Decision <u>**PROPOSED DECISION OF ALJ GLEGOLA**</u> **(Mailed 10/15 /2021)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TracFone Wireless, Inc. (U4321C), América Móvil, S.A.B. de C.V. and Verizon Communications, Inc. for Approval of Transfer of Control over Tracfone Wireless, Inc.	Application 20-11-001

DECISION GRANTING JOINT APPLICATION AND APPROVING TRANSFER OF CONTROL OF TRACFONE WIRELESS, INC. TO VERIZON COMMUNICATIONS, INC., SUBJECT TO CONDITIONS

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DECISION GRANTING JOINT APPLICATION AND APPROVING TRANSFER OF CONTROL OF TRACFONE WIRELESS, INC. TO VERIZON COMMUNICATIONS, INC., SUBJECT TO CONDITIONS

Summary

This Decision approves the joint application of TracFone Wireless, Inc. (U4321C) (TracFone), América Móvil, S.A.B. de C.V. (América Móvil), and Verizon Communications, Inc. (Verizon) to transfer control of TracFone from América Móvil to Verizon, with conditions. Consistent with Public Utilities Code Section 854, this Commission finds that absent conditions, the proposed transaction is not in the public interest.

The conditions mitigate potential harms to customers by: 1) requiring Verizon and TracFone to complete the migration of TracFone customers currently not using Verizon's network within two years; 2) requiring Verizon and TracFone to offer current TracFone customers with incompatible handsets as a result of the acquisition a Verizon compatible handset or subscriber identification module card at no cost; 3) requiring Verizon or TracFone to offer California LifeLine service for 20 years following the close of the transaction; 4) requiring Verizon to offer California LifeLine plans, handsets, and devices in its stores; and 5) requiring Verizon and TracFone to achieve and maintain specific levels of California LifeLine customer enrollment. We establish a reporting process, as well as a mitigation enforcement program with penalties if specific performance requirements are not met.

This proceeding remains open.

1. Proposed Transaction

On September 13, 2020, Verizon Communications Inc. (Verizon), América Móvil, S.A.B. de C.V. (América Móvil), TracFone Wireless, Inc. (TracFone) (collectively the "Joint Applicants") entered into an agreement pursuant to which Verizon will acquire TracFone from América Móvil (proposed transaction). Under the agreement, América Móvil will sell all of its interests in TracFone to Verizon in exchange for $3.125 billion in cash and $3.125 billion in Verizon common stock at closing. The Agreement also includes up to an additional $650 million in future cash considerations.

Upon completion of the proposed transaction, TracFone will become a wholly owned direct subsidiary of Verizon. TracFone does not own its own wireless network. As a mobile virtual network operator (MVNO), TracFone must rely on facilities-based network providers to offer service through wholesale service agreements. After the close of the proposed transaction, Verizon intends to migrate all TracFone customers currently using the networks of other providers (in general, AT&T and T-Mobile) to Verizon's network.

2. Parties to the Proposed Transaction

Verizon Communications, Inc. (Verizon) is a publicly traded Delaware corporation headquartered in New York, New York. Verizon is a holding company whose operating subsidiaries offer voice, data, and video services in California and elsewhere. Verizon's wireless division, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), provides nationwide voice and data services to nearly 120 million wireless connections, including in California.

América Móvil is a public stock corporation organized under the laws of Mexico with its principal executive offices in Mexico City, Mexico. Mr. Carlos Slim Helú and certain members of his immediate family hold majority equity and voting interests in América Móvil.

TracFone is an indirect, wholly owned subsidiary of América Móvil. TracFone sells and distributes prepaid, no-contract wireless phones and wireless voice service throughout the United States, including in California. TracFone is not a facilities-based carrier and does not hold wireless radio licenses. Rather, TracFone is an MVNO that uses the networks of facilities-based wireless or mobile carriers (also called mobile network operators or MNOs) to provide its services. TracFone currently offers prepaid wireless services, including voice and wireless broadband Internet offerings, to consumers in California through the following nine brands: SafeLink Wireless, Straight Talk Wireless, TracFone, Net10 Wireless, Walmart Family Mobile, Total Wireless, Go Smart Mobile, Page Plus, and Simple Mobile.[1] TracFone provides LifeLine-subsidized services in California, in addition to elsewhere in the country, primarily through its SafeLink brand. As of March 31, 2021, TracFone had approximately 230,000 California LifeLine customers, or roughly 14 percent of California's total LifeLine customers, making TracFone the third-largest retail provider of wireless LifeLine subsidized services in California.

3. Procedural History

On November 5, 2020, Joint Applicants filed their application to transfer TracFone (U4321C) from América Móvil to Verizon.

The following intervenors filed timely protests:

- The Public Advocates Office (Cal Advocates);
- Center for Accessible Technology, Greenlining Institute, The Utility Reform Network (jointly); and
- Public Knowledge, the California Center for Rural Policy, Access Humboldt, Next Century Cities, the Benton Institute for Broadband & Society, Communications Workers of America, Tribal Digital

[1] Joint Statement on Stipulation of Facts, filed April 29, 2021. Stipulation Number 5.

Networks, and the Open Technology Institute at New America (jointly).[2]

A prehearing conference (PHC) was held on January 26, 2021 to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter and address other matters as necessary.

An evidentiary hearing (EH) was held on May 5-6, 2021.

4. Commission Jurisdiction

California Public Utilities (Pub. Util.) Code sections 851-857 require the California Public Utilities Commission (Commission) to review transfers of utility property. Under Pub. Util. Code § 854(a), this proposed transaction requires Commission approval. To implement its review of such transactions in an efficient manner, the Commission requires 30 days advance notice of such a proposed transfer rather than an application for approval of the transfer, while reserving the right to require an application for approval of the transfer after review of the notice.[3]

Under Pub. Util. Code §§ 854(b)(1) and (c), Commission approval requires a showing that the proposed transaction provides short-term and long-term economic benefits to ratepayers and is in the public interest. Pub. Util. Code § 854(b) applies to mergers "where any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding $500 million dollars …" Pub. Util. Code § 854(c) has very similar qualifying language. Pub. Util. Code § 854(g) makes clear that the $500 million threshold in

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[2] Note that TURN, CforAT, CWA and Public Knowledge jointly filed post-evidentiary hearing briefs as "Joint Intervenors."

[3] Decision (D.) 95-10-032 Ordering Paragraph 3.

Pub. Util. Code § 854(b) only applies to affiliates if the affiliate was used to effect the merger, acquisition, or control.

Pub. Util. Code § 854(c) directs the Commission to consider specific public interest factors, but it does not require proof of each factor and does not bar consideration of other criteria. Public interest factors include :

- Maintain or improve the financial condition of the resulting public utility doing business in the state;
- Maintain or improve the quality of service to public utility ratepayers in the state;
- Maintain or improve the quality of management of the resulting public utility doing business in the state;
- Be fair and reasonable to affected public utility employees, including both union and nonunion employees;
- Be fair and reasonable to the majority of all affected public utility shareholders;
- Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility;
- Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state; and
- Provide mitigation measures to prevent significant adverse consequences that may result.

The Scoping Memo and Section 5 of this decision list other factors raised by the pleadings that are relevant to our consideration of the public interest, and we analyze each of those public interest criteria in the following sections.

Pub. Util. Code § 854(f) places the burden on Joint Applicants of proving by a preponderance of the evidence that the requirements of subdivisions (b), (c), and (d) are met.

Pub. Util. Code § 854(e) requires the Commission to "consider reasonable options to the proposal recommended by other parties, including no new merger…"

Wireless carriers are "telephone corporations" and therefore public utilities under Pub. Util. Code §§ 216, 233 and 234. Pursuant to 47 United States Code (USC) Section 322(c)(3), states can regulate neither wireless rates nor entry into the wireless market,[4] but they retain jurisdiction over "other terms and conditions" of wireless service. The legislative history of 47 USC § 322(c)(3) indicates that Congress intended to include transfers of control in the "other terms and conditions" of wireless contracts.[5] In Decision (D.) 95-10-032, the Commission addressed the problem of defining its remaining jurisdiction over wireless providers in light of the above law and concluded that it retained jurisdiction over transfers of ownership of wireless companies.[6]

The Commission has a fundamental responsibility to thoroughly consider the evidentiary record, determine the applicable facts and law, and then exercise its reasonable discretion to craft appropriate remedies.[7] Further, the California

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[4] (A) Notwithstanding Sections 2(b) and 221(b) [47 USC §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

[5] It is the intent of the Committee that the State still will be able to regulate the terms and conditions of these services. By "terms and conditions" the Committee intend to include such matters as . . . transfers of control . . ." House Report No. 103-111, at 251.

[6] D.95-10-032, Conclusion of Law 9: "The transfer of ownership interests in a CMRS entity is not tantamount to entry, and Commission jurisdiction over such transactions is not preempted under the federal legislation."

[7] D.20-08-011 at 48.

Court of Appeal has recognized that the Commission has the authority under Pub. Util. Code § 854 to fashion its own conditions.[8]

5. Issues Before the Commission

The scope of this proceeding includes issues that are relevant to evaluating the proposed transaction's impacts on California consumers and determining whether any conditions should be placed upon the "new" entity to mitigate any significant negative impacts after evaluating the statutory criteria and considerations set out in Pub. Util. Code § 854. The fundamental issue presented by this joint application is whether this proposed acquisition is in the public interest of the residents of California, the standard historically employed by the Commission to evaluate proposed acquisitions like this one. This proceeding will determine the issues described below.

1. Will the transaction impact competition for services currently provided by either company? If yes, is that impact significant? Also, is there a specific geographic region, group of individuals, or businesses that would be impacted? Specific impacts this proceeding will focus on, among others, include:
   a. The impact on California LifeLine customers, as well as other disadvantaged individuals and communities; and
   b. The impact on mobile virtual network operators that current rely on wholesale services from Verizon and/or Verizon affiliates.
   c. Impact on the quality of, and access to, service to California consumers in rural, and other geographic areas.
2. Will the proposed transaction negatively impact existing TracFone customers, including California LifeLine customers? In particular, the Commission will examine impacts related to service quality, customer satisfaction,

[8] *PG&E Corp. v. Pub. Utilities Com.* 118 Cal.App.4th 1174, 1196 (2004).

pricing policies, system integration and device[9] compatibility (including compatibility with Verizon's 5G network) after customers migrate to the Verizon network.

3. Are there other potential negative impacts of this proposed transaction?
4. Would the transaction lead to positive impacts, such as increased efficiency or innovation?
5. Do the potential benefits of this proposed transaction exceed any potential negative effects?
6. Should the Commission approve the proposed transaction?
7. If the Commission approves the proposed transaction, should it impose conditions or mitigation measures to prevent significant adverse consequences and, if so, what should those conditions or measures be?
8. What mechanisms should be used to enforce any conditions or mitigation measures imposed by the Commission?

5. Standard of Review

As noted above, the scope of this proceeding includes issues that are relevant to evaluating the proposed transaction's impacts on California consumers and determining whether any conditions should be placed upon the "new" entity to mitigate negative impacts. This Commission's fundamental determination is whether or not this proposed acquisition overall is in the public interest of the residents of California, with Joint Applicants bearing the burden of proving that in the affirmative.[10] Also as noted above, Pub. Util. Code §§ 854

[9] We note that various parties, as well as the Commission, use the terms devices and handsets to refer to phones. The California LifeLine Program uses the term "handset" to describe phones provided to California LifeLine customers. In addition to handsets, the term "device" includes equipment sold at stores of mobile providers, such as wireless-enabled watches and tablets, among other items.

[10] We note that Joint Applicants in briefs argue the proposed transaction is "not adverse" to the public interest, while intervenors argue the standard is whether the Proposed Transaction is not

Footnote continued on next page.

(b) and (c) provide broad factors that the Commission should consider in determining if a transfer of control is in the public interest, though not all factors are applicable to all transactions.

