

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
América Móvil, S.A.B. de C.V., Transferor,)	
and)	
Verizon Communications Inc., Transferee,)	
)	IB File No. ITC-T/C-20200930-00173
Application for Consent to Transfer Control)	
of TracFone Wireless, Inc. Pursuant to)	
Section 214 of the Communications Act of)	
1934, as Amended)	
)	
Proposed Transfer of Control of Tracfone)	
Wireless, Inc., to Verizon Communications)	GN Docket No. 21-112

**REPLY COMMENTS OF THE
AMERICAN ANTITRUST INSTITUTE**

I. INTRODUCTION

The American Antitrust Institute (AAI) submits these Reply Comments in response to the Proposed Transfer of Control of TracFone Wireless to Verizon Communications, Inc. (GN Docket No. 21-112); and Application for Consent to Transfer Control of TracFone Wireless, Inc. Pursuant to Section 214 of the Communications Act of 1934, as Amended (IB File No. ITC-T/C-20200930-00173).¹ Applicants América Móvil, S.A.B. de C.V. (“Tracfone”) and Verizon Communications Inc. (“Verizon”) request that the Federal Communications Commission (“Commission”) approve their application (“Application”). The Tracfone-Verizon deal, proposed in September of 2020, is worth \$6.9 billion.²

¹ See Application for Consent to Transfer Control of International Section 214 Authorization of América Móvil, S.A.B. de C.V. and Verizon Communications, Inc., Fed. Commc’ns. Comm’n, IB File No. ITC-T/C-20200930-00173, Sept. 30, 2020 (“Application”). The Commission opened a new docket in this proceeding on Mar. 30, 2021. See Federal Communications Commission Establishes Docket for Proposed Transfer of Control of Tracfone Wireless, Inc. to Verizon Communications Inc., Public Notice No. DA 21-376, Fed. Commc’ns. Comm’n, GN Docket No. 21-112, Mar. 30, 2021, *available at* <https://ecfsapi.fcc.gov/file/033063625812/DA-21-376A1.pdf>.

² Bevin Fletcher, *Verizon swoops into prepaid with \$6.9B Tracfone acquisition*, FIERCEWIRELESS.COM, Sep. 14, 2020, *available at* <https://www.fiercewireless.com/financial/verizon-dives-into-prepaid-plans-to-acquire-tracfone-for-up-to-6-9-billion>

The AAI has reviewed the application and other submissions in both dockets, including comments and reply comments. The acquisition raises significant concerns under the Commission’s standard that the proposed transfer be consistent with the public interest, convenience, and necessity.³ The proposed transfer will eliminate the largest standalone rival (Tracfone) in the pre-paid wireless market and put it into the hands of Verizon, one of the “Big 3” facilities-based mobile network operators (MNOs). Verizon’s share of the pre-paid wireless market will increase substantially, while it continues to control the network access needed by smaller mobile virtual network operators (MVNOs) in order to resell pre-paid wireless services to consumers.

The acquisition would cement an oligopoly in the pre-paid wireless market between Verizon, T-Mobile, and AT&T. These are *very same* companies that make up the Big 3 facilities-based MNO oligopoly created in the premium, post-paid market in the aftermath of the Sprint-T-Mobile merger only a year ago.⁴ 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. AAI urges the Commission to assess the proposed transfer in light of this bigger, troubling picture of a restructured wireless communications sector.

AAI is concerned that the proposed transfer will likely have harmful horizontal and vertical competitive effects in the market for pre-paid wireless service, leading to higher prices, lower quality, and less innovation. These effects would be felt by an important segment of consumers that have already been hard hit by the COVID-19 pandemic, economic downturn, and other disruptions. These concerns have been either ignored or downplayed in the Application, which waves away competitive issues and makes broad and unsupported claims of public interest benefits. Verizon’s motivation for acquiring Tracfone, namely, to secure its own “flanker” brand, only highlights this flaw, since the

³ 47 U.S.C. § 214(a); 47 C.F.R. § 63.18.

