

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

In the Matter of)	
)	
Verizon Communications, Inc., Transferor)	
)	
and)	WT Docket No. 06-113
)	DA 06-1245
América Móvil, S.A. de C.V., Transferee)	
)	
Applications for Consent to Transfer)	
of Control of Licenses and)	
Authorizations Pursuant to Sections)	
214 and 310(d) of the Communications Act)	

**PETITION TO DENY, OR, IN THE ALTERNATIVE, CONDITION
COMMISSION CONSENT**

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DISTANCIA DE
PUERTO RICO, INC.**

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SUMMARY

Applicants have failed to show that the proposed transaction, on balance, is in the public interest. The Commission's public interest analysis involves consideration of a broad range of factors, such as the overall state of the relevant market and anticompetitive conduct, and allegations thereof, outside of traditional antitrust principles. Applicants have not shown identifiable public interest benefits sufficient to overcome the potential and dangerous competitive harms to consumers that would result from the transaction. Where, as here, potential public interest harms are so great, Commission precedent demands a more powerful showing of potential public interest benefits. Accordingly, Petitioner Telefónica Larga Distancia de Puerto Rico (“TLD”) respectfully requests that the Commission deny the application for transfer of control.

The significance of the proposed transaction should not be underestimated. It involves the acquisition of the seventh largest incumbent local exchange carrier (“ILEC”) in the United States, located in a uniquely vulnerable telecommunications market with a population base of approximately 3.9 million United States citizens.

On the island of Puerto Rico, the target of the acquisition, Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”), parent of the Puerto Rico Telephone Company and PRT Larga Distancia, Inc. (“PRTD”) and other subsidiaries (collectively, “PRTC”) is the sole ILEC and the second largest wireless operator. Through PRTC, TELPRI has a market share in the residential local exchange market well in excess of 90% and dominant market shares in the business local exchange market, the intra-island long distance services market, the interstate long distance services market, and the international long distance services market, in addition to being the leading provider of broadband internet

services. Despite privatization, Puerto Rico still suffers from an extreme lack of competition in its telecommunications markets unlike anywhere else in the United States. Indeed, almost 80% of the zip code areas on the island have no competitive presence in the local exchange market.

The proposed acquirer, América Móvil, S.A. de C.V., (“América Móvil”), and its sister company, Teléfonos de México, S.A. de C.V. (“Telmex”), are tied by an almost uniformly interlocking directorship and intertwined financially through widespread business agreements and transactions. Together, under common ownership and guidance, they dominate the telecommunications markets in Mexico and much of Latin America. In Mexico, América Móvil has approximately 80% of the wireless market and Telmex is the monopolist in all aspects of the wireline market. América Móvil and Telmex have a well documented reputation as ruthless defenders of their market power, with a history of impeding competition and opposing measures that would increase the level of competition in the markets where they operate. The Puerto Rico telecommunications marketplace is a unique environment and one that is particularly vulnerable to the competition-limiting behavior in which América Móvil and Telmex have engaged and may continue if the transaction is approved.

América Móvil is not qualified to take control of the seventh largest ILEC in the United States. First, it has utterly failed to carry its public interest burden. It presents itself and its plans in broad generalizations and platitudes, and says almost nothing other than what would generally be said by any putative transferee in any transaction. It offers nothing new or specific to Puerto Rico or the telecommunications market there – no commitments to maintain, improve or innovate what PRTC has already in place and no

commitments to promote competition or to help consumers. It makes statements about general benefits that are to flow from its size and scale, ignoring the fact that it is replacing Verizon Communications, Inc. (“Verizon”) whose size and scale bests América Móvil. In short, it fails to carry its burden to demonstrate how taking control of TELPRI provides any public benefits to Puerto Rico, its consumers or to competition. Beyond this failure, América Móvil also ignores the fact that it has extremely limited experience with wireline networks, serving less than 2% of its subscribers through wireline in three Central American countries. Moreover, Puerto Rico suffers from a telephone penetration rate below 70% and actively seeks ways to increase it. América Móvil's three wireline operations have telephone penetration rates of ranging from 3.8% to 13.8%. It has no experience and offers no ideas for increasing Puerto Rico's 70% penetration rate.

As if this were not enough, Mexico's antitrust commission recently found that América Móvil had engaged in anticompetitive practices by refusing to interconnect with Nextel for the exchange of short messages (“SMS”) after having blatantly ignored a ruling from Mexico's regulatory commission requiring it to do so. Mexico's antitrust commission specifically found that América Móvil acted with the objective of impeding access to the market. Its sister company Telmex has had a checkered history before this Commission, the United States Trade Representative and the World Trade Organization for anticompetitive practices and noncompliance with requirements and commitments.

Petitioner's affiliates, including Telefonica Moviles, have experienced first-hand the competition-limiting practices of Telmex and América Móvil in Mexico and Central America. América Móvil subsidiaries have a history of campaigns and covert actions, engaging in innovative anticompetitive practices. In Mexico, the Federal Competition

Commission (Comisión Federal de Competencia, or “COFECO”), Mexico's antitrust commission, has found Telcel, América Móvil’s dominant wireless subsidiary in Mexico, presumptively responsible for such practices on multiple occasions.

Not only does this proposed transaction do nothing to promote competition in a marketplace badly in need of it, it diminishes competition and thus actively works to defeat the public interest. The proposed transaction would give AT&T, Inc.’s (“AT&T”), which controls Cingular Wireless Services, Inc. (“Cingular”), which is the dominant wireless operator in Puerto Rico, an interest in Puerto Rico's second leading wireless operator and dominant ILEC, PRTC and its wireless operation (the second largest in Puerto Rico). This is because AT&T has significant financial stake, voice and motivation with respect to both América Móvil and Telmex. Its stake in these two companies is valued at **\$6.4 billion**, with rights including membership in a consortium that controls both entities and the right to appoint two América Móvil board members, including a member of its three-person Executive Committee. In addition, the transaction would remove América Móvil's current status as an actual competitor in Puerto Rico through its prepaid wireless business, TracFone Wireless, Inc., and a potential competitor based on its previous experience entering the Puerto Rico wireless market.

The transaction, if permitted, would also allow unprecedented monopoly power by a single entity and its affiliates on both ends of international traffic and at various stages along the way. The Latin American countries in which América Móvil and Telmex presently dominate the international calling market, such as the Dominican Republic, are the countries that account for the heaviest international traffic to and from Puerto Rico. By controlling PRTC, América Móvil and its affiliates would control both

ends of these international calls, presenting a loss of transparency and great potential for abuse.

In granting its consent to the proposed transaction, the Commission will unleash on a particularly vulnerable United States telecommunications marketplace a company with a record of stalling and impeding competition in markets where it operates.

Petitioner urges the Commission to deny the application. In the alternative, Petitioner requests that the Commission impose conditions, including those specified herein, to curtail the resulting public interest harms in Puerto Rico.

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**PETITION TO DENY, OR, IN THE ALTERNATIVE, CONDITION
COMMISSION CONSENT**

Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”), by its attorneys and pursuant to the Public Notice,¹ herein² petitions the Federal Communications Commission (“FCC” or “Commission”) to deny the above-captioned application for consent to the transfer of control of Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”) from Verizon Communications, Inc. (“Verizon”), to América Móvil, S.A. de C.V. (“América Móvil”) (the “Application”).³ In the alternative, should the Commission

¹ See 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, Public Notice, DA 06-1245 (released June 14, 2006) (“Public Notice”).

² Appended hereto as Exhibit 1 is the Declaration of Rafael Serrano, Marketing and Strategy Vice President of TLD, regarding factual matters alleged in this Petition.

³ See Verizon Communications, Inc. And América Móvil, S.A. de C.V., Applications For Consent To Transfer Control Of Licenses And Authorizations Pursuant To Sections 214 And 310(d) Of The Communications Act, WT Docket No. 06-113 (May 9, 2006), as

decide to consent to the proposed transfer, TLD urges the Commission to adopt the conditions discussed herein.

As TLD understands the proposed transaction, subject to Commission consent, América Móvil, through its wholly-owned subsidiary, Sercotel, S.A. de C.V. (“Sercotel”), would acquire control of TELPRI, the parent of the Puerto Rico Telephone Company, PRT Larga Distancia, Inc. (“PRTLTD”) and other subsidiaries (referred to as “PRTC”) from GTE Holdings (Puerto Rico) LLC (“GTE Holdings”), a wholly-owned subsidiary of Verizon.

