Verizon Hearing Exhibit VZ-09-TC-C

A.20-11-001

Verizon/TracFone Joint Application for Transfer of Control

Rebuttal Testimony of Verizon Communications
(Confidential_TF Counsel Version)
Errata-Corrected dated May 3, 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 (Filed November 5, 2020)

Rebuttal Testimony of Verizon Communications Inc.

May 3, 2021

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This rebuttal testimony is submitted in support of the Joint Application of TracFone Wireless, Inc. ("TracFone"), América Móvil, S.A.B. de C.V. ("América Móvil"), and Verizon Communications Inc. ("Verizon"), for approval of the transfer of TracFone from América Móvil to Verizon (the "Transaction").

I. OVERVIEW

[Angie Klein]

In their application and opening testimony, the Joint Applicants demonstrated that Verizon's acquisition of TracFone is in the public interest. The Transaction will reduce TracFone's costs, particularly its network costs, and enable it to respond more quickly and effectively to consumer demands and market conditions. The Transaction reflects Verizon's investment of at least $6.25 billion to serve value-oriented prepaid consumers, and that means TracFone, under Verizon's ownership, will compete hard to attract and retain those consumers. This is particularly true for LifeLine customers, a "foundational element" of Verizon's commitment, according to the CEO of Verizon's Consumer Group. A major benefit of the Transaction is the introduction of a second facilities-based competitor for LifeLine customers, and Verizon has unequivocally expressed its intent to serve that critical segment currently dominated by the network of a single provider, T-Mobile.

The Utility Reform Network ("TURN") witness Ms. Mailloux sets forth certain recommendations to ensure that LifeLine customers will not be harmed by the Transaction. While the Verizon does not agree with Ms. Mailloux's characterizations of its statements and documents, we view TURN's recommendations as a whole as constructive. The Joint Applicants would accept the following conditions, which are based on TURN's proposals, with some modifications:

- Verizon will commit not to add any additional co-pays[1] to SafeLink's existing LifeLine plans for two years following the close of the Transaction, except that SafeLink may include new "tiers" of LifeLine service as authorized under the Commission's MSS/SSA standards, which may include co-pays as authorized, if such service tiers are not currently offered by TracFone; provided that Verizon may revisit this commitment if the terms of the LifeLine program (such as the subsidy level and MSS) change.

- Verizon will commit for three years after the Transaction closes to spend $1,000,000 per year for the purposes of marketing LifeLine, providing outreach on LifeLine, and enrolling eligible customers in LifeLine.

- Verizon would agree to present the Commission, within six months of the close of the Transaction, with a plan to enroll LifeLine customers through grassroots distribution efforts targeted to customers interested in LifeLine through Safelink.

- Verizon agrees that TracFone will submit LifeLine marketing materials for the Commission's approval before disseminating those materials to the public, in compliance with the Commission's rules.

- Verizon is aligned with the principle that, for two years after the Transaction closes, at least 10% of new retail locations directly or third-party owned that are opened that distribute a TracFone brand or brands will be located in geographic locations in which a significant number of low-income consumers reside. This excludes retail locations that distribute consumer goods in addition to mobile devices and services, such as Walmart or similar retailers, as Verizon does not control the locations in which such retailers open stores.

- Verizon would agree to a condition requiring Commission approval to withdraw TracFone from the LifeLine program consistent with applicable federal requirements for relinquishment of Eligible Telecommunications Carrier ("ETC") status.[2]

[Paul Vasington]

By contrast, the Public Advocates Office at the California Utilities Commission ("Cal Advocates") largely ignores the competition and choice that empower consumers and misinterprets documents produced in discovery to construct an inaccurate depiction of the Transaction. Cal Advocates' assessment of the transaction is divorced from the realities of how

[1] *See* definition of "co-pays" in footnote 209.

[2] *See* fn. 185.

the Transaction will affect consumers and competition—a combination of a wireless carrier and a reseller in a highly competitive industry, where the two companies have little overlap in customer focus. In fact, the conditions proposed by Cal Advocates go even beyond those imposed by the California Public Utilities Commission ("Commission") in connection with its review of the Sprint/T-Mobile merger, which combined two large network-based providers who competed for the same retail and wholesale customers, in stark contrast to this Transaction, which would bring together a Mobile Virtual Network Operator ("MVNO") and a Mobile Network Operation ("MNO") that largely do not compete.

The Cal Advocates witnesses invite the Commission effectively to micro-manage TracFone's business, from brand strategy, to mandatory growth targets, to customer satisfaction surveys, to locations for fifty percent of new TracFone distribution outlets, and more. Cal Advocates would have the Commission mandate eleven single-spaced pages of prescriptive requirements that would apply only to Verizon and TracFone, distorting the market and ultimately harming consumers. No similar conditions were imposed—in fact, no formal application was filed—when Verizon's rivals, AT&T and T-Mobile, made similar acquisitions in recent years.

The Cal Advocates witnesses observe that TracFone today serves low-income consumers; express concern that Verizon has not made specific and concrete commitments for what brands and plans it will offer low-income consumers; and jump to the conclusion that the Commission should regulate the post-acquisition offerings through a series of highly prescriptive requirements that go further and last longer[3] even than those the Commission imposed in the

[3] Even after ten years, Cal Advocates proposes a review to determine if its numerous conditions should be revised or extended.

Sprint/T-Mobile merger, which, unlike here, involved the acquisition of a facilities-based wireless competitor. What these witnesses overlook is that TracFone, both today and under Verizon's ownership, operates in a highly competitive industry, in which consumers have many choices. Just as TracFone today is driven to craft offerings that appeal to value-oriented consumers, so too will TracFone face that same imperative under Verizon's ownership. TracFone, however, will be better able to do so after the Transaction because the costs that it incurs to provide service will be significantly reduced.

The demands of the Cal Advocates witnesses for the Commission to micro-manage TracFone's decisions on brands, plans, migration, distribution, and other operational matters are neither reasonable nor necessary. TracFone, as well as its competitors, can make decisions on these matters without Commission regulation, and there is nothing about the Transaction that justifies imposing new requirements solely on TracFone.

The Cal Advocates witnesses express dissatisfaction with the Joint Applicants' inability to describe in specific and fixed terms what plans they will offer and what incentives they will provide to facilitate migration. But Verizon is legally restricted from speaking freely with TracFone about these matters until the Transaction is approved, and without an unconstrained discussion with TracFone to gain its experience and insights, it would be unwise to make definitive plans. Additionally, Verizon and TracFone will need to be and remain nimble to respond to other market participants (who will not keep their competitive strategies static) as well as to changing consumer needs. In the fast-moving and dynamic wireless industry, it is simply impossible to make detailed, irrevocable commitments about how the company will operate a few years in the future, let alone five or ten. That is not how business is conducted;

tactics change. In other sections of this testimony, we share our current thinking and planning, but it is subject to change.

That said, one point is clear: TracFone's strategy, under Verizon's ownership, will continue to be to compete vigorously for value-oriented consumers, and it will be positioned to do so more effectively than TracFone can do alone. The fears of Cal Advocates' witnesses that Verizon will withdraw low-cost plans and force TracFone's customers to pay more for existing services and plans cannot be squared with the realities of robust competition for those customers' business, as perhaps evidenced best by what Cal Advocates' own witness Dr. Selwyn admits:

> In a competitive market, customers—and particularly prepaid customers who do not have a fixed term contract—are free to move to a different provider if they are dissatisfied with their current service. In fact, the high churn rates—the frequency with which customers switch services—associated with prepaid services confirms that this is already happening on a regular basis.[4]

To be sure, Verizon hopes that some of TracFone's customers will *choose* to spend more to obtain greater value—for example, unlimited data plans, multi-line plans, and other features. Consumer demand for wireless data, for example, continues to increase rapidly. CTIA reports, "Last year, the average smartphone user consumed 6.6 GB per month. This year that number is up to 9.2 GB per month. And it's not just data use that's up—voice minutes and text messages also increased year-over-year."[5] But it would be directly contrary to Verizon's economic interest—and, indeed, the rationale for the Transaction—for Verizon to have TracFone cease providing low-cost prepaid options in competition with those offered by other prepaid providers. The Transaction gives TracFone and Verizon together the tools and incentives to pursue value-oriented customers, and that is what they will do once this Transaction is approved.

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[4] Direct Testimony of Dr. Lee L. Selwyn on behalf of the Public Advocates Office at the California Public Utilities Commission, April 2, 2021 ("Selwyn Direct Testimony") at 39:13-17.

[5] https://www.ctia.org/news/report-2020-annual-survey-highlights.

Nothing about the Transaction will undermine this competitive necessity. On the contrary, the Transaction will enhance competition by strengthening TracFone. This improved competitive dynamic will benefit all consumers, not just those who choose TracFone. Dr. Selwyn acknowledges that the Transaction will reduce TracFone's network costs, but he contends that TracFone, and other MVNOs, *might* be able to achieve the same outcome *through a hypothetical regulatory mandate that does not currently exist*. Setting aside the many problems with this suggestion (discussed below), it does not show that the Transaction will *weaken* competition. Dr. Selwyn suggests that the Transaction will reduce Verizon's incentive to sell at wholesale to other MVNOs who provide prepaid. But Verizon will have the same incentive as it does today to sell at wholesale to MVNOs, particularly cable companies who have grown their wireless subscriber base rapidly, as well as other MVNOs who can reach niche customer segments that Verizon is not well-positioned to target. In any case, Dr. Selwyn does not demonstrate that the hypothesized impact on MVNOs would actually reduce retail competition or otherwise harm prepaid consumers. Dr. Selwyn's discussion of retail market competition likewise falls flat; his analysis oversimplifies the market and glosses over the abundant evidence that Verizon's prepaid offerings target a different sub-segment of prepaid consumers than those addressed by TracFone. In sum, TracFone today competes mainly with AT&T's Cricket, T-Mobile's Metro, and DISH's Boost, and others, and that will remain true after the Transaction closes.

Because competition for prepaid consumers is and will remain strong, all of the conditions recommended by the Cal Advocates witnesses are misguided and should not be adopted. The Commission has recognized for many years that a dynamic competitive process is better for consumer welfare. As far back as 1993, the Commission stated:

> In establishing regulatory frameworks, as repeatedly expressed, our first preference is to encourage and rely upon effective competition to assure just and reasonable rates for mobile telephone service.[6]

The Commission followed the same policy in its 2006 Uniform Regulatory Framework decision, where it stated: "Consistent with the Legislature's intent, the Commission, whenever possible, has relied on competition as a means to ensure that rates are 'just and reasonable.'"[7] As the Commission observed in its 2016 decision affirming the Uniform Regulatory Framework: "The pace of technological advancement in the telecommunications marketplace is accelerating. We understand that a high degree of regulatory humility is required in such circumstances, even if an oversight agency were to have plenary regulatory and enforcement authority."[8] Similarly, in other proceedings to review acquisitions of non-rate-regulated telecommunications carriers under Public Utilities Code section 854, the Commission has consistently stated that competitive market forces are the best means of ensuring that the cost savings and other synergies resulting from a transaction are shared with consumers.[9]

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[6] I.93-12-007, 1993 WL 597945, at *4.

[7] D.06-08-030 at 33.

[8] D.16-12-025 at 159.

[9] *See, e.g.*, D.05-11-028 at 15 (approving SBC's acquisition of AT&T; "'competitive market forces, rather than mandated rate reductions,' should distribute merger benefits to ratepayers" (quoting D.97-05-092, 1997 Cal. PUC LEXIS 340, at *27-31 (May 21, 1997))); *see also id*. at 27 ("[W]e have worked to develop a new regulatory regime that depends more on market forces, rather than the artificial distribution of merger benefits through formula and other traditional ratemaking mechanisms contemplated by § 854(b). Any attempt to use traditional cost-based rate of return mechanisms to mandate distribution of merger benefits would be detrimental to the operation of market forces and contrary to the main thrust of the 1996 Telecommunications Act, state telecommunications policy, and this Commission's stated policies under NRF."); D.05-11-029, 2005 Cal. PUC LEXIS 517, at *38 (Verizon-MCI merger) ("Merger synergies are simply efficiencies gained from the combination of the two companies, and in this context competitive pressures will no doubt push the Applicants to distribute significant benefits to their consumers."); *id.* at *39 ("[W]e conclude that it is preferable to rely on the market to distribute California-based merger benefits to California consumers.").

The Cal Advocates witnesses go further than asking the Commission to overturn this precedent and to impose a raft of regulatory obligations solely on one participant in a highly-competitive market. They ask the Commission to assert control over virtually every aspect of TracFone's business through the vehicle of conditions on approval of this Transaction. That is not the proper approach to a proceeding under section 854. If the Commission were persuaded that Cal Advocates' concerns about the industry structure have merit, then it should petition the Federal Communications Commission ("FCC") to examine them in an industry-wide proceeding.

The conditions recommended by Cal Advocates reflect a desire to impose outdated, monopoly-style regulation that the Commission has wisely eschewed for competitive industries even when applied generally. For example, Dr. Selwyn recommends "requiring that Verizon and the other two MNOs modify their treatment of TracFone and other MVNOs in line with the requirements that the FCC imposed upon T-Mobile with respect to its dealings with DISH and Boost Mobile."[10] As a preliminary matter, the analogy to the T-Mobile transaction is misplaced. There, the FCC, United States Department of Justice ("DOJ"), and this Commission found that the loss of Sprint as an independent facilities-based carrier *would* reduce competition, and to address that problem the FCC and the DOJ took steps to enable DISH to emerge as a fourth facilities-based provider. It was in that context that DISH purchased Boost, and the resale obligation was designed to enable DISH to continue to serve that customer base as a transitional measure while it built out its own network to become itself a facilities-based competitor. That is wholly different from this Transaction, where TracFone is *not* a facilities-based provider, the Transaction will introduce *more* facilities-based competition, and there is no "transition" program to which Dr. Selwyn's regulatory prescription would relate.

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[10] Selwyn Direct Testimony at vi.

The more relevant analogies are AT&T's acquisition of Cricket and T-Mobile's acquisition of Metro. Consumers have benefited greatly from those precedent acquisitions, as the MNO's flanker brands have grown their customer counts through aggressive pricing.[11] This Transaction will intensify that competition, and there is no reason to impose conditions here that were not imposed on AT&T when it acquired Cricket or on T-Mobile when it acquired Metro.

But there are deeper problems with Dr. Selwyn's comments. Because neither the other MNOs nor the other MVNOs are parties to this proceeding, Dr. Selwyn's observation, troubling as it may be, is not advanced as a recommended condition. Instead, Dr. Selwyn suggests that Verizon be required to offer wholesale services to MVNOs on the same terms as it "makes available" to TracFone.[12] This is markedly different from the obligation imposed on T-Mobile, which was required to offer Boost access on terms that were better than it provided to any other *unaffiliated* MVNO. Dr. Selwyn's recommendation would require the Commission to determine the "actual" or "fair" price and terms of Verizon's relationship to TracFone, which would quickly enmesh the Commission in regulating wholesale services provided by MNOs to MVNOs. Dr. Selwyn does not mention the cost and complexity of such regulation,[13] or the Commission's prescient observation in 1993: "We envision that in the not too distant future that

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[11] Indeed, the subscriber counts for Cricket and Metro have each doubled in the time since they were acquired by MNOs. *See* Cricket Wireless Surpasses 9 Million Subscribers, Cricket Newsroom (2018), https://www.cricketwireless.com/newsroom/news-release/cricket-wireless-surpasses-9-million-subscribers.html ("Prepaid Wireless Provider Doubles its Subscriber Base since its Acquisition by AT&T in 2014"); Fortune, Why T-Mobile Is Rebranding MetroPCS to 'Metro by T-Mobile' (Sept. 24, 2018), https://fortune.com/2018/09/24/t-mobile-rebranding-metropcs-metro-by-t-mobile/ ("Since T-Mobile bought the unit, its subscriber base has more than doubled to 18 million as the brand spread from just 12 markets to about 100 nationwide currently.").

[12] Selwyn Direct Testimony at 85.

[13] *See, e.g.*, D.95-03-042, 1995 WL 238604 (discussing development of cost-based rates for unbundled wholesale wireless services).

the market forces of competition will police the mobile market and allow for an orderly withdrawal of government oversight," including specifically of wireless wholesale transactions.[14] The Commission has not regulated such transactions since 1995,[15] and the FCC decided in 1996 to sunset its wireless resale rules in 2002.[16]

A few other examples illustrate how far out of step Cal Advocates' recommendations are with the Commission's regulatory policies for the highly-competitive wireless industry:

- Mandating that TracFone increase the number of subscribers on each brand by 25,000 per year, for 10 years, for each non-LifeLine brand;[17]
- Mandating a specific number (10) of employees dedicated solely to customer migration;[18]
- Requiring Verizon to pay customers $25 to terminate service with TracFone and switch to a competitor;[19]
- Conditioning the phase-out of any existing brand on prior CPUC approval;[20]

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[14] I.93-12-007, 1993 WL 597945, at *1.

[15] D.96-12-071, 1996 WL 754712.

[16] *See* First Report and Order, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd. 18,455 (1996), *aff'd Cellnet Commun., Inc. v. FCC*, 149 F.3d 429 (6th Cir. 1998).

[17] Karambelkar Testimony at 41.

[18] Testimony of Lucas Duffy on behalf of the Public Advocates Office at the California Public Utilities Commission, April 2, 2021 ("Duffy Testimony") at 45:17-18.

[19] Testimony of Dr. Surabhi Karambelkar on behalf of the Public Advocates Offices at the California Public Utilities Commission, April 2, 2021 ("Karambelkar Testimony") at 41:10-13.

[20] *Id.* at 40:8-27.

- Ordering Verizon to provide home internet at prices set by the CPUC ($15) indefinitely;[21]
- Mandating specific network investment and service quality improvements with accompanying regulatory monitoring, oversight and approval for a period of ten years;[22] and
- Requiring Verizon to provide any customer (including non-LifeLine) with a free handset to migrate to the Verizon network[23] and to provide LifeLine customers with a 5G handset for free.[24]

These and other recommendations are far beyond anything the Commission has required in any other section 854 proceeding, including the recent Sprint/T-Mobile merger, or in any other decision involving the wireless industry in the past 25 years, and they are entirely unnecessary and inappropriate in this case.

