Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations	))))))))	DA-12-1664 WT Docket No. 12-301

OPENING COMMENTS OF THE GREENLINING INSTITUTE

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OPENING COMMENTS OF THE GREENLINING INSTITUTE

The Greenlining Institute ("Greenlining") hereby files these Opening Comments in the above-captioned matter pursuant to Section 309(d)(I) of the Communications Act of 1934,[1] and the FCC's Public Notice of December 27, 2012.[2] Greenlining has delayed filing these comments for the reasons described in Greenlining's letter of Jan. 17, 2013.[3]

Based on its initial and limited review of the proposed transaction, Greenlining believes that the proposed transaction could serve the public interest. However, Greenlining's review has been limited to the Public Interest Statement filed by Deutsche Telekom AG, T-Mobile USA, Inc. ("T-Mobile"), and MetroPCS Communications, Inc. ("MetroPCS").[4] Without further information, Greenlining cannot determine whether the proposed transaction would ultimately benefit low-income consumers. Greenlining intends to continue investigating the merger, and will supplement these comments as needed.

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[1] 47 U.S.C. § 309(d)(l) (2011).
[2] FCC Public Notice, DA 12-2090, Docket No. 12-313 (December 27, 2012) (Revising Pleading Cycle).
[3] Letter from Paul Goodman, The Greenlining Institute, to Marlene Dortch (January 17, 2013).
[4] These comments refer to Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. jointly as "Applicants."

STATEMENT OF FACTS

In describing the proposed transaction, Applicants describe T-Mobile and MetroPCS as two "value" wireless providers who, consolidated into one company, will be able to more effectively compete against high-cost, "premium" providers like AT&T, T-Mobile, and Sprint.[5] MetroPCS sells to value-driven consumers in a limited number of major metropolitan areas.[6] MetroPCS is one of the most aggressively priced competitors in the wireless market.[7] T-Mobile similarly offers a number of self-described low-cost, "value plans."[8]

Applicants have stated that after the transaction is consummated, the new company will maintain T-Mobile and MetroPCS as separate brands.[9] Additionally, MetroPCS will maintain prices for its existing customers.[10] Applicants state that one of the benefits of the proposed transaction is that MetroPCS customers will have more device, plan, and application choices.[11] While the new company will integrate many of MetroPCS' cell sites into T-Mobile's existing network, some sites will be decommissioned.[12] The new company will also consolidate T-Mobile and MetroPCS' spectrum holdings, which are on adjacent bands in many areas.[13] Consolidating spectrum will help T-Mobile address its near-term bandwidth shortages.[14]

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[5] Applicants' Public Interest Statement at 11 (hereafter, Public Interest Statement).
[6] *Id.* at 2.
[7] Abby Ellin, What the T-Mobile/MetroPCS Merger Means for Cost-Conscious Consumers (Oct. 5, 2012) *available at* http://abcnews.go.com/blogs/business/2012/10/what-the-t-mobilemetropcs-merger-means-for-cost-conscious-consumers/.
[8] See T-Mobile, "Value Packages," available at http://www.t-mobile.com/shop/Packages/ValuePackages.aspx (last accessed January 22, 2013).
[9] Public Interest Statement at 3.
[10] *Id.* at 24.
[11] *Id.* at 22.
[12] *See Id.* at 27.
[13] *Id.* at 27.
[14] *Id.* at 10.

ARGUMENT

I. WHILE THE PROPOSED TRANSACTION APPEARS TO BE IN THE PUBLIC INTEREST, THERE ARE UNRESOLVED QUESTIONS.

Greenlining was initially optimistic that the proposed transaction would serve the public interest. However, Greenlining is concerned that Applicants' responses to the Commission's data requests may contain evidence of harms which could result in the proposed transaction being against the public interest. There is a risk that the proposed transaction could harm competition in the market for value wireless services, harming low-income consumers. Additionally, the proposed transaction, if consummated, could delay deployment of advanced services to these consumers. Finally, the proposed transaction will reduce diversity of spectrum ownership, and could have severe job impacts.