⁴ Diana L. Moss, *Why the Proposed Sprint-T-Mobile Merger Should be DOA at the DOJ*, AM. ANTITRUST INST., at 5-8, Jun. 5, 2018, available at https://www.antitrustinstitute.org/wp-content/uploads/2018/08/AAI_Sprint-T-Mobile_Comm_6.5.18.pdf.

acquisition would enhance its incentives to extend its already considerable market power to the market for pre-paid wireless service.⁵ AAI urges the Commission to deny Applicants' proposed transfer in order to preserve competition in the market for pre-paid wireless service and protect the consumers who depend on it.

II. INTEREST OF THE AMERICAN ANTITRUST INSTITUTE

AAI is an independent, nonprofit organization, established in 1998.⁶ AAI's mission is to promote competition that protects consumers, businesses, and society. We serve the public through education, research, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of competition policy. AAI has provided legal and economic analysis and commentary on mergers, spectrum auctions, net neutrality, antitrust enforcement, and regulatory policy involving the communications sector for over 20 years.

III. THE PRE-PAID WIRELESS MARKET IS VITALLY IMPORTANT TO PARTICULARLY VULNERABLE CONSUMERS IN THE U.S.

The pre-paid wireless market is vitally important to a significant number of particularly vulnerable consumers in the U.S. It is the Commission's statutory duty to protect those consumers. Applicants characterize these consumers as "value-conscious."⁷ But the reality is that the consumers directly affected by Verizon's acquisition of Tracfone are unable to afford contract-based, higher priced premium, post-paid wireless service plans. Such plans feature unlimited calling, texting, and data that often require expensive mobile devices like smartphones. And eligibility for such plans usually requires that a subscriber possess a good credit rating, which many consumers may not have. The distinct pre-paid wireless market features lower-income consumers that in many cases require lifeline wireless services. This market should be no less important to competition enforcers and sector regulators than the high-profile post-paid market.

⁵ Application, *supra* note 1, at 4.

⁶ For more information, please visit antitrustinstitute.org.

⁷ Application, *supra* note 1, at 4.

Federal antitrust enforcers did not give the proposed Tracfone-Verizon deal a second look under the Hart-Scott-Rodino Act premerger notification program.⁸ The transaction received “early termination” by the federal antitrust agencies on November 24, 2020, only months after the highly concentrative, 4-3 merger of facilities-based carriers Sprint and T-Mobile was consummated in mid-2020.⁹ The U.S. Department of Justice (DOJ) allowed the Sprint-T-Mobile merger to proceed in the face of strong opposition by state antitrust enforcers, market participants, industry groups, and competition and consumer advocates, subject to a settlement requiring a complex and risky mix of remedies.¹⁰ This included the divestiture of Sprint’s pre-paid Boost brand to Dish, a firm with no track record in the wireless markets.¹¹

The troubling early termination of the Tracfone-Verizon deal came as no surprise. Indeed, if the DOJ did not move to block Sprint-T-Mobile—a merger that created the Big 3 oligopoly in the wireless service market—then it certainly could not take issue with an acquisition that installs the same Big 3 in the pre-paid wireless market. A lack of antitrust scrutiny means that the FCC is the “cop on the beat,” and the last line of defense in holding Tracfone and Verizon to account fully for how their transaction will meet the Commission’s statutory public interest test. To date, the companies have not done so.

IV. APPLICANTS USE THE WRONG METRIC TO CONCLUDE THAT THE PROPOSED ACQUISITION RAISES NO HORIZONTAL COMPETITIVE CONCERNS

The proposed acquisition will eliminate important horizontal competition. Verizon’s acquisition of Tracfone would completely eliminate a large, independent rival in the pre-paid wireless market and combine it with one of the three large facilities-based carriers (Verizon) that offers both

⁸ 15 U.S.C. § 18a.

⁹ 20201618: *Verizon Communications Inc.; American Movil, S.A.B. de C.V.*, Early Termination Notices, Fed. Trade Comm’n., available at <https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20201618>.

