

FCC FORM 602
OWNERSHIP DISCLOSURE
TEMPR

FCC 602
Main Form

FCC Ownership Disclosure Information for the
Wireless Telecommunications Services

Approved by OMB
3060 - 0799
See instructions for
Public burden estimate
Submitted:
Filer FRN: **0007752470**

Filer Information

1) First Name (if individual): MI: Last Name: Suffix:

2) Filer Name (if entity): TEM Puerto Rico, Inc. 3) FCC Registration Number (FRN): **0007752470**

Contact Information

4) TEM Puerto Rico, Inc.
Maria Dolores Pizarro Figueroa Esq
Metro ~~Cite~~ Park, Calle 2 Edif. 17, Suite 600
Guaynabo, PR **00968**

Telephone Number: **(787)273-5629**

Fax Number: **(787)749-5880**

E-mail Address:

Related FCC Regulated Businesses of Filer

5a) Name and address of all FCC-Regulated Businesses owned by Filer: 5b) Principal Business: 5c) FCC Registration Number (FRN): 5d) Percent of Interest Held:

Signature

Typed or Printed Name of Party Authorized to Sign

6) First Name: Maria Dolores MI: Last Name: **Pizarro Figueroa** Suffix: **Esq**

Title: Corporate Legal Counsel

Signature:
Maria Dolores Pizarro Figueroa Esq

Date:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

FCC 602
Schedule A

FCC Ownership Disclosure Information for the
Wireless Telecommunications Services

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estimate

Schedule for Disclosable Interest Holder

Disclosable Interest Holder Information (complete as many as required to describe all disclosable interest holders)

1) Disclosable Interest Holder's First Name (if individual): MI: Last Name: suffix:

2) Disclosable Interest Holder's Name (if entity): Telefonica, S.A. 3) FCC Registration Number (FRN): 0007755358

4) Disclosable Interest Holder's Address:
Sexta Planta
Goya 24
Madrid, 28001
Spain

5) Type of Interest in Filer: Direct ownership interest in Filer 6) Disclosable Interest Holder is a (n): Corporation 7) Percent of Interest Held in Filer: 100.00

8) Disclosable interest Holder's Type of Ownership: Common Stock Voting 9) Disclosable Interest Holder's Country of Citizenship or Jurisdiction of Formation: Spain

Related FCC Regulated Businesses of Disclosable Interest Holders (repeat for each interest holder identified)

10a) Name and address of all FCC-Regulated Businesses owned by Disclosable Interest Holder listed in Item 1 or 2: 10b) Principal Business: 10c) FCC Registration Number (FRN): 10d) Percent of Interest Held:

FCC 602
Schedule A

FCC Ownership Disclosure Information for the
Wireless Telecommunications Services

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estimate

Schedule for Disclosable Interest Holder

Disclosable Interest Holder Information (complete as many as required to describe all disclosable interest holders)

1) Disclosable Interest Holder's First Name (if individual): MI: Last Name: suffix:

2) Disclosable Interest Holder's Name (if entity): Telefonica, S.A. 3) FCC Registration Number (FRN): 0006650790

4) Disclosable Interest Holder's Address:
7th Floor
Gran Via 28
Madrid, 28013
Spain

5) Type of Interest in Filer: Indirect ownership interest in Filer 6) Disclosable Interest Holder is a 7) Percent of Interest Held in Filer: 92.70

(n):
Corporation

8) Disclosable Interest Holder's Type of Ownership:
Common Stock
Voting

9) Disclosable Interest Holder's Country of Citizenship or
Jurisdiction of Formation: Spain

Related FCC Regulated Businesses of Disclosable Interest Holders (repeat for each interest holder identified)

10a) Name and address of all FCC-Regulated Businesses owned by Disclosable Interest Holder listed in Item 1 or 2:	10b) Principal Business:	10c) FCC Registration Number (FRN):	10d) Percent of Interest Held:
Telefonica Data Licensing, Inc. 1221 Brickell Ave., Suite 700 Miami, FL 33131	Provision of telecommunications services	0003864550	100.00
Communications Technology, Inc. 1221 Brickell Ave., Suite 600 Miami, FL 33131	Provision of international telecommunications services	0006650543	100.00
Emergia USA, Inc. 1221 Brickell Ave., Suite 700 Miami, FL 33131	Provision of wholesale submarine cable capacity	0006650618	100.00
Telefonica Larga Distancia de Puerto Rico, Inc. Metro Office Park, Bldg. 17, St. #1 Guaynabo, PR 00968	Provision of telecommunications services	0006650477	98.00
Telecomunicacoes de Sao Paulo SIA - TELESP P.O Box 21 Andar Rua Mariniano de Carvalho 851 Sao Paulo SP, 01321-001	Provision of international telecommunication services	0006877088	100.00

Attachment List

Attachment Type:	Date:	Description:	Contents:
Indirect Ownership	10/03/2002	Exhibit 2	./upload_files/1035179419
Indirect Ownership	10/03/2002	Exhibit 1	./upload_files/1035178821

Exhibit 1

Clarification of Ownership Interests of Telefonica, S.A.

