EXHIBIT A

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Asian Americans Advancing Justice | AAJC and
Multicultural Media, Telecom and Internet Council

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

METROPCS CALIFORNIA, LLC,

Plaintiff,

vs.

MICHAEL PICKER, President of the California Public Utilities Commission, in his official capacity; MARTHA GUZMAN ACEVES, Commissioner of the California Public Utilities Commission, in her official capacity; CARLA J. PETERMAN, Commissioner of the California Public Utilities Commission, in her official capacity; LIANE M. RANDOLPH, Commissioner of the California Public Utilities Commission, in her official capacity; CLIFFORD RECHTSCHAFFEN, Commissioner of the California Public Utilities Commission, in his official capacity,

Defendants.

Case No. 3:17-cv-05959-SI

***AMICUS CURIAE* BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE | AAJC IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

The California Public Utilities Commission's ("CPUC") methodology for assessing surcharges will increase the cost of prepaid wireless services, a cost that will likely be borne—disproportionately—by lower-income, minority communities. Due to a lack of financial resources, lower-income, minority communities must often forgo fixed home broadband service, and instead rely heavily on internet-enabled smartphones. In many cases, smartphones provide their only access to necessities like education, employment opportunities, and health care. For those who are financially strapped, pre-paid wireless service provides a cheaper option. Low-income communities (of whom many are persons of color), are particularly sensitive to subtle prices increases; any increase in cost, particularly in the form of state fees, threatens to cut-off significant numbers of low income people and people of color from vital services.

Asian Americans Advancing Justice | AAJC ("Advancing Justice-AAJC") submits this amicus curiae brief in support of the Motion for Summary Judgment filed by MetroPCS California, LLC ("MetroPCS") to abrogate the CPUC's methodology for calculating surcharges for prepaid wireless service. The CPUC should be enjoined from imposing on prepaid wireless subscribers a surcharge that is based on carrier revenues from *interstate* services, which are beyond the CPUC's authority.

II. ARGUMENT

A. Prepaid Wireless Phones Can Help Bridge the Digital Divide Disproportionately Impacting Low-Income, Minority Communities.

Access to broadband internet is severely limited for low-income communities of color. Cost and limited access to credit are key obstacles to home broadband internet for many low-income minority households. But, as dependency on internet-based services grow, these communities often turn to their phones for internet access; indeed, their phones are often the only access to broadband. And, as cost and access to credit remain obstacles, prepaid wireless plans, which are often cheaper and more readily accessible than postpaid wireless plans, are a popular choice.

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1. *Data Shows That Low-Income Communities of Color Are Most Likely to Lack Access to Broadband.*

More than ever, fast and reliable internet access has become integral to our lives. However, as recently as 2018, the FCC reported that over 24 million Americans still lack fixed terrestrial broadband at speeds of 25 Mbps/3 Mbps.[1] Pew Research analysis of Census data finds that the lowest-income households have the lowest home broadband subscription rates.[2] There is a widening gap between those who can access broadband internet and those who cannot; indeed, in 2012, the high cost of home internet was the second most cited reason that households did not subscribe to home internet,[3] but by 2015, it was the primary reason.[4] Among households that gave up home internet by 2012, 43% cited cost as the explanation for relinquishing home service.[5] For such households, high costs and low income present significant barriers to home internet use.[6]

From a household income standpoint, roughly one-third (31.4%) of households with children ages 6 to 17 and whose incomes fall below $50,000 do not have a high-speed internet connection at home, compared with only 8.4% among those with income of $50,000 or greater.[7] This digital gap is even more pronounced at income levels at or below $30,000, where roughly 50% of Americans do not have home broadband.[8] These income thresholds represent serious barriers to broadband adoption, especially for minority households whose median income falls

[1] FCC, *2018 Broadband Deployment Report*, https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-10A1.pdf, 22 (adopted Feb. 2, 2018).
[2] John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband 'Homework Gap,'* http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/ (accessed Apr. 4, 2018).
[3] U.S. Dept. of Com., NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet*, http://www.ntia.doc.gov/report/2014/exploring-digital-nation-embracing-mobile-internet. (accessed Apr. 4, 2018).
[4] John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015*, http://www.pewinternet.org/2015/12/21/home-broadband-2015/ (accessed Apr. 4, 2018).
[5] U.S. Dept. of Com., NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet*, http://www.ntia.doc.gov/report/2014/exploring-digital-nation-embracing-mobile-internet. (accessed Apr. 4, 2018).
[6] *Id.*
[7] John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband 'Homework Gap,'* http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/ (accessed Apr. 4, 2018).
[8] Monica Anderson, Pew Research Center, *Fact Tank, Digital Divide Persists Even As Lower-Income Americans Make Gains In Tech Adoption*, http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/ (accessed Apr. 4, 2018).

