

On November 16 and 17, 2021, representatives of Verizon met via teleconference with Commission staff (see Attachment A for list of participants) to discuss the Verizon/TracFone transaction and potential commitments regarding advancing Lifeline, facilitating a smooth customer transition to the Verizon network, and other issues. In light of the record established in this proceeding and subject to the commitments set forth below, we request grant of the application to transfer control of TracFone's International Section 214 authorization in connection with Verizon's acquisition of TracFone.[1]

A combined Verizon and TracFone will better serve existing and potential TracFone customers and inject further competition into the prepaid segment for value-conscious customers, including Lifeline customers. The commitments – including our commitment to participate in the Lifeline program for at least seven years – reflect Verizon's dedication to helping meet the communications needs of lower-income consumers with affordable broadband options. Consumers will benefit as the number of facilities-based providers in the prepaid segment effectively moves from two to three. And equipping TracFone with a network will lower TracFone's costs, allowing it to leverage owner's economics to offer value-conscious consumers more competitive plans; make TracFone more nimble in responding to consumer demands and competitive offers; and deliver a new level of device-buying power to TracFone, resulting in better deals for TracFone's customers.

While a combined Verizon and TracFone will benefit value-conscious prepaid consumers and serve the public interest, Verizon recognized that some stakeholders expressed concern about certain aspects of the transaction. Verizon worked with these stakeholders – including Public Knowledge, Access Humboldt, the Benton Institute for Broadband and Society, the California Center for Rural Policy, and Communications Workers of

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

America – to address their concerns through a series of commitments,[2] and we are pleased that the transaction has garnered additional support from the National Urban League, National Action Network, and others.[3]

During the recent calls, Commission staff expressed concern about certain aspects of the transaction. In order to respond to these concerns and address them definitively, Verizon offers the following commitments:

Lifeline:

- **Term Length and Scope:**
    - Verizon, directly or through its affiliates, will continue to offer Lifeline services for at least seven years from the close of the transaction over the same service area where TracFone currently offers Lifeline service;
    - All Verizon/TracFone's Lifeline service offerings will meet or exceed the Lifeline minimum service standards (MSS) in place throughout this time period. Verizon will ensure continued service for existing and new Lifeline customers for the entirety of that period either via its own network or through MVNO agreements. Verizon may seek a waiver of this commitment in areas where it does not have its own network if it is unable to extend a necessary MVNO agreement under commercially reasonable terms; and
    - Before any TracFone Lifeline customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device[4] is not compatible with the Verizon network.

- **Maintain Existing Plans:**
    - Verizon will continue to offer and advertise existing TracFone Lifeline rate plans for at least three years after the transaction closes unless the plan no longer meets Lifeline MSS standards.
        - Verizon may substitute better terms for any existing plan provided that the monthly price and any co-pays do not increase. Nothing in these commitments prevents Verizon from offering additional Lifeline plans with different terms.
    - Verizon will continue to offer and advertise and will not add new co-pays to TracFone's existing Lifeline plans that currently are offered at no cost to prepaid customers for at least three years after the transaction closes.
        - In the event the Commission increases the Lifeline MSS, Verizon will offer at least one plan in compliance with these new requirements at no cost to Lifeline eligible consumers for at least three years after close of the transaction. Nothing in this commitment shall prevent Verizon

[2] *See* Letter from Public Knowledge *et al*. (Aug. 11, 2021); *see also* Letter from Verizon (Aug. 11, 2021); Letter from Verizon (Sept. 22, 2021).

[3] Letter from National Urban League *et al*. (Sept. 23, 2021); *see also* Letter from United States-Mexico Chamber of Commerce (Sept. 24, 2021); Letter from MANA, A National Latina Organization (Sept. 27, 2021); Letter from the National Puerto Rican Chamber of Commerce (Sept. 28, 2021); Letter from United States Hispanic Chamber of Commerce (Oct. 5, 2021); Letter from National LGBT Chamber of Commerce (Oct. 6, 2021); Letter from National Hispanic Council on Aging (Oct. 13, 2021).