Telefonica, S.A. is a disclosable interest holder of the filer, TEM Puerto Rico, Inc. Thus, the attached Form 602 Ownership Disclosure lists the related FCC regulated businesses of Telefonica, S.A. and the respective percent of interest held in each such FCC regulated business. Question 10(d) requests the exact percent of interest held but does not permit any description of the type of interest held. In order to clarify the responses to Question 10(d), TEM Puerto Rico, Inc. submits in this exhibit that the type of interest held by Telefonica, S.A. in each FCC regulated business is an indirect interest.

Exhibit 2

Telefonica, **S.A.** - Indirect Ownership of Filer

As noted in the attached Form 602 Ownership Disclosure, Telefonica, S.A. holds an indirect interest in the filer, TEM Puerto Rico, Inc (“Filer”). The nature of this indirect interest is as follows:

- (i) Telefonica Moviles, S.A. holds a 100% interest in the Filer;
- (ii) Telefonica, S.A. holds a 92.7% interest in Telefonica Moviles, S.A.

Thus, Telefonica, S.A. holds a 92.7% indirect interest in the Filer.

INTERNATIONAL SECTION 214 APPLICATION
FOR OFFICIAL USE ONLY

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:
Section 2 14 Transfer of Control

1. Applicant

Name:	TEM Puerto Rico, Inc.	Phone Number:	787-273-5629
DBA Name:		Fax Number:	787-749-5880
Street:	Metro Office Park	E-Mail:	
	Calle 2 Edif. 17, Suite 600		
City:	Guaynabo	State:	PR
Country:	USA	Zipcode :	00968 -
Attention:	Maria Dolores Pizarro Figueroa Esq		

2. Contact

Name:	Richard Rubin	Phone Number:	703-891-7610
Company:	Akin, Gump, Strauss, Hauer & Feld, LLP	Fax Number:	703-891-7501
Street:	1676 International Dr. Penthouse	E-Mail:	rmbin@akingump.com
City:	McLean	State:	VA
Country:	USA	Zipcode:	22102 -
Contact Title:	Partner	Relationship:	Legal Counsel

3. Place of Incorporation of Applicant Commonwealth of Puerto Rico**4. Other Company(ies) and Place(s) of Incorporation**

. Service Type(s) (check all that apply)

- Global or Limited Global Facilities–Based Authority (Section 63.18(e)(1))
- Global or Limited Global Resale Authority (Section 63.18(e)(2))
- Individual Facilities–Based Service (Section 63.18(e)(3))
- Individual Switched Resale Service (Section 63.18(e)(3))
- Individual Facilities–Based and Resale Service (Section 63.18(e)(3))
- Switched Services over Private Lines (ISR) (Section 63.16 and/or 63.18 (e)(3))
- Inmarsat and Mobile Satellite Service (Section 63.18(e)(3))
- Overseas Cable Construction (Section 63.18(e)(3))
- Individual Non–Interconnected Private Line Resale Service (Section 63.18(e)(3))
- Other (Section 63.18(e)(3))

a. Is a fee submitted with this application?

- If Yes, complete and attach FCC Form 159. **If No**, indicate reason for fee exemption (see **47 C.F.R. Section 1.1114**).
- Governmental Entity Noncommercial educational licensee
- Other(please explain):

b. Fee Classification CUT – Section 214 Authority

. Destination Country(ies) (e.g., "Country X", "All international points", "All international points except Country X and Country Y" or Countries X, Y, and Z only".) All international points

8. Caption (description of authority requested, e.g., Application for Authority to Provide International Facilities-Based and Resold Services to All International Points Except Country **X**)

(If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

The proposed transferee is hereby electronically filing an application seeking Commission consent to the streamlined transfer of control of NewComm Wireless Services, Inc., holder of a global resale and facilities-based Section 214 authorization, to TEM Puerto Rico, Inc.

9. Does the applicant request streamlined processing pursuant to 47 C.F.R. Section 63.12? If yes, include in Attachment 1 a statement of how the application qualifies for streamlined processing. Yes No

10. If applying for authority to provide switched services over private lines pursuant to Section 63.16, provide the required showing in Attachment 1.

Applicant certifies that its responses to questions 11 through 17 are true:

11. If the applicant is a foreign carrier, or is affiliated (as defined in 47 C.F.R. Section 63.09(e)) with a foreign carrier, provide in Attachment 1 the information and certifications required by Section 63.18(i) through (m).

12. Does the applicant seek authority to provide service to any destination described in paragraphs (1) through (4) of Section 63.18(j)? If yes, list those destinations in Attachment 1 as a response to question 12. Yes No

13. Does the applicant seek authority to provide service to any destinations other than those listed in response to question 12 where it has an affiliation with a foreign carrier? If yes, list those destinations in Attachment 1 as a response to question 13.

Yes

No

14. [Section 63.18(h)] In Attachment 2, provide the name, address, citizenship and principal business of the applicant's ten percent or greater direct and indirect shareholders or other equity holders, and identify any interlocking directorates.

