

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

In the Matter of

Combined Application for Consent to the Transfer of Control of Telecomunicaciones de Puerto Rico, Inc., Holder of Domestic and International Section 214 Authorizations, from Verizon Communications Inc. to América Móvil, S.A. de C.V.

DA 06-1245

WT Docket No. 06-113

Centennial Communications Corp. Petition to Deny

1. Introduction and Summary.

Centennial Communications Corp. (“Centennial”) respectfully petitions the Commission to deny the combined application to transfer control of domestic and international Section 214 authorizations from Verizon Communications, Inc. (“Verizon”) to América Móvil, S.A. de C.V. (“América Móvil”).¹ Alternatively, the transaction could be permitted to proceed if certain conditions were imposed, in the public interest.²

Basically, in this transaction Verizon proposes to sell control of the Puerto Rico Telephone Company (“PRTC”), the incumbent local exchange carrier (“ILEC”) serving Puerto Rico, to América Móvil, a Mexican corporation. This is unprecedented in that, as far as Centennial can determine, it is the first time the Commission has been confronted with the prospect of an ILEC being transferred to a foreign entity.

¹ See Public Notice, Pleading Cycle Established, América Móvil, S.A. de C.V., Verizon Communications Inc. , AND Subsidiaries of Telecomunicaciones de Puerto Rico, Inc. Seek FCC Consent To Transfer Control Of Licenses And Authorizations And Request A Declaratory Ruling On Foreign Ownership, DA 06-1245 (June 14, 2006) (setting July 14, 2006 deadline for petitions to deny). Verizon and América Móvil are referred to herein as the “Applicants.”

² In accordance with Section 1.939(d) of the Commission’s rules, 47 C.F.R. § 1.939(d), this Petition to Deny is supported by the attached Affidavit of William L. Roughton, Jr., Centennial’s Vice President – Legal & Regulatory Affairs.

Centennial is not opposed to foreign investment in United States telecommunications markets, either in general or with respect to investments in ILECs. Centennial itself has invested in foreign telecommunications markets, and appreciates and supports the Commission's "open entry" policies with respect to foreign investment.³ Nonetheless, the distinctive nature of this transaction – the first foreign acquisition of a major ILEC⁴ – warrants some special consideration.

Centennial has a unique perspective on the potential acquisition of PRTC, in that we have been competing with PRTC in both landline and wireless markets for nearly ten years, since shortly after the passage of the Telecommunications Act of 1996 (the "1996 Act").⁵ In light of our long experience competing with PRTC – and, at times, fighting to require PRTC to comply with its legal obligations – Centennial is concerned that without the imposition of specific, verifiable and enforceable conditions, the strong public interest in robust landline and wireless competition in Puerto Rico will be endangered. Consequently, the application should be denied unless certain conditions are imposed – either by voluntary agreement of the Applicants or by Commission directive.⁶

Specifically, without the following three conditions, the proposed transaction is not in the public interest and should be disallowed:

- *First*, the Commission should require PRTC to submit to monitoring and reporting by an outside entity to ensure compliance with its interconnection and

³ See generally *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997).

⁴ With approximately 1.1 million access lines (see Overview of Transaction/Petition for Declaratory Ruling/Request for Procedural Considerations (May 9, 2006) ("Overview of Transaction") at 5) PRTC is clearly among the handful of largest ILECs – or would be if it were viewed as a separate firm.

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at scattered sections of* 47 U.S.C. §§ 151 *et. seq.*

⁶ Because Centennial both competes with PRTC and obtains various interconnection arrangements from it – arrangements that are essential to Centennial's business – Centennial is plainly a "party in interest" with respect to this transaction within the meaning of Commission Rule 1.939(d).

related obligations under the 1996 Act and analogous Puerto Rico telecommunications laws.⁷

- **Second**, to avoid the potential for cross-subsidy of PRTC's competitive services with revenues from captive landline residence customers, in violation of 47 U.S.C. § 254(k) and analogous provisions of Puerto Rico law, the Commission should require that PRTC not increase residential rates for at least two calendar years following the close of the transaction, with an audit to confirm the absence of cross-subsidies for at least three calendar years following closing.
- **Third**, to eliminate any potential law enforcement/national security concerns that could arise from a foreign entity acquiring control of a major ILEC, PRTC should be required to waive any long-term service commitments in contracts with any U.S. government agency, so that the affected entities may protect their interests without economic penalty, including, if they are so inclined, by deciding to obtain service from firms under the control of domestic United States entities.

