

monopoly network under complete foreign control. Such control would render the Commonwealth telecommunications network and, in turn, critical infrastructure services and U.S. military, as well as IBB activities that utilize the network, potentially vulnerable in a time of war or national crisis.

The proposed transaction is also not in the public interest due to the Commonwealth's distant and strategic geographic location. The U.S. depends, for purposes of national defense, upon the strategic location of the Commonwealth, situated within 2000 miles of North Korea, mainland China, the Philippines, and Taiwan. Moreover, the Commonwealth's distant location from the mainland U.S. renders it more difficult to defend during a time of war or national crisis. In light of the Nation's ongoing war against terrorism, it would be imprudent to grant the Petition at this time.

A. National Security And Public Safety Must Be Prioritized Under The Commission's Public Interest Analysis.

Pursuant to Sections 214(a) and 310(d) of the 1934 Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control is in the public interest.⁴⁹ In discharging these responsibilities, the Commission must weigh the "potential public interest harms of the proposed transactions against the potential public interest benefits to ensure that, on balance, the transfers of control serve the public interest, convenience and

⁴⁹ The Applicants bear the burden of proof of showing that the benefits outweigh the harms. *See, e.g.*, MCI/WorldCom Order at 18031; Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd. 19985, 20063 (1997) ("*Bell Atlantic/NYNEX Order*"). *See also* 47 U.S.C. §§ 214(a) and 310(d); Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 (2001) ("*VoiceStream/Deutsche Telekom Order*").

necessity.”⁵⁰ As part of its public interest analysis, the Commission is also required to take into account the broad aims of the 1934 Act, including national security and public safety (or law enforcement) concerns.⁵¹

In its Petition, PTI emphasizes the “strong presumption that no competitive concerns are raised by [up to and including 100 percent] indirect foreign investment” from entities from WTO member countries.”⁵² Despite PTI’s attempt to focus attention on this presumption, it must be stressed that the presumption does not apply to national security and public safety (or law enforcement) issues.⁵³ Instead, national security and law enforcement are independent concerns of the Commission’s public interest analysis, distinct from the presumption surrounding competitive harms addressed by *the Foreign Participation Order*. Moreover, the *Foreign Participation Order* did not affect the public interest requirements of Sections 214 and 310(a), including the requirement that the Applicants bear the burden of proof.

In fact, national security and public safety are two of the overarching purposes of the 1934 Act.⁵⁴ The emergence of competition and the evolution away from monopoly-based

⁵⁰ *VoiceStream/Deutsche Telekom Order* at 9789.

⁵¹ See, e.g., *Ameritech/GTE Order* at 6670; See also *In re Rules and Policies on Foreign participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23891, 23918 (1997) (“*Foreign Participation Order*”).

⁵² Petition at 5, citing *VoiceStream Wireless Corp.*, 15 FCC Rcd 3341, 3348 (2000).

⁵³ *Foreign Participation Order* at 23916 (“Our presumption in favor of entry for participation applies only to competition concerns that may arise because of a foreign carrier’s market power in a foreign market.”). See also *id.* at 23921 (“We do not, however, presume that an application poses no national security, law enforcement, foreign policy or trade concerns. We will continue to consider these concerns independent of our competition analysis.”).

⁵⁴ As 47 U.S.C. § 151 states, the 1934 Act was created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the

markets in the mainland U.S. has served, over time, to diminish and obscure the potentially serious national security and public safety concerns presented by foreign ownership of telecommunications licenses. According to the Commission,

The original national security rationale for limiting foreign ownership in a parent corporation has less applicability today than it had in the 1930's. Today we have a plethora of service providers. No single licensee which is owned in part by a foreign corporation could take over the wireless and wireline services in the United States in a time of war.⁵⁵

While a "plethora of service providers" may exist in the mainland U.S. such that no single foreign-owned provider could gain control of the telecommunications network, this is not the case in the Commonwealth. To the contrary, the proposed transaction contemplates just that: a foreign-owned provider gaining control of the Commonwealth's monopoly telecommunications network. Due to the development of competitive mainland U.S. telecommunications markets, the national security rationale underlying Section 310 apparently has seldom posed an obstacle to transfer applications filed with the Commission in recent times, thereby justifying waivers far in excess of the 25% indirect ownership limit established in Section 310. The instant transaction, however, goes to the heart of the rationale underlying Section 310 and mandates that a waiver beyond the statutory cap not be granted.⁵⁶

purpose of promoting safety of life and property through the use of wire and radio communication...."
See 47 U.S.C. § 151 (emphasis added).