In the present case, Joint Applicants characterize the proposed transaction as an acquisition of TracFone by Verizon, the holding company. Joint Applicants further assert that Verizon has zero California revenue,[11] arguing that Pub. Util. Code § 854(g) exempts this transaction from the $500 million threshold in Pub. Util. Code § 854(b), since the threshold only applies to affiliates used to effect the merger, acquisition, or control. Cal Advocates and Joint Intervenors both assert that Pub. Util. Code §§ 854(b) or (c) apply because Verizon Wireless made more than $500 million in annual revenue in California[12] and we note that while Joint Applicants dispute Cal Advocates' interpretation of statute, Joint Applicants do not dispute this material fact regarding the annual California revenue of Verizon Wireless.

Implementing or truly effectuating this proposed transaction requires components owned and managed by Verizon Communications' affiliates,[13] including: the network TracFone customers must migrate to,[14] compatible

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in the public interest. We see a distinction between those two choices of words and for clarity indicate the statute reads the Commission must find the proposed the transaction is "in the public interest" not that it is "not adverse to the public interest." *See* Pub. Util. Code § 854(c). Thus a "do no harm" standard is not sufficient in this case.

[11] Application at 12.

[12] Joint Statement of Stipulations on Facts (dated April 29, 2021) at 5, Stipulation 33 (marked CONFIDENTIAL-LAWYERS ONLY).

[13] In addition to Verizon Wireless, affiliates include XO Communications, Verizon Business MCI metro Access Transmission Services Corp. (MCI).

[14] Application at 4 Verizon intends to migrate to its network those TracFone customers whose service now rides on the networks of other facilities-based carriers. Application at 6, "Verizon

Footnote continued on next page.

devices with Verizon's network (including smartphones, tablets, and wearables),[15] Verizon stores,[16] Verizon's contracts, Verizon personnel, and Verizon's management approaches.[17] Therefore, these Verizon subsidiary and affiliate companies also are key to the merger and their revenues should be included in the threshold amount governing Pub. Util. Code §§ 854(b) and (c). This Commission adopted a similar approach in D.20-04-008 and we do so here. The issues identified in the scope of this proceeding will assist the Commission in making the determination whether Joint Applicants have met the burden of proving by a preponderance of the evidence that the proposed transaction is in the public interest.

6. Impact on Competition in California

We first examine the impact this proposed transaction will have on competition in California. Federal antitrust agencies, such as the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ), as well as this Commission, typically use the Herfindahl-Hirschmann Index (HHI),[18] a measure

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is a holding company whose operating subsidiaries offer voice, data, and video services and solutions on its award-winning networks and platforms in California…"

[15] Application at 3.

[16] Joint Applicants Opening Brief at 45. Note the number of brick-and-mortar locations is confidential.

[17] Application at 4. TracFone customers also will benefit from the innovative approach and service experience that have made Verizon the leading provider of postpaid mobile services

[18] *See* DOJ/FTC Horizontal Merger Guidelines, available at https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c. HHI is calculated by squaring the market share of each firm competing in a market, and then summing the resulting numbers, and can range from close to zero to 10,000. FTC/DOJ considers a market with an HHI of less than 1,500 to be an unconcentrated marketplace, an HHI of 1,500 to 2,500 to be a moderately concentrated marketplace, and an HHI of 2,500 or greater to be a highly concentrated marketplace. (*Id*. at § 5.3.) As a general rule, mergers that increase the HHI by more than 200 points in highly concentrated markets "will be presumed to be likely to enhance market power."

of market concentration, when reviewing proposed transactions like this one. As a matter of practice, we do not necessarily use HHI as the sole measuring stick for market power.[19]

6.1. Joint Applicants Position

Joint Applicants assert the marketplace is already competitive and that competition will remain strong if the proposed transaction is approved, or at least not result in a material reduction in competition. Joint Applicants assert that California consumers can choose from prepaid brands offered by over a dozen providers[20] and that the annual churn rate for the California prepaid markets is 47.2 percent,[21] indicating that "good competitive options are available to consumers and that the cost of switching to those options is low…" and that "[b]oth of these facts demonstrate that there is active, ongoing competition for consumers."[22] Additionally, Joint Applicants note that, on the national level, between 2015, the year after AT&T acquired Cricket (and two years after T-Mobile acquired Metro PCS), and 2020, TracFone's total subscriber base declined by five million customers, or nearly 20 percent—from 25.7 million subscribers as of 2015 to 20.7 million as of 2020, and its share of the prepaid segment declined by seven points, while AT&T's share (including Cricket) increased by nine points, and T-Mobile's share (including Metro) increased by four points.[23]

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[19] *See* D. 16-12-025 at 55.

[20] Joint Applicants Opening Brief at 20.

[21] Exhibit VZ-03-C (Vasington) at 43.

[22] Exhibit TF-05 (Israel) at 1-2.

[23] Joint Applicants Opening Brief at 22. Exhibit TF-01-C (Diaz Corona) at 8-9.

Joint Applicants calculate that HHI would increase by 20 to 27 points as a result of the proposed transaction, depending on how DISH is treated in that analysis, with HHI either increasing from 3,163 to 3,190, or from 3,342 to 3,362.[24][25]

Joint Applicants also predict a post-acquisition TracFone will compete more robustly due to cost savings, efficiencies and economies of scale:

> By combining Verizon's network resources with TracFone's experience, brand recognition, distribution network, and other assets, the Transaction will enable the combined company to compete for value-conscious customers better than either company could do alone...[26]
>
> [A]s an MVNO, Tracfone is severely constrained in its ability to compete against brands possessing "owner's economics," including flanker brands,[27] by virtue of their connection to a nationwide MNO. This problem is not unique to TracFone, but rather a result of MVNOs' structural disadvantages when faced with direct competition from competitively aggressive MNOs with vastly superior cost structures…[28]

Joint Applicants assert these cost savings will be shared with consumers.

A second reason Joint Applicants assert that the "new" TracFone will be a more robust competitor is because Verizon has early access to many new,

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[24] Exhibit TF-05 (Israel) at 23. Note at 21-22, Dr. Israel also calculates HHI by attributing MVNOs to the MNOs on which they operate, and considers shares among prepaid plans and MVNOs, moving TracFone's customers from AT&T's and T-Mobile's networks to Verizon's network. When calculating HHI in this manner, Dr. Israel finds that post-transaction HHI decreases by 28 to 119 points.

[25] For clarity, we note the geographic span of the market used in this analysis was at the national level.

[26] Joint Applicants Opening Brief at 24.

[27] A flanker brand is a new brand introduced into the market by a company that already has an established brand in the same product category.

[28] Joint Applicants Opening Brief at 21

innovative, and competitively priced device offerings, an advantage that TracFone currently does not have.[29] (More details on devices in Section 7.2.) Joint Applicants assert that Metro and Cricket, competitors to TracFone, introduce new products and services much faster than TracFone does because those companies do not need to engage in such lengthy negotiations with their parent companies.[30] Joint Applicants argue that this improved access will allow TracFone to respond faster to market demand and rival offerings, and increase the speed with which TracFone can deliver new offerings and the latest technologies to prepaid consumers, who will benefit from these enhancements. Joint Applicants assert this newfound ability to be more nimble in developing, and providing consumers quicker and better access to new technologies and offerings is a pro-competitive consumer benefit and furthers the public interest.

Regarding Verizon's treatment of MVNOs that will become competitors if Verizon acquires TracFone, Joint Applicants state:

> … Verizon will continue to have an incentive to sell wholesale network access to competitively relevant MVNOs—which are the only MVNOs that can matter for an assessment of the Transaction's effect on competition and consumers - including cable companies and other MVNOs with distinct business cases to serve particular sets of consumers (such as those who want to buy wireless services as part of a bundle from their cable provider).
>
> Verizon will continue to have this incentive because those MVNOs offer unique value propositions (*e.g.*, cable companies can bundle mobile service with wireline services) and selling wholesale network access to them allows Verizon to share in the value that those MVNOs create. Those MVNOs will also retain the ability to

[29] Exhibit TF-03 Opening Testimony of Dr. Mark Israel at 18.

[30] *Id* at 16.

> purchase wholesale network access from AT&T and T-Mobile (and, potentially, DISH), which continue to sell such access despite also owning flanker brands. Indeed, to the extent that AT&T and T-Mobile find it beneficial to replace TracFone subscribers that shift to the Verizon network, that would give them an additional incentive to serve other MVNOs.[31]
>
> Verizon has strong incentives to sell wholesale service to MVNOs, even after the Transaction is complete. For *example*, Verizon provides wholesale services to cable companies, which bundle wireless and wireline services. They offer a differentiated product that can attract customers that Verizon might not otherwise reach. Verizon will thus continue to have the incentive to provide network access to cable companies. In fact, after Verizon announced its intention to acquire TracFone, Verizon continued to expand its wholesale arrangements with MVNOs such as Comcast and Charter. Verizon is also aware that, if it did not provide network access to MVNOs that target specific customer niches, those MVNOs could turn to AT&T, T-Mobile, and, in the near future, DISH. Indeed, both AT&T and T-Mobile continue to provide network access to MVNOs notwithstanding their acquisition of entities that were entirely or predominantly MVNOs providing prepaid services, demonstrating that substantial participation in the retail prepaid market is not inconsistent with a robust wholesale offering.[32]
>
> From an economic perspective, the correct standard for assessing the effects of the transaction is the effect on consumers, not the effect on, for *example*, a specific competitor or set of competitors...

Regarding attempts to look at the impact on the MVNO market, Joint Applicants argue that:

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[31] Exhibit TF-04 Rebuttal Testimony of Dr. Mark Israel at 12-13.

[32] Joint Applicants Opening Brief at 54-55.

> … a focus on harm to MVNOs in the wholesale market, for *example*, distinct from the effects on consumers in the downstream market, would not constitute an appropriate standard for evaluating the effects of the merger because any such "harm" to MVNOs can reflect stronger competition from the merged firm. In particular, a TracFone that realizes substantially lower marginal costs would be a much more formidable competitor to other MVNOs, which would benefit consumers even if it reduces the margins of rival MVNOs, meaning the effects on MVNOs of the transaction is the wrong standard, as procompetitive, pro-consumer changes can harm rival MVNOs by increasing the competition they face.[33]

6.2. Intervenors Positions

Neither Joint Intervenors nor Cal Advocates dispute that the "new" TracFone no longer needing to secure wholesale services agreements from MNOs, will benefit TracFone (and Verizon). However, these parties question if the reduced costs associated with these efficiencies will lead to consumer benefits, including passing on the reduced costs, since Joint Applicants do not commit to doing so.

Cal Advocates asserts the proposed transaction will negatively impact competition, with an increase in market concentration in the prepaid wireless market and erode competition in the wholesale market. Cal Advocates calculates that HHI will increase post-acquisition from 2372 to 2712,[34] a higher increase than Joint Applicants' HHI calculation, taking the market from moderately concentrated to highly concentrated. Cal Advocates notes that under the Horizontal Merger Guidelines, mergers resulting in highly concentrated markets

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[33] Exhibit TF-03 Opening Testimony of Dr. Mark Israel at 26.

[34] The geographic span for this market in Cal Advocates' analysis appears to be national.

that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.[35]

Both Joint Intervenors and Cal Advocates express concern over Verizon's future conduct towards competitor MVNOs if the proposed transaction is approved, noting the challenges TracFone currently faces in negotiations with Verizon, including lengthy contract negotiations. Cal Advocates asserts that approving the proposed transaction would further incentivize MNOs to deal unfairly with MVNOs (and other smaller carriers) such that the MVNOs and small carriers cannot effectively compete and would be at risk of exiting the market, which would make the market even more concentrated and harm customers.[36] Cal Advocates contends approving the proposed transaction would essentially eliminate non-facilities-based competition in the prepaid wireless market.[37] Cal Advocates asserts approval of the proposed transaction will diminish or eliminate MVNOs that aren't affiliated with a MNO, thus reducing competitions in the wireless market. Cal Advocates notes that as the Federal Communications Commission (FCC) required that the combined T-Mobile and Sprint divest Boost to DISH Network Corporation for just this reason.[38]

Joint Intervenors note that two Joint Applicant witnesses described the challenges MVNOs have negotiating with MNOs like Verizon, noting that MNOs that owned their own "flanker" brands have an incentive to prevent MVNOs from competing aggressively or responding to competitive moves in a

[35] Cal Advocates Opening Brief at 16.

[36] Cal Advocates Reply Brief at 2.

