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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	MB Docket No. 14-57
	)	
Applications of	)	
	)	
Comcast Corporation, Time Warner Cable Inc. Charter Communications, Inc. and Spinco	))))	
	)	
To Assign and Transfer Control of FCC Licenses and Other Authorizations	))	

REPLY OF THE GREENLINING INSTITUTE TO OPPOSITION TO PETITIONS TO DENY AND RESPONSE TO COMMENTS

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TABLE OF CONTENTS

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The Greenlining Institute ("Greenlining") hereby files this Reply to Joint Opposition to Petitions to Deny and Reply to Comments in the above-captioned matter.

I. SUMMARY OF ARGUMENT

Applicants fail to rebut arguments that they lack the requisite character to meet the Commission's qualifications to transfer licenses. The Commission's approval of a proposed transaction that, at best, provides incremental improvements to quality of service, affordable broadband programs, and diversity would harm the public interest. Applicants fail to make any meaningful commitments regarding the provision of Lifeline service, extending the Internet Essentials program, or offering standalone service. Finally, the proposed transactions would cause such severe public interest harms that no conditions could tip the balance in favor of the public interest. Accordingly, the Commission should deny the proposed transactions.

II. APPLICANTS LACK THE REQUISITE CHARACTER TO MEET THE REQUISITE QUALIFICATIONS TO TRANSFER LICENSES.

As noted in Greenlining's Petition to Deny, Comcast fails to meet the Commission's character requirement because of Comcast's admitted releases of over 74,000 Californians' unlisted names, phone numbers, and addresses over a period of at least two years, as well as Comcast's attempts to avoid responsibility for those releases.[1] The Commission should disregard Applicants' request that the Commission ignore Comcast's behavior. Comcast's

[1] *California Public Utilities Commission, Investigation on the Commission's Own Motion Into the Operations, Practices, and Conduct of Comcast Phone of California LLC (U-5698-C) and its Related Entities (Collectively "Comcast") to Determine Whether Comcast Violated the Laws, Rules, and Regulations of this State in the Unauthorized Disclosure and Publication of Comcast Subscribers' Unlisted Names, Telephone Numbers, and Addresses*, *Order Instituting Investigation into the Unauthorized Disclosure and Publication of Unlisted Telephone Numbers by Comcast,* I.13-10-003 (Oct. 3, 2013) (*hereafter*, Comcast Unlisted Numbers OII).

releases of unlisted and unpublished information of almost 75,000 customers over a period of up to two and a half years involve Commission conduct. Additionally, during the course of the California Public Utilities Commission's (CPUC) investigation of the releases, Comcast made fraudulent representations to the CPUC. Finally, the CPUC's ruling on the releases is imminent; accordingly, the Commission should delay this proceeding until the CPUC issues that final decision.

A. Comcast's Releases Of Unlisted And Unpublished Information Of Almost 75,000 Customers Over A Period Of Up To Two And A Half Years Involves Commission Conduct.

Applicants argue that the Commission should ignore Comcast's releases of unlisted and unpublished names, addresses and phone numbers of its California telephone subscribers, because those releases do not involve Commission conduct.[2] However, as Applicants note,[3] the CPUC investigation involves almost 75,000 alleged violations of California Public Utilities Code section 451, which states that "[a]ll charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful." Public Utilities Code section 451 mirrors 47 U.S.C. § 201, which states that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful."

By virtue of its being a state proceeding, the CPUC investigation necessarily does not include alleged violations of FCC rules and policies. However, Comcast's alleged behavior in

[2] Opposition at 308.
[3] *Id*. at 309.

that proceeding appears to violate section 201. Comcast's unauthorized releases of the unlisted and unpublished information of almost 75,000 customers over a period of up to two and a half years do involve Commission conduct. Accordingly, that behavior is "predictive of an applicant's future truthfulness and reliability, and thus [has] a bearing on an applicant's character qualifications."[4]

B. During the California Public Utilities Commission's Investigation of Comcast's Releases Of Unlisted And Unpublished Information, Comcast Made Fraudulent Misrepresentations to The California Public Utilities Commission.