15. In Attachment 1, respond to paragraphs (d), (e)(3) and (g) of Section 63.18

16. By checking Yes, the undersigned certifies that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.

Yes

No

17. By checking Yes, the applicant certifies that it has not agreed to accept special concessions directly or indirectly from a foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future.

Yes

No

CERTIFICATION

18. Typed Name of Person Signing Maria Dolores Pizarro		19. Title of Person Signing Director of Corporate Legal Office
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/ OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).		
20. 1: Transfer 2: Petition 3:		

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 1 – 6,056 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0686), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to jboley@fcc.gov. PLEASE DO NOT SEND YOUR RESPONSE TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0686.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

8. Caption (description of authority requested, e.g., Application for Authority to Provide International Facilities-Based and Resold Services to All International Points Except Country X)

The proposed transferee is hereby electronically filing an application seeking Commission consent to the streamlined transfer of control of NewComm Wireless Services, Inc., holder of a global resale and facilities-based Section 214 authorization, to **TEM** Puerto Rico, Inc. The Commission requested that the parties file this transfer of control application online using the IBFS procedures intended for the filing of an electronic application for a new Section 214 authorization.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
CLEARCOMM, L.P.)	
)	
and)	
)	
TEM PUERTO RICO, INC.)	
)	
Application, Pursuant to Section 214)	File No. _____
of the Communications Act of 1934,)	
as Amended, for Consent to Transfer)	
Control of Authorization to Provide)	
Global Resale and Facilities-Based)	
Telecommunications Services)	
File No. ITC-214-19990615-00426)	

APPLICATION FOR CONSENT TO TRANSFER CONTROL

ClearComm, L.P. (“ClearComm” or “Transferor”) hereby requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.18 of the rules of the Federal Communications Commission (“Commission”), 47 C.F.R. § 63.18, to transfer control of NewComm Wireless Services, Inc. (“NewComm”), holder of the above-referenced international Section 214 authorization (the “Authorization”), to TEM Puerto Rico, Inc. (“TEM PR” or “Transferee”) (together, the “Parties”). As explained below, *this* application (“Application”) qualifies for 14-day streamlined processing by the Commission pursuant to Section 63.12 of the Commission’s rules, 47 C.F.R. § 63.12.

I. PREAMBLE

A. Description of the Transaction

The Parties. NewComm is majority owned and controlled by ClearComm, a limited partnership organized under the laws of the state of Delaware, composed of one general partner, SuperTel Communications Corp. (“SuperTel”), a corporation organized under the laws of the Commonwealth of Puerto Rico, and approximately 1600 individual limited partners. Syndicated

Communications Venture Partners IV, L.P. (“SYNCOM”) and Fleet Development Ventures Group (“FDVG”) also hold minority interests of 8.02% and 4.08% in NewComm, respectively. In addition to the above-referenced international 214 authorization, NewComm holds two C-Block PCS licenses and 131 common carrier point-to-point microwave licenses. The current organizational structure of NewComm is set forth in Attachment A. TEM PR is a corporation organized under the laws of the Commonwealth of Puerto Rico that is wholly owned by Telefonica Móviles, S.A. (“Móviles”), a publicly-traded Spanish corporation controlled by Telefonica, S.A. (“Telefonica”), also a publicly-traded Spanish corporation.

Background. In March 1999, ClearComm entered into a Joint Venture Agreement (“JVA”) with Telefonica Larga Distancia de Puerto Rico, Inc. (“TLD”), also an indirect Telefonica subsidiary, which formed NewComm.¹ NewComm commenced commercial wireless service in Puerto Rico in September 1999 under a management agreement with TLD. Under the terms of the JVA, and pursuant to Commission consent, ClearComm assigned its licenses to NewComm and TLD loaned working capital to NewComm. That loan was evidenced by promissory notes secured by a TLD right to convert the promissory notes, as well as certain subsequent non-dilution notes, into approximately 49.9% of the equity and 25% of the voting rights of NewComm.²

In *ClearComm, L.P., Memorandum Opinion and Order*, 16 FCC Rcd 18627 (WTB 2001) (“*Order*”), the Commission found that the arrangements between ClearComm, NewComm and TLD, including the management agreement with TLD, are consistent with the Commission’s rules, regulations and policies. Except for a May 2002 Contribution Agreement³ that provides TLD with the right to convert its entire 49.9% equity interest to a voting interest,⁴ and a March 2002 Stock Purchase Agreement that provides for TLD to acquire additional shares of stock in order to obtain a total 50.1% voting interest in NewComm, ClearComm, NewComm and TLD have not altered their relationship since the *Order*.

¹ TLD is indirectly controlled by Telefonica through its wholly owned subsidiary, Telefonica Internacional, S.A. (“TISA”), a company incorporated in Spain, and directly controlled by Telefonica International Holding, B.V. (“TIH”), a company incorporated in the Netherlands and a wholly-owned subsidiary of TISA.

² *See Order*, 16 FCC Rcd 18629-18630.

³ The Contribution Agreement was executed on May 20, 2002 and is attached hereto as Attachment B.