[37] Cal Advocates Opening Brief at 18. Exhibit CA-02 (Selwyn) at 79-80.

[38] Cal Advocates Opening Brief at 19. Exhibit CA-02 (Selwyn) at 54-59.

timely fashion[39] and have less motivation to negotiate with those other MVNOs trying to gain access to offer LifeLine services through the Verizon network, thus giving TracFone an advantage.[40] Joint Intervenors have not identified a mitigation measure that would ensure that the combined company negotiates with the remaining MVNOs in good faith. Joint Intervenors urge that if the Commission cannot identify measures that would prevent Verizon from refusing or delaying negotiations with MVNOs without a valid business reason, it should deny the transaction.[41] Cal Advocates proposes that "Verizon offer wholesale services to all non-affiliated MVNOs on the same terms and conditions it makes available to its post-acquisition TracFone affiliate."[42] Additionally, Joint Intervenors urge the Commission to monitor whether the combined company refuses or delays negotiations with MVNOs without a valid business reason. Additionally, Joint Intervenors recommend the Commission require the combined company submit a quarterly Tier 1 Advice Letter listing new and ongoing negotiations with MVNOs, including when negotiations began, and listing any completed negotiations and results (*i.e.*, whether the negotiations concluded with an agreement). They recommend that the contents of the advice letter would be available to parties to this proceeding that have access to Verizon—Confidential Lawyers Only documents.[43]

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[39] Joint Intervenors Opening Brief at 85-86.

[40] Joint Intervenors Opening Brief at 86. Tr. Vol. 2, 280:22-281:2 (Mailloux).

[41] Joint Intervenors Opening Brief at 86.

[42] Cal Advocates Opening Brief at 24 and A-1.

[43] Joint Intervenors Opening Brief at 87.

6.3. Discussion

While the proposed acquisition may benefit Verizon and TracFone, those benefits on their own do not necessarily indicate a more competitive market post-transaction, as Joint Applicants appear to contend. We find that Verizon and TracFone are competitors. Expert witnesses for Joint Applicants, including the CEO of TracFone,[44] testified that Verizon and TracFone compete for the same customers. Because of this fact, the proposed transaction decreases competition in the California prepaid wireless market, though it is not clear by exactly how much, or in which regional markets, given the limited information in the record.

Joint Applicants' claim that over a dozen providers offering prepaid plans in California supports a conclusion that the prepaid market is, and will remain, competitive is insufficient because Joint Applicants do not specify which markets these providers serve. Typically, market competition analysis is performed at a regional level (*e.g.*, Los Angeles, or the San Francisco Bay Area), which is especially important here because prepaid wireless providers typically do not serve the entire State. Similarly, the HHI analyses provided by both Joint Applicants and Cal Advocates are of limited use, because each rely on subscriber counts at the national level, instead of in California or at a more granular regional level. This Commission is responsible for reviewing the proposed transaction's impact specifically for California, including specific markets within the State. Despite the limited use of the HHI analysis provided, we note Joint Applicants' analysis indicates the national prepaid market is well above highly concentrated.

[44] We note that representatives of Joint Applicants, as well as their expert witnesses, have contradicted each other regarding whether or not Verizon and TracFone compete against each other.

We are not persuaded by Joint Applicants' argument that a 47 percent churn rate is indicative of a competitive market. As Joint Applicants admit, no government agency uses this metric when reviewing a proposed transaction such as this one, unlike the HHI metric used in antitrust reviews. Additionally, unlike with HHI, no agency or academic has developed standards or ranges for this metric that help distinguish between competitive and noncompetitive markets.[45] In other words, we have no quantitative or qualitative benchmark against which to evaluate the churn rate number. Finally, this number is inflated, given that it includes customers that disconnect and reconnect later on in the same year.[46] We note that roughly 70 percent of the over one million wireless California LifeLine customers delay their subscription renewals even when they receive their annual renewal applications.[47] Given that this churn rate is inflated, and that Joint Applicants provide no precedent or authority to justify using it, or, for that matter, even a study, we determine it offers little value to our analysis and decline to use it.

We find that one significant competitive impact of approving the proposed transaction is that Verizon changes from a very small player in the California prepaid wireless market into the largest. This changes market dynamics because MVNOs that currently are Verizon's wholesale customers become competitors if Verizon acquires TracFone. Here we are not persuaded by Joint Applicant's argument that the Commission should not consider the proposed transaction's impact on competitors. We also are not persuaded by Joint Applicants'

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[45] *See* RT 473-475. TracFone Witness Israel.

[46] *See* RT 219:1-17, Verizon Witness Vasington admits that churn includes disconnections, including disconnections for missing payments and not replacing airtime cards.

[47] *See* RT 308:25-309:2. Response from TURN Witness Mailloux to question from ALJ.

assertions that a post-transaction Verizon is incented to treat competitor MVNOs the same way as the company treats those MVNOs now. The record indicates TracFone's current challenges negotiating with Verizon, including the length of these negotiations, and its inability to secure certain agreements that would allow TracFone to offer additional services to its customers. Joint Applicants also express concerns about whether T-Mobile and AT&T are incented to treat TracFone differently once acquired by Verizon:

> Unlike TracFone, those MNOs are fierce competitors of Verizon and have little incentive to assist Verizon in competing against their "flanker" brands via TracFone. Should those MNOs insist on onerous wholesale terms (or refuse to sell in those geographies at all), TracFone would be forced to come to market with a service and cost structure that is likely to be worse than it possesses as an MVNO.[48]

In short, Joint Applicants want the Commission to accept that Verizon will not be incented to act in an anticompetitive manner towards non-affiliated MVNOs, while at the same time accept that AT&T and T-Mobile are incented to act in an anticompetitive manner. Joint Applicants provide no basis for the Commission to make this conclusion.

While we may not find some of the arguments and analysis on this topic presented by intervenors to be persuasive, we note that Joint Applicants bear the burden of proving that the proposed transaction is not anticompetitive. Joint Applicants do not meet this burden, and the record indicates the transaction will lead to a somewhat less competitive market, though the reduction in competition may not be significant enough to cause an adverse public impact.

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[48] Joint Applicants Rebuttal at 85.

7. Benefits and Harms of Proposed Transaction

To meet their burden of proving that the proposed transaction is in the public interest for California, Joint Applicants must provide evidence that the transaction would result in specific, actionable benefits, or commitments to provide benefits, to California consumers, including many of the low-income, underserved, and vulnerable residents whose access to service is implicated in the proposed transaction.

7.1. Improved Efficiencies and Innovation

Joint Applicants assert the proposed transaction will yield large marginal cost efficiencies because the costs to serve TracFone's customers becomes part of Verizon's incremental network costs, which are a fraction of the price TracFone pays for wholesale services today. Thus, Joint Applicants argue that the substantial reduction in the incremental costs to serve customers will enhance the competitiveness of the combined firm's prepaid offerings, to the benefit of consumers.[49] Verizon anticipates that TracFone will be more profitable with the proposed transaction than without and that the cost savings associated with the transaction would be shared with customers.

Neither Joint Intervenors nor Cal Advocates dispute that the new TracFone no longer needing to secure wholesale agreements will benefit TracFone (and Verizon). However, these parties question if the reduced costs associated with these efficiencies will lead to consumer benefits, including passing on the reduced costs, since Joint Applicants do not commit to doing so. In particular, Cal Advocates asserts that Verizon's financial projections include increased prices for TracFone customers, with TracFone's projected Average

[49] Joint Applicants Opening Brief 25-27.

Revenue per Unit (ARPU)[50] through 2025 increasing more under Verizon ownership than as a standalone company, with Verizon also projecting a decline in TracFone customers.[51,52] Joint Intervenors also argue that with the loss of a standalone TracFone, a pioneer in the provision of low-cost services and LifeLine, the proposed transaction promises to reduce innovation.[53]

7.2. Access to Better Services and Devices

Joint Applicants assert TracFone's current dependence on MNOs for wireless service, as well as its limited buying power, hinders its ability to provide competitive offerings on a timely basis. For *example*, TracFone currently cannot offer fixed wireless Internet service because it has been unable to reach agreement with any MNOs to support such an offering.[54] Thus, Joint Applicants contend the proposed acquisition will improve TracFone's ability to respond quickly to market demand and rival offerings, and increase the speed with which TracFone can deliver new offerings and the latest technologies to customers and potential customers, including access to 5G, home Internet service, and international roaming for TracFone customers and other prepaid wireless consumers.[55] Increased device offerings include both 4G and 5G devices,

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[50] ARPU is calculated by dividing total revenue from wireless service monthly recurring, usage and special feature charges (excluding handset rental or instalment payments) by the number of customer billing units.

[51] Cal Advocates Selwyn 16-24.

[52] Note these numbers appear in confidential testimony and are at the national level, not in California.

[53] Joint Intervenors Reply Brief at 44.

[54] Joint Applicants Opening Brief at 38. Exhibit TF-01-C (Diaz Corona) at 15; (*See* also RT at 425:21-24 TracFone/Diaz Corona) (noting that TracFone has been unable to reach agreement with any of its carriers to offer fixed wireless services).

[55] Joint Applicants Opening Brief at 40. Exhibit VZ-03-C (Vasington) at 15-17; Exhibit. VZ-07-C (Vasington) at 28-30; *See* also Exhibit TF-01-C (Diaz Corona) at 14-15; *See* also RT at 323:21-24

Footnote continued on next page.

customer premises equipment for home Internet service,[56] and a broader range of mobile devices, such as mobile hotspots, wearables, children's watches[57] and low-cost flip phones with app store capabilities.

While both Cal Advocates and Joint Intervenors do not dispute that Verizon offers more advanced devices and service plans than TracFone currently offers, both parties assert Joint Applicants have not demonstrated that the proposed transaction will result in TracFone customers having access to these more advanced products because Verizon has not committed to offering them at a low-cost to TracFone customers, including California LifeLine customers. Cal Advocates notes that almost all TracFone customers are low-income[58] and thus likely unable afford many of the "attractive" options offered by Verizon. A 5G-enabled smartphone on average costs $915.37, with the least expensive 5G option at $399.99,[59] while LTE Home includes a $240 upfront cost for a router.[60] Cal Advocates further asserts that TracFone's brands offer plans that are often less expensive than prepaid plans offered by Cricket, AT&T, Metro, T-Mobile, Boost, Verizon Wireless (prepaid) and Visible.[61]

(TracFone/Diaz Corona) (explaining that as TracFone gained access to "new technology such as fixed wireless [and] 5G" after the Transaction, TracFone "would offer those to the market").

[56] Joint Applicants Opening Brief at 41. Exhibit VZ-07-C (Vasington) at 31.

[57] Exhibit VZ-03-C (Klein) at 14.

[58] Cal Advocates Opening Brief at 25. This relies on the California Department of Housing and Community Development's income thresholds, which categorize a family of four with a household income of less than $69,680 as low-income.

[59] CA-08-EC - Duffy Testimony at 15.

[60] Cal Advocates Opening Brief at 45. Cal Advocates cites testimony of Ms. Klein at the EH (*See* RT 35:26-36:16).

[61] Cal Advocates Opening Brief at 26. Exhibit CA-04 (Karambelkar) at 20-21.

Joint Intervenors argue that Joint Applicants' assertions regarding increased device offerings conflate affordability and consumer choice,[62] as Verizon could adjust a TracFone plan to increase the amount of data offered, add features, or increase service quality while also increasing the price and only offering a slight discount from what such a plan would have previously cost.[63] In order to ensure that prepaid and LifeLine customers receive the public interest benefits of the proposed transaction, Joint Intervenors recommend that the Commission require Verizon offer a 5G-compatible handset as part of LifeLine service within one year after the close of the transaction in locations where Verizon currently offers retail services over 5G, and within six months of rolling out 5G in a new market.[64] Cal Advocates propose a number of mitigation measures aimed at ensuring that Verizon and TracFone continue to offer prepaid service plans with comparable features at comparable prices to TracFone's existing plans for low-income customers.

7.3. Customer Migration

Verizon's post-acquisition plans include migrating all TracFone customers currently not serviced by the Verizon network to Verizon's network. In California, this means hundreds of thousands of current TracFone customers will need to be migrated from AT&T's and T-Mobile's networks to Verizon's network, including the vast majority of LifeLine customers. Hundreds of thousands of TracFone customers already use compatible devices and will need no additional equipment to migrate to Verizon's network. Hundreds of thousands of customers will require only a subscriber identification module

[62] Joint Intervenors Opening Brief at 74.