The issue before the Commission is straightforward. The Transaction will make TracFone a more formidable competitor and strengthen its ability to provide LifeLine service. TracFone, under Verizon's ownership, will continue to have the same incentives it has today to compete for value-oriented customers. Consumers will continue to have choices, only they will be better choices. The Commission should approve the Application expeditiously.

II. THE TRANSACTION WILL BENEFIT CONSUMERS

A. The Transaction Will Yield Significant Cost Savings

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[21] Testimony of James Ahlstedt on behalf of the Public Advocates Office at the California Public Utilities Commission, April 2, 2021 ("Ahlstedt Testimony") at 31.

[22] Duffy Testimony at 44:43-45:12.

[23] *Id.* at 43:18-44:15.

[24] Ahlstedt Testimony at 31:6-9.

1. The Combined Entity Will Have a Lower Cost Structure [Paul Vasington]

Verizon's acquisition of TracFone will reduce TracFone's cost structure. This is not in dispute. Dr. Selwyn acknowledges that the transaction will eliminate "double marginalization," resulting in substantial reductions in network costs.[25] These savings are significant, as discussed in greater detail in Verizon's opening testimony[26] and in the two submissions by Dr. Israel.[27]

Dr. Selwyn argues that, apart from network costs, "the remainder of TracFone's operations will actually become *less efficient* following its acquisition by Verizon than if it were to continue on a standalone basis."[28] But he acknowledges that the Transaction will reduce the "total cost" of TracFone's operations,[29] because the cost savings attributable to network savings swamp these relatively small increases and produce immediate overall efficiency gains.[30] Even Dr. Selwyn's representation of Verizon's financial forecasts in Table 5 of his testimony show

[25] Selwyn Direct Testimony at 10:18-22 ("The Transaction will allow Verizon to maintain TracFone operations at lower total cost due mainly to the 'network cost savings' that the to-be-acquired TracFone affiliate will realize when its cost of the underlying wholesale service is reduced from the prices it presently pays to Verizon (and other MNOs) to Verizon's incremental costs, without any mark-up or profit component.").

[26] Opening Testimony of Paul Vasington on behalf of Verizon Communications Inc., April 2, 2021 ("Verizon Opening Testimony (Vasington)") at 8-9.

[27] Opening Testimony of Mark A. Israel on behalf of TracFone Wireless, Inc., March, 12, 2021 ("Israel Opening Testimony") at 8-13; Rebuttal Testimony of Mark Israel on behalf of TracFone Wireless, Inc., April 9, 2021 ("Israel Rebuttal Testimony") at 15-18.

[28] Selwyn Direct Testimony at 26:17-20 (emphasis in original).

[29] *Id.* at 10:18-22.

[30] Dr. Selwyn's calculation of TracFone's non-network costs is also incorrect, which undermines the validity of his analysis of this issue. Dr. Selwyn erroneously included carrier service costs as a non-network expense. *See* Cal Advocates' Response to Verizon Data Request 1 (workpapers for Table 5). In fact, "Service Costs by Carrier" are payments to MNOs, and as such are network costs. As a result, the projected non-network costs in Table 5 and Figure 5 of Dr. Selwyn's testimony do not accurately reflect the estimate of non-network costs included in HSR Attachment 4(c)5, VZW_000864 [Confidential-Lawyers Only], which he cites as his data source.

that TracFone's overall projected costs are lower in every year after the Transaction compared with the cost projections for TracFone if it remains a standalone entity.[31]

Dr. Selwyn also misinterprets the **[BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY]** near-term increase **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** in certain non-network operating expenses as reflecting inefficiencies. **[BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY]** Some of these expenses are for distribution, marketing, brand awareness, incentives and other efforts to encourage TracFone's customers riding on other networks to choose to migrate to Verizon and to attract new customers to TracFone; such efforts benefit consumers.[32] **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** Other expenses reflect **[BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY]** one-time costs to integrate TracFone into Verizon, such as IT costs and employee retention payments.[33] **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** Dr. Selwyn mischaracterizes Verizon's planned investments in growing TracFone's business and investments to achieve longer-term savings as inefficiencies. In reality, they are needed investments in TracFone's business that will benefit consumers.

A significant element of the increase in projected operating expenses for post-acquisition TracFone compared with standalone TracFone is **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** increased device subsidies.**[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**[34] Dr. Selwyn's suggestion that this renders TracFone "less efficient" fails

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[31] Selwyn Direct Testimony at 27.

[32] *See infra* § II.A.2.

[33] *See, e.g.*, VZW_000861 [Confidential-Lawyers Only], VZW_000864 [Confidential-Lawyers Only], VZW_000865 [Confidential-Lawyers Only].

[34] *Compare* VZW_000861 [Confidential-Lawyers Only] *with* VZW_000864 [Confidential-Lawyers Only], showing a **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** $616

to recognize the consumer benefit that results from these costs; **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** device subsidies **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** represent a direct financial benefit for consumers.

The Transaction also produces meaningful non-network cost savings, which Dr. Selwyn does not mention. Verizon projects **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** *net* non-network operating expense savings **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** for TracFone in the first year after the Transaction, growing each year thereafter.[35] Contrary to Dr. Selwyn's suggestion, the Transaction will increase TracFone's operational efficiency and produce direct, tangible benefits for consumers.

2. The Lower Cost Structure Will Benefit Consumers [Paul Vasington]

Competition in the wireless industry generally, and in the prepaid segment, is robust.[36] Competition will drive TracFone to share the cost savings realized through the Transaction with consumers. Lowering TracFone's costs through owner's economics will give it the ability and incentive to compete more aggressively, to the benefit of consumers.[37]

The Commission has repeatedly recognized and adopted "the economic theory that increased competition would drive rates close to cost."[38] Specific to the context of acquisitions, the Commission has refrained from attempting to regulate how cost savings are passed through, recognizing that competition will do the job: "Merger synergies are simply efficiencies gained

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million increase in "Equipment Expense" **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** for the acquisition case in year 2025.

[35] VZW_000865 [Confidential-Lawyers Only].

[36] Verizon Opening Testimony (Vasington) at 43.

[37] *See* Verizon's Response to Cal Advocates Data Request V-9-1, Attachment A-8 to Selwyn Direct Testimony.

[38] D.17-07-011 at 2.

from the combination of the two companies, and in this context competitive pressures will no doubt push the Applicants to distribute significant benefits to their consumers."[39] As the testimony of Dr. Israel on behalf of TracFone demonstrates, as a matter of "fundamental economics," the same will be true here.[40]

Dr. Selwyn questions this conclusion, asserting that the Joint Applicants have not put forward any evidence of firm-price elasticity, which he defines as "consumer responses to a change in the price charged by an individual firm."[41] In fact, that evidence is obvious: the annual churn rate in the prepaid segment is 47.2%.[42] As Dr. Selwyn himself admits, the "high churn rates" for prepaid customers demonstrate that customers "move to a different provider if they are dissatisfied with their current service,"[43] which plainly includes price as a factor. And Verizon noted in its data response: "Verizon's analysis of the price elasticity of demand for value-conscious prepaid customers was an important consideration in its decision to pursue this transaction . . . ."[44]

Dr. Selwyn nevertheless suggests that cost savings will not be shared with consumers, citing as support the fact that 40% of prepaid customers are served by MVNOs, who face higher

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[39] D.05-11-028 at 27-28; *see also* D.05-11-029, 2005 Cal. PUC LEXIS 517, at *39 ("[W]e conclude that it is preferable to rely on the market to distribute California-based merger benefits to California consumers.").

[40] Israel Rebuttal Testimony at 3, 14.

[41] Selwyn Direct Testimony at 14:14-15.

[42] *Communications Marketplace Report*, 33 FCC 20-188, at 17 n.77 (citing CTIA, Wireless Industry Indices Report Year-End 2019 Results (2019), at Appx. C, 14); *see also* Selwyn Direct Testimony at 43.

[43] Selwyn Direct Testimony at 39:13-15.

[44] Verizon Response to Cal Advocates Data Request V-9-1.

costs than the flanker brands of MNOs.[45] Dr. Selwyn ignores the plentiful evidence that those flanker brands have been undercutting TracFone (which represents the majority of the 40% of prepaid customers to which Dr. Selwyn refers) on prices,[46] and that TracFone's market share has dropped as the flanker brands' shares have increased.[47] This competitive dynamic will only accelerate as a result of the Transaction, as TracFone becomes a stronger competitor and forces other providers to respond.

The reduction in TracFone's costs resulting from the Transaction will benefit consumers in many ways. Some TracFone customers likely will spend less for the same amount of service, but that is not the only possible beneficial outcome or the only way that "prices," broadly defined, may decline. TracFone will be able to offer **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** better devices, larger device subsidies, and better plans **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** than are offered today, and consumers may choose to spend more to get more. In other words, the value-adjusted prices consumers pay for TracFone services can be expected to decline, even though the total amount that some customers pay in absolute dollar terms may increase. As Dr. Israel explains, when consumers choose to spend more to obtain more, output has increased, which is the definition of a pro-consumer outcome.[48]

Also, Verizon's internal documents evaluating the Transaction—the same documents upon which Dr. Selwyn relies—identify two specific ways in which Verizon anticipated that cost

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[45] Selwyn Direct Testimony at 66-67.

[46] Opening Testimony of Eduardo Diaz Corona on behalf of TracFone Wireless, Inc., March 12, 2021 ("Diaz Corona Opening Testimony") at 10-11; Verizon Opening Testimony (Vasington) at 9-12.

[47] Diaz Corona Opening Testimony at 8-9; Opening Testimony of Angie Klein on behalf of Verizon Communications, Inc., March 12, 2021 ("Verizon Opening Testimony (Klein)") at 5-6.

[48] Israel Rebuttal Testimony at 30.

savings would be shared with consumers. First, **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** device subsidies were expected to increase with the Transaction at a 9% compound annual growth rate ("CAGR") over the period 2021-2025, compared to a 2.9% CAGR for TracFone as a standalone entity.[49] In dollar terms, the subsidy is forecast to grow from $71.89 in 2019 (TracFone's actual cost) to $116.32 in 2025 in the acquisition case, versus $87.22 in the standalone case.[50] As Verizon observed in this document: "Additional subsidy [is] needed to compete in value market."[51] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** The cost savings resulting from the Transaction will enable TracFone to compete by **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** increasing device subsidies. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

A second example is **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** data usage. As stated in TracFone's opening testimony: "Consumers are continuously demanding and using increasing amounts of data and the transition to 5G will only reinforce these trends."[52] In evaluating the Transaction, Verizon recognized this and assumed that TracFone customers' average data usage per month would grow in the standalone TracFone case, but that it would grow more rapidly in the acquisition case. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** As Verizon explained in a data response, its projections assumed **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** "continued movement by and the acceleration of customers to brands/plans offering higher data allotments as the consumer demand for more data

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[49] *Compare* VZW_000861 [Confidential-Lawyers Only] *with* VZW_000864 [Confidential-Lawyers Only].

[50] *Id.*

[51] VZW_000864 [Confidential-Lawyers Only].

[52] Diaz Corona Opening Testimony at 11.

increases year-over-year based on the leveraging of 'owner's economics' to offer larger data allowances or unlimited plans."[53] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** This is reflected in the numbers:

[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]

Table 1
Data Usage (GB)/Average Subscribers/Month

	2020	2021	2022	2023	2024	2025
Standalone Case	6.8	8.0	9.1	10.0	10.9	11.9
Acquisition Case	6.8	8.4	10.3	12.2	13.7	15.0

Because of owner's economics, it will be substantially less costly for TracFone to carry this traffic on Verizon's network with the Transaction, and Verizon's analysis of the Transaction explicitly assumed that these cost reductions would be shared with customers in the form of lower amounts paid by consumers per GB:

Table 2
Consumer Cost Per GB Used

	2020	2021	2022	2023	2024	2025
Standalone Case	$4.1	$3.5	$3.2	$2.9	$2.7	$2.5
Acquisition Case	$4.1	$3.4	$2.9	$2.5	$2.3	$2.1

These savings for consumers are significant—about 10% in 2022, and about 13% in 2023-2025—**[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** and represent a major, concrete consumer benefit of the Transaction.

[53] Verizon's Response to Cal Advocates Data Request V-8-1.

As the data example illustrates, Verizon hopes and expects that some of TracFone's customers (or customers it wins from other prepaid providers) will be willing to spend more than they do today to obtain a better plan, such as a plan with unlimited usage, multiple lines, or additional services. To the extent customers choose to purchase better handsets, or to use more data, output has increased, which reflects a benefit to consumers, as Dr. Israel explains.

To be clear, TracFone will not and cannot *force* any consumers to take plans that they do not want. If a consumer wants to stick with a lower-priced plan with fewer features, the consumer will have the option to purchase that plan from TracFone. In fact, TracFone will be better able to offer such low-cost plans after the acquisition, given its lower costs. The May 2020 presentation to Verizon's Board of Directors seeking approval for the Transaction is filled with statements reflecting **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** the strategy to compete for value-oriented customers,[54] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** and Verizon's current planning regarding the future brand strategy explicitly contemplates **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** continuing to offer low-cost, "no frills" plans.[55] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** However, Verizon expects that many customers will *choose* to buy different plans in the future than they do today, largely because they will have options and will see value that is not presently available.

[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY] Dr. Selwyn overlooks the expansion of output, and the value to consumers of better devices and plans, by focusing solely

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[54] VZW_000834 [Confidential-Lawyers Only] ("Cover all customer segments in [the] value market"); VZW_000851 [Confidential-Lawyers Only] ("This transaction firmly establishes Verizon as a leader in the value segment").

[55] *See infra* § II.C.3.

on the total amount a customer spends—Average Revenue per User ("ARPU"). Dr. Selwyn observes that, in the same Board presentation, Verizon projected a reduction in the number of TracFone customers from 2020-2025 and an increase in total revenue and ARPU, from which he infers that TracFone will increase prices rather than share the cost savings with consumers.[56] Dr. Selwyn's inference is incorrect. The forecast increase in ARPU reflects the expectation that customers will *choose* to purchase better phones and better plans. Dr. Selwyn himself acknowledges that Verizon can achieve a higher ARPU without rising prices: "ARPU could come from changes in price as well as from expansions in the volumes and/or types of individual services that Verizon expects to be providing to TracFone customers following the Acquisition."[57] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Yet he fails to account for this when assuming that **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** higher ARPU necessarily indicates prices will rise.

Dr. Selwyn quotes Verizon's data response, explaining why the ARPU projections do not indicate intentions to **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** raise prices,[58] but dismisses it because, he claims, Verizon's "projections regarding its brand realignments and projected customer counts . . . reveal that it does not expect to achieve this objective at least between now and 2025."[59] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** On the contrary, the May 2020 Board presentation that Dr. Selwyn cites makes clear that the forecasted **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** increase in

[56] Selwyn Direct Testimony at 17-24.

[57] *Id.* at 23:6-8.

[58] *Id.* at 19:5-18 (quoting Verizon's Response to Cal Advocates Data Request V-7-10, Attachment A-12 to Selwyn Direct Testimony).

[59] *Id.* at 19.

ARPU was based on the assumption that customers would elect to purchase better plans, and thereby get more for their money.[60] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Moreover, Dr. Selwyn's observation about "customer counts" is beside the point, as ARPU reflects average revenue *per user*. There is no inconsistency in projecting that some customers will choose to spend more for better plans, while other customers will choose to migrate to other carriers. That is especially true immediately after the Transaction, as other MNOs that carry TracFone traffic are expected to make aggressive offers to customers riding on their networks with devices that can continue to be used on those networks.[61] It was an explicit, and conservative, assumption of Verizon's analysis of the Transaction that TracFone would experience **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** "[h]igher churn in early years" due to "device compatibility issues," **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** and that by 2025, **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** with increased investment in distribution, marketing, and migration support, including device subsidies, TracFone would rebuild to approximately its current number of subscribers.[62] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** As Dr. Israel explains, Verizon's projection that it will be able to build customer counts on its own network in four years **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** to equal what TracFone currently serves on all networks **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** reflects the

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[60] VZW_000863 [Confidential-Lawyers Only] (observing that **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** Straight Talk ARPU reflects "extension into multi-line discounts" and Total Wireless ARPU reflects "repositioned unlimited value prop"). **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

[61] *See* Verizon's Response to Cal Advocates Data Request V-8-1.

[62] VZW_000862 [Confidential-Lawyers Only].

competitive strengths that this Transaction will create.[63] While Verizon did not make a specific numerical forecast past 2025, lowering TracFone's costs to serve customers through owner's economics will incentivize Verizon to compete more aggressively, including on price-to-value, and thereby grow the number of value-conscious subscribers even more over time.[64]

Dr. Selwyn's supposition that the **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** increase in ARPU **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** is attributable not to voluntary choices by consumers to pay more for greater value, but instead to the "forced" migration of TracFone customers from lower-priced to higher-priced brands makes little sense and is directly contradicted by the documents he cites and marketplace realities. For example, the May 2020 Board presentation assumed that **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** the Simple Mobile brand (which is explicitly linked to T-Mobile) will wind down and that customers on that brand will be invited to migrate to the Total Wireless brand. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** The presentation shows that **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** the 2019 ARPU for Simple Mobile is *higher* than the ARPU forecasted for every year from 2020-2025 for the Total Wireless brand. In other words, the very document Dr. Selwyn relies on indicates that customers who migrate from Simple Mobile on T-Mobile's network to total Wireless on Verizon's network will spend less, on average, than they would have spent absent the Transaction. In addition, for Straight Talk, which is TracFone's most popular brand, Verizon's analysis assumed that ARPU would *decrease* from $41.23 in 2019 to $36.57 by 2025. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Both projections reflect a belief that this

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63 Israel Rebuttal Testimony at 30-31.

64 *See* Verizon's Response to Cal Advocates Data Request V-9-1; Verizon Opening Testimony (Vasington) at 8-13.

