BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company, L.P. (U-5112) and T-Mobile USA, Inc. a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a)	A.18-07-011 (Filed July 13, 2018)
And Related Matter.	A.18-07-012

REPLY BRIEF OF THE GREENLINING INSTITUTE

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Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure and the February 26, 2019 Administrative Law Judge's Ruling Denying in Part and Granting in Part the Motion of the Public Advocates Office to Amend and Supplement Testimony and for Additional Hearings; and Revising the Schedule of this Proceeding, The Greenlining Institute ("Greenlining") respectfully submits this reply brief in opposition to the application in the above-captioned proceeding.

The Joint Applicants persist in attempting to bifurcate the Commission's review of its transfer of control transaction into two separate proceedings, despite the fact the Commission consolidated Joint Applicants' wireline and wireless applications, because those applications involved related questions of law or fact.[1] As part of their strategy, Joint Applicants filed two opening briefs.[2] Greenlining will not opine as to Joint Applicants' motivations for their continued attempts to take control of the Commission's process and schedule for this proceeding.[3] Regardless, Greenlining is filing this Reply Brief in response to both opening briefs filed by Joint Applicants.

I. SUMMARY OF ARGUMENT

Joint Applicants have demonstrated that they are not serious about ensuring that communities of color benefit from the transaction. Joint Consumers' commitments are

[1] Administrative Law Judge's Ruling Consolidating Applications p. 1 (Sept. 11, 2019).
[2] Joint Applicants' Post-Hearing Opening Brief Requesting Immediate Approval of the Transfer of Sprint Communications Company L.P. to T-Mobile USA, Inc. (Apr. 26, 2019) ("Joint Applicants' Opening Brief (Wireline)"); Joint Applicants' Post-Hearing Opening Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032 (Apr. 26, 2019) ("Joint Applicants' Opening Brief (Wireless)").
[3] *See* Joint Consumers' Response to Joint Motion of Joint Applicants and California Emerging Technology Fund To Reflect Memorandum Of Understanding Between The California Emerging Technology Fund And T-Mobile USA, INC.at p. 5 (April 23, 2019)

insufficient to ensure that the proposed transaction will increase the combined company's diversity and inclusion, close the digital divide for communities of color, or increase philanthropy to communities of color, and the Commission should reject Applicants' claims that those commitments are in the public interest. Accordingly, the Commission should deny the transaction.

II. THE COMMISSION HAS THE JURISDICTION TO DENY THE PROPOSED TRANSACTION.

A. The Commission Need Not Forbear from Exercising its Authority to Review a Proposed Transaction when Review or Further Analysis is Necessary in the Public Interest.

Joint Applicants persist in claiming that the Commission's Decision in *In Re Mobile Telephone Service and Wireless Communications*[4] prohibits the Commission from approving or denying transfers of control of wireless providers, and that the Commission may only "review" Joint Applicants' notification to the Commission. However, this argument is based on an incorrect characterization of the *In Re Mobile Telephone Service* decision. Joint Applicants are correct in that the Decision stated that the Commission would forbear from requiring preapproval of wireless transactions. However, the specific language regarding that forbearance makes it clear that the Commission would require preapproval in some circumstances:

> Accordingly, we shall forbear from requiring preapproval of transaction involving issuances of stock and other securities as well as transfers of ownership and acquisition or encumbrances of CMRS property except, again, *those discussed below*.[5]

[4] D.95-10-032, 62 CPUC 2d 3.
[5] *Id*. at p. 13 (emphasis added).