I. The Parties

América Móvil is the dominant wireless carrier in Mexico, having approximately 80% of that market and operations in many Latin American countries.⁴ It is controlled by America Telecom S.A. de C.V. (“America Telecom”) which holds 64.72% of the voting shares of América Móvil. America Telecom is majority-owned and controlled by Carlos Slim Helú and members of his family. Carlos Slim Helú and members of his family also control and have a majority ownership interest in Carso Global Telecom S.A. de C.V.

amended June 8, 2006. Certain subsidiaries of TELPRI hold licenses issued by the Commission under Part 22 (Cellular Radiotelephone Service), Part 24 (Personal Communications Service), Part 90 (Industrial/Business Pool Service) and Part 101 (Common Carrier Fixed Point-to-Point Microwave Service and Digital Electronic Message Service) as well as domestic and international authorizations issued under Section 214 of the Communications Act of 1934, as amended (the “Communications Act” or “Act”), 47 U.S.C. §§ 214(a), 310(d). *See also* Public Notice. One of those subsidiaries is the Puerto Rico Telephone Company, the seventh largest incumbent local exchange carrier (“ILEC”) in the United States and the only ILEC in Puerto Rico. *See* Form 10-K, Telecomunicaciones de Puerto Rico, Inc., SEC File No. 333-85503, at 3, 19 (filed Mar. 31, 2006) (“TELPRI Form 10-K”).

⁴ *See, e.g.*, International Monetary Fund, Mexico: 2004 Article IV Consultation – Staff Report, IMF Country Report No. 04/419 (Dec. 2004), at 6 (“IMF Report”), *available at* <http://www.imf.org/external/pubs/ft/scr/2004/cr04419.pdf>.

(“Carso Global Telecom”) which is the majority owner and controls Teléfonos de México, S.A. de C.V. (“Telmex”), the monopoly ILEC in Mexico.

While a separate public company, Telmex shares an identity of ownership, control and interests with América Móvil. These two companies are so closely tied together as to be alter egos. Both are majority-owned and controlled by Carlos Slim Helú. They share directors and officers and they have an intricate web of operational interrelationships. In fact, of the eleven directors listed by América Móvil in its most recent Form 20-F filing with the U.S. Securities and Exchange Commission (“SEC”), at least nine of them have close ties to Telmex.⁵ For purposes of assessing the proposed transaction, the Commission must evaluate Telmex with the same scrutiny as América Móvil.⁶

Furthermore, América Móvil and Telmex have ongoing contractual relationships and have regularly engaged in transactions with one another since Telmex spun off América Móvil in 2000. The two entities are party to various operational agreements

⁵ Carlos Slim Helú is Honorary Chairman for Life of both América Móvil and Telmex. Patrick Slim Domit, the son of Carlos Slim Helú, is the Chairman of América Móvil, a member of its Executive Committee and a director of Telmex’s parent. Daniel Hajj Aboumrada is a Director of América Móvil, member of its Executive Committee and Director of Telmex’s parent. He is also the son-in-law of Carlos Slim Helú. Jaime Chico Pardo is a Director of América Móvil as well as its parent and the Chief Executive Officer and Vice-Chairman of Telmex. Alejandro Soberon Kuri is a Director of América Móvil and Telmex. Maria Asuncion Aramburuzabala Larregui is a Director of América Móvil and Grupo Televisa on whose board sits Carlos Slim Domit, son of Carlos Slim Helú. Claudio X. Gonzalez Laporte is a Director of América Móvil and of Telmex’s parent. David Ibarra Munoz is a Director of América Móvil and of Grupo Financiero Inbursa, S.A. de C.V. of which Carlos Slim Helú is also Honorary Chairman for Life. Finally, Rayford Wilkins is a Director and member of the Executive Committee of América Móvil, and a Director of Telmex. *See* Form 20-F, América Móvil, SEC File No. 001-16269, at 69-71 (filed June 30, 2006) (“América Móvil Form 20-F”).

⁶ The Commission acknowledges as much in the Public Notice. *See* Public Notice at n.10 (indicating that América Móvil is an affiliate of Telmex). It also bears noting that América Móvil’s Chief Executive Officer (“CEO”) serves as Director of Telmex’s Mexican subsidiaries. América Móvil Form 20-F at 74.

which América Móvil states are “material to our financial performance.”⁷ Some of these agreements provide for interconnection, use of Telmex facilities by América Móvil, long distance service to América Móvil customers, and for other services provided by the other. In addition, Telmex serves as a distributor of handsets and prepaid cards offered by Telcel. According to the Telmex Form 20-F, the amounts paid under these agreements in 2005 totaled P.11,370 million (approximately \$1 billion) paid by América Móvil to Telmex and P.6,018 million (approximately \$545 million) paid by Telmex to América Móvil.⁸

According to its most recent Form 10-K, Verizon is

one of the world’s leading providers of communications services. Verizon’s domestic wireline telecommunications business provides local telephone services, including broadband, in 28 states and Washington, D.C. and nationwide long-distance and other communications products and services. Verizon’s domestic wireless business, operating as Verizon Wireless, provides wireless voice and data products and services across the United States using one of the most extensive wireless networks. Information Services operates directory publishing businesses and provides electronic commerce services. Verizon’s International segment includes wireline and wireless communications operations and investments in the Americas and Europe. In connection with the closing of the merger with MCI, Inc. (MCI), which occurred on January 6, 2006, Verizon now owns and operates one of the most expansive end-to-end global Internet Protocol (IP) networks which includes over 270,000 domestic and 360,000 international route miles of fiber optic cable and provides access to over 140 countries worldwide.⁹

⁷ América Móvil Form 20-F at 79.

⁸ See Form 20-F, Teléfonos de México, S.A. de C.V., SEC File No. 1-32741, at 76 (filed June 30, 2006) (“Telmex Form 20-F”).

⁹ Form 10-K, Verizon Communications Inc., SEC File No. 1-8606, at 1 (filed Mar. 14, 2006) (“Verizon Form 10-K”).

Most pertinent, Verizon owns 52% of and controls TELPRI, which it proposes to sell to América Móvil.¹⁰

TELPRI, through PRTC, is the seventh largest ILEC in the United States.¹¹ It is the sole ILEC in Puerto Rico, an island of 3.9 million U.S. citizens.¹² PRTC is a monopoly today for all intents and purposes, having withstood the efforts of the Telecommunications Act of 1996 (the “1996 Act”)¹³ and related local legislation to open the local telecommunications marketplace to competition. Through TELPRI’S wholly-owned subsidiaries PRTC and PRTLD, which is engaged in the provision of long distance services, TELPRI has a market share in the residential local exchange market well in excess of 90%, and dominant market shares in the business local exchange market, the intra-island long distance services market, the interstate long distance services market, and the international long distance services market in Puerto Rico. It has the second largest market share in the wireless market and is the leading provider of broadband internet services on the island.

TLD is an intrastate, interstate (between Puerto Rico, the U.S. Virgin Islands, and other domestic points), and international (between Puerto Rico, the U.S. Virgin Islands, and international points) carrier. TLD is a subsidiary of Telefónica International Holding B.V. (“TIH”), in turn a wholly-owned indirect subsidiary of Telefónica S.A., the Spanish global telecommunications company with communications operations throughout the world.

¹⁰ *Id.* at 13.

¹¹ *See* TELPRI Form 10-K at 3.

¹² *See e.g.*, <http://welcome.topuertorico.org/people.shtml>.

¹³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.).

In 1999, TLD entered the intrastate long distance market after the enactment of the 1996 Act and Puerto Rico's Law 213, discussed *infra*, and the implementation of equal access. TLD is a competitive provider of long-distance service in Puerto Rico, providing intrastate (intra-island), interstate, and international telecommunications service to both residential and business customers. TLD is a facilities-based carrier. Since 1992, TLD has made tens of millions of dollars in capital expenditures for facilities related to its long-distance service. TLD also provides limited local exchange service to business customers through resale although, as indicated *infra*, the telecommunications regulatory environment in Puerto Rico is unfavorable to the development of local exchange competition.

TLD does not oppose the Application on the basis of América Móvil's status as a foreign carrier seeking to acquire control of a large domestic ILEC. Rather, it seeks denial of the Application because the transfer of control of PRTC from Verizon to América Móvil specifically does not serve the public interest, would harm consumers and reduce competition.

II. Standard of Review.

Pursuant to Sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses will serve the public interest, convenience, and necessity.¹⁴ If the Commission finds that the transaction would not violate an applicable statute or rule, then the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the

¹⁴ 47 U.S.C. §§ 214(a), 310(d).

Communications Act or related statutes.¹⁵ The Commission then employs a balancing process weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁶ The Applicants bear the burden of proving by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.¹⁷

The Commission must consider whether the transaction complies with federal communications policy and promotes the “broad aims of the Communications Act.”¹⁸ Among other things, the public interest evaluation entails a deeply rooted preference for preserving and enhancing competition, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.¹⁹

¹⁵ See, e.g., In re SBC Communications, Inc. and AT&T Corp., Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd. 18290, 18300 ¶ 16 (2005) (“*AT&T/SBC Order*”).

