

**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.)	WT Docket No. 12-301
)	
For Consent to Assign or Transfer Control of Licenses and Authorizations)	

MOTION

Deutsche Telekom AG (“DT”), T-Mobile USA, Inc. (“T-Mobile USA”), and MetroPCS Communications, Inc. (“MetroPCS” and, collectively with DT and T-Mobile USA, “Applicants”) hereby move to strike the “Opening Comments” of The Greenlining Institute (“Greenlining”) as untimely filed.¹ Alternatively, if the “Opening Comments” are not struck entirely, the Commission should treat the filing as informal comments that entitle Greenlining to none of the rights of a party or a “participant” in the proceeding as defined in the Protective Order and Second Protective Order.² Greenlining’s efforts to try to establish “participant” status through its late-filed pleading so it can obtain access to the Applicants’ confidential and highly confidential information are procedurally defective and must be rejected. In addition, any concerns expressed by Greenlining about the proposed transaction should be deemed fully addressed for the reasons set forth below.

¹ Opening Comments of The Greenlining Institute, WT Docket No. 12-301 (Jan. 22, 2013) (“Opening Comments”).

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

I. GREENLINING'S FILING SHOULD BE REJECTED AS UNTIMELY OR TREATED AS INFORMAL COMMENTS

Greenlining has filed its "Opening Comments" 57 days late. Petitions to deny and comments in the above-captioned proceeding were due on November 26, 2012,³ yet Greenlining knowingly waited until January 22, 2013 to submit its filing. Greenlining has conceded that it was aware of the pleading cycle established by the Commission, yet made a "tactical decision to delay filing at the FCC"⁴ and did so on its own initiative.⁵ Indeed, Greenlining already had access to information in the record via the Public Interest Statement, and had adequate time to raise the issues it is bringing up now – issues it chose not to raise in a timely fashion. The Public Notice in this proceeding makes clear that **"a party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised it previously."**⁶ If the Commission were to accept such late-filed pleadings, the Applicants – and the agency – would be placed in the untenable position of having to re-initiate a pleading cycle at the whim of any entity seeking to delay a transaction.⁷ Moreover, the fact that Greenlining has stylized its comments as "Opening Comments" clearly evidences an intent to

³ *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 (Jan. 22, 2013) ("Public Notice").

⁴ Letter from Paul Goodman, The Greenlining Institute, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301, at 2 (Jan. 17, 2013) ("Greenlining Jan. 17th Letter").

⁵ See Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301, at 4-5 (Jan. 22, 2013).

⁶ Public Notice at 5 (emphasis in original).

⁷ Greenlining has requested neither a waiver nor an extension of the comment filing deadline, rendering its pleading procedurally defective on that basis as well. See *In re Americom Network, Inc.*, 16 FCC Rcd 18450 (WTB rel. 2001) (finding late-filed pleading procedurally defective where petitioner did not request a waiver or extension of the filing deadline).

make additional untimely filings – without regard to Commission deadlines or established procedures. Such an intent flies in the face of the specific deadlines and procedures that the Commission has adopted in order to review proposed transactions in a timely manner, and the Commission should summarily reject the Greenling pleading in order to protect the integrity of its application processes. Accordingly, as it has in other cases, the Commission should strike Greenlining’s late-filed pleading from the record⁸ or, at most, treat it as informal comments.⁹

Greenlining’s submission of late-filed comments appears to be an attempt to establish “participant” status so it can examine the Applicants’ confidential and highly confidential information in order to confirm its “initial view that the proposed transaction serves the public interest.”¹⁰ Greenlining recently sought access to the Applicants’ unredacted responses to the Commission’s December 20, 2012 Information and Discovery Request and the Applicants objected to such access on the basis that Greenlining is not an eligible participant in this

⁸ See, e.g., *Hughes Network Systems, Ltd., Assignor, and HNS Licensee Sub LLC, Consolidated Application for Consent for Assignment of Earth Station Licenses and Associated Special Temporary Authorizations*, 20 FCC Rcd 8080 ¶¶ 3-8 (IB rel. 2005) (dismissing late-filed comments as untimely filed); *National Science and Technology Network, Inc.*, 17 FCC Rcd 365, ¶ 6 (2001) (dismissing late-filed comments as untimely where filer “did not make any showing concerning its failure to file” within the designated period); *Application of Motorola SMR, Inc. 900 MHz Authorization New York MTA*, 12 FCC Rcd 5979, ¶ 11 (WTB rel. 1997) (striking late-filed reply pleading where filer failed to present an emergency situation justifying the late filing); *Berlin, DeForest, Markesan, and Wautoma, Wisconsin*, 10 FCC Rcd 7733, n.3 (AB rel. 1995) (late-filed reply comments were unauthorized and not accepted).