[63] Joint Intervenors Opening Brief at 76.

[64] Joint Intervenors Opening Brief at 84.

(SIM) card swap to migrate, which Joint Applicants commit to provide for free. Additionally, over two hundred thousand customers either have devices that are incompatible with the Verizon network and require a new device to migrate to Verizon's network, or Joint Applicants have not yet identified their migration status.

Joint Intervenors assert Verizon's transition plan to bring TracFone customers onto the Verizon network from other non-Verizon facilities-based networks is vague and insufficient to ensure that these TracFone customers—including the majority of TracFone's LifeLine customers—will not lose service, incur additional costs (such as having to pay for a new handset), or be forced to switch to plans that are more expensive or do not meet their needs. Joint Intervenors note that the United States Department of Justice's Merger Guidelines state that the purported benefits of a merger should not be considered if they are "vague, speculative, or otherwise cannot be verified by reasonable means,"[65] arguing that the same standard should be used by this Commission.

Cal Advocates asserts the TracFone customers currently on the networks of T-Mobile or AT&T, that will be forced to migrate to Verizon's network, will be disproportionately California LifeLine customers. Cal Advocates argues that the proposed transaction's migration plan is too limited and may force TracFone's customers, who are not currently on Verizon's network, to choose between upgrading their devices or to seek out a new wireless service provider. Consequently, Cal Advocates asserts that TracFone customers will need to pay for Verizon-enabled devices to replace their incompatible device. Cal Advocates

[65] Joint Intervenors Opening Brief at 3.

also notes that Verizon's prepaid phone brands and models have significantly higher prices than TracFone brands.[66] In addition to the cost of new devices, Cal Advocates observes that these low-income customers will need to find transportation to a store to receive the compatible equipment.[67] Moreover, in response to claims by Joint Applicants that these customers can choose another provider, Cal Advocates contends that there is no guarantee that these customers will have choices that will not incur additional costs, including when incentives that reference "free device" promotions from other carriers because they may come with fees or restrictions. These restrictions may include a requirement to subscribe to certain types of plans, or to keep plans for a certain amount of time, location restrictions, or online only or in-store only offers. This is evidenced by Verizon's own cross exhibits, indicating that the "no-cost" handsets offered come with a requirement to purchase a service plan costing at least $60/month or an activation fee.[68]

[66] Cal Advocates Opening Brief at 37. Exhibit CA-08-EC (Duffy) at 15.

[67] Cal Advocates Opening Brief at 37.

[68] Cal Advocates Opening Brief at 39, citing Exhibit VZ-05 - Verizon Rebuttal at 44-45 n. 124.

7.4. Impact on California LifeLine Program and California LifeLine Customers[69]

Joint Applicants initially failed to address California LifeLine service in their application, noting that the "new" TracFone could not "…terminate the provision of LifeLine service without following all the legal requirements and protections for LifeLine customers, which include a requirement that the Commission approve the withdrawal from LifeLine service, which it can only do after finding that LifeLine customers have alternatives to obtain LifeLine service."[70]

Noting that TracFone's California LifeLine customers generally are even lower income than the average TracFone customer,[71] Joint Intervenors assert that the Commission must consider Verizon's commitment to the LifeLine program as a critical piece of its public interest analysis in considering this proposed transaction. Joint Intervenors argue that one of the most striking features of the record in this proceeding is Joint Applicants not making meaningful commitments to participate in the California LifeLine program, despite TracFone being the third largest wireless LifeLine provider in California. Joint Intervenors further point out that Verizon's corporate parent relinquished its LifeLine obligations, as well as the fact that the company has never participated in the wireless Lifeline program, also should raise a red flag about its current level of commitment to the LifeLine program. Additionally, Joint Intervenors contend that Verizon's history outside of California indicates that the new combined

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[69] Note we refer to the "California LifeLine Program" either as California LifeLine Program or as "LifeLine," while the federal program is referred to as Lifeline.

[70] Joints Applicant's comments at PHC, RT at 22:7-22.

[71] Cal Advocates Opening Brief at 32. Exhibit CA-06 (Ahlstedt) at 18-19. Exhibit CA-04-C (Karambelkar at 16, Figure 2.

company will reduce California LifeLine service, noting that Verizon's witness acknowledged that, in other states, Verizon has acquired providers holding eligible telecommunications carrier (ETC) status to provide Lifeline service, maintained that ETC status, yet significantly reduced the level of Lifeline service. Joint Intervenors contend that Verizon maintains ETC status in Iowa, North Dakota, New York, and Wisconsin, yet the company's actual participation in Lifeline in these states is "practically non-existent."[72]

Joint Intervenors raise concerns regarding Verizon's intention in serving low-income communities following the company's participation in the federal Emergency Broadband Benefit (EBB) program, which is intended to help connect low-income consumers to broadband service providers. In particular, Joint Intervenors allege Verizon attempted to force customer onto more expensive plans in order to get the federal EBB subsidy. While the FCC's rules for the EBB allow providers to limit program eligibility to selected plans, Joint Intervenors assert Verizon's behavior runs contrary to the intent of the program and that, even though Verizon stopped this practice in response to negative press, the Commission should take note of the fact that Verizon's internal decision-making process led it to treat the EBB as an opportunity to take advantage of the low-income consumers they were supposed to serve.[73]

Cal Advocates disputes Verizon's claim that Verizon could not legally terminate the provision of LifeLine service without Commission approval, noting that this process only applies to traditional wireline carriers, not for "non-traditional" wireless service providers like TracFone. Rather,

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[72] Joint Intervenors Opening Brief at 16.

[73] Joint Intervenors Opening Brief at 17.

Cal Advocates argues that General Order (GO) 153 contains the process in which non-traditional providers of LifeLine service may withdraw from the LifeLine market with two steps:

i. The Service Provider (TracFone in this case) must give 30-days advance notice to customers, and

ii. The Service Provider must fulfill all contractual obligations entered with its subscribers.

Based on these criteria, Cal Advocates reasons that, presuming there are no contractual obligations that would prevent withdrawal from the California LifeLine program, Verizon could withdraw TracFone's LifeLine service in as little as 30-days after the proposed transaction closes.[74] Joint Intervenors note that just because TracFone "can" exit the LifeLine program and has not, does not demonstrate Verizon's commitment to the program, instead asserting that it is Verizon's burden to affirmatively demonstrate its commitment.[75]

Cal Advocates contends that without a specific long-term commitment to participate in LifeLine, the Commission should give no weight to Joint Applicants' statements that they will continue to offer LifeLine service in California. Cal Advocates proposes several conditions regarding LifeLine, including requiring that TracFone offer California LifeLine service as long as the program exists, as well as specific customer benchmarks. Joint Intervenors propose the Commission require Verizon "maintain or increase" TracFone's current 14 percent market share, or else implement a specific set of Commission

[74] Cal Advocates Opening Brief at 34. Exhibit CA-06 (Ahlstedt) at 16; GO 153 § 4.7.3 and D.14-01-036, Decision Adopting Revisions to Modernize and Expand the California LifeLine Program, R.11-03-013, Findings of Fact 27, at 163.

[75] Joint Intervenors Reply Brief at 7.

mandated marketing and outreach plans and implementation plans to compete for off-network customers and additional distribution channels.

Joint Applicants contend that Cal Advocates and Joint Intervenors rely on out-of-date and out-of-context statements, including testimony given in 2008, in questioning Verizon's commitment to serving low-income customers, including California LifeLine customers. Joint Applicants also argue that combining Verizon's network and resources with TracFone's brands and expertise is "critical" to growing California LifeLine and continuing TracFone's participation in the program.[76] Joint Applicants maintain that concerns about Verizon's lack of experience offering wireless LifeLine service are irrelevant because Verizon Wireless has been marketed as a premium service, not one targeting more value-conscious customers, and the purpose of the proposed transaction is to position Verizon as the leading provider for value-conscious customers. Further, Joint Applicants note that Verizon was a major provider of wireline Lifeline service, including Verizon California being the second largest California LifeLine provider in 2014 and 2015, prior to that Verizon company being acquired by Frontier Communications.[77]

7.5. Benefits of Access to Verizon's Network

Joint Applicants assert the proposed transaction secures the benefit of Verizon's network —"the best, largest, and most reliable in California" — to TracFone's customers, noting Verizon's ranking in J.D. Power's customer satisfaction surveys and reports prepared by RootMetrics.[78] Verizon also recently announced an additional $10 billion in nationwide capital expenditures

[76] Joint Applicants Reply Brief at 65. Exhibit TF-02-C (Diaz Corona) at 22.

[77] Joint Applicants Reply Brief at 67.

[78] Joint Applicants Opening Brief at 70. Exhibit VZ-07-C (Ng) at 47, 58-59.

over the next three years, in addition to $17.5 to $18.5 billion dollars already scoped for network development in 2021.[79] Joint Applicants also contend the proposed transaction will improve TracFone's insight into network quality and enable it to create a better experience for its customers, as currently, TracFone is limited in its ability to monitor the quality of customers' experience on providers' networks. Because it does not operate its own network, TracFone cannot track and diagnose network performance interruptions, and cannot respond quickly to customer concerns about network quality.[80]

Joint Intervenors maintain that access to Verizon's network is not a merger specific condition, noting that Verizon could already offer these benefits to TracFone customers as a wholesale provider to TracFone.[81]

Cal Advocates notes that Verizon has not identified how it will provide reliable service to TracFone customers currently served by another carrier that provides service outside of Verizon's coverage area, asserting that because TracFone currently has wholesale contracts with all the largest MNOs, its current coverage area is larger than Verizon's.[82]

7.6. Impact on Communities Losing TracFone Service

On April 29, 2021, parties filed a Joint Statement stipulating to a number of items, including that Verizon's network service territory covers 99.7 % of California's population.[83] Cal Advocates contend there are communities

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[79] Joint Applicants Opening Brief at 70. Exhibit VZ-03-C (Klein) at 7; *see* also Exhibit VZ-03-C (Ng) at 47.

[80] Joint Applicants Opening Brief at 71.

[81] Joint Intervenors Opening Brief at 84.

[82] Cal Advocates Opening Brief at 39-40.

[83] Joint Statement on Stipulation of Facts, filed April 29, 2021. Stipulation Number 34.

currently served by TracFone that do not use Verizon's network. Although groups of customers have been identified in the record by income, race, and even disabilities, parties have not identified a specific community by geographic location that would lose TracFone service as a result of this proposed transaction. Joint Applicants assert Verizon will be unable to migrate only a very small number of Tracfone Lifeline customers to its network.[84]

8. Joint Applicants Fail to Show the Proposed Transaction is in the Public Interest

On balance, we conclude Joint Applicants have not met the burden of proving this proposed transaction is in the public interest. Joint Applicants' assertions rely on insufficiently granular data and in many other cases are unsupported. In some cases, Joint Applicants' own analysis contradicts its claims and expert witnesses also contradict each other. Further, both Cal Advocates and Joint Intervenors identify several impacts on low-income customers that Joint Applicant do not address in a sufficient manner. Joint Applicants' best responses to those identified impacts are that its statements are taken out of context, or that those statements and actions are out of date (*e.g.*, testimony from 2008), or that certain information concerning Verizon's conduct should be excluded from the record (*e.g.*, accusations that Verizon upsold EBB products).

While we might accept Joint Applicants' claims that the proposed transaction is in their financial interest solely on the assumption they would not have entered into a $6.75 billion purchase agreement if that were not the case, and we also accept this proposed transaction should make TracFone more efficient, we find that the intervenors in this proceeding effectively and

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[84] Joint Applicants Opening Brief at 72. Exhibit VZ-07-C (Ng) at 51.

persuasively distinguish between Joint Applicants' statements that the "new" TracFone is "incented" to offer a particular device or service at a "low-cost," and any actual commitments to offer those devices or services at a low price. While Joint Applicants make a good case that Verizon's acquisition can provide TracFone customers more options in terms of devices and plans, and devices with higher capabilities than they may currently receive, there is no condition or certainty that TracFone customers will have access to these benefits without incurring additional costs. The record contains no commitments for Verizon to pass on any verifiable or quantifiable cost savings or service improvements to TracFone's customers. More certainty is needed here, especially given that there are indications that the merger could reduce competition in the prepaid market that largely serves low-income customers in California. Joint Intervenors also make a valid argument that access to Verizon's network is not necessarily a merger specific benefit, as Verizon could provide TracFone customers the same access through its existing contract with TracFone, or a future one.