Additionally, over the course of the CPUC proceeding, it appears that Comcast made at least two fraudulent misrepresentations to the CPUC. The CPUC's Safety and Enforcement Division alleges that in the course of that proceeding, Comcast fraudulently asserted (1) "that it had no way to search its customer service notes to identify customers who may have complained about their non-published numbers being made public" and (2) "that the non-published numbers had not been provided to any directory assistance providers, and then engaged in a series of further artifices and misstatements to defend the original misstatement."[5] Accordingly, it would be appropriate for the Commission to consider those fraudulent misstatements when evaluating Applicants' character in this proceeding.[6]

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[4] *Application of Green Eagle Networks, Inc. and Convey Communications, Inc. for Commission Consent to the Assignment of Personal Communications Services Licenses*, Memorandum Opinion and Order, 27 FCC Rcd. 5732 ¶ 14 (2012).
[5] Comcast Unlisted Numbers OII, Amended Opening Brief of the Safety and Enforcement Division (Public Version) at 101 (filed November 7, 2014).
[6] *Green Eagle Networks, supra* note 4 at ¶ 14 (2012).

C. The Commission's Decision Should Include a Consideration of the California Public Utilities Commission's Final Decision in the Unlisted Numbers Proceeding.

Comcast argues that the Commission should disregard the facts underlying the CPUC proceeding because the CPUC has not yet issued a final decision in that proceeding.[7] However, based on the current schedule in that proceeding, the CPUC will issue a final decision no later than early April of next year. If Applicants insist that the Commission only consider adjudicated decisions when determining whether Applicants possess the requisite character, the Commission should delay its decision in this proceeding until the CPUC issues a final decision in the unlisted numbers proceeding.

D. Applicants Lack the Requisite Character to Meet the Commission's Requirements.

Comcast's releases of unlisted and unpublished information involve Commission conduct. Additionally, during the course of the California Public Utilities Commission's (CPUC) investigation of the releases, Comcast made fraudulent misrepresentations to the CPUC. Finally, Greenlining anticipates that the CPUC's forthcoming decision will find Comcast liable and impose significant penalties. Based on these facts, the Commission should disregard Comcast's arguments that the releases are irrelevant, and should find that Applicants lack the requisite character to meet the Commission's requirements.

III. THE PROPOSED TRANSACTION WILL AT BEST RESULT IN INCREMENTAL IMPROVEMENTS WHICH HARM THE PUBLIC INTEREST.

In their Public Interest Statement, Applicants describe a number of purported benefits which they claim will slightly improve service for customers in Time Warner's current service

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[7] *Id*.

territory. These purported benefits include quality of service, the availability of affordable broadband, and diversity. However, it is unlikely that the proposed transactions will actually result in those benefits. Additionally, any service quality, affordability, or diversity improvements would be extremely small. The Commission's approval of proposed transactions which provide at best incremental improvements would harm the public interest.

A. The Proposed Transactions will Not Meaningfully Improve Quality of Service, Affordable Broadband Programs, or Diversity.

The proposed transactions will not benefit California consumers or the public interest. The proposed transactions will not improve or maintain quality of service. Additionally, the proposed transactions, will not meaningfully improve the availability of affordable broadband or the combined company's diversity efforts.

1. The Proposed Transactions Will Not Benefit California Consumers or The Public Interest Because The Proposed Transactions Will Not Improve or Maintain Quality of Service.

The proposed transactions will not maintain or improve service quality for California consumers. Additionally, the proposed transactions will not improve customer service for California consumers. Even if the proposed transactions did result in service quality and customer service improvements, those improvements would be so minimal as to be meaningless.

a. The Proposed Transactions Will Not Maintain or Improve Service Quality for Consumers.

Applicants assert that the proposed transactions will result in "more reliable networks" for Time Warner Cable Customers.[8] This improved quality of service will not, apparently, result in improved quality of service to any of the combined company's other customers. According to

[8] Opposition at 111.

current and former Comcast customers, Comcast's quality of service includes service that "cuts in and out constantly," download and upload speeds that "change erratically" and "are sometimes fast and sometimes very slow," "[f]requent interruption in internet services without explanation (frequently happens during day time hours when internet is needed)," inadequate bandwidth, blocked channels and Internet access through some televisions, and unreliable phone service.[9] Greenlining doubts that any Time Warner Cable customer would view this level of service quality as an "improvement."