Transaction and customer migrations will tend to result in **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** less ARPU for those offerings, not more **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**.[65]

Dr. Selwyn's reliance on Verizon's earnings before income, taxes, depreciation and amortization ("EBITDA") projections is likewise misplaced.[66] EBITDA **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** declines substantially in Verizon's 2021 projections,[67] reflecting the expectation that TracFone will have to spend heavily to entice customers riding on other carriers' networks to migrate to the Verizon network, among other reasons. EBITDA is subsequently forecast to increase, **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** which is unsurprising given the owner's economics. Achieving these owner's economics will require additional capital expenditures,[68] which Dr. Selwyn elsewhere recognizes must be counted,[69] and which are not reflected in EBITDA. More fundamentally, as Dr. Israel explains, the **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** growth in EBITDA shows that TracFone would be sharing cost savings with customers, as it can profitably serve customers for less than it can without owner's economics, thereby adding customers and growing EBITDA with each subscriber added.[70] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Stated more simply, if TracFone, under Verizon's ownership, is competitively successful, its earnings will grow. That does not mean that all of the benefits of reduced costs resulting from

[65] *See also* Israel Rebuttal Testimony at 29.

[66] Selwyn Direct Testimony at 28-32.

[67] VZW_000864 [Confidential-Lawyers Only]; *see also* Selwyn Direct Testimony at 30, Table 8.

[68] VZW_000866 [Confidential-Lawyers Only].

[69] Selwyn Direct Testimony at 65-66.

[70] Israel Rebuttal Testimony at 34.

the Transaction will be pocketed by shareholders, as Dr. Selwyn surmises. It means just the opposite.

Finally, what ultimately matters for consumers is how competitive forces operate, not Verizon's May 2020 projections. While there is no doubt that Verizon will share a substantial portion of the cost savings resulting from the Transaction with customers, the precise extent and manner in which those savings are flowed through cannot be predicted with certainty. The prices consumers pay will be determined by the thrust-and-parry of competition, not by internal estimates. And economics teaches that in this competitive environment, customers benefit when producers' costs decrease.

B. The Transaction Will Make TracFone into a More Nimble Competitor [Paul Vasington]

In their opening testimony, both Verizon[71] and TracFone[72] explained, with specific examples, how the current arms'-length relationship between TracFone, on the one hand, and Verizon and the other MNOs, on the other, impairs TracFone's ability to respond quickly to changing consumer desires, technological developments, and competitors' rapidly-changing offers. TracFone elaborated on this problem in its data response, which Dr. Selwyn quotes in his testimony.[73] Neither Dr. Selwyn nor any of the other intervenor witnesses disputes this description of the status quo, nor do they dispute the benefits to competition and consumers resulting from TracFone's ability to bring new offerings to market more quickly if the Proposed Transaction is completed.

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[71] Verizon Opening Testimony (Vasington) at 13-14.

[72] Diaz Corona Opening Testimony at 12-15.

[73] Selwyn Direct Testimony at 51-53 (quoting TracFone Response to Cal Advocates Data Request T-4-14(a), Attachment A-6 to Selwyn Testimony).

Instead, Dr. Selwyn posits a different solution: TracFone could "petition[] the FCC to impose requirements on the three MNOs in their dealings with TracFone along the same lines as the FCC has imposed upon T-Mobile."[74] But this speculation about what the FCC might do is irrelevant to this proceeding. No merger has ever been rejected because the benefits of the merger might otherwise be achievable through a hypothetical government mandate, nor should it. Moreover, Dr. Selwyn provides no evidence that such a regulatory mandate would actually result in greater benefits to competition and consumers than integrating TracFone into Verizon. To the contrary, the Commission has long recognized that competitive markets better promote consumer welfare.[75]

In addition, Dr. Selwyn's posited regulation regime does not even purport to address the problem inherent in arms'-length dealing, *i.e.*, the delay and complexity of coordinating across multiple MNOs. Even if one could imagine a regulatory mandate requiring all MNOs to treat MVNOs on equal terms as their own subsidiaries receive, TracFone and every other MVNO would still need to engage with each MNO to offer new services, replicating the original problem: delay and other roadblocks as compared to a TracFone that was under Verizon's ownership.

Nor is there any reason to expect the FCC would accept Dr. Selwyn's hypothesized invitation to regulate wholesale wireless transactions. As noted elsewhere[76] the MVNO terms required by the FCC in the Sprint/T-Mobile merger arose due to entirely different goals and conditions in that transaction.

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[74] Selwyn Direct Testimony at 58:13-14.

[75] *See supra* § I.

[76] *See infra* § III.

The FCC has for 25 years chosen not to regulate wholesale access to MNOs' networks.[77] There is no reason to expect the FCC to reverse course.

C. The Transaction Will Create More Options for TracFone and Prepaid Customers

1. The Transaction Will Permit Better Device Offerings While Maintaining Low-Cost Options [Angie Klein]

Verizon's opening testimony explained that the Transaction will allow TracFone to negotiate volume discounts and therefore provide customers with more attractive phone offerings, as well as new types of devices.[78] Dr. Selwyn dismisses this benefit, speculating without evidence that more devices in theory *could* be offered by TracFone in the absence of the Transaction.[79] This approach ignores the challenges TracFone faces on its own, with slim margins and limited scale, as contrasted to the advantage that the combined company would have in terms of increased buying power.

Compared to a combined Verizon and TracFone, TracFone as an MVNO has less bargaining power to negotiate lower prices for devices. This is especially the case for higher-end devices, such as 5G phones: until enough TracFone customers purchase such devices, TracFone's bargaining power for those devices may be quite limited; but fewer customers will choose to purchase such devices before prices drop. The greater demand from customers of the combined Verizon (the largest distributor of certain smartphones, including iPhones) and TracFone will allow the company to purchase such devices at a lower cost, making them more affordable for TracFone's customers.

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[77] *See* fn. 16.

[78] Verizon Opening Testimony (Klein) at 14.

[79] Selwyn Direct Testimony at 37:17-20.

Mr. Duffy's concern that the Transaction will lead to higher device prices is misplaced. He points out that the average price for the devices Verizon offers for its own brands, such as Verizon Prepaid, is higher than the average price of devices offered by the TracFone brand.[80] This is no surprise, as it reflects Verizon's current marketing strategy, which targets the "premium" sub-segment of the prepaid segment, rather than the "value" sub-segment that TracFone targets. The whole point of acquiring TracFone is to reach a different set of customers, who prefer less expensive devices and plans. Under Verizon's ownership, TracFone will continue to offer low-cost device options to meet these customers' needs, and will be better able to do so given the reductions in TracFone's costs as well as Verizon's scale.

Mr. Duffy likewise errs in asserting that the difference in pricing between devices offered by TracFone and Verizon prepaid brands will force customers currently receiving service from TracFone brands to pay substantially higher device prices for "Verizon-enabled device[s]" when they migrate to the Verizon network. Many customers on the TracFone brand (as well as various other TracFone brands) ride on the Verizon network using lower-cost devices today, and such devices will remain options for customers who migrate to Verizon's network from other networks. And Verizon plans to develop the **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** TracFone brand as a leading bring-your-own-device brand, and to permit customers to bring their own device on each of its brands, **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** enabling customers to use a range of devices, while providing more aggressive plan options for the no-frills customer segment that migrates to this brand primarily. Nothing about Verizon's network or the Transaction will deprive customers of access to lower-cost devices. Moreover, as described below with regard to Verizon's migration

[80] Duffy Testimony at 15:16-18.

plans, **[BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY]** Verizon intends to offer incentives for migration, which may take the form of credits for upgrading devices, **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** further reducing the cost of devices for TracFone's current customers.[81]

2. The Transaction Will Promote Access to 5G, Home Internet, International Roaming, and Superior Network Services [Paul Vasington]

Verizon's opening testimony highlighted that TracFone customers and other prepaid wireless consumers will benefit from Verizon's 5G, home internet, international roaming, and superior network services.[82] While the Cal Advocates witnesses suggest these benefits could be achieved without the Transaction, the Joint Applicants have demonstrated that the Transaction will improve access to Verizon services for TracFone customers and transform TracFone into a stronger competitor, which necessarily requires developing plans and services that attract customers in this high-churn segment.

For example, the practical difficulties inherent in TracFone's current arms'-length relationships with Verizon and other MNOs prevent it from rapidly adapting 5G offerings. In addition, the Transaction will enable TracFone to realize Verizon's economies of scale in purchasing 5G devices, which, combined with **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** larger subsidies, **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** will make such devices more affordable to TracFone's customers with the Transaction than without. Finally, 5G is designed to handle greater volumes of data, which makes the benefits of owner's economics especially compelling.

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[81] *See infra* § II.C.4.

[82] Verizon Opening Testimony (Klein) at 15-18.

Mr. Duffy's proposal that Verizon be required to provide free 5G devices should be rejected. No other carrier is subject to such a mandate, and there is nothing about the Transaction that would warrant the imposition of a unique obligation on TracFone. On the contrary, Verizon will compete to provide 5G services and devices to *all* customers, including those in the value prepaid segment. To the extent Mr. Duffy's 5G recommendations raise an industry-wide issue about minimum service standards for LifeLine or other government support program, those should be addressed on an industry-wide basis, not through this proceeding.

Mr. Duffy also criticizes the current pace of 5G deployment and expresses his view that its quality does not yet achieve "the superior performance and coverage that Verizon's brand is known for."[83] Even if this were true, for the sake of argument only, it does not counsel against approval of this Transaction, the benefits of which will extend into the future. Verizon was the first company in the world to launch a commercial 5G mobile network,[84] and it continues to aggressively accelerate and expand deployment of 5G services for wireless customers. And as a result of the recent FCC C-band (midband) spectrum auction, together with Verizon's existing and future high-band (mmWave) spectrum deployments, Verizon expects to make incremental 5G bandwidth available to 100 million people through the new C-band spectrum within 12 months.[85] By 2024, when the remainder of the C-Band spectrum is cleared, more than 250

[83] Duffy Testimony at 21:1-2.

[84] *See* Jeb Su, *Verizon Launches World's First Commercial 5G Smartphone Service*, Forbes (Apr. 4, 2019), https://www.forbes.com/sites/jeanbaptiste/2019/04/04/verizon-launches-worlds-first-commercial-5g-smartphone-service/.

[85] Press Release, Verizon Announces C-Band Results ("Verizon Announces C-Band Results") (Mar. 10, 2021).

million people are expected to have access to Verizon's 5G Ultra Wideband service on C-Band spectrum.[86]

Verizon also showed that the Transaction will improve international roaming and international calling for TracFone's customers. While Dr. Selwyn posits that this could occur without the Transaction, the reality is that this has not happened, and that it is difficult for TracFone to negotiate such arrangements on a standalone basis.

The Cal Advocates witnesses also question whether access to Verizon's fixed wireless home internet solutions—LTE Home Internet and 5G Home—represent a benefit for TracFone customers. Mr. Duffy acknowledges that Verizon's LTE Home Internet service in particular provides "an alternative internet option for rural customers with limited choices," and he cites a third-party reviewer's positive assessment of this service.[87] He does not dispute that Verizon's entry via wireless technology into the home broadband segment enhances competition in this area by challenging the dominant incumbent cable and telephone companies. Nonetheless, he criticizes the current coverage area for Verizon's home internet services. In doing so, he overlooks Verizon's plans to aggressively expand coverage, as discussed above. As Verizon explained in its opening testimony, Verizon expects its fixed wireless access broadband services to cover fifty million homes by the end of 2025, which would more than *triple* the number of homes Verizon intends to cover this year.[88] Mr. Duffy's focus on a snapshot in time again fails to recognize the longer-term benefits of the Transaction.

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[86] Verizon Announces C-Band Results. *See also* Verizon, *2021 Investor Day*, https://www.verizon.com/about/sites/default/files/Verizon-Investor-Day-Infographic-2021.pdf.

[87] Duffy Testimony at 24:3-5.

[88] Verizon Opening Testimony (Klein) at 17. *See also* Verizon Announces C-Band Results.

The Cal Advocates witnesses also underestimate the potential for more competitive home internet services for prepaid wireless customers. As with other devices, Verizon's purchasing power will reduce the cost of customer premises equipment that TracFone's customers will need for home internet service. In addition, as noted in Verizon's opening testimony, [**BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY**] Verizon may make home internet services available to TracFone customers at a discount when bundled with a prepaid wireless plan. This type of discount makes business sense because bundled services typically mean lower customer acquisition and administrative costs and help promote customer retention for both mobile and home service. [**END VERIZON CONFIDENTIAL LAWYERS ONLY**] By contrast, TracFone cannot offer [**BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY**] bundled home internet services [**END VERIZON CONFIDENTIAL LAWYERS ONLY**] without negotiating access to this service from a network provider.

Both Mr. Duffy and Dr. Karambelkar minimize the value of [**BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY**] discounted [**END VERIZON CONFIDENTIAL LAWYERS ONLY**] home internet services, although they offer no pricing or consumer survey data that addresses Verizon's competitiveness. Relatedly, Dr. Karambelkar speculates that Verizon's future home internet offerings will be priced "out of reach" for value-conscious prepaid customers.[89] Like Mr. Duffy's criticism of Verizon's existing coverage area for home internet services, Dr. Karambelkar's assessment of Verizon's current home internet services erroneously assumes that prices and plan offerings will remain static into the future. Both Cal Advocates witnesses also miss a key point that Verizon raised in its opening testimony—the Transaction would enable Verizon to rely on TracFone's expertise and existing customer base to

[89] Karambelkar Testimony at 38.

better ascertain the home internet needs and preferences of value-conscious prepaid wireless customers, which in turn will inform the development of more attractive offerings for this segment.

Finally, Dr. Selwyn argues that since TracFone customers can already switch to prepaid plans that rely on Verizon's network, TracFone customers riding on other networks will not experience a benefit from this transaction.[90] For support, he cites the high churn rate in the competitive prepaid segment, noting that prepaid customers "are free to move to a different provider if they are dissatisfied with their current service."[91] On that point, we agree. But Dr. Selwyn is too quick to dismiss the benefits of improved network performance that TracFone customers who voluntarily migrate to Verizon's network will experience. As Mr. Diaz Corona testifies, TracFone's data indicates that its customers are "extremely satisfied" with the quality of Verizon's network.[92] We discuss the benefits of Verizon's network performance in Section II.D of this testimony. And by offering incentives enabled by the cost savings resulting from the Transaction, and laying the groundwork for a carefully planned transition, Verizon will make it easier for TracFone customers on other networks to choose Verizon's network after the acquisition.

3. Verizon's Strategy for TracFone's Brands and Plans is Designed to Serve a Range of Customers [Angie Klein]

Many of TracFone's brands have substantial value, and Verizon has no incentive or interest in destroying that value. **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]**

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[90] Selwyn Direct Testimony at 39:10-18.

[91] *Id.* at 39:14-15.

[92] Rebuttal Testimony of Eduardo Diaz Corona on behalf of TracFone Wireless, Inc., April 9, 2021 ("Diaz Corona Rebuttal Testimony") at 10.

After the Transaction closes, however, some of TracFone's brands may be realigned. Some brands are linked to T-Mobile's network. Other TracFone brands have not been successful, and TracFone, as a standalone company, has stopped investing to grow them.[93] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** TracFone, just like its competitors, adapts its brands in response to consumer interests. That is true today, and it will remain true under Verizon's ownership. The evolution of brands is a normal and healthy aspect of competition.

A "brand" is a name used for marketing purposes. It is not a price paid by consumers. Each brand has a variety of plans with different prices, and these plans also change over time. While Dr. Karambelkar expresses concern that the changes to TracFone's brands under Verizon's ownership will deprive consumers of the pricing plans they prefer, she fails to evaluate the particular plans under each brand, focusing instead on ARPU per brand, which reflects an average. She also erroneously assumes that the pricing plans under each brand are static.

As noted in its opening testimony, Verizon is currently conducting market research to understand what value-conscious customers want.[94] That research will influence Verizon's determinations on how to present TracFone's brands and what prepaid plans to offer customers. It is impossible to finalize plans for brands at this point, because research continues, Verizon's ability to craft specific plans with TracFone is limited, and competitive dynamics change rapidly. Nevertheless, Verizon expects to have firmer plans for TracFone brands in place within the next few months. And while Verizon has not yet finalized its plans for TracFone brands, it has progressed in its research and planning.

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[93] **[BEGIN CONFIDENTIAL LAWYERS ONLY]** Indeed, as discussed below, Mr. Diaz Corona indicates that TracFone, before agreeing to the transaction, had committed internally to cease investing to grow certain underperforming TracFone brands. *See* Diaz Corona Rebuttal Testimony at 18-19. **[END CONFIDENTIAL LAWYERS ONLY]**

[94] Verizon Opening Testimony (Klein) at 19-20.

Verizon has made clear that it has no intention or ability to *force* customers onto more expensive plans,[95] and no decisions about what brands to present can change that outcome. Verizon plans to make additional services and more advanced features available to TracFone customers, and it hopes that some TracFone customers will be interested in those offerings. Historically, TracFone's customers have opted for plans with greater features, including Unlimited plans. But, following the close of the Transaction, TracFone will certainly offer plans that are attractive to those customers who are more concerned about obtaining the lowest absolute price.

Indeed, in order to fulfil a central purpose of the Transaction—to allow Verizon to attract and retain value-conscious customers—Verizon *must* provide the plans that TracFone's most price-sensitive customers desire; otherwise, given the high churn levels and competition in the prepaid market, those customers will take their business to other providers with low-cost options.[96] Verizon's analyses of the Proposed Transaction depended on the idea that Verizon would use TracFone's status as a current leader in the value segment to allow Verizon to reach greater numbers of value-conscious customers and "establish[] Verizon as a leader in the value segment."[97] Internal Verizon presentations analyzing the potential impact of the Proposed Transaction indicate that Verizon's strategic approach is to **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** "[c]over all customer segments in value market and compete across entirety of Consumer market"[98] and, similarly, to "[b]ecome a meaningful option

[95] *Id.* at 18.

[96] *See, e.g.*, Karambelkar Testimony at 21, Table 1 (chart displaying various wireless plans that cost $30 or less per month from various providers).

[97] VZW_000851 [Confidential-Lawyers Only].