¹⁰ See, e.g., U.S. and Plaintiff States v. Deutsche Telekom AG, et al., U.S. Department of Justice, available at <https://www.justice.gov/atr/case/us-et-al-v-deutsche-telekom-ag-et-al>.

¹¹ See Tunney Act Comments of the American Antitrust Institute, United States v. Deutsche Telekom AG, No. 1:19-cv-02232 (D.D.C.), at 9, Oct. 11, 2019, available at <https://www.antitrustinstitute.org/wp-content/uploads/2019/10/AI-Tunney-Act-Comments-re-Sprint-T-Mobile.pdf>.

pre-paid and post-paid wireless services. Verizon is currently a small player in the pre-paid market, with about 4 million subscribers.¹² The acquisition of Tracfone will combine Verizon's pre-paid subscribers with Tracfone's roughly 21 million subscribers.¹³ The two other major rivals in the pre-paid market are T-Mobile (including Metro PCS brand), with about 20.5 million subscribers, and AT&T (including Cricket brand), with about 18 million subscribers.¹⁴ Dish has about 9 million subscribers.¹⁵

The pre-paid wireless market thus totals over 70 million subscribers and is moderately concentrated (about 2,400 HHI) under the U.S. Department of Justice/Federal Trade Commission Horizontal Merger Guidelines.¹⁶ The combination of Verizon's existing pre-paid and Tracfone's subscribers increases Verizon's market share from about 5% to 34%. This increases concentration by more than 300 HHI points, pushing post-merger market concentration to about 2,700 HHI, or into the highly concentrated range. Under the Horizontal Merger Guidelines, a merger-induced increase in concentration of over 100 HHI points potentially raises significant competitive concerns and often warrants scrutiny.¹⁷

Applicants downplay any horizontal effects of the proposed acquisition. They calculate market shares by assigning each pre-paid brand's subscribers to the facilities-based carrier on which each pre-paid brand "rides" (*i.e.*, leases radio access network (RAN) at wholesale). For example, Applicants assert that, for the purposes of calculating market share, "...the Commission attributes MVNO customers to their host facilities-based providers."¹⁸ About 13 million Tracfone subscribers already ride on the Verizon system. Applicants thus conclude that transferring over the remaining almost 8

¹² Fletcher, *supra* note 2.

¹³ Mark Lowenstein, *Lowenstein: What's the roadmap for prepaid in the United States?* FIERCEWIRELESS.COM, Nov. 19, 2020, available at <https://www.fiercewireless.com/wireless/lowenstein-what-s-roadmap-for-prepaid-united-states>. See also, Fletcher, *supra* note 2.

¹⁴ Application, *supra* note 1, at 14. See also Fletcher, *supra* note 2.

¹⁵ Fletcher, *supra* note 2.

¹⁶ U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf> ("Horizontal Merger Guidelines").

¹⁷ *Id.*

¹⁸ Application, *supra* note 1, at 5.

million subscribers that currently ride on the systems of T-Mobile and AT&T after the acquisition would result in a “de minimis,” “net addition of roughly two percent of all mobile wireless connections.”¹⁹

Applicants’ approach to calculating market shares in the pre-paid wireless market is flawed and misleading. Their reference to how the Commission calculates markets shares is based on the Commission’s 20th Wireless Report (2017).²⁰ There, the report explains that “Following widespread industry practices, the Commission generally attributes the subscribers of MVNOs to their host facilities-based service providers, including when it calculates market concentration metrics.”²¹ What Applicants do not say is that the Commission’s approach to calculating market shares described in the 20th Wireless Report is performed for the purpose of calculating market shares for providers of *all* wireless services. The instant proceeding addresses the effects of the acquisition in the distinct pre-paid wireless market.