Applicants boast that Comcast now offers two-hour appointment windows across "most" of its footprint, and that Comcast meets this commitment 97 percent of the time.[10] Even if these claims are true, numerous Comcast customers have complained that technicians show up and are unable to install equipment, do not install the services that the customer paid for, perform failed installations that result in the customer receiving no service, or announce that they do not want to complete the installation because it "was time to go home."[11] Comcast's solution to this problem is apparently to encourage customers to install broadband equipment themselves, despite a disturbingly low activation success rate.[12]

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[9] California Public Utilities Commission, *Joint Application of Comcast Corporation, Time Warner Cable Inc., Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC for Expedited Approval of the Transfer of Control of Time Warner Cable Information Services (California), LLC (U-6874- C); and the Pro Forma Transfer of Control of Bright House Networks Information Services (California), LLC (U-695-C), to Comcast Corporation Pursuant to California Public Utilities Code Section 854(a)* (hereafter, CPUC Comcast/Time Warner Proceeding), Reply Brief of The Greenlining Institute and Consumers Union, Exhibit A, *available at* http://greenlining.org/issues/2014/reply-brief-greenlining-consumers-union-opposing-comcasttime-warner-cable-merger/ (last accessed December 23, 2014).
[10] Opposition at 286-287.
[11] CPUC Comcast/Time Warner Proceeding, Reply Brief of The Greenlining Institute and Consumers Union, Exhibit A.
[12] Opposition at 286-287.

b. The Proposed Transactions Will Not Maintain or Improve Customer Service for Consumers.

Applicants argue that the proposed transactions will result in improved customer service.[13] However, based on the stories of consumers who shared their experiences with Comcast's customer service, switching to Comcast's customer service would be no improvement. For example, some customers reported being sold services not available in their area.[14] Other customers told stories of excessive wait times and Comcast's failure to correct problems.[15] Customers also experienced problems with billing disputes and bogus fees, often caused by Comcast's poor record keeping.[16] Comcast's customer service problems are not limited to online or phone support, but include problems at Comcast's retail locations.[17]

As noted above, Comcast's current subscribers do not think highly of its products and services. Time Warner Cable subscribers might not think of Comcast's products and services as much of an "upgrade." It is also important to keep in mind that these upgrades often involve installation costs and price hikes for required equipment upgrades needed in order to enjoy the "upgraded" products and services. These costs and price hikes are not always initially obvious to the consumer.[18] Applicants fail to explain how this level of customer service is an improvement over Time Warner's customer service. Additionally, even if that level of customer service were an improvement, it would be such a negligible improvement as to be meaningless. Accordingly, the Commission should reject those claims when considering the public interest impact of the proposed transactions.

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[13] Opposition at 282.
[14] CPUC Comcast/Time Warner Proceeding, Reply Brief of The Greenlining Institute and Consumers Union, Exhibit A
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.

c. The Proposed Transactions will not Result in Meaningful Improvements to Service Quality or Customer Service for the Combined Company's Customers.

The Commission's approval of the proposed transactions would result in the expansion of a company that does not view service quality or customer service as a means to increase customer satisfaction. If the Commission approves the proposed transactions, it is likely that the new company's customers will experience the same, merger-specific problems that Comcast customers have experienced as a result of past transactions. These problems would harm consumers and the public interest. Additionally, any improvements to quality of service would be incremental at best.

2. The Proposed Transactions will Not Meaningfully Improve the Availability of Affordable Broadband.

In discussing Comcast's Internet Essentials program, Applicants explain that, post-transaction, the combined company will expand the Internet Essentials program to eligible consumers within Time Warner Cable's current service area.[19] While Greenlining wholeheartedly supports increasing the availability of affordable broadband service to low-income consumers, Applicants exaggerate the effect that Internet Essentials has had in increasing that availability. While Applicants describe extensive outreach efforts by Comcast, those outreach efforts have not had the needed effect. This may be partly attributable to Comcast's apparent failure to provide support services for the program in languages other than English. Finally, Comcast's digital literacy efforts related to Internet Essentials have been insufficient.

[19] Opposition at 53.

a. Comcast's Outreach Efforts Have Not Resulted in Significant Adoption of Internet Essentials.