⁴ On March 12, 2002, TLC and ClearComm entered into a Stock Purchase Agreement, pursuant to which TLD, through a combination of exercise of its conversion rights and acquisition of certain additional NewComm shares from ClearComm, and subject to Commission consent, would obtain a controlling 50.1% voting ownership interest in NewComm. TLD and ClearComm entered into the Stock Purchase Agreement after the five-year construction notifications had been filed for the Licenses, under Section 24.839(a)(6) of the Commission’s rules, 47 C.F.R. § 24.839(A)(6), terminating the designated entity restricted transfer period. The Stock Purchase Agreement is attached hereto as Attachment C.

The *Order* arose from a proceeding begun by one of NewComm's incumbent competitors in the market. The competitor alleged that the formation and terms of the JVA caused a *defacto* transfer of control of the NewComm PCS Licenses from ClearComm to TLD.⁵ While the FCC ultimately determined that the transaction did not cause a *defacto* transfer of control, the parties agreed with the FCC to eliminate an option in favor of TLD to acquire an interest of 0.2% that had been part of the JVA. On June 26, 2001, the JVA was amended to eliminate the TLD option to buy the additional 0.2%.⁶ This transaction does not, accordingly, arise out of the exercise of any option in contravention of the *Order*, but rather represents the exercise of existing rights under the JVA along with the acquisition of stock contemplated by an entirely new agreement between the parties.

During the course of the *defacto* control proceedings before the FCC, which extended from February 4, 1999 to October 17, 2001,⁷ NewComm was unable to secure permanent financing from traditional capital markets. In order to fund its obligations and the operation of the system, in each of November 2000, December 2000, and March 2001, NewComm received funding from SYNCOM, a third party, in exchange for an 8.02 ownership interest in NewComm. In addition, on March 2, 2002, ClearComm sold approximately 4.08% of NewComm to a group of investors led by FDVG. At present, NewComm is owned 87.9% by ClearComm, 8.02% by SYNCOM and 4.08% by FDVG.⁸ Due to non-dilution provisions associated with the SYNCOM and FDVG investments, their interests will remain consistent following the conversion of TLD promissory notes and the consummation of the Stock Purchase Agreement. Upon consummation of the Stock Purchase Agreement, after Commission consent, NewComm will be owned 50.1% by TEM PR, 37.8% by ClearComm, 8.02% by SYNCOM and 4.08% by FDVG.

During the period from June 26, 2001 through March 12, 2002, TLD had convertible interests that, upon execution, would result in TLD obtaining 49.9% of the equity of NewComm and 25% of the voting rights of NewComm. TLD had no other rights, whether future, contingent, or otherwise, to acquire shares, voting rights or equity in NewComm.

Following the *Order*, NewComm continued its efforts to secure permanent facilities financing for its system. Specifically, NewComm was seeking financing to eliminate certain Lucent equipment loans and bridge financing supplied by ABN/AMRO and others. NewComm's efforts at permanent financing had been, until the resolution of the pending *de facto* control issues, unavailing for obvious reasons. Unfortunately, with the timing of the resolution of the *defacto* control issues coinciding with the failure of the capital markets for

⁵ 16 FCC Rcd 18629

⁶ See Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, and Ms. Andrea Kelley, Auctions and Industry Analysis Division, from Mr. Robert Pettit, Counsel to NewComm (June 27, 2001) (detailing amendments to the JVA deleting TLD's 0.2% option and the effect of the SYNCOM investment). See also, *Order*, 16 FCC Rcd 18632.

⁷ See ULS File No. 0000003752.

⁸ Four percent or less of ClearComm is owned by non-US interest holders. See Declaration of Javier Lamoso, attached hereto as Attachment D.

telecommunications, the company had limited options in terms of funding sources. Accordingly, the company evaluated a number of options, which, after the termination of certain restrictions on the ownership of NewComm? included the sale of a controlling interest to Telefónica.

Subject Transaction. Subject to Commission consent and satisfaction of other closing conditions, TEM PR intends to acquire a controlling 50.1% majority voting ownership interest in NewComm from ClearComm. TEM PR proposes to do so as follows:

First, during the pendency of this Application, TLD intends to assign the promissory notes with their attendant conversion rights to TEM PR in exchange for acquiring 100% of the voting interests in TEM PR. TLD also intends to assign to TEM PR an agreement between TLD and ClearComm that currently provides for TLD to exercise its conversion rights and acquire additional shares in order to obtain a 50.1% interest in NewComm.¹⁰

Second, also during the pendency of this Application, control of TEM PR will be transferred from TLD to Móviles. Because Moviles, through its subsidiaries and affiliates, holds and/or manages the wireless components of Telefonica's telecommunications business worldwide, this transfer will allow for the eventual consolidation of control and operation of NewComm's licenses and authorizations in the arm of Telefonica that possesses the most experience and expertise in providing commercial wireless services.