A. Applicants Must Prove, By A Preponderance Of The Evidence, That The Proposed Transaction Is In The Public Interest.

A party seeking the acquisition or transfer of a license bears the burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction will serve the public interest, convenience, and necessity.[15] In making this determination, the Commission first assesses "whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules."[16]

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[15] Order In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).
[16] *Id.*

When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest; however, the Commission's public interest inquiry extends far beyond potential competitive effects.[17] The Commission also considers "whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits."[18] The Commission's public interest inquiry includes a consideration of, "among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest."[19]

The Commission then considers whether the acquisition "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."[20] If there is a risk of harm, the Commission employs "a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits."[21] If the potential public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.[22]

[17] *Id.* at 8717.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

B. The Proposed Transaction Could Harm Competition in the Value Wireless Services Market.

1.The Local Value Wireless Services Market Is a Relevant Market.

The Commission's competitive analysis of a proposed transaction begins with determining appropriate market definitions for the transaction.[23] Market definition requires defining both the product market and the geographic market.[24]

a. The Market for Value Wireless Services is a Relevant Product Market.

The relevant market consists of all goods which are "reasonably interchangeable" with a product.[25] Products are "reasonably interchangeable" if consumers (1) view those products as substitutes for each other and (2) would switch among those products in response to a change in price.[26] In determining whether goods are reasonably interchangeable, courts consider the price, the use, and the qualities of the respective products.[27]

Applicants argue that the relevant product market for the purposes of reviewing the proposed transaction is the market for all wireless services.[28] However, Antitrust law recognizes that separate markets for premium products and value products can exist: "...when quality is related to price, price classes may provide useful shorthand for describing collections of products properly defining a market."[29] Applicants' definition

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[23] *Id.*
[24] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, p. 7 (August 19, 2010), available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf (hereafter, Merger Guidelines).
[25] United States v. E. I. Du Pont de Nemours & Co., 351 U.S. 377, 395 (U.S. 1956).
[26] Apple v. Psystar, 586 F. Supp. 2d 1190 at 1196 (N.D. Cal. 2008).
[27] *Id.*
[28] Public Interest Statement at 46.
[29] Jonathan B. Baker, Stepping Out In An Old Brown Shoe: In Qualified Praise Of Submarkets, 68 Antitrust Law Journal 203, 205, n.7. (2000), citing US v. Gillette Co., 828 F. Supp. 78 (D.D.C. 1993).

is over-expansive. Under this definition, a consumer who pays forty dollars a month for wireless service would, when faced with an increase in price, switch to a wireless service costing 100 dollars a month or more. A significant number of consumers would not view $40 wireless services and $100 wireless services as substitutes for one another. It is more likely that consumers view "value" wireless services as one set of products, and "premium" wireless services as another.

Applicants themselves acknowledge separate markets for high-cost and low-cost wireless services. In describing the proposed transaction, Applicants describe T-Mobile and MetroPCS as two "value" wireless providers who, consolidated into one company, will be able to more effectively compete against high-cost, "premium" providers like AT&T, T-Mobile, and Sprint.[30] As Applicants acknowledge, MetroPCS and T-Mobile sell to value-driven consumers.[31] While the Commission may want to examine the effects of the proposed transaction on the market for wireless services as a whole, it should also consider the market for value wireless services as a separate market.

b. The Local Market is a Relevant Geographic Market.

In addition to determining the product market, the Commission also determines the relevant geographic market.[32] In evaluating the geographic market, courts and agencies try to "find the area or areas to which a potential buyer may rationally look for the goods or services he seeks."[33]

[30] *See* Statement of Facts, *supra.*
[31] *Id.*
[32] Merger Guidelines at 13.
[33] U.S. v. Grinnell Corp., 384 U.S. 563, 588 (1966).

Applicants concede that the Commission views the geographic market for wireless services to be both local and national.[34] MetroPCS does, to some extent, compete nationally.[35] Accordingly, the Commission should consider the effects of the proposed transaction on the national market.

Additionally, as Applicants state, MetroPCS is a regional provider with service offerings generally limited to highly populated urban areas.[36] Accordingly, there are vast portions of the country where consumers cannot purchase MetroPCS services. The Commission should study the proposed transaction's competitive effects within the discrete regional markets that MetroPCS serves.

2. There are Unresolved Questions Regarding the Proposed Transaction's Competitive Effects.

Based on the non-confidential information in its possession, Greenlining believes that the proposed transaction would increase competition in the national market for all wireless services. However, Greenlining is concerned that this increased national competition could come at the expense of reduced competition in the market for value wireless services. Applicants have indicated that the new company will continue to provide value services. However, the extent to which it will provide value services is unclear.