As described below, imposing these conditions is fully consistent with the standards the Commission has articulated in connection with evaluating proposed mergers, acquisitions, and transfers of control.

2. The Commission's Standard for Imposing Conditions.

The Commission has repeatedly observed that its task in evaluating proposed mergers and acquisitions is "whether the proposed transfer of control ... will serve the public interest, convenience, and necessity."⁸ Assuming that the transaction literally "complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules,"⁹ the key consideration is whether the transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."¹⁰ Stating the relevant considerations more fully:

Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant

⁷ See Law 213 of September 12, 1996, 27 L.P.R.A. §265 *et seq.* ("Puerto Rico Law 213").

⁸ *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) at ¶ 16 ("*Verizon-MCI Order*") (footnote omitted).

⁹ *Id.*

¹⁰ *Id.*

markets [and] accelerating private sector deployment of advanced services Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers. ...

In determining the competitive effects of the merger, our analysis is informed by, but not limited to, traditional antitrust principles. The Commission and the DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of the DOJ. ... The Commission ... is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players. In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition. ...

Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.¹¹

Here, the need for conditions does not arise from an antitrust-like review of increases in market concentration. Nor is it required to “remedy pre-existing harms.” To the contrary, the key factor justifying conditions here is the need to ensure that the special duties that apply to ILECs are properly considered, appreciated, and fulfilled by PRTC’s new owners. This is unique to this transaction because – as noted above – this is the first time that the Commission has considered the sale of an ILEC to a non-United States entity.

¹¹ *Id.* at ¶¶ 17-19 (footnotes omitted).

The Commission essentially presumes – in the absence of a specific showing to the contrary – that domestic ILECs exercise market power in their home landline markets.¹² Precisely because ILECs possess market power, one purpose of the special duties imposed on them is to prevent them from exercising that power – and, indeed, to require them to undertake specific tasks in support of their market rivals that they would not have any natural inclination or independent duty to undertake.¹³ While the antitrust laws do not normally require a dominant firm to cooperate with rivals, the 1996 Act specifically requires that ILECs must take steps that “will accelerate the decline of [their] market power.” *Verizon-MCI Order* at ¶ 18. These obligations are, to put it mildly, counter-intuitive for aggressive, competitive businesses (such as we presume América Móvil to be, given its near-total focus on wireless services).¹⁴ There is therefore every reason to believe that PRTC’s new owners – not having been conditioned by a decade of operating under the 1996 Act – will have no discernable natural affinity for fulfilling these obligations. The Commission, however, has both the authority and the duty to ensure that the procompetitive requirements of the 1996 Act are acknowledged, understood, and fully obeyed by PRTC’s new owners.

In this regard, it is widely recognized that corporate culture affects corporate behavior – including the corporation’s willingness to comply with legal requirements. Numerous courts of appeals have relied upon considerations of corporate culture in deciding both civil and criminal cases.¹⁵ Also, the Department of Justice has recognized

¹² “Under the Commission’s existing domestic common carrier regulations, incumbent LECs generally are treated as dominant carriers because the Commission has found that these carriers possess and are likely to be able to exercise market power.” *Presubscribed Interexchange Carrier Charges*, 20 FCC Rcd 2855 (2005) at ¶ 4.

¹³ See *Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, *esp.* 402, 407-10 (2004) (no antitrust liability for failure to fulfill duties under 1996 Act because there was no obligation to perform those duties outside the Act’s requirements).

¹⁴ According to the Applicants’ Overview of Transaction, less than 2% of América Móvil’s customers are landline subscribers. Overview of Transaction at 4 (100 million of 102 million total subscribers are wireless).

¹⁵ *E.g.*, *United States v. Brodie*, 403 F.3d 123, 155-56, 158 (3rd Cir. 2005) (evidence of corporate culture of using “code words” to hide knowledge of prohibited transactions, creating a “culture of deceit”); *Dunkin’ Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437, 442 (D.C. Cir. 2004) (affirming NLRB reliance on a finding of “a corporate culture of lawlessness” in issuing a mandatory bargaining order); *Townsend Industries, Inc. v. United*

that a firm's corporate culture is relevant to the likelihood that a firm will obey the antitrust laws.¹⁶ And, the Commission itself has relied on changes in corporate culture in assessing the fitness of an entity to hold spectrum licenses.¹⁷ So, there can be no grounds to treat the inevitable change in corporate culture that PRTC will experience upon sale to América Móvil as insignificant or irrelevant.¹⁸

After a decade of operating under the 1996 Act, it is reasonable to assume that domestic ILECs have a corporate culture that has, at least to some extent, internalized the need to comply with the obligations set out in the Act.¹⁹ There is, however, no reason to

States, 342 F.3d 890, 894 n.3 (8th Cir. 2003) (reversing district court in tax refund case, in part, because a firm's "corporate culture" provided an explanation for absence of certain documentation); *United States v. Polishan*, 336 F.3d 234, 241, 243-44 (3rd Cir. 2003) (rejecting criminal defendant's objection to introduction of evidence relating to "corporate culture"); *Slattery v. Swiss Reinsurance America Corp.*, 248 F.3d 87, (2nd Cir. 2001) (evidence of "corporate culture" relevant to environment within which firm makes decisions).