⁵⁵ *In re* Market Entry and Regulation of Foreign-affiliated Entities, *Public Notice*, 10 FCC Rcd. 4844, 4851 n.16 (1995).

⁵⁶ In short, this transaction raises those unique and important national security and law enforcement concerns contemplated by the Commission in the *Foreign Participation Order* at 23919.

B. Foreign Control Over The Commonwealth's Monopoly Telecommunications Network Is Not In The Public Interest.

The paramount objectives of national security and public safety mandate denial of the Petition. The Commonwealth telecommunications network, as demonstrated below, is a monopoly-based network. Meaningful competition is virtually non-existent.⁵⁷ Since both critical infrastructure services and U.S. national defense functions are dependent upon the network, both would be potentially vulnerable in a state of war or national crisis were the network under foreign control.

1. MTC Dominates the Commonwealth Telecommunications Market.

MTC (and its wholly-owned subsidiary, GTE Pacifica) are the dominant providers of virtually all forms of telecommunications services in the Commonwealth. Both the small population and physical size of the Commonwealth have historically served to sustain a monopoly telecommunications environment and to limit the emergence of viable competition.

As PTI concedes, competition in providing wireline local telecommunications services is non-existent in the Commonwealth.⁵⁸ To date, MTC is the only company authorized under the Commonwealth's local telecommunications law to provide local service (including 911 emergency wireline services)⁵⁹ and apparently has never entered into an interconnection agreement under the 1996 Act. MTC is also the only provider of exchange access services. Local service between the islands of Saipan, Tinian, and Rota is provided over a private fiber optic submarine cable owned exclusively by GTE Pacifica.

⁵⁷ This distinguishes the facts at hand from virtually all other transfer applications the Commission has processed in recent years.

⁵⁸ Petition at 13.

⁵⁹ Commonwealth Telecommunications Act, Pub. L. No. 12-39, H.B. No. 12-006 (2001).

Notwithstanding PTI's suggestions to the contrary, MTC or Verizon Micronesia is well-established as the dominant cellular provider in the Commonwealth. While Verizon Micronesia is the wireline provider, Saipancell (or Guam Cellular and Paging, Inc.) is the non-wireline provider. Saipancell, however, does not even offer service on the islands of Tinian and Rota, and has a subscriber base which is significantly smaller than that of Verizon Micronesia. While PTI offers assertions of cellular, paging and radio communications competition in the Commonwealth (as well as claims that these wireless alternatives compete with wireline services)⁶⁰, it fails to supply any specific statistics or evidence to support such claims.

Only limited domestic and international off-island competition exists in the Commonwealth. GTE Pacifica also controls access off the islands of the Commonwealth by means of its exclusive ownership of C-band transmit/receive earth stations as well as a fiber optic submarine cable connecting the Commonwealth with Guam and, in turn, the rest of the world.⁶¹ MTC is also the predominant supplier of backbone Internet services and the dominant Internet service provider in the Commonwealth.

PTI characterizes MTC's market share for presubscribed 1+ originating access minutes as almost 70%, based on a "June 2002 summary of billed carrier access MOU Report".⁶² However, this is predicated upon MTC's internal data and does not appear to be readily verifiable in an independent manner. Moreover, the cited source is one year old and the same extracted **single-month data** that PTI attempted to rely upon in its previous applications and waiver before the

⁶⁰ Petition at 12-13.

⁶¹ While connecting the three main populated islands of Saipan, Tinian and Rota, the submarine cable also runs to Guam, thereby connecting the Commonwealth with multiple international submarine cables connecting into Guam.

⁶² Petition at 12 and Attachment C.

Commission in IB Dkt. No. 02-111. At a minimum, PTI should be required to 1) update the data with more current data; and 2) supply data by month for a twelve month period to obtain a reliable – not potentially aberrational – figure.⁶³

In short, virtually no competitive alternatives to MTC's facilities and services exist, distinguishing the Commonwealth market radically from competitive telecommunications markets in the mainland U.S. This lack of viable competitive alternatives in the Commonwealth gives rise to unique national security and public safety risks were the Commonwealth telecommunications network to fall under foreign control.

2. *Critical Commonwealth Infrastructure Services Could Be Vulnerable if Foreign Control is Allowed.*

Critical infrastructure services, including 911 public safety services and essential private sector services, would be potentially vulnerable were the Commonwealth sole-source telecommunications network to fall under foreign control. In today's economy, critical infrastructure services are increasingly interlinked,⁶⁴ and the hub of this interdependency is the telecommunications system.