⁹ See, e.g., *In the Matter of Verizon Washington DC, Inc.*, 26 FCC Rcd 13511, ¶¶ 7-8 (WTB rel. 2011) (treating late-filed comments as informal requests for Commission action under Section 1.41 of the rules); *Armstrong Utilities, Inc., et al. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 11725, ¶ 7 n.28 (MB rel. 2007) (treating late-filed comments as *ex parte* presentation); cf. *Applications of Pacific Telesis Group, Transferor and SBC Communications, Transferee*, 12 FCC Rcd 2624, ¶ 10 (1997) (denying motion to accept late-filed comments but treating filing as “informal request for Commission action”).

¹⁰ See Opening Comments at ii [this is the first page of the pleading, but it is marked as ii]. (“Without further information, Greenlining cannot determine whether the proposed transaction would ultimately benefit low-income consumers”).

proceeding as defined in the Protective Order and Second Protective Order.¹¹ Greenlining’s filing is an effort to establish participant status retroactively. However, as the Applicants have noted previously, the Commission has found that entities who have not filed pleadings during the comment cycle are not entitled to access to confidential and highly confidential materials filed in a proceeding.¹² Submitting an unauthorized pleading nearly 40 days after the pleading cycle closed and almost 60 days after comments were due does not qualify Greenlining as a “participant” eligible to access sensitive documents under the protective orders. The Commission should reject Greenlining’s attempt to circumvent established agency regulations and processes.

II. GREENLINING’S STATED CONCERNS ABOUT THE TRANSACTION HAVE BEEN FULLY ADDRESSED IN THE APPLICANTS’ PUBLIC INTEREST STATEMENT AND JOINT OPPOSITION

Greenlining begins its filing by noting that, based upon its review of the Applicants’ Public Interest Statement, it “believes the proposed transaction could serve the public interest.”¹³ Notwithstanding this positive view of the transaction, Greenlining nevertheless speculates – without substantiation or any specific allegations of fact – that the transaction could harm low-income consumers by reducing competition, delaying deployment of advanced services, reducing

¹¹ Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301 (Jan. 7, 2013); Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301 (Jan. 7, 2013).

¹² *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) (objection sustained through telephone call with Bureau). Similarly, the Bureau has previously sustained an objection to access to confidential and highly confidential information where it determined that the request for access was likely not motivated by “genuine participation in [the] administrative proceeding” where the entity made a minimal filing after the pleading cycle closed. *See* Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau to Joseph I. Marchese, Bursor & Fisher, 26 FCC Red 11235 (WTB rel. 2011).

¹³ Opening Comments at ii (this is the first page of the pleading, but it is marked as ii).

diversity of spectrum ownership and causing severe job impacts.¹⁴ Greenlining’s concerns are without foundation. As noted below, these issues have already been fully addressed in the Applicant’s Public Interest Statement¹⁵ and Joint Opposition.¹⁶

- **Competitive Harms.** Greenlining expresses concern that that the proposed transaction may result in reduced competition in the market for value wireless services.¹⁷ The Public Interest Statement explains:
 - Competition will be strengthened in the wireless marketplace as “Newco will be in a stronger position to compete more aggressively and effectively against its three larger wireless rivals.”¹⁸
 - Competition will be augmented as “Newco plans to retain and expand the MetroPCS brand and service in order to bring MetroPCS’ compelling, unlimited, flat rate, no long-term contract offerings to new cities and to provide many value-driven customers with increased options.”¹⁹
 - The more efficient use of spectrum and greater economies of scale achieved through the transaction will result in enhanced offerings to consumers, “which will in turn spur competitive responses from all other providers, including the larger nationwide carriers, increasing overall wireless competition.”²⁰
 - “[N]o competitive harms would result from the proposed transaction in any locality . . . post-consummation, the merged company will continue to be constrained by the full range of competitors and products available at the local level.”²¹

¹⁴ *Id.* at 2.