¹⁶ See, e.g., W.J. Kolasky (Deputy Assistant Attorney General, Antitrust Division, U.S. Dept. of Justice), *Antitrust Compliance Programs: The Government Perspective* (July 12, 2002) at 18 (referring to a company as having "the kind of corporate culture that breeds antitrust crimes"), available at: <http://www.usdoj.gov/atr/public/speeches/11534.pdf>.

¹⁷ See *WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses*, Memorandum Opinion And Order, 18 FCC Rcd 26484 (2003) at ¶¶ 18-19 & n.80 (relying in part on change in corporate culture to deem transferees fit to hold licenses).

¹⁸ In the SBC-Ameritech merger, the Commission was presented with, but did not directly rely upon, arguments that SBC's corporate culture was more antithetical to competition than Ameritech's. *Applications of AMERITECH CORP., Transferor, and SBC COMMUNICATIONS INC., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion And Order 14 FCC Rcd 14712 (1999) at ¶ 569. The key reason the Commission found it unnecessary to rely on these grounds was that it had independently concluded to impose a variety of pro-competitive conditions on that transaction, so that the same concerns raised by the differing corporate cultures of SBC and Ameritech were already being addressed. *Id.* at ¶ 571. The situation here is very different – more like *WorldCom* than *SBC-Ameritech*. Here, the unique change in corporate culture inevitably occasioned by transfer of a domestic United States ILEC to a foreign wireless provider justifies a greater focus on this issue, just as the complete reforming of *WorldCom*'s corporate culture justified reliance on that factor in that case.

¹⁹ The Commission's extensive experience in assessing ILEC compliance with the Act's requirements, both in individual enforcement cases and in Section 271 proceedings, provides a sound basis for agency expertise in this regard.

assume that a six-year-old wireless spin-off of a Mexican landline firm²⁰ has or will quickly develop a corporate culture that in any way appreciates these requirements. It is therefore highly likely that the transfer of PRTC to the particular acquiring entity involved in this transaction will affect both the attitude PRTC brings to its obligation to comply with the 1996 Act (and related laws), as well as the resources that management will be inclined to devote to that end. In other words, the new ownership of PRTC “could result in public interest harms [that] substantially frustrate[e] or impair[]the ... implementation of the Communications Act or related statutes.”²¹ Consequently, Centennial’s concerns directly arise from the specific effects of this proposed transaction. It is therefore appropriate to address them by means of conditions.

So, the main point of the conditions Centennial proposes is not to prevent the exercise of market power that will be *created* as a result of the proposed transaction. It is, instead, to ensure that the new owners of PRTC – with a vastly different corporate culture from a traditional domestic ILEC – will devote the time, management attention, and financial resources needed to maintain adequate compliance with PRTC’s existing duties – duties whose key purpose is to constrain (and, indeed, to assist in eliminating) the market power that PRTC’s new owners will be acquiring, just by buying PRTC.²²

Centennial is proud to have contributed, over the last decade, to the growth of competition in both landline and wireless telecommunications markets in Puerto Rico. We have deployed extensive fiber and wireless facilities to provide real facilities-based competition to PRTC. Competition has resulted in lower prices and better service for Puerto Rico consumers. For example, when Centennial began operations, PRTC provided its landline service using 68 small local calling zones, while Centennial used 14. Today, PRTC uses a 10-zone local calling structure, while Centennial treats all intra-

²⁰ See América Móvil Application to Transfer Control of Domestic and International Section 214 Authorizations at 9 (“Application”) (answer to Questions 11 & 12) (spin-off of América Móvil).

²¹ *Verizon-MCI Order* at ¶ 16.

²² *Verizon-MCI Order* at ¶ 19. As discussed *infra*, one “related statute” potentially affected by this transaction is the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.) (“CALEA”).