Greenlining's Petition pointed out the very limited success of the Internet Essentials program.[20] While adoption numbers seem to have improved (from approximately 6 percent to approximately 14 percent), those figures remain abysmally low. In response to this data, Applicants present the Internet Essentials program as a significant success. In support of this claim, Applicants discuss a number of Comcast's outreach efforts, including:

- Distributing nearly 37 million Internet Essentials brochures at no cost;
- Mailing 1.7 million pieces of direct mail;
- Broadcasting nearly 4 million public service announcements;
- Spending millions of dollars on paid advertising;
- Holding dozens of launch events;
- Generating over 3 billion earned media impressions;
- Producing and airing 49 public affairs segments, and
- Working closely with more than 8,000 partners."[21]

Greenlining appreciates these outreach efforts. Despite all of these efforts, however, Comcast has only been able to enroll about 350,000 households—far fewer than needed.[22] Greenlining hopes that Comcast will increase its efforts to extend the reach of broadband service to the poor and underserved. However, Comcast can do so without the Commission's approving the proposed transactions. Additionally, Time Warner Cable can introduce a broadband adoption program whether the Commission approves the proposed transactions or not.

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[20] Greenlining Petition to Deny at 11. That protest indicated that the adoption rate was "about one half of one percent;" that number was inaccurate. The adoption rate for Internet Essentials at that time was approximately 6 percent.
[21] Opposition at 58.
[22] Opposition at 50.

b. Internet Essentials Provides Extremely Limited Benefits to Limited English Proficiency Consumers.

Applicants indicate that Comcast offers print materials regarding Internet Essentials in 14 languages.[23] While this effort is laudable, Applicants indicate that Comcast's Internet Essentials online outreach, for example, is only available in English and Spanish.[24] Similarly, it appears that telephone support for Internet Essentials is only available in English and Spanish.[25]It is likely that Comcast's low Internet Essentials enrollment figures are in some part attributable to the limited options for limited English proficiency customers.

c. Applicants' Extension Of the Internet Essentials Program to Low-Income Customers in Time Warner Cable's Service Territory Will Not Help Educate Consumers on Using Computers and the Internet When Service Is Provided.

As discussed above, Comcast's outreach efforts to promote Internet Essentials have not this far resulted in significant program enrollment. The Internet Essentials program cannot increase the digital literacy of eligible consumers who are unaware of or do not enroll in the program. But Comcast's digital literacy education efforts for those consumers who actually enroll in Internet Essentials also appear to have had only limited effect. Applicants report that only 29% of IE customers "took advantage" of IE in-person or online training resources.[26] It is unclear whether even those customers completed in-person or online training, or whether that training resulted in increased digital literacy among those customers. Applicant's own expert concedes that the Internet Essentials program is not an ideal tool for teaching digital literacy,

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[23] CPUC Comcast/Time Warner Proceeding, Applicants' Opening Brief at 32.
[24] *Id*. at 31.
[25] Opposition at 58.
[26] Letter from John B. Horrigan to Chairman Wheeler, Analysis of Uptake Rates of Comcast Internet Essentials at 21 (September 18, 2014).

recommending that Internet Essentials customers look elsewhere for digital literacy resources.[27] Expanding Comcast's digital literacy training to current Time Warner Cable customers is not likely to result in a meaningful increase in digital literacy, particularly in light of the fact that Applicants appear unwilling even to make a binding commitment to continue the Internet Essentials program, as discussed below.

d. The Proposed Transaction Will Not Meaningfully Increase Broadband Adoption By Low-Income Consumers.

Comcast's outreach efforts have not resulted in significant adoption of Internet Essentials, and Internet Essentials does not appear to effectively reach limited English proficiency consumers. The proposed transactions have no bearing on Applicants' ability to extend broadband service to low-income communities. Finally, Comcast's digital literacy efforts related to Internet Essentials also appear to have had only limited effect. Accordingly, Applicants' extension of the current failed Internet Essentials program to low-income customers in Time Warner Cable's service territory will not necessarily increase adoption or digital literacy. Accordingly, the Commission should disregard Applicants' claims about the benefits of the Internet Essentials program as a justification for approving the proposed transactions.