The phrase "those discussed below" refers to, among other instances, Ordering Paragraph 3, which applies to situations involving the transfer of ownership of a wireless provider.[6] The Commission found that it must maintain authority to review these transactions, "to ensure that the participants in an ownership transfer have complied fully with our rules and regulations."[7] Ordering Paragraph 3 states that "Unless the CMRS provider is notified within the 14 or 30 day period by the Commission or its staff that further information is needed or that a formal application is required, the CMRS provider shall not require any commission preapproval to consummate the transaction.[8] Yet, the Commission also asserted its authority to review any wireless transactions that fall under Section 854 to the extent transactions, "adverse to the public interest come to light."[9]

Joint Applicants filed the wireless Application in A.18-07-012 on July 13, 2018. It is Greenlining's understanding that Joint Applicants filed their Application in A.18-07-012 in response to a request from Commission staff to do so. Additionally, on August 8, 2018, the Commission issued Resolution ALJ 176-3421, which ruled that A.18-07-012 would require hearings.[10] Either of these events—the request from Commission staff or the notice that hearings were required—was sufficient to trigger the exception to the Commission's forbearance rule. Accordingly, the Commission has the authority, and the legal duty under Public Utilities Code section 854, to determine whether the proposed transaction is in the public interest, and grant or deny the proposed transaction accordingly.

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[6] "In any proposed transaction involving any change of ownership of the CMRS provider in which an owner or group of owners acquire a larger ownership share than the largest holding of any current owner, 30 days prior notice." D.95-10-032, 62 CPUC 2d at 19, OP 3(c).
[7] *Id*. at p. 21.
[8] *Id*.
[9] *Id*. at p. 22.
[10] ALJ 176-3421 at p. 1.

B. Joint Applicants' Claim that the Commission's Denying the Merger would Effectively Prohibit Sprint and T-Mobile from Providing Service in California is Contrary to the Record in this Proceeding.

Joint Applicants make the bold claim that the Commission somehow cannot review wireless mergers because of federal law restricting the ability of states to regulate wireless rates or "market entry."[11] Joint Applicants make the argument that the Commission cannot review the wireless merger because doing so would have the effect of prohibiting "the ability of any entity to provide any interstate or intrastate telecommunications service."[12] This argument, however, is flawed. The *In Re Mobile Telephone Service* decision—the very decision that Joint Applicants cite to support their forbearance argument—expressly held that the Commission's review of wireless did not constitute regulation of market entry:

> Asset transfer or encumbrance transactions or transfers of control falling within the scope of §§ 851-854 do not constitute market entry.[13]

Additionally, the Commission expressly found that Commission approval or denial of transfers involving wireless providers was not preempted by federal law:

> The transfer of ownership interests in a CMRS entity is not tantamount to entry, and Commission jurisdiction over such transfers is not preempted under the federal legislation.[14]
>
> Federal preemption of entry regulation does not preempt state regulation of transactions involving issuances of securities or transfers or encumbrances of assets.[15]

Additionally, in the absence of the proposed transaction, Sprint and T-Mobile would still have the ability to move into markets that they do not currently serve. In fact, as Public Advocates note, "it is undisputed that Sprint and T-Mobile will build a 5G network if the proposed merger

[11] Joint Applicants' Opening Brief (Wireless) at p. 15, note 30.
[12] *Id*. at p. 15-16, note 30.
[13] D.95-10-032, 62 CPUC 2d at 17, COL 12.
[14] *Id*. at p. 17, COL 9.
[15] *Id*. at p. 17, COL 10.

does not happen."[16] Joint Applicants' claim that federal law preempts Commission review of the wireless transaction is false, and the Commission should reject it.

III. JOINT APPLICANTS' COMMITMENTS DO NOT ENSURE THAT COMMUNITIES OF COLOR WILL BENEFIT FROM THE PROPOSED TRANSACTION.

Joint Applicants have entered into two Memoranda of Understanding (MOUs)—one with the National Diversity Coalition (NDC),[17] and one with the California Emerging Technology Fund (CETF).[18] Unfortunately, Joint Applicants have still not demonstrated that the combined company would be serious about serving communities of color. Additionally, neither the NDC nor the CETF MOU contain meaningful commitments that would be sufficient to ensure that communities of color benefit from the proposed transaction.

