



July 22, 2021

**VIA ELECTRONIC FILING**

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

***RE: In the Matter of Emergency Broadband Benefit, WC Docket No. 20-445;  
Proposed Transfer of Control of TracFone Wireless, Inc. to Verizon Communications  
Inc., GN Docket No. 21-112***

Dear Ms. Dortch:

On July 20, Joshua Stager of New America’s Open Technology Institute (“OTI”) met via phone with Acting Chairwoman Jessica Rosenworcel and her Acting Chief of Staff Travis Litman, Acting Chief Policy Advisor Kate Black, and Jodie Griffin of the Wireline Competition Bureau. We discussed the acute connectivity needs of low-income consumers in the context of the Emergency Broadband Benefit (“EBB”) and Verizon’s proposed acquisition of TracFone from América Móvil.

OTI is a steadfast proponent of the EBB and celebrated the program’s launch on May 12.<sup>1</sup> We are working with federal policymakers and consumer advocates to ensure the program is a success and hope EBB becomes the model for a long-term program to combat the country’s persistent broadband affordability crisis. Accordingly, OTI is closely monitoring program implementation and identifying lessons learned from the program’s first two months.

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<sup>1</sup> “[OTI Applauds ‘Landmark Day’ for Utility Justice](#),” New America’s Open Technology Institute, Press Release, May 12, 2021.

**COERCIVE UPSELLING:** First, we discussed the need for additional pricing guardrails that protect EBB applicants from coercive upselling tactics. Almost immediately upon EBB’s launch on May 12, consumers reported frustration with ISPs when attempting to enroll in the program. *The Washington Post* described “shenanigans” in which customer service agents pressured EBB applicants to sign up for more expensive plans.<sup>2</sup> Although providers have responded to some of these complaints, the incidents underscore a program vulnerability that should be addressed with stronger rules prohibiting ISPs from engaging in coercive upselling tactics. Customer service agents are often trained to upsell consumers and may easily default to such tactics with EBB applicants absent further action from the Commission.

Accordingly, the Commission should require participating providers to (1) inform applicants about the availability of less expensive products and provide an opportunity to choose the less expensive product during EBB enrollment, (2) make all plans eligible for EBB support, (3) give customers an easy method to return to their original plan after EBB ends, and (4) obtain opt-in consent for full price service *after* a customer signs up for EBB—not during the application phase.

**DATA CAPS:** OTI recommended an additional pricing guardrail to protect EBB subscribers from hidden costs: a ban on data caps. OTI’s *Cost of Connectivity* research found that data caps are common in the U.S. marketplace and that their associated “overage” penalties create hidden costs that low-income consumers often cannot afford.<sup>3</sup> Many have questioned whether data caps are actually necessary or if they merely create artificial scarcity that ISPs can exploit. During the early stages of the pandemic, many ISPs abruptly waived their data caps and reported no network congestion, suggesting that data caps are, indeed, unnecessary from a network management perspective.<sup>4</sup>

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<sup>2</sup> Geoffrey Fowler, “[The government has a program to cut your Internet bill. Verizon was using it to force you onto a new data plan.](#),” *Washington Post*, May 21, 2021; *see also* Kelcee Griffith, “[ISP Info Gaps, Price Hikes Top List Of EBB Gripes.](#),” *Law360*, June 25, 2021; Issie Lapowsky, “[Spectrum is forcing full-price plans on people seeking FCC benefit.](#),” *Protocol*, May 25, 2021.

<sup>3</sup> Becky Chao and Claire Park, *The Cost of Connectivity 2020*, New America’s Open Technology Institute, July 15, 2020.

<sup>4</sup> *See, e.g.*, Rob Pegoraro, “[The Coronavirus Might Have Just Killed ISP Data Caps.](#),” *Fast Company*, March 21, 2020; Jon Brodtkin, “[Comcast waiving data caps hasn’t hurt its network—why not make it permanent?](#),” *Ars Technica*, March 31, 2020; Danielle Kehl and Patrick Lucey, *Artificial Scarcity: How Data Caps Harm Consumers and Innovation*, New America’s Open Technology Institute, June 2015.