3. The Proposed Transactions will Not Meaningfully Improve Diversity.

Applicants argue that Greenlining's concerns that Comcast's diversity efforts are lackluster are "baseless."[28] Applicants further claim that "[a]s demonstrated in the Public Interest Statement and in Comcast's diversity, social responsibility, and compliance reports,

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[27] *Id*.
[28] Opposition at 95-96.

Comcast is strongly committed to diversity and inclusion."[29] However, these claims exaggerate the impact of Comcast's diversity efforts.

For example, when addressing Comcast's diversity efforts in California, Applicants state that Comcast voluntarily complies with the CPUC's supplier diversity requirements. However, Comcast's voluntary compliance with the California Public Utilities Commission's diversity requirements is not a sufficient commitment to diversity, especially when compared to other telecommunications providers in California.[30] Comcast's minimal efforts are not only disappointing, but are significantly lower than any other reporting telecommunications provider in California. While California telecommunications providers reported spending over 2.6 billion dollars on supplier diversity in 2013, Comcast's share of that amount was 24 million dollars, by far the lowest amount of any provider.[31] In comparison, Cox, a company with a far smaller California presence, spent 91 million dollars on supplier diversity.[32]

Comcast continues to neglect minority business enterprise (MBE) spending in the African American and Native American categories:

> Comcast slightly improved its overall MBE spending to 8.23% in 2013 and received an F+. Comcast achieved slight increases in all areas, but did not move above 1% in African American and MWBE contract spending. In the Native American and DVBE categories, spending remained at zero.[33]

[29] Id. at 92.
[30] Stephanie Chen and Noemi Gallardo, Supplier Diversity Report Card: Unexpected Achievements and Continuing Gaps at 17 (June 2014), (hereafter, Greenlining 2014 Supplier Diversity Report Card) *available at* http://greenlining.org/wp-content/uploads/2014/06/2014-Supplier-Diversity-Report-Card-printer-friendly.pdf (last accessed December 10, 2014).
[31] Greenlining 2014 Supplier Diversity Report Card at 10.
[32] *Id*. at 12.
[33] *Id*.

Applicants conflate Time Warner Cable's failure to participate in the CPUC supplier diversity program with actual measurements of Time Warner Cable's diversity efforts.[34] Applicants have provided no actual evidence that Comcast's paltry diversity spending is greater than that of Time Warner Cable.

Greenlining does not wish to discount Comcast's supplier diversity efforts. However, given its size and presence in California, Comcast could be doing much more. Comcast's extension of its current supplier diversity efforts to Time Warner's service territory may not actually result in increased diversity spending by the new company. Even if the extension did result in increased diversity spending, that diversity spending would likely be negligible.

B. The Commission's Approval of Proposed Transactions Which Provide At Best Incremental Improvements Would Harm the Public Interest.

Applicants respond to arguments about service quality, the Internet Essentials program, and diversity spending with the rather puzzling argument that because Comcast's efforts in those areas are incrementally better than Time Warner's customer service, the proposed transactions are in the public interest.[35] Even if Comcast's efforts are "less terrible" than Time Warner Cable's efforts, that would not justify the Commission's approval of the proposed transactions. The incremental improvement to customer service, the Internet Essentials program, and the new company's diversity efforts that could potentially result from the proposed transactions are insufficient to make those transactions be in the public interest. Such Commission approval would actually **harm** the public interest, because it would send providers the clear message that

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[34] CPUC Comcast/Time Warner Proceeding, Applicants' Opening Brief at 17.

[35] CPUC Comcast/Time Warner Proceeding, Applicants' Opening Brief, Exhibit D (Israel, Keating, and Weiskopf, Economic Analysis of the Effect of the Comcast-TWC Transaction on Voice and Broadband Services in California) at 24. "The relevant question, of course, is the incremental effect of the transaction."

providers have no obligation to offer acceptable service quality, a meaningful low-income broadband program, or significant diversity efforts, and, in fact, that a company that provides some of the worst service quality of any industry in the country[36] can still obtain Commission approval to acquire another company. The Commission's sending such a message would create a perverse incentive for providers to do less, harming consumers and the public interest.

