



May 21, 2021

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

In re: GN Docket No. 21-112; IB File No. ITC-T/C-20200930-00173

Dear Ms. Dortch,

Public Knowledge (PK) and other public interest groups have previously expressed concern that Verizon “intends to change TracFone’s focus from serving those communities in greatest need with affordable mobile service plans to something else that is less affordable....”¹ Verizon’s recent attempt to use the Emergency Broadband Benefit (EBB) as a means to force low-income consumers to switch to more expensive broadband plans² demonstrates that, despite Verizon’s claims to the contrary, these concerns are valid. Should the Commission decide to grant the applications, it should impose the conditions requested by PK to protect Lifeline and low-income customers.

¹ Comments of Public Knowledge, Open Technology Institute, The California Center for Rural Policy, Next Century Cities, Access Humboldt, Tribal Digital Village, and the Benton Institute for Broadband and Society, IB File No. ITC-T/C-20200930-00173, at 15 (December 18, 2020). [hereinafter Public Interest Comments].

² Jon Brodtkin, ArsTechnica, *Verizon Forces Users Onto Pricier Plans to Get \$50-per-month Gov’t Subsidy*, ArsTechnica (May 18, 2021), <https://arstechnica.com/tech-policy/2021/05/verizon-uses-fcc-pandemic-subsidy-to-upsell-customers-to-pricier-plans/>.

Further, the Commission should reject Applicants efforts to pressure the Commission into closing this review before staff and stakeholders have had adequate opportunity to review the submissions. Applicants chose to submit a wholly inadequate application, and to resist submission of relevant information until ordered to do so. Applicants cannot now complain of any undue delay when they were the ones dragging their heels.

A. Verizon’s Behavior as an EBB Provider Demonstrates Its Disdain Towards Serving Low-Income Consumers, Such as TracFone’s Lifeline Subscribers.

Verizon recently treated the EBB program as an opportunity to pressure its current customers onto more expensive broadband plans. As a participant in the Commission’s newly initiated EBB program, Verizon agreed to offer subsidized broadband service to eligible consumers. As was recently reported, Verizon limited which plans it would make available for the EBB to newer more expensive plans.³ Verizon told current eligible customers that they would need to switch to these higher cost plans in order to utilize their temporary subsidy, leaving them with a more expensive broadband bill once the subsidy ends.⁴

While the FCC’s rules regarding the EBB do not prevent Verizon from limiting which plans are eligible for the subsidy, this behavior runs contrary to the intent of the program and undermines Verizon’s own reasons for requesting a recent waiver of the FCC’s EBB reimbursement rules. According to the Verizon waiver petition, granting the request would:

“encourage providers to offer the EBB discount on a broader range of services. Without the waiver, providers may be compelled to simplify their reimbursement calculations by offering the EBB discount only on one service or only on services for which the standard rates all exceed \$50 per month. The waiver would thus be consistent with the EBB

³ *Id.*

⁴ *Id.*

Program Order’s goal of encouraging providers to offer the EBB discount on more services.”⁵

Contrary to Verizon’s arguments, receiving the waiver⁶ did nothing to prevent Verizon from later using the EBB to force customers onto more expensive plans well above the subsidy amount.

Although Verizon has since stopped this practice in response to the negative press it received for using a public subsidy to gouge low-income consumers,⁷ the Commission should take note of the fact that Verizon’s internal decision-making process led it to treat the EBB as an opportunity to take advantage of the low-income consumers they were supposed to serve.

Verizon’s behaviour with regards to the EBB program demonstrates that the Commission cannot take Verizon’s assurances that it will continue to protect TracFone’s low-income consumers without enforceable commitments to do so at face value. With regard to the Verizon/TracFone merger, the Commission can ensure that Verizon remains true to its word by adopting the enforceable merger conditions PK has previously discussed.⁸ With regards to this particular incident, we highlight the need for the Commission to obtain commitments to:

- Participate in the Lifeline program for a minimum of 5 years.
- Keep customers, particularly Lifeline customers, on non-Verizon networks if that is the only way to ensure adequate quality of service for Lifeline and pre-paid customers.

⁵ Verizon Petition for Limited Waiver, WC Docket 20-445 (April 8, 2021), <https://ecfsapi.fcc.gov/file/10408037826873/2021%2004%2008%20Verizon%20EBB%20Waiver.pdf>.

⁶ F.C.C., Order, In the Matter of Emergency Broadband Benefit Program, WC Docket No. 20-445 (rel. April 20, 2021), <https://ecfsapi.fcc.gov/file/042076516167/DA-21-455A1.pdf>.

⁷ Press Release, An Update on Verizon’s EBB Program, Verizon (May 19, 2021), <https://www.verizon.com/about/news/nearly-1000-verizon-customers-enroll-ebb-program/>.

⁸ Public Interest Comments, *supra* note 1, at 3; *see also* Public Knowledge, Ex Parte Letter, *Re: Proposed Transfer of Tracfone Wireless, Inc. to Verizon Communications, Inc.* GN Docket No. 21-112 (April 23, 2021), <https://ecfsapi.fcc.gov/file/10423088205892/VZ%20Tracfone%20Transaction%20Team%204.22.21.pdf>.

- Make 5G networks and equipment available to Lifeline and prepaid customers on the same basis as made available to Verizon’s post-paid customers.
- Freeze existing Tracfone rates, at the same terms and conditions as they currently exist, for a minimum of 5 years following the transaction and two years for new prepaid customers.
- Maintain the existing packages available to Lifeline customers for a minimum of 5 years.
- Continue to market to Lifeline and pre-paid customers, including non-English speaking customers, at the same level as Tracfone does today.

The Commission should also consider whatever other conditions the record demonstrates are necessary to protect Lifeline and other low-income pre-paid subscribers.

B. Applicants Have Only Themselves to Blame for the Timeline of the Review.

Additionally, PK objects to Verizon’s recent plea that the Commission move more quickly to approve this transaction.⁹ The complaint about the time needed to analyze this transaction was in a cover letter delivering approximately 21,000 documents related to its merger application to the Commission. If Verizon had wanted to expedite this process, then it should have cooperated with the Commission and concerned parties after it initially filed the transaction application. As PK and others repeatedly observed prior to the Request for Information (RFI), the burden falls on the *applicants* to demonstrate that the transaction serves the public interest. By contrast, it is the responsibility of the Commission to make a thorough and probing examination of the transaction. Verizon, as a participant in numerous transactions, knows this full well. Having dragged their feet in the hopes that staff would simply rubber stamp the transaction,

⁹ Verizon, Letter, *Re: Application for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112 (May 18, 2021), [https://ecfsapi.fcc.gov/file/105181419129586/VZ%20TracFone%20Follow%20Up%20Ex%20Parte%20\(5.18.21\)-c.pdf](https://ecfsapi.fcc.gov/file/105181419129586/VZ%20TracFone%20Follow%20Up%20Ex%20Parte%20(5.18.21)-c.pdf).

Applicants cannot now complain about the time necessary to read and analyze the documents they have grudgingly provided.

Respectfully submitted,

/s/Kathleen Burke*
Policy Counsel
Public Knowledge

**Admitted to the Bar under D.C. App. R. 46-A
(Emergency Examination Waiver)*