⁶³ This is especially true given that PTI in IB Dkt. No. 02-111 originally only supplied market share data for originating access minutes, which showed a misleading and minimal market share figure (i.e. 11%). See letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI, to James L. Ball, FCC, dated August 16, 2002, at Attachment 7. Subsequently, the Commonwealth submitted a response claiming that the 11% figure appeared to consist largely of 1) calls to prepaid calling card providers used by many tourists and visitors; and 2) credit card verification calls to 800 numbers. The Commonwealth went on to point out that presubscribed 1+ originating information would serve as the best identifier of long distance market share. See letter from Thomas K. Crowe and Gregory E. Kunkle, Counsel for the Office of the Governor, to Marleen H. Dortch, FCC, August 28, 2002, at 6. PTI then replied with substantially modified market share statistics which included share for 1+ presubscribed originating access minutes, which are the same statistics relied upon in PTI's current Petition. See letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI, to James L. Ball, FCC, dated October 8, 2002, at Attachment 6.

⁶⁴ See Robert F. Dacey, Director, Information Security Issues, General Accounting Office, Statement Before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations and the Subcommittee on Technology and Procurement Policy, Committee on Government Reform, House of Representatives (May 2, 2002). In his statement, Mr. Dacey provides:

According to Presidential Decision Directive/NSC-63,

Critical Infrastructures are those physical and cyber-based systems essential to the minimum operations of the economy and government. They include, but are not limited to, telecommunications, energy, banking and finance, transportation, water systems and emergency services, both government and private. Many of the nation's critical infrastructures have historically been physically and logically separate systems that have little interdependence. As a result of advances in information technology and the necessity of improved efficiency, however, these infrastructures have become increasingly automated and interlinked. The same advances have created new vulnerabilities to equipment failure, human error, weather, and other natural causes and physical and cyber attacks. Addressing these vulnerabilities will necessarily require flexible, evolutionary approaches that span both the public and private sectors and protect both domestic and international security.

Because of our military strength, future enemies, whether nations, groups, or individuals, may seek to harm us in non-traditional ways including attacks within the United States. Because our economy is increasingly reliant on interdependent and cyber-supported infrastructures, non-traditional attacks on our infrastructure and information systems may be capable of significantly harming both our military power and our economy.⁶⁵

The Presidential Decision Directive goes on to additionally state,

It has long been the policy of the United States to assure the continuity and viability of critical infrastructures. **I intend that the United States will take all necessary measures to swiftly eliminate any significant vulnerability to both physical and cyber attacks on our critical infrastructures, including especially our cyber systems.**⁶⁶

“Dramatic increases in computer interconnectivity, especially in the use of the Internet, continue to revolutionize the way our government, our nation, and much of the world communicate and conduct business. However, this widespread interconnectivity also poses significant risks to our computer systems and, more important, to the critical operations and infrastructures they support, such as telecommunications, power distribution, public health, national defense (including the military's war fighting capability), law enforcement, government and emergency services.”

⁶⁵ See *Presidential Decision Directive NSC-63* at 1.

⁶⁶ *Id.* (emphasis added). The U.S. Department of Homeland Security, has stated that the telecommunications sector faces “significant challenges” in the new threat environment. According to the Department, “Because the government and critical-infrastructure industries rely heavily on the public telecommunications infrastructure for vital communications services, the sector's protection initiatives are particularly important.” U.S. Department of Homeland Security, *The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets* 47 (February 2003), available at http://www.dhs.gov/interweb/assetlibrary/Physical_Strategy.pdf (visited June 5, 2003).

In a 1995 letter to the U.S. Department of Justice, the former FBI Director and FBI Administrator stated, “[t]elecommunications networks are critical and unique parts of any nation’s information infrastructure. They are the central conduits for transacting a great deal of governmental business and private commerce. Control of the networks has tremendous importance.”⁶⁷ Among other concerns raised, the former FBI Director and FBI Administrator expressed concern over the ability of a foreign-based carrier to immediately respond to U.S. government telecommunications requirements when national emergency, disaster, or other critical government telecommunications needs arise. According to the letter, “[i]f a foreign-based carrier were called upon to immediately respond to some disaster such as an act of state-sponsored terrorism, there would be both doubt and risk to the [U.S.] government if the common carrier was influenced or otherwise controlled by a foreign government associated with such terrorism.”⁶⁸

Since the Commonwealth’s telecommunications network is a monopoly network, its critical infrastructure services, including 911 public safety services and other vital private sector services, are largely interdependent upon that network. Were the network to be under foreign control during a time of war or national crisis, these critical infrastructure services would be potentially vulnerable to disruption or sabotage. Consistent with Presidential Decision Directive/NSC-63, this vulnerability should be avoided due to the national security concerns it raises by preventing a foreign-controlled interest from acquiring MTC.