Applicants’ attribution of market shares to host facilities-based providers is not only misleading, it is contrary to basic economics. MVNOs pay a wholesale price for network access so that they can resell pre-paid service to consumers. Their economic objective in the pre-paid market is therefore to maximize the difference between their wholesale cost and retail price. A great deal of market power can be exercised by pre-paid rivals within this margin, especially if markets are not conducive to competitive outcomes. The oligopolized, pre-paid wireless market that would result from Verizon’s acquisition of Tracfone is decidedly not conducive to competitive outcomes. Calculating market shares on the basis of pre-paid subscribers, as shown above, reflects the relevant economics of

¹⁹ *Id.*, at 6.

²⁰ *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, Twentieth Report*, Fed. Comm’n. Comm’n, Sept. 27, 2017, *available at* <https://docs.fcc.gov/public/attachments/FCC-17-126A1.pdf>.

²¹ *Id.*, at n. 99.

how the proposed acquisition of Tracfone enhances Verizon's ability and/or incentive to exercise market power.

When market shares are calculated correctly, the large increase in concentration is clearly problematic. In eliminating Tracfone as an independent, standalone rival, the acquisition would significantly increase Verizon's pre-paid market share and leave only two other players (AT&T and T-Mobile) as rivals in the pre-paid market. And the disruptions associated with Dish's acquisition of Sprint's divested Boost brand make it unreliable in potentially disciplining prices increases post-acquisition.²² The pre-paid market would thus look almost identical to the oligopolized post-paid market. Given the magnitude of these issues, AAI urges the Commission to deny the request for transfer.

V. VERIZON WILL HAVE STRONGER INCENTIVES TO FORECLOSE RIVAL PRE-PAID BRANDS POST-ACQUISITION

The proposed transfer of Tracfone Wireless, Inc. to Verizon could also have significant vertical anti-competitive effects, which are ignored in the Application. While vertical mergers do not eliminate rivals or increase market concentration, they can enhance the ability and/or incentive for a merged firm to engage in conduct that harms competition at a horizontal level. By combining inputs with distribution, for example, a vertical merger can enhance incentives for the merged firm to exclude its downstream or upstream rivals, either by raising their costs or cutting off their access to critical resources.²³ The magnitude of horizontal effects from a vertical combination depends on a number of factors, including concentration in upstream input and downstream output markets.

As a facilities-based carrier, Verizon sells network access at wholesale to a number of MVNOs, which then resell pre-paid wireless service to consumers. As noted earlier, combining Verizon's

²² Bevin Fletcher, *What T-Mobile 3G CDMA shutdown means for Boost Mobile*, FIERCEWIRELESS.COM, Mar. 2, 2021, available at <https://www.fiercewireless.com/operators/what-t-mobile-3g-cdma-shutdown-means-for-boost-mobile>.

²³ See, e.g., Steven C. Salop, *Invigorating Vertical Merger Enforcement*, 127 YALE L.J. 1962 (2018). See also, Michael Riordan & Steven Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach* 63 ANTITRUST L. J. 513 (1995).

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.

Verizon's post-acquisition strategy to disadvantage rival MVNOs could include cutting them off entirely, raising their costs by increasing wholesale prices for network access, or degrading the quality of their service. Verizon stands to profit from such a strategy. There are only two other MNOs to which disadvantaged MVNOs could turn. With their own significant shares in the pre-paid market, both T-Mobile and AT&T have incentives to favor their own brands, making it even more difficult for rival MVNOs to switch to other MNOs for needed network access.

With little competition among MNOs and the inability of the MVNOs to "self-supply," a Verizon strategy to foreclose rival MVNOs would likely raise prices for pre-paid wireless services. And given Verizon's share of the post-acquisition pre-paid market, the gains from diverting subscribers of rival MVNOs to its new Tracfone brand (at higher prices) would likely exceed any lost MVNO wholesale revenue. As a result, consumers of pre-paid wireless service are likely to pay higher prices, receive lower quality service, and suffer from less innovation.