[4] "Existing device" refers to the customer's device as of the closing date.

Marlene H. Dortch, Secretary
November 18, 2021
Page 3 of 8

from seeking a waiver of the commitment to offer a no-cost plan should an increase in Lifeline MSS significantly raise compliance costs. In addition, nothing in this commitment shall prevent Verizon from pursuing compensation through state or federal device reimbursement programs so long as no unrecovered costs are passed on to Verizon's Lifeline subscribers.

- **Lifeline Marketing and Advertising:**
  - For at least seven years following the close of the transaction, Verizon will maintain marketing and advertising expenditures for Lifeline at levels that equal or exceed the average of TracFone's marketing and advertising expenditures for the three calendar years before the Applicants filed the application for consent to transfer control. During this period, Verizon will market and advertise through similar channels as TracFone. Specifically:
    - Verizon will maintain a new, dedicated website with information about the Lifeline program, how to apply for Lifeline, and a list of its Lifeline plans and instructions for obtaining any necessary replacement devices and/or SIM cards. A link to the new, dedicated Lifeline website will appear on the home page of the Verizon.com and TracFone websites. The website also will be clearly accessible in each language that TracFone has used in its own marketing and advertising.
    - The Verizon.com home page will contain a link to "TracFone" under the "Shop" category that directly links to the home page of TracFone's website (containing the information detailed in these commitments). The search function on Verizon's home page will also lead to a "Lifeline" page that includes the details of TracFone's offerings, including a link to the dedicated Lifeline customer service line and the new, dedicated Lifeline website.
    - Verizon will maintain a dedicated customer service line for Lifeline customers, staffed by trained customer service agents able to address customer inquiries concerning how to apply for Lifeline, Lifeline offerings, and transition issues, including instructions for obtaining any necessary replacement devices and/or SIM cards. The telephone number for this customer service line will be displayed on the home page of TracFone's website and on Verizon's new, dedicated Lifeline website.
    - Verizon will target Lifeline advertisements to Lifeline eligible subscribers, using the same languages, similar advertising and outreach media, and grassroot efforts that TracFone used.

Lifeline 5G Condition: Within six months after the transaction closes, Verizon will make available to existing and new Lifeline prepaid customers the lowest cost plan that includes 5G service and meets Lifeline MSS that is offered by any of its subsidiaries or affiliates, and will offer a range of cost-effective 5G devices to existing and new Lifeline customers for a minimum of seven years after the close of the transaction. Within six months of closing, Verizon will furnish to the Wireless Telecommunications Bureau a list of devices that currently meet these criteria, which shall be used for comparison during the length of this commitment.

TracFone Liability: Without prejudicing contractual indemnification rights between Verizon and América Móvil, Verizon and its successors, assigns, and transferees will assume liability for any forfeitures, restitution, or other obligations that may be imposed by the Commission or the Universal Service Administrative Company (USAC) on TracFone and its subsidiaries, and any successors or assigns, unless such liability has been resolved by TracFone prior to the closing of the transaction, and it will comply with any agreements with the Commission or USAC,

Marlene H. Dortch, Secretary
November 18, 2021
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including following any compliance plans, or other obligations, agreed to by TracFone, its subsidiaries, or any successors or assigns.

Customer Service and Transition Issues:

- **Service Condition:**
  - Verizon will maintain TracFone's existing MVNO agreements to serve customers outside Verizon's network coverage (including Puerto Rico) for a minimum of three years after close of the transaction. Nothing in this commitment is intended to conflict with or limit Verizon's commitment above to continue service for existing and new Lifeline customers for at least seven years after the transaction closes via its own network or through MVNO agreements.
    - Verizon will negotiate in good faith to extend the terms of TracFone's existing MVNO agreements to at least three years from the transaction closing if doing so would be necessary to avoid service disruption to TracFone customers. Verizon may seek a waiver of this condition if it is unable to negotiate an extension at commercially reasonable terms. Nothing in this commitment requires Verizon to modify the rates, terms, or conditions of any agreement it assumes from TracFone.

