Stephanie Chen – Testimony of the Greenlining Institute at the CPUC’s All-Party Public Hearing on the Comcast-TimeWarner Merger, April 14, 2015.

Thank you. My name is Stephanie Chen, representing the Greenlining Institute along with my colleague Paul Goodman. I am also speaking on behalf of the Center for Accessible Technology, whose counsel was unable to be here today. Both Greenlining and C for AT remain opposed to the merger, and we thank Commissioner Florio for his recent Alternate decision that would deny the deal.

Commissioners, this deal remains a bad one for California. I think the only other merger that would be worse for California would be one between the Giants and the Dodgers. The merger would consolidate virtually all broadband service in the state, and a significant majority of our video service, with one company that has a very poor track record for all aspects of service, and that this Commission cannot fully regulate.

Comcast has demonstrated that it cannot be trusted to keep our private information secure. It has shown exceedingly little interest in serving customers who are unable or unwilling to pay $200 a month or more for bundled service.

Its Internet Essentials program provides substandard speeds and very limited access, to the relative handful of customers who are even eligible for the program and make it all the way through the burdensome enrollment process. It does not live up to the promise Comcast is making to the communities you heard from earlier today, who need broadband access and who would, if the merger were approved, be forced to settle for second rate service, at BEST. Comcast's customer service is notoriously terrible, in many instances downright offensive, and its commitments to diversity are lackluster at best.

Comcast's supplier diversity performance overall actually slipped by 6% over the last year, calling into question its asserted commitments in a state where diversity in the supply chain is simply the norm. Its commitments to content diversity have been called into very serious question, and with good reason. And it's important to look at those content diversity commitments not only for their impacts on equity in media, but also because those commitments were made as conditions to the Comcast NBCU merger.

The fact that Comcast did not live up to the conditions it agreed to in its last major merger should be a *serious* red flag for this Commission as to whether it can *actually* impose conditions, even where it is legally able to do so, that will have the *real life effect* of mitigating the harms this merger would cause.

In preparation for this hearing, you asked about differences in the state public interest review versus the federal, and we thank you because this is an important question. In the public interest review, both the federal and state reviews are looking at similar things, and the scope of what both agencies *can* and *should* look at is very broad.

The commission's public interest review is *much much broader* than just impacts on phone bills. It includes job impacts, media impacts, diversity impacts, impacts on customers who don't speak much English. However the CPUCs jurisdiction to *enforce* any conditions it may impose is more limited. Your review can and should include all aspects of the public interest regardless of where your jurisdiction may end.

Exactly where that jurisdiction ends is the subject of hot debate, but there are limits and those are highly relevant to your review. So when it comes to conditions and questions of enforceability, I urge you to bear in mind two things. First, bear in mind the FCC had *full jurisdiction* to impose the conditions it imposed on the Comcast NBCU merger, and those conditions remain substantially unfulfilled. There, we got the harms, but we did not get the mitigating benefits.

Commissioners - if you find harms to the public interest, as *both* the PD and the APD have found, over dozens of pages of analysis, and you are not *certain* you can enforce conditions that will mitigate those harms, you must deny the merger. To find harms, and approve conditions that will not become reality after the merger, is to *knowingly* let those harms play out across California, with no recourse for the millions of customers who will be impacted.

Comcast has challenged every one of the robust set of conditions set forth in the PD. Every single one - saying either you can't, or they won't. This includes even the ones that are essential for public safety! Comcast has objected to providing 24 hours of backup battery power for its phone customers, saying hey, we tell them they are at risk, so that's good enough. Yet there is ample evidence that customers are not aware of their risk in the event of a power outage.

Rather than stepping up and doing what they can to promote public safety, Comcast objects. These objections run directly counter to the public interest and directly counter to this Commissions goal of shoring up public safety.

Looking at the 25 conditions in total, there's not a single one that we can confidently look at and say, ok, if we vote for the PD, that will happen. Not a one. Either your jurisdiction is in question, or Comcast has stated its unwillingness to comply.

Where jurisdiction is in question, best case scenario is a couple of years of litigation to resolve the question, which will significantly tap Legal Division resources. If the CPUC eventually prevails, or for conditions where jurisdiction is not in question, past experience has shown that a great deal of oversight will be needed to ensure that the commitment on paper actually turns into a commitment in real life.

The Commission doesn't have the resources for this kind of oversight. So what will end up happening is nothing. There will be no way to mitigate the harms caused, and no way to un-merge the companies or otherwise impose competition in an already highly consolidated market.

The only thing that we can see that will really improve service for customers, particularly those who aren't in the wealthiest income bracket, is competition. We see this wherever Google

Fiber sets up shop - all of a sudden the incumbent carrier manages to increase its speeds without raising its prices. And that's not because it acquired a new company, it's because there's now competition in that local market.

And we mentioned this at the San Francisco meeting but it's worth saying again. You heard a great deal about the community partnerships that both companies support, and Greenlining commends this activity. We believe all companies, regardless of whether there's a merger on deck, should be supporting organizations doing great work in our communities. But this support doesn't say anything about the impacts of the merger itself. These companies should continue their support of community organizations regardless, and in fact we think that having a larger number of corporate partners better serves our communities.

In conclusion, Comcast is arguing that you should approve the merger but that you can't impose conditions because you don't have the jurisdiction, or they don't like it. So they say just approve the merger and don't impose any conditions. Commissioners, this is a misstatement of the law. Both the PD and the APD are very clear and very thorough in concluding that this merger creates substantial public interest harms. Under Public Utilities Code section 854, if the commission cannot create mitigation measures sufficient to counteract the harms it has found, then the Commission MUST deny the transaction.

As such Greenlining and the Center for Accessible Technology urge you to adopt Commissioner Florio's alternate decision and deny this merger. Thank you for your time, and we look forward to answering any questions you may have.