Finally, after Commission consent to the transfer of control of NewComm is obtained, TEM PR will exercise the conversion and acquisition rights obtained from TLD, in accordance with the agreements entered into between TLD and ClearComm and assigned by TLD to TEM PR. The exercise of these rights will result in TEM PR's acquiring a 50.1% majority interest in NewComm. Following consummation of this transfer of control of NewComm to TEM PR, NewComm will be directly controlled by TEM PR, which will be controlled by Móviles, which is controlled by Telefonica. The proposed ownership structure of NewComm is set forth in Attachment E.

⁹ One of the issues raised in the context of the *de facto* control proceedings was the fact that NewComm was a designated entity under Section 24.709(b)(6) of the FCC's rules, 47 C.F.R. §24.709(b)(6). Hence, a determination that NewComm was controlled by TLD would have resulted in a loss of NewComm's designated entity status. However, pursuant to Section 24.839(a)(6) of the FCC's rules, 47 C.F.R. §24.839(a)(6), the restrictions on the ownership of NewComm lapsed after the company filed its notification of having met the five-year construction benchmarks for its authorizations. NewComm's five-year construction notifications were filed on September 10, 2001, and granted on October 31, 2001. See FCC ULS File Nos. 0000588662, 0000588663.

¹⁰ On March 12, 2002, TLD and ClearComm entered into a Stock Purchase Agreement pursuant to which TLD, through a combination of exercising its conversion rights and acquiring certain additional NewComm shares from ClearComm, and subject to Commission consent, would obtain a controlling 50.1% voting ownership interest in NewComm.

The Commission has held that under the current ownership structure of NewComm, ClearComm holds both *de jure* and *de facto* control of NewComm.¹¹ Until such time as Commission consent to this transaction is obtained and the underlying transaction is consummated, both *de jure* and *de facto* control of NewComm will remain with ClearComm.

The following materials are being filed contemporaneously with the Application:

- (i) Application seeking Commission consent to transfer control of NewComm, licensee of two (2) C-block broadband personal communications service (“PCS”) licenses, from ClearComm to TEM PR
- (ii) Application seeking Commission consent to transfer control of NewComm, licensee of 131 common carrier fixed microwave licenses, from ClearComm to TEM PR, and
- (iii) Petition for declaratory ruling in which TEM PR asks the Commission’s International Bureau to determine that the indirect foreign ownership of NewComm, if controlled by TEM PR, is in the public interest.

The Parties also are filing voluntarily with the U.S. Department of Treasury Committee on Foreign Investment in the United States (“CFIUS”) a notification regarding the proposed transaction.

B. Public Interest

The proposed transfer of control is in the public interest. The subject transaction will mark the entry of Telefonica into the U.S. commercial mobile radio services market and, more particularly, the Puerto Rico market.¹² Telefonica and its subsidiaries are leading international providers of telecommunications services. As an indirect subsidiary of Telefonica, TEM PR will bring substantial economic resources and technical expertise to enhance the competitiveness of NewComm’s PCS operations through price, product and quality of service competition. TEM PR also is well positioned to focus on the provision of quality and innovative services to customers in Puerto Rico because the Telefonica family of companies has decades of collective experience in the international telecommunications industry and has provided quality service to its customers throughout Spain, the rest of Europe, and Latin America. Accordingly, TEM PR submits that grant of this Application is in the public interest.

¹¹ See Order, 16 FCC Rcd 18633. Prior to adoption of the Order, ClearComm and TLD amended the JVA to address the Commission’s concerns that *de facto* control of NewComm might have been transferred to TLD.

¹² The Commission previously has found the indirect owner of Móviles, Telefonica, S.A., qualified to control a U.S. fixed wireless license. Specifically, Telefonica Data Licensing, Inc., an indirect subsidiary of Telefónica, S.A., participated in Auction Number 30, completed May 9, 2000, and was issued a 39 GHz license for a geographic area encompassing Puerto Rico and the U.S. Virgin Islands. See FCC File No. ISP-PDR-20000313-00001.

The proposed transfer also promises to yield **affirmative public interest benefits** by promoting competition in **U.S.** markets. The Commission has noted that “foreign investment can promote competition in U.S. markets and that the public interest is served by permitting more open investment in U.S. common carrier radio licenses by “TO-member entities.”¹³ TEM PR and its affiliated entities *are* prepared to invest significantly in the further development of PCS and related services in Puerto Rico. Thus, Commission grant of the Application will benefit consumers by allowing a new, well-financed competitor to enter the PCS market.

II. SECTION 63.18 INFORMATION

The following information is submitted in support of the Application:

- (a) The name, mailing address, and telephone number of Transferor are **as** follows:

ClearComm, L.P.
268 Ave. Luis Muñoz Rivera
Suite 2206, Hato Rey Tower
San Juan, PR 00918-1913
Telephone: (787) 620-0140
Facsimile: (787) 620-0144
Attention: Javier O. Lamoso, President

The name, mailing address, and telephone number of Transferee are **as** follows:

TEM Puerto Rico, Inc.
Metro Office Park
Calle 2 Edif. 17
Suite 600
Guaynabo, Puerto Rico 00968
Tel: (787)273-5629
Fax: (787)749-5880
Attention: Maria Dolores Pizarro-Figueroa

- (b) ClearComm is a limited partnership formed under the laws of the state of Delaware

TEM PR is a U.S. corporation organized under the laws of the Commonwealth of Puerto Rico.