- **Customer Transition to Verizon Network:**
  - *Customer notification*. Before requiring any TracFone customers to transition to Verizon's network, Verizon will send at least two toll-free text messages, emails, or voicemail notifications, separated by at least two weeks, to all transitioning customers, unless prohibited by law. The notification will provide access to the following information: the migration date; a description of any steps the customer must take to be transitioned; a statement that the current plan which the customer uses will remain available for at least three years after the close of the transaction; and information concerning the toll-free phone number and dedicated website that are available for additional information on the transition.
  - *Customer service line*. For at least three years after the close of the transaction, Verizon will maintain an exclusive, toll-free customer service line for all TracFone customers, staffed by trained customer service agents able to address customer inquiries regarding transition issues. The telephone number for this customer service line will be displayed on the first page of TracFone's website (which will be directly linked on Verizon's home page, as discussed above). The telephone number will also be displayed on any physical transition-related material.
  - *Dedicated website*. Verizon will conduct outreach, advertising, and displaying of all TracFone plans on a dedicated website for three years after the close of the transaction.
    - The website will: (a) clearly indicate transition deadlines for those three years; (b) clearly explain that customers will be able to maintain their current plans for three years and display the relevant expiration dates; (c) be clearly accessible in each language that TracFone used to provide notifications prior to the transaction close; (d) disclose availability of other network providers in a customer's area; and (e) prominently display the exclusive toll-free customer service line.
    - Verizon will include a prominently-featured, easy-to-locate link to the dedicated website on TracFone's home page (which will be directly linked on Verizon's home page, as discussed

above). Verizon and TracFone will also prominently display the link to the dedicated website on all physical transition-related material.

- *Replacement devices or SIMs*. For at least three years after the close of the transaction, before any TracFone customer is required to transition to Verizon's network, Verizon will offer at no cost a compatible device with comparable functionality and/or SIM replacement to that customer if the customer's existing device[5] is not compatible with the Verizon network.

- **Rate Plans:**
  - For at least three years after the close of the transaction, Verizon will maintain existing TracFone rate plans and allow new and existing customers to continue on those plans.

Handset Unlocking: Within 30 days after closing, Verizon will extend its 700 MHz C block device 60-day unlocking policy to all such devices purchased from TracFone after closing and activated on the Verizon network, subject to a two-year waiver of the automatic unlocking requirement to allow manual unlocking for those TracFone devices that do not have automatic unlocking capabilities currently.

- Within 30 days after closing, Verizon will notify all TracFone customers of its new unlocking policies. In addition, beginning 30 days after closing, Verizon will notify TracFone customers of its unlocking policies upon activation of a new 700 MHz C block device that will operate on the Verizon network.
- For 700 MHz C block TracFone devices that operate on the Verizon network and are capable of unlocking automatically (e.g., Apple devices), they will unlock automatically 60 days after activation.
- For 700 MHz C block TracFone devices that operate on the Verizon network and lack an automatic unlocking capability, Verizon will provide customers with manual means to unlock the device 60 days after activation. When the 60-day period expires, Verizon will provide clear and easy to follow instructions to those customers as to how they can manually unlock their devices.
- No later than 24 months after closing, any new 700 MHz C block TracFone device that Verizon offers and that operates on Verizon's network will be capable of automatically unlocking.
- Verizon will report the total number of locked TracFone devices and, of that number, the total number of devices that have the ability to automatically unlock within 60 days of closing and again on the first and second anniversary of the closing.

MVNO Agreements: Verizon will provide those MVNOs who have current contracts with Verizon an option to extend their existing MVNO wholesale agreements, on the same terms and conditions, continuing on a month-to-month basis until three years after the transaction closes. This option does not apply to MVNOs whose agreements expire beyond three years after the transaction closes nor to any terms that would apply to the provision of fixed wireless services.[6] In the event that the MVNO contact in question specifies different terms from year to year, the MVNO may extend the contract based on the terms in effect during the last year of the contract.

[5] "Existing device" refers to the customer's device as of the closing date.
[6] For avoidance of doubt, an MVNO agreement provision that allows for negotiating a replacement agreement under certain conditions does not constitute an expiration of that agreement.