A. Joint Applicants' Opening Brief is Evidence that T-Mobile is Not Serious about Serving Communities of Color.

Joint Applicants' brief is extremely confident about the predictability of purported cost and service quality savings that the proposed transaction would create. Joint Applicants state that the merger benefits "are significant and wide-ranging,"[19] and "not just the product of wishful thinking."[20] Joint Applicants describe the proposed transactions' effects on broadband deployment, pricing, coverage, and service quality as beyond dispute and as a foregone conclusion, stating that the proposed transaction will "[d]rive the investment of billions of dollars

[16] Public Advocates' Opening Brief at p. 38.
[17] Joint Applicant Exhibit 8-C, Attachment B ("NDC MOU").
[18] Joint Applicants and California Emerging Technology Fund To Reflect Memorandum Of Understanding Between The California Emerging Technology Fund And T-Mobile USA, INC., Exhibit A (April 8, 2019) ("CETF MOU")
[19] Joint Applicants' Opening Brief (Wireless) at p. 2.
[20] *Id*. at p. 4.

in California,"[21] "[a]ccellerate the deployment of a robust, world-class 5G network,"[22] "[l]ower prices for consumers,"[23] and "[e]nhance service quality for millions of current Sprint California customers."[24]

When discussing commitments that could benefit communities of color, however, Joint Applicants' are much less confident. For example, T-Mobile promises to **strive** to increase LifeLine adoption,[25] and promises to participate in the LifeLine program through 2024, unless there is a "material change" to the program.[26] As Greenlining noted in its Opening Brief, Joint Applicants' commitments to increase diversity and inclusion are all qualified by statements that the combined company "shall strive" to accomplish those goals;[27] Joint Applicants' Opening Brief uses this same language.[28] Similarly, when discussing the digital divide, Joint Applicants state a great many aspirational goals, but do not provide sufficient detail about how the combined company will achieve those goals.

B. The Commitments Regarding the LifeLine Program are Insufficient to Ensure that the Proposed Transaction will Benefit Communities of Color.

LifeLine service is often a critical need for households of color, and California LifeLine eligible customers are disproportionately people of color. Only 22 percent of white households are LifeLine eligible, compared to 36 percent of African American households and 56 percent of

[21] *Id*. at p. 2.
[22] *Id*. at p. 3.
[23] *Id*.
[24] *Id*.
[25] Joint Applicants' Opening Brief (Wireless) at p. 82.
[26] *Id*. at p. 82, note 285.
[27] Greenlining Opening Brief at pp.9-10.
[28] Joint Applicants' Opening Brief (Wireless) at p. 99 ("New T-Mobile **commits to strive** to increase the diversity of its workforce in California" (emphasis added)).

Latino households.[29] As TURN noted in its Opening Brief, T-Mobile's historical failure to participate in the California LifeLine program is inconsistent with T-Mobile's purported commitment to low-income consumers.[30] TURN's Opening Brief also noted that the testimony Joint Applicants offered did nothing to allay concerns about their vague commitments regarding LifeLine.[31] Unfortunately, Joint Applicants' Opening Brief does not resolve this issue.

The Opening Brief includes a somewhat convoluted explanation of the combined company's LifeLine commitment:

> …New T-Mobile will continue to offer LifeLine services (pursuant to both federal FCC Lifeline and state CPUC LifeLine programs) indefinitely in California to both current and new LifeLine eligible customers *for free*…
>
> In addition, New T-Mobile strive [*sic*] to increase Lifeline adoption in California over five (5) years by achieving at least 332,500 new (additional) low-income households through (i) new Assurance LifeLine customers (gross additions) approved by the LifeLine administrator and (ii) Low-Income customers in California for a total of no less than 675,500 enrolled LifeLine / low-income households at the end of five (5) years.[32]

Parsing this language reveals that this commitment is not a commitment to increase Lifeline adoption, but rather to provide service to low-income customers, through a combination of both the LifeLine program and non-LifeLine service to low-income customers. The combined company could meet this commitment by selling standard retail service to low-income customers, depriving those customers of both the benefit of the LifeLine subsidy and the consumer protections for LifeLine service.