Island calls as local. Both Centennial and PRTC have introduced new services for business customers as well. These factors doubtless contribute to the fact that, as we understand it, one-third of Fortune 500 companies have chosen to establish operations in Puerto Rico.

Plainly, however, the growth of competition in Puerto Rico has been dependent on PRTC fulfilling its obligations under the 1996 Act and Puerto Rico Law 213. Sometimes PRTC has resisted those obligations. Sometimes it has fulfilled them only after actual or threatened litigation. Often there have been legitimate, good faith disagreements between PRTC and Centennial regarding how the Puerto Rico Telecommunications Regulatory Board ("TRB") should interpret and enforce those obligations. But there has never before been a basis for concern that PRTC's owners and managers might not really understand and acknowledge that those obligations exist, and are an integral part of PRTC's obligations as a business entity operating in this regulated industry. Yet that is exactly the concern – based on the identity of PRTC's new owners – with the proposed transaction here. It would be unfortunate indeed if the competitive environment in Puerto Rico were to change for the worse, when the modest conditions proposed here would go far towards avoiding that result.

3. Three Specific Conditions Are Necessary.

- a. *Designate An Outside Entity To Monitor And Report On Compliance With PRTC's Obligations Under The 1996 Act And Related Puerto Rico Law.*

Centennial is a facilities-based competitor, using its own landline and wireless networks to serve its customers in Puerto Rico. In order to enable the exchange of traffic between Centennial and PRTC, Centennial has established more than two dozen physical "meet point" interconnection arrangements with PRTC, including direct connections at all major PRTC end offices throughout the island.

This substantial investment in facilities makes it possible for Centennial to compete without overly depending on PRTC for key network infrastructure. That said, Centennial is continuously exposed to the risk that PRTC will not provide adequate transmission capacity to and from these meet points, leading either to dissatisfied

customers whose calls are not completed or inefficient routing of traffic through PRTC's overworked tandem switches in San Juan. Both the capacity of the transmission facilities at the meet points and the efficient routing of traffic to and from the meet points have been the subject of regulatory litigation between Centennial and PRTC over the years. This leads to two specific concerns: (a) that PRTC maintain adequate capacity at the more than two dozen "meet points" used to exchange traffic throughout Puerto Rico; and (b) that PRTC properly route traffic between the companies so as to avoid congestion (that is, to use the extensive network of end office meet points, and not tandem interconnection, wherever possible).

An additional recurring problem affecting PRTC's compliance with its obligations under the 1996 Act has been the inadequacy of PRTC's billing/mediation systems, which has led to significant disputes between Centennial and PRTC. As Centennial understands it, PRTC has recently begun to direct new resources to this problem. That is encouraging, but Centennial is now deeply concerned that under new ownership – and with a focus on the wireless side of the business – this problem will once again become a low-priority (or "no-priority") item for PRTC.

Given these problems, Centennial submits that the circumstances of this transaction give rise to reasonable concern that PRTC, under its new ownership, will not devote sufficient resources to meeting its interconnection-related obligations under the 1996 Act. Instead, its new owners could very well conclude that these concerns should take a back seat to the endless demands of the wireless business for new capital, new marketing efforts, etc. Centennial – which also competes in the wireless market – certainly appreciates those demands. But that appreciation leads not only to empathy, but also to concern, because Centennial depends on interconnection arrangements with PRTC to allow our own customers to exchange traffic with PRTC's roughly one million landline subscribers.

In this regard, Centennial notes that, while competition in Puerto Rico wireless markets is relatively robust, competition in landline markets has been much slower to develop. For example, Paul Budde Communications (a research firm relied upon by Applicants) notes the following:

International Telcom Ltd (ITL) was among the first independent phone companies to compete with PRTC in the local fixed-line market. It signed an agreement to exchange traffic with PRTC in 1999. By June 2001, however, it claimed that it was no longer able to operate because of the roadblocks to competition placed by PRTC. It therefore ceased operations, leaving PRTC with its local telephone monopoly virtually intact.

Although local telephony still remains heavily dominated by PRTC, Centennial has succeeded in eking out around 10% share of the local fixed-line market. PRTC holds the remaining 90%.

Paul Budde Communications, *Puerto Rico – Telecoms Market Overview & Statistics* (February 2006) at 5.²³ PRTC, in short, continues to utterly dominate the landline market in Puerto Rico. As a result, there is every reason for continued concern regarding the implementation and enforcement of PRTC's duties under the 1996 Act with regard to the landline business.