⁶⁷ See letter from Louis J. Freeh, Director, and Thomas A. Constantine, Administrator, FBI, to Rep. John. D. Dingell (May 24, 1995), attached as Exhibit D.

⁶⁸ See *id.* at 3.

3. *Foreign Control Over the Network Would Jeopardize U.S. National Security Interests in the Commonwealth.*

Important U.S. national security interests would be potentially vulnerable were the Commonwealth monopoly telecommunications network to fall under foreign control. The U.S. military has a significant interest in the Commonwealth for, among other things, training and maintaining “forward deployed” military units there.⁶⁹ In addition, important U.S. IBB facilities rebroadcast from locations in the Commonwealth. While U.S. military activities and IBB transmission can apparently occur, to a large extent, independent of the Commonwealth telecommunications network, both do utilize the network to some degree. Were the network to fall under foreign control during a time of war or national crisis, U.S. military and IBB activities could be compromised, potentially imperiling national security.

a. *Military Operations.*

The U.S. military commits significant resources to its activities in the Commonwealth, underscoring the critical national security role that the small insular occupies.

The Covenant, defining the legal relationship between the U.S. and the Commonwealth and approved by Congress, obligates the United States to have “complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands.”⁷⁰ U.S. military activities in the Commonwealth are both intended to protect the Commonwealth as well as further broaden U.S. strategic objectives in the region. The federal government leases approximately 18,182 acres of land in the Commonwealth, which is used for

⁶⁹ See <http://www.wlf.org/upload/8-14-02Center.pdf> (visited June 4, 2003).

⁷⁰ See Covenant § 104; Exhibit B at 1. Serious doubt exists that the U.S. could uphold this obligation were the telephone network in the Commonwealth 100% foreign-controlled and operated.

military purposes.⁷¹ The U.S. Navy and Marines use some of this land to conduct joint training exercises, including the use of troops, ships and aircraft, to maintain the combat readiness of “forward deployed” military units. For a selected sampling of ongoing U.S. military activity in the Commonwealth, see Exhibit E. Significantly, the Commonwealth island of Farallon de Medinilla is the only live-fire training location in the western Pacific.⁷² In addition, several military transport ships are routinely positioned just off the coast of Saipan, available for deployment wherever strategically needed in the region.⁷³ Signs appear to indicate that the Commonwealth’s national defense role is increasing, not decreasing with the passage of time.⁷⁴ It is certainly conceivable that the Commonwealth would play a significant and strategic role in the future crises in Asia or the Middle East, including any potential conflict with North Korea or continuing military operations in the Philippines.⁷⁵

The federal government itself has a significant presence in the Commonwealth. The following U.S. government entities have Commonwealth office locations: Department of Defense, Department of Interior, Department of Justice, Department of Transportation, Department of Labor, Department of Agriculture, Social Security Administration, U.S. National Labor Relations Board, U.S. Postal Service, U.S. Probation, U.S. District Court, and IBB. There

⁷¹ Specifically, the federal government leases approximately 17,799 acres on Tinian including adjacent water areas; 177 acres on Saipan; and 206 acres on Farallon de Medinilla Island and adjacent water areas. *See* Covenant § 802.

⁷² The uninhabited island, used for bombing exercises to maintain the skills of combat-ready troops in the region, plays a unique role in national defense given its proximity to Asia and the Middle East. *See* articles in Exhibit F; *see also* <http://www.guampdn.com/news/stories/20020607/localnews/458578.html> (visited June 4, 2003).

⁷³ *See* <http://www.globalsecurity.org/military/facility/saipan.htm> (visited May 28, 2003).

⁷⁴ *See* Exhibit G.

⁷⁵ *See* Exhibit H.

can be little doubt that these government offices rely heavily on the Commonwealth telephone network.⁷⁶ While the military maintains its own communications capabilities, certain functions and federal government operations in the Commonwealth appear to depend on the monopoly telecommunications network.

b. IBB Facilities.

The IBB, a federal government entity, oversees both the Voice of America (“VOA”) and Radio Free Asia (“RFA”), each of which relies upon transmission facilities in the Commonwealth.⁷⁷ VOA, whose mission is to broadcast the policies and views of the U.S., provides programming *via* radio, TV and the Internet in 53 languages throughout the world. RFA broadcasts news and information in 9 languages to listeners in Asia⁷⁸ who do not have access to full and free news media. Its purpose is to deliver accurate and timely news, information and commentary, and promote the rights of freedom of opinion and expression within Asian countries.⁷⁹

The IBB owns and operates 3 transmitters in Saipan and 8 in Tinian that are used by VOA and RFA to rebroadcast signals within the Pacific Rim. These transmitters are independent of the monopoly telecommunications network; however, both VOA and RFA appear to depend upon the network for communications within the Commonwealth and the outside world.