¹⁶ See, e.g., *id.*; In re Applications of Nextel Communications, Inc. and Sprint Corporation; For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd. 13967, 13976-77 ¶ 20 (2005) (“*Sprint/Nextel Order*”).

¹⁷ See, e.g., *AT&T/SBC Order*, 20 FCC Rcd. at 18300 ¶ 16; *Sprint/Nextel Order*, 20 FCC Rcd. at 13976-77 ¶ 20.

¹⁸ *Sprint/Nextel Order*, 20 FCC Rcd. at 13977 ¶ 21 (quoting In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation; For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, 21543 ¶ 41 (2004), *reh’g denied*, 20 FCC Rcd. 8660 (2005) (“*Cingular/AT&T Wireless Order*”).

¹⁹ See, e.g., *Sprint/Nextel Order*, 20 FCC Rcd. at 13977 ¶ 21; *AT&T/SBC Order*, 20 FCC Rcd. at 18301-02 ¶ 17.

The Commission is not limited by traditional antitrust principles in determining the competitive effects of a merger.²⁰ In addition to considering whether the transaction will reduce existing competition, the Commission must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the transaction's effect on future competition.²¹ The Commission must be cognizant that in addition to whatever public interest benefits it may attribute to the transaction, the transaction also may create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.²² Only where potential harms appear less likely and less substantial will the Commission accept a lesser showing of potential benefits to approve the transaction.²³

As part of determining whether the transferee meets the requisite qualifications to hold and transfer licenses under Section 310(d) of the Communications Act and the Commission's rules,²⁴ the Commission considers in its public interest review, among

²⁰ See, e.g., *AT&T/SBC Order*, 20 FCC Rcd. at 18,302 ¶ 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544-45 ¶ 42; see also *Satellite Bus. Sys.*, 62 FCC 2d 997, 1088 ¶ 268 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *N. Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

²¹ See, e.g., *In re Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control, Memorandum Opinion and Order*, WC Docket No. 05-75, 20 FCC Rcd. 18433, 18444-45 ¶ 18 (2005) ("*Verizon/MCI Order*"); *AT&T/SBC Order*, 20 FCC Rcd. at 18302 ¶ 18.

²² See, e.g., *Verizon/MCI Order*, 20 FCC Rcd. at 18444-45 ¶ 18; *AT&T/SBC Order*, 20 FCC Rcd. at 18302 ¶ 18.

²³ *Verizon/MCI Order*, 20 FCC Rcd. at 18531 ¶ 196.

²⁴ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *AT&T/SBC Order*, 20 FCC Rcd. at 18379 ¶ 171; *Sprint/Nextel Order*, 20 FCC Rcd. at 13979 ¶ 24. The Commission also considers Commission-related misconduct of the parent of the transferee and non-

other things, conduct both related and unrelated to the Commission, including felony convictions, fraudulent misrepresentations to government units, violations of antitrust or other laws protecting competition, and other conduct on a case-by-case basis.²⁵ The Commission may also take allegations of anticompetitive conduct into consideration.²⁶

The Commission's public interest authority enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.²⁷ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.²⁸

None of this analysis takes place in a vacuum. The Commission must consider the characteristics of the markets involved, including how vulnerable or susceptible they are to abuse, and consider the relationship between the potential for anticompetitive

Commission-related misconduct of the parent of the transferee where there is a sufficient nexus between the transferee and the parent corporation. *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21550 ¶ 52. Specifically, if a close, ongoing relationship between the parent and subsidiary can be found, if the two have common principals, and if the common principals are actively involved in the day-to-day operations of the subsidiary, the Commission will then consider the significance of the relationship of the non-Commission misconduct to the operation of the subsidiary, focusing on the actual involvement of the common principals in both the misconduct and the day-to-day activities of the subsidiary.

²⁵ *AT&T/SBC Order*, 20 FCC Rcd. at 18379 ¶ 172; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. 21548, 21549-50 ¶ 47, 51 & n.201.

²⁶ *AT&T/SBC Order*, 20 FCC Rcd. at 21593 ¶ 185 n.468.

²⁷ *See, e.g., AT&T/SBC Order*, 20 FCC Rcd. at 18302-03 ¶ 19; *Sprint/Nextel Order*, 20 FCC Rcd. at 13978-79 ¶ 23.

²⁸ 47 U.S.C. § 303(r). The Commission has held it will impose conditions that remedy harms that arise from the transaction and relate to the Commission's responsibilities under the Communications Act and related statutes. *See, e.g., AT&T/SBC Order*, 20 FCC Rcd. at 18302-03 ¶ 19; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43.

conduct or the type or degree of such conduct and the conditions in the markets. To do anything else would undervalue the purpose of the public interest analysis.

III. The Current Condition of the Puerto Rico Telecommunications Marketplace.

PRTC is not only the seventh largest LEC in the United States, it is Puerto Rico's only ILEC. Prior to 1996, PRTC, then wholly-owned by the government of Puerto Rico, provided all wireline telephone service throughout Puerto Rico, including residential local exchange service, business local exchange service, payphones, directory assistance, operator service, and long distance service. It was an unregulated monopoly with prices set pursuant to shifting non-regulatory considerations. There was no rate regulation at all, and rates underwent no cost or other regulatory scrutiny. Indeed, there was a statutory prohibition against telecommunications competition. In 1999, the government of Puerto Rico sold a significant share of PRTC to GTE Holdings, now owned by Verizon, which share now amounts to a 52% ownership interest in PRTC. The government of Puerto Rico still owns 28% of PRTC and thus has a very significant economic interest in the value of PRTC.²⁹ The remaining 20% of PRTC is divided between employees of PRTC (7%) and a Puerto Rico-based bank (13%).

In response to the enactment of the 1996 Act, the Puerto Rico legislature enacted the Puerto Rico Telecommunications Act, Law 213 of September 12, 1996, 27 P.R. Laws Ann. § 265, *et seq.* ("Law 213"). Law 213 created the Telecommunications Regulatory Board of Puerto Rico ("Puerto Rico Board"), which, subject to the authority conferred and limitations imposed by Law 213, regulates telecommunication services within Puerto

²⁹ Whether or not América Móvil would also acquire the Puerto Rico government's remaining 28% ownership interest in PRTC does not change anything. The legacy of a protectionist government telecommunications marketplace will remain vibrant and its effect on competition is unaffected.

Rico. The Puerto Rico Board is entrusted with, among other things, the obligation to promote competition, promote interconnection, and remove regulatory barriers or unnecessary administrative procedures which may hamper competition in the market. The government of Puerto Rico appoints the three members of the Puerto Rico Board.

Today, a decade after the enactment of the 1996 Act, PRTC still has a monopoly in the residential local exchange market and a dominant position in the business local exchange market, broadband services market, intra-island long distance market, the interstate long distance market and the international long distance market.

There is only one (1) facilities-based competitive local exchange carrier (“CLEC”) in all of Puerto Rico regardless of the number of switched access lines, such that none of the postal zip code areas receive service from more than one CLEC.³⁰ PRTC itself confirms this dominance, that there is only one facilities-based CLEC and that even this CLEC's service is overwhelmingly to businesses. In a March 29, 2005 letter to the Commission, PRTC stated that:

Although total subscribership data from all carriers on the island are not available, **the percentage of subscribers that [PRTC] serves – 70 percent as compared to a national average penetration of 94.2 percent – is likely very close to total subscribership on the island.**

Based on conditions in Puerto Rico, it is highly unlikely that more than a very small percentage of households subscribe to a wireline or wireless competitive carrier in place of [PRTC].

³⁰ FCC, Local Telephone Competition: Status as of June 30, 2005, at Table 17 (April 2006), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2006/db0403/DOC-264742A1.pdf (“FCC Local Telephone Competition Report”).

[PRTC's] **sole** major facilities-based wireline competitor is **focused on the business market and new commercial and residential development.**³¹

But the competitive situation is even worse. Seventy-nine percent (79%) of the postal zip code areas in Puerto Rico do not receive any service from a CLEC and the remaining twenty-one percent (21%) receive service from no more than two CLECs.³² The national averages are that only seventeen percent (17%) of the postal zip code areas do not receive any switched access line service from a CLEC and thirty seven percent (37%) receive service from ten or more CLECs.³³ Thus, despite its size, the island of Puerto Rico has vast areas – disproportionately large compared to the rest of the United States – that do not have the benefit of even one facilities-based competitor in the local exchange services marketplace, and where a single competitor does have a presence, it is almost exclusively with respect to business local exchange services. PRTC maintains dominant market power in the business local exchange telecommunications market and an effective monopoly in the residential local exchange services market.