The two most significant public harms in the record relate to the number of customers needing to migrate to Verizon's network, as well as uncertainty regarding whether TracFone will remain an active participant in California LifeLine, to which Joint Applicants do not commit to beyond the short term.

A proposed transaction where well over a hundred thousand customers, and perhaps two hundred thousand customers, need to incur out-of-pocket costs to remain TracFone customers, or to subscribe to service from another provider without protections for these customers, is not in the public interest. It is also concerning that Verizon does not have a complete plan in place to migrate hundreds of thousands of customers in California, though in fairness to Verizon, it will not have access to all the information and resources it needs until after the transaction closes. We note that this is not atypical for proposed transactions like this, but this fact is nonetheless still very concerning, given the sheer number of customers, mostly low-income customers, that will require new SIM cards or new devices to retain their existing TracFone service. Verizon has not demonstrated a commitment of the staffing and other resources that will be required to effectuate the migration or provided a timeline indicating what actions it will take and when. The Commission's approval of Frontier's acquisition of Verizon California faced similar challenges, which resulted in many customers without telephone service. The risk to customers that rely on TracFone for their sole phone service is too great without mitigating conditions.

Our second significant concern about this proposed transaction is ensuring TracFone's LifeLine customers continue to benefit from TracFone offering LifeLine service. The record paints Verizon as uninterested in TracFone continuing to offer California LifeLine service. Verizon's failure to make long-term commitments to California Lifeline further supports our finding that this proposed transaction is not in the public interest. While Joint Applicants note that Verizon participates in State Lifeline programs in Iowa, North Dakota, New York, and Wisconsin, Verizon's subscriber decline and low participation rates in those State Lifeline programs merit cause for concern about similar outcomes in California. Joint Applicants' statements in this proceeding do not alleviate our concern about TracFone's continued participation in California LifeLine, as Joint Applicants' strongest proposal is the five-year commitment provided in comments to the PD, with previous commitments being either a three-year period from which the companies may withdraw from if they do not like the outcome of the open California LifeLine proceeding or the Commission's annual revision of California LifeLine minimum service requirements, or a three-year unconditional commitment to participate in LifeLine.[85] The ability of Verizon to withdraw if LifeLine requirements are modified creates significant risk given there are several open proceedings at this Commission and at the FCC, as well as the regular annual adjustments made to the California LifeLine minimum service standards. TracFone's continued participation in California LifeLine is important for ensuring access to affordable and reliable communications services for low-income Californians. Absent a firm (non-contingent), long-term commitment of TracFone's continued offering of California LifeLine plans, this proposed transaction is not in the public interest.

While we do not find Cal Advocates' argument regarding Verizon's network service quality to be persuasive, given the small number of TracFone customers outside of Verizon's network footprint, we also note that Joint Applicants' claims about Verizon's network are not sufficiently supported. Similar to its competition analysis, Joint Applicants provide national surveys, instead of California-specific information, and these surveys are very broad in nature. Joint Applicants fail to demonstrate that TracFone customers that currently rely on the networks of AT&T and T-Mobile will have more reliable or better service due to the proposed acquisition. The record lacks a comparison of Verizon to AT&T and T-Mobile in terms of geographic coverage for 5G and

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[85] On August 17, 2021, Joint Applicants served two *ex parte* communications on the Service List that contradict each other on the issue of participating in LifeLine: a letter from Rudolph M. Reyes, Jr., Vice President and General Counsel at Verizon to all five CPUC Commissioners, and an *ex parte* notice of a meeting that occurred on August 12, 2021. The letter from Mr. Reyes states that "Verizon reserved the right to revisit the commitment if the terms of the California LifeLine program were to materially change." Attachment C of the Notice includes a proposal that TracFone would "[p]rovide LifeLine for at least three years after the Transaction (without conditions)."

non-5G services, the number of network outages and recovery times, and the number of dropped calls. Lacking evidentiary support for answers to any of these issues, we cannot conclude that access to Verizon's network is a benefit for TracFone customers. Further, TracFone makes clear it is not able "to monitor the quality of customers' experience on providers' networks... [*including*] network performance interruptions."

While we find the proposed transaction, if approved, will result in several harms, absent conditions to mitigate those harms, we also note that this proposed transaction could benefit consumers. Access to more and better handsets and other devices should improve customer experience, provided customers can afford the handsets and other devices. Further, the efficiencies and lower costs stemming from the "new" TracFone not needing to secure wholesale services from a MNO should lead to a TracFone that is better able to compete with the other major players in the prepaid market, pushing those companies to innovate. TracFone currently is losing customers in California, including LifeLine customers (TracFone once had over 500,000 LifeLine customers). A dynamic where TracFone and other companies are better competing for customers in the California prepaid market is a positive outcome. While we conclude, on balance, that Joint Applicants fail to meet the burden of proving that the proposed transaction is in the public interest, we nonetheless find that many of the significant harms in the record may be remedied through conditions. For this reason, denying the Joint Application is only reasonable if Joint Applicants refuse to comply with the conditions established in this decision. Approving the transaction as modified allows consumers to benefit from an improved TracFone, while also ensuring that current TracFone customers are not forced to pay to maintain their existing service, and assuring

TracFone's continued participation in LifeLine. These benefits, on balance, make the transaction with conditions in the public interest.

9. Conditions

Joint Applicants, Joint Intervenors and Cal Advocates all propose a number of conditions. Our goal is to mitigate the harms identified in the record to the greatest extent practicable. We agree with Cal Advocates on the need to make any conditions performance-based, with measurable outcomes and enforceable actions. Some proposed conditions we adopt (*e.g.*, Joint Applicants' offer of free SIM cards), others we modify (*e.g.*, Joint Intervenor and Cal Advocates recommended California LifeLine customer targets or Joint Applicants offer of free devices), others we do not adopt because they are too difficult or impractical to enforce (*e.g.*, Cal Advocates recommendation on wholesale service pricing to competitor MVNOs), and others we adopt based on the overall record of the proceeding.

<u>Customer Cost Impacts</u>

To mitigate the harm to hundreds of thousands of current TracFone customers with handsets that are incompatible with Verizon's network, we require that Verizon provide to all those TracFone customers a new handset, free of charge. Additionally, those replacement handsets for LifeLine customers with incompatible handsets will be provided at no cost to the California LifeLine Program. At a minimum, these customers must be offered 4G handsets so that their service is not compromised. We agree with Joint Intervenors recommendation that, where possible, Verizon should offer a 5G-compatible handset at no cost as part of LifeLine service after the close of the transaction in locations where Verizon currently offers retail services with 5G, and within six months of rolling out 5G in a new market. Thus for the first year of the migration, customers may receive 4G handsets at no cost, due to global supply constraints, but for the second year of the migration, and for as long as the migration takes after that, TracFone customers in need of a new handset to migrate to Verizon's network shall be offered a 5G handset, where 5G service is available in California. A customer may request a different device, but customers must opt out of the more advanced and expensive devices, not opt in. Additionally, the current TracFone customers that are not located in an area served by Verizon and do not have service following the transaction must be provided free handsets, under the same circumstances. Verizon and Tracfone also shall offer prepaid plans that Tracfone offered prior to the proposed transaction, or offer other plans that include the same allowances for voice, text, and data at the same or a lower price as TracFone currently offers for five years following the close of the proposed transaction. These conditions appreciably reduce a significant harm identified in the record where TracFone customers could face significant financial costs resulting from the acquisition.

<u>Migration Plan</u>

To facilitate an effective and predictable transition period for customers, we require that Verizon and TracFone migrate all TracFone customers currently not using Verizon's network to Verizon's network within two years following the close of the transaction. To ensure this happens, Verizon and TracFone must take all actions to maintain the MVNO contracts with third parties that enable service to Tracfone and ensure that TracFone's customers will continue to receive service without interruption. Verizon's and TracFone's migration plan shall prioritize TracFone's current California Lifeline customers. To assist with this migration, Verizon shall have a customer support hotline to assist migrating customers and to track complaints and challenges for up to two years following the close of the transaction, or until the migration is complete, as determined by the Commission's Communications Division Staff. Verizon must ensure sufficient staffing so that 80 percent of customers do not experience call answer times exceeding sixty seconds. For two years after the close of the transaction, or until the customer migration is complete, TracFone and Verizon shall provide a monthly report to Communications Division Staff that includes the number of calls, the purpose of the calls and resolution. Upon staff request, customer name and contact information shall be provided.

Within three months of the transaction closing, TracFone must contact all of its customers informing them of the transaction, including by text message in the customers' preferred language or if not specified by the customer in the language of sale. For TracFone customers needing a SIM card or new handset replacement to remain a TracFone customer, TracFone shall inform them of their need for and eligibility to receive a SIM card or handset at no cost. This communication shall include clear instructions for how customers will receive the free equipment, including the locations for pick up and when the equipment will be available.

Verizon or TracFone shall provide TracFone customers needing a SIM card or new handset to migrate over to the Verizon network the handset or SIM card at no cost. If a customer not responding to this notice results in that customer's phone service being disconnected, Verizon is still responsible for providing a free SIM card or new handset for up to one year following the close of the transaction. This also applies to LifeLine customers that are in good standing with the non-usage rules in accordance with GO 153 within four months after the close of the transaction. TracFone shall inform customers of the need to migrate their service within three months of the transaction closing. TracFone also shall inform customers at 60 days, 30 days, and 7 days before its wholesale contracts with other MNO providers are scheduled to expire and the migration from those networks to the Verizon network is scheduled to take place.

If any TracFone customers do not wish to migrate to Verizon's brand or network, TracFone shall waive all costs a customer may have otherwise incurred for service. If there are remaining costs on a phone, TracFone shall allow the customer to continue making payments consistent with the existing plan or contract. The customer shall be provided all necessary permissions and account information to port their telephone number to another provider without delay.

LifeLine Program

To ensure that the transaction does not adversely impact the California LifeLine program, we require that TracFone or Verizon participate in California LifeLine for 20 years after the close of the transaction, on terms and conditions that are comparable to or better than those currently offered by TracFone and that the company participating in LifeLine comply with California LifeLine rules. This requirement applies to Verizon and/or TracFone, their current affiliates, subsidiaries, and brands, and any successor companies, affiliates, subsidiaries, and brands, as well as to companies in which they have at least a 10 percent ownership stake. Further, all Verizon stores in California shall advertise California LifeLine handsets, devices, and plans, with clear signage so that customers are informed about and can enroll in the program. Verizon must advertise California Lifeline services on its website, including handsets, devices, and plans. Verizon shall track LifeLine enrollments by store. To ensure that TracFone's level of participation in California LifeLine does not significantly degrade over time, we require that TracFone meet the following customer targets, as tracked by the LifeLine Administrator in its monthly Inward/Outward reports:[86]

- By December 31, 2022, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 150,000 California LifeLine subscribers;
- By December 31, 2023, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 166,000 California LifeLine subscribers;
- By December 31, 2024 Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 183,000 California LifeLine subscribers;
- By December 30, 2025, and on a monthly basis thereafter, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 200,000 California LifeLine subscribers; and
- By December 31, 2023, at least 15 percent of Verizon or TracFone's California LifeLine subscribers must be from low-income disadvantaged communities as defined in this Commission's Environmental and Social Justice (ESJ) Action Plan.

Our goal of 200,000 LifeLine subscribers is reasonable based on TracFone's LifeLine subscriber count of roughly 230,000 pre-COVID-19 pandemic and at the time of filing this application. Our requirement of a minimum number of subscribers in low-income disadvantaged communities is consistent with this Commission's ESJ Action Plan.