⁷⁶ 2001 CNMI Official Telephone Directory, at 30-31 (2001).

⁷⁷ The IBB was established when President Clinton signed the International Broadcasting Act of 1994 (Public Law No. 103-236), which also created a 9-member, bipartisan Broadcasting Board of Governors (BBG). One of the BBG members is the U.S. Secretary of State. In October 1999, the BBG/IBB was separated from the former U.S. Information Agency and became an independent federal entity as mandated by the Foreign Affairs Reform and Restructuring Act (Public Law No. 105-277) of 1998. The BBG provides oversight and guidance to the federally funded VOA and RFA. RFA is a non-profit corporation. For more information, see <http://www.ibb.gov> (visited June 4, 2003).

⁷⁸ See <http://www.rfa.org/front/about/> (visited June 4, 2003).

⁷⁹ *Id.*

As the Commonwealth's telecommunications network is a sole-source, monopoly network, U.S. military and IBB activities appear to utilize that network. Were the network to be under foreign control during a time of war or national crisis, U.S. military and IBB activities could be vulnerable to disruption. Consistent with Presidential Decision Directive/NSC-63, this potential vulnerability to the national defense should be avoided by preventing foreign-controlled interests from acquiring MTC.

As shown above, foreign control over the Commonwealth's monopoly network, a network on which critical Commonwealth infrastructure services depend and U.S. military and IBB facilities in part depend, would jeopardize U.S. national security and therefore is not in the public interest.

C. The Commonwealth's Distant And Strategic Location Dictates Against Foreign Ownership Of The Telecommunications Network.

The telecommunications network should not be controlled by foreign interests in the Commonwealth, given the national security issues raised by its distant and strategic geographic location.

The Commonwealth is geographically located in the North Pacific Ocean some 3,300 miles from Honolulu, 5,625 miles from San Francisco, and 1,272 miles from Tokyo.⁸⁰ Its distant geographic location from the mainland U.S. renders it more difficult to protect and defend during a time of war or national crisis. For this reason, the telecommunications network--arguably the most critical infrastructure service in a distant U.S. insular area from a national security perspective--should remain under U.S. control.

⁸⁰

See Exhibit B.

Due to its location, the United States has long recognized the strategic importance of the Commonwealth in maintaining peace and freedom throughout the Pacific Rim.⁸¹ Less than 2000 miles from North Korea, mainland China, the Philippines, and Taiwan,⁸² the Commonwealth is situated within a relatively close distance to regions where U.S. national security could be jeopardized in the future. This is underscored by the fact that the U.S. military stations “forward deployed” units in the Commonwealth.⁸³ Further, as is well known, the Commonwealth’s strategic location played a critical role in hastening the end of World War II, serving as the launching point, from the island of Tinian, of the B-29 bombers, the “Enola Gay” and the “Bockscar.”⁸⁴ Thus, the strategic geographic location of the Commonwealth is yet another reason why the Commission should not permit foreign control of the Commonwealth telecommunications network.

D. The Caselaw Cited By PTI Fails To Support A Grant Of Its Petition.

PTI cites several instances in which the Commission has granted 100% indirect foreign ownership of common carrier radio licenses.⁸⁵ Additionally, PTI cites to a single instance in

⁸¹ For instance, in an article entitled *U.S. Military Build-up on Mariana Island of Tinian*, Air Force Commander Colonel Mark Gehri noted the strategic importance of the Commonwealth in maintaining peace and freedom in the Pacific as it is the farthest point the U.S. Military can go in the region, enabling America to strike anyone who would challenge the Pacific. See <http://www.cosmos.ne.jp/~miyagawa/nagocnet/data/saipan1e.html> (“*U.S. Military Build-up on Mariana Island of Tinian*”) (visited June 4, 2003). Additionally, after gaining control of the islands of the Commonwealth in 1944 through military victories in World War II, the United States kept the islands under military control until 1971 “because of their strategic significance.” See http://www.census.gov/population/www/proas/pr_ia_hist.html (visited June 4, 2003). Further, the Central Intelligence Agency currently lists the Commonwealth as a “strategic location in the North Pacific Ocean.” See <http://www.cia.gov/cia/publications/factbook/geos/cq.html> (visited June 4, 2003).