**BROADBAND NUTRITION LABEL:** OTI recommended that ISPs participating in EBB be required to adopt the “broadband nutrition label” that the Commission created in 2016:

<b>Broadband Facts</b>	
Fixed broadband consumer disclosure	
<b>Choose Your Service Data Plan for 50Mbps Service Tier</b>	
Monthly charge for month-to-month plan	<b>\$60.00</b>
Monthly charge for 2 year contract plan	<b>\$55.00</b>
Click here for other <a href="#">pricing options</a> including promotions and options bundled with other services, like cable television and wireless services.	
<b>Other Charges and Terms</b>	
Data included with monthly charge	<b>300GB</b>
Charges for additional data usage – each additional 50GB	<b>\$10.00</b>
Optional modem or gateway lease – Customers may use their own modem or gateway; click here for <a href="#">our policy</a>	<b>\$10.00/month</b>
Other monthly fees	<b>Not Applicable</b>
<b>One-time fees</b>	
Activation fee	<b>\$50.00</b>
Deposit	<b>\$50.00</b>
Installation fee	<b>\$25.00</b>
Early termination fee	<b>\$240.00</b>
<b>Government Taxes and Other Government-Related Fees May Apply:</b> Varies by location	
<a href="#">Other services on network</a>	
<b>Performance - <a href="#">Individual experience may vary</a></b>	
Typical speed downstream	<b>53 Mbps</b>
Typical speed upstream	<b>6 Mbps</b>
Typical latency	<b>35 milliseconds</b>
Typical packet loss	<b>0.08%</b>
<b>Network Management</b>	
Application-specific network management practices?	<b>Yes</b>
Subscriber-triggered network management practices?	<b>Yes</b>
<a href="#">More details on network management</a>	
<b>Privacy</b>	<a href="#">See our privacy policy</a>
<b>Complaints or Inquiries</b>	To contact us: <a href="#">online</a> /(123)456-7890; To submit complaints to the FCC: <a href="#">online</a> /(888)225-5322
Learn more about the <a href="#">terms used on this form and other relevant information</a> at the FCC's website.	

The label, which is modeled after the FDA’s familiar food labeling, is designed to be a standardized, consumer-friendly way for ISPs to disclose information about the service they are selling, including cost, ancillary fees, and speeds. ISP pricing and service terms are notoriously opaque, and EBB has additional bureaucratic layers that can further confuse consumers. A broadband nutrition label would help cut through the confusion and strengthen consumer trust and understanding of the service they are signing up for.<sup>5</sup> The 2016 label was endorsed by a broad cross-section of consumer advocates, government officials, and industry.<sup>6</sup> Moreover, President Biden endorsed the broadband nutrition label in his July 9 executive order to promote competition and pricing transparency in U.S. markets.<sup>7</sup>

<sup>5</sup> Amir Nasr and Austin Adams, “[We Need a Broadband Internet Pricing Equivalent of Nutrition Labels](#),” Slate, December 10, 2020.

<sup>6</sup> “Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels,” Public Notice, GN Docket No. 14-28, April 4, 2016.

<sup>7</sup> “[Executive Order on Promoting Competition in the American Economy](#),” The White House Presidential Actions, July 9, 2021.

**EBB VERIFICATION & PELL OUTREACH:** OTI reiterated its request that the Commission strengthen and streamline EBB’s eligibility verification system. OTI is particularly concerned about the delays in obtaining computer matching agreements (“CMAs”) with other government eligibility databases that could speed the verification process. A recent Government Accountability Office investigation revealed that the National Verifier has been hampered by a lack of CMAs, leading many Lifeline applicants to abandon their applications amid verification delays.<sup>8</sup> EBB partially relies on the National Verifier, making completion of the Verifier and CMAs with relevant databases an urgent priority.