¹³ See VoiceStream Wireless Corporation, Powertel, Inc. and Deutsche Telekom AG Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) (citing Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order on Reconsideration*, 12 FCC Rcd 23891,23940 (1997)).

- (c) The names, titles, mailing addresses, and telephone numbers of the persons designated to receive correspondence for Transferor are **as** follows:

Eric W. DeSilva, **Esq.**
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-3182

The names, titles, mailing addresses, and telephone numbers of the persons designated to receive correspondence for Transferee are **as** follows:

Maria Dolores Pizarro-Figueroa
Directora
Asesoría Legal Corporativa
Metro Office Park
Calle 2 Edif. 17
Suite 600
Guaynabo, Puerto Rico 00968
Tel: (787)273-5629
Fax: (787)749-5880

Juan Ramon Balcells
Telefónica Móviles, **S.A.**
Goya **24**, Sexta Planta
28001 Madrid, España

Richard Rubin, **Esq.**
Akin, Gump, Strauss, Hauer & Feld, L.L.P
1676 International Drive
Penthouse
McLean, Virginia **22102**
Tel: (703) 891-7610
Fax: (703)891-7501

- (d) On August 4, 1999, the FCC granted NewComm's Section 214 authorization to provide international global resale service. (FCC File No. ITC-214-19990615-00426).

TEM PR does not hold any authorizations pursuant to Section 214.

- (e) ClearComm requests FCC consent to transfer control of NewComm, holder of Section 214 authority to operate **as** a global facilities-based and resale carrier providing services between the United States and international points, pursuant to Section 63.18(e)(2) of the Commission's rules. Transferee hereby certifies that it will comply with the terms and conditions contained in Sections 63.21, 63.22 and/or 63.23 of the Commission's rules, **as** applicable.

- (f) At this time, Transferee does not seek any other authorization available under **Section 63.18(e)**.
- (g) Not applicable.
- (h) The names, addresses, citizenship, and principal businesses of the entities that directly or indirectly will control ten percent or more of the voting stock of Transferee at the time the instant transaction is consummated are **as** follows:

Name of Beneficial Owner: Telefonica Moviles, S.A.
Business **Type:** Wireless Telecommunications **Provider**
Address: Goya **24**, Sexta Planta
Madrid 28001, Spain
Citizenship: Spain
Percentage of Ownership: 100% direct

Name of Beneficial Owner: Telefonica, S.A.
Business Type: International Communications Provider
Address: Gran Via **28**, 7th Floor
Madrid **28013**, Spain
Citizenship: Spain
Percentage of Ownership: **71.25%** (direct) and **21.50%** (indirect) of M6viles

Name of Beneficial Owner: Telefonica Internacional, S.A.
Business Type: International Communications Provider
Address: Gran Via **28**
Madrid **28013**, Spain
Citizenship: Spain
Percentage of Ownership: **21.50%** (direct) of Moviles

Certain directors of the Transferee hold interlocking directorates by holding a seat on the board of a foreign carrier. These interlocking directorates are listed in Attachment F to this Application.

- (i) The Transferee certifies that it is not a foreign carrier but that it is affiliated with foreign carriers in Argentina, Austria, Brazil, Chile, Colombia, Cuba, El Salvador, Germany, Guatemala, Italy, Mexico, Morocco, Peru, Spain, Switzerland, and Uruguay.
- (j) The Transferee certifies that it does not seek to provide service to any country in which (1) the Transferee is a foreign carrier; or (2) the Transferee controls a foreign carrier; or (3) two or more foreign carriers (or parties that control foreign carriers) together own more than **25%** of the Transferee and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services **in** the United States. The Transferee also certifies that it is a subsidiary of Telefonica, which directly or indirectly controls foreign carriers or holds a **25%** or greater

interest in foreign carriers in the following destination countries to which the Transferee seeks to provide international telecommunications services:

In Argentina, Telefonica, through TISA, owns **32.28%** of Telefonica Argentina S.A. (“TASA”), which provides local, long-distance and international telephone services in Argentina. Telefonica, through TISA, owns **12.67%** of COINTEL. Telefonica, through TI Holding, B.V. (“TI Holding”), a wholly owned subsidiary of TISA, also owns **37.33%** of COINTEL. Further, TISA owns 100% of Telefónica Holding Argentina S.A. which, in turn owns 50% of COINTEL. COINTEL owns approximately **64.84%** of TASA. TISA manages TASA pursuant to a management agreement. Telefonica, through its wholly-owned subsidiary Telefonica DataCorp. S.A. (“Telefonica DataCorp.”), has a **97.92%** ownership interest in Telefonica Data Argentina, S.A. which provides data services in Argentina. Also, Telefonica, through Moviles and Telefonica Moviles Holding, S.A., indirectly owns **97.93%** of Telefónica Comunicaciones Personales, S.A. which provides wireless services in Argentina.