Furthermore, it is clear from the materials presented by the Applicants that the real focus of América Móvil – the acquiring entity – is on wireless mobile service, not on fixed landline communications. Thus, less than 2% of América Móvil's subscribers are fixed line customers.²⁴ This transaction was plainly structured with wireless in mind – and with landline service as an afterthought. There is nothing inappropriate about a wireless focus *per se*. However, it does raise the concern – certainly for Centennial, which will have to deal with PRTC's new owners for the foreseeable future – that neither management nor operational resources will be devoted to complying with the key regulatory obligations associated with PRTC's landline ILEC network.²⁵

²³ See www.budde.com.au/Reports/Contents/Puerto-Rico-Telecoms-Market-Overview-Statistics-1887.html. The Applicants rely on this self-same report to argue that the Puerto Rico telecommunications market is, in general, competitive. See Public Interest Statement at 9 & n.20. That may be; but in Centennial's experience a great deal of investment in facilities, negotiation, and litigation has been required even to "ek[e] out" Centennial's existing, relatively modest share of lines. (Note that to review the actual report (as opposed to a synopsis on the web site) requires payment of a modest (\$50) fee.)

²⁴ See Overview of Transaction at 4 (100 million of 102 million total subscribers are wireless).

²⁵ In this regard, the same company (América Telecom S.A. de C.V.) controls both América Móvil and Teléfonos de México, S.A. de C.V. ("TelMex"), the dominant landline telephone company in Mexico. In fact, América Móvil was created in 2000 as a spin-off from TelMex.

In these circumstances, Centennial submits that the proposed transaction would not be in the public interest unless PRTC is required to establish (and fund) an outside monitor to provide semi-annual reports to this Commission, to the TRB, and (with appropriate confidentiality protections) to PRTC's facilities-based competitors, for a period of three years following the closing of the transaction, addressing PRTC's compliance with its obligations to Centennial and all other competing, interconnected entities, under the 1996 Act.²⁶ These reports should specifically address PRTC's compliance with all interconnection-related obligations, including meet point capacity, call routing, and billing/mediation systems. Centennial suggests that the TRB be empowered to identify any additional specific matters on which monitoring and reporting should be required.

Centennial submits that being subject to an outside compliance monitor for a reasonable period of time will go a long way towards beginning to instill in PRTC's new owners the required appreciation of the scope of PRTC's obligations under the 1996 Act. In this regard, this condition is directly related to the Commission's observation that in this industry, "competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players." *Verizon-MCI Order* at ¶18. This condition, therefore, is fully justified under the Commission's articulated criteria.

(See <http://www.sec.gov/Archives/edgar/data/866213/000119312506139784/d20f.htm> (TelMex 2005 Form 20-F) at 14; Overview of Transaction at 4; Application at 9 (answer to Questions 11 & 12)). Had the focus of the parties been on the landline business, it would seem to have been straightforward to have TelMex, rather than América Móvil, be the acquiring entity. The choice of América Móvil confirms the wireless focus of the new ownership. In addition, note that the Applicants were at pains to explain that in their view, TelMex "is not properly considered dominant in Mexico under Mexican law, which differs from U.S. law and the Commission's rules." Application at 11 (answer to Question 17). Even if this is technically, legally correct, statements of this nature can only heighten concern that América Móvil may not fully appreciate the obligations applicable to ILECs in the United States.

²⁶ Cf. *America Online & Time-Warner, Inc.*, Docket No. C-3989, 2001 FTC LEXIS 44 (Federal Trade Commission, April 17, 2001) (establishing "monitor trustee" for combined AOL/Time-Warner entity).

b. *Protect Residential Ratepayers (And Competitors) From Unfair Cross-Subsidies.*

The discussion above shows that there is reason for concern that PRTC's new owners will not have adequate regard for the interests of residential landline customers as they focus on the more robustly growing wireless market. Centennial submits that this wireless focus, combined with PRTC's dominant position in the landline market, will create a strong temptation to try to extract additional revenues from landline residential customers to subsidize wireless (and/or business-landline) activities.

As noted in the *Verizon-MCI Order*, one aspect of the Commission's review of potential effects of the merger is "assessing whether the merger will affect the quality of communications services." *Id.* at ¶ 17. From this perspective, Centennial is concerned that the wireless focus of PRTC's new owners will lead them to view PRTC's essential residential landline services as a cash cow to be exploited, to the extent possible, for the wireless business. The Commission can use its pragmatic regulatory expertise to recognize that this is not a fanciful concern, and take steps to prevent it from occurring.