[29] Cal.P.U.C, Staff Report to the California Legislature: Affordability of Basic Telephone Service, Vol. 1, (Sept. 30, 2010) p. 22.
[30] TURN Opening Brief at p. 25.
[31] *Id*. at p. 23.
[32] Joint Applicants' Opening Brief (Wireless) at p. 82.

Additionally, it is important to note that this service will not be, as Joint Applicants claim, "free." If a customer subscribes to the combined company's LifeLine service, the combined company may offer that service at no cost to the customer, but will presumably still be collecting California and federal subsides through the LifeLine program. Additionally, it appears that the combined company's non-LifeLine low-income offering will not be free to subscribers. Rather, it will consist of a $15 discount off of the combined company's plans.[33]

Joint Applicants' commitments regarding LifeLine lack specificity about how the company will achieve its goal of increasing LifeLine adoption by low-income households. Additionally, it is unclear how many of those households will be LifeLine subscribers, and how many will subscribe to an alternate low-income service. Additionally, as noted above, the MOU's language regarding the combined company's withdrawing from offering LifeLine if there are "material changes" to the program is so broad that the combined company could likely withdraw for virtually any reason. Accordingly, the commitments NDC MOU are insufficient to ensure that the proposed transaction will improve the combined company's diversity and inclusion measures.

C. The Commitments in the Memorandum of Understanding with the National Diversity Coalition are Insufficient to Ensure that the Proposed Transaction Will Improve the Combined Company's Diversity and Inclusion Measures.

Joint Applicants' 104-page Opening Brief includes only a few scant pages addressing the combined company's plans to increased diversity and inclusion.[34] The Opening Brief essentially consists of a recitation of the terms of the Memorandum of Understanding with the National Diversity Coalition. Greenlining has addressed the failings of that MOU in its Opening Brief,

[33] D.19-04-021 at p. 22.
[34] Joint Applicants' Opening Brief (Wireless) at pp. 98-102.

noting that the commitments in the MOU lack any meaningful transparency measures and contain no meaningful commitments.[35]

Joint Applicants' Opening Brief does attempt to respond to Greenlining's Opening Testimony regarding best practices for increasing diversity and inclusion:

> "The NDC MOU specifically addresses Greenlining's testimony in this area, which calls for telecommunications providers to "work on a wide range of efforts intended to attract diverse candidates at all levels through their service territories," including "targeted outreach to recruit a workforce that 'top to bottom' reflects California's diversity," "internships and opportunities for diverse candidates entering the workforce," and "work to increase board and executive diversity."[36]

The NDC MOU's commitments in these areas are, unfortunately, too vague to be meaningful. The MOU's diversity commitments are no more than a vague promise to "establish plans" to "establish...initiatives."[37]

Additionally, the stated initiatives are so vague as to be meaningless. The MOU indicates that to attract diverse candidates, the combined company will "support and partner with local trade schools and other community and civic organizations" and "invest in local community programs designed to prepare people of color and other diverse individuals to succeed in the workplace."[38] Neither the MOU nor Joint Applicants' Opening Brief demonstrate a nexus between outreach to trade schools and attracting diverse candidates at **all levels** of the combined company. Additionally, the commitment includes no goals or metrics to evaluate the sufficiency of the combined company's efforts. The MOU does not specify how **many** trade schools and

[35] Greenlining Opening Brief at pp. 8-9.
[36] Joint Applicants' Opening Brief (Wireless) at 100.
[37] Sylla Dixon Testimony, Attachment B, p. 4.
[38] *Id*.

community and civic organizations the combined company will partner with, nor does it specify how much the combined company will invest in local community programs.

While the MOU states that the combined company will create an initiative to create "[i]nternships for students who attend minority-serving educational institutions,"[39] it is silent as to the number of internships, or for how long the combined company will offer those internships. Similarly, the MOU states that the combined company will work with community groups to "assist in the selection of executive leadership development programs and the development of internship programs aimed at exposing college and university students to employment opportunities with the company in California,"[40] the MOU does not provide any details regarding the extent of its participation or expenditures on those programs.

