

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re Applications of)	
)	
VERIZON COMMUNICATIONS INC.,)	
Transferor)	
)	
and)	WCB Docket No. 06-113
)	
AMÉRICA MÓVIL, S.A. DE C.V.,)	
Transferee)	
)	
for Consent to the Transfer of Control of)	
Entities Holding Commission Licenses and)	
Authorizations Pursuant to Sections 214 and)	
310(d) of the Communications Act.)	

**PETITION TO DENY
OF THE
TELECOMMUNICATIONS REGULATORY BOARD
OF
PUERTO RICO**

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Summary

The Telecommunications Regulatory Board of Puerto Rico (“the Board”) asks the Commission to deny the applications of América Móvil, S.A. de C.V. (“América Móvil”), Verizon Communications Inc. and Telecommunicaciones de Puerto Rico (“TELPRI”) seeking approval of the transfer of control of TELPRI from Verizon to América Móvil. The Board, which has the responsibility in Puerto Rico for promoting competition and protecting the consumer finds the purported public interest benefits of the transaction to be hollow and meaningless with no specifics or commitments. There are no credible tangible benefits for the consumer in Puerto Rico described in the application, and there is a direct adverse effect if PRTC were to become a litigation magnet as the only U.S. asset of América Móvil, a Mexican company.

The Board suggests remediation and recommends that the FCC condition approval of the transfer upon PRTC adhering to specific quality of service measurement and reporting regulations. These regulations, which would be phased in over time, are both reasonable and achievable. They were prepared in consultation with Telcordia Technologies Inc, and involve both retail and wholesale services and are designed to assure quality of service to Puerto Rico consumers. In addition, the Commission should require specific infrastructure investment to improve telephone penetration rates in Puerto Rico.

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PETITION TO DENY

The Telecommunications Regulatory Board of Puerto Rico (“Board”), by its attorneys, hereby petitions for denial of the applications of América Móvil, S.A. de C.V. (“América Móvil”), Verizon Communications Inc. (“Verizon”), and subsidiaries of Telecomunicaciones de Puerto Rico, Inc. (“TELPRI,” and together with América Móvil and Verizon, the “Applicants”), seeking Federal Communications Commission (“FCC” or “Commission”) approval of the transfer of control to América Móvil of TELPRI and its wholly-owned subsidiaries which hold certain FCC licenses and authorizations (“the Application”).¹ These subsidiaries are PRT Larga Distancia (“PRT LD”) a long distance carrier, and the Puerto Rico

¹ The applications were filed pursuant to Sections 214 and 310(d) of the Communications Act, 47 U.S.C. §151 et seq. (“Act”).

Telephone Company (“PRTC”), the Incumbent Local Exchange Carrier (“ILEC”) in Puerto Rico. The Board respectfully requests that the Commission deny the Application unless a grant is conditioned on América Móvil pledging to continue the progress PRTC has made in improving telecommunications services in Puerto Rico by adhering to reasonable and achievable performance standards designed to assure quality of service for Puerto Rico consumers and by committing to specific infrastructure investment to improve telephone penetration rates.

I. BACKGROUND

A. The Board’s Responsibility Under the Puerto Rico Act

In 1996, recognizing the fundamental changes in telecommunications regulation occurring in the United States, the Legislature of Puerto Rico passed Law 213, the Puerto Rico Telecommunications Act (“Puerto Rico Act”) to establish the Board and to endow the Board with the tasks of ensuring a pro-competitive telecommunications market in Puerto Rico and of protecting the rights of consumers. The Puerto Rico Act includes a detailed statement of telecommunications public policy on Puerto Rico, including policies to:

- (d) establish specific, predictable, and sufficient support mechanisms to preserve and develop universal service;

* * *

- (f) ensure the availability of the broadest range of competitive possibilities in the offering of telecommunications services and facilities;

- (g) promote competition and use the market forces as key factors in determining the prices, terms, availability and conditions of the service;

* * *

- (q) give access to telecommunications services that are reasonably comparable to those provided in urban areas to consumers throughout the island, including low-income

persons and those who reside in rural areas or in areas where access to such services is costly;

- (r) guarantee the enjoyment of the service offered, without fear of unreasonable interruptions or interference;²

Since its creation, the Board has undertaken major initiatives to inform the Puerto Rico population of telecommunications opportunities; has presided over fourteen interconnection arbitrations; has approved forty interconnection agreements; has conducted a major proceeding on reducing intrastate access rates; has consistently advocated on behalf of the telecommunications consumers of Puerto Rico and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico.³ Throughout these activities the Board has consistently followed a pro-competitive, pro-consumer path.

