



April 21, 2022

Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Jonathan Kanter
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Merger Enforcement Request for Information (Docket No. FTC-2022-0003-0001)

The National Urban League (NUL) respectfully submits these comments in response to the Request for Information on Merger Enforcement issued by the Federal Trade Commission (FTC) and Department of Justice (DOJ) on behalf of its 92 affiliates that serve over 300 communities in 37 states and the District of Columbia.

As a historic civil rights organization that advocates on behalf of and provides direct services to a diverse constituency in the core areas of workforce, housing, health, education, and social justice, NUL believes that opportunities for underrepresented groups and competition are interconnected. As companies continue to engage in both vertical and horizontal transactions, it is critical that the Federal Trade Commission (FTC) and the Department of Justice (DOJ) merger guidelines and enforcement actions analyze and center the economic impact of transactions on communities of color and low-income communities.

Our approach on these issues is shaped by our experience working with companies over the years to deepen their commitment to diversity and inclusion for communities of color and other marginalized groups at the consumer, employee, creator, business owner, shareholder levels. In the context of mergers, we have done this work by negotiating memoranda of understanding (MOUs) with companies to ensure commitments that will benefit the communities we serve. For example, we led a coalition of civil rights groups to develop MOUs around the Comcast and NBC Universal merger (2010), the Charter Communications and Time Warner Cable merger (2016), and most recently, the T-Mobile and Sprint merger (2020).

FTC and DOJ Merger Guidelines and Enforcement Actions Must Analyze the Economic Impact of Transactions on Communities of Color and Low-Income Communities

Mergers within the technology, telecommunications, and media ecosystems have become increasingly prevalent. The companies that operate within these spaces impact nearly every aspect of the daily lives of the people in our diverse nation, which makes it imperative for antitrust agencies to carefully review potential vertical and horizontal mergers. The largest companies that engage in these

transactions should consider the economic effect on diverse communities and how they impact the way we access critical communications services and content. To this end, within their guidelines and subsequent enforcement actions, the FTC and DOJ should ensure companies consider the economic impact on communities of color and low-income communities.

Courts have affirmed that the purpose of antitrust laws is to increase competition, which improves consumer welfare – the enforcement of antitrust laws is in the public’s interest, and this public interest outweighs corporate gain.¹ As diversity, equity, and inclusion commitments have been proven in today’s society to be in the public interest, they should be a key government consideration when evaluating proposed mergers.

Communities of color have considerable influence in shaping American culture and much of that influence is seen and flourishes on online platforms and the larger media ecosystem. Despite this influence, diverse representation at the highest levels of these organizations fall short, particularly in senior leadership and on Boards with decision-making power, and is currently not reflective of the diversity, buying power, nor cultural influence of the communities in this country. More specifically, approximately 14% of the U.S. population self identifies as Black and holds over \$1.57 trillion in buying power.² Latinx people make up 18.7% of the U.S. population and have a buying power of approximately \$1.9 trillion.³

It is imperative that diverse perspectives, backgrounds, and experiences are reflected within the influential positions of these companies so that business decisions, innovative products and content empower communities of color and other historically marginalized groups. Recent studies have shown that companies have retained fewer workers of color post-merger.⁴ They must reflect adequate representation with merging companies.

Beyond their employee base, companies should also be on the record on how the communities they serve will benefit from the merger when sharing their proposals with agencies for approval. This information should include the benefits that would be provided to diverse consumers, creators, business owners and suppliers, and shareholders. Companies should commit to offering procurement and contracting opportunities to minority and women-owned businesses, including sole proprietorships, which describe 82 percent of minority-owned businesses, and mid-sized businesses.⁵

¹ See, e.g., *Swedish Match*, 131 F. Supp. 2d at 173 (D.D.C. 2000); *U.S. v. Inaco, Inc.*, 704 F. Supp. 1409, 1430 (W.D. Mich. 1989).

² *Facts about the US Black Population*, Pew Research Center (March 25, 2021), <https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/>; *Seeing and Believing: Meeting Black Audience Demand for Representation that Matters*, Nielsen (October 2021), <https://www.nielsen.com/wp-content/uploads/sites/3/2021/10/african-american-dis-oct-2021.pdf>.

³ *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, U.S. Census Bureau, (Aug. 12, 2021) <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>; *The Multicultural Economy Report*, Selig Center for Economy Growth, University of Georgia, (2021), <https://www.terry.uga.edu/about/selig>; see also J. Merritt Melancon, *Consumer buying power is more diverse than ever*, UGA TODAY (Aug. 11, 2021), <https://news.uga.edu/selig-multicultural-economy-report-2021/>.