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Reporting and Monitoring:

- Verizon will pay for and retain both an internal company compliance officer and an independent compliance officer to monitor compliance with these commitments for a period of seven years and six months after the close of the transaction.
- For a period of seven years after the close of the transaction, Verizon will submit a publicly-available semi-annual report to the Commission describing its compliance with these commitments, including the following information with respect to Lifeline and non- Lifeline customers:
  - The current number of Lifeline and non-Lifeline prepaid subscribers as of the end of the reporting period;
  - Data regarding TracFone customers that have been transitioned to Verizon's network from other networks, including the number of devices that have successfully transferred, as of the end of the reporting period;
  - The availability of 5G for Lifeline customers, including which geographic service areas have access to Verizon's 5G network and the number of Lifeline customers subscribing to a 5G service as of the end of the reporting period; and
  - All states where TracFone offers a Lifeline-supported service and a state-by-state breakdown of amounts spent on advertising and other marketing activities associated with Lifeline.
- Verizon may file proprietary information with the Commission on a confidential basis, making it available only to representatives of parties that have signed the relevant protective order (either during the pendency of the proceeding or thereafter) provided that Verizon shall also file a public version redacting the proprietary information to be available for review by the public.
- The independent compliance officer will submit compliance reports to the Commission after each semi-annual report, with a detailed description of Verizon's efforts to meet these commitments. The reports will be made publicly available; however, some of the information may include material that is confidential which should not be routinely available for public inspection. Such confidential material may be submitted for confidential treatment under Commission rules.
- Verizon will report any material noncompliance with these commitments within 15 calendar days of discovery of noncompliance.

* * *

Based on the record in this proceeding and subject to the commitments set forth herein, the application to transfer control of TracFone's International Section 214 authorization to Verizon should be promptly granted.

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Pursuant to Section 1.106 of the Commission's rules, a copy of this letter is being submitted in the record of this proceeding. Please contact the undersigned with any questions.

Yours sincerely,

William H. Johnson
Senior Vice President, Verizon

cc: FCC Participants listed in Attachment A

ATTACHMENT A

November 16, 2021 Teleconference Participants

FCC
Charles Mathias
Catherine Matraves
Monica DeLong
Stacy Ferraro
Garnet Hanly
Susannah Larson
Jessica Quinley
Joel Rabinovitz
Donald Stockdale
Aleks Yankelevich

Verizon
William Johnson
Tamara Preiss
Greg Romano
Katharine Saunders
Adam Krinsky, Wilkinson Barker Knauer, LLP

November 17, 2021 Teleconference Participants

FCC
Charles Mathias
Catherine Matraves
Monica DeLong
Stacy Ferraro
Garnet Hanly
Susannah Larson
Georgios Leris
Jessica Quinley
Joel Rabinovitz
Donald Stockdale
Aleks Yankelevich

Verizon
William Johnson
Tamara Preiss
Greg Romano
Katharine Saunders
Adam Krinsky, Wilkinson Barker Knauer, LLP

APPENDIX C

I. COMPLIANCE PROGRAM AND REPORTING

1. Company Compliance Officer. Within thirty (30) calendar days after the Closing Date, the Company[1] shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Company Compliance Officer and to discharge the Company's duties with respect to the Conditions specified in the Order, including Appendices B and C. The person designated as the Company Compliance Officer shall be a senior executive within the Company's consumer group. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Order, the Compliance Officer shall have specific knowledge of the Company's operations referred to in these Conditions prior to assuming the duties required by this Appendix C. This designation shall be reported in accordance with section I.5 below.

2. Company Implementation and Compliance Plan. The Company agrees that it shall, within sixty (60) calendar days after the Closing Date, develop and implement an Implementation and Compliance Plan designed to ensure its implementation of and compliance with the Conditions specified in the Order, including Appendices B and C, establishing, *inter alia*, mechanisms to provide, on an ongoing basis, adequate notice and training to all Company personnel involved with the activities covered by the Conditions in the Order, including Appendices B and C. This Implementation and Compliance Plan shall be filed in accordance with section I.5 below and provided to the Independent Compliance Officer for review upon the Independent Compliance Officer's selection.