IV. APPLICANTS' PURPOTED COMMITMENTS TO PROVIDING LIFELINE SERVICE, EXTENDING INTERNET ESSENTIALS, AND OFFERING STANDALONE SERVICE ARE ILLUSORY.

Applicants claim to make a number of commitments that benefit the public interest post-transaction. However, none of those purported commitments—including offering Lifeline service, offering Internet Essentials, and offering standalone service--are meaningful. Under the Applicant's offered terms for those commitments, Applicants can stop offering those services at any time.

A. Applicants Make No Meaningful Commitments to Offer Lifeline Service Post-Transaction.

In its Petition, Greenlining raised concerns about the fact that, post-merger, Comcast would likely reverse Time Warner Cable's business plan to offer Lifeline service to customers within its service territory.[37] Much like their response to Greenlining's claims about Internet Essentials, Applicants respond with reassurances which are essentially meaningless. For example, in Response to Greenlining's identical claims in the California Public Utilities Commission's review of the proposed transactions, Kevin J. Leddy, Time Warner Cable's Executive Vice President, Corporate Strategy, states that "Time Warner Cable intends to transfer

[36] Lance Whitney, Cable providers, ISPs rank dead last for customer service (August 21, 2013), *available at* http://www.cnet.com/news/cable-providers-isps-rank-dead-last-for-customer-service/.
[37] Greenlining Petition at 8.

its VoIP customers from its unregulated retail affiliate, Time Warner Cable Digital Phone LLC, to Time Warner CableIS(CA), which is a competitive local exchange carrier ('CLEC') authorized to provide telecommunications services in the State. Time Warner Cable has no plans to modify its VoIP based service plans except as necessary pursuant to that change in regulatory status; that is, Time Warner Cable's features, rates, and other service terms will remain essentially the same as they exist today, and will similarly remain comparable to the attributes of Comcast's voice offerings."[38]

It is important to note that Mr. Leddy's statements do nothing more than describe Time Warner Cable's *current* business plans. Mr. Leddy cannot guarantee that, post-transaction, the combined company will continue to offer Lifeline service. In fact, as Greenlining has previously noted, any actual knowledge by Mr. Leddy's regarding Comcast's future plans might well rise to the level of an antitrust violation.[39] Any assurances would have to come from Comcast, which provides none: Comcast states that it "will continue to provide service to Lifeline customers of Time Warner CableIS(CA) *unless and until*, in the normal course, Comcast files and the Commission approves an application to relinquish the Time Warner CableIS(CA) Lifeline certification."[40] Applicants provide no guarantee that the combined company will continue to offer Lifeline service post-transaction. Accordingly, the Commission should ignore Applicants' claims of Lifeline benefits.

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[38] CPUC Comcast/Time Warner Proceeding, Applicants' Opening Brief, Exhibit C (Declaration of Kevin J. Leddy) (hereafter, Leddy Declaration), at ¶ 7.
[39] CPUC Comcast/Time Warner Proceeding, Greenlining Protest at 18.
[40] Leddy Declaration at ¶ 11 (emphasis added).

B. Applicants Make No Meaningful Commitments to Offer Internet Essentials Post-Transaction.

Applicants make grandiose-sounding statements about continuing the Internet Essentials program. Comcast may claim that it is extending Internet Essentials "indefinitely,"[41] but "indefinitely" refers only to an *unspecified period of time*. Applicants have made no meaningful commitment to continue the Internet Essentials program, and could conceivably eliminate the program the day after the proposed transactions are approved. Given that the combined company could eliminate the Internet Essentials program immediately after it gained approval of the proposed transactions, and could just as easily continue and expand the program even without a merger, the Commission should not consider Internet Essentials a benefit of those transactions.

C. Applicants Make No Meaningful Commitments to Offer Lifeline Service Post-Transaction.

In the CPUC proceeding reviewing the instant transactions, the CPUC asks whether the new company would continue to offer standalone broadband service post-transaction.[42] Applicants provide the tepid response that "[i]n addition to extending Internet Essentials to Time Warner Cable's territories, Comcast will also maintain its commitment to offering consumers the option to purchase broadband service on a standalone basis. This offering stems from a condition in the NBCUniversal transaction, but has become a core feature of Comcast's broadband business."[43] Much like Applicants' claims about the combined company's post-transaction plans to offer Internet Essentials, this response contains no actual commitment to

[41] Opposition at 50.
[42] CPUC Comcast/Time Warner Proceeding, Scoping Memo at 13.
[43] Opposition at 86-87.

continue offering standalone service. Based on those statements, the combined company could discontinue offering standalone service the moment the Commission approved the merger.