We adopt Verizon's proposal that it maintain the marketing budget of at least $1 million for California LifeLine for at least 3 years following the close of the transaction. The marketing materials must comply with GO 153, including

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[86] The Inward/Outward Report is a monthly report created by Communications Division Staff in the California LifeLine Program. Carriers submit these reports to the CD Staff every month to track California LifeLine enrollment.

marketing material approval requirements. Verizon and/or TracFone must employ street teams as part of its targeted outreach to ESJ Communities consistent with the Commission's the ESJ Action Plan. The street teams shall not be funded by the $1 million in marketing budget.

Finally, to assure that TracFone's California LifeLine customers are not paying to remain TracFone customers, TracFone shall not add new co-pays to existing California LifeLine plans for at least three years after the close of the transaction.

Verizon shall file regular progress reports and Advice Letters, as specified in the Ordering Paragraphs. Verizon and TracFone also must meet with Communications Division Staff and the LifeLine Administrator at least once every six months for two years after the close of the transaction, or until the customer migration is complete, to discuss enrollment numbers and review challenges with migration.

Treatment of Competitor MVNOs

Regarding our concern that Verizon may be incented to act in an anti-competitive manner towards MVNOs that currently are customers, but will become competitors if Verizon acquires TracFone, Verizon shall exercise good faith to offer MVNO contracts in California to non-affiliates, to the extent the company has available capacity.

Approving the Proposed Acquisition with Conditions

With the inclusion of the conditions discussed above, we find this proposed transaction is in the public interest.

10. Enforcement

Public utilities are subject to enforcement action and fines pursuant to

Pub. Util. Code §§ 2102-2105, 2107, 2108, and 2114. Pub. Util. Code § 702 mandates that "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in anyway relating to or affecting its business as a public utility and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." Pub. Util. Code § 2107 sets a minimum compliance penalty of $500 and a maximum of $100,000 for each offense.

California law, including Pub. Util. Code § 7, authorizes the Commission to delegate certain powers to its staff, including the investigation of facts preliminary to agency action, and the assessment of specific fines for certain violations. In this proceeding, a mitigation enforcement program administered by staff for specified violations will allow prompt and efficient enforcement action by the Commission and ensure Verizon's and TracFone's compliance with all conditions in the Decision, thus realizing the proposed transaction's intended benefits.

We adopt here a mitigation enforcement program modelled on the mitigation enforcement program developed to enforce the conditions of T-Mobile's acquisition of Sprint and adopted by the Commission in Resolution T-17722. The procedures for implementing this program are specified in Appendix A. As with any Commission citation program, the issuance of a citation for a specified violation is not mandatory.

Here, the Commission delegates to Staff authority to draft and issue citations and levy fines for specific violations as set forth below.

Table 1. Violations and Fines

SPECIFIED VIOLATION	SCHEDULED FINE
Failure to participate in the California LifeLine Program in accordance with Ordering Paragraph 2.	$100,000 per day for every day in violation of this order
Failure to meet California LifeLine total subscriber targets in accordance with Ordering Paragraph 3(a)-3(d).	0% – less than 40% of target achieved: $100,000 per day; 40% – less than 60% of target achieved: $90,000 per day; 60% – less than 80% of target achieved: $80,000 per day; 80% – less than 100% of target achieved: $70,000 per day;.
Failure to meet California LifeLine customer subscription targets for ESJ communities, in accordance with Ordering Paragraph 3(e).	$100,000 per month not in compliance.
Failure to spend $1 million annually in marketing for the California LifeLine Program for three years following the close of the proposed transaction, in accordance with Ordering Paragraph 5.	$100,000 per month not in compliance.
Failure to advertise and offer enrollment for Lifeline plans in all Verizon stores in California, in accordance with Ordering Paragraph 6.	$100,000 per day not in compliance.
Failure to provide eligible customers with free handsets or free SIM cards, in accordance with Ordering Paragraph 8.	0% – less than 20% of target achieved: $100,000 per day; 20% – less than 40% of target achieved: $90,000 per day; 40% – less than 60% of target achieved: $80,000 per day; 60% – less than 80% of target achieved: 70,000 per day; 80% – less than 100% of target achieved: $60,000 per day.

Failure to provide support line for customers, in accordance with Ordering Paragraph 8b.	$75,000 per day not in compliance.
Failure to provide 60-second response time for support line for 80% of customers, in accordance with Ordering Paragraph 8b.	$100,000 per month not in compliance.
Failure to migrate all TracFone customers[87] to the Verizon network, in accordance with Ordering Paragraph 8. Failure to achieve any specific metric in Ordering Paragraph 8 shall constitute a violation.	0% – less than 20% of target achieved: $100,000 per day; 20% – less than 40% of target achieved: $90,000 per day; 40% – less than 60% of target achieved: $80,000 per day; 60% – less than 80% of target achieved: 70,000 per day; 80% – less than 100% of target achieved: $60,000 per day.
Failure to notify all TracFone customers of transaction, in accordance with Ordering Paragraph 8(c)(d).	$100,000 per month not notified.
Failure to submit Advice Letter updates, data, documents, or reports requested by CD staff.	$20,000 per day not in compliance. $20,000 per day for each data point omitted. Each data point shall constitute a single violation. A maximum fine of up to $50,000,000 annually for this violation.

The complete process for the mitigation enforcement program is contained in Appendix A. Decision 98-12-075 sets forth criteria for determining the reasonableness of a citation. The factors to consider in assessing the reasonableness of a fine include: (1) the severity of the economic or physical harm resulting from the violation; (2) the conduct to prevent, detect, disclose, and rectify the violation; (3) the financial resources of the party involved; (4) the

[87] This applies to customers who will continue with TracFone following the merger because they did not opt out.

public interest involved; (5) the totality of the circumstances; and (6) Commission precedents. Using these criteria, we note that there is significant harm to low-income customers if Verizon does not follow through on the obligations upon which we condition approval of this Joint Application. Further, we note that Verizon's annual revenue exceeds $100 billion. Given the severity of the impact of a violation, coupled with Verizon's ability to pay even a very large fine, we find the fines we include in this mitigation enforcement program to be reasonable.

11. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Thomas J. Glegola in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 4, 2021, and reply comments were filed on November 9, 2021, by Joint Applicants, Joint Intervenors, and Cal Advocates. As described below in greater detail, this decision has been revised in response to these comments and reply comments.

Joint Applicants make a compelling case that the six-month customer migration period contained in the Proposed Decision is not feasible, especially given current supply shortages and the logistical challenges associated with such a migration. Joint Applicants indicate Verizon planned for a migration period of "a couple years." Further Joint Applicants indicate TracFone has "contractual MVNO arrangements with AT&T and T-Mobile that entitle TracFone to continue providing service over those networks for years after the closing" and that these contracts "ensure that TracFone's customers will continue to receive service without interruption"[88] and have filed these contracts under seal. Therefore, we revise the migration period to two years and adjust a number of reporting requirements based on this change. We also require Verizon and TracFone to take all actions required to maintain the wholesale contracts with third parties that provide service to Tracfone customers until all such customer are migrated without disrupted service. We do not grant Joint Applicants' request that we adopt a decision without mandating a specific time period or enforcement requirements.

In response to Joint Applicants' request, we clarify that either Verizon or TracFone must meet the LifeLine obligation ordered by this decision, but that the obligation does not fall to both companies. This accurately reflects the condition for the migration discussed in Section 9.

We also revise this decision to reflect that Verizon did make an offer for TracFone to participate in LifeLine for three years and that offer was without conditions, though the record in this regard is confusing, given two documents Joint Applicants served on the Service List on the same day contradict each other. On August 17, 2021, Verizon served a letter from Rudolph M. Reyes, Jr., Vice President and General Counsel at Verizon, to all five CPUC Commissioners. Mr. Reyes' letter reads:

> Verizon agreed not to add copays to TracFone's existing California LifeLine plans for two years, with certain exceptions. In making this commitment, Verizon largely adopted TURN's recommendation, though Verizon reserved

[88] Joint Applicants Opening Comments at 1-2.

> the right to revisit the commitment if the terms of the California LifeLine program were to materially change.[89]

Joint Applicants also filed and served a notice of an August 12, 2021 *ex parte* meeting. Attachment C of that notice includes a proposal that TracFone would "[p]rovide LifeLine for at least three years after the Transaction (without conditions)." Confusion over this issue is consistent throughout the record of this proceeding, with Joint Applicants also stating that Verizon made "firm commitments" to continue to participate in LifeLine, even though it only expressed an intent for TracFone to continue to offer LifeLine service or simply discussed this Commission's authority related to TracFone's ETC status.

In response to Joint Applicants' request, we revise the LifeLine participation requirement, so that the mandate is expressed in terms of years, instead of in perpetuity. Joint Applicants also increase the offer to participate in LifeLine from three years to five years. We find this transaction is not in the public interest without a significant, unconditional, and long-term commitment for Verizon or TracFone to participate in the LifeLine program, and modify the LifeLine participation requirement to require Verizon or TracFone to participate in LifeLine for 20 years.

Additionally, we modify Verizon or TracFone's LifeLine subscriber targets in Ordering Paragraph 3(c) over four years. Joint Applicants make a compelling case that either the targets or the timing of the targets need to be revised to take into account that when the freeze on LifeLine renewals is lifted, the number of TracFone's LifeLine customers will decline, and that decline, at least initially, before subscribers renew, likely will be significant.

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[89] Letter from Rudolph M. Reyes, Jr., Vice President and General Counsel at Verizon, to all five CPUC Commissioners, Re: A.21-11-001, Verizon acquisition of TracFone, served August 17, 2021 at 2.

In response to comments from Joint Intervenors, we revise Ordering Paragraph 6 to specify the types of stores where Verizon must market LifeLine products and services. Joint Applicants raise a good point that it may not be feasible to market in certain locations.

In response to comments from Joint Intervenors, we add Findings of Fact 24 and 25:

- Joint Applicants failed to make commitments or provide certainty that former TracFone customers will have more options in terms of devices and plans without incurring additional costs.
- Joint Applicants failed to make commitments to pass on any verifiable or quantifiable cost savings or service improvements to former TracFone customers despite claiming such benefits would occur as a result of the merger.

In response to comments from Joint Intervenors, Ordering Paragraph 8(b) is revised so that the tracking and associated reporting requirements also break out those metrics for (1) LifeLine customers, (2) non-LifeLine customers, and (3) customers speaking a language other than English to identify which type of customers, if any, are facing hurdles and utilizing the support hotline for assistance.

In response to comments of Joint Intervenors, this decision is revised to include 2 new Ordering Paragraphs:

- Ordering Paragraph 8 (n) to allow the ability to opt-out of all customer notifications; and
- Ordering Paragraph 8 (m) to require Verizon and TracFone to post information on the transaction and the post-transaction transition on each company's website.

In response to comments from Joint Applicants, we revise Ordering Paragraph 7 from requiring Verizon and TracFone to offer plans that TracFone currently offers "at the same price for a total of five years following the close of the transaction" to "require TracFone either to continue offering the same plans, or to offer other plans that include the same allowances for voice, text, and data at the same or a lower price as TracFone currently offers."

In response to comments from Joint Applicants, we revise the fine for failure to provide a 60-second response time for customer support line for 80 percent of customers from a fine of $50,000 per day not in compliance to a fine of $100,000 per month not in compliance.

In response to arguments from Cal Advocates and Joint Intervenors that requiring Verizon or TracFone to offer residential Internet service is not beyond this Commission's jurisdiction, we delete that assertion from this decision. We need not rely on an argument over our jurisdiction to not require this condition as part of our approval.

In response to comments from Joint Applicants, noting several pending motions related to the confidential treatment of certain information, we delete Ordering Paragraph 13 of the PD and revise Ordering Paragraph 14 (now 13) so this proceeding remains open. Upon disposition of the pending motions, the assigned Administrative Law Judge shall issue a ruling closing the proceeding.

12. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Thomas J. Glegola is the assigned ALJ in this proceeding.

Findings of Fact

1. On September 13, 2020, the Joint Applicants entered into an agreement pursuant to which Verizon will acquire TracFone from América Móvil (Proposed Transaction). Under the agreement, América Móvil will sell all of its interests in TracFone to Verizon in exchange for $3.125 billion in cash and

$3.125 billion in Verizon common stock, subject to customary adjustments, at closing. The Agreement also includes up to an additional $650 million in future cash consideration.