In Austria, Telefonica, through Moviles and its wholly owned subsidiary Telefonica Moviles España, S.A. (“Moviles Espafia”), also holds 100% of 3G Mobile Telecommunications GmbH (“3G Mobile”). 3G Mobile currently is not providing any telecommunications services in Austria.

In Brazil, Telefonica, through Moviles and a series of holding companies, holds a controlling interest in the following local wireless carriers: (1) Telerj Celular S.A. (Rio de Janeiro); (2) Telest Celular S.A. (Spinto Santo); and (3) Celular CRT, S.A. (previously a part of the local wireline carrier, Companhia Riograndense de Telecomunicações, S.A.). Telefónica, through TISA, also holds a **63.10%** interest in Telecomunicações de Sao Paulo, S.A. (“TELESP”), which provides local and domestic long distance services. TISA also owns an indirect **20.38%** ownership interest in TELESP through its **96.52%** ownership interest in S.P. Participacoes Holding and its **100%** ownership interest in Tele Ibero Americana. In addition, Telefonica, through Telefonica DataCorp, and Telefónica Data Holding, owns **99.9%** of Telefonica Empresas, S.A., which provides data services in Brazil. Finally, Telefonica, through Moviles, manages and holds a **27.69%** ownership interest in two local wireless carriers: Teleshia Celular, S.A and Telegipe Celular, S.A.

In Chile, Telefonica, through TISA and TI Holding, owns **43.64%** of Compañia Telécomunicaciones de Chile (“CTC”) through TI Holding’s 100% ownership of Telefonica Chile Holding B.V. (which owns **100%** of CTC’s immediate parent, Telefonica Internacional de Chile, S.A.). CTC owns **99.16%** of Compañia Teléfonos de Chile Mundo, a long distance service provider, and 100% of Compañia Teléfonos de Chile Comunicaciones Móviles, a wireless telecommunications company. CTC provides local exchange and international services, and through its subsidiaries, CTC provides long distance and wireless services.

In Colombia, Telefonica, through Telefonica Data Holding, has a **50.2%** interest in Telefónica Data Colombia, which provides data services.

In El Salvador, Telefonica, through Moviles, holds a 60.77% interest in **Telefónica Móviles** El Salvador S.A. de C.V., a provider of long distance and wireless services in El Salvador. Telefonica Móviles holds this interest through its 67.3% interest in TES Holding, S.A. de C.V., the holder of 90.3% of Telefonica El Salvador's shares. This interest is expected to increase in the near future.

In Germany, Telefonica, through Móviles and Móviles España, holds 57.2% of Group 3G UMTS Holding GmbH., which holds 100% of Group 3G UMTS GmbH. ("Group 3 G"). Group 3G provides wireless telecommunications services in Germany. Telefonica owns 100% of Media Ways, which provides data services in Germany. Telefonica DataCorp owns 100% of Highway One, which also provides data services in Germany.

In Guatemala, Telefonica, through Móviles and TCG Holdings, S.A., holds a controlling 67.3% interest in (1) Tele Escucha S.A., which provides paging services in Guatemala; and (2) Telefonica CentroAmerica Guatemala S.A., which provides **long** distance and wireless services in Guatemala. This interest is expected to increase in the near future.

In Italy, Telefonica, through Telefonica DataCorp. holds a 34% interest in Atlanet Spa., which provides competitive local services in Italy. Telefonica, through Moviles and Moviles España, also holds a minority interest in IPSE 2000, of which 5% is owned directly by Móviles España and 40.59% is owned by Solivella Investments, B.V., a wholly owned subsidiary of Moviles España. IPSE 2000 currently **is** not providing telecommunications services in Italy.

In Mexico, **Telefónica**, through Telefonica DataCorp., owns 33.95% of, and through Telefonica Data Holding., owns 12.81% of Telefonica Data Mexico, S.A. de C.V., which provides data services in Mexico. Telefonica, through **Telefónica** DataCorp. owns 49% of Telefonica Data Holding Mexico, S.A. de C.V., which owns an additional 42.47% of owns an additional 52.04% of Telefonica Data Mexico, S.A. de C.V. Telefonica, through **Telefónica** Moviles, owns 100% or otherwise controlling interests of Baja Cellular Mexicana, S.A. de C.V. ("BAJACEL"), Movitel del Noroeste, S.A. de C.V. ("MOVITEL"), Telefonía Celular de Norte, S.A. de C.V. ("NORCEL") and Celular de Telefonía, S.A. de C.V. ("CEDETEL"), each of which, directly or indirectly, is a provider of wireless services in Mexico.

In Morocco, Telefonica, through Moviles España, has a 30.5% interest in Medi Telecom, S.A. ("Medi"). Medi provides wireless services throughout Morocco. Telefonica, through Telefonica DataCorp., owns 59.86% of Telefonica Data Atlas, S.A. which is authorized to provide data services in Morocco.