Additionally, Greenlining is skeptical that the combined company will inform customers about the availability of standalone Internet access. As a condition for approving the NBCU transaction, for example, the Commission required Comcast to provide and promote a reasonably priced stand-alone broadband service.[44] The FCC intended to keep a road open for customers who wanted to move from bundled to unbundled service, who maybe wanted even to cut out cable entirely and move to over-the-top programming.[45] Comcast's sales force, however, continued to actively promote the bundle, and failed to promote the inexpensive standalone alternative.[46] Complaints mounted.[47] Eventually, the Commission brought action and imposed an $800,000 penalty on Comcast for noncompliance.[48]

Applicants make no meaningful commitment to continue to offer standalone broadband service pending approval of the proposed transactions. Additionally, Comcast's past behavior indicates that the combined company will not promote unbundled, standalone service. Accordingly, the Commission should disregard Applicants' claims that the proposed transactions will result in the combined company's offering standalone broadband service.

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[44] Memorandum Opinion and Order in In re Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, MB Docket No. 10-56, at ¶ 102 (adopted January 18, 2011, released January 20, 2011) (hereafter, Comcast-NBCU Order).

[45] *Id*.

[46] Consent Decree, In the Matter of Comcast Corporation, Docket No. DA-12-953 (June 27, 2012), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-12-953A1.pdf.

[47] *Id*.

[48] *Id*. For a description of other reported claims of noncompliance, *see, e.g.*, Letter from Senator Al Franken to the Honorable Tom Wheeler, dated Feb. 27, 2014, http://www.franken.senate.gov/files/letter/140227FCCLetterComcastTWC.pdf.

V. THE PROPOSED TRANSACTIONS WOULD HARM CONSUMERS AND THE PUBLIC INTEREST.

The proposed transaction will not offer substantial benefits to California consumers and instead poses a great risk of public interest harms. In determining whether Applicants have the requisite character to meet the Commission's requirements, the Commission should consider Comcast's releases of the unlisted and unpublished information of almost 75,000 customers over a period of up to two and a half years involves commission conduct, as well as the fact that Comcast made fraudulent misrepresentations during the course of the CPUC's review of those releases. The proposed transactions will not meaningfully improve quality of service, affordable broadband programs, or diversity. Applicants have not met their burden of showing that the proposed transactions would result in any such improvements, and even if the proposed transactions did, those improvements would be negligible. The Commission should not approve a transaction which results in only incremental improvements, because that approval would destroy providers' incentives to improve their offerings and service. Finally, Applicants statements regarding the new company's continuing to provide Lifeline, Internet Essentials, and standalone services contain no actual commitments and are illusory. Accordingly, the Commission should disregard these claims when evaluating the public interest effects of the proposed transactions. Applicants have failed to demonstrate that the purported benefits of the proposed transaction outweigh the potential harms to consumers, competition, and the public interest. Accordingly, Greenlining respectfully requests that the Commission deny the Application.

VI. THERE ARE NO MITIGATION MEASURES THAT THE COMMISSION COULD IMPOSE THAT WOULD BE SUFFICIENT TO ENSURE THAT THE PROPOSED TRANSACTIONS ARE IN THE PUBLIC INTEREST.

In its Petition, Greenlining suggested that if the Commission did not deny the Application, it should impose conditions sufficient to ensure that the proposed transactions are in the public interest.[49] Greenlining no longer takes that position. Given Comcast's tendency to creatively interpret the terms of conditions, it would be difficult for the Commission to describe required or prohibited conduct with sufficient specificity to ensure Comcast's compliance.[50] Similarly, the Commission will experience difficulty in detecting noncompliance and in resolving complaints, because companies who have complaints but must rely on ongoing business relationships with Comcast will be hesitant to come forward.[51] Finally, when Comcast has been subject to conditions that interfere with Comcast's inherent profitmaking incentives, Comcast has flat-out failed to comply.[52]

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[49] Greenlining Petition to Deny at 17.