2. On November 5, 2020, Joint Applicants filed their application to transfer TracFone (U4321C) from América Móvil to Verizon.

3. The following intervenors filed timely protests:

   (a) The Public Advocates Office;

   (b) Center for Accessible Technology, Greenlining Institute, The Utility Reform Network (jointly); and

   (c) Public Knowledge, the California Center for Rural Policy, Access Humboldt, Next Century Cities, the Benton Institute for Broadband & Society, Communications Workers of America, Tribal Digital Networks, and the Open Technology Institute at New America (jointly).

4. Joint Applicants did not provide granular, California specific data to assess competition in the California prepaid wireless market.

5. No agency in the United States responsible for reviewing mergers and acquisitions relies on churn rate as a metric to measure competition.

6. Churn rate includes customers that unsubscribe and resubscribe in the same year.

7. Almost seventy percent of California LifeLine customers do not renew their service at the time they receive their annual renewal application.

8. The national prepaid wireless market is highly concentrated, as is the California prepaid wireless market.

9. Both Verizon Wireless and TracFone compete in the California prepaid wireless market. As a result, this transaction will increase market concentration,

though given the relatively small number of Verizon Wireless prepaid customers in California, that increase is not significant.

10. TracFone does not own its own wireless network. As a MVNO provider, TracFone must rely on facilities-based network providers to offer service through wholesale service agreements.

11. Implementing this transaction requires key components owned and managed by Verizon affiliates, including: the network TracFone customers must migrate to, Verizon-compatible devices (including handsets, smartphones, tablets, and wearables), Verizon stores, Verizon's contracts, Verizon's people, and Verizon's management approaches.

12. Verizon Wireless, including its affiliates, earned more than $500 million in annual revenue in California.

13. TracFone currently offers prepaid wireless services to consumers in California through a portfolio of nine brands: SafeLink Wireless, Straight Talk Wireless, TracFone, Net10 Wireless, Walmart Family Mobile, Total Wireless, Go Smart Mobile, Page Plus, and Simple Mobile.

14. TracFone primarily serves low-income customers in California.

15. TracFone currently is the third largest provider of wireless LifeLine service in California.

16. Verizon purchased companies with ETC status that participate in Lifeline programs in Iowa, North Dakota, New York, and Wisconsin. After the close of the transactions, the number of Lifeline subscribers in these states declined in a significant manner.

17. Joint Applicants do not offer a long-term guarantee of TracFone's continued participation in the California LifeLine Program.

18. The proposed transaction will eliminate TracFone's need to negotiate and secure access to an MNO network.

19. The proposed transaction will result in TracFone being able to offer more devices to its customers with the conditions set forth in this decision.

20. Verizon does not commit to a specific price for its proposed new affordable devices.

21. Verizon's intent that traffic from all TracFone customers will ride on its network will require migrating hundreds of thousands of TracFone customers in California from the networks of T-Mobile and AT&T.

   a. Hundreds of thousands of TracFone customers in California already receive service through the Verizon network.

   b. Hundreds of thousands of TracFone customers in California can migrate to the Verizon network with their existing handsets without any upgrade.

   c. Hundreds of thousands of TracFone customers in California will require a SIM card to migrate to Verizon's network. Verizon has offered to provide these SIM cards free of charge.

   d. Hundreds of thousands of TracFone customers in California will require a new handset to migrate to Verizon's network, or Joint Applicants do not know their status.

   e. Over 90 percent of TracFone's LifeLine customers will need to be migrated to Verizon's network.

22. Verizon's network service territory covers 99.7 percent of California's population.

23. Parties do not identify a specific community by geographic location that loses coverage as a result of this Transaction.

24. Joint Applicants fail to make commitments or provide certainty that former TracFone customers will have more options in terms of devices and plans without incurring additional costs.

25. Joint Applicants fail to make commitments to pass on any verifiable or quantifiable cost savings or service improvements to former TracFone customers despite claiming such benefits would occur as a result of the proposed transaction.

26. Mitigation measures are needed to prevent adverse consequences from this transaction.

27. Given the severity of the impact of a violation of the conditions imposed by this decision, coupled with Verizon's ability to pay even a very large fine, the fines included in the mitigation enforcement program are reasonable and necessary to ensure that the Transaction is in the public interest.

28. Several parties filed motions on the confidential treatment of certain information, including:

a. On November 6, 2020, Joint Applicants filed a motion to file under seal the portions of the Joint Application and Exhibit 5 and the entirety of Exhibits 2 and 4;

b. On April 29, 2021 filed a motion to maintain the confidentiality of specific information contained in the Joint Statement on Stipulations of Facts;

c. On May 28,2021 Joint Applicants filed a motion to file under seal certain information in their opening brief marked as confidential;

d. On June 11, 2021, Joint Applicants files motion to file under seal certain information in their reply brief marked as confidential;

e. On April 27, 2021, Cal Advocates filed a motion to disclose certain information contained in its testimony, as well as the underlying data that came from data requests;

f. On May 28, 2021, Cal Advocates and Joint Intervenors riled motions to file their opening briefs under seal;

g. On June 11, 2021, Cal Advocates and Joint Intervenors filed motions to file their reply briefs under seal; and

h. On April 27, 2021, Cal Advocates filed a motion to disclose certain portions of its testimony.

Conclusions of Law

1. The Transaction is subject to review under Pub. Util. Code §§ 854(a), (b) and (c) and D.95-10-032.

2. Verizon affiliates, including Cellco Partnership (U3001C) d/b/a Verizon Wireless, are parties to the Transaction.

3. Joint Applicants bear the burden of proving by a preponderance of the evidence that this proposed transaction is in the public interest.

4. With the conditions enumerated in the ordering paragraphs and discussed in Sections 8 and 9 of this decision, the Transaction is in the public interest and should be approved.

5. Approval of the Transaction, with the conditions enumerated in the ordering paragraphs hereof, complies with Pub. Util. Code §§ 854(b)(1) and (b)(3).

6. Public utilities are subject to Commission enforcement action and fines, including pursuant to Pub. Util. Code §§ 2102-2105, 2107, 2108 and 2114.

7. The Scheduled Fines set forth in Section 10 and Appendix A are reasonable and will encourage Verizon's and TracFone's complete and timely fulfillment of their obligations.

8. The proceeding should remain open to allow the Commission to resolve the pending motions for confidential treatment.

O R D E R

IT IS ORDERED that:

1. Pursuant to California Public Utilities Code Section 854, the Joint Application of TracFone Wireless, Inc. (U4321C) (TracFone), América Móvil, S.A.B. de C.V. (América Móvil), and Verizon Communications, Inc. (Verizon) to transfer control of TracFone from América Móvil to Verizon is approved, subject to the conditions in Ordering Paragraphs 2 through 13.

2. For 20 years following the close of the transaction, Verizon Communications, Inc., Cellco Partnership (U3001C) d/b/a Verizon Wireless (Verizon), or Tracfone Wireless, Inc. (TracFone), shall participate in the California LifeLine Program on terms and conditions that are comparable to or better than those currently offered by TracFone and shall be subject to all California LifeLine Program rules, including those described in General Order 153. This requirement applies to Verizon or TracFone and includes the companies' affiliates, subsidiaries, brands, successor companies and companies in which they have at least a 10 percent ownership stake. After 20 years of participation in California LifeLine, Verizon shall not withdraw itself or TracFone from the California LifeLine program without obtaining the Commission's approval, under the standards applicable to the relinquishment of Eligible Telecommunications Carrier status.

3. Verizon Communications, Inc. or Tracfone Wireless, Inc. shall achieve the following California LifeLine subscriber counts, based on the Inward/Outward report provided by the California LifeLine Administrator:

   a. By December 31, 2022, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 150,000 California LifeLine subscribers;

b. By December 31, 2023, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 166,000 California LifeLine subscribers;

c. By December 31, 2024, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 183,000 California LifeLine subscribers;

d. By December 30, 2025, and on a monthly basis thereafter, Verizon Communications, Inc. or Tracfone Wireless, Inc. shall have at least 200,000 California LifeLine subscribers; and

e. By December 31, 2023, at least 15 percent of customers must be from low-income disadvantaged communities based on this Commission's Environmental and Social Justice Action Plan.

4. Verizon Communications, Inc. and Tracfone Wireless, Inc. shall not add costs to existing California LifeLine plans for at least three years after the close of the transaction. All existing Tracfone Wireless, Inc. California LifeLine plans shall be marketed and offered to new LifeLine customers for at least three years.

5. Verizon Communications, Inc. and Tracfone Wireless, Inc. shall maintain an annual marketing budget of $1 million for the California LifeLine Program for at least 3 years following the close of the transaction and comply with General Order 153 marketing material approval requirements. The companies also shall employ street teams as part of their targeted outreach to Environmental and Social Justice Communities identified in the California Public Utilities Commission's Environmental and Social Justice Action Plan. The $1 million in marketing expenses required in this paragraph excludes expenses for Environmental and Social Justice community street teams.

6. As part of providing California LifeLine service, all Verizon-branded stores in California, including those owned by Verizon Communications, Inc., Cellco Partnership (U3001C) d/b/a Verizon Wireless, or any other subsidiary,

affiliate, successor company, successor brand, or companies in which Verizon Communications, Inc., and Cellco Partnership (U3001C) d/b/a Verizon Wireless have at least a 10 percent ownership stake in, including all TracFone-branded stores, shall advertise the California LifeLine Program with clear and visible signage so that potential customers know that they can enroll in the Program at the Verizon store. All Verizon-branded stores shall provide existing and new customers to the California LifeLine program the ability to enroll in the California LifeLine program with online or paper enrollment of some California LifeLine service plans and the necessary customer support for enrollment, such as a knowledgeable staff available in the store or through a service line. The stores also shall have affordable handsets on the premises. In addition to reporting numbers on a statewide basis, Verizon shall report California LifeLine enrollment numbers by store on an annual basis.

7. Verizon Communications, Inc. or Tracfone Wireless, Inc. shall offer the same plans, or offer other plans that include the same allowances for voice, text, and data at the same or a lower price as TracFone currently offers for a total of five years following the close of the transaction.

8. Within two years of the close of the proposed transaction, Verizon Communications, Inc. and Tracfone Wireless, Inc. shall migrate all TracFone Wireless, Inc. customers currently not using the network of Verizon Communications, Inc. to the company's network. The migration shall prioritize current California Lifeline and customers with incompatible handsets. As part of the customer migration process, the companies must undertake the tasks described below.

(a) At least 30 days prior to when the customer migration begins, Verizon Communications, Inc. and Tracfone Wireless, Inc. shall notify the California Public Utilities

Commission's (Commission) Consumer Affairs Branch (CAB) and the California LifeLine Third Party Administrator Call Center. The companies also must provide notification when the migration is expected to end. The 30-days prior notification also must include:

i. Forwarding numbers so that CAB and the LifeLine Call Center will be able to transfer customers to Verizon Communications, Inc. or Tracfone Wireless, Inc.;

ii. Answers to frequently asked questions, along with updates as needed;

iii. The contact information, including name, email address and phone number, for the company liaisons (more than one) that CAB or the California LifeLine Third Party Administrator Call Center representatives can call at Verizon Communications, Inc. and Tracfone Wireless, Inc. to resolve urgent issues.

(b) Within 10 days of the transaction closing, Verizon Communications, Inc. (Verizon) and Tracfone Wireless, Inc. (TracFone) shall open a support line to assist migrating customers in their transition and to track complaints and challenges for two years or until migration is complete. This call center is separate from this Commission's CAB or the California LifeLine Third Party Administrator Call Center. Verizon and TracFone shall shoulder the burden of assisting TracFone customers that have questions or are experiencing challenges related to its customer migration. Call Answer Time shall not exceed 60 seconds for 80 percent of customers. On a monthly basis for two years after the close of the transaction, Verizon Communications, Inc. and Tracfone Wireless, Inc. shall report to Communications Division Staff, including the number of calls, the nature of the calls, call duration, and resolution. The reports also shall indicate the number of LifeLine customers, non-LifeLine customers, and customers speaking a language other than English for each category.

Upon staff request, customer name and contact information shall be provided.