[34] Public Interest Statement at 48.
[35] *Id.* at 14.
[36] *Id.* at 2.

a. The Proposed Transaction Would Eliminate Competition between T-Mobile and MetroPCS.

Applicants state that the proposed transaction will not have any local competitive effects, because, post-transaction, there will be a number of wireless provider providing competitive pressure in the new company's service areas.[37] However, these providers include both providers of value services and providers of premium services. Applicants' argument carefully avoids addressing the fact that T-Mobile and MetroPCS compete against each other in the much smaller value wireless market.

If the Commission approves the proposed transaction, the consolidation of T-Mobile and MetroPCS will reduce the already small number of competing offerings in the value wireless services market. This would create a very possible risk of higher prices and lower quality of service for those services. Greenlining is encouraged by Applicants' statements that the new company will maintain T-Mobile and MetroPCS as separate brands.[38] However, even if MetroPCS and T-Mobile remain separate brands, the fact that those brands are owned by one company will provide a disincentive for those two brands to compete. Additionally the transaction could eliminate MetroPCS' incentives to expand into markets that are currently served by T-Mobile. The proposed transaction could accordingly reduce competition, and harm the public interest.

b. There is a Risk that the Proposed Transaction, If Consummated, could Result in T-Mobile's Exiting the Value Services Market.

Applicants claim that post-transaction, MetroPCS will maintain prices for its current customers.[39] Applicants do not appear to make any similar claims regarding the

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[37] *Id.* at 54.
[38] *Id.* at 2.
[39] *Id.* at 24.

T-Mobile brand. It is possible that post-transaction, the new company would decide to reposition the T-Mobile brand in order to devote most or all its resources to competing against AT&T, Verizon, and Sprint. As a result, T-Mobile could reduce or completely discontinue its value offerings, effectively exiting the value market. Accordingly, the proposed merger could result in reduced competition in the value market.

c. There is a Risk that the Proposed Transaction, If Consummated, could Result in MetroPCS' Exiting the Value Services Market.

Applicants state that they intend to maintain the MetroPCS brand.[40] However, Applicants acknowledge that T-Mobile faces near-term bandwidth shortages.[41] Given that the T-Mobile brand promises to generate higher revenue than the MetroPCS brand, it is not unreasonable to assume that as T-Mobile's "spectrum crunch" becomes more severe, the new company will devote more and more of its spectrum to T-Mobile services. This appears to be of particular risk because, as Applicants state, T-Mobile and MetroPCS' spectrum holdings are on adjacent bands and therefore relatively easy to consolidate.[42] In an area where the new company has a severe spectrum shortage and demand is high, it would be a reasonable business decision to eliminate the MetroPCS brand and devote the new company's entire spectrum to its more lucrative T-Mobile brand. This would result in market exit by MetroPCS, which would lead to higher prices and lower service quality from the remaining providers of value services.

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[40] *Id.* at 2.
[41] *Id.* at 10.
[42] *Id.* at 12, 24.

3. There is a Risk that the Proposed Transaction, If Consummated, could Reduce Competition in the Value Services Market.

The consolidation of T-Mobile and MetroPCS will reduce value providers' incentives to keep prices low or improve offerings or quality of service. As a result, the proposed transaction threatens to substantially lessen competition within the market. Greenlining is wholeheartedly in favor of a wireless company with the resources and capacity to challenge AT&T, Verizon, and Sprint. However, this increased competitive potential should not be at the expense of purchasers of value services. The Commission should ensure that low-income consumers' interests are protected.

C. There is a Risk that the Proposed Transaction, if Consummated, Could Harm Low-Income Consumers.

Even if the Commission defines the relevant market as all wireless services and finds no harmful competitive effects under a traditional antitrust analysis, the proposed transaction still poses a risk that low-income consumers will be harmed. As discussed above, there is a risk that as a result of the transaction, T-Mobile, MetroPCS, or both brands will no longer provide value services. As discussed above, this scenario promises to drive up prices and reduce quality of service. These consequences would severely harm low-income consumers who cannot afford more expensive, "premium" service offerings, and would promise to further widen the digital divide.