The Board's authority to act for the benefit of the consumers of Puerto Rico has been confirmed by numerous courts. *See, e.g., Puerto Rico Tele. v. Telecommunications Reg. Bd.*, 189 F.3d 1, 7 (1st Cir. 1999) (confirming the Board's authority to act for the benefit of consumers in Puerto Rico); *WorldNet Telecommunications, Inc. v. Telecommunications Reg. Bd. of Puerto Rico*, Case No. 04-2051, Report and Recommendation at 34-48 (Oct. 5, 2005) (upholding Board's authority to impose performance measures).

During its ten-year history, the Board has overseen and managed a transition from a telecommunications market dominated by a state-owned monopoly to a market characterized by competition and increasing sensitivity to the right of consumers to expect consistent high-quality service. Since the creation of the Board, PRTC, once a government-owned ILEC, has been substantially privatized. Since privatization, progress has been made on improving the quality of

² 27 L.P.R.A. § 265.

³ Currently, there are ten active interconnection agreements in Puerto Rico.

service provided both to consumers and to competing carriers. It is to ensure the continuation of this progress that the Board asks the FCC to condition any transfer of control of PRTC on the achievement of specific, reasonable and achievable performance measurements.

B. The Commission’s Review of the Transfer to GTE

In 1999, in the first step in the privatization of PRTC, the Commission granted applications filed by PRTC and Telefonica de Puerto Rico, Inc. (“TELPRI”) to transfer control of licenses and an international resale authorization to GTE Holdings (Puerto Rico) LLC (“GTE”).⁴ GTE proposed to acquire 51 percent plus one share of TELPRI (at that time a wholly owned subsidiary of the Puerto Rico Telephone Authority, a government entity). In addition, shares of TELPRI would be transferred by GTE and PRTA to Popular Inc., to private investors, and to a newly created PRTC employee stock ownership plan.⁵ At the close of the transaction, GTE would own about 40% of PRTC, with the opportunity to acquire more stock from PRTA at a future date. In addition, GTE would exercise control over the companies. The Commission reviewed the applications under the requirements imposed by sections 214(a) and 310(d) of the Communications Act of 1934, which requires the applicants to “demonstrate that the transfer of the subject licenses and authorization will serve the public interest, convenience, and necessity.”⁶ In reviewing and considering the 1999 transfer application, the Commission held that it “must weigh the potential public interest harms of the transaction against the potential public interest

⁴ 14 FCC Rcd. 3122 (Feb. 12, 1999).

⁵ *Id.* at ¶ 6. Popular Inc. (Popular) is the holding company of Banco Popular de Puerto Rico, one of the largest financial institutions in Puerto Rico.

⁶ *Id.* at ¶ 1.

benefits. . . . Where necessary, the Commission can attach conditions to the transfer of authorizations or licenses to ensure that the public interest is served by the transaction.”⁷

The Commission conditioned its approval of the transfer of licenses to GTE upon continued compliance with a prior order, which required PRTC to comply with equal access, network information disclosure, customer proprietary network information and service data reporting requirements.⁸ The Commission also conditioned its approval upon GTE’s commitment to file with the International Bureau and with certain carriers semiannual reports.⁹

The Commission also considered that GTE had pledged not to raise rates for basic residential service for three years; committed to continuing PRTC’s investment of \$1 billion over five years to improve telephone service in Puerto Rico; and committed to improve PRTC’s overall service.¹⁰ The Commission relied upon a statement from GTE that it had “specifically committed to invest more than \$850 million in facilities and services during the succeeding five years and projected an investment of more than \$300 million of unallocated funds to permit PRTC to react in a timely fashion to market conditions or meet unanticipated expenses, and that this investment will promote upgrades in PRTC’s facilities and improvements in services.”¹¹

In granting the 1999 application, the Commission focused specifically on GTE’s commitment that it would improve service quality by “improving customer service, network management, and long distance, wireless and internet services.”¹²

⁷ *Id.* at ¶ 13 (quoting *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd. 18025, 18030-32 (1998)).