[98] VZW_000834 [Confidential-Lawyers Only].

for value customers and compete for customers across all segments."[99] These presentations specifically focus on plans to reach low-income customers who are the most focused on cost and affordability and are underserved by current wireless offerings.[100] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Thus, while Verizon is excited to provide more options and better choices for TracFone's customers, it is committed to maintaining lower-cost offerings that many customers desire.

In accordance with this general approach, Verizon plans to invest both in brands whose customers often opt for more features and therefore produce higher revenues per user, while at the same time also investing in plans and brands focused on the most value-conscious customers. As even Dr. Karambelkar must acknowledge, Verizon's branding strategy involves positioning the **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** TracFone brand as one that offers "lower price points" and is at the "low end of the Value market."[101] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** Verizon's branding approach for TracFone is therefore aligned with its overall strategy to reach customers across the value segment.

Dr. Karembelkar's broad assertion that the Transaction will "likely increase prices"[102] is unsupported and does not indicate that TracFone services will be less affordable as a result of the Transaction. As "evidence," she cites Dr. Selwyn, who speculates that Verizon will **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** increase prices for "certain" TracFone services,[103] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** not prices for all

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[99] VZW_000514 [Confidential-Lawyers Only].

[100] VZW_000803 [Confidential-Lawyers Only].

[101] *See* Karambelkar Testimony at 27:5-6; VZW_000910-911 [Confidential-Lawyers Only].

[102] Karambelkar Testimony at 35:24-25.

[103] Selwyn Direct Testimony at 11:5-6.

services. We and Dr. Israel discuss the flaws in Dr. Selwyn's testimony in this respect, and Dr. Selwyn's testimony,[104] in any case, does not even purport to show that TracFone's low-cost plans will become more expensive or unavailable.

In a competitive and fast-moving industry such as wireless, it is natural that some brands will evolve and some will be phased out. Nothing prevents TracFone, or any other prepaid wireless provider, from changing its brands today. **[BEGIN CONFIDENTIAL LAWYERS-ONLY]** Indeed, the rebuttal testimony of Mr. Diaz Corona notes that TracFone already has decided to stop investing resources to grow the Page Plus, Go Smart Mobile, Net10, Clearway, and Telcel brands,[105] which would lead to the phasing out of these brands over time given customer churn. **[END CONFIDENTIAL LAWYERS-ONLY][BEGIN VERIZON CONFIDENTIAL LAWYERS ONLY]** Verizon contemplates continuing that approach by not making further investments in the very same brands, which have far fewer customers than most TracFone brands,[106] indicating that they are less attractive to customers. **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** It simply does not make sense to market, distribute, and support multiple brands that are not popular with consumers. Doing so is inefficient for the business, and it is likely to confuse customers and make shopping for wireless service more

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[104] *See supra* § II.A.2. Incidentally, Cal Advocates' witnesses adopted a convention to envelop with TracFone or Verizon confidentiality designations conclusions they made based on confidential documents produced in discovery. Those conclusions ostensibly indicate a quote from confidential documents, but are not quotes and are not accurate. For example, at page 43, lines 9-11, Dr. Selwyn envelopes the following statement in Verizon confidentiality designations: "Verizon's HSR materials . . . show planned price increases under Verizon ownership that are not anticipated to occur under América Móvil ownership." Selwyn Direct Testimony at 43:9-12. But Verizon's confidential documents do not show planned price increases. This is nothing more than Dr. Selwyn's flawed conclusion.

[105] Diaz Corona Rebuttal Testimony at 18-19.

[106] *See* TRAC00317 [Confidential-Lawyers Only].

complicated. Substantial investment in distribution, media, and marketing are needed for a brand to succeed, and it would be unwise (and unhelpful to consumers) to dilute those investments by spreading them across too many brands. **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** Verizon therefore plans to continue service on those legacy TracFone brands for current customers, but aims to attract new customers to brands that are the focus of investment. Verizon envisions concentrating its investment on a few TracFone brands, including a brand or brands that will be associated with the Verizon Wireless name, in competition with the other MNOs' flanker brands. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

[BEGIN VERIZON CONFIDENTIAL LAWYERS-ONLY] Other contemplated changes to TracFone's brands are necessitated by arrangements that would change as a result of the Proposed Transaction. The Simple Mobile and Walmart Family Mobile brands are explicitly tied to T-Mobile, and since a major objective of the Proposed Transaction is to migrate customers onto the Verizon network, those brands may be phased out, subject to the research in which Verizon is currently engaged. Verizon will work to incentivize their customers through promotions to migrate to Total Wireless or Straight Talk, while Verizon expects that T-Mobile will compete vigorously to retain those subscribers on its network. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

The SafeLink brand and its current plans are being continued, as discussed further below with regard to the LifeLine program, in Section II.F.

Dr. Karambelkar expresses concern that the elimination of brands would reduce the choices available to the demographic segment served by the brand.[107] Other brands, however, can offer plans that are similar to the plans of the discontinued brand and appeal to the same

[107] Karambelkar Testimony at 31:22-32:8.

demographic. It would be contrary to TracFone's economic interest (whether standalone or under Verizon's ownership) to fail to offer plans that customers desire, including plans that are similar to or improvements on the plans customers on other brands have enjoyed. **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** For example, Dr. Karambelkar compares the Simple Mobile 3GB for $25 plan to a plan offered on Total Wireless that provides 1GB of data for $30. This comparison is of little value, since relatively few customers choose that Total Wireless plan.[108] **[END CONFIDENTIAL-LAWYERS ONLY]** From this comparison, Dr. Karambelkar concludes that **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** replacing Simple Mobile will negatively impact low-income subscribers of that brand.[109] But, to the extent that the Simple Mobile 3GB plan is popular with customers, TracFone will craft new plans on brands like Total Wireless that offer similar plans in order to attract those customers. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

Thus, Dr. Karambelkar's assumption that brands and plan offerings are static is mistaken. **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** Total Wireless provides a case in point. Following the close of the Transaction, Verizon plans to build Total Wireless into a larger brand, which will allow it to optimize its marketing investment and channel distribution. Verizon also plans to elevate the brand in customers' perceptions by explicitly associating it with the Verizon network as "Total Wireless by Verizon," and expanding offerings to include competitive multi-line plans, which are not currently a focus of TracFone's brands. As referenced above, according to Verizon's May 2020 board deck, the ARPU for the Total Wireless brand ($32.51), to which Simple Mobile customers may be encouraged to migrate,

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[108] *See* TracFone Response to Cal Advocates Data Request T-2-1, Attachment B-5 to Karambelkar Testimony at TRAC00008 [Confidential-Lawyers Only].

[109] Karambelkar Testimony at 25:8-14.

would be less in every year from 2021-2025 than the 2019 ARPU for Simple Mobile ($33.29).[110] This strategy will make Total Wireless **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** a more effective competitor against the large MNO flanker brands Metro and Cricket, to the benefit of its customers.

In addition, Dr. Karambelkar's contention that potential negative impacts to low-income subscribers will result from the **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** discontinuation of the Simple Mobile Brand, **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** which she asserts "plays an important role in serving some of the most vulnerable and disadvantaged communities in California,"[111] is incorrect on its own terms. Dr. Karambelkar states that **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** Simple Mobile is to be replaced by Straight Talk and Total Wireless, but this is incorrect[112]: the plan is for Simple Mobile customers to be encouraged to move to Total Wireless. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** In any event, as indicated in Dr. Karambelkar's own testimony, **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** Straight Talk subscribers have a lower average income and are more likely to have an annual income of less than $35,000 than subscribers of Simple Mobile,[113] indicating that Straight Talk provides offerings that are attractive to low-income customers. **[END CONFIDENTIAL-LAWYERS ONLY]** **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** As such, the facts as to both Total Wireless and Straight Talk indicate that Verizon has not envisioned migrating current Simple

[110] *See* VZW_000863 [Confidential-Lawyers Only].

[111] Karambelkar Testimony at 24:9-12.

[112] *Id.* at 25:9-10.

[113] *Id.* at 14:11-17, 16, Figure 2; TracFone Response to Cal Advocates Data Request T-2-14, Attachment B-2 to Karambelkar Testimony at TRAC00101 [Confidential-Lawyers Only].

Mobile customers to a more expensive brand. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** In sum, speculative assertions about increased prices and flawed comparisons of brands and plans do not provide any reason to doubt Verizon's commitment to a strategy of offering new and better features that are attractive choices for customers, while at the same time reaching all customers within the value segment with low-cost options that value-conscious customers desire.

In light of competition for prepaid customers and Verizon and TracFone's ample incentive to offer plans that meet customers' needs, Cal Advocates' requests for the Commission to regulate TracFone's brands and plan offerings through conditions of approval are unwarranted and should not be adopted. The Commission does not regulate the brands or plans offered by prepaid providers generally, and there is nothing about this Transaction that warrants the imposition of such command-and-control solely over TracFone through deal conditions.

In particular, the Commission should reject the unprecedented recommendations to require pre-approval to phase out certain brands. Dr. Karambelkar refers to "Commission approved TracFone brands,"[114] but the Commission has not approved TracFone's (or any other wireless provider's) brands. Cal Advocates' proposal that the Commission review TracFone's decisions to replace or phase out brands is contrary to the Commission's approach of not exercising such regulatory micro-management of wireless companies' brand portfolios and should not be required. TracFone, and all other prepaid providers, today have the flexibility to change brands to respond to customer demands and market conditions, and TracFone will continue to need that flexibility in the future in order to best compete for customers in the competitive and rapidly changing prepaid wireless segment. Imposing long-term conditions will

[114] Karambelkar Testimony at 7:34-35, 8:12; 8:33; 40:29-30; 41:1; 41:22.

inhibit that flexibility and may have unintended consequences in the future. To the extent TracFone phases out brands, it will certainly provide customers with notice so that it can encourage them to migrate to another brand.

The Commission should also disregard Cal Advocates' unreasonable requirement that Verizon "increase the total number of customers by at least 25,000 per year in each non-LifeLine TracFone brand" for ten years after the close of the Transaction,[115] **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** which for some brands would require Verizon to increase subscribership by orders of magnitude. **[END CONFIDENTIAL-LAWYERS ONLY]** While Verizon would welcome an increase in customer counts, it cannot unilaterally control the outcome of competition. The Commission does not require any other prepaid provider to achieve subscriber count targets for particular brands, and there is no basis to do so in the context of this Transaction.

Similarly, the Commission should reject Cal Advocates' request that the Commission regulate the prices and features of prepaid plans offered by TracFone by "requir[ing] Verizon to continue to offer similar or better prepaid plans through TracFone's brands at prices lower than those offered at the closing of the Proposed Transaction."[116] Although Verizon anticipates improving TracFone's current plan offerings over time, the sort of price regulation requested by Cal Advocates is inappropriate in a competitive industry and has not been imposed on any other prepaid provider. Moreover, restricting TracFone's ability to change its plans would make it harder for TracFone to respond to customers' demands and compete for their business.

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[115] *Id.* at 8:29-30, 9:1-4, 41:18-19.

[116] *Id.* at 9:20-22.

TracFone welcomes the opportunity to work with community-based organizations, government agencies, and others to better understand customer needs, but Cal Advocates' proposal of a mandate to partner with a specified number (10) of such groups every year for ten years[117] is unwarranted. Neither TracFone nor its competitors has such an obligation today, and nothing about the Transaction makes such a requirement needed.

Similarly, the recommendation to compel TracFone to blast a text message twice a year to all of its customers with contact information to the Consumer Affairs Bureau is not warranted by the Transaction and not imposed on any other market participant. More importantly, it is not customer-friendly: customers do not like to receive blast messages in this manner for no compelling reason.

4. TracFone Customers Will Experience a Carefully Planned Transition After the Proposed Transaction Closes [Angie Klein]

Verizon is developing plans to migrate all of TracFone's customers onto Verizon's network. There will not be a "flash cut" from another network to Verizon's that would abruptly deprive customers of service. Rather, over time, Verizon will offer TracFone customers a range of promotions and incentives, including **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** targeted campaigns for SIM-card replacement and device upgrades that enable device compatibility with Verizon's network.[118] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** During the transition period, when Verizon and other networks compete to attract TracFone's customers, those customers will be able to keep their plans.[119]

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[117] *Id.* at 8:36-41, 9:1-4.

[118] *See, e.g.*, Verizon's Response to Cal Advocates Data Request V-4-21.

[119] Verizon expects the transition period to **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** last roughly two years. **[END VERIZON CONFIDENTIAL LAWYERS ONLY]** *See* Verizon Opening Testimony (Ng) at 24.

At this point it is impossible to detail exactly what incentives Verizon will offer TracFone users. Given how quickly the wireless industry changes, and given antitrust limits on Verizon's ability to coordinate with experts at TracFone before the Transaction closes, any plans developed today are necessarily tentative. That said, all TracFone customers will have options, and Verizon expects that TracFone customers riding on other networks will benefit from especially robust competition, as AT&T and T-Mobile have strong incentives to pursue TracFone users whose devices are already compatible with their networks. TracFone will need to adapt, and its goal will remain to provide incentives for customers riding on other networks to choose to migrate to Verizon. Verizon's goal is to retain and grow TracFone's total customer numbers, and to achieve that goal, Verizon has every incentive to deliver the smoothest transition possible.

The roughly **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 436,000 **[END CONFIDENTIAL-LAWYERS ONLY]** TracFone users in California who already ride on Verizon's network will require no migration changes at all.[120]

Verizon has analyzed data provided by TracFone and found that roughly **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 364,000 **[END CONFIDENTIAL-LAWYERS ONLY]** customers in California will require only a SIM-card swap to migrate to Verizon's network. TracFone will provide SIM-cards to these customers free of charge. These customers will simply need to switch the SIM card in their device—a simple, two-step process.[121] Shortly after the closing, TracFone will launch targeted messaging campaigns and promotions to encourage this switch.

[120] *See* Verizon Opening Testimony (Klein) at 38.

[121] *See* Diaz Corona Opening Testimony at 3-4 (describing ease of activation).

Approximately **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 179,000 **[END CONFIDENTIAL-LAWYERS ONLY]** TracFone customers in California have devices that Verizon has determined are generally incompatible with its network (except in some geographic areas) and likely will require a device upgrade.[122] But this figure significantly overstates the actual number of users requiring migration incentives, given the high rate of churn in the prepaid segment. As Dr. Selwyn notes, within three years, 85% of TracFone customers will no longer be purchasing the same service package.[123] Following this pattern, Verizon expects cycling to cause the majority of TracFone users to adjust or change their service to take advantage of the most appealing offers on the market. For many customers, that may entail an upgrade to a new device compatible with Verizon's network. Verizon will endeavor to offer attractive incentives to retain these customers. In particular, Verizon expects to rely on **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** device subsidies **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** to incentivize migration by customers whose devices are generally incompatible with Verizon's network. While market conditions may change, a review of current competitor promotions indicates that almost all of the major flanker brands provide no-cost handsets to consumers switching onto their plans.[124]

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[122] Compatibility for about **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 26,000 **[END CONFIDENTIAL-LAWYERS ONLY]** other customers remains unknown. These customers have either unknown devices, or devices that are uncommon on the network and which compatibility has not been determined. Uncertainty stems in part from data issues, which Verizon is consulting with TracFone to resolve. Verizon also continues to research **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** the long tail these devices represent: dozens of infrequently encountered device-types, with very few users per device. **[END CONFIDENTIAL-LAWYERS ONLY]**

[123] Selwyn Direct Testimony at 43:16-44:02.

[124] *See* Cricket Wireless, *Current Phone Plans and Fees* ("Cricket Wireless, *Charges and Fees*"), https://www.cricketwireless.com/cell-phones/smartphones (last visited Apr, 8, 2021) (offering ten different android phones for $0 upfront costs, when customers enroll in a plan for $60/m); *see also* Metro, *Phones* ("Metro, *Phones*"), https://www.metrobyt-mobile.com/shop/phones (last

Some customers will decline Verizon's offers during the transition period and instead migrate to other carriers. But this is not a reason to withhold approval of the Transaction or to require Verizon to pay customers to go elsewhere. In general, carriers are accustomed to high churn and attuned to the ease of switching prepaid plans. They run promotions that waive activation fees[125] and offer discounts on devices for customers looking to switch providers.[126] TracFone customers riding on other carriers' networks will be prime targets for those carriers, as those customers' devices are compatible with those carriers' networks.[127] This applies at least equally to LifeLine customers.[128] Should they wish to leave TracFone, LifeLine and non-LifeLine customers alike will find a landscape vying to offer them attractive service and low transaction costs. That competitive dynamic only strengthens Verizon's motivation to compete to retain those customers with attractive offers and high-quality service.

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visited Apr. 8, 2021) (offering 15 different phones, including an iPhone model, for "$0.00 when you switch," with $20 activation fee); *But see* Boost, *Phones*, https://www.boostmobile.com/phones (last visited Apr. 8, 2021) (offering phones starting at $29.99). *See also* Diaz Corona Rebuttal Testimony at 10-11.

[125] All providers offer free promotions that waive activation fees. *See* Cricket Wireless, *Charges and Fees*, (activation fees of $0 online and "up to $25 in store"); *see* Boost Mobile, *Frequently Asked Questions: Phone Activation*, https://www.boostmobile.com/support/faq/phones-devices/phone-activation.html (last visited Apr. 8, 2021) (specifying free activation for new Boost Mobile phones, and a $10 activation fee for certified pre-owned); Metro, *Phones*, https://www.metrobyt-mobile.com/shop/phones/details/Metro-by-T-Mobile-SIM-Card/NC128TRIPLESIM (last visited Apr. 8, 2021) (offering "no activation fees when you switch"). *See also* Diaz Corona Rebuttal Testimony at 10-11.

[126] *See* sources cited *supra* note 125.

[127] Customers also will not be forced to pay device unlocking fees in the event they would rather move to another provider than migrate to Verizon's network, contrary to Dr. Karambelkar's concern. *See* Karambelkar Testimony at 38:16-19. Because the period over which their devices would be locked is at most one year, any locking fee would expire during the expected **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** two year transition period. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**.

[128] *See* Diaz Corona Rebuttal Testimony at 18-20.