Compared to the states,

Puerto Rico is second highest among all the states in terms of postal zip code area percentage **that do not receive service from even one CLEC.** Only Alaska – a state that is much larger than Puerto Rico, has less population than Puerto Rico and has fewer switched access lines than Puerto Rico – ranks higher.³⁴

³¹ Letter from Nancy J. Victory, Counsel for Puerto Rico Telephone Company, Inc. to Jeffrey Carlisle, CC Docket No. 96-45, at 1 (filed March 29, 2005) (“March 29, 2005 PRTC Letter”) (emphasis added) (footnote omitted).

³² FCC Local Telephone Competition Report at Table 17.

³³ *Id.*

³⁴ *Id.* at Tables 7 and 17 (emphasis added).

It is clear that despite the ten years that have passed since the enactment of the 1996 Act, local exchange competition has been inexorably slow to take root in Puerto Rico and uniquely so relative to virtually anywhere else in the United States.

PRTC's local and intra-island operations are not rate regulated; it is neither a rate of return carrier nor a price cap carrier. In fact, the Puerto Rico Board has repeatedly stated that, according to Law 213, the tariffs of all telecommunications companies, dominant and nondominant alike, "go into effect simultaneously with their filing before the Board unless a complaint is filed alleging that they are not cost-based."³⁵ It is widely recognized that PRTC's current rates are not cost-based. The Puerto Rico Board's effort to adopt a cost methodology that would allow it to be able to determine the cost basis of newly filed rates was frustrated by PRTC when it withdrew tariff revisions that had been the subject of a complaint and a proceeding before the Puerto Rico Board for approximately ten months. Relying entirely on PRTC's explanation that the proceeding had lasted too long and was too complex, the Puerto Rico Board simply accepted the withdrawal of the tariff revisions and dismissed the complaints without addressing any of the legal or economic issues which had been raised and fully briefed in the proceeding.³⁶

³⁵ Comunicado de Prensa, "La Junta Reglamentadora de Telecomunicaciones Aclara Comunicados Sobre Tarifas de Servicios Residenciales" (Oct. 19, 2005), *available at* <http://www.jrtpr.gobierno.pr/ComunicadoPrensa.pdf>.

³⁶ *See generally* Telefónica Larga Distancia de Puerto Rico, Inc. v. Puerto Rico Telephone Company, Inc., Docket Nos. JRT-2005-Q-0121, *et al.* (June 22, 2005); *In re* Telefónica Larga Distancia de Puerto Rico, Inc., Petition for Expedited Declaratory Ruling Regarding Section 253 of the Communications Act of 1934, as amended, WCB Docket No. 06-1, Petition for Expedited Declaratory Ruling (Dec. 20, 2005). Considerable information regarding the current structure of telecommunications markets in Puerto Rico has been developed in discovery and in the record before the Puerto Rico Board in Docket Nos. JRT-2005-Q-0121, *et al.*, however, such information is subject to a Non-Disclosure Agreement ("NDA") between TLD and PRTC. TLD is willing to waive its

Law 213 was enacted and the Puerto Rico Board was authorized and established when PRTC was wholly-owned by the government of the Commonwealth of Puerto Rico. The current members of the Puerto Rico Board serve at the pleasure of the government which still owns 28% of PRTC and has every incentive to make the proposed new ownership comfortable with the regulatory environment in Puerto Rico. Regardless of whether the government sells its 28% share to América Móvil, the legislative and regulatory legacy of protecting the incumbent remains intact. Law 213 was a simple head nod in the direction of the 1996 Act and the pro-competition requirements and policies at the federal level.

Neither Law 213 nor the Puerto Rico Board has grasped the need for asymmetric regulation where an overwhelmingly dominant ILEC exercises extreme market power in virtually every telecommunications sector. Relying on the need for a “level playing field,” the Puerto Rico Board has ignored the starting place – which reflects the virtually unbridled potential of PRTC for anticompetitive activities – and has focused instead on making sure that any regulation apply equally to all carriers, whether competitive or not. It is no wonder that competition has not developed.

To its limited credit, four years after the local market was technically opened to competition by Law 213, the Board instituted a proceeding on market dominance and found that PRTC remained the dominant carrier in each of Puerto Rico's wireline telecommunications markets, a determination that remains true to this date.³⁷ However,

rights under the NDA in order to bring market share information before the Commission and requests that the Commission urge Verizon to direct PRTC to do the same.

³⁷ See *In re Solicitud de Comentarios en Torno a Cominio de Mercado en la Prestacion de Servicios de Telecomunicaciones*, Puerto Rico Telecommunications Regulatory Board, Case No. JRT-2000-CCG-0003, *Resolution and Order* (Aug. 23, 2000); *In re Solicitud de*

the “dominant” label has not been translated into any pro-consumer or pro-competition regulation. While the Puerto Rico Board did require PRTC to phase-in a reduction in its intrastate access charge from 9.3 cents per minute to 2.2 cents per minute over a period of years,³⁸ such progress has been painstakingly slow in the carrier-to-carrier milieu and completely absent with respect to the services provided and rates charged by PRTC to its residential and business subscribers.

Puerto Rico presents a unique telecommunications marketplace in many ways. The Puerto Rico Board recognized this uniqueness in its Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico For Enterprise Market Switching Impairment in Defined Puerto Rico Markets, filed with the Commission on December 30,

Comentarios en Torno a Cominio de Mercado en la Prestacion de Servicios de Telecomunicaciones, Puerto Rico Telecommunications Regulatory Board, Case No. JRT-2000-CCG-0003, *Resolution and Order on Reconsideration* (Dec. 21, 2000).

³⁸ See generally *Lambda Communications, Inc. v. Puerto Rico Telephone Co.*, Puerto Rico Telecommunications Regulatory Board, Case No. 97-Q-0003, *et al.*, *Resolution and Order* (Oct. 10, 2001). No sooner had the reduction in intrastate access charge been fully phased-in did PRTC file tariff revisions to create an island-wide calling area which would be mandatory for its subscribers (the “Single Zone Plan”). By dint of its monopoly in the residential local exchange market and its dominance in the business local exchange market, PRTC was seeking to force its captive subscribers to use its intra-island long distance service and thereby eliminate the more competitive intra-island long distance market altogether. PRTC had clearly figured out it could avoid the revenue loss represented by the reduction of its intrastate access charge to more realistic, cost-related levels by eliminating the need for the charge altogether and collect even greater revenues by imposing higher rated bundled packages on its subscribers and those that had previously used competitive carriers for their intra-island long distance service. After almost one year of bitter and costly debate before the Puerto Rico Board and on the eve of having to comply with certain discovery orders that stemmed from PRTC’s discovery violations, PRTC simply withdrew the tariff revisions. The Puerto Rico Board then dismissed the complaints that had given rise to the proceeding and abandoned its efforts to address key costing and competitive issues which had been fully developed in the record of the Single Zone Plan proceeding. A little over one month later, América Móvil’s proposed purchase of Verizon’s 52% controlling interest in PRTC was made public.

2003.³⁹ There, the Puerto Rico Board stated that “[t]he telecommunications market in Puerto Rico has developed from a set of historical, cultural, technical and political dimensions that are unique within the United States.”⁴⁰ It stated further that “widespread switch deployment that the Commission highlighted in the *TRO* does not yet exist in Puerto Rico”⁴¹ and that “[i]n evaluating the Puerto Rico markets, it appears that because of a variety of reasons, the markets are more embryonic than corresponding markets on the mainland.”⁴² The Puerto Rico Board's statements are as true today as they were then. TLD submits that the Commission must take the uniqueness of the Puerto Rico telecommunications markets into consideration in determining whether the proposed transaction is in the public interest.

IV. The Applicants Have Not Demonstrated That Commission Consent to the Proposed Transfer Serves the Public Interest.

Applicants fail to carry their burden to demonstrate that the proposed transfer will serve the public interest. In their Application, Applicants argue that Puerto Rican consumers will benefit from América Móvil’s operating experience, business approach and the economies of scale América Móvil will provide, but these arguments are not substantiated and rely on vague and conclusory statements.⁴³

³⁹ In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147, Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico For Enterprise Market Switching Impairment in Defined Puerto Rico Markets (Dec. 30, 2003), at 4-5.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 4.

⁴² *Id.* at 4-5.

⁴³ Public Interest Statement, Applications of Verizon Communications, Inc. and América Móvil, WT Docket No. 06-113 (filed May 9, 2006), at 2 (“Public Interest Statement”).