3. Independent Compliance Officer.

   a. Within ninety (90) days of the Closing Date, an Independent Compliance Officer shall be identified, whose selection is acceptable to the Company and approved by the Commission's Office of General Counsel. If the Company and the Commission's Office of General Counsel do not agree on the selection of an Independent Compliance Officer within ninety (90) days, then the Commission's Office of General Counsel shall select the Independent Compliance Officer.

   b. The Company shall engage the Independent Compliance Officer at its own expense to perform the duties set forth herein, specifically, an evaluation of the adequacy of the Company's compliance with the Conditions from the closing date until the condition to provide Lifeline service terminates ("Independent Compliance Officer's Duties"), and shall designate the Commission as a third-party beneficiary to the engagement. The terms of the engagement shall be subject to approval by the Commission's Office of General Counsel.

   c. The Independent Compliance Officer and any persons retained by the Independent Compliance Officer to effectuate this Appendix C may not (i) have had any employment or familial relationships with the Company within the past two (2) years; (ii) have been employed by or affiliated with any competitor of the Company within the past two (2) years; (iii) have been an employee of the Commission within the past two (2) years; (iv) have submitted any comments or otherwise participated in this transaction proceeding or have been employed by or affiliated with any entity that has submitted any comments or otherwise participated in this transaction proceeding within the past two (2) years; or (v) have any conflict of interest related to the Independent Compliance Officer's Duties that could prevent him or her from performing his or her duties in a fair and unbiased manner. In addition, for a minimum of two (2) years after the end of the Independent Compliance

[1] The Company refers to (i) Verizon Communications Inc., (ii) any affiliate or subsidiary directly or indirectly controlled by Verizon Communications, Inc., and (iv) any successor-in-interest.

Officer's engagement, the Independent Compliance Officer shall not be employed by, or have any business relationship with, the Company.

d. The Independent Compliance Officer shall have the power and authority to review and evaluate the Company's Implementation and Compliance Plan and any related materials to the Plan, and recommend to the Company changes to address any perceived deficiencies in the Plan. Any such recommendations shall be included in the Independent Compliance Officer's Compliance Reports.

e. The Independent Compliance Officer shall have the authority to engage in conversations with Commission staff at any time and to convey any information learned. Such conversations shall be presumed to be confidential under the Commission's rules and also shall not be divulged to the Company without approval of the Commission staff.

f. The Independent Compliance Officer shall prepare and submit, in accordance with the filing and service requirements set forth in section I.5. herein, a Compliance Report within sixty (60) days of receiving the Company's semi-annual reports required under these Conditions. Each such Compliance Report shall be limited to the Independent Compliance Officer's Duties and shall provide a detailed description of the Company's efforts during the relevant period to comply with the Conditions and will specifically meet the reporting requirements for the Conditions set forth herein. The Independent Compliance Officer shall provide a final copy of all Compliance Reports to the Company's Compliance Officer at least seven (7) days before the report is submitted to the Commission, so that the Company may prepare a request for confidential treatment if necessary.

g. The Company shall have thirty (30) days from submission of the Compliance Reports to the Commission to comment on and/or object to the Compliance Report and must submit such comments and/or objections in accordance with the filing and service requirements set forth in section I.5. herein. The Company's comments and/or objections shall be accompanied by a statement explaining the basis for its response and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[2]

h. If the Independent Compliance Officer in the reasonable exercise of the Independent Compliance Officer's Duties discovers or receives evidence that suggests to the Independent Compliance Officer that the Company is materially violating or materially failing to comply with a Condition, the Independent Compliance Officer shall promptly bring that discovery and/or evidence to the attention of the Company and the Commission's Office of General Counsel.

i. The Independent Compliance Officer shall not have the authority to direct the Company to make changes to the Implementation and Compliance Plan, the Company's efforts to comply with the Conditions specified in the Order, including Appendices B and C, or the Company's business practices or policies. The Commission (and its Bureaus and Offices in their delegated authority) retains all rights to determine if a violation has occurred and to take whatever action it deems appropriate. The Independent Compliance Officer also shall not have the authority to review the business activities or management of the Company that do not directly relate to the Independent Compliance Officer's Duties and shall not have the authority to participate in the business activities or management of the Company. The Independent Compliance Officer's powers shall be limited to those in this compliance program and reporting section.