⁸² See <http://www.wcrl.ars.usda.gov/cec/java/lat-long.htm> (visited June 4, 2003).

⁸³ See *U.S. Military Build-up on Mariana Island of Tinian*.

⁸⁴ See http://www.nasm.si.edu/nasm/aero/aircraft/boeing_b29.htm (visited June 4, 2003).

⁸⁵ Petition at 5.

which the Commission approved foreign ownership of an Incumbent Local Exchange Carrier.⁸⁶ The cited cases apply to competitive mainland U.S. markets where compelling national security and public safety concerns did not exist, and do not justify a grant of the Petition.

Of the five cases cited by PTI, four involve radio licenses held by carriers in competitive markets.⁸⁷ As shown *supra* at 21-23, the Commonwealth's telecommunications market is not competitive. Only the fifth case cited to by Applicants, Global Crossing's acquisition of Frontier Communications, involves a transfer of a LEC and in that case the Commission approved the transaction while specifically taking into account the fact that ample competition was present in the market.⁸⁸ The opposite is true in the instant proceeding. In short, none of the markets in any of the examples cited to by Applicants were controlled by a monopoly LEC, such as is the case in the CNMI market, and none of the examples contained the unique and compelling national security and public safety concerns which are present in the instant proceeding.

V. THE PROPOSED TRANSACTION STANDS TO UNDERMINE RATE INTEGRATION IN THE COMMONWEALTH.

If approved in its current form, the proposed transaction, has the ominous potential to result in the loss of important products and services as well as comparatively low per minute pricing, thereby undermining rate integration in the Commonwealth in violation of Section 254(g) of the Act.⁸⁹ Since this would not be in the public interest, the Applications should be denied.⁹⁰

⁸⁶ Petition at 6.

⁸⁷ *Id.* at 5.

⁸⁸ *In re Global Crossing Ltd. and Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended*, Memorandum Opinion and Order, 14 FCC Rcd 15911, 15917 (1999). ("no allegation or evidence in the record that the companies are among a limited number of significant potential competitors in each other's markets.")

⁸⁹ See 47 U.S.C. § 254(g).

Sections 214(a) and 310(d) of the 1934 Act require the Commission to determine that the proposed transfers of control serve the public interest prior to issuing any order approving the Applications.⁹¹ In evaluating whether the public interest is served by the transfers of control, the Commission must first find that they advance the broad goals of the Act which include “the implementation of Congress’ pro-competitive, de-regulatory national policy framework”, as well as “preserving and advancing universal service.”⁹² Rate integration is an essential component of the principle of universal service, having been included as subsection (g) under Section 254 of the 1996 Act. Without rate integration, consumers located in insular and high cost areas of the Nation would be charged significantly higher rates for telecommunications services than rates charged for similar services in urban areas. Such a result would be in direct conflict with Section 254(g). Thus, the Commission’s public interest determination in the instant proceeding must include an analysis of the effect of the merger on rate integration.

Such an analysis is particularly important here since the buyer of the Commonwealth telephone network under the proposed transaction lacks corresponding operations in the mainland U.S. through which rates can be systematically integrated. Verizon, the ultimate parent

⁹⁰ Alternatively, should the Commission decide to approve the Applications, it should condition any approval on the requirement that PTI sustain all existing MTC and GTE Pacifica product offerings at pricing not to exceed existing rate levels indefinitely. Further, any approval should be conditioned on a reaffirmation that PTI is required to integrate its rates with mainland U.S. rates notwithstanding its lack of a mainland U.S. operating company. This second condition is simply a reflection of the rate integration policy. *See, e.g., Geographic Rate Averaging Order* at 9586.

⁹¹ *See* 47 U.S.C. §§ 214(a) and 310(d). *See also in re Applications For Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee, Memorandum Opinion and Order* in CC Dkt. No. 98-25, FCC 98-276 (1998); *Bell Atlantic/NYNEX Order* at 20007-20008.

⁹² *Bell Atlantic/NYNEX Order* at 19987.

company of MTC and GTE Pacifica, has substantial operations both in the mainland U.S. and, through MTC and GTE Pacifica, in the Commonwealth, facilitating integration of rates across corporate affiliates in a manner that has introduced service offerings and pricing to the Commonwealth market which are comparable to those available in the mainland U.S. This will not be the case with PTI, which will have no mainland U.S. operations. Exactly how this entity will integrate its rates must be carefully considered by the Commission as part of its analysis of the effect of the transaction on rate integration.