The Application seeks Commission consent to the transfer of control of PRTC from Verizon to América Móvil. This includes PRTC's wireline and wireless networks. Indeed, the Section 214 international authorizations associated with PRTC's local and long distance wireline operations and the microwave authorizations that govern the microwave facilities that are integral to the PRTC wireline network are to be controlled by América Móvil. As noted, PRTC is the seventh largest ILEC in the United States, the only ILEC in Puerto Rico (approximately 3.9 million U.S. citizens), and dominates all telecommunications markets. The América Móvil acquisition of PRTC presents very difficult regulatory challenges given PRTC's dominance of Puerto Rico telecommunications and broadband markets, but totally unprecedented challenges and opportunities for anticompetitive mischief that are very difficult to police given the resulting complete dominance on both ends of data, voice and other services among Puerto Rico and Brazil, the Dominican Republic, El Salvador, Guatemala, Mexico, Nicaragua and Venezuela.⁴⁴

While Applicants claim that América Móvil has nearly 100 million wireless subscribers in fourteen countries in the Americas, Applicants fail to mention that América Móvil had just 2 million fixed lines in three countries (Guatemala, Nicaragua and El Salvador) as of December 31, 2005, according to América Móvil's most recent annual report filed with the SEC.⁴⁵ Thus, only about 2% of América Móvil's subscribership is fixed line and these holdings will nearly be tripled by this transaction. The acquisition of TELPRI, the dominant wireline service provider in Puerto Rico, would

⁴⁴ See The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets, Public Notice, DA 04-1584 (May 28, 2004).

⁴⁵ América Móvil Form 20-F at 15.

add approximately 1.1 million access lines, including 841,000 residential and 269,000 business lines – an increase in fixed lines of roughly another 50% for América Móvil.⁴⁶ América Móvil is predominantly a wireless carrier and its very limited experience with wireline networks, operations and business does not rise to the level demanded by the seventh largest wireline network in the United States.

Verizon-controlled PRTC has been very vocal at the Commission concerning the low telephone penetration rate in Puerto Rico. For example, in November 2004, PRTC told the Commission that “Puerto Rico is an area seriously deserving of high cost universal service funding” because “[t]he penetration rate . . . within the [C]ommonwealth currently stands below 70 percent – far below both the national average (94 percent) and even the lowest state penetration rate (88 percent in Arkansas). The penetration rate in many of Puerto Rico’s rural counties is substantially lower – in some places below 50 percent.”⁴⁷

The telephone penetration rates in Nicaragua, Guatemala and El Salvador, however, are only 3.8%, 8.9%, and 13.4%, respectively.⁴⁸ It is unclear how América Móvil, with its limited wireline experience and even then at such clearly low and unacceptable penetration levels, will enhance the telephone penetration rate in Puerto

⁴⁶ TELPRI Form 10-K at 3.

⁴⁷ Letter from Nancy J. Victory, Wiley, Rein & Fielding LLP, counsel for Puerto Rico Telephone Company, Inc., to Jeffrey Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 96-45 (Nov. 4, 2004), at 1. *See also* In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, WC Docket No. 05-337, Comments of Puerto Rico Telephone Company, Inc. (Mar. 27, 2006), at 25-26.

⁴⁸ Latin Business Chronicle, *Brazil the leader in lines and Costa Rica in penetration*, available at <http://www.latinbusinesschronicle.com/technology/telecom.htm> (last visited July 14, 2006).

Rico. This scarcity of experience and the qualifications that América Móvil would bring to Puerto Rico also brings the clear risk of further increasing the dependency of Puerto Rico on universal service funds. América Móvil stands poised to avail itself of universal service funding such as the \$66 million PRTC received in 2005 from the Interstate Common Line Fund, plus approximately \$6 million that PRTC's wireless operation received from the same fund, plus over \$13 million that PRTC received from the Low Income fund in 2005.⁴⁹ The public interest requires much more.

The Applicants purport to describe the public interest benefits that flow from the proposed transaction. This section is full of general platitudes which consistently say nothing probative. By relying on arguments in favor of América Móvil's general operating experience, Applicants do not offer sufficient, specific reasons for the Commission to conclude that the transaction will result in public interest benefits sufficient to mitigate potential harms from the transaction. Missing from the Public Interest Statement in particular is an explanation of how América Móvil's operating experience and business approach with respect to wireline service would benefit Puerto Rican consumers. Instead, América Móvil devotes much of its Public Interest Statement to a discussion of its efforts in its wireless business, relying on unexplained conclusory statements that its operating experience as a large telecommunications provider will benefit Puerto Rican consumers. Nor does América Móvil make any commitment,

⁴⁹ See USAC HC-01 quarterly reports for PRTC and PRTC-Central in 2005. Low income disbursement data for Puerto Rico, *available at* <http://www.usac.org/li/tools/disbursements>, and high cost disbursement data for Puerto Rico, *available at* <http://www.usac.org/hc/tools/disbursements>. Of course, if the Commission approves Puerto Rico's participation in the High Cost Fund, América Móvil stands to receive considerably more monies from the Universal Service Fund. See generally *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, WC Docket No. 05-337.

enforceable or otherwise, to Puerto Rico or PRTC regarding capital spending, broadband deployment or competitiveness or introduction of new services, let alone assert that it will even continue investing at the level of its current owners.⁵⁰

For example, América Móvil states that its “ability to compete successfully [depends] on customer service, on marketing, and on our ability to anticipate and respond to various competitive factors affecting the telecommunications industry, including new services and technologies, changes in consumer preferences, demographic trends, economic conditions and discount pricing strategies by competitors.”⁵¹ This says nothing of any value to a public interest determination.

Similarly, América Móvil states that its “experience in the provision of telecommunications services throughout the Americas will enable it to build upon Verizon’s achievements in expanding the availability and scope of telecommunications

⁵⁰ In the TELPRI Form 10-K (at 3), TELPRI states:

We have invested approximately \$1.4 billion from the date of the Acquisition . . . through December 31, 2005 to expand and enhance our network. In 2006 we expect to invest an additional \$154 million in capital expenditures. Our digital switching wireline network encompasses over approximately 90,200 fiber miles with speeds of up to OC-192 and supplies direct fiber optic connections to more office buildings than any other service provider on the island. Our cellular network utilizes the code division multiple access (“CDMA”) standard and the time division multiple access (“TDMA”) standard. During 2003, the Company decided to migrate all TDMA clients to the CDMA network. We have invested approximately \$137 million since 2001 in a network overlay using the CDMA standard.

⁵¹ Public Interest Statement at 3 (quoting América Móvil’s Form 20-F at 6).

services for consumers in Puerto Rico.”⁵² These meaningless assertions are entirely unsupported by specific – let alone general – commitments.

Another example is América Móvil’s statement that “[t]he ‘networks are consistently optimized to try to ensure maximum coverage and high quality service.’”⁵³ This statement is uninformative at best.

The Commission recognizes that efficiencies generated through a merger can mitigate competitive harms where the efficiencies enhance the entity’s ability and incentive to compete, with resulting benefits such as lowered prices, improved quality, enhanced services or new products.⁵⁴ However, Applicants have not made this showing. While Applicants’ Public Interest Statement is filled with adulations as to América Móvil’s size and success in Latin America, it offers few arguments as to why or how its size and success would enhance competition with resulting benefits for Puerto Rican consumers, under United States regulation, even as much as – let alone any more than – is currently the case for Verizon.

Applicants thoroughly fail to translate América Móvil’s operating experience and business approach into public interest benefits for Puerto Rican consumers. Applicants acknowledge that there are “material socioeconomic differences between Puerto Rico and the countries in which América Móvil has operated successfully,” but do not reconcile

⁵² *Id.* at 5-6 & n.7 (citing the description of América Móvil’s operations in América Móvil’s Form 20-F at 20-45).

⁵³ *Id.* at 3 (quoting América Móvil’s Form 20-F at 16).

⁵⁴ Verizon/MCI Order, 20 FCC Rcd. at 18530 ¶ 194 (citing Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd. 20559, 20630 ¶ 188 (2002)).

these differences.⁵⁵ Instead, Applicants simply conclude that América Móvil’s general operating experience, its experience in dealing with “economically stratified populations” and difficult geographic terrain in its current operations in different countries will bring public interest benefits.⁵⁶ Such conclusory arguments cannot serve as a basis for a public interest finding by the Commission. Applicants state that América Móvil has accommodated low-income customers, but admit that residents of Puerto Rico have a higher level of average personal income than the countries in which América Móvil has operated.⁵⁷ Applicants fail to explain how América Móvil’s experience in other markets would benefit Puerto Rican consumers in the Puerto Rican market. The wireline penetration levels in Puerto Rico far exceed those in the other markets in which the acquirer operates wireline networks, and the acquirer has never shown any ability to manage a wireline network where penetration is this high, let alone demonstrate the know-how as to how to best increase it. In addition, Applicants extol América Móvil’s approach to network development and expansion but do not link the company’s business approach to the Puerto Rican market.⁵⁸

As discussed below, the transaction would result in harms that are both substantial and likely. Because of these potential harms, Applicants face a higher burden of showing specific public interest benefits. Applicants fail to meet this burden by using vague and conclusory statements that are essentially self-laudatory and have no probative bearing on a public interest showing.