[2] 47 CFR § 1.16.

j. The Company shall reasonably assist the Independent Compliance Officer in the performance of the Independent Compliance Officer's Duties set forth in this Order. The Company shall take no action to interfere with or to impede the Independent Compliance Officer's accomplishment of his or her duties. The Independent Compliance Officer, and any person retained by the Independent Compliance Officer, may, in connection with the reasonable exercise of his or her responsibilities, subject to the Company's privilege rights, on reasonable notice to the Company during normal business hours, and in coordination with the Company Compliance Officer:

   i. Interview any Company personnel for any purpose reasonably related to the Independent Compliance Officer's duties; any such interview will be subject to the reasonable convenience of such personnel and the Company will make such personnel available;

   ii. Have such access to the facilities of the Company as is reasonably required by the Independent Compliance Officer's duties;

   iii. Have full and complete access to and inspect and copy any document, email, contract, and any other information in the possession, custody, or control of the Company reasonably related to the Independent Compliance Officer's duties; and

   iv. Require the Company to provide compilations of documents, data, or other information reasonably related to the Independent Compliance Officer's duties, and to submit reports to the Independent Compliance Officer containing such material, in such form as the Independent Compliance Officer may reasonably direct.

k. Any objections by the Company to actions by the Independent Compliance Officer must be conveyed in writing to the Commission's Office of General Counsel and to the Independent Compliance Officer within thirty (30) calendar days after the action giving rise to the objection or else such objection may be considered waived at the discretion of the Commission's Office of General Counsel. Any such objections will be resolved by the Commission's Office of General Counsel within thirty (30) days. The Company need not comply with any request or action of the Independent Compliance Officer that is subject to an objection lodged with the Commission until the Office of the General Counsel resolves the objection.

l. The Independent Compliance Officer may hire such persons on reasonable terms and costs as are reasonably necessary to fulfill the Independent Compliance Officer's duties, with prior notice and subject to the approval of the Commission's Office of General Counsel. The Independent Compliance Officer shall serve at reasonable costs and expense and any persons hired to assist the Independent Compliance Officer shall serve at the cost and expense of the Company, on such terms and conditions as the Commission's Office of General Counsel reasonably approves, and shall be subject to the execution of customary confidentiality agreements acceptable to the Company. The compensation of the Independent Compliance Officer and any persons hired to assist the Independent Compliance Officer shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities and consistent with reasonable expense practices. The Independent Compliance Officer shall submit a monthly expense report in reasonable detail to the Company and the Commission's Office of General Counsel, with the first such report to be submitted within thirty (30) days after the selection of the Independent Compliance Officer, describing the total amounts expended.

m. The Commission's Office of General Counsel may at any time, on reasonable grounds, require the Company to replace the Independent Compliance Officer with a substitute

Independent Compliance Officer selected by the same selection process as used in the initial selection.

n. The Company may not refuse to pay the Independent Compliance Officer without first receiving approval of the Commission's Office of General Counsel. If the Company determines that the Independent Compliance Officer has ceased to act or failed to act diligently or in a cost-effective manner, it may submit a request to the Commission's Office of General Counsel proposing corrective actions to be taken by the Independent Compliance Officer, including, without limitation, adjustments of amounts charged by the Independent Compliance Officer or the selection of a substitute Independent Compliance Officer.

o. The Independent Compliance Officer's engagement will continue for six months following termination of the condition to provide Lifeline services.

p. To the extent that this Condition permits or requires the Independent Compliance Officer to make requests of, or otherwise communicate with the Company, the Independent Compliance Officer shall first direct such communications—including, but not limited to, any requests for documents, access to the facilities access, or access to the Company's personnel—to the Company's Compliance Officer who shall be obligated to respond within one business day.