As Greenlining noted in its opening brief, Joint Applicants' current commitments are too weak to provide any assurance that the combined company will be committed to diversity and inclusion, or that the combined company will take active steps to increase diversity and inclusion.[41] Accordingly, the Commission should reject Applicants' claims that those commitments are public interest benefits. .

[39] Sylla Dixon Testimony, Attachment B, p. 4.
[40] *Id*.
[41] Greenlining Opening Brief at p. 13.

D. The Commitments in the Memorandum of Understanding with the California Emerging Technology Fund are Insufficient to Ensure that the Proposed Transaction Will Help Close the Digital Divide for Communities of Color.

1. The Commitments in the CETF MOU Are Insufficient to Ensure that the Proposed Transaction Will Help Close the Digital Divide.

Joint Applicants' Opening Brief includes only a page and a half addressing the combined company's plans to close the digital divide.[42] The Opening Brief essentially consists of a recitation of the terms of the Memorandum of Understanding with the California Emerging Technology Fund. Unfortunately, the CETF MOU suffers from the same flaws as the NDC MOU. The MOU is deficient because it (1) gives nearly unilateral control to the combined company over determining how to meet its obligations, (2) lacks any meaningful transparency measures, and (3) contains commitments that do not actually bind the combined company to closing the digital divide.

a. The CETF MOU Locks Stakeholders, Including CETF, out of the Decision-Making Process.

Much like the NDC MOU, the combined company has virtually absolute discretion over how to achieve the goals enumerated in the CETF MOU. Under the terms of the CETF MOU, the combined company commits to "prioritize its planned 5G network improvements in 10 unserved and underserved California areas." [43] The combined company has the unilateral power to select those sites.[44] Similarly, the CETF MOU contains a commitment to deploy wireless

[42] Joint Applicants' Opening Brief (Wireless) at pp. 98-102.
[43] CETF MOU at p. 11. It is important to note that this is not a commitment to build out broadband infrastructure to new areas. Rather, the company will prioritize (a term undefined in the MOU) network upgrades inside T-Mobile's existing network plan.
[44] *Id*. at p. 11.

service to ten county fairgrounds, and T-Mobile has final decision-making authority on where to place those sites.[45]

The combined company will not only have unilateral decision-making authority over network deployment, but also over digital adoption measures. The CETF MOU commits to expand school-based programs to reach an additional 52,000 low-income California families with school age children.[46] However, the combined company will have wide discretion to set or modify eligibility requirements, as long as the programs serve "primarily" low-income students.[47] This would allow the combined company to, for example, declare all students in a particular area eligible and include households that are not low-income families when reaching its 52,000 goal. The combined company's singular control over decision-making gives CETF and other stakeholders (including the Rural Regional Consortia referenced in the MOU)[48] no real input or influence over the combined company's compliance with the MOU.

b. The CETF MOU Lacks Meaningful Transparency Measures.

While the CETF MOU includes a requirement that T-Mobile file an annual compliance report, virtually all of the information in that report will be treated confidentially.[49] The confidential information includes an analysis of the combined company's efforts to serve low-income customers,[50] and the combined company's progress on network deployment.[51] Accordingly, stakeholders would not have access to that information and would not be able to

[45] *Id*. at p. 12. The combined company is not required to add cell cites beyond those in its existing network model to achieve this goal.
[46] CETF MOU at p. 7.
[47] *Id*.
[48] *Id*. at p. 11.
[49] *Id*. at p. 14.
[50] *Id*.
[51] *Id*.

share their input with the Commission or any other stakeholders. This creates a substantial risk that the combined company will move forward with solutions that do not meet community needs. The reporting requirements in the CETF MOU are insufficient to ensure that communities can give meaningful input.

c. The Commitments in the CETF MOU are Insufficient to Constitute Merger Benefits.