⁸ *Id.* at ¶ 32.

⁹ *Id.* at ¶ 38 n.98.

¹⁰ *Id.* at ¶¶ 50, 62.

¹¹ *Id.* at n.138 (citing Declaration of Alfred C. Glammarino, filed as an Exhibit to the Joint Application).

¹² *Id.* at ¶ 54.

C. Bell Atlantic/GTE Merger

Slightly more than a year after GTE acquired control of PRTC, the Commission approved the merger of GTE and Bell Atlantic Corporation.¹³ The Commission found that the merger of the two companies would harm consumers of telecommunications services, absent conditions.¹⁴ However, the Commission found that voluntary merger conditions by GTE and Bell Atlantic, as well as conditions imposed by the Commission, would mitigate the public interest harms of the merger, and would provide countervailing public interest benefits.

Of particular interest in the instant proceeding were conditions imposed to assure quality of service on both a retail and wholesale level. With regard to the latter, the parties voluntarily committed to a Carrier to Carrier Performance Plan, including Performance Measurements.¹⁵ With regard to the former, the Commission required that the merged company report benchmark and service quality information

“as a safeguard against potential deterioration in Bell Atlantic’s or GTE’s quality of service as a result of the merger, and *to promote affirmative service quality improvements*.”¹⁶

The parties were required to report to the Commission, and post on their website or report to relevant state commissions, quarterly service quality reports in accordance with the National Association of Regulatory Utility Commissioners (“NARUC”) Technology Policy Subgroup’s November 1998 “Service Quality White Paper.”¹⁷

¹³ 15 FCC Rec. 14032 (2000). The merged company eventually became known as Verizon Communications Inc. (“Verizon”), one of the parties to the instant application.

¹⁴ *Id.* at ¶ 4.

¹⁵ *Id.* at ¶ 247, 279-284, Appendix D at ¶ 16 and Attachment A.

¹⁶ *Id.* at ¶ 328.

¹⁷ *Id.*

Thus, in connection with the merger that created one of the parties to the instant application, the Commission found it necessary to apply service quality conditions on both a retail and wholesale level. Further, these conditions included a compliance and enforcement program which required independent auditing and self-executing remedies for failure to perform.¹⁸

D. The Instant Application

The Applicants have filed three applications requesting consent to the transfer of control of TELPRI to América Móvil, relating to domestic and international Section 214 authorizations and Title III radio station authorizations. In addition, the Applicants have filed a Petition for Declaratory Ruling pursuant to Section 310(b)(4) of the Act requesting that the proposed foreign ownership structure in excess of 25 percent be approved.

In support of the Application, Verizon and América Móvil filed a “Public Interest Statement” with the Commission on May 9, 2006. According to the Public Interest Statement, Puerto Rican consumers will benefit from the transaction in three ways: (1) América Móvil has developed beneficial operating experience and a business approach in offering service throughout the Americas; (2) América Móvil’s economies of scale and scope; and (3) América Móvil’s experience in serving consumers in other countries.¹⁹

The Public Interest Statement states that, “when entering new markets, América Móvil focuses on developing a fully integrated telecommunications services provider that can offer a wide array of products and on expanding the coverage of telecommunications services to provide

¹⁸ *Id.* at ¶¶ 332-348.