⁵⁵ Public Interest Statement at 5.

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 4-5.

⁵⁸ *Id.* at 3, 5.

V. The Proposed Transfer Has Significant Anticompetitive Potential Which Requires Denial of the Application as Contrary to the Public Interest.

The Applicants claim that the proposed transaction would have no anticompetitive effects. The discussion is myopic and inaccurate.

A. The Applicants' Claims That PRTC Faces Significant Competition Is Ill-Founded.

The Applicants claim that PRTC is subject to significant intermodal competition.⁵⁹ It appears that at least one of the Applicants changes its view on this issue depending on the context of the argument. In March 2005, in an effort to obtain participation for Puerto Rico in the Universal Service High Cost Fund, Verizon-controlled PRTC emphasized to the Commission that it was not subject to competition, intermodal or otherwise.⁶⁰ As noted earlier, the March 29, 2005 letter to the Wireline Competition Bureau confirmed that PRTC has virtually no competitors in Puerto Rico:

[PRTC] is the only incumbent local exchange carrier in Puerto Rico. Although total subscribership data from all carriers on the island are not available, the percentage of subscribers that [PRTC] serves – 70 percent as compared to a national average of penetration total of 94.2 percent – is likely very close to total subscribership on the island.

Based on the conditions in Puerto Rico, it is highly unlikely that more than a very small percentage of households subscribe to a wireline or wireless competitive carrier in place of [PRTC]. This is based on the fact that the areas in which [PRTC]'s subscribership levels are particularly low – those areas requiring network build-out and low-income residential and rural communities – are also areas in which competitors, wireline and wireless, lack facilities.

⁵⁹ *Id.* at 9-10.

⁶⁰ March 29, 2005 PRTC Letter at 1 (“Based on the conditions in Puerto Rico, it is highly unlikely that more than a very small percentage of households subscribe to a wireline or wireless competitive carrier in place of [PRTC].”).

[PRTC]'s sole major facilities-based wireline competitor is focused on the business market and new commercial and residential development. Likewise, wireless carriers, including [PRTC]'s affiliated wireless provider, have the same difficulties as [PRTC] does serving remote areas – due to the lack of basic infrastructure and the inhospitable terrain on the island. Further, consistent with conditions on the mainland, wireless service remains largely a complementary service in Puerto Rico.⁶¹

Yet, from April 2005 through the beginning of February 2006, PRTC complained bitterly to the Puerto Rico Board that it was a victim of extreme intermodal competitive pressures as it sought to implement a **mandatory** islandwide calling plan that would have eliminated the intra-island long distance services market.⁶² In May 2006, PRTC returned to the Commission and claimed it is not subject to those same competitive pressures, even criticizing others who would make that claim and citing favorably those that express concerns regarding the substitutability of other technologies.

At least two hundred communities in Puerto Rico have no access to communications infrastructure of any kind, and Sprint Nextel presents no evidence to demonstrate that intermodal competition will extend network facilities – wireline or wireless – to these areas. MMTC and CWA also express concern with respect to those technologies' effectiveness with respect to public safety and disaster preparedness: “[w]hen cell phones do not work, terrestrial phones often still do.”⁶³

The Puerto Rico Board agrees, citing PRTC approvingly for the proposition that “wireline telephone penetration continues to drop among low income customers, who are

⁶¹ *Id.* at 1-2 (footnote omitted).

⁶² *See generally* Telefónica Larga Distancia de Puerto Rico, Inc. v. Puerto Rico Telephone Company, Inc., Docket Nos. JRT-2005-Q-0121, *et al.* (June 22, 2005).

⁶³ In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, WC Docket No. 05-337, Reply Comments of Puerto Rico Telephone Company, Inc., (May 26, 2006), at n.5 (citation omitted).

not likely to be moving to a wireless service”⁶⁴ and further stating that “the Board does not credit the decline in telephone penetration entirely to a migration to wireless. Rather, we believe a significant portion of the decline is due to the difficulties of maintaining an efficient network in an insular area.”⁶⁵

Cynically, Verizon tells the Commission in this proceeding that PRTC faces significant competition – because it now is in their best interest to assert that there is no competitive impact associated with the proposed transaction. However, a very short time ago, PRTC characterized almost the identical competitive landscape in the opposite way, telling the Commission that it faces virtually no competition – because it was then making the case for Puerto Rico’s participation in the Universal Service High Cost Fund. In simple point of fact, PRTC has no credibility whatsoever on the subject of competition, and the Commission should not rely on the Applicants’ claims in this proceeding that Puerto Rico has a healthy competitive telecommunications environment.

B. AT&T’s Interest In América Móvil and Telmex Represent Significant Anticompetitive Potential.

The Applicants paint AT&T, Inc.’s (“AT&T”) ownership in América Móvil with a broad brush, as competitively inconsequential.⁶⁶ This is a gross understatement. As described below, approval of the proposed transaction will result in AT&T holding very significant financial stakes in the licensees of the two largest wireless carriers in Puerto

⁶⁴ In re Federal-State Joint Board on Universal Service, Reply Comments of Telecommunications Regulatory Board of Puerto Rico, CC Docket No. 96-45, WC Docket No. 05-337 (May 26, 2006), at 4.

⁶⁵ *Id.* at 3.

⁶⁶ Public Interest Statement at 7.

Rico, within excess of 70 MHz of spectrum and over 50% market share.⁶⁷ The anticompetitive potential inherent in this situation is plainly inconsistent with the public interest.⁶⁸

i. AT&T Has Significant Economic Stakes in América Móvil and Telmex Which Create Unacceptable Anticompetitive Potential.

At the present time, AT&T holds approximately 60% of Cingular Wireless Services, Inc. (“Cingular”), which has the largest wireless operation in Puerto Rico with a reported market share of approximately 32%. In the event that the Commission approves AT&T’s pending acquisition of BellSouth Telecommunications, Inc. (“BellSouth”), AT&T will have 100% ownership of Cingular.⁶⁹

According to the Application, SBC, not AT&T, “holds approximately 7.91 percent of América Móvil’s total capital stock,” including “approximately 24.47 percent”

⁶⁷ *Id.* at 8; *see also* Por Rafael Lama Bonilla, *Verizon registra crecimiento de 20%*, El Nuevo Día, Aug. 10, 2005.

⁶⁸ In the *AT&T/SBC Order*, the Commission concluded that SBC’s ownership interest was below the threshold to be considered an affiliate of Telmex for purposes of having dominant carrier status on the U.S.-Mexico route. *AT&T/SBC Order*, 20 FCC Rcd. at 18378 ¶ 169. In the instant case, the issue raised is not whether AT&T should be deemed to have dominant carrier status on the U.S.-Mexico route or any other route. The issue here concerns the anticompetitive effects of América Móvil’s acquisition of PRTC on U.S. consumers and competition in Puerto Rico. Moreover, in the AT&T/SBC Merger, the transaction did not result in a significant financial stake in the two largest wireless carriers in a market. Nor is there any indication that the Commission even had the amount of the financial stake that SBC had in Telmex before it in the AT&T/SBC Merger.

⁶⁹ *See* El Nuevo Día, *supra*. The AT&T Annual Report states “[w]e account for our 60% economic interest in Cingular under the equity method of accounting in our consolidated financial statements since we share control equally (i.e. 50/50) with our 40% economic partner BellSouth in the joint venture.” 2005 Annual Report, AT&T, Inc. (Feb. 16, 2005), at 28 (“AT&T 2005 Annual Report”), *available at* http://att.sbc.com/Investor/ATT_Annual.

of the class AA shares (representing voting control of the company) and that its “stock is owned through a trust that effectively neutralizes its votes.”⁷⁰

What the Application does not say is that AT&T’s 7.9% interest represents a very sizable financial stake. In its most recent Annual Report, AT&T states **“[t]he fair value of our investment in América Móvil, based on the equivalent value of América Móvil L shares at December 31, 2005, was approximately \$4,198[000,000].”**⁷¹

Moreover, although América Móvil chooses not to disclose it, AT&T also holds approximately 8.2% of Telmex’s total capital stock as to which AT&T states that **“[t]he fair value of our investment in Telmex, based on the equivalent value of Telmex L shares at December 31, 2005, was approximately \$2,221[000,000].”**⁷² All told, while the Applicants claim that AT&T’s voting interests of 24.61% in América Móvil and 21.0% in Telmex are effectively “neutralized” by virtue of being held in a legally required trust, AT&T nevertheless holds a financial stake of approximately \$6.4 billion dollars in América Móvil and Telmex.⁷³ By any reasonable standard, the size of the investment in América Móvil alone, or together with Telmex, can be expected to influence boardroom and competitive marketplace behavior by AT&T.