below $50,000. Indeed, the income of minority-headed households continues to trail that of white households. Based on 2014 U.S. Census data, the median income for black and Hispanic households was $43,300, compared with $63,600 among white households.[9]

Significantly, as of 2015, home broadband adoption peaked—idling at 67% of Americans, down from 70% in 2013.[10] The plateau in home internet adoption coincides with an increase in "smartphone-only" adults—those adults who have internet-capable phones, but without home broadband service.[11] Unsurprisingly, however, those without home high-speed service—two-thirds of non-adopters—are much more likely now than in the past to view the lack of home broadband as a major disadvantage when it comes to accessing government services, searching for employment, following the news, education, and learning about health.[12]

2. *Low-income Americans Are Increasingly Using Phones to Access the Internet.*

With home broadband adoption flat-lining among low-income, minority communities, internet-enabled smartphones are increasingly critical to this demographic, and often the only pathway to resources primarily accessible online. Indeed, low-income, minority communities have become increasingly smartphone-dependent as a means of bridging the broadband gap at home. Pew Research reports that as of 2015, 13% of Americans were smartphone-only, an increase of 5% from 2013.[13] Further, as of 2016, 20% of adults living in households earning less than $30,000 a year were smartphone-only internet users.[14] This represents an increase from 12% in 2013. In contrast, only 4% of those living in households earning $100,000 or more fell into this category in either year.[15] Similarly, 12% of Americans rely on their smartphone as their primary

[9] Pew Research, *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/ (accessed Apr. 4, 2018).
[10] John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015*, http://www.pewinternet.org/2015/12/21/home-broadband-2015/ (accessed Apr. 4, 2018).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Monica Anderson, Pew Research Center, *Fact Tank, Digital Divide Persists Even As Lower-Income Americans Make Gains In Tech Adoption*, http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/ (accessed Apr. 4, 2018).
[15] *Id.*

access to the Internet at home—a group which is more likely to be younger, non-white, and lower-income.[16] Further, 7% of smartphone owners state that, aside from having no broadband services at home, they have limited options for online access in general—a group that Pew Research Center calls "smartphone dependent" users.[17] Often, this smartphone-dependent group experiences the most issues with consistent and reliable internet service.

3. *Prepaid Wireless Plans Offer Low-Income Communities Accessibility to Broadband.*

Millions of low-income, minority communities have to give up their phone plans because of the high cost of smartphone ownership. Notably, 23% of smartphone owners have to cancel their service for a period of time because of financial inability—a figure that swells to 44% for those smartphone owners with an annual household income of less than $30,000.[18] The most vulnerable, however, are smartphone-dependent Americans who have limited options for going online other than their cell phone, nearly 50% of whom have to allow their service to lapse due to financial hardship.[19] Despite the instability in internet access for this group of smartphone users, they are in many ways, in the most need.

In light of this financial instability, it is unsurprising that prepaid wireless phones are a popular option in the low-income community. Prepaid phones are a "lifeline for low-income consumers and people with bad credit."[20] This is because prepaid plans help low-income individuals and families control their budget and avoid costly unanticipated additional charges.[21]

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[16] CTIA, *Wireless Snapshot 2017, More Devices, More Smartphones, And More Applications Contribute To Our Mobile-First Lives*, https://api.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf (accessed Apr. 4, 2018); *see also*, Pew Research Center, *Mobile Fact Sheet*, http://www.pewinternet.org/fact-sheet/mobile/ (accessed Apr. 4, 2018).

[17] Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015*, http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/ (accessed Apr. 4, 2018).

[18] *Id.*

[19] *Id.*

[20] Marc Lifsher, Los Angeles Times, *More Cellphone Users Switch to Prepaid Plans,* http://articles.latimes.com/2013/feb/19/business/la-fi-0220-prepaid-cellphone-boom-20130220 (accessed Apr. 4, 2018).