The Commission's review also entails assessing whether the transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."²⁷ As relevant to this specific proposed condition, Centennial notes that 47 U.S.C. § 254(k) states that a carrier "may not use services that are not competitive" (PRTC's dominant landline residential services) "to subsidize services that are subject to competition" (PRTC's business and wireless services). However, the Applicants themselves noted that, when it comes to matters of telecommunications regulation, "Mexican law ... differs from U.S. law and the Commission's rules." Application at 11. In the wireless sector, the differences in formal regulatory rules will likely be of less practical significance, since all suppliers are subject to the natural rules of the competitive marketplace – which are fundamentally the same everywhere. But there is reason to be concerned that PRTC's new owners may not be sufficiently focused on and appreciative of the specific regulatory obligations that apply to dominant U.S. landline service providers. Again, as discussed above, it is nothing

²⁷ *Verizon-MCI Order* at ¶ 16.

more than straightforward business pragmatism to acknowledge that corporate culture matters.²⁸ Since the corporate culture of PRTC is due to undergo a radical change, it is reasonable to take modest, prudent measures to ensure that PRTC's new owners are fully appreciative of – and fully comply with – their obligations under domestic United States law relating to ILECs.

In this regard, in most domestic transactions involving large ILECs, the Commission has some assurance that cross-subsidy will not be a problem because the merging parties have been subject to price cap or similar regulation at both the federal and state levels. Price cap regulation tends to mitigate cross-subsidy concerns because the regulated firm is not able to shift costs from a competitive to a non-competitive operation. This is because the capped prices are not directly tied to cost, and so cannot be raised to cover the cross-subsidy in the first place. PRTC, however, is regulated on the basis of its costs, not on the basis of price caps, on both the state and federal levels.²⁹ The protection against cross-subsidy, embedded in the use of price cap regulation – on which the Commission has been able to rely in past transactions – is simply absent here.

To ensure that PRTC's new owners do not fail to appreciate and comply with their obligation to avoid cross-subsidy, the Commission should require, as a condition of closing the transaction, that (a) PRTC shall not be permitted to increase residential

²⁸ See notes 15-18, *supra*, and accompanying text.

²⁹ Under Puerto Rico Law, PRTC can be required to justify any rate change on the basis of its costs. Indeed, in a proceeding involving a PRTC proposal to restructure residence rates, the TRB reaffirmed PRTC's obligation to justify proposed rates on the basis of costs. See *Puerto Rico Law 213; Telefonica Larga Distancia et al. v. PRTC*, Case Nos. JRT-2005-Q-0121 *et al.*, *Order on Cost Methodology* (J.R.T. Sep. 1, 2005), available at: <http://www.jrtpr.gobierno.pr/Archivo/QUERELLAS%5C2005%5CJRT-2005-Q-0121%5C20050901%20OCM.pdf>. And, PRTC justifies its interstate rates on a cost-of-service basis as well. See *Puerto Rico Telephone Company Petition for Waiver of Section 61.41 of the Commission's Rules or, in the Alternative, Request for Waiver of Section 54.303(a) of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd 27694 (2002) (allowing PRTC to remain under rate-of-return regulation until the Commission completes its review of the all-or-nothing rule); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 10812 (2004) at n.40 (“all outstanding waivers of the all-or-nothing rule that depend on our decision in this proceeding shall continue in effect until we issue a final order on this issue”); FCC, *Interstate Rates of Return for Local Exchange Carriers Years 1997-2003*, <http://www.fcc.gov/wcb/iatd/lec.html>. Whatever may be true for other ILECs, therefore, for PRTC cross-subsidy remains a real risk.

service rates for a period of at least two calendar years following closing; and (b) PRTC must submit to an annual audit, for each of the three full calendar years following closing, to confirm that the company is not cross-subsidizing wireless or business services with revenues from residential customers. This condition is consistent with the Commission's previously-articulated criteria, in that it is necessary to avoid "public interest harms" that could arise by virtue of the new owners' "substantially frustrating or impairing the objectives or implementation of the Communications Act," *Verizon-MCI Order* at ¶ 16, and, specifically, Section 254(k).³⁰

c. *National Security And Law Enforcement Issues.*

Centennial, obviously, does not bear responsibility for PRTC's obligations under CALEA and related national security statutes. And, Centennial notes that the Applicants have indicated that they will submit the transaction to review by the Committee on Foreign Investment in the United States.³¹ That said, Centennial is involved, at least indirectly, with PRTC's CALEA and related obligations in various ways. For example, Centennial and PRTC have simultaneously been involved in meeting law enforcement requirements for tracking communications. At other times, it has been necessary to resolve disputes between Centennial and PRTC with regard to where certain traffic of interest to law enforcement was originating. Centennial is also affected by its obligation