When reviewing a proposed transaction, the Commission does not consider the purported benefits of that transaction if those purported benefits are "vague, speculative, or otherwise cannot be verified by reasonable means."[52] While the CETF MOU does contain what could be considered "aspirational" goals, the MOU's accountability measures are far too weak. For example, the CETF MOU allows the combined company to withdraw from its LifeLine commitment in the case of "material changes," a term which is not defined in the MOU.[53] The combined company could claim that any number of changes to either California's LifeLine program or the federal Lifeline program were material, and withdraw from offering LifeLine service. The combined company's LifeLine commitment is insufficiently robust to be considered a merger benefit.

In some instances, there is no consequence whatsoever if the combined company fails to accomplish the goals in the MOU. For example, f the combined company does not meet its cell site construction target, it appears that the only consequence is that the combined company has to explain why it did not do so in its annual report.[54] As previously noted, that explanation would be

[52] Horizontal Merger Guidelines, U.S. DEPARTMENT OF JUSTICE AND THE FEDERAL TRADE COMMISSION, Aug. 19, 2010, available at http://www.ftc.gov/sites/default/files/attachments/merger-review/100819 hmg.pdf.
[53] CETF MOU at p. 7.
[54] *Id*. at p. 10.

confidential,[55] making it much more difficult for communities to hold the combined company accountable for poor service or slow progress.

Finally, it is worth noting Joint Applicants' consistent assertion that the Commission lacks the jurisdiction to approve or deny the proposed transaction.[56] Greenlining fears that there is a significant risk that if the Commission approves the transaction, Joint Applicants could refuse to comply with the terms of the MOU. The combined company could (1) complete the transaction, (2) argue that the Commission had no jurisdiction over wireless transactions and then argue that the Commission's lack of jurisdiction over the wireless transaction prohibits the Commission from enforcing the MOU.[57] While this risk might not ordinarily be of concern, Joint Applicants' consistent insistence that the Commission lacks jurisdiction to approve or deny a wireless transaction raises serious concerns that the combined company may attempt to avoid complying with the MOU.

2. The Commitments in the CETF MOU Are Insufficient to Ensure that the Proposed Transaction Will Help Close the Digital Divide for Communities of Color.

The deficiencies described above—the combined company's unilateral decision-making power, the lack of transparency, and the lack of meaningful accountability measures—create a substantial risk that consumers will not benefit from the proposed transaction. Consumers of color, would, accordingly, not benefit. However, even if the Commission finds that the CETF MOU is sufficiently detailed, transparent, and enforceable, nothing in the MOU ensures that the MOU's benefits will reach communities of color.

[55] *Id*. at p. 14
[56] *See* section II., above.
[57] "It is well settled that parties cannot confer subject matter jurisdiction…by consent, waiver or estoppel." Housing Group v. United Nat. Ins. Co. (2001) 90 Cal. App. 4th 1106, 1113.

The CETF MOU does not address communities of color specifically, nor does it even **contain** the terms "diverse," "minority," or "communities of color"—apparently, neither T-Mobile nor CETF thought it was important to specifically address merger benefits for communities of color. Accordingly, there is nothing requiring that the combined company deliver the benefits of low-income programs, network improvements, or increased emergency preparedness and response to communities of color. This is especially disappointing considering that Greenlining was responsible for creating CETF as a condition of approval of the SBC-AT&T and Verizon-MCI mergers with the express purpose of improving broadband deployment to low-income households, disabled citizens, seniors, and communities of color.[58]

Greenlining acknowledges that CETF has worked to improve broadband deployment to communities of color, and that the terms "unserved and underserved areas"[59] and "other disadvantaged communities"[60] in the MOU likely refer to, among other communities, communities of color. However, as Greenlining has previously noted, when companies fail to specifically address the needs of communities of color, those communities are often left behind.[61] The failure of the CETF MOU to intentionally address the needs of communities of color, together with the combined company's nearly unilateral power to decide what communities will

[58] D.05-11-028 at 78, In the Matter of the Joint Application of SBC Communications, Inc. ("SBC") and AT&T Corp. Inc. ("AT&T") for Authorization to Transfer Control of AT&T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation (November 18, 2005); D.05-11-029 at 3, In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI (Nov. 18, 2005).
[59] CETF MOU at p. 6.
[60] Joint Applicants' Opening Brief (Wireless) at p. 98.
[61] See Greenlining Exhibit 1 p. 3:15-4:2.

receive the benefits of the MOU, create a substantial risk that communities of color will be left behind.