⁷⁰ Overview of the Transaction/Petition for Declaratory Ruling/Request Procedural Considerations at n.7, Applications of Verizon Communications Inc. and América Móvil, WT Docket No. 06-113 (filed May 9, 2006) (“Petition for Declaratory Ruling”). *See also* América Móvil Form 20-F at 77 (América Móvil states that the AA Shares are an unlisted class of voting shares held only by America Telecom S.A. de C.V., AT&T and certain other Mexican investors, and that the AA Shares represent 93.55% of the full voting shares (the remaining being A Shares) and 30.18% of the total capital stock of América Móvil as of April 30, 2006. According to the América Móvil 20-F, as of April 30, 2006, AT&T owned 26.30% of the class of AA Shares, and 24.61% of the voting shares of the company.).

⁷¹ AT&T 2005 Annual Report at 69 (emphasis added).

⁷² *Id.* (emphasis added).

⁷³ América Móvil Form 20-F at 77-78; Telmex Form 20-F at 73.

The proposed \$939 million acquisition of Verizon's 52.01% interest in PRTC would give América Móvil control of PRTC's wireline and wireless operations in Puerto Rico. América Móvil expects to acquire the remaining 47.99% at a cost of \$866.4 million.⁷⁴ Thus the cost of acquiring 100% of PRTC would be \$1.805 billion. This is not an insignificant expenditure. As noted, PRTC's wireline operation is an island-wide ILEC that faces no competition to speak of in the residential local exchange market and only slightly more in each of Puerto Rico's other telecommunications markets. PRTC's wireless operation has the second largest market share in Puerto Rico, recently identified at approximately 24%.⁷⁵

Thus, Commission consent to the proposed transaction would leave AT&T with very significant financial stakes in the success of the *two* largest wireless operations in addition to the near monopoly ILEC in Puerto Rico and would, therefore, give it an incentive to engage in anticompetitive strategies to maximize the return on its investment.⁷⁶ Since PRTC already dominates all telecommunications markets in Puerto

⁷⁴ See América Móvil Form 20-F at 17. In all cases, América Móvil would acquire 65% of TELPRI's common stock. In addition to Verizon's 52.01% interest in TELPRI, América Móvil has already agreed to acquire Popular, Inc.'s 13% stake in TELPRI at a cost of \$234 million. Petition for Declaratory Ruling at 3; Pedro Valle Javier, *Popular to Sell Its PRT Stake for \$234 Million*, Caribbean Business, at 4, July 6, 2006.

⁷⁵ See El Nuevo Día, *supra* at note 68.

⁷⁶ For example, potential discrimination could take a number of forms, such as: (1) routing calls to affiliates or preferred carriers in proportions greater than those justified; (2) otherwise manipulating the calculations and settlements payments to wrongfully favor of affiliates or preferred carriers; (3) routing high-profit calls to affiliates or preferred carriers, and leaving the rest to their competitors; (4) undercharging affiliates or preferred carriers and/or overcharging their competitors for use of the same essential facilities in Puerto Rico, Mexico or other markets where América Móvil or Telmex have a local exchange monopoly or dominance; (5) leaking to affiliates and preferred carriers the confidential information that they receive from competitors of such affiliates or preferred carriers; (6) giving affiliates or preferred carriers advance notice of network changes and

Rico except for the wireless market, the proposed transaction would affiliate América Móvil, AT&T and PRTC with the dominant position in that market as well. Absent effective conditions, dominance would encourage strategic behavior that could yield PRTC yet more customers, calls and revenues, and ultimately higher returns, than would otherwise be the case.

ii. AT&T Has a Significant Voice In América Móvil's Matters.

The Applicants state in conclusory fashion that AT&T's approximately 24.47% (now 24.61%) of the América Móvil class AA shares (representing a 93.37% voting control of América Móvil) "is owned through a trust that effectively neutralizes its votes."⁷⁷ This trust is apparently a creature of América Móvil's bylaws and the Applicants do not state that it is required by Mexican law. The Applicants do not explain what they base their conclusion on that the trust "effectively neutralizes" AT&T's votes at the shareholder level. The Applicants provide an insufficient description of the trust,

other information that affiliates, preferred carriers and their competitors will need to know; or (7) either as an agent or through an affiliated third party, selling the services of affiliates or preferred carriers in ways that use PRTC's, América Móvil's and Telmex's home market power. *See* Sprint Corp., Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act, Declaratory Ruling, 11 FCC Rcd. 1850 ¶ 56 (1996).

⁷⁷ Petition for Declaratory Ruling at n.7. According to the América Móvil Form 20-F, América Móvil's bylaws refer to such trusts as:

Trusts expressly permitted to acquire AA Shares in accordance with Mexican law and in which (i) the majority of the trustee's rights are held by Mexican citizens, corporations whose capital stock is completely held by Mexican citizens, and Mexican credit, insurance and investment companies or (ii) the AA Shares controlled by the trust represent a minority of the outstanding AA Shares and are voted in the same manner as the majority of the outstanding AA Shares.

América Móvil Form 20-F at 95. The Applicants do not reveal which of the subsections described above applies to the trust in AT&T's case.

its provisions, and how it operates, and do not even identify the trustee.⁷⁸ TLD submits that, without a review of the trust documents, the Commission cannot determine whether the trust truly “neutralizes” AT&T’s shareholder vote.⁷⁹ If the trust is required only by América Móvil’s bylaws, and class AA shares are almost exclusively held by America Telecom and AT&T, there would seem to be little to prevent modification of the bylaws. Moreover, the Applicants disclose that AT&T has the right to appoint two directors on the board of América Móvil.⁸⁰ AT&T also appoints one member of the three-member América Móvil Executive Committee. There is no indication that the designation of these board members and Executive Committee member is within the province of the trustee and there is no mention in the Applicants’ filings with the Commission or in the

⁷⁸ It is noteworthy that in its most recent Form 10-K, AT&T states that “[w]e are a member of a consortium that holds all of the class AA shares of América Móvil stock, representing voting control of the company.” Form 10-K, AT&T Inc., SEC File No. 1-8610, at 8 (filed Mar. 1, 2006) (“AT&T Form 10-K”). Although disclosed in the América Móvil Form 20-F, the fact that the AT&T shares are held by a trust and, more significantly, that the trust mechanism “neutralizes” AT&T’s ability to vote the shares, is not mentioned in the AT&T Form 10-K. The Applicants have not submitted a copy of the trust documents that “neutralize” AT&T’s ability to vote the AA shares. It is unclear how to reconcile its statement regarding the trust with the statement in the 10-K representing to the AT&T shareholders that they are members of a consortium that holds voting control of América Móvil, something which clearly implies that AT&T controls its own votes.

⁷⁹ The same arrangements and issues exist in the AT&T relationship with Telmex except that it is Carso Global Telecom (Telmex’s parent) that has the right to appoint a majority of the directors of Telmex and AT&T has the right to appoint an **unstated** number of directors of Telmex and to appoint one member of Telmex’s Executive Committee pursuant to an agreement entered into December 2000 between Carso Global Telecom and SBC International, Inc. based on their respective share of ownership. *See* AT&T Form 10-K at 7-8; Telmex Form 20-F at 64-65, 73.

⁸⁰ Petition for Declaratory Ruling at n.7. In the most recent América Móvil Form 20-F filing, América Móvil states that AA Shareholders and A Shareholders “together elect a majority of the directors and alternate directors, provided that any holder or group of holders of at least 10% of the total AA Shares and A Shares is entitled to name one director.” América Móvil Form 20-F at 68.

América Móvil Form 20-F whether the trust also “neutralizes” AT&T’s votes on the board or its ability to function independently as one-third of the Executive Committee as well.

In fact, the two directors and the one member of the three-member América Móvil Executive Committee are officers of AT&T.⁸¹ The Commission should not assume that a trust, which is claimed to effectively “neutralize” AT&T’s ability to vote its shares as it wishes, would coincidentally appoint AT&T officers to the América Móvil Board of Directors so that they can vote as AT&T wishes. América Móvil plainly states that its “Board of Directors has broad authority to manage our company”⁸² and that “[o]ur bylaws provide that the Executive Committee may generally exercise the powers of the Board of Directors, with certain exceptions.”⁸³ The reasonable conclusion is that the vote at the shareholder level does not drive the important management decisions and that if AT&T’s vote at the shareholder level has been effectively neutralized by certain trust provisions, the fact that AT&T does have a vote and a voice at the Board of Directors and Executive Committee may be more meaningful for purposes of this proceeding.

⁸¹ América Móvil Form 20-F at 71. The directors are Rayford Wilkins, Group President, AT&T, and John Stephens, Senior Vice President and Controller, AT&T. Mr. Wilkins is also a member of the three-member América Móvil Executive Committee. *Id.* at 70.