q. Nothing in this Condition shall be construed to effectuate a waiver of any and all privileges that apply, including but not limited to the attorney-client privilege or the work product doctrine, and under no circumstances shall the Independent Compliance Officer have the right to request documents or information protected by any applicable privilege. Likewise, the Company shall not be required to provide any materials to the Independent Compliance Officer before the Company's counsel has been given a reasonable opportunity to review those materials and withhold those materials deemed to be shielded from disclosure under any applicable privileges. In the event that the Company has taken reasonable steps to prevent the disclosure of privileged materials and in an inadvertent production of privileged materials occur, the Company may request the privilege document may be returned to the Company and the Independent Compliance Officer permanently destroy and disregard that information. The Independent Compliance Officer shall comply with any such request provided it is made by the Company, in writing, within a reasonable time after the Company discovers the inadvertent production. The Company shall have the right to have counsel present for any interview the Independence Compliance Officer conducts with any Company personnel.

4. <u>Reporting Requirements</u>

a. The Company shall file with the Commission, in accordance with the filing and service requirements set forth in section I.5. herein, publicly available semi-annual reports describing its compliance with each of the Conditions herein including the information it proposed in its commitments letter regarding both Lifeline and non-Lifeline customers. This information will be separated out by Lifeline and non-Lifeline customers. The reporting requirements herein are for a time period of seven years following the close of the transaction. As described above in section I.3 above, the Independent Compliance Officer will prepare and submit publicly available Compliance Reports within sixty (60) days of receiving the Company's semi-annual reports.

b. The Company shall report, in accordance with the filing and service requirements set forth in section I.5. herein, any material noncompliance with the Conditions of this Order within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of material noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance.

5. Confidentiality and Filing and Service Requirements. Any and all materials submitted to the Commission by any party pursuant to these Conditions, unless otherwise provided in this Appendix C, shall be filed in the appropriate docket with the Commission's Secretary's Office with an electronic copy submitted via email to the addresses listed below. The Commission recognizes that information submitted pursuant to these Conditions is likely to include material that is confidential which should not be routinely available for public inspection pursuant to 5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905; and 47 CFR § 0.457(d). Parties may request confidential treatment under 47 CFR § 0.459. Parties submitting such confidential material shall provide an explanation of why the material should be considered confidential with both an unredacted (with confidential material marked) and a redacted version of any submission to the Commission's Secretary's Office with electronic copies submitted via email to the addresses listed below.

(a) Wireless Telecommunications Bureau:
Charles Mathias (or his successor)
With a copy submitted electronically to Charles.Mathias@fcc.gov.

(b) Office of Economics and Analytics:
Catherine Matraves (or her successor)
With a copy submitted electronically to Catherine.Matraves@fcc.gov.

(c) International Bureau:
David Krech (or his successor)
With a copy submitted electronically to David.Krech@fcc.gov.

(d) Office of General Counsel:
Joel Rabinovitz (or his successor)
With a copy submitted electronically to Joel.Rabinovitz@fcc.gov.

(e) Enforcement Bureau
EnforcementBureauIHD@fcc.gov

(f) Independent Compliance Officer:
To be selected.

CONCURRING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, Memorandum Opinion and Order, GN Docket No. 21-112

Approving this transaction promotes the public interest, and therefore I support the decision. So I want to commend Chairwoman Rosenworcel and her team for their work on this proceeding. As I have noted previously, I have concerns with the standards and frameworks that the agency applies in transaction reviews.[1] Rather than relitigating those concerns here, I am voting to concur in the outcome of today's decision.

[1] *See 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 (2019) (Statement of Commissioner Brendan Carr); Remarks of Commissioner Brendan Carr at the Phoenix Center's 19th Annual U.S. Telecoms Symposium, *Keeping Pace With Dynamic Industries* (Dec. 3, 2019), https://docs.fcc.gov/public/attachments/DOC-361147A1.pdf.