OTI also urged the Commission to establish a CMA with the Department of Education’s database for Pell Grants. This CMA would facilitate the enrollment of college students receiving Pell Grants—a population that Congress made eligible for EBB but which the Commission has relatively little experience dealing with. The Commission was unable to establish a CMA with the Department of Education before EBB launched on May 12, but the Department sent an email to all Pell recipients informing them of their eligibility for EBB. OTI has heard reports that some students missed that email and urged the Commission to ask the Department of Education to send the email notification a second time.

**NEGATIVE CREDIT REPORTING:** We discussed the need to ensure that EBB subscribers do not incur negative credit reporting as a result of their participation in the program. The risks of a low credit score are particularly acute for EBB’s low-income subscribers, as credit reporting is increasingly used in the low-income housing market and has been linked to homelessness.<sup>9</sup> An alarming study by the Consumer Financial Protection Bureau found that more than 1-in-5 consumers already had telecommunications-related debt on their credit reports prior to the COVID-19 pandemic. The study also found that telecommunications debt is the third-leading cause of debt collections calls, behind only credit card and medical debts.<sup>10</sup> Given these stakes, the Commission should take strong action to protect EBB subscribers from credit score harm. EBB providers should be prohibited from reporting missed payments or other negative items to credit bureaus and other consumer reporting agencies.

**VERIZON/TRACFONE MERGER:** Lastly, we discussed Verizon’s proposed acquisition of TracFone, a major wireless provider for low-income Americans and the Lifeline program. OTI emphasized that the Commission must, at a minimum, impose strong conditions to protect low-income consumers from price increases and ensure TracFone remains a supportive Lifeline

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<sup>8</sup> Government Accountability Office, [“FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience,”](#) January 2021.

<sup>9</sup> See, e.g., Mya Frazier, [“When No Landlord Will Rent to You, Where Do You Go?”](#) New York Times, May 20, 2021; Bobby Allen, [“How the Careless Errors of Credit Reporting Agencies are Ruining People’s Lives,”](#) Washington Post, Sept. 8, 2016.

<sup>10</sup> Consumer Financial Protection Bureau, [Collection of Telecommunication Debt](#), August 2018.

participant.<sup>11</sup> However, any conditions would be worthless if they do not include rigorous enforcement mechanisms.

Historically, the Commission has struggled to monitor and enforce merger conditions, particularly when the victims of violations are low-income consumers. To the extent the Commission has detected violations, it is often because an aggrieved third-party business interest raised complaints, such as when the Commission took enforcement action against Comcast for violating a 2011 merger condition that implicated Bloomberg.<sup>12</sup>

Given the likelihood that any violation of Verizon/TracFone conditions would only harm low-income consumers and not implicate an aggrieved third-party company, it is imperative that the Commission create strong, independent enforcement mechanisms. Confidential compliance reports from the post-merger company, as has been used in some past transactions, would be woefully insufficient. The Commission should appoint an ombudsman or compliance officer who is empowered to proactively monitor the conditions, ensure that low-income consumers are not being harmed, and facilitate consumer complaints about potential violations—particularly from Lifeline subscribers. The Commission mandated an ombudsman in the AT&T/DIRECTV transaction, which offers instructive model language on how such a position ensures that mergers are in the public interest.<sup>13</sup>

Respectfully submitted,

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<sup>11</sup> See Comments of Public Knowledge, New America's 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, GN Docket No. 21-112, December 18, 2020.

<sup>12</sup> *In the Matter of Bloomberg L.P. v. Comcast Cable Communications*, MB Docket No 11-104, Memorandum Opinion and Order, May 2, 2012.

<sup>13</sup> *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, July 24, 2015, para. 123 (“Given the important role that these conditions serve in securing the public interest benefits of this transaction, we find that compliance with the conditions must be ensured. Accordingly, to ensure that AT&T complies with the conditions of this Order, we require that AT&T retain both an internal company compliance officer and an independent, external compliance officer that will report and monitor, respectively, the combined entity’s compliance in accordance with the terms of this Order”).