In Peru, Telefonica, through TISA, owns 49.53% of Telefonica del Perú, S.A.A. ("TDP"), a provider of local, long distance and international services in Peru. TISA (through its 100% ownership interest in Telefonica Peru Holding, S.A.) also owns an additional approximately 47.54% of TDP. Telefonica Peru Holding, S.A. controls a majority of the TDP Board and TISA has a management contract to operate TDP. Telefonica, through Telefonica DataCorp., owns 97.07% of Telefonica Data Peru, S.A.A. which provides data services in Peru. Telefonica, through Moviles and Telefonica

Moviles Peru Holding, S.A.A., also indirectly **owns 97.97%** of Telefonica Moviles, S.A.C., which provides wireless services in Peru.

In Spain, Telefónica and its subsidiaries are dominant providers of domestic and international telecommunications services throughout Spain.

In Switzerland, Telefónica, through Móviles and Moviles España, holds 100% of Spiral Investments B.V., a Dutch holding company, which holds 100% of 3G Moviles AG, a Swiss corporation. 3G Moviles AG currently does not provide any telecommunications services.

In Uruguay, Telefonica, through Telefonica DataCorp., **owns** 100% of Telefónica Data Uruguay, S.A., which provides data services in Uruguay.

- (k) The Transferee certifies that it is affiliated with foreign carriers in Argentina, Austria, Brazil, Chile, Colombia, El Salvador, Germany, Guatemala, Italy, Mexico, Morocco, Peru, Spain, Switzerland and Uruguay. All of these destination countries are members of the WTO.
- (l) The Transferee certifies that it will file the requisite quarterly traffic reports for all routes on which it is regulated as dominant, i.e., Argentina, Chile, Peru, and Spain, **as** required by Section 43.61(c) of the Commission's rules, 47 C.F.R. § 43.61(c).
- (m) The Transferee agrees to be classified **as** a dominant carrier between the United States and Argentina, Chile, Peru, and Spain, where the Transferee is affiliated with dominant foreign carriers. The settlement rate for termination of traffic in Chile and Peru is at or below the benchmark settlement rate adopted for those countries in IB Docket No. 96-261. Transferee will comply with the requirements set forth in Section 63.10(c) with regard to its provision of traffic on those routes. The Transferee **is** entitled to non-dominant classification on all other routes. The Transferee's affiliates in Austria, Brazil, Colombia, El Salvador, Guatemala, Italy, Mexico, Morocco and Uruguay are cellular and/or competitive carriers controlling far less **than** 50% of their relevant international transport and local markets. The Transferee, therefore, qualifies for a presumption of non-dominance on these routes under Section 63.10(a)(3) of the Commission's rules (47C.F.R. §63.10(a)(3)). Except for Cuba, which is not a destination country for purposes of this Application, the Transferee is not affiliated with foreign carriers in any other countries, and thus qualifies for a presumption of non-dominance on all other international routes.
- (n) Transferee certifies that it has not agreed to accept special concessions directly or indirectly **from** any foreign carrier with respect to any U.S. international route where the foreign **carrier** possesses market power on the foreign end **of** the route, and Transferee further certifies that it will not enter into such agreements in the future.
- (o) Pursuant to Sections 1.2001 through 1.2003 of the Commission's rules, Transferee certifies that no party to this application has been denied federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

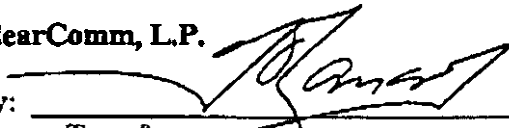
- (p) This Application qualifies for streamlined processing. While the Transferee is affiliated with dominant foreign carriers in **Argentina**, Chile, **Peru**, and Spain, the Transferee agrees to be classified **as** a dominant carrier on these routes. Argentina, Chile, **Peru**, and Spain are all members of the WTO. The Transferee is also affiliated with foreign carriers in Austria, Brazil, Colombia, El Salvador, Germany, Guatemala, Italy, Mexico, Morocco, Switzerland and Uruguay. Each of these **cellular and/or** competitive carriers control far less than **50%** of the relevant international transport and local markets. The Transferee, therefore, qualifies for a presumption of nondominance **on** these affiliated routes. Except for Cuba, which is not a destination country for purposes of this Application, the Transferee is not affiliated with foreign carriers in any other country, and thus qualifies for a presumption of non-dominance on all **other** international routes.

11. CONCLUSION

In conclusion, Transferor and Transferee certify that all of the information in **this** application is accurate and correct. For the foregoing **reasons**, Transferor and Transferee respectfully request that the Commission grant its consent to the transfer of control of the Section 214 authorization referenced herein.

[Signatures follow]

Respectfully submitted,

ClearComm, L.P.
By: 
Transferor

Title: PRESIDENT

Date: October 7, 2002

TEM Puerto Rico, Inc.

By: _____
Transferee

Title: _____

Date: _____

ClearComm, L.P. (Transferor)
TEM Puerto Rico, Inc. (Transferee)

Respectfully submitted,

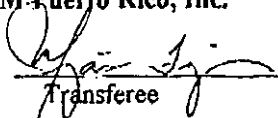
ClearComm, L.P.

By: _____
Transferor

Title: _____

Date: _____

TEM-Puerto Rico, Inc.

By:  _____
Transferee

Title: Corporate Legal Counsel

Date: October 3, 2002