¹⁹ Public Interest Statement at 2.

access to as many consumers as possible.”²⁰ It adds that, “América Móvil’s experience in the provision of telecommunications service throughout the Americas will enable it to build upon Verizon’s achievements in expanding the availability and scope of telecommunications services for consumers in Puerto Rico. . . . It will expand both the coverage of telecommunications services and the service options available to [Puerto Rico] consumers.”²¹

II. DISCUSSION

A. The Purported Public Interest Benefits Are Meaningless

For some time, the Board has been concerned about the quality of service on Puerto Rico. The Board believes that there has been some improvement in quality of service in the seven years since PRTC was privatized. However, with the transfer of control of PRTC to a foreign entity, América Móvil, the Board is again concerned about the possibility of deterioration in service levels and about lack of attention to improvements.

The Application gives little comfort. The Applicants suggest three more-or-less generic public interest benefits, but offer little specifics or commitments. The first purported benefit, the operating experience and business approach of América Móvil, might be good for the Puerto Rico consumer, but the only specific commitment given is the assurance of 3G service for wireless subscribers and a promise to “examine” the best means of achieving this upgrade.²² Given the demand and competition for wireless service in Puerto Rico, it seems clear that this purported “benefit” is inevitable, no matter who controls PRTC. Claims of superior operating experience and business approach are of little public benefit without some tangible example of how these will be valuable to the Puerto Rico consumer. Further, that example should be in the

²⁰ *Id.* at 3.

²¹ *Id.* at 5-6.

²² Public Interest Statement at ¶ 4.

form of a specific commitment, not mere generalities or vague promises to “examine” something. Moreover, América Móvil’s operating experience and business approach has been almost entirely in the field of wireless communications.²³ In fact, América Móvil has *no* experience operating as an ILEC in the United States. The Application fails to demonstrate that América Móvil’s experience in the wireless arena will be of any tangible public benefit to PRTC’S wireline subscribers.

Second, the Application boasts of the economies of scale that can be provided by a global provider of communications services. This assures “maximum leverage” in the form of favorable prices for network equipment, etc.²⁴ Again, no commitment is given and the application itself admits that its global strategy is adjusted to the specifics of each national market. In that case, and understanding that PRTC would be the only U.S. company owned by América Móvil, there seems no benefit to economies of scale that are not presently enjoyed by a subsidiary of Verizon. Indeed, given the overwhelming preponderance of wireless customers, it is not unreasonable to imagine that these global economies are completely irrelevant to wireline subscribers.

Third, the Application claims that América Móvil’s experience in providing service in less affluent parts of the world will help it build upon “Verizon’s achievements in expanding the availability and scope of telecommunications services for consumers in Puerto Rico.”²⁵ América Móvil claims that it brings to Puerto Rico a history of using “scale, scope and other resources” to

²³ As of December 31, 2005, América Móvil had over 93.3 million wireless subscribers and only 2 million wireline subscribers. América Móvil SEC Form 6-K, June 30, 2006, p.2.

²⁴ Public Interest Statement. at ¶ 5.

²⁵ *Id.* at ¶ 6.

overcome the challenges presented by offering telecommunications in locations that share many characteristics of Puerto Rico.²⁶ Most importantly, América Móvil commits to

“expand both the coverage of telecommunications services and service options available to consumers”²⁷

But again, no specifics. The Applicants fail to explain how they intend to expand the coverage of services, when this has been a chronic problem in Puerto Rico for decades. The penetration rate is currently about 60.9%, despite years of effort by the Board and PRTC itself.²⁸ Similarly, a commitment to expand “service options” is meaningless unless specific services are identified, a timeline proposed and rates and charges identified. Offering a highly profitable service that only a very few consumers can afford is hardly a public benefit.

In sum, the Application offers a Public Interest Statement that is nothing but meaningless platitudes, devoid of specifics, tangible benefits and real commitments. This is in contrast to the original privatization of PRTC in which GTE specifically committed to investing \$1 billion over five years to improve telephone service.²⁹ GTE also committed to no basic residential rate increases for 3 years, Internet access at discounted rates for educational institutions and reasonable job security for PRTC employees. Even with these specific commitments, consumers were concerned. But the FCC found that GTE’s commitments were “sufficiently detailed and credible.”³⁰

The same cannot be said for América Móvil.

B. There Is A Direct Adverse Effect

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Attachment A, a February 2006 analysis by PRTC of households with a PRTC line.