⁴ Alexandra Kalev, *How “Neutral” Layoffs Disproportionately Affect Women and Minorities*, Harvard Business Review (Jul. 26, 2016), <https://hbr.org/2016/07/how-neutral-layoffs-disproportionately-affect-women-and-minorities>.

⁵ *State of Minority Business Enterprise (SMOBE) Data by State*, Minority Business Development Agency, <https://www.mbda.gov/page/state-minority-business-enterprise-smobe-data-state>.

Guidelines Should Follow the National Urban League’s Model of Equity Commitments as a Merger Condition

NUL has seen how beneficial the inclusion of equitable policies benefits diverse populations in past merger reviews. As you know, DOJ and FTC coordinated to conduct a review of the T-Mobile and Sprint merger over the course of two years, and civil rights organizations, spearheaded by the National Urban League, joined in that merger review process, and carefully considered the impact of the merger on communities of color and advocated for conditions and commitments.

As a result of this collaboration, FCC and DOJ included low-and mid-band nationwide and rural 5G population coverage conditions; nationwide and rural speed conditions; in-home broadband marketing and supported household conditions; pricing and rate plan conditions; mobile virtual network operator, roaming, and Lifeline conditions; and divestitures of brands, stores, towers, and spectrum. The conditions imposed by state regulators and attorneys general included job and retail store conditions; network investment conditions; and pricing and rate plan conditions.

In addition to these conditions, a historic MOU was agreed to with the merging companies and civil rights organizations.⁶ This MOU led to the following:

- Commitments to elevate D&I internally vis-à-vis expert advisory councils, senior D&I executive oversight roles, and engagement by company leadership;
- Commitments to increase board, senior leadership, and workforce diversity;
- Commitments to increase partnerships, business, and procurement activities with a range of diverse business enterprises;
- Commitments to reach minimum levels of spend on diverse suppliers;
- Commitments to expand wireless offerings to low-income consumers, underserved communities of color and insular and rural areas, and to organizations serving these underserved communities; and
- Commitments to make substantial philanthropic investments in institutions serving disadvantaged or underrepresented communities.

To date, we feel comfortable that these commitments are being honored or are in the process of being honored by the new T-Mobile. In carrying out the MOU, T-Mobile is participating in the Federal Communications Commission’s Affordable Connectivity Program through its prepaid brands. This program extends and institutionalizes a critical lifeline that has kept many within communities of color connected during the pandemic. Also spurred by the civil rights MOU, T-Mobile has taken on the homework gap, which disproportionately impacts children of color, by introducing Project 10Million, a \$10.7 billion investment that offers school districts and families free hotspots, free and low-cost data plans, and at-cost devices for 10 million eligible households.

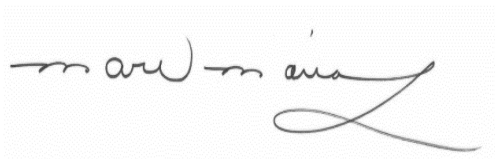
While proud of this work in furtherance of our larger mission of economic empowerment, the fact remains that these are commitments and not conditions; thus, they are practically unenforceable. Therefore, it is critical that DOJ and FTC include enforceable conditions within these updated

⁶ *Civil Rights Groups Sign Groundbreaking Diversity Agreement with T-Mobile US*, National Urban League (Oct. 15, 2019), <https://nul.org/news/civil-rights-groups-sign-groundbreaking-diversity-agreement-t-mobile-us>.

merger guidelines after actively engaging with diverse and under-resourced communities that they will be inclusive of diversity and equity with a fierce sense of urgency.

Thank you for the opportunity to provide our recommendations on how to effectively update the enforcement of antitrust laws pertaining to mergers. Should you have any questions, please contact Yvette Badu-Nimako (ybadu@nul.org), Vice President, Policy and Legislative Affairs. We look forward to working with you to ensure that critical and robust equity provisions are built into the makeup of all merger considerations.

Sincerely,

A handwritten signature in black ink, appearing to read "marc morial", written in a cursive style.

Marc H. Morial
President and Chief Executive Officer
National Urban League

A handwritten signature in black ink, appearing to read "Joi Chaney", written in a cursive style.

Joi O. Chaney
Executive Director, Washington Bureau
Senior Vice President, Policy & Advocacy
National Urban League