Mobile wireless service is particularly important to low-income consumers and communities of color, as it may be their only access to broadband. The Commission's National Broadband Plan noted that only 40% of low-income consumers adopted broadband, a much lower rate than the national average (65%).[43] It is more likely that a low-income consumer's wireless device is their only means of accessing the internet.[44] Some low-income consumers are unable to obtain premium services because of issues of creditworthiness or prior disconnections.[45]

African Americans and Hispanics also adopt broadband at lower rates – 59% and 49% respectively.[46] African-Americans and Latinos are also more likely to access the internet through mobile services.[47] Thus, these communities are at the low points of the "Digital Divide."

Low-income consumers and consumers of color, who disproportionately rely on mobile-only wireless service, will have less dependable phone service. This is of particular concern to low-income families, many of whom do not have wireline phone service.[48] Poor and/or inconsistent download speeds will further reduce these consumers' ability to access health information,[49] government services,[50] and employment

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[43] *See* Federal Communications Commission, Connecting America: The National Broadband Plan 167, Exhibit 9-A (March 2010) (hereafter, "National Broadband Plan").

[44] Pew Internet and American Life Project, Mobile Access 2010 10, (2010), *available at* http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Mobile_Access_2010.pdf (*hereafter*, Pew Mobile Access Report).

[45] *See* Catherine J. K. Sandoval, Comment, In the Matter of Framework for Broadband Internet Service 7, GN Docket No. 10-127 (2010).

[46] *See* Pew Mobile Access Report, *supra* note 44, at 10..

[47] *Id.*

[48] Janice A. Hauge, Eric P. Chiang, and Mark A. Jamison, More than a Lifeline: Low-Income Households' Telecommunications Preferences 5 (2008), *available at* http://warrington.ufl.edu/purc/purcdocs/papers/0804_Hauge_More_Than_A.pdf.

[49] *See* The Children's Partnership, Information Technology Making a Difference in Children's Lives: An Issue Brief for Leaders for Children, Digital Opportunity for Youth Issue Brief No. 4 (2008).

[50] *See* ALA Office for Research & Statistics, U.S. Public Libraries & E-Government Services 2, (2010), *available at* http://www.ala.org/ala/research/initiatives/plftas/issuesbriefs/brief_e-gov_june.pdf.

opportunities.[51] Higher dropped call rates mean that consumers may not be able to contact emergency services in dangerous and life-threatening situations.[52]

The proposed transaction will seriously harm the health, safety and welfare of a large number of the nation's citizens. While the proposed transaction could theoretically result in competition and improved service for subscribers of premium offerings, it could do so at the expense of low-income consumers and communities of color. Such a consequence would only serve to widen the Digital Divide and would be contrary to the public interest.

D. There is a Risk that the Proposed Transaction, if Consummated, Could Delay Deployment of Advanced Services.

In deciding whether a transaction is in the public interest, the Commission considers whether the transaction will accelerate private sector deployment of advanced services.[53] Applicants state that one of the benefits of the proposed transaction is that MetroPCS customers will have more device, plan, and application choices.[54] However, while Applicants state that there will be no price hikes for MetroPCS' current offerings,[55] they are silent as to the affordability of these new options. In light of these lingering questions about affordability, the Commission should examine whether low-income consumers will be able to benefit from those new services.

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[51] *See* William H. Leher, Carlos A. Osorio, Sharon E. Gillett, & Marvin A. Sirbu, Measuring Broadband's Economic Impact, Broadband Properties 3 (December 2005).
[52] *See* E Casey Lide, Balancing the Benefits and Privacy Concerns of Municipal Broadband, 11 N.Y.U.J. Legis. & Pub. Pol'y 467, 470 (2008).
[53] AT&T/Cellco Order at 8717 ¶ 23.
[54] Public Interest Statement at 22.
[55] *Id.* at 24.

E. The Proposed Transaction, if Consummated, Will Reduce Diversity of Spectrum Holdings.

In deciding whether a transaction is in the public interest, the Commission considers the proposed transaction's effects on diversity of spectrum holdings.[56] The consolidation of MetroPCS and T-Mobile would reduce diversity of spectrum holdings. Greenlining is particularly concerned about this issue, because MetroPCS has a history of serving limited English proficiency consumers. As discussed above, the proposed transaction could result in MetroPCS' entire current spectrum being reallocated to provide premium wireless services. This result could potentially make it more difficult for those consumers to obtain wireless services, and could make it more difficult for Spanish-speaking consumers to obtain wireless service.

