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March 8, 2013

BY ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: *Ex Parte Letter*, Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign Licenses, WT Docket No. 12-301

Dear Ms. Dortch:

We are writing you to provide The Greenlining Institute's (Greenlining) initial analysis of the Confidential and Highly Confidential Materials that Applicants provided to the Commission in the above-captioned proceeding. Based on its preliminary review of those documents, Greenlining believes that the proposed transaction would harm the public interest and that the Commission should *deny* the application. Additionally, this letter proposes a number of conditions that Greenlining feels, based on its initial review of Applicant's materials, are necessary to protect the public interest.

1. The Commission Should Not Render a Decision on the Application Until the Expiration of the 180 Day "Shot Clock."

As a preliminary matter, Greenlining is concerned that the Commission may rule on the application before Greenlining is able to provide the Commission with a complete analysis of Applicants' Confidential and Highly Confidential Documents and a thorough explanation of Greenlining's opposition to the application. Applicants provided their Confidential and Highly Confidential Materials to the Commission on January 7, 2013, but objected to Greenlining's receipt of those documents on that same day. As a result of Applicants' unwillingness to provide the documents, Greenlining did not receive copies of the Confidential and Highly Confidential Materials until February 5, 2013. Based on Greenlining's ex parte meetings with Commission staff in late January[1] and statements made by Applicants' attorneys, Greenlining believes that Applicants are encouraging the Commission to "fast track" the proceeding and that a decision may be imminent.

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[1] *See* Greenlining, Notice of Ex Parte Presentation (Jan. 30, 2013).

Applicants' tactics at the Commission mirror their tactics at proceedings before the California Public Utilities Commission. In both proceedings, Applicants have used delaying tactics and attempted to resist access to information in an attempt to exclude consumers from providing input on the proposed transaction. In light of these tactics, Greenlining is reviewing Applicants' materials and preparing its analysis of those materials as quickly as possible. Greenlining anticipates filing a more robust explanation of its reasons for opposing the application no later than Wednesday, March 13. Greenlining respectfully requests that the Commission withhold ruling on the decision until the Commission has had the opportunity to review that filing. Given that there are almost 50 days remaining on the Commission's "shot clock" in this proceeding, the Commission's review of Greenlining's filing will not unduly delay the proceeding.

2. If the Commission Does Approve the Application, It Should Impose Conditions.

Based on its limited review of Applicant's materials, Greenlining is concerned that the proposed transaction contains as-yet-unidentified deeper flaws. Greenlining also has outstanding concerns about the potential of the new company to eliminate the MetroPCS brand and the harms to jobs, franchisees, and diversity that will result if the Commission approves the proposed transaction. Greenlining does not expect that its review of Applicants' materials will uncover any new information which might obviate those concerns. Regardless of what issues Greenlining's further review of Applicant's materials might unearth, any Commission approval of the proposed transaction must be subject to, at a bare minimum, the following conditions:

a. The Commission Should Ensure that the New Company Maintains T-Mobile and MetroPCS as Separate Brands.

After reviewing the documents Applicants submitted to the Commission, Greenlining is unconvinced that that new company will maintain MetroPCS and T-Mobile as separate brands. Given the Applicants' claims that the new company intends to aggressively compete with AT&T and Verizon, Greenlining is concerned that the new company will eventually discontinue the MetroPCS brand. For example, the new company could focus on increasing its profits by increasing its average revenue per user (ARPU). As a result of the new company's focus on more profitable, high-ARPU customers, the company would presumably begin to reduce the number of its lower-ARPU services. This would eventually lead to the new company's "phasing out" MetroPCS and MetroPCS' low-cost offerings. Applicants' representations that the new company *intends* to maintain separate T-Mobile and MetroPCS brands is no *guarantee* that the new company will do so, particularly given the publicly-held nature of the new company. If the Commission approves the transaction, it should impose conditions to ensure that the new company maintains separate T-Mobile and MetroPCS brands for at least five years after Applicants consummate the transaction.