Mr. Duffy argues that customers who do migrate to Verizon may be dissatisfied.[129] This argument is unconvincing given Verizon's high level of customer satisfaction and extensive network coverage, which Mr. Duffy himself recognizes.[130] Verizon's overall network strength[131] suggests that a customer migrating to Verizon is likely to be more satisfied than a customer who migrates to another network. In addition, **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** TracFone's lower rate of churn among customers on the Verizon network, **[END CONFIDENTIAL-LAWYERS ONLY]** discussed in the testimony of Mr. Diaz Corona, **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** suggests that TracFone customers are more satisfied with their service experience when receiving service on Verizon's network than on other networks **[END CONFIDENTIAL-LAWYERS ONLY]**.[132] In any case, this is a decision for *customers* to make, not Mr. Duffy. Against the backdrop of promotions and incentives offered by MVNOs, customers have every reason to transfer to whatever service they perceive to be the most valuable. The industry's high churn rate, as Dr. Selwyn observes, suggests that customers already do so readily.[133]

To the extent there are customers who, at the end of the transition period, and after receiving multiple notices, elect *not* to migrate, TracFone will take appropriate steps. What those steps are, however, will also depend on the circumstances, including the number and nature of the affected customers and the posture of the MNOs. These circumstances cannot be predicted years in advance. While exact plans remain to be determined, however, Verizon has

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[129] *See* Duffy Testimony at 26-28.

[130] *See id.* at 26-28, 36-39.

[131] *See* discussion *infra* Section II.D.

[132] *See* Diaz Corona Rebuttal Testimony at 8.

[133] *See* Selwyn Direct Testimony at 39:13-17.

committed that TracFone customers will not be moved off their networks and onto Verizon without their consent.[134]

As a result, the conditions Intervenors propose are neither necessary nor appropriate. TracFone will not only provide notice of the transition, but will offer customers incentives to migrate to Verizon. The Commission should not mandate free devices and should not require TracFone to pay departing customers—particularly in an environment in which other carriers can be expected to offer to enroll those customers at no cost. TracFone will have personnel working with customers on transition, but there is no need to require them to be solely dedicated to that function and no basis to prescribe how many. Nor should the Commission mandate a consultant to survey transition experience. Verizon's commitment to gradually transition customers and the robust competition for MVNO users generally are more than sufficient to secure low transaction costs and attractive incentives for TracFone's users during and after the transition period.

D. Verizon's Superior Network Performance [Lynda Ng]

Verizon has the best, largest, and most reliable network in California. As noted in Verizon's opening testimony, the industry's most comprehensive study of nationwide network performance concluded that Verizon offers California customers the best available service in every dimension the report considers—overall performance, network reliability, network accessibility, network speed, data performance, call performance, and text performance.[135] Verizon, moreover, continues to invest in strengthening and expanding its network. Just last month, Verizon announced an additional $10 billion in capital expenditures[136] over the next three

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[134] *See, e.g.*, Verizon's Response to Cal Advocates Data Request V-2-3.

[135] *See* RootMetrics, *Second Half of 2020 State RootScore Report: California* (2021), https://www.rootmetrics.com/en-US/rootscore/map/state/california/2020/2H.

[136] This number is in addition to Verizon's capital expenditure of $17.5 to $18.5 billion for 2021 and beyond. *See* Verizon, *Edited Transcript: Verizon Communications Inc., Virtual Investor*

years stemming from its long-awaited C-Band auction results, in which Verizon succeeded in more than *doubling* its existing mid-band spectrum holdings by adding an average of 161 MHz of C-Band nationwide for $52.9 billion, including incentive payments and clearing costs.[137] Verizon's network is not just California's strongest overall: analysis comparing Verizon's network coverage to TracFone's LifeLine and non-LifeLine users indicates that Verizon adequately serves TracFone users even in the hardest-to-reach parts of the state.[138]

1. Verizon's Network Covers the Vast Majority of TracFone's LifeLine Users [Lynda Ng]

Verizon understands that, because of the nature of the prepaid business and because TracFone does not operate its own network, TracFone does not know where most of its customers live. For non-LifeLine users, TracFone maintains records of zip codes that customers report at activation. Those zip codes are not validated to ensure that they are real locations or that they correspond to the locations of TracFone users.[139] Nor are the zip codes updated as customers move. For LifeLine customers, Verizon understands that TracFone's data is more granular: TracFone maintains both mailing addresses and service addresses. As a result, analyzing TracFone's LifeLine customers provides the best window into Verizon's ability to cover TracFone's current users overall.

Day at 12 (Mar. 10, 2021), https://www.verizon.com/about/sites/default/files/2021-03/2021-IR-Day-Transcript-10310.pdf. *See* also Michael Mandel and Elliott Long, *Investment Heroes 2020*, https://progressivepolicy.org/blogs/investment-heroes-2020/ (July 24, 2020) (showing Verizon Communications as having the fifth highest estimated U.S. capital expenditure of any non-Financial companies in 2020).

[137] *See* Verizon Opening Testimony (Klein) at 7. *See also* Verizon Announces C-Band Results.

[138] *See* discussion, *infra*, at Section II.D.1, pp. 49-52.

[139] Diaz Corona Opening Testimony at 6.

No wireless network provider offers coverage in every area of the nation or California. Nonetheless, a new analysis looking at geographic zip codes of TracFone LifeLine users for which Verizon's network covers less than 70% of the geographic area of the zip code shows that Verizon's network can cover nearly all of TracFone's existing LifeLine customers.[140]

There are a total of 1,070 TracFone LifeLine customers associated with geographic California zip codes with <70% Verizon coverage. But even within these zip codes, Verizon provides coverage in areas where people generally are. All but 20 of the 1,070 customers have service addresses in areas covered by Verizon's network. In other words, 98.13% of TracFone's California LifeLine users in counties where Verizon's network has the *least* coverage would still be adequately served on Verizon. Of the 20 remaining California LifeLine customers who fall outside Verizon's service area, over a third already rely on Verizon over other providers. That data indicates that Verizon remains competitive *even* in the most remote patches of California and where Verizon's network coverage is less extensive (but potentially better than the coverage provided by other MNOs).

To take just one example: Del Norte County, California, is home to 430 TracFone LifeLine customers with valid service addresses in geographic zip codes in which Verizon's network provides <70% coverage. Of those, only four are associated with a service address outside of Verizon's network coverage areas. Two of those users *already* rely on Verizon, despite being outside Verizon's service territory. That leaves just two customers on other providers' networks in areas without Verizon coverage:

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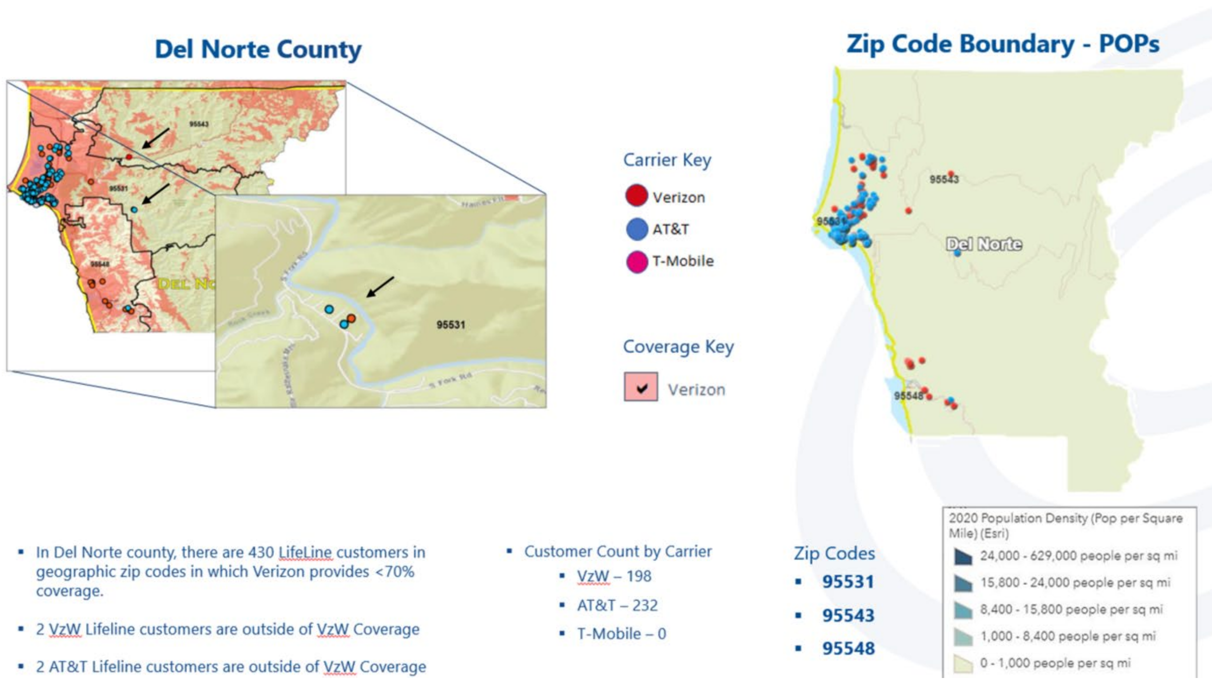
[140] The analysis, undertaken by Verizon and TracFone, was based on location information provided by TracFone and Verizon's network coverage data. The analysis compares the Verizon network's California coverage to the service address of each TracFone LifeLine customer in a geographic zip code in which Verizon offers less than 70% coverage. The analysis excludes institutional and P.O. box zip codes, described in more detail in Section II.D.2, below.



Those two customers rely on AT&T. But subsequent analysis has shown that AT&T also lacks coverage for their addresses. That means that the LifeLine customers in Del Norte County that rely on other networks outside of Verizon's service area *also* lack coverage on their underlying networks.[141] In Del Norte County, in other words, every TracFone LifeLine user currently in the coverage area of any network on which they rely will also have coverage on Verizon.

Analyses for the rest of the state tell a similar story: statewide, all but *twelve* of TracFone's California LifeLine users in <70% geographic zip codes are *either* associated with Verizon coverage areas or already served by Verizon.

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[141] Verizon understands, moreover, that one of Del Norte County's [**BEGIN CONFIDENTIAL-LAWYERS ONLY]** two non-Verizon customers outside of Verizon coverage areas has logged no usage over the last six months. TracFone has advised that, according to program guidelines, that customer would normally be de-enrolled from LifeLine for non-usage (but continues to receive service under the COVID Service extension). [**END CONFIDENTIAL-LAWYERS ONLY]**

The tiny minority of TracFone LifeLine customers outside of Verizon's service area and not already served by Verizon will have options and plenty of time (years) to exercise them. By definition, any TracFone customer who receives coverage through a non-Verizon network in an area where Verizon service is not available will be able to obtain service following the close of the Transaction through the network from which they currently receive it. As Mr. Diaz Corona's testimony details, the market for California LifeLine customers is competitive.[142] MVNOs offer LifeLine customers a range of switching benefits, including free handsets. And LifeLine customers displeased with Verizon's coverage can expect to enroll in new LifeLine coverage for free.[143] As Mr. Diaz Corona notes, elevated churn in the LifeLine segment in California reflects this intense competition for LifeLine customers.[144] As a result of this competition, any of the twelve LifeLine users in <70% Verizon service zip codes can expect to switch carriers for free, and may even receive incentives like new handsets from other MVNOs eager to acquire them as customers.

2. Verizon is the Network of Choice for Non-LifeLine TracFone Users in the Hardest-to-Reach Parts of California [Lynda Ng]

Verizon understands that TracFone does not maintain verified address or even zip-code level data for its non-LifeLine customers.[145] Zip codes, moreover, can be misleading.

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[142] *See* Diaz Corona Rebuttal Testimony at 18-20.

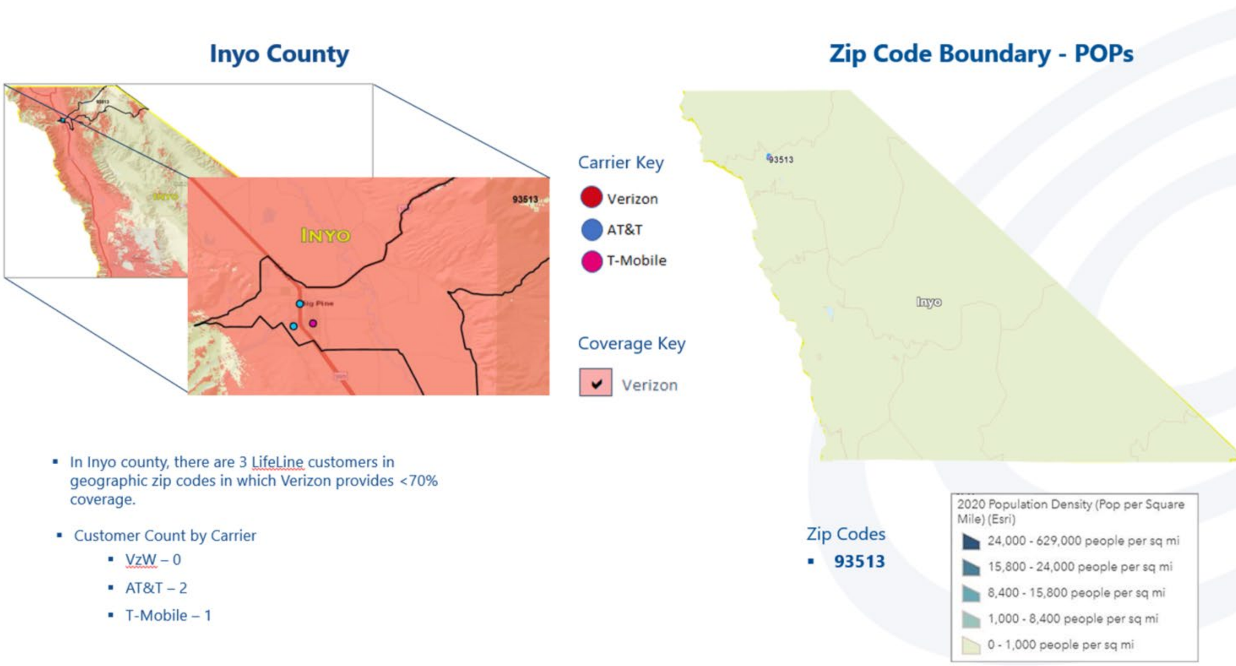
[143] *Id.*

[144] *Id.* at 19.

[145] Because of the nature of the prepaid business and because TracFone does not operate its own network, TracFone lacks precise location data for its non-LifeLine users. Instead, TracFone stores zip codes these customers report at activation. TracFone does not validate that these zip codes correspond to real physical locations and does not validate that customers live or use their subscriptions at the locations the zip codes reflect. *See* Diaz Corona Opening Testimony at 6.

To start, zip codes cover a lot of geographic areas where people are not located. Take Inyo county. Verizon's network covers only 33.01% of the geographic area of zip code 93513, which spans from Inyo National Forest to Death Valley National Park[146]:

Yet service address data for TracFone's LifeLine customers shows that Verizon's network

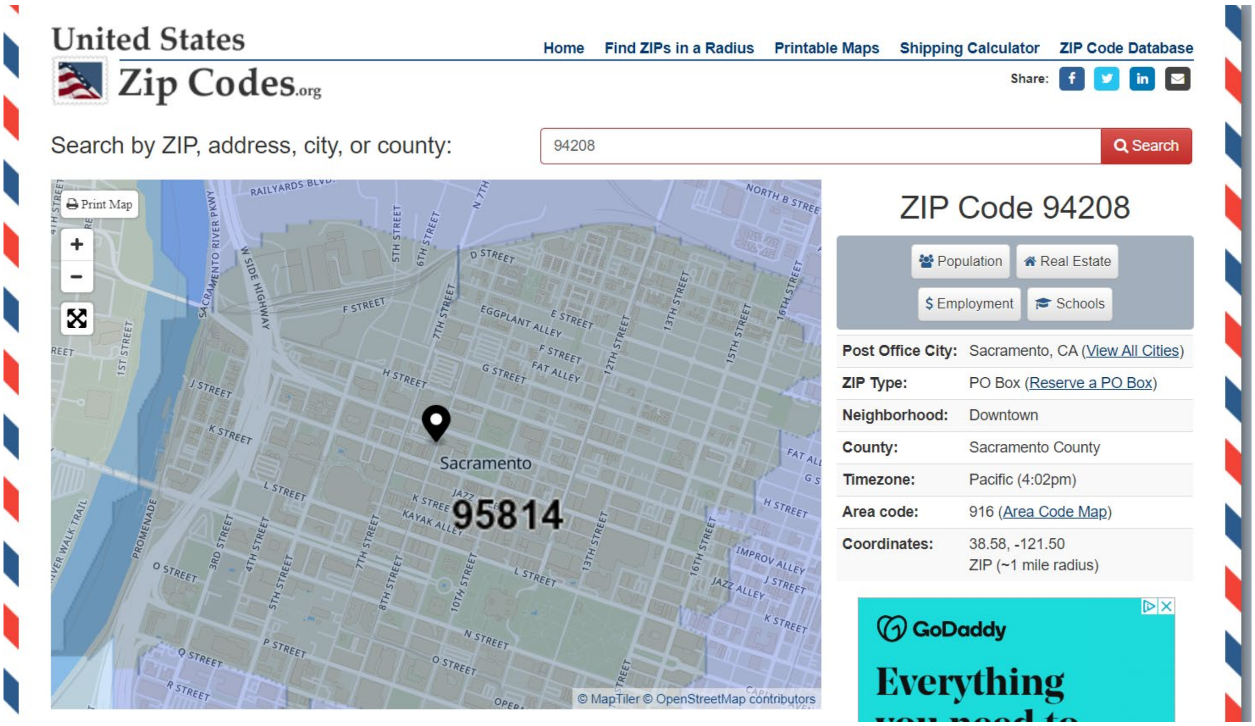


covers every one of the three TracFone LifeLine customers associated with the zip code. Especially in rural areas like Inyo county, network coverage may reach customers even when there is low coverage in the zip code overall.

Zip codes can also refer to unique addresses like Dodger Stadium (90012) or to blocks of P.O. Boxes. Consider 94208. According to an online directory of U.S. zip codes, 94208 is assigned to a block of P.O. Boxes that sit comfortably within Sacramento's larger zip code

[146] *See* United States Zip Codes, Zip Code 93513, https://www.unitedstateszipcodes.org/93513/ (last visited Apr. 8, 2021).