³⁰ Centennial notes that a large portion of Applicants' Public Interest Statement seems devoted to the claim that América Móvil's extensive resources and experience in the telecommunications business will lead to improvements in service – including landline service – in Puerto Rico. See Public Interest Statement at 2-6. This claim might have some persuasive value if PRTC were being purchased from a revenue-starved government agency or a stand-alone telephone service provider. In fact, however, PRTC is being purchased from Verizon, which had 2005 operating revenues of approximately \$75 billion. <http://www.sec.gov/Archives/edgar/data/732712/000119312506053710/dex13.htm>. By contrast, América Móvil's 2005 operating revenues were only about \$17 billion – roughly one quarter Verizon's revenues. See page 2 of América Móvil's most recent Form 20-F, available online at: <http://www.sec.gov/Archives/edgar/data/1129137/000119312506140183/d20f.htm> (stating 2005 results in U.S. dollars). Seventeen billion dollars is obviously a lot of money, but the fact remains that the financial resources of PRTC's parent entity are going to substantially *decrease* as a result of this transaction, making suspect any claim that PRTC will see *improved* access to capital in connection with its already-anemic residential landline business.

³¹ See Overview of Transaction at 3-4.

to cooperate with PRTC, in certain situations, in providing information needed by law enforcement.

As far as Centennial can tell, nothing in the filed materials supporting the transaction addresses any aspect of CALEA compliance, as that might be affected by the change in ownership.³²

Centennial's own activities in this area have given us an appreciation of the unique position of Puerto Rico in securing United States interests in the Caribbean and Latin America, including the presence in Puerto Rico of a number of government installations with sensitive communications needs. Centennial submits that the public interest would be served by allowing affected government entities to select, if they so choose and without financial penalty, a domestic United States entity to provide their communications services.

In this regard, not only is América Móvil a Mexican company; by law it must remain under Mexican control. As stated in the Overview of Transaction, under América Móvil's bylaws, "a majority of the directors and a majority of the alternate directors must be Mexican citizens and elected by Mexican stockholders." *Id.* at 8 n.8 While Centennial has no objection in principle to Mexican (or other foreign) ownership of United States telecommunications companies, this requirement of América Móvil's bylaws does emphasize the fact that non-United States citizens would have ultimate control over PRTC's operations.

Centennial's proposed condition – that affected government entities be given the opportunity to take a "fresh look" at their communications suppliers, without economic penalty – would, we submit, provide a practical way to allow any concerns that might exist in this area to be addressed. As an added benefit, this approach would obviate any need to delve into why any particular governmental entity might or might not find it

³² As noted above, the Commission recognizes that it may impose conditions in order to ensure appropriate implementation of the Communications Act and "related statutes." *Verizon-MCI Order* at ¶ 16. CALEA is clearly a "related statute," the objectives and implementation of which the Commission may consider in establishing conditions on a proposed transaction.

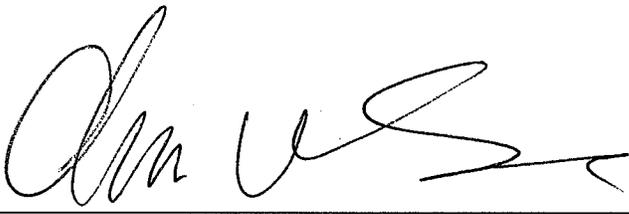
appropriate or advantageous to modify its current purchasing arrangements. This is clearly in the public interest, and should be made a condition of the transaction.

4. Conclusion.

For the reasons described above, the Commission should deny the application to allow América Móvil to acquire PRTC, unless the conditions described herein are made part of the approval of the transaction.

Respectfully submitted,

CENTENNIAL COMMUNICATIONS CORP.

By: 

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Dated: July 14, 2006

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

In the Matter of

Combined Application for Consent to the Transfer of Control of Telecomunicaciones de Puerto Rico, Inc., Holder of Domestic and International Section 214 Authorizations, from Verizon Communications Inc. to América Móvil, S.A. de C.V.

DA 06-1245

WT Docket No. 06-113

Affidavit of William L. Roughton, Jr.