[21] Bruce Wilkinson, Nielson, *What's Driving The Growth of Pre-Paid Cell Phones*, http://www.nielsen.com/us/en/insights/news/2010/whats-driving-the-growth-of-pre-paid-cell-phones.html (accessed April 4, 2018); *see also*, Consumer Reports, *Cell Phones & Service, Cell Phone & Service Buying Guide*, https://www.consumerreports.org/cro/cell-phones-services/buying-guide/index.htm (prepaid plans have lower monthly bills) (accessed Apr. 4, 2018).

Overall, "[p]repaid service has come into its own because of a trio of customer-friendly factors: The cost sometimes is less than half that of a traditional billed service; there's no restrictive contract or hefty early-cancellation fee; and some high-end providers offer smartphones with unlimited Internet, text and roaming capabilities that weren't available previously."[22]

In sum, prepaid wireless plans are helping low-income communities access broadband internet services.

B. Broadband Access Provides Substantial Benefits to Low-Income Communities.

Access to broadband internet has become an essential component for the social and economic mobility of low-income communities and persons of color. In big and small ways, broadband internet positively impacts how Americans access everyday necessities. As a basic matter, "fixed services allow consumers to view high definition video for larger screens and download and share large files, while mobile broadband powers smartphones, wearable devices, mobile health monitoring, video suitable for smaller screens and countless location-based services."[23] Nonetheless, some key services and utilities accessed by Americans on their phones include:

- 62% … look up information about a health condition.
- 57% … do online banking.
- 44% … look up real estate listings or other information about a place to live.
- 43% … look up information about a job.
- 40% … look up government services or information.
- 30% … take a class or get educational content.

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[22] Marc Lifsher, Los Angeles Times, *More Cellphone Users Switch to Prepaid Plans,* http://articles.latimes.com/2013/feb/19/business/la-fi-0220-prepaid-cellphone-boom-20130220 (accessed Apr. 4, 2018).

[23] FCC, *2016 Broadband Progress Report*, https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf, 16 (adopted Jan. 28, 2016).

- 18% … submit a job application.[24]

For many low-income individuals, access to these types of services and utilities is often *only* available through their smartphones as they are less likely to have broadband at home. Perhaps, among the most critical of these services are education and employment opportunities, especially when it comes to socioeconomic mobility.

1. *A Lack of Broadband Access Widens the Gap in Educational Opportunities.*

The FCC has found that mobile broadband access is increasingly commonplace for real-time educational courses.[25] Reports show that access to broadband internet is needed to do schoolwork; as many as "7 in 10 teachers assign homework that requires access to broadband."[26] Yet some five million students, most of whom are from low-income communities of color, do not have broadband access at home.[27] These "low-income children—who are four times less likely to have access to broadband at home than their middle- and upper-income counterparts —are particularly vulnerable to the long-term detrimental effects of constrained access to technology-enriched education."[28]

2. *Access to Employment is Increasingly Dependent on Broadband.*

Similarly, internet access has become increasingly critical for low-income, people of color to find employment. Lower-income and smartphone-dependent subscribers are especially likely to use only smartphones as an employment resource.[29] As Pew Research Center reports:

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[24] Aaron Smith, Pew Research Center, *U.S. Smartphone Use In 2015, Chapter Two: Usage and Attitudes Toward Smartphones*, http://www.pewinternet.org/2015/04/01/chapter-two-usage-and-attitudes-toward-smartphones/#job%20seeking (accessed Apr. 4, 2018).
[25] See *Id*. at 25.
[26] See e.g., Jessica Rosenworcel, The Aspen Institute, *Millions Of Children Can't Do Their Homework Because They Don't Have Access To Broadband Internet*, https://www.aspeninstitute.org/blog-posts/the-homework-gap/ (accessed Apr. 4, 2018).
[27] John B. Horrigan, Pew Research Center, *Fact Tank, The Numbers Behind the Broadband 'Homework Gap,'* http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/ (accessed Apr. 4, 2018).
[28] U.S. Dept. Housing and Urban Development, *Evidence Matters, Digital Inequality and Low-Income Households*, https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html (accessed Apr. 4, 2018).
[29] Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015*, http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/ (accessed Apr. 4, 2018).