Since MTC is both the dominant off-island service provider and, through Verizon, the only nationwide provider with a recognizable presence in the Commonwealth, its divestiture from Verizon would mean the loss of the benchmark integration rate for the Commonwealth, potentially undermining comparatively low per minute rates. The sale of MTC to PTI will also invariably mean the loss of attractive Verizon calling plans stemming from the integration of Verizon products and services.

MTC has sustained drastically lower rates since rate integration took effect in 1997 by attempting to incorporate rates with those of its mainland operations.⁹³ The rates established by MTC, as the dominant off-island service provider, serve as the benchmark integration rate for the handful of small competitors that offer long distance services in the Commonwealth and, in effect, “disciplines the marketplace.” The sale of MTC to PTI poses the very real threat that the benchmark rate (along with important product offerings) established by MTC will be abandoned and domestic, interexchange rates for basic services to the mainland U.S. will increase. If this occurs, rate integration would be undermined in the Commonwealth.

⁹³ See *infra* note 94. In large measure, this has been due to the fact that the company 1) has a mainland U.S. operation and rate base; and 2) has established telecommunications technical and managerial expertise. PTI, by contrast, lacks both of these characteristics.

Were the loss of a benchmark integration rate for the Commonwealth to compromise the rate integration policy, significant public interest benefits would be lost. Approximately 69,221 U.S. citizens in the Commonwealth now benefit from, and depend upon, Verizon calling plans and comparatively low per minute pricing. Since the implementation of rate integration in the Commonwealth in 1997, per minute rates for calls between the Commonwealth and other U.S. points have fallen drastically to a small fraction of their pre-integrated levels.⁹⁴ The Commission itself accurately forecasted just before rate integration was implemented in the Pacific insular areas that “subscribers in these points will experience significant benefits from rate integration.”⁹⁵ The loss or erosion of integrated rates would harm consumers⁹⁶ and businesses; setback the close commercial and social ties which integrated rates have facilitated between the Commonwealth and mainland U.S.; and weaken usage of telemedicine, distance learning and Internet service in the Commonwealth.

The proposed transaction has the very real potential to result in the loss of important products and services in the Commonwealth as well as comparatively low per minute rates, in contravention of Section 254(g). Thus, it is not in the public interest.

⁹⁴ For example, AT&T’s first minute standard residential dial station rate to the Commonwealth dropped from \$2.15 to \$.29. See *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 11812, 11828, para.32, n.90 (1997).

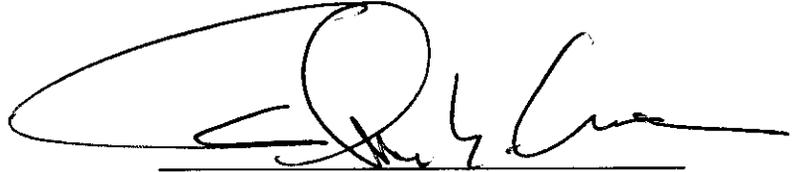
⁹⁵ *Id.*

⁹⁶ The impact would be acute as *per capita* income levels in the Commonwealth are among the lowest in the Nation. See Exhibit B at 3.

VI. CONCLUSION

For the foregoing reasons, the Commission must deny the Petition and the Applications, or, alternatively, designate the matter for hearing.

Respectfully submitted,



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June 9, 2003

IB Dkt. No. 03-115
Office of the Governor
June 9, 2003

EXHIBIT A

AFFIDAVIT

State of _____ :

:

ss.

County of _____ :

Robert Schwalbach, Affiant, being duly sworn according to law, deposes and says that: I am a Senior Policy Advisor in the Office of the Governor, Commonwealth of the Northern Mariana Islands ("Commonwealth"), and am fully authorized to execute this affidavit on behalf of the Office of the Governor.

A credit report prepared by International Company Profile shows that Citadel Holdings Inc. ("Citadel") reported being involved in the purchase of controlling shares of Micronesian Telecommunications Corporation ("MTC") in 2002. That credit report also shows that Citadel suffered losses in the amount of 534,929,865 Pesos in the year 2000, recouping only approximately 10 percent of that total with 2001's before tax profits.

MTC (and its wholly-owned subsidiary, GTE Pacifica Inc. ("GTE Pacifica")) are the dominant providers of virtually all forms of telecommunications services in the Commonwealth. Both the small population and physical size of the Commonwealth have historically served to sustain a monopoly telecommunications environment and to limit the emergence of viable competition.

To date, MTC is the only company authorized under the Commonwealth's local telecommunications law to provide local service and apparently has never entered into an

interconnection agreement under the 1996 Act. MTC is also the only provider of exchange access services. Local service between the islands of Saipan, Tinian, and Rota is provided over a fiber optic submarine cable owned exclusively by GTE Pacifica.