(c) Within three months of the transaction closing, TracFone Wireless, Inc. shall contact all customers informing them of the transaction, including by text message in the customers' preferred language or if not specified by the customer in the language of sale.

(d) If any TracFone Wireless, Inc. (TracFone) customer needs a SIM card or new handset to remain a TracFone customer, Tracfone shall market and contact all customers in the customers' preferred language or if not specified by the customer in the language of sale to inform them of their need for and eligibility to receive a SIM card or handset at no cost. This communication shall include clear instructions for how customers will receive free equipment. TracFone shall inform customers in the customers' preferred language or if not specified by the customer in the language of sale within three months of the transaction closing, as well as 60 days, 30 days, and 7 days before a wholesale contracts with another provider is scheduled to expire.

(e) Verizon Communications, Inc. (Verizon) or Tracfone Wireless, Inc. (TracFone) shall provide TracFone customers needing a SIM card or new handset to migrate over to the network of Verizon, the handset or SIM card at no cost to the customer or the California LifeLine Fund. Where 5G service is available, customers shall be offered a 5G handset at no cost, though customers may request other models. Given global supply shortages, Verizon and TracFone may offer 4G handsets during the first year after the close of the transaction, but shall offer 5G handsets at no costs thereafter, until the customer migration is complete, though customers may request other models. If failure of a customer to respond results in discontinued phone service, returning customers shall be provided a SIM card or new handset for a year following the close of the proposed transaction. This also applies to LifeLine customers that are in good standing with the non-usage rules four months after the close of the transaction

(f) If any Tracfone Wireless, Inc customers do not wish to migrate to the brand or network of Verizon Communications, Inc, Tracfone Wireless, Inc shall waive all transfer costs a customer may incur. If there are remaining costs on a phone, a customer should be able to pay outstanding payments over the previously agreed period of time. Immediately upon request, the customer shall be provided all necessary permissions and account information to port their telephone number to another provider.

(g) Within 15 days after the closing of the proposed transaction, Verizon Communications, Inc. shall file a Tier 1 Advice Letter with the Commission's Communications Division, informing the Commission of the proposed transaction's close. The company shall also send a copy of the Advice Letter to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number.

(h) Within 60 days of closing, Verizon Communications, Inc. and Tracfone Wireless, Inc. shall file a Tier 2 Advice Letter with the Commission outlining the companies' California customer migration plans. A courtesy copy must be emailed to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number. The Advice Letter must include, at a minimum, the following information:

i. network transition timelines;

ii. baseline report sorted by LifeLine and non-LifeLine customers that includes customer counts the month preceding the transaction close, customers that require new handsets and customers that require SIM cards;

iii. TracFone's 2021 California LifeLine Service Plan;

iv. handset and SIM card distribution plan;

v. the number of customers at risk of known service disruptions;

vi. consumer education materials;

vii. applicable changes in customer accounts;

viii. applicable activities related to the California LifeLine Administrator;

ix. specific marketing messaging to customers about the acquisition, SIM cards and handsets, and instructions to ensure customers transition seamlessly, including timing;

x. specific marketing messaging and training materials to be used by street teams;

xi. specific language that will be used for customers who choose to opt out of Verizon network and new compatible devices; and

xii. additional information, as requested by Commission Staff.

(i) Within 180 days of closing, and every three months thereafter until the migration is complete, Verizon Communications, Inc. and Tracfone Wireless, Inc. (TracFone) shall file a Tier 1 Advice Letter indicating the number of California TracFone customers that have been migrated and those that still need to be. TracFone must separate these totals by California LifeLine customers and other California customers, as well as by the number of customers needing SIM cards or new handsets. The companies also shall send a copy of the Advice Letter to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number.

(j) Within 120 days of closing, TracFone Wireless, Inc. must file a Tier 1 Advice providing an update on the information required in Ordering Paragraph 7. Verizon shall also send a copy of the advice letter to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number.

(k) Within 180 days of the close of the transaction, and every six months thereafter until the customer migration is complete, Verizon Communications, Inc. and Tracfone Wireless, Inc. (TracFone) must file a Tier 1 Advice Letter indicating the number of California TracFone customers that have been migrated and those that still need to be. The companies also shall send a copy of the Advice Letter to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number.

(l) Within 15 days of the close of the transaction, both Verizon Communications, Inc. and Tracfone Wireless, Inc. shall post information regarding the transaction on the front page of each company's website and shall update those webpages to include transition information for customers, such as the availability of free replacement phones and SIM cards and the customer migration hotline number.

(m) Verizon Communications, Inc. and Tracfone Wireless, Inc. (TracFone) shall allow customers to opt out of receiving notifications.

(n) Verizon Communications, Inc. and Tracfone Wireless, Inc. (TracFone) shall take all actions required to maintain the wholesale contracts with third parties that enable service to Tracfone customers until all such customers are migrated without disrupted service.

9. For up to three years after the close of the proposed transaction, Verizon Communications, Inc. and Tracfone Wireless, Inc. shall meet with California Public Utilities Commission Communication's Division (CD) staff and the California LifeLine Administrator at least once every six months to discuss

enrollment numbers and review challenges with the customer migration. The companies shall provide supplemental monthly reporting as determined by CD staff for compliance and monitoring of this Decision.

10. The mitigation enforcement program described in Appendix A is hereby adopted. Authority is delegated to California Public Utilities Commission staff to issue citations and levy Scheduled Fines for the Specified Violations to enforce compliance with the Ordering Paragraphs of this Decision.

11. Verizon Communications, Inc. and Cellco Partnership (U3001C) d/b/a Verizon Wireless shall exercise good faith to offer mobile virtual network operator contracts in California to non-affiliates, to the extent the company has available capacity.

12. Within fifteen days of issuance of this decision, Verizon Communications, Inc., and Tracfone Wireless, Inc. shall file a Tier 1 Advice Letter accepting terms of this order. If the companies do not file the Tier 1 Advice Letter accepting the terms of this order, the Joint Application shall be denied.

13. This proceeding shall remain open to address pending motions for confidential treatment. Upon disposition of the pending motions, the assigned Administrative Law Judge shall issue a ruling closing the proceeding.

This order is effective today.

Dated ____________________________, at San Francisco, California.

Appendix A

Conditions Mitigation Enforcement Program for Verizon Acquisition of TracFone

1.0 Specified Violations and Scheduled Fines

1.1 "Specified Violation" means the failure to comply with the Ordering Paragraphs of this Decision and indicated in Table 1, below.

1.2 "Scheduled Fine" is the reasonable amount of monetary fine imposed on Verizon and TracFone for a Specified Violation. The monetary amounts per violation are set forth below in this Appendix A, and indicated in Table 1, below. Fines may be imposed up to the amount of the Scheduled Fine.

Table 1. Violations and Fines

SPECIFIED VIOLATION	SCHEDULED FINE
Failure to participate in the California LifeLine Program in accordance with Ordering Paragraph 2.	$100,000 per day for every day in violation of this order
Failure to meet California LifeLine total subscriber targets in accordance with Ordering Paragraph 3(a)-3(d).	0% – less than 40% of target achieved: $100,000 per day; 40% – less than 60% of target achieved: $90,000 per day; 60% – less than 80% of target achieved: $80,000 per day; 80% – less than 100% of target achieved: $70,000 per day;
Failure to meet California LifeLine customer subscription targets for ESJ communities, in accordance with Ordering Paragraph 3(e).	$100,000 per month not in compliance.

Failure to spend $1 million annually in marketing for the California LifeLine Program for three years following the close of the proposed transaction, in accordance with Ordering Paragraph 5.	$100,000 per month not in compliance.
Failure to advertise and offer enrollment for Lifeline plans in all Verizon stores in California, in accordance with Ordering Paragraph 6.	$100,000 per day not in compliance.
Failure to provide eligible customers with free handsets or free SIM cards, in accordance with Ordering Paragraph 8.	0% – less than 20% of target achieved: $100,000 per day; 20% – less than 40% of target achieved: $90,000 per day; 40% – less than 60% of target achieved: $80,000 per day; 60% – less than 80% of target achieved: 70,000 per day; 80% – less than 100% of target achieved: $60,000 per day.
Failure to provide support line for customers, in accordance with Ordering Paragraph 8b.	$75,000 per day not in compliance.
Failure to provide 60-second response time for support line for 80% of customers, in accordance with Ordering Paragraph 8b.	$100,000 per month not in compliance.
Failure to migrate all TracFone customers[90] to the Verizon network, in accordance with Ordering Paragraph 8. Failure to achieve any specific metric in Ordering Paragraph 8 shall constitute a violation.	0% – less than 20% of target achieved: $100,000 per day; 20% – less than 40% of target achieved: $90,000 per day; 40% – less than 60% of target achieved: $80,000 per day; 60% – less than 80% of target achieved: 70,000

[90] This applies to customers who will continue with TracFone following the merger because they did not opt out.

	per day; 80% – less than 100% of target achieved: $60,000 per day.
Failure to notify all TracFone customers of transaction, in accordance with Ordering Paragraph 8(c)(d).	$100,000 per month not notified.
Failure to submit Advice Letter updates, data, documents, or reports requested by CD staff.	$20,000 per day not in compliance. $20,000 per day for each data point omitted. Each data point shall constitute a single violation. A maximum fine of up to $50,000,000 annually for this violation.

1.3 Modification of Scheduled Fines. Scheduled Fines may be modified by Resolution.

2.0 Procedures for the Issuance of Citations

2.1 Citations for Specified Violations. Prior to issuing a citation, Verizon and TracFone will be given notice by Communications Division Staff by email, and will be given an opportunity to discuss the potential violation.

2.2 Issuance of Citations. After appropriate informal investigation and verification, Communications Division Staff will determine that a Specified Violation defined in this Decision has occurred. The Communications Division Director, or designee, as determined by the Executive Director, is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Fine that may be levied are described above in this Appendix. Any data or information included in a citation that was provided confidentially by Verizon and TracFone (or used in any appeal process), shall be governed by General Order 66-D. Staff shall retain all information and documentation used to issue the citation in order to file and serve its compliance filing in the case of an appeal.

2.3 Service of Citations. Citations shall be sent by Commission Staff by first class mail to the Respondent at the address of the agent for service of process with a copy via e-mail to the Respondent's regulatory representative.

2.4 Content of Citations. Citations shall state the name of the company cited, the date of the citation, alleged violation(s), the evidence supporting the alleged violations, and the penalty amount from the Scheduled Fines. The citation shall summarize the evidence and Commission Staff shall make the evidence available for timely inspection upon request by the Respondent. Citations also shall include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative present at the hearing, and to request a transcript. The proposed Scheduled Fine stated in the citation shall not increase during the time periods specified herein for the Respondent to either accept the citation or appeal the citation.

2.5 Notice. Commission Staff will serve notice of violations to the service list of Application 20-11-001 of the following events under the Mitigation Enforcement Program: issuance of a citation (Section 2.2), or notice of payment.

2.6 Response to Citation. The cited company may either: (1) accept the citation and pay the assessed fine within 30 days; or (2) appeal the citation in accordance with Resolution ALJ-377. The cited company may request a waiver of the 30-day deadline in order to file an appeal. For good cause, Comminutions Division Staff may extend the 30-day deadline once for up to 14 calendar days.

2.7 Payment of Scheduled Fines. Payment of Scheduled Fines shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

3.0 Appeal of Mitigation Enforcement Program

3.1 Procedural Rules: Resolution ALJ-377, or its successor, shall govern the procedural process for appealing citations issued under this mitigation enforcement program.

4.0 Default

4.1 Defined: A Respondent is in default if the Respondent: (a) fails to pay the full amount of the Scheduled Fine within thirty (30) days of the date of issuance; (b) fails to timely appeal the citation; or (c) fails to pay the penalty amount due upon Commission issuance of a Resolution on an appeal.

4.2 Interest on Scheduled Fine: the citation shall become final and the Respondent is in default.[91] Upon default, any unpaid balance of a Scheduled Fine shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid fines and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

[91] If T-Mobile files a timely notice of appeal, a fine is not due unless an Administrative Law Judge (ALJ) finds a violation existed, and the Commission agrees with the findings of the ALJ. Interest does not accrue on a fine if a timely notice of appeal is filed.

(END OF APPENDIX A)