(95814). An image from Unitedstateszipcodes.org illustrates the relationship:



Network coverage estimates frequently reflect 0% coverage for PO box zip codes, even if they fall within another zip code, like 95814, in which Verizon has 100% coverage. As a result, network coverage estimates underestimate the actual service customers are likely to experience.

The zip code data Mr. Duffy cites glosses over these nuances, failing to differentiate between zip code type or geographic coverage.[147] As a result, TracFone and Verizon's internal

[147] Mr. Duffy relies on initial TracFone analysis (summarized in TRAC00268_CONFIDENTIAL LAWYERS ONLY – Cal Advocates Office Data Request – TracFone Response No. 19) that Verizon understands was not as granular or refined as the analysis TracFone and Verizon subsequently conducted, as reflected in this testimony. Based on the further analysis by TracFone and Verizon, and for the reasons described here, Verizon believes that analysis overstates the extent to which there may be current TracFone subscribers outside of Verizon's coverage area.

analyses—which do account for nongeographic zip codes—offer a far more useful picture of coverage than Mr. Duffy's comparison.[148]

Those TracFone and Verizon estimates indicate that Verizon's non-LifeLine customers will overwhelmingly benefit from Verizon coverage, even in the hardest-to-reach parts of the state. Roughly 97.35% of California's non-LifeLine TracFone users reported zip codes in which Verizon's network coverage is over 70%. For the 2.65% of remaining TracFone non-LifeLine customers who reported zip codes in which Verizon does not offer over 70% coverage, Verizon is already overwhelmingly the network of choice: in <70% coverage geographic zip codes, **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 72% **[END CONFIDENTIAL-LAWYERS ONLY]** of TracFone's non-LifeLine customers already rely on Verizon's network. Compare that to the **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 43% **[END CONFIDENTIAL-LAWYERS ONLY]** of TracFone users served by Verizon's network statewide. The result suggests that Verizon disproportionately serves TracFone's customers *specifically* in the hardest-to-reach pockets of Verizon's network—areas that cover the hardest-to-reach parts of the state.

Together, analysis of TracFone's LifeLine and non-LifeLine customers tell the same story: Verizon's network offers adequate coverage for the vast majority of TracFone users. And even in California's most remote areas, Verizon's network is competitive.

3. Verizon Is a leader in Network Resiliency in California [Lynda Ng]

Intervenors' discussion of network outages fails to acknowledge that the FCC changed its outage reporting methodology almost in the middle of the four-year period Mr. Duffy cites.[149] As a result of the changes, effective May 2018, the number of reportable wireless outages

[148] Mr. Duffy's analysis nonetheless finds that Verizon does offer the state's best coverage—a feature Mr. Duffy notes is key to customer satisfaction. *See* Duffy Testimony at 27-28.

[149] *See* Disruptions to Communications, 82 Fed. Reg. 28,410 (June 22, 2017).

increased substantially, but for reasons entirely unrelated to the physical resilience of Verizon's network or Verizon's network reliability practices.[150]

The total number of outages reported, moreover, indicates nothing about the duration and scope of those outages. By the Intervenors' math, a carrier with ten outages involving ten cell sites across the state of California, each lasting less than an hour and with limited to no coverage loss will appear less reliable than a carrier with a single weeklong outage that knocks out service for all of L.A. County.

Contrary to Intervenors' assertions, Verizon is a leader in network resiliency in California. Mr. Duffy's testimony does not cite the other carriers' network outage records, but the Commission has lauded Verizon's network performance. Just last year, the Commission held up Verizon as a model for superior network resiliency when compared to California's other wireless carriers.[151] In that same proceeding, even Cal Advocates noted that Verizon surpassed other wireless providers in network resiliency.[152]

As the Commission acknowledged, Verizon has invested considerable resources in backup power at its cell sites and switching centers. Nonetheless, Verizon continues to invest heavily in network resiliency. From 2020-2023, Verizon plans to invest **[BEGIN VERIZON**

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[150] Specifically, the FCC revised the methodology so that outages affecting 900,000 user minutes are now calculated by multiplying the number of macro cell site outages by the average number of users served per site (a number that is calculated as the total number of users of a provider divided by the total number of the provider's macro cell sites). This revised reporting methodology meant that the number of outages reported increased substantially.

[151] *See* D.20-07-011 at 68 (noting that Verizon, unlike other networks, supported investment requirements for carriers, and saw 97% of its "cell sites remain[] in service during the major wildfires and PSPS events in 2019"); *see also id.* at 63-64 (citing Verizon as a model of good resiliency practices).

[152] *See id.* at 75 ("Cal Advocates notes that Verizon experienced significantly fewer outages than other wireless providers" during the 2019 PSPS and wildfire events).

CONFIDENTIAL-LAWYERS ONLY] $24 million **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** in California High Fire Threat Districts Tiers 2 and 3, which will add additional fixed generators to macro sites that do not have fixed generators, and provide other assets like portable generators, fuel tanks for our trucks, and temporary assets like Satellite Picocells on Trailers (SPOTs). These funds will also go to enhance Verizon's generator fuel and performance monitoring systems, providing additional information about the status of generators and fuel.

While Verizon has been and remains focused on network outages, the problem is industry-wide and not directly related to the Transaction. California has experienced outage events related to newly authorized procedures for public safety power shutoff events[153] and disasters like wildfires across all networks.[154] The cable failures Mr. Duffy cites, moreover, are attributable to third party backhaul and not primarily caused by Verizon's own wireless network. It is also important to note that even where there may be a cell site outage, such outage does not directly correlate to a loss of coverage or service disruption for customers in many cases, as there may be overlapping coverage from adjacent sites and/or from deployable assets. Mr. Duffy's reference to GO 133-D network outage data omits this context, ignores Verizon's leading record on resiliency, and fails to explain how outages—an industry-wide problem for which Verizon has been recognized as a leader for largely avoiding them—relate to the Transaction.

4. Verizon Offers California Customers Superior Network Quality and Speed [Lynda Ng]

[153] *See* Resolution ESRB-8, adopted July 12, 2018 (extending to SCE and PG&E procedures adopted for SDG&E in D.12-04-024).
[154] *See, e.g.*, *id.* (Commission decision addressing industry-wide resiliency issues).

Finally, the network speed data Intervenors cite is not persuasive. To start, the Ookla data Mr. Duffy cites refers to national, not California-specific, speeds.

More fundamentally, it reflects crowdsourced data, which is partial and statistically biased, and as a result unhelpful for the kind of head-to-head comparisons Mr. Duffy tries to draw. Unlike systematic studies that compare providers' network strength by testing competitors in the same place and at the same time, crowdsourced datasets reflect a random sample of whatever users happen to test network speed at a given moment. This unevenness means the data cannot provide firm ground for comparing networks' performance head-to-head.

For networks like Verizon, which is strong in areas where other networks may lack service altogether, crowdsourced data may be especially misleading. A rural customer may report slow speeds, for example, on Verizon. But the same customer may have no coverage at all on AT&T. While a systematic study would reflect this nuance, crowdsourced data does not. Added to this list of deficiencies, Ookla data considers only one dimension of performance. While speed is important to customer satisfaction, so is reliability. Systematic studies that cover a range of network performance metrics are more helpful for understanding the quality of a network overall. Understood in context, Ookla's data cannot provide persuasive support for the conclusions Mr. Duffy draws.

For network-by-network comparisons, Verizon instead uses network test results from multiple specialist vendors, each of which uses different methodologies. RootMetrics, J.D. Power, and other crowdsourced providers all point to the same result: Verizon's network offers superior reliability, consistent speeds, and unparalleled coverage.

Verizon has been recognized as the best overall network by RootMetrics for 15 consecutive testing periods.[155] RootMetrics uses scientific drive-testing to recreate real-world user experiences.[156] As a result, it offers the industry's most reliable study of performance. RootMetrics' California study found that Verizon offers California customers the best available service in every single dimension of network quality the study assesses—*including* overall performance, network reliability, network accessibility, network speed, data performance, call performance, and text performance.[157]

Meanwhile, J.D. Power surveys real customers to measure satisfaction across categories including call, message, email, and web collection.[158] Verizon is the most awarded wireless company in the history of J.D. Power.[159]

Finally, other crowdsourced studies recognize Verizon as a leader. OpenSignal, which conducts crowdsourced testing, recently named Verizon #1 in 4G coverage experience, app experience, game experience, and video experience in California.[160]

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155 *See* Telecomlead, *Verizon has the best wireless network: RootMetrics* (Jan. 25, 2021), https://www.telecomlead.com/4g-lte/verizon-has-the-best-wireless-network-rootmetrics-98569.

156 *See* RootMetrics, *A Simple Premise for a Sophisticated Methodology*, https://rootmetrics.com/en-US/methodology#:~:text=RootScores%20offer%20a%20simple%20way,score%2C%20the%20better%20the%20performance (last visited Apr. 8, 2021).

157 *See* RootMetrics, *Second Half of 2020 State RootScore Report: California* (2021), https://www.rootmetrics.com/en-US/rootscore/map/state/california/2020/2H.

158 *See, e.g.*, J.D. Power, *Wireless Network Quality Problems Most Prevalent in Urban and Rural Regions, J.D. Power Finds* (Jan. 23, 2020) (summarizing results and methodology of J.D. Power 2020 U.S. Wireless Network Performance Study, in which "Verizon wireless rank[ed] highest in all six regions covered in the study, achieving the lowest network quality problems per 100 connections (PP100) in call quality, messaging quality and data quality in each region").

159 *See* Ilya Hemlin, *Verizon breaks record as the most awarded brand for J.D. Power Wireless Network Quality*, Verizon (Jan. 26, 2021), https://www.verizon.com/about/news/verizon-breaks-record-most-awarded-brand-jd-power-wireless-network-quality.

160 *See* Open Signal, *2021 U.S.A. Mobile Network Experience: Regional Analysis* (2021), https://www.opensignal.com/reports/2021/01/usa/mobile-network-experience.

These results, across a range of studies, are compatible with the positive trend that Mr. Duffy acknowledges in Verizon's customer satisfaction scores and Call Drop Rates.[161] That satisfaction is further demonstrated in the churn rate for TracFone customers riding on Verizon, which TracFone has indicated is **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** materially lower than the churn rate for TracFone's other customers.[162] **[END CONFIDENTIAL-LAWYERS ONLY]** This **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** lower **[END CONFIDENTIAL-LAWYERS ONLY]** churn rate is strong evidence of Verizon's superior network quality and the benefit to consumers that the transaction offers.

In the event that any minority of TracFone's customers experience reduced network coverage or strength on Verizon, they will have options. The prepaid market is competitive. As evidenced by the sector's high churn rates, barriers are low for prepaid customers who wish to change providers or change their service,[163] and users have every incentive to switch to products or plans with carriers that they perceive to better serve them. TracFone customers with reduced network coverage or strength with Verizon are currently served by other networks. Those customers, if dissatisfied with Verizon's service, will be able to choose between offerings from their current carrier or other MVNOs partnering with that carrier and they will switch away from TracFone towards those more attractive offerings.

E. <u>The Transaction Will Expand TracFone Distribution for Prepaid Consumers [Angie Klein]</u>

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[161] As Mr. Duffy notes, Verizon's Call Setup Rate trend is neutral. Duffy Testimony at 42.

[162] Diaz Corona Rebuttal Testimony at 9-10.

[163] *See* Communications Marketplace Report, 33 FCC 20-188, at 17 n.77 (citing CTIA, Wireless Industry Indices Report Year-End 2019 Results (2019), at Appx. C, 14) (annual customer churn rate in the prepaid segment is 47.2%).

The Transaction will allow TracFone to increase its reach both online and in the local communities it serves. Verizon intends to maintain TracFone's existing distribution channels[164] and to broaden its physical footprint in warehouse stores, urban centers, and rural areas in California.[165] **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** To do so, Verizon's plans show its intention to invest $120 million in market development funds ("MDFs") nationwide over the first two years after the transaction closes.[166] Verizon intends to use those funds to grow the customer base for dedicated prepaid retail stores and other retail outlets and to promote the Verizon and TracFone prepaid options sold within them.[167] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

That investment is a significant benefit of the Transaction. As Mr. Diaz Corona described in his opening testimony, TracFone's thin margins have hampered its ability to expand distribution.[168] With better margins and access to more capital, TracFone will be able to invest

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[164] *See* Verizon's Response to Cal Advocates Data Request V-4-22 ("As a starting point, Verizon is committed to maintaining TracFone's strong relationships with existing retail partners like Walmart, as outlined in previously-produced analysis and planning documents.") (citing: VZW_000488 [Confidential-Lawyers Only], VZW_000500 [Confidential-Lawyers Only], VZW_000514 [Confidential-Lawyers Only], VZW_000517 [Confidential-Lawyers Only], VZW_000523 [Confidential-Lawyers Only], VZW_000830 [Confidential-Lawyers Only], VZW_000835 [Confidential-Lawyers Only], VZW_000848 [Confidential-Lawyers Only], VZW_000859 [Confidential-Lawyers Only], VZW_000912 [Confidential-Lawyers Only], VZW_000930 [Confidential-Lawyers Only]).

[165] *See, e.g.*, Verizon's Response to Cal Advocates Data Request V-4-22 (citing VZW_005953 [Confidential-Lawyers Only]).

[166] *Id.*

[167] *See, e.g.*, VZW_000774 [Confidential-Lawyers Only], VZW_000859 [Confidential-Lawyers Only], VZW_000864 [Confidential-Lawyers Only], VZW_000912 [Confidential-Lawyers Only], VZW_000930 [Confidential-Lawyers Only].

[168] *See* Diaz Corona Opening Testimony at 10 ("As a result of its high network costs, TracFone operates on thin margins, which limit its ability to compete aggressively on handset offerings, distribution, rate plans and more.").

heavily in bricks-and-mortar distribution channels, including in low-income, diverse, and underserved communities. Verizon has committed to invest, moreover, in online distribution, improving the web experience for online users and investing in generating online demand. For customers, the result will be better access to TracFone's services. Contrary to Intervenors' claims, this improved access is a direct result of the Transaction **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** and Verizon's investment in TracFone's market development. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

Mr. Duffy incorrectly suggests that Verizon's distribution plans focus mainly on **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** Costco and Sam's Club locations, **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** and that Verizon will thus target affluent suburban consumers, neglecting low-income and urban segments of TracFone's user-base.[169] On the contrary, Verizon expects investments in distribution to significantly benefit low-income customers. **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** In addition to aspiring to expand into 1,300 Costco and Sam's Club locations, Verizon aspires to open 2,500 brick-and-mortar stores over the next few years, including in low-income urban markets in which Boost is dominant.[170] Verizon believes these locations will particularly benefit historically underserved customers, whom Verizon understands value brick-and-mortar store with employees from their community.[171] The investments Verizon has scoped in physical distribution will allow TracFone to expand outlets where these customers can look at device options, discuss

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[169] *See* Duffy Testimony at 16:24-17:16.

[170] *See* Verizon's Revised Response to Cal Advocates Data Request V-4-22(b).

[171] *See id.*

different plans with a representative, activate service, and make payments.[172] **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]**

The Commission should not regulate where and how TracFone opens new distribution channels, as Mr. Duffy proposes. Because of the reductions in TracFone's costs that result from the Transaction, TracFone will have both the ability and incentive to pursue customers with these additional investments; no regulatory commitment could match that incentive. The Commission does not micro-manage any other prepaid providers' decisions about the location of its distribution outlets, and it should not do so for TracFone.

F. Verizon Will Maintain and Improve TracFone's LifeLine Service, Benefitting LifeLine Subscribers

1. The Transaction Will Lead to Increased Competition for LifeLine Customers [Paul Vasington]

One of the most important benefits of the Transaction to California LifeLine customers is the introduction of a second facilities-based carrier offering LifeLine service. Currently, approximately ninety percent of LifeLine customers receive service over the T-Mobile network.[173] Providing service to TracFone's LifeLine customers through Verizon's network will introduce a facilities-based provider. The Commission and others have recognized the benefits of facilities-based competition generally. For example, in its decision approving the Sprint/T-Mobile merger, the Commission noted that a reduction in the number of facilities-based carriers from four to three raised competitive concerns, and that the potential addition of a new facilities-

[172] *See id.*

[173] *See* Verizon Opening Testimony (Vasington) at 37.

based carrier would significantly alleviate such concerns.[174] LifeLine customers, like wireless customers generally, stand to benefit from facilities-based competition.

Ms. Mailloux's suggestion that LifeLine customers are indifferent to competition is incorrect. Based on the premises that survey data shows that **[BEGIN CONFIDENTIAL LAWYERS ONLY]** many TracFone customers are not aware of the identity of the network providing their service, and that many are sensitive to price increases [**END CONFIDENTIAL LAWYERS ONLY]**, Ms. Mailloux concludes that there is no reason for Verizon to compete for LifeLine customers.[175] This conclusion does not follow. For one thing, LifeLine customers, just like any other customers, care about the quality of services offered through different networks and can switch to a provider that offers better service. There are many providers of LifeLine service, whose market shares change over time,[176] showing that LifeLine providers compete for and win the business of LifeLine customers.

As described in Verizon's opening testimony, the Transaction will enable TracFone to compete more effectively for LifeLine customers.[177] Despite her contention that competition for LifeLine customers is irrelevant, Ms. Mailloux makes a number of statements that demonstrate just the opposite. For example, Ms. Mailloux expresses concern that TracFone's LifeLine offerings may be negatively impacted by the Transaction because TracFone LifeLine subscribers will be "lock[ed] up" on Verizon's network, depriving TracFone of the ability to "use its

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[174] *See* D.20-04-008 at 21-22; *see generally In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 F.C.C. Rcd. 5660, 5675 (2018) ("[W]here there is more than one facilities-based alternative, . . . we expect customers will benefit from competition between facilities-based providers.").

[175] Testimony of Christine A. Mailloux on behalf of The Utility Reform Network and Center for Accessible Technology, April 2, 2021 ("Mailloux Testimony") at 26:19-27:11.

[176] *See* Verizon Opening Testimony (Vasington) at 36.