MTC or Verizon Micronesia is well-established as the dominant cellular provider in the Commonwealth. While Verizon Micronesia is the wireline provider, Saipancell (or Guam Cellular and Paging, Inc.) is the non-wireline provider. Saipancell, however, has a subscriber base which is significantly smaller than that of Verizon Micronesia.

Only limited domestic and international off-island competition exists in the Commonwealth. GTE Pacifica also controls access off the islands of the Commonwealth by means of its exclusive ownership of C-band transmit/receive earth stations as well as a fiber optic submarine cable connecting the Commonwealth with Guam and, in turn, the rest of the world. MTC is also the predominant supplier of backbone Internet services and the dominant Internet service provider in the Commonwealth.

Since the Commonwealth's telecommunications network is a monopoly network, its critical infrastructure services, including 911 public safety services and other vital private sector services, are largely interdependent upon that network.

The U.S. military commits significant resources to its activities in the Commonwealth. The federal government leases approximately 18,182 acres of land in the Commonwealth, which is used for military purposes. The U.S. Navy and Marines use some of this land to conduct joint training exercises, including the use of troops, ships and aircraft, to maintain the combat readiness of "forward deployed" military units. Significantly, the Commonwealth island of Parallon de Medinilla is the only live-fire training location in the western Pacific. In addition,

several military transport ships are routinely positioned just off the coast of Saipan, available for deployment wherever strategically needed in the region.

The federal government itself has a significant presence in the Commonwealth. The following U.S. government entities have Commonwealth office locations: Department of Defense, Department of Interior, Department of Justice, Department of Transportation, Department of Labor, Department of Agriculture, Social Security Administration, U.S. National Labor Relations Board, U.S. Postal Service, U.S. Probation, U.S. District Court, and International Broadcasting Bureau. There can be little doubt that these government offices rely heavily on the Commonwealth telephone network. While the military maintains its own communications capabilities, certain functions and federal government operations in the Commonwealth appear to depend on the monopoly telecommunications network.

The International Broadcasting Bureau owns and operates 3 transmitters in Saipan and 8 in Tinian that are used by Voice of America ("VOA") and Radio Free Asia ("RFA") to rebroadcast signals within the Pacific Rim. These transmitters are independent of the monopoly telecommunications network; however, both VOA and RFA appear to depend upon the network for communications within the Commonwealth and the outside world.

Verizon, the ultimate parent company of MTC and GTE Pacifica, has substantial operations in both the mainland U.S. and, through MTC and GTE Pacifica, in the Commonwealth, facilitating integration of rates across corporate affiliates in a manner that has introduced service offerings and pricing to the Commonwealth market which are comparable to those available in the mainland U.S.

I attest under penalty of perjury that the foregoing is true and correct as to the best of my knowledge, information, and belief.

[Handwritten Signature]

Signature of Affiant

Sworn and subscribed before me this 6th day of June, 2003.

[Handwritten Signature]

Signature of Official administering oath

My commission expires 9/6/04.



NACE N. SOALABLAI
NOTARY PUBLIC
Commonwealth of the Northern Mariana Islands
My Commission expires: 9/6/04

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EXHIBIT B

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

I. Background

A. Political Relationship with the United States

In 1947, the Commonwealth became part of the United Nations' Trust Territory of the Pacific Islands ("TTPI"), which was administered by the United States until 1976¹ when the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States" was approved by both a United Nations supervised plebiscite of Commonwealth residents and subsequently by Congress.² The Commonwealth is now a self-governing commonwealth in political union and under the sovereignty of the United States. Pursuant to Presidential Proclamation No. 5564 (implemented on November 3, 1986), all persons born in the Commonwealth both before and after the Covenant took effect are citizens of the United States.³ The TTPI was officially terminated on December 22, 1990 by the Security Council of the United Nations.

B. Government

The Commonwealth adopted its own constitution in 1977.⁴ The constitution provides for a governmental system analogous to that of a typical American state: the executive branch is represented by the Governor and Lieutenant Governor, the legislative branch by a House of Representatives (18 members) and a Senate (9 members), and the

¹ U.S. Department of the Interior, Office of Insular Affairs website, <http://www.doi.gov/oia/facts2000.html> (visited May 27, 2003) ("OIA website").

² See 48 U.S.C. § 1801 note (Supp. 1999), approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263 ("Covenant"). Under the Covenant, the United States has a special obligation to assist the Commonwealth in achieving economic development. Section 701 of the Covenant states that "[T]he Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop economic resources needed to meet the financial responsibilities of local self government."

³ See OIA website.

⁴ *Id.*