²⁹ 14 FCC Rcd. 3122 at ¶ 50.

³⁰ *Id.* at ¶ 58.

The Applicants claim that, in addition to the noted public benefits of the transaction, there will be no countervailing adverse effects on competition. Notwithstanding the competitive analysis, the transaction is not completely devoid of negative consequences.

As the transaction is structured, TELPRI and its subsidiaries, PRTC and PRT LD, will become subsidiaries of Sercotel S.A. de C.V. (“Sercotel”) a Mexican corporation and subsidiary of América Móvil.³¹ América Móvil is a Mexican corporation whose American Depositary Shares are publicly traded on the New York Stock Exchange. Each year in its annual report filing with the U.S. Securities and Exchange Commission, América Móvil reveals risks relating to its operations. Included is the following:

América Móvil is organized under the laws of Mexico, with its principal place of business (*domicilio social*) in Mexico City, and most of our directors, officers and controlling persons reside outside the United States. In addition, *all or a substantial portion of our assets and their assets are located outside of the United States*. As a result, it may be difficult for investors to effect service of process within the United States on such persons *or to enforce judgments against them*, including in any action based on civil liabilities under the U.S. federal securities laws.³²

Upon the consummation of this transaction, it will no longer be the case that all – or a substantial portion – of América Móvil assets will be located outside the United States. One particular asset, the Puerto Rico Telephone Company, is located in United States territory and may become a target for the enforcement of judgments against América Móvil. While not all lawsuits against América Móvil or its principals will be meritorious or successful, the addition of a substantial asset in a U.S. jurisdiction creates a magnet for litigation and puts the assets of the

³¹ América Móvil owns 99.9 percent of Sercotel. See Petition for Declaratory Ruling at 7.

³² América Móvil, Form 20-F, June 30, 2006 at 12 (emphasis added).

Puerto Rico Telephone Company in jeopardy. This certainly should be considered a possible adverse effect of the transaction.

C. The Commission Should Apply Remediative Conditions

Because the public interest benefits offered by the Applicants are so hollow, and because there is a direct adverse effect and other adverse consequences, the Commission cannot find this application to be in the public interest, and cannot grant it. Remediation is required. The Board believes that remediation in the form of specific steps to improve both retail and wholesale service on Puerto Rico is required. This will benefit both the residential and business consumer, and improve the ability of competitors to compete.

The Board has consulted with Telcordia Technologies Inc. (“Telcordia”) which has developed Proposed Regulations for “Quality of Service” metrics that set forth the measures, definitions, standards, the business rules and the penalty rules to measure overall performance of the network and related services that affect the customer experience. The Regulations address and propose three groups of quality performance measures:

Retail –Local Exchange, Wholesale – Local Service and Wholesale – Interexchange Switched and Special. These have been taken from various NARUC, FCC and state quality measurement programs. In sum, these performance measures are reasonable and achievable, in time, by any company willing to improve service quality to a level enjoyed by other U.S. consumers. The Board expects to issue a rulemaking to consider the Telcordia Proposed Regulations and get input from carriers, providers and the general public in accordance with the Administrative Procedure Act of Puerto Rico. This rulemaking will consider the applicability of the performance measures to all telecommunications service providers in Puerto Rico, not only to

the Puerto Rico Telephone Company. Nevertheless, application of these performance measures to PRTC should proceed immediately.

We include the Proposed Regulations as Attachment B and ask that the Commission require compliance with these Regulations for Quality of Service Measurement and Reporting as a condition of grant of the instant application. In addition, the Commission should require specific investment commitments from América Móvil to address telephone penetration issues.

III. CONCLUSION

Because there are no detailed and credible public benefits to this transaction and because there are adverse consequences, the Commission should deny the Application unless remediative conditions are imposed. Those conditions should consist of reasonable and achievable performance measures designed to assure quality of service to Puerto Rico consumers and specific commitments on infrastructure investment to improve telephone penetration.

Respectfully submitted,

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Attachment A - Telephone Penetration
Attachment B - Proposed Regulations for Quality of Service Measurement and Reporting