[177] *Id.* at 37.

bargaining power to shop around for more favorable network access terms and conditions" from different MNOs.[178] While her worry is unfounded—TracFone could not possibly "bargain" for a better wholesale deal than it will achieve through owner's economics—the premise of Ms. Mailloux's argument is that LifeLine customers are affected by the terms of wholesale access. It follows that, as TracFone's network cost improves as a result of the Transaction, TracFone will be better able to serve LifeLine customers. Ms. Mailloux also worries that the Transaction "will give TracFone a significant advantage over its current MVNO rivals, and potentially weaken these other MVNO LifeLine service providers."[179] Setting aside the internal inconsistency of Ms. Mailloux asking TracFone to compete "aggressively" for LifeLine customers but not be too competitive, this testimony acknowledges that there is competition for LifeLine customers, and the Transaction stands to make TracFone more competitive—to the benefit of LifeLine customers.

A standalone TracFone will face increasing challenges to its ability to continue providing LifeLine service without requiring co-pays, particularly as it competes with T-Mobile's Assurance brand. With regard to LifeLine service, as with prepaid service generally, a standalone TracFone, with a higher cost structure and thinner margins, will be challenged as Minimum Service Standards ("MSSs") for the California LifeLine and federal Lifeline programs increase data requirements over time without commensurate increases in subsidies.[180] These challenges are summarized by Mr. Diaz Corona in his rebuttal testimony, which notes that, if

[178] Mailloux Testimony at 14:1-5.

[179] *Id.* at 21:5:7. This statement is also in direct contradiction to Ms. Mailloux's concern that the Transaction will "weaken[] TracFone, one of the strongest LifeLine competitors in California today." *Id.* at 3:6-7.

[180] *See* Diaz Corona Opening Testimony at 18.

MSSs increase further, "TracFone may be left with no choice but to charge co-payments," and, "[b]eyond that, TracFone likely would need to consider withdrawing from the programs entirely."[181] Even if MSSs do not increase, the owner's economics that TracFone will enjoy following the close of the Transaction will put its ability to offer LifeLine service on surer footing.

While Ms. Mailloux and Mr. Ahlstedt express concern that Verizon is not sufficiently committed to continuing LifeLine service,[182] a more salient question is whether *TracFone* is more able to continue economically serving LifeLine customers as a standalone company over time, without addressing the structural challenges it faces. Relying on the testimony of Dr. Selwyn, Mr. Ahlstedt claims that Verizon, as a "profit seeking business . . . has an incentive to discontinue offering LifeLine."[183] However, this principle applies equally to TracFone, which also is a profit-seeking business (as is every other provider of LifeLine service), and the higher cost structure of TracFone as an MVNO makes it more likely that providing LifeLine service would be less profitable for a standalone TracFone than for a Verizon-backed TracFone following the Transaction.[184] Moreover, while Mr. Ahlstedt asserts that Verizon could cease providing LifeLine service,[185] so too could TracFone. Verizon's strongly stated commitment to

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[181] *See* Diaz Corona Rebuttal Testimony at 22.

[182] *See, e.g.*, Mailloux Testimony at 3:7-11, 13:5-13; Ahlstedt Testimony at 14:11-14.

[183] *See* Ahlstedt Testimony at 14:18-19.

[184] *See* Diaz Corona Rebuttal Testimony at 22.

[185] Ahlstedt Testimony at 15:14-16:9. Mr. Ahlstedt notes that providers may withdraw from providing wireless LifeLine service upon satisfying notice requirements and fulfilling contractual obligations. *Id.* While technically correct, this does not mean that TracFone could withdraw on 30-days' notice as a practical matter. TracFone has been designated by the Commission as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e)(2) for the purposes of receiving a subsidy under the federal Lifeline program. *See* Resolution T-17467 (Aug. 13, 2015). "If an ETC, wireless or wireline, wishes to relinquish its ETC status, it must also comply with the federal ETC relinquishment requirements set forth in 47 U.S.C. § 214(e)(4). Section

continue serving LifeLine customers, backed by Verizon's owner's economics that will render TracFone better able to compete following the Transaction and will provide more security for TracFone's LifeLine service after the Transaction than exists at present.

2. Under Verizon's Ownership, TracFone Will Continue to Serve LifeLine Customers [Angie Klein]

Intervenors' concerns about the future of the LifeLine program under Verizon's ownership are unfounded. Verizon has made amply clear its firm commitment to LifeLine. As noted in the opening testimony, Verizon intends to maintain TracFone's participation in the LifeLine program, because Verizon sees the LifeLine program as a key element of TracFone's service to value customers.[186] Following his statement that Verizon "see[s] Lifeline as a foundational element of our commitment in this space,"[187] Ronan Dunne, the CEO of Verizon's Consumer Group, recently reaffirmed this view, stating in an interview that the company "couldn't be more unequivocal about our commitment to Lifeline and the consumer segments that it serves," adding that he stands ready to "sit down today with the FCC [and the Commission] and talk specifically to them about commitments—binding commitments," on Lifeline and on "enhancing facilities-based competition."[188]

214(e)(4) requires the requesting ETC to provide a notice to the State commission and fulfill other obligations including ensuring that all customers served by the requesting ETC will continue to be served." D.14-01-036, 2014 Cal. PUC LEXIS 54, at *94. Thus, while there is no separate requirement to obtain Commission approval to stop receiving the additional subsidy under the California LifeLine program, as a practical matter it is unlikely that any ETC would relinquish that subsidy and continue only the federal program. In any event, Verizon has made clear that it intends to maintain TracFone's ETC status and LifeLine service.

[186] Verizon Opening Testimony (Klein) at 33-34.

[187] *Id.* at 33; *see also* Bloomberg Law, *Verizon-TracFone Deal is Early Test of New FCC Wireless Stance* (Mar. 7, 2021), https://bnanews.bna.com/antitrust/verizon-tracfone-deal-is-early-test-of-new-fcc-wireless-stance.

[188] *See id.*

Ms. Mailloux and Dr. Karambelkar misinterpret a reference to SafeLink within a presentation on Verizon's branding strategy as an indication that Verizon is not committed to maintaining LifeLine service.[189] A May 2020 presentation to the Verizon Board on the Transaction included a slide describing preliminary thoughts on a strategy to **[BEGIN VERIZON CONFIDENTIAL-LAWYERS ONLY]** "Streamline and Refocus Brands."[190] It lists a number of brands, including SafeLink, as to which it was then envisioned that there would be "[l]ights-on funding with harvest approach and migration to investment brands." In context, "lights-on funding" means maintaining TracFone's current strategy for those brands, many of which do not have significant customer bases. **[END VERIZON CONFIDENTIAL-LAWYERS ONLY]** The observations in this slide regarding brands were not only preliminary, but also were nationwide. **[BEGIN CONFIDENTIAL LAWYERS ONLY]** In the case of SafeLink, TracFone does not heavily invest nationwide because federal subsidies are inadequate,[191] but TracFone invests substantial amounts to promote SafeLink in California, including by using grassroots agents on the ground to enroll eligible customers. **[END CONFIDENTIAL LAWYERS ONLY]** In any case, since May 2020, Verizon has made clear its commitment to LifeLine, and its further analyses have included SafeLink within Verizon's overall brand strategy of covering the entire prepaid segment, with SafeLink serving the customers who are most focused on cost and affordability.[192] Following the close of the

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[189] *See* Mailloux Testimony at 16:13-25; Karambelkar Testimony at 28:1-5.

[190] *See* VZW_000835 [Confidential-Lawyers Only]. *See supra* § II.C.3.

[191] As Mr. Diaz Corona notes in his rebuttal testimony, with only a few exceptions including California, TracFone has ceased providing free smartphones to Lifeline customers, eliminated the use of in-person enrollment support, and limited consumer outreach efforts to the minimum requirements. Diaz Corona Rebuttal Testimony at 21.

[192] *See* VZW_000806 [Confidential-Lawyers Only].

Transaction, Verizon plans to continue TracFone's marketing investments in California to promote LifeLine service.

Ms. Mailloux observes that the same May 2020 presentation assumes that SafeLink subscribership would **[BEGIN CONFIDENTIAL LAWYERS ONLY]** decrease following the Transaction.[193] **[END CONFIDENTIAL LAWYERS ONLY]** This assumption does not reflect a desire or plan by Verizon to reduce LifeLine subscribers. Instead, it reflects a conservative assumption that TracFone's LifeLine subscriber count would continue to decrease, consistent with the general trend of decreasing enrollment in the Lifeline program,[194] and as a result of government enforcement actions[195] that Verizon assumed could result in enhanced compliance plans.[196]

While Ms. Mailloux criticizes Verizon for not providing specific details about LifeLine offerings in the future, a lack of details about plan offerings does not indicate a lack of commitment to the LifeLine program; rather, Verizon has set forth its intention to at least ensure continuity of existing plans. Verizon has made it clear that it intends to continue the specific

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193 Mailloux Testimony at 17:1-14.

194 *See* Diaz Corona Rebuttal Testimony at 22.

195 *See, e.g.*, Notice of Apparent Liability for Forfeiture, *In the Matter of TracFone Wireless, Inc.*, File No. EB-IHD-13-00010668 (F.C.C. Sept. 30, 2013) (proposing forfeiture of $4,573,376 for alleged violations of FCC rules consisting of requesting and/or receiving support from the federal Lifeline program for ineligible consumers); Notice of Apparent Liability for Forfeiture and Order, *In the Matter of TracFone Wireless, Inc.*, File No. EB-IHD-18-00027738 (F.C.C. Apr. 2, 2020) (proposing a $6,013,000 forfeiture penalty for alleged improper claims for reimbursement under the federal LifeLine program in Florida and Texas); Advisory Regarding Fraud in the Lifeline Program, Federal Communications Commission, Office of the Inspector General (April 16, 2019) (alerting federal Lifeline carriers of potential violations of program rules and potential sanctions for those violations, and describing a three-year audit into the LifeLine program that concluded additional action was needed to address improper Lifeline payments).

196 *See also* Mailloux Testimony at 25 (discussing references in Verizon documents to enhanced compliance plan).

plans that customers currently have.[197] However, as Ms. Mailloux observes, LifeLine service, like other wireless services, must develop over time to meet customers' needs.[198] Verizon is therefore continuing to investigate LifeLine customers' preferences, which is an ongoing process, in order to determine plan features going forward. Verizon expects that TracFone's expertise serving LifeLine customers, which can be fully shared only after the close of the Transaction, will substantially aid these determinations. Ms. Mailloux's apparent preference for a "long term commitment to the status quo"[199] is misplaced; rather, Verizon believes that LifeLine plan options should be updated in light of customer preferences and as part of the competition to serve those customers, which the Transaction will increase.

Ms. Mailloux observes that Verizon does not currently serve wireless LifeLine customers in California,[200] but she incorrectly infers that this indicates Verizon will not be interested in serving LifeLine customers through TracFone. A major objective of the Transaction is to gain the benefit of TracFone's extensive experience serving these customers. Verizon's support for the Emergency Broadband Benefit ("EBB") program also does not indicate that Verizon is less committed to providing LifeLine service, as Ms. Mailloux also suggests.[201] Verizon supports the EBB program as another choice for customers, in addition to LifeLine, not as a mandate that necessitates eliminating the LifeLine program. Verizon's recent whitepaper supporting the creation of a permanent broadband benefit that would exist after the EBB expires, which Ms.

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[197] Verizon Opening Testimony (Klein) at 34.

[198] Mailloux Testimony at 15:18-19.

[199] *Id.* at 15:17-19.

[200] *Id.* at 11:4-12:5.

[201] *Id.* at 18:3-14.

Mailloux cites, expresses Verizon's view that "[i]t's time to create a new program that will *supplement* Lifeline to sustainably address the needs of our most at-risk communities."[202]

Mr. Ahlstedt's concerns about harms to LifeLine customers who migrate to Verizon's network are unfounded.[203] As described above, Verizon is planning to gradually encourage the migration of all customers, including LifeLine customers, to Verizon's network, using attractive incentives. LifeLine customers requiring a SIM card replacement will be able to receive it at no cost; Verizon will provide incentives to be applied to obtaining a new device compatible with the Verizon network; and all the while LifeLine customers can expect to have options to obtain LifeLine service on a different network if they so choose, likely without switching costs, as many providers regularly waive activation fees and offer free devices to customers who switch from another provider.[204]

Ms. Mailloux's and Mr. Ahlstedt's criticisms of Verizon for not planning to provide fixed wireless solutions and 5G service (and the devices used for those services) as part of the LifeLine program are misplaced. Neither 5G services nor fixed wireless are currently part of the MSS for the LifeLine program set by the Commission,[205] and the LifeLine program does not provide for customers to apply the LifeLine discount to services like fixed wireless that are not part of approved LifeLine telephone plans. Intervenors are therefore asking the Commission to modify the requirements of the LifeLine program as a "condition" that would apply only to the applicants if the Transaction is approved, and not to all LifeLine participants. This request is

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[202] Verizon, *Accelerating America: affordability, adoption, access*, https://www.verizon.com/about/sites/default/files/verizon-accelerating-america-broadband-full-version.pdf.

[203] *See* Ahlstedt Testimony at 24:14-21.

[204] *See supra* §§ II.C.4, II.D.1; Diaz Corona Rebuttal Testimony at 10-11.

[205] *See* D.20-10-006, Attachment 1.

unrelated to the Transaction and outside the scope of this proceeding, which is limited to whether the Transaction is in the public interest. Changing the LifeLine rules for only one provider would skew markets and incentives and potentially harm competition, which is inconsistent with the Commission's telecommunications policy favoring competitively neutral consumer protections and benefits. Ms. Mailloux's and Mr. Ahlstedt's suggestions to bypass the rulemaking process (which TURN is participating in[206]) here by requiring the provision of such services to LifeLine customers should not be followed. Moreover, there is no basis to conclude that providing such services is necessary to meet LifeLine customers preferences and needs, given that, as Mr. Ahlstedt indicates, **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** 99.1% **[END CONFIDENTIAL-LAWYERS ONLY]** of SafeLink customers opt for free plans rather than paying for additional services.[207]

3. TURN and CforAT's Recommendations Are Constructive, While Cal Advocates' Requested Conditions Are Unreasonable and Should Be Rejected [Angie Klein]

Verizon is in general agreement with most of TURN's overall recommendations for TracFone's California LifeLine service. Specifically, Verizon would accept the following conditions, based on those proposed by TURN, with certain modifications and exceptions as described below. Verizon's specific responses to TURN's recommendations are as follows:

Co-pays. Ms. Mailloux proposes that Verizon not add any new co-pay requirements for LifeLine service in California for the next two years, except that Verizon may add new "tiers" of LifeLine service as authorized under the Commission's MSS/SSA standards, which may include

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[206] *See* Reply Comments of the Utility Reform Network on the Straw Proposal Addressing Specific Support Amount for California Lifeline, R.20-02-008 (Aug. 6, 2020).

[207] Ahlstedt Testimony at 20:1-5.

co-pays as authorized, if such service tiers are not currently offered by TracFone.[208] Verizon will commit not to add any additional co-pays[209] to SafeLink's existing LifeLine plans for two years following the close of the Transaction, except that SafeLink may include new "tiers" of LifeLine service as authorized under the Commission's MSS/SSA standards, which may include co-pays as authorized, if such service tiers are not currently offered by TracFone; provided that Verizon may revisit this commitment if the terms of the LifeLine program (such as the subsidy level and MSS) change.

Customer share/outreach. Ms. Mailloux proposes that the Commission require Verizon to maintain or increase TracFone's current 14% share of the total California LifeLine subscribers for three years, or else pay for and implement a Commission-mandated marketing and outreach plan.[210] Verizon cannot guarantee it will be successful in competition with others, including T-Mobile, on whose network the vast majority of TracFone's LifeLine customers ride, and which was required, as a condition of the merger of two facilities-based carriers, to enroll at least 332,500 new low-income California households, including LifeLine customers on its Assurance Brand and other low-income customers[211]. Ms. Mailloux's proposed time period (three years) covers **[BEGIN VERIZON CONFIDENTIAL]** the time period when Verizon will be seeking to migrate TracFone's LifeLine customers from T-Mobile's network to Verizon's network,

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[208] *Id.* at 29:22-25.

[209] By "co-pays," Verizon refers to the fixed monthly amount payable by LifeLine customers for LifeLine plans, the amount of which (if any) has been approved by Commission staff through the advice letter process. For illustration, there is no co-pay for SafeLink's Unlimited Talk & Text with 6 GB Data plans; the current co-pay for SafeLink's Unlimited Talk & Text with 20 GB High Speed Data plan is $15.78, and the current co-pay for SafeLink's Unlimited Talk & Text with 40 GB High Speed Data plan is $24.28.

[210] Mailloux Testimony at 28:13-17.

[211] D.20-04-008 at 23-24.

during which T-Mobile may seek to attract these customers to remain on its network. **[END VERIZON CONFIDENTIAL]** Verizon, moreover, should not be constrained from entering into wholesale agreements with MVNOs to provide LifeLine service. While Verizon cannot commit to achieving a particular market share, Verizon will commit that, for three years after the Transaction closes, it will spend $1,000,000 per year for the purposes of marketing LifeLine, providing outreach on LifeLine, and enrolling eligible customers in LifeLine.[212]

Marketing plan. Ms. Mailloux proposes that Verizon be required to present a plan to the Commission describing how it will market wireless LifeLine services and distribute those services through all of Verizon's and TracFone's distribution channels.[213] Verizon would agree to present the Commission, within six months of the close of the Transaction, with a plan to enroll LifeLine customers through grassroots distribution efforts targeted to customers interested in Lifeline through SafeLink. This is the method that Verizon understands TracFone has used with success to efficiently and effectively target outreach to customers most likely to be interested in LifeLine service.

Marketing materials. Ms. Mailloux proposes that Verizon submit marketing materials offered in eleven specified languages for the Commission to approve.[214] Verizon agrees that TracFone will submit LifeLine marketing materials for the Commission's approval before

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[212] When acquiring Leap Wireless, parent company of Cricket, AT&T committed to the Commission that it would maintain Cricket's ETC status for just 18 months after the closing of the merger. *See* Letter from J. David Tate, General Attorney & Associate General Counsel Legal Department, AT&T California, to Ryan Dulin, Director, Communications Division California Public Utilities Commission, *Re:* Notice by AT&T Inc. of Proposed Indirect Transfer of Control of Cricket Communications, Inc. (U 3076 C) (October 8, 2013), at 6.