> Compared with smartphone owners from households earning $75,000 or more per year, smartphone owners from households earning less than $30,000 annually are nearly twice as likely to use their phone to look for information about a job—and more than four times as likely to use their phone to actually submit a job application. Just 7% of smartphone owners from higher income households have applied for a job using their phone in the last year, but 32% of smartphone owners from lower-income households have done so.[30]

Similarly, approximately 63% of smartphone-dependent users have accessed job information on their phone, and 39% have used their phone to submit a job application.[31] Significantly, many of the largest employers of low-income workers have migrated to an online-only job application process. Indeed, "more than 80 percent of Fortune 500 companies post job openings only online and require online applications. Many of those companies, such as Wal-Mart and Target, are major employers of lower-income workers."[32]

Thus, in order to achieve upward mobility, whether through education, employment, or accessing government services,[33] access to broadband internet is a necessity for low-income, minority communities. And, as discussed herein, this broadband access is most often lacking in these very communities. As such, additional costs associated with accessing broadband internet serves to further widen socioeconomic gaps in our society.

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[30] Aaron Smith, Pew Research Center, *Internet and Technology, U.S. Smartphone Use in 2015*, http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/ (accessed Apr. 4, 2018).

[31] *Id.*

[32] U.S. Dept. Housing and Urban Development, *Featured Article, Understanding the Broadband Access Gap*, https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_100614.html (accessed Aprl 4, 2018).

[33] *See, e.g.*, Darrell M. West and Jack Karsten, Brookings, *Rural And Urban America Divided By Broadband Access*, https://www.brookings.edu/blog/techtank/2016/07/18/rural-and-urban-america-divided-by-broadband-access/ ("From Social Security to FAFSA, government services are transitioning to online access. Tax forms and services are being increasingly streamlined through online portals and tools, and with limited broadband speed, rural America may struggle to access these services.") (accessed Apr. 4, 2018).

C. The CPUC's Increased Surcharge Will Negatively Impact Broadband Access for Low-Income, Minority Communities.

The CPUC's methodology for accessing surcharges on prepaid wireless service will likely increase costs for lower-income Americans to access mobile broadband. As described in MetroPCS's Second Amended Complaint, "if MetroPCS does not itself absorb the unlawfully inflated surcharge burden, it would be forced to either increase the cost of service or offer consumers less for the same price." And low-income, minority subscribers of prepaid wireless will be hit the hardest. Indeed, the Office of Governmental Affairs previously notified the CPUC regarding the income disparity among prepaid and postpaid subscribers, and the disproportionate impact price-increases would have on prepaid customers. In an April 8, 2014 letter to the CPUC from the Office of Governmental Affairs, the then Director stated the following regarding AB 1717:

> Moreover, the bill **creates an inequitable disparity between prepaid and postpaid consumers, thus disproportionately affecting low-income consumers and minorities.** Additional costs will likely be made up by prepaid consumers, as the MTS surcharge would have to be set equivalently higher to pay for this fee to the retailers. Prepaid consumers are more likely than postpaid consumers to be low-income and from minority communities.[34]

Prepaid wireless phone subscribers are among the most cost sensitive consumers of mobile broadband. Should MetroPCS and other prepaid wireless carriers pass on to their subscribers the cost of this increased surcharge liability, prepaid wireless subscribers—which are largely composed of low-income and minority consumers—may have difficulty maintaining their service, which will negatively impact their ability to access internet-necessary services.

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[34] Ltr. from Lynn Sadler, Dir., Office of Government Affairs, to The Commission, *AB 1717 (Perea) – Telecommunications: prepaid mobile telephone services: state surcharge and fees: local charges collection*, 6 (Apr. 8, 2014) (Emphasis in original) (available at: www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=7018).

III. CONCLUSION

Amici respectfully urge the Court to issue an injunction enjoining Defendants from imposing surcharges on any revenues that MetroPCS and other carriers derive from providing interstate prepaid wireless services, including mobile broadband service, that will increase costs for low-income communities of color.

Dated: April 6, 2018

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JEFFREY S. RASKIN
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By */s/ Jeffrey S. Raskin*
Jeffrey S. Raskin
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CERTIFICATE OF SERVICE

I, Jeffrey S. Raskin, hereby certify that on the 6th day of April, 2018, I caused the foregoing document to be electronically transmitted to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to any ECF registrants for this case.

/s/ Jeffrey S. Raskin
Jeffrey S. Raskin