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January 7, 2013

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

Deutsche Telekom AG (“DT”) and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, “Applicants”) object to disclosure of the confidential and highly confidential information in their January 7, 2013 response (“Response”)<sup>1</sup> to the Commission’s December 20, 2012 Information and Discovery Request (“Information Request”)<sup>2</sup> to the Greenlining Institute (“Greenlining”). Though Greenlining has filed acknowledgements of confidentiality, it has not otherwise participated in this proceeding, having failed to file Comments or Reply Comments on the proposed transaction. Accordingly, Greenlining is not a participant to this proceeding and its counsel may not gain access to the Applicants’ unredacted Response.

Under the Protective Order and Second Protective Order in this proceeding, only counsel and outside counsel to “participants” may gain access to confidential and highly confidential information filed in the proceeding.<sup>3</sup> The definitions of

<sup>1</sup> Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301 (Jan. 7, 2013) (“Response”).

<sup>2</sup> Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Dan Menser, T-Mobile License LLC, WT Docket No. 12-301 (Dec. 20, 2012) (“Information Request”).

<sup>3</sup> Protective Order, WT Docket No. 12-301, DA 12-1664, ¶¶ 1-2 (WTB rel. Oct. 17, 2012); Second Protective Order, WT Docket No. 12-301, DA 12-1665, ¶¶ 1-2, (WTB rel. Oct. 17, 2012) (“Second Protective Order”).

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“Counsel” and “Outside Counsel” found in both Protective Orders explicitly provide that qualifying counsel must represent “a Participant” to gain access to Stamped Confidential and Highly Confidential documents. The Protective Order defines “Counsel” to mean In-House Counsel or Outside Counsel of Record.<sup>4</sup> “In House Counsel” means “an attorney employed by *Participant* in this proceeding . . . and who is actively engaged in the conduct of this proceeding.”<sup>5</sup> In the Protective Order and Second Protective Order, “Outside Counsel of Record” or “Outside Counsel” means an attorney or firm retained by or representing “*a Participant in this proceeding.*”<sup>6</sup> Both protective orders define a “Participant” as “a person or entity that *has filed, or has a good faith intention to file, an application, petition to deny, or material comments* in the proceeding.”<sup>7</sup>

Greenlining did not file a timely petition to deny in this proceeding. Nor did Greenlining file timely comments or reply comments. In fact, Greenlining has not participated at all in this proceeding other than its filing of Acknowledgements of Confidentiality. Further, the comment period for the proceeding is now closed, ending the opportunity for commenters to timely raise new issues.<sup>8</sup> Greenlining clearly does not qualify as a Participant in this proceeding under the protective orders governing this proceeding. Therefore, Greenlining is not qualified to gain

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<sup>4</sup> Protective Order, ¶ 2.

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> Protective Order, ¶ 2 (emphasis added); Second Protective Order, ¶ 2 (emphasis added).

<sup>7</sup> Protective Order, ¶ 2 (emphasis added); Second Protective Order, ¶ 2 (emphasis added).

<sup>8</sup> *See Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. Seek FCC Consent to the Transfer of Control of PCS Licenses and AWS-1 Licenses and Leases, One 700 MHz License, and International 214 Authorizations Held by MetroPCS Communications, Inc. and by T-Mobile USA, Inc. to Deutsche Telekom AG*, Public Notice, WT Docket No. 12-301, DA 12-1730 (Oct. 26, 2012) (“[p]etitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.”) (emphasis in original).

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access to the Applicants' unredacted Response, nor any other confidential or highly confidential materials that may be filed in this proceeding.<sup>9</sup>

To provide Greenlining with the unredacted Response would run counter to the purpose of the protective orders governing this proceeding. These orders limit use of confidential and highly confidential information "solely for the preparation and conduct of this proceeding"; such information cannot be used "for any other purpose."<sup>10</sup> The Applicants' Response provides narrative descriptions, documents and data, including very granular and extremely competitively sensitive information covering virtually all categories of highly confidential information described in Appendix A to the Second Protective Order.<sup>11</sup> Accordingly, the vast majority of the information submitted in the Response was marked as confidential or highly confidential. This extremely sensitive information cannot be relevant in any way to Greenlining's advocacy because Greenlining has failed to participate in this proceeding and the time period for interested parties to raise issues has now passed. Accordingly, the Commission should deny Greenlining access to the confidential and highly confidential information in the Response, as Greenlining's access would not advance the conduct of this proceeding.

For these reasons, the Applicants respectfully ask the Commission to sustain this objection and deny Greenlining access to the Applicants' unredacted Response to the Information Request.

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<sup>9</sup> The Commission has previously found that entities who have not filed timely formal pleadings during the comment cycle do not qualify as parties to a proceeding. *See, e.g.* Letter from Nancy J. Victory, Counsel for Verizon Wireless, and Peter J. Schildkraut, Counsel for AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-121 (Dec. 9, 2009).

<sup>10</sup> *See* Protective Order, WT Docket No. 12-301, DA 12-1664, ¶ 7 (WTB rel. Oct. 17, 2012); Second Protective Order ¶ 10.

<sup>11</sup> Second Protective Order, WT Docket No. 12-301, DA 12-1665 (WTB rel. Oct. 17, 2012) ("Second Protective Order"). Appendix A enumerates the categories of the information that constitutes a submitting party's "most sensitive business data which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations . . . ." Second Protective Order, ¶ 2.



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Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory  
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