[213] Mailloux Testimony at 28:18-24.

[214] *Id.* at 28:25-29:5.

disseminating those materials to the public, in compliance with the Commission's rules.[215] With respect to the languages in which TracFone will provide marketing materials, Verizon disagrees with Ms. Mailloux's recommendation, which is not a requirement for all LifeLine providers; TracFone will continue to abide by the Commission's rules requiring the provision of notices and customer support in the language of sale.[216]

Retail locations. Ms. Mailloux proposes that Verizon commit to placing 10% of its retail locations established within two years of the close of the Transaction, including third party agent locations, in rural areas, low-income urban and suburban areas, and communities of color.[217] Verizon is aligned with the principle that, for two years after the Transaction closes, at least 10% of new retail locations directly or third-party owned that are opened that distribute a TracFone brand or brands will be located in geographic locations in which a significant number of low-income consumers reside.[218]

Home internet and 5G. As noted above, providing fixed wireless and 5G service is not required under the LifeLine program and is not an appropriate condition for approval in this proceeding. However, Verizon notes that LifeLine customers, like other TracFone customers, may benefit from better access to these services for the reasons described above.

4G LTE. Ms. Mailloux proposes that Verizon provide LifeLine service over its 4G LTE network as well as offer a variety of device choices and upgrades from the current offerings.[219]

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[215] *See* D.14-01-036, ordering paragraph 24(c).

[216] *See* G.O. 153 § 4.6, App'x A No. 18.

[217] Mailloux Testimony at 29:6-10.

[218] This would exclude retail locations that distribute consumer goods in addition to mobile devices and services, such as Walmart or similar retailers, as Verizon does not control the locations in which such retailers open stores.

[219] Mailloux Testimony at 29:19-21.

TracFone currently offers LifeLine over Verizon's 4G LTE network, and any customers signing up for LifeLine service can choose 4G LTE. Following the close of the Transaction, TracFone will continue to provide LifeLine service over Verizon's 4G LTE network. To the extent some LifeLine customers ride on another carrier's network, TracFone will encourage them to migrate to Verizon's 4G LTE (or 5G) network, but cannot and will not compel them to do so.

LifeLine team. Ms. Mailloux proposes that Verizon be required to offer incentives to retain TracFone's LifeLine team, and to train additional personnel on LifeLine issues, and to maintain the size of the LifeLine team for two years after the close of the Transaction.[220] Verizon looks forward to retaining and welcoming TracFone's employees, including those employees who support TracFone's Lifeline services. However, Verizon believes it is not appropriate for the Commission to require Verizon to **[BEGIN CONFIDENTIAL-LAWYERS ONLY]** provide employee retention incentives, or require specific staffing levels. **[END CONFIDENTIAL-LAWYERS ONLY]**

Approval to withdraw. Finally, Ms. Mailloux proposes that Verizon be required to file an application with the Commission to obtain approval for TracFone to withdraw from the LifeLine program.[221] While Verizon has no intention to withdraw TracFone from LifeLine, Verizon would agree to a condition requiring Commission approval to withdraw TracFone from the LifeLine program consistent with applicable federal requirements for relinquishment of ETC status.[222]

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[220] Mailloux Testimony at 30:1-4.

[221] *Id.* at 30:5-7.

[222] *See* fn. 185.

In contrast to TURN and CforAT's recommendations, Cal Advocates' proposed conditions are unreasonable and unrelated to the Transaction, and they should not be adopted by the Commission.[223] As explained above, demanding the provision of fixed wireless and 5G service goes beyond the requirements of the current LifeLine program; so too do the proposed requirements that Verizon provide free 5G handsets to LifeLine customers and offer home internet at a specific price ($15) for an apparently indefinite term. Absent the Transaction, TracFone would not be required to make such offers, and there is nothing about the Transaction that warrants imposing this obligation uniquely on Verizon among all LifeLine providers. Cal Advocates' proposed requirements that Verizon and TracFone participate in the LifeLine program for as long as it exists, and provide plans at a specific cost ($0) during that entire period, no matter how the terms of the program might change over time, distort the voluntary nature of the LifeLine program for wireless providers. And Cal Advocates' proposal that the Commission should micromanage the migration process through rigid requirements enforced through a series of advice letters both evidences a misunderstanding of, and would frustrate, Verizon's approach to migration, which is designed to accomplish migration gradually, in as seamless a process as possible, through customers' own decisions to upgrade devices in response to attractive incentives, and not in a rigid, command-and-control fashion.[224]

III. <u>THE TRANSACTION WILL NOT HARM COMPETITION</u>

The Transaction will enhance the competitive landscape by empowering TracFone to compete with an improved cost structure and without the friction and delays inherent in arms'-

[223] *See* Ahlstedt Testimony at 6:14-8:10.

[224] *See supra* § II.C.4.

length transactions with MNOs. Dr. Selwyn has not shown that the Transaction will produce any countervailing competitive harms to consumers, either through vertical or horizontal effects.

A. **The Transaction Does Not Raise Vertical Concerns [Paul Vasington]**

For a number of reasons, the Transaction does not raise competition concerns in a vertical sense, *i.e.* harms to consumers resulting from the loss of competition from MVNOs other than TracFone.

First, the Transaction does not change the incentive of MNOs to continue to provide wholesale service to MVNOs, particularly those that can reach retail customers in different ways than the MNOs themselves. T-Mobile, AT&T, and previously Sprint did not cease selling to MVNOs following their acquisitions of prepaid brands; AT&T and T-Mobile continue to sell service to TracFone and other MVNOs today, and Sprint likewise had MVNO partners before it was acquired by T-Mobile. Selling to MVNOs who can reach customers that the MNOs themselves cannot as efficiently reach is profitable for MNOs. The same will continue to be the case for Verizon (and other MNOs) post-closing.

For example, those MVNOs that offer a differentiated package of services (such as the cable companies Comcast and Charter) or those that target niche customers segments (such as GreatCall) are likely to continue to succeed, and the MNOs, including Verizon, will continue to have the incentive to compete for wholesale arrangements with those MVNOs with or without the Transaction. This result has been predicted by none other than Dr. Selwyn himself, who discussed MVNOs' shift toward "customers that MNO's frequently shun" in his testimony in connection with the merger of Sprint and T-Mobile.[225] In that testimony, Dr. Selwyn relied on a

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[225] Direct Testimony of Dr. Lee L. Selwyn on behalf of the Public Advocates Office at the California Public Utilities Commission during the Sprint/T-Mobile review, January 7, 2019 ("Selwyn 2019 Sprint/T-Mobile Direct Testimony") at 92-95.

paper by McKinsey & Company advising that an MVNO "make sure its target segments were not on its MNO partner's radar screen."[226]

Second, while Dr. Selwyn hypothesizes that the Transaction will reduce Verizon's incentives to sell wholesale service to other MVNOs, he fails to show how, even if this happened, consumers would be harmed. The MVNOs other than TracFone that provide prepaid service represent a miniscule fraction of Verizon's wholesale revenue and of the prepaid segment as a whole. As Dr. Selwyn observes, **[BEGIN VERIZON HIGHLY CONFIDENTIAL-LAWYERS ONLY]** [redacted] **[END VERIZON HIGHLY CONFIDENTIAL-LAWYERS ONLY]** Dr. Selwyn does not explain how the loss of this tiny amount of MVNO competition could possibly change the competitive dynamic in a way that would harm consumers. In any case, every MVNO served by Verizon could turn to another MNO for wholesale service at a competitive rate, and those MNOs would have the same incentive to sell to those MVNOs as they do today.

Third, MVNOs do not play a significant role in competition against the MNOs. Because of their inferior cost structures and similar weaknesses, MVNOs are not a powerful competitive force against facilities-based MNOs.

Dr. Selwyn disputes this conclusion by relying on an FCC policy established in 1982. That policy, however, was predicated on a market structure in which only two MNOs were permitted in any important geographic area; that was the context in which the FCC believed

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226 *Id.*

[redacted]

resale competition was significant. Fortunately, this regulatory regime was abandoned decades ago in favor of one encouraging competition between MNOs while also allowing MNOs to sell wholesale to MVNOs on commercial terms.

The FCC's embrace of competition among MNOs has produced enormous benefits for consumers. Today we have three nationwide MNOs and may soon have a fourth (DISH). Since regulatory reform was enacted in the 1990s, consumers have seen enormous declines in wireless prices, an explosion of service offerings, and enhancements in quality and coverage that could not have been imagined in 1982. This fierce competition among MNOs will continue to flourish and benefit consumers with or without a large MVNO sector. Even Dr. Selwyn cites the FCC's conclusion that it "typically has seen MVNOs as limited in their ability to constrain the prices of facilities-based service providers because they rely on those facilities-based providers for network access."[228]

Dr. Selwyn implies repeatedly that the MVNO agreement that accompanied the divestiture of Boost to DISH in connection with the Sprint/T-Mobile merger demonstrates the importance of MVNOs to competition. But that example undermines, rather than supports, Dr. Selwyn's theories. The merger of T-Mobile and Sprint—both nationwide MNOs—bears no resemblance to the Transaction, which combines an MNO and an MVNO. This fundamental difference makes any comparison to Sprint/T-Mobile inapposite.

In any case, Dr. Selwyn's suggestion that the purpose of the condition was to enable Boost to compete as an MVNO is wrong. Although Boost has an MVNO arrangement with T-Mobile, that arrangement is intended to support Boost's owner, DISH, while DISH builds out its

[228] *Id.* at 56:24-26.

own nationwide network, *i.e.* while DISH becomes an MNO.[229] In other words, the regulators did not merely create a Boost MVNO and hope that it could compete against the MNOs; instead, the Boost MVNO arrangement is part of an overall package intended to promote the development of a fourth MNO with all of the competitive assets possessed by the other facilities-based carriers.[230]

Such measures would be unnecessary if MVNOs were the competitive force that Dr. Selwyn believes them to be. To the contrary, they indicate that an MVNO arrangement—even one with highly preferential terms imposed by regulators—is not a recipe for competition against the MNOs. This conclusion is made expressly in aspects of the record from the Sprint/T-Mobile proceedings that Dr. Selwyn ignores. For example, in the proceeding considering the states' challenge to that merger, the court emphatically rejected Dr. Selwyn's views on MVNOs: "MVNOs should *not* be considered independent competitors in the [wireless] Market."[231] Dr. Israel discusses this record in his rebuttal testimony.

The vertical aspects of the Transaction raise no concerns for competition.

B. <u>The Horizontal Aspects of the Transaction Raise No Competition Concerns [Paul Vasington]</u>

[229] *See* https://www.justice.gov/opa/pr/court-enters-final-judgment-t-mobilesprint-transaction ("T-Mobile must also provide Dish with robust access to the T-Mobile network for a period of seven years while Dish transitions the business and builds out its 5G network.").

[230] *See* DOJ brief at 22, https://www.justice.gov/atr/case-document/file/1215706/download ("Much of the relief in the proposed Final Judgment is to provide DISH with assets and resources to make its entry as a nationwide, facilities-based wireless carrier easier and more certain . . . . In particular, the divestiture of Sprint's prepaid businesses will enable DISH to serve an existing base of 9 million subscribers . . . . As DISH completes its network buildout, it will be in position to move existing subscribers onto its new network in short order, allowing it to immediately monetize its own network by ***shifting away from using a third-party network*** to serve subscribers." (emphasis added)).

[231] *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 200 (S.D.N.Y. 2020) (emphasis added).

Dr. Selwyn also incorrectly suggests that the Transaction raises horizontal concerns. For a number of reasons, this is incorrect.

Dr. Selwyn ignores the fact that Verizon and TracFone are not material competitors. Even if one were to accept Dr. Selwyn's market definitions, the data show that Verizon's share of any "prepaid market" is tiny in comparison to the other players. But even that greatly overstates the degree of competition *between Verizon and TracFone* because the two companies do not pursue the same prepaid customers. Verizon has focused on the premium sub-segment of the prepaid business, and has not pursued value-oriented consumers directly. Instead, Verizon has used wholesale sales to TracFone to reach those customers. In fact, other witnesses offered by Cal Advocates have emphasized the uniqueness of TracFone's marketing compared to Verizon.[232] Dr. Selwyn does not account for those material differences when discussing his Herfindahl-Hirschman Index ("HHI") figures, but instead treats Verizon and TracFone as if they were direct competitors because both companies sell "prepaid" service of some type.

Dr. Selwyn's erroneous treatment of "prepaid" as a homogenous market is replicated by his erroneous treatment of "post-paid" as an entirely distinct market. In reality, prepaid and postpaid offerings are often marketed and sold as direct alternatives to identical customers—especially customers interested in premium products, whether prepaid or postpaid. Even more, non-prepaid alternatives—such as cable/wireless bundles sold by cable companies—are also marketed and sold to those same customers. While *some* prepaid customers do not have the credit profile required for post-paid service, others do, and some customers cross-shop pre-paid

[232] *See* Duffy Testimony at 15:7-15 (noting that Verizon customers today choose to spend, on average, over than $500 more per device than TracFone customers).

and post-paid offerings. As Dr. Selwyn points out, those offerings might vary in ways that are meaningful, but such differences are the hallmarks of competition, not its absence.

In sum, the dynamics of the wireless industry are far more nuanced than Dr. Selwyn's HHI calculations would suggest.

As Dr. Israel's testimony discusses in more depth, Dr. Selwyn's current approach is also at odds with his approach to market definition in the Sprint/T-Mobile merger. Dr. Selwyn has not explained this difference in approach.

Ultimately, Dr. Selwyn's HHI calculations have no predictive value. Dr. Selwyn recognizes that his calculations do not provide "a basis for rejection" of the Transaction, but asks the Commission to weigh them against the Transaction anyway. But Verizon has already shown that this data does not reflect commercial realities and that the Transaction brings with it substantial efficiency benefits and product differentiation not accounted for in any HHI figure. In these circumstances, and for the additional reasons discussed by Dr. Israel, the Commission should not place weight on these figures.

Nor does the Transaction raise risks of coordination. Dr. Selwyn opines that coordination will be "a lot easier"[233] if the Transaction occurs, but he does not appear to have conducted any analysis of coordinated effects that is specific to the Transaction, and his conclusion is not correct. Verizon does not coordinate its conduct with its competitors, and the Transaction makes such coordination no more likely in the future. MNOs possess considerable differences in the quality and network capacity as well as the various strategies they pursue to attract customers. MNOs and other wireless service providers compete across a range of dimensions, not simply

[233] Selwyn Direct Testimony at 54.

price.[234] And constantly changing wireless technological offerings push these providers to innovate and differentiate their offerings, including on the basis of network quality, data plans, bundled services, or even entertainment content.[235] For example, today every MNO is implementing its own complex strategy to roll out a nationwide 5G network in a manner that best leverages its unique network assets and spectrum resources. These and other industry features inhibit coordination and they would not change with the Transaction. To the contrary, competition will be enhanced as TracFone is able to come to market with more competitive offers.

Additionally, as discussed above, TracFone is not a significant competitor to Verizon today, and thus its combination with Verizon could not enhance any risks of coordination.

C. Dr. Selwyn's Proposed Conditions Are Impractical and Damaging to Competition [Paul Vasington]

Dr. Selwyn's proposed conditions would do considerable harm to California consumers and should be rejected.

1. Requiring TracFone to serve customers via other MNOs' networks after the Transaction is complete is unnecessary and unworkable

Dr. Selwyn's first proposed condition is that TracFone be required to offer service even in those rare corners of California that are not covered by the Verizon network. This is not a necessary or beneficial condition. Neither the Commission nor the parties to the Transaction can control whether, or on what terms, the other MNOs would be willing to sell wholesale service to Verizon and TracFone in those areas after the Transaction closes and the transition period comes to an end. Unlike TracFone, those MNOs *are* fierce competitors of Verizon and have little

[234] *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d at 235.

[235] *Id.*

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. Consumers do not benefit from TracFone’s offerings if those offerings cannot be competitive, and the proposed condition makes TracFone exceptionally vulnerable to opportunistic conduct by the other MNOs for the simple reason that TracFone cannot say “no.”

In any case, this condition is wholly unnecessary. Customers have competitive alternatives where TracFone competes today. While Verizon and TracFone have every incentive to keep and pursue customers after the transaction, the reality is that some will choose to move to other prepaid or post-paid offerings from competitors, and they will not be harmed by that choice.

2. Requiring Verizon to sell wholesale service to other MVNOs under a rate-regulated structure would massively harm competition and consumers

Dr. Selwyn’s second proposed condition is that Verizon be required to offer wholesale services to third-party MVNOs on the same terms and conditions that it makes available to TracFone after the transaction is complete.

This condition would severely harm competition by undermining Verizon’s incentives to improve TracFone’s cost-competitiveness. As explained elsewhere, the Transaction helps consumers because TracFone’s network access costs will dramatically decline. This puts Verizon and TracFone in a position to come to market with pricing and features that attract customers, a “win-win” proposition for Verizon, TracFone, and consumers. Dr. Selwyn’s proposed condition undermines those incentives by introducing a critical and unpredictable new variable into Verizon’s economic incentives. If the condition is imposed, Verizon might find many instances where reductions in TracFone's costs were *possible* but no longer *profitable* because the cost reduction would also be passed along to any other MVNO that demanded similar terms. The result would be radically decreased opportunities for Verizon to use TracFone as a competitive force against other prepaid offerings. And because other MNOs (such as T-Mobile and AT&T) would not be subject to similar restrictions, TracFone would find itself frequently undercut by MNO-supported alternatives that compete freely for the same customers.

Moreover, the condition is entirely impractical as the transfer "pricing" between Verizon and TracFone represents internal accounting and management determinations, not merely a "rate" in the sense that it is something that will be invoiced to TracFone. It does not make sense to use such a figure for pricing for outside MVNO customers, and resolving the "appropriate" price to MVNOs risks a scenario in which the price and terms of wholesale service is regulated based on its own determination of cost, a hugely complex process that the Commission and FCC have eschewed (correctly) for many years, and which is imposed on no other MNO.