F. The Proposed Transaction Is Not In the Public Interest Because It Would Eliminate Jobs.

In considering the public interest effects of a proposed transaction, the Commission considers possible impacts on jobs.[57] Greenlining shares CWA's concerns that the "synergies"[58] and "cost efficiencies"[59] that Applicants claim are a benefit of the transaction are, at least in part, a reference to job cuts. Given Applicants' history of outsourcing jobs, Applicants may intend to obtain cost savings by cutting domestic jobs.[60] Additionally, as with many transactions, Applicants may plan to combine T-Mobile and MetroPCS' call center and billing operations, resulting in a reduction in staff.

[56] *Id.*
[57] See Comments of the Communication Workers of America at 2 (Nov. 26, 2012) (hereafter, CWA Comments).
[58] Public Interest Statement at 42.
[59] *Id.*
[60] CWA Comments at 6.

Additionally, while the new company will integrate many of MetroPCS' cell sites into T-Mobile's existing network, some sites will be decommissioned.[61] It is fair to assume that the integration and decommissioning of cell sites will result in the integration and decommissioning of maintenance crews, resulting in more lost jobs. These job losses could affect MetroPCS and T-Mobile's internal employees, but could also affect external employees of MetroPCS and T-Mobile's third-party contractors.

Finally, while Applicants claim that the new company will maintain T-Mobile and MetroPCS as separate brands, it is possible that the new company will decide to consolidate retail stores, resulting in subsequent job losses. It is likely that these job losses will occur in areas where having multiple work crews or retail stores would be redundant. These areas will likely be areas where T-Mobile's and MetroPCS' networks overlap completely--high-density, urban areas. Many of these jobs will be low-income jobs, such as entry-level retail jobs.[62]

Additionally, retail store consolidation could result in the closure of a number of franchise stores. T-Mobile has been a market leader in promoting franchise ownership by people of color.[63] Greenlining is especially concerned that retail closures could disproportionately impact these communities.

Finally, the closure of retail establishments would quite probably cause increased urban blight, declining property values, residential instability, and increased crime.[64] These consequences would seriously harm low-income families and the public interest.

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[61] Public Interest Statement at 27.
[62] Greenlining does not have access to data regarding the specific number of threatened low-income jobs.
[63] Dennis Romero, T-Mobile Shakes Up Owner-Operator Model (March 30, 2009) *available at* http://www.entrepreneur.com/article/200982.
[64] *See* Bernard E. Harcourt & Jens Ludwig, Broken Windows: New Evidence from New York City and a Five-City Social Experiment, 73 U. Chi. L. Rev. 271, 281 (2006).

The Commission should carefully examine the proposed transaction's job impacts, particularly on low-income communities and communities of color.

II. IF THE COMMISSION APPROVES THE TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO PROTECT THE PUBLIC INTEREST.

The Commission can prescribe restrictions or conditions that may be necessary to carry out the provisions of the Communications Act.[65] The Commission can use its "...extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits."[66] Should the Commission approve the applications, Greenlining asks that the Commission take measures to ensure that the public interest is protected. The Commission should ensure that low-income consumers are able to obtain affordable value wireless services and next-generation wireless services. Additionally, the Commission should require the new company to pass the economic benefits of the transaction through to consumers, promote diversity, and bridge the digital divide.

CONCLUSION

Greenlining acknowledges T-Mobile and MetroPCS' historical commitment to providing affordable wireless services to low-income consumers and communities of color. This historical commitment was a major factor in Greenlining's initial evaluation that the proposed transaction appeared to serve the public interest. Applicants' focus on low-income customers is well documented in their public statements, but it is entirely unclear whether the proposed transaction will actually benefit those customers.

[65] 47 U.S.C. § 303, subdivision (f); AT&T/Cellco Order at 8717-8718.
[66] AT&T/Cellco Order at 8718.

As discussed above, Applicants bear the burden of demonstrating that the proposed transaction is in the public interest. Because of the particular vulnerabilities of the customer base at issue, it is particularly important not to take Applicants' assertions about the benefits of the transaction at face value. Low-income consumers are particularly sensitive to price increases, and could be disproportionately impacted by the proposed transaction's harmful effects. Accordingly, Greenlining respectfully requests that the Commission's analysis of the proposed transaction includes a robust discussion of that transaction's effects on low-income consumers.

Respectfully submitted, Dated: January 22, 2011

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CERTIFICATE OF SERVICE

I, Paul Goodman, hereby certify that on this 22nd day of December 2013, I caused true and correct copies of the foregoing Comments to be served by electronic mail to the following:

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