E. The Commitments Regarding the Philanthropy are Insufficient to Ensure that the Proposed Transaction will Benefit Communities of Color.

Joint Applicants argue that the NDC MOU will ensure that the combined company promotes philanthropy and community investment,[62] noting that "[t]he NDC MOU specifically addresses Greenlining's testimony in this area, which calls for telecommunication providers to promote economic equity for communities of color and serve the public interest by 'continually seek[ing] out opportunities that benefit the community and customers and focus on providing quality products and services that reflect equity for communities of color,' requiring their executive leadership to regularly emphasize the importance of diversity in philanthropy and community engagement to its managers,' and collecting and sharing '(1) information regarding their philanthropic contributions (including the identity of the recipient, amount, percentage of pre-tax California revenue, and hours of volunteer work) and (2) information regarding its philanthropic activities (including philanthropic efforts).'"[63] Unfortunately, while the NDC MOU contains some general commitments regarding increasing philanthropy to communities of color, those commitments are too vague to be meaningful.

In the MOU, the combined company would work to "increase its philanthropic efforts," "support minority-led and minority-serving organizations and educational institutions," and partner with minority-led and minority-serving organizations to support its marketing, education, and outreach."[64] The inclusion of "minority-serving" organizations in these commitments fails to

[62] Joint Applicants' Opening Brief (Wireless) at p. 102.
[63] *Id*. at p. 102.
[64] NDC MOU at p. 8.

address the Greenlining's testimony emphasizing the need to provide philanthropy to **minority-led** organizations.[65] Additionally, the CETF MOU's commitments to increasing philanthropy to communities of color lack any details regarding the how many organizations the combined company will work with, or how much money the combined company will devote to these efforts. It is unclear why Joint Applicants earmarked specific amounts in the CETF MOU—five million dollars to promote LifeLine and low-income programs,[66] one million dollars for digital adoption programs,[67] and 35 million dollars to CETF,[68] but did not commit to a specific dollar amount for philanthropy in the NDC MOU.[69] The commitments in the NDC MOU regarding the combined company's increased philanthropy to communities are too vague to be considered public interest benefits.

IV. CONCLUSION

At the outset of this proceeding, Greenlining was optimistic about working with Joint Applicants to ensure that the proposed transaction would benefit California's communities of color. Unfortunately, this is no longer the case, and Greenlining now opposes the proposed transaction. Despite Joint Applicants' repeated claims otherwise, the Commission has the jurisdiction to approve or deny the proposed transaction. Joint Applicants have demonstrated that they are not serious about ensuring that communities of color benefit from the transaction, because Joint Applicants fail to address the impact of the proposed transaction on communities of color. Joint Consumers' commitments are insufficient to ensure that the proposed transaction

[65] Greenlining Exhibit 1 at p. 2:23-25.
[66] CETF MOU at p. 6.
[67] *Id*. at p. 7.
[68] *Id*. at p. 8. This includes 13 million dollars in unrestricted funds.
[69] While not mentioned in the NDC MOU, T-Mobile did agree to forgive NDC's obligation to repay intervenor compensation (plus interest) to T-Mobile per D.18-11-044. T-Mobile USA's Response to the Communications Division's Data Request Dated April 2, 2019 (DRs 32 and 33) p. 3, note 1.

will increase the combined company's diversity and inclusion, help bridge the digital divide for communities of color, or increase philanthropy to communities of color. Greenlining respectfully requests that Commission deny the proposed transaction.

Respectfully submitted,

Dated: May 10, 2019

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