The possibility of adverse vertical competitive after Verizon acquires Tracfone is not speculative. The U.S. Department of Justice/Federal Trade Commission Vertical Merger Guidelines set out the conditions under which input foreclosure is likely, including a highly concentrated MNO market.²⁴ Perhaps even more compelling, the DOJ's complaint in Sprint-T-Mobile clearly articulates the concern that the merger could diminish competition for wholesale network access: "Competition between Sprint and T-Mobile to sell mobile wireless service wholesale to MVNOs has benefited

²⁴ U.S. Department of Justice & Federal Trade Commission, Vertical Merger Guidelines, at 2, Jun. 30, 2020, https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-verticalmerger-guidelines/vertical_merger_guidelines_6-30-20.pdf.

consumers...[t]he merger’s elimination of this competition likely would reduce future innovation.”²⁵

The DOJ’s Proposed Final Judgment in Sprint-T-Mobile thus included, among other conditions, the requirement that Sprint-T-Mobile abide by all terms of their existing MVNO agreements.²⁶

Verizon’s proposed acquisition of Tracfone raises significant vertical competitive concerns. As aptly put by the Communications Workers of America in their comments: “If the threat of switching to Verizon and AT&T could not protect MVNOs that relied on T-Mobile, why should the Commission now expect competition to somehow protect the independent MVNOs that rely on Verizon after it acquires TracFone, the leading pre-paid MVNO provider?”²⁷ In light of the significant horizontal and vertical competitive concerns raised by the proposed transfer, the Commission should deny the Application.

VI. APPLICANTS’ EFFICIENCIES CLAIMS ARE BROAD AND UNSUPPORTED

The gravity of the competitive concerns raised by Verizon’s proposed acquisition of Tracfone are amplified by Applicants’ unsupported claims regarding the public interest benefits of the transfer. Applicants do not provide even the basic support necessary for the Commission to conclude that such benefits are cognizable and achievable *only* through the acquisition.²⁸ Given the magnitude of the competitive concerns raised by the proposed transfer, such benefits would also have to be commensurately large.

Applicants’ public interest benefits claim rests on the statement that the transfer will: (1) “...deliver public interest benefits in the form of more options and better choices for TracFone’s generally value-conscious set of customers” and (2) “...accelerate Verizon’s ability to compete for and

²⁵ U.S., et al, v. Deutsche Telekom AG, et al., Complaint, Case 1:19-cv-02232 (D.D.C., Jul. 26, 2019), at PP. 22, <https://www.justice.gov/atr/case-document/file/1187751/download>

²⁶ *Id.*, at § VII.A.

²⁷ Comments of the Communications Workers of America, América Móvil, S.A.B de C. V. and Verizon Communications, Inc., at 17, IB File No. ITC-T/C-20200930-00173, Dec. 18, 2020.

²⁸ Horizontal Merger Guidelines, *supra* note 16, at § 10.

better serve value-oriented customers.”²⁹ These broader claims are followed by further assertions that the transaction will deliver a “wider variety of devices” to Tracfone customers, enable them to “[a]ccess to new technologies and service options (like 5G);” provide “[i]mproved international roaming options,” provide access to “[s]uperior network performance” through Verizon’s “award-winning” network quality, and “[e]xpanded distribution” for Tracfone.³⁰

Applicants provide no evidence or support for how the foregoing public interest benefits will materialize. Nor do they pass muster on why Verizon cannot achieve such benefits for pre-paid consumers without acquiring Tracfone. For example, Applicants do not address the obvious question of how different data capability and network speeds associated with pre-paid wireless service may constrain consumers’ ability to use a wider array of devices. Applicants do not address why pre-paid customers do not already have access to Verizon’s “award-winning” network quality, and why the acquisition is necessary to enable that benefit. Moreover, there is no detail on how Verizon will expand distribution of Tracfone services post-acquisition, especially during an economic downturn and COVID-related disruption.

In sum, Applicant’s unsupported arguments provide the Commission with little basis for finding that claimed public benefits will assuage concerns over likely anticompetitive effects and that the proposed transfer is in the public interest. The AAI therefore urges the Commission to reject Applicants’ claimed benefits in its assessment and to deny the request for the proposed transfer.

Respectfully submitted,

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²⁹ Application, *supra* note 1, at 2-4.

³⁰ Application, *supra* note 1, at 10-13.