[50] For example, the DOJ and the Commission were aware at the time of Comcast-NBCU that Netflix and other over-the-top providers represented the "best hope" for increased competition to cable's dominance. *See, e.g., Comcast-NBCU* Complaint, *supra* note 52, ¶ 9. As a result, they imposed a number of conditions intended to prevent Comcast from engaging in conduct that would interfere with this developing source of competition. The DOJ and FCC orders spelled out multiple restrictions on Comcast's permitted behavior, including not discriminating against program content delivered over its own broadband network – adopting the FCC's "open Internet rules."
The conditions did not anticipate, however, that Comcast might decide not to continue to increase the number of ports into its network to keep pace with the increasing volume of traffic that content providers, and particularly Netflix, were delivering at the request of Comcast customers. The Comcast-NBCU conditions dealt with what happened when information was already *on* Comcast's network, not what happened at the point of contact *with* the network. Comcast assured the FCC and DOJ of net neutrality for its last mile. But Comcast found a loophole: it discriminated *before* the last mile, at the interconnection points. Ultimately, the behavioral conditions did not protect even the largest online video distributor, Netflix.

[51] *See* Notice of Proposed Rulemaking ¶ 172, In the Matter of Protecting and Promoting the Open Internet, FCC Docket No. 14-61 (May 15, 2014).

[52] Thus, when the condition required Comcast to locate its rival Bloomberg News on a channel in a "news neighborhood" in close proximity to other news stations, the result was that Comcast fought the condition tooth and nail for more than two years.

The proposed transactions would cause such severe public interest harms that no number of conditions could tip the balance in favor of the public interest. The Commission would have enormous potential difficulty crafting conditions that could hold the combined company accountable. Finally, there is a significant likelihood that Comcast will effectively ignore or seek to circumvent any conditions that it does not care for. For these reasons, the Commission would be unable to impose conditions sufficient to outweigh the public interest harms of the proposed transactions.

Here, it seems clear that if Comcast did not own NBCU, its incentive would have been to give maximum exposure to Bloomberg News, to satisfy its subscribers who watch Bloomberg News. But its ownership of NBCU programming, in particular MSNBC and CNBC, fundamentally altered that incentive. That the behavioral condition did not deter Comcast even when its discrimination against Bloomberg News was so highly visible to regulators suggests how much more difficult it is to require less visible good behavior when the company's incentives run in the other direction.

VII. CONCLUSION

Greenlining supports well-designed industry measures that increase the availability of affordable communications services to communities of color and low-income consumers. Applicants claim that the goal of the proposed transactions is to ensure quality, innovative, next-generation phone and broadband service to consumers in California. Those goals are laudable. However, the proposed transactions will not bring these promised improvements. Rather, the proposed transactions will reduce quality of service, delay the deployment of next-generation services, and widen the Digital Divide between higher-income and lower-income citizens. Even if the proposed transaction brings about all of the benefits Applicants claim, the harms to consumers far outweigh those purported benefits, and would harm the public interest as a result.

For the above-stated reasons, Greenlining respectfully requests that the Commission deny the proposed transaction.

Respectfully submitted, Dated: December 23, 2014

/s/______________________
Paul Goodman
Legal Counsel

Declaration of Paul Goodman

My name is Paul Goodman. I am Legal Counsel-Telecommunications of the Greenlining Institute.

The Greenlining Institute is a national policy, organizing and leadership institute working for racial and economic justice. The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities. We also advocate before regulatory agencies to advance these goals.

Members of the communities served by the Greenlining Institute reside in areas served by Comcast services and/or Time Warner services, and many are subscribers to those services. Moreover, members of the communities served by Greenlining Institute and employees of the Greenlining Institute are subscribers to other service providers who will be impacted by the proposed merger.

I am familiar with the contents of the foregoing Reply to Opposition to Petitions to Deny and Response to Comments. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on December 23, 2014.

/s/ Paul Goodman___________

Paul Goodman

Certificate of Service

I hereby certify that on this 23rd day of December, 2014, I caused true and correct copies of the foregoing Reply to Opposition to Petitions to Deny and Response to Comments to be served as follows:

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/s/_Paul Goodman____________________
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