However, a condition imposing the bare requirement that the new company maintain the T-Mobile and MetroPCS brands would be insufficient. Such a requirement would not ensure that the new company devoted the necessary staff and resources to maintain a viable MetroPCS brand. Accordingly, the Commission should impose conditions to ensure that the new company sufficiently supports the MetroPCS brand and its low-cost offerings.

To achieve this goal, the Commission should require the new company to devote a minimum percentage of its marketing budget to the MetroPCS brand for the next five years.

Greenlining suggests that the Commission determine this percentage based on the proportion of the new company's T-Mobile and MetroPCS customers at the time the transaction is approved. Additionally, the Commission should impose conditions to ensure that the new company does not offer MetroPCS customers inferior service in order to steer those customers towards the T-Mobile brand. In accordance with net neutrality principles, the Commission should prohibit the new company from prioritizing T-Mobile customers' voice and data traffic over MetroPCS customers' voice and data traffic. Finally, the Commission should also require that the new company provide identical levels of customer care for T-Mobile and MetroPCS customers.

b. The Commission Should Impose Conditions to Mitigate Job Losses and Store Closures.

Greenlining shares CWA's concerns about the job impacts of the proposed transaction, and urges the Commission to adopt the conditions proposed by CWA.[2] Additionally, as noted in its comments, Greenlining is particularly concerned about potential store closures.[3] If the merger does create any new jobs, those positions should first be offered to employees of franchisees that lost their jobs as a result of the proposed transaction. The Commission should require the new company to pay for any necessary job training or moving costs related to those jobs.

c. The Commission Should Impose Conditions to Promote Diversity.

Communities of color are more likely to depend on the value-conscious services that could be eliminated with the termination of the MetroPCS brand. Members of these communities are a significant portion of MetroPCS' and T-Mobile's customer bases. MetroPCS

[2] CWA comments at 8

[3] Greenlining Comments at 13.

has a history of serving limited English proficient consumers.[4] T-Mobile has been a market leader in promoting franchise ownership by people of color.[5]

Applicants indicate that the new company will continue to market and provide service to communities of color.[6] However, in order to best serve a diverse customer base, the new company's franchisees, suppliers, and board and senior management should be at least as diverse as the customers the new company serves. As a condition of the proposed transaction's approval, the Commission should require the new company to preserve and expand T-Mobile's commitment to franchise ownership by people of color. Additionally, the Commission should require that the new company draft and implement plans to increase its supplier diversity. Finally, the Commission should require that the new company draft and implement plans to ensure that the new company's board and senior management reflects the makeup and experience of customers that the new company serves.

3. Conclusion

A company's transparency is a key metric for determining whether that company values its customers. Applicants' delaying tactics and objections to transparency in this proceeding exhibit a blatant disregard for the merger's effects on the new company's customers. Additionally, Applicants' behavior raises serious concerns about the truthfulness of the claimed public interest benefits of the proposed transaction. Greenlining's initial review of Applicant's Confidential and Highly Confidential Materials indicates that those materials do not support, or in some cases contradict, Applicants' public interest claims. The Commission should ensure that

[4] Greenlining Comments at 12.
[5] Dennis Romero, T-Mobile Shakes Up Owner-Operator Model (March 30, 2009) *available at* http://www.entrepreneur.com/article/200982.
[6] *See* Public Interest Statement at 8.

parties to the proceeding have sufficient time to bring these unsupported or contradicted claims to the Commission's attention.

Greenlining had high hopes that the proposed transaction would benefit low-income communities and communities of color. However, it now appears that these communities will not benefit from the proposed transaction without Commission intervention. Accordingly, the Commission should deny the application. If the Commission approves the application, it should impose conditions to ensure that the new company maintains T-Mobile and MetroPCS as separate brands. Additionally, the Commission should impose conditions to mitigate the job losses and store closures caused by the proposed transaction, and to promote diversity.

Accordingly, the Commission should grant the relief discussed above to protect consumers and the public interest.

Respectfully submitted, Dated: March 8, 2013

/s/______________________
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/s/______________________
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CERTIFICATE OF SERVICE

I, Paul Goodman, hereby certify that on this 7th Day of March, 2013, I caused true and correct copies of the foregoing Ex Parte Letter to be served by electronic mail to the following:

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