1. I am William L. Roughton, Jr. I am Vice President – Legal and Regulatory Affairs for Centennial Communications Corp. (“Centennial”). I am filing this affidavit in support of Centennial’s Petition to Deny the “Combined Application for Consent to the Transfer of Control of Telecomunicaciones de Puerto Rico, Inc., Holder of Domestic and International Section 214 Authorizations, from Verizon Communications Inc. to América Móvil, S.A. de C.V.,” docketed before the Commission in the matters noted above.
2. I have held my current position for approximately two years. Prior to assuming my current position, I was general counsel for a competitive local exchange carrier (“CLEC”). Prior to that, I was Associate General Counsel for PCS PrimeCo LLC, a wireless company now part of Verizon Wireless. Prior to PrimeCo, I was general counsel of Bell Atlantic Personal Communications, Inc. From 1983 to 1991, I was with Bell Atlantic Mobile Systems and predecessor entities, serving as general counsel there for about five years. Overall, I have had more than 25 years experience in legal and regulatory matters relating to the communications industry.
3. In the course of my duties for Centennial, I am responsible for the supervision and implementation of the regulatory policy of Centennial’s various operating subsidiaries, including, specifically, the Centennial subsidiaries that provide landline and wireless communications services in Puerto Rico. In the course of my duties I have become familiar with Centennial’s operations in Puerto Rico, including its relationship with the

incumbent local exchange carrier (“ILEC”) serving Puerto Rico, the Puerto Rico Telephone Company (“PRTC”).

4. As I understand the proposed transaction, Verizon proposes to sell control of PRTC to América Móvil, a Mexican corporation. As far as Centennial can determine, this is the first time a foreign entity has sought permission to acquire a United States ILEC.
5. Centennial is directly affected by this transaction and by the ownership and operation of PRTC. This is because Centennial interconnects with PRTC’s landline network both in Centennial’s role as a landline CLEC and in its role as a Commercial Mobile Radio Service (“CMRS”) provider. Centennial has been competing with PRTC in both landline and wireless markets for nearly 10 years. Centennial depends on interconnection with PRTC to allow Centennial’s customers to communicate with PRTC’s landline subscribers. Any degradation in PRTC’s performance of its interconnection-related obligations would negatively affect Centennial. I therefore conclude that Centennial is a “party in interest” with respect to this transaction.
6. Centennial supports the Commission’s general “open entry” policies. Centennial itself has invested in overseas telecommunications markets. Centennial is nevertheless concerned that the corporate entity acquiring PRTC is not a domestic United States ILEC. Our concern arises because the acquiring entity has no institutional history, and no associated corporate culture, that would support the devotion of the necessary resources to complying with PRTC’s obligations under the Telecommunications Act of 1996 and related statutes. As indicated in the filing to which this Affidavit is appended, it is well-recognized, including by the United States Department of Justice, that corporate culture is an important factor in assessing the likely behavior of a corporate entity.
7. Centennial is interconnected with PRTC at more than two dozen physical “meet points” throughout the island of Puerto Rico. Centennial invested in this robust interconnection architecture both to have greater control over the facilities used to provide its own services and to avoid charges for using PRTC’s facilities to carry traffic to or from a central location. Centennial is concerned that PRTC’s new owners will not devote the

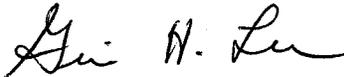
resources needed to ensure that these meet point interconnection arrangements are augmented as needed to assure the smooth flow of traffic. Centennial is also concerned that PRTC's new owners will not take the steps necessary to maximize the routing of traffic through the meet points, rather than by means of PRTC's tandems. Centennial is also concerned that PRTC's new owners will not devote sufficient resources to continue upgrading PRTC's billing and mediation systems, which have long been below industry standard but which PRTC has recently begun to address.

8. Centennial is concerned that PRTC's new owners will make efforts to cross-subsidize its competitive operations – notably its wireless services, but also its landline business services – with revenues from its landline residence business. PRTC is in a better position to undertake such cross-subsidies than other ILECs because it is regulated on the basis of its costs of service, not price caps, on both the state and federal levels.
9. Finally, Centennial notes that PRTC's new owners are Mexican citizens, not United States citizens, and suggests that this factor might be of concern to certain government customers on Puerto Rico. We suggest that such customers be given the option to take service from communications providers controlled by United States citizens without financial penalty.


William L. Roughton, Jr.

Subscribed and sworn before me this 14th day of July, 2006:

Notary Public:



Commission expire:

Gina H. Lee
Notary Public, District of Columbia
My Commission Expires 06-30-2009

CERTIFICATE OF SERVICE

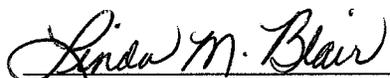
I, Linda M. Blair, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that copies of the foregoing "Centennial Communications Corp. Petition to Deny," were sent via first class mail, this 14th day of July, 2006, to the following:

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