¹⁵ *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, Lead File No. No. 0005446627, at Exhibit 1, Description of Transaction, Public Interest Showing, and Related Demonstrations (filed Oct. 18, 2012) (“Public Interest Statement”).

¹⁶ Joint Opposition of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. to Comments, WT Docket No. 12-301 (Dec. 6, 2012) (“Joint Opposition”).

¹⁷ Opening Comments at 6-9.

¹⁸ Public Interest Statement at 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 54.

- **T-Mobile USA and/or MetroPCS Exiting Market.** Greenlining alludes to a perceived risk that the proposed transaction could result in T-Mobile USA and/or MetroPCS exiting the value service marketplace.²² Greenlining also speculates that the transaction could result in MetroPCS’ “entire current spectrum being reallocated to provide premium wireless services.”²³ The claim that either company may exit the value services marketplace is baseless and contradicted by the Applicants’ Public Interest Statement, which explains:
 - The combined company “intends to be the leading value carrier in the U.S., with a focus on offering a variety of appealing plans to compete aggressively for customers seeking affordability and certainty in the cost of their wireless plans.”²⁴
 - The proposed transaction will enable the expansion of MetroPCS to new areas. “As a result, consumers in those areas will gain access to a variety of additional popular offerings that they cannot access today, particularly ones targeted to value-conscious consumers.”²⁵
- **Affordability of Advanced Services.** Greenlining asks the Commission to examine whether low-income consumers will be able to benefit from the new services offered by Newco.²⁶ However, the Public Interest Statement makes clear that:
 - MetroPCS customers will have access to the T-Mobile USA HSPA+ network, leading to “a better experience for MetroPCS customers and a more compelling value proposition for prospective customers.”²⁷
 - “Access to T-Mobile USA’s nationwide network also will allow MetroPCS customers to substantially reduce their reliance on voice and data roaming arrangements with other carriers, meaning more seamless coverage, dramatically reduced roaming costs to MetroPCS and its customers, and more reliable service.”²⁸
 - “[C]urrent MetroPCS customers will receive the benefits of an expanded and enhanced network without an increase in price of their existing service plans”²⁹

²² Opening Comments at 7-8.

²³ Opening Comments at 12.

²⁴ Public Interest Statement at v.

²⁵ *Id.* at 20.

²⁶ Opening Comments at 11.

²⁷ Public Interest Statement at 21.

²⁸ *Id.* at 21.

²⁹ *Id.* at 24.

and “all of the benefits of the proposed transaction will be available to T-Mobile USA customers without having to change devices or rate plans.”³⁰

- **Jobs.** Greenlining expresses concern that the proposed transaction may not be in the public interest because it would eliminate jobs.³¹ The Applicants have stated:
 - “[T]he vast majority of the synergies of the proposed transaction are not “human” or “job” based.”³²
 - “At this point, T-Mobile USA and MetroPCS have made no such decisions on post-merger integration and outsourcing is not included in any currently projected synergies.”³³

As detailed above, the benefits of the proposed transaction to low-income customers have already been fully documented in the Public Interest Statement and Joint Opposition to the extent they are relevant to the proposed transaction.

In addition, Greenlining asserts that the Commission should analyze the competitive effects on the proposed transaction using the “local value wireless services market” as the relevant market.³⁴ As explained in the Public Interest Statement, “all wireless services” is the appropriate product market for reviewing the proposed transaction.³⁵ Greenlining offers no basis for departing from the Commission’s well-established practices and precedent. Indeed, Greenlining “believes that the proposed transaction would increase competition in the national market for all wireless services.”³⁶

³⁰ *Id.* at 25.

³¹ Opening Comments at 12.

³² Joint Opposition at 5; *see* Public Interest Statement at 22-31.

³³ Joint Opposition at 5.

³⁴ *Id.* at 4-6.

³⁵ Public Interest Statement at 46-47.

³⁶ Opening Comments at 6.

III. CONCLUSION

For the foregoing reasons, the Commission should strike Greenlining's Opening Comments as untimely filed. Alternatively, the Commission should treat this filing as informal comments that entitle Greenlining to none of the rights of a party or a "participant" in the proceeding as defined in the Protective Order and Second Protective Order.

Respectfully submitted,

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