⁸² *Id.* at 68. América Móvil goes on to explain that “[a]ctions requiring the approval of our board of directors include: a change of control of the company; transactions with related parties (as defined in the Mexican Securities Market Law); acquisitions or sales of assets equal in value to, or greater in value than, 10% of the value of the company’s assets; guarantees of amounts exceeding 30% of the value of the company’s assets; and any other transaction in an amount greater than 1% of the value of the company’s assets.” *Id.*

⁸³ *Id.* at 71. The “certain exceptions” are not identified by América Móvil.

Finally, the América Móvil Form 20-F states that:

América Telecom and [AT&T] are parties to an agreement relating to their ownership of AA Shares. Among other things, **the agreement subjects certain transfers of AA Shares by either party to a right of first offer in favor of the other party**, although the right of first offer does not apply to the conversion of AA Shares to L Shares, as permitted by our bylaws, or the subsequent transfer of L Shares. The agreement also provides for the composition of the Board of Directors and the Executive Committee and for each party to enter into a Management Services Agreement with us.”⁸⁴

The significance of this right of first refusal cannot be ascertained without a review of the agreement containing it. Nor can it be determined whether such agreement or any other agreement for that matter affects how shares are voted.⁸⁵ Nor can the significance of a “Management Services Agreement” with AT&T be assessed without reviewing a copy.

iii. América Móvil and Telmex Are Also Intertwined With AT&T.

In addition, Telmex and América Móvil are very much intertwined financially with AT&T. AT&T’s interest in Telmex arises from various transactions and contractual relationships. Telmex and AT&T have participated in several transactions in recent years. The Telmex Form 20-F shows that three of Telmex’s eighteen current directors are executives at AT&T or an affiliate of AT&T.⁸⁶ Furthermore, since 2002, Telmex has paid SBC International Management Services, Inc., an AT&T subsidiary, for consulting

⁸⁴ América Móvil Form 20-F at 77 (emphasis added).

⁸⁵ For example, a requirement that the AT&T AA shares be “voted in the same manner as the majority of the outstanding AA Shares,” as could be the case depending on the nature of the trust in this case, would be rendered meaningless by an agreement between AT&T and America Telecom as to how America Telecom is to vote its own majority AA shares on a given issue.

⁸⁶ Telmex Form 20-F at 63.

and management services provided to Telmex pursuant to a written agreement.⁸⁷ Telmex will pay SBC International Management Services, Inc. \$9 million this year for services performed under the agreement.⁸⁸ Telmex also pays AT&T fees for consulting and management services.⁸⁹

América Móvil's relationship with AT&T similarly demonstrates that AT&T has a financial interest in América Móvil. Since 2002, SBC International, Inc. has provided services to América Móvil's Mexican wireless subsidiary, Telcel, pursuant to a written agreement for which Telcel will pay \$1 million this year.⁹⁰ These services consist of advising Telcel with respect to its management, operations, business and regulatory efforts, infrastructure and network construction, and technical, administrative and financial planning, among others things.

Thus, the proposed transaction would diminish competition in the wireless market by creating significant economic interests between the two largest wireless carriers in Puerto Rico. In addition, the proposed transaction would diminish competition by aligning AT&T's operations as a wireless operator, an intra-island long distance service provider, an interstate long distance service provider and an international long distance service provider with those of América Móvil, Telmex and PRTC.

⁸⁷ *Id.* at 75-76.

⁸⁸ *Id.* at Ex. 4.5.

⁸⁹ *Id.* at F-47. The Commission has previously noted some of these interrelationships between SBC and Telmex. *See AT&T/SBC Order*, 20 FCC Rcd. at 18379 n.476 (noting the existence of the trust, SBC's designation of directors on the Telmex board and a member of the Telmex Executive Committee, the Management Services Agreement and "a Joint Marketing Agreement [between SBC and] Telmex USA, LLC, a wholly-owned subsidiary of Telmex, pursuant to which SBC assists Telmex USA in marketing two types of Telmex prepaid calling cards that bear the SBC logo.")

⁹⁰ América Móvil Form 20-F at 81, Ex. 4.4.

C. The Proposed Transaction Eliminates Potential Competition and Threatens Existing Competition.

This is not the first time these two entities have crossed paths with Puerto Rico. Six years ago, in 2000, SBC and Telmex joined forces and acquired the wireless mobile network now owned by Cingular.⁹¹ Telmex has since sold its controlling interest in that venture to SBC, but its previous entry into the Puerto Rico telecommunications marketplace demonstrates its viability as an independent competitor in that market. By acquiring PRTC, including its wireless operation, América Móvil eliminates itself as a potential additional competitor in a market sorely in need of competition.

In addition, América Móvil has maintained an interest in telecommunications in Puerto Rico, most directly through its 98% owned affiliate, TracFone Wireless, Inc. (“TracFone Wireless”), the largest prepaid wireless card and prepaid wireless phone company with \$4.9 million in revenues.⁹² TracFone Wireless has dozens of retail outlets in Puerto Rico. The potential for TracFone Wireless to align itself with PRTC’s wireless operation and Cingular Wireless, to the exclusion of its competitors is readily apparent.

Thus, Telmex and América Móvil have a history as a competitor, both facilities-based and resale, in Puerto Rico. The acquisition of PRTC by América Móvil diminishes competition on the island, both potential and actual.

⁹¹ See International Bureau and Wireless Telecommunications Bureau Grant Consent for Transfer of Control of Licenses of Cellular Communications of Puerto Rico, Inc. to SBC Communications, Inc., Public Notice, DA 99-1654 (Aug. 18, 1999).

⁹² See TracFone, <http://www.tracfone.com/about.jsp?nextPage=about.jsp&task=about>; América Móvil Form 20-F at 35, 45.

D. The Telmex and América Móvil Records of Impeding and Resisting Competition Do Not Satisfy the Public Interest Standard in this Proceeding.

The activities of the telecommunications companies belonging to the América Móvil and Telmex groups provide clear guidance as to what can be expected in Puerto Rico should the Commission consent to the proposed transaction as presented.

The telecommunications companies belonging to the América Móvil and Telmex groups have a long-standing history and continuing practice of forceful, multi-faceted resistance to competition in the telecommunications markets.

A February 25, 2006 article in the Wall Street Journal makes the point:

A decade after supposed deregulation, Telmex has 95% of the country's fixed line market, resulting in relatively high telephony prices and a sub-optimal ratio of telephones to Mexican homes, particularly in rural areas. Telmex controls almost all data traffic and consumer choice in broadband, Internet and voice over Internet services is practically non-existent. It's still not clear whether the wireless market can develop competitively.

....

Mr. Slim's company has been masterful in protecting its turf. One example is its success in using endless litigation to fend off regulatory orders that it provide interconnection to other carriers at fair rates, as required by law. However, in crushing competition, Mr. Slim has not acted alone. He has had help from the government of PAN President Vicente Fox, as he did from the Institutional Revolutionary Party (PRI) President Ernesto Zedillo before him.⁹³

A June 3, 2006, article in the New York Times echoes these points. Referring to Mr. Slim Helú, the article states:

[H]e used his influence over the government to fight off attempts by competitors – including MCI and AT&T – to get a piece of the Mexican market.

⁹³ Mary Anastasia O'Grady, *A Telecom Monopoly Cripples Mexico*, Wall St. J., at A19, Feb. 25, 2006.

Today, 9 out of 10 telephone lines in Mexico are operated by Telmex. Its mobile sister company, Telcel, operates almost 80 percent of all the country's cellphones. That dominance has financed Mr. Slim's expansion abroad. Over the past five years, his wireless carrier América Móvil has bought cellphone companies across Latin America to become the region's dominant company, with more than 100 million subscribers.

The Organization for Economic Cooperation and Development, an association of wealthy countries based in Paris, reports that Mexicans pay some of the highest phone rates in the world, with calls costing 50 percent more than the group's average.

....

As a result, said Mr. Ortiz of the Bank of Mexico, economic growth is one percentage point less than it could be with real competition. There are not enough jobs to keep workers from migrating to the United States and investment is being driven to countries like Brazil and China.⁹⁴

Even more recently, in the Wall Street Journal, on June 21, 2006, Telmex and affiliates were called to task for monopoly pricing, anticompetitive machinations, for using its considerable resources to fight off deregulatory efforts with endless litigation and ferociously protecting the Telmex advantage.⁹⁵ The same source indicated that (a) Telmex "retains 95% of the fixed-line market, and telephony prices are high relative to markets that have undergone deregulation;" (b) "[a]ccess in rural areas is sketchy;" (c) "Telmex controls almost all data traffic, and there is next to no consumer choice in

⁹⁴ Ginger Thompson, *Prodded by the Left, Mexico's Richest Man Talks Equity*, N.Y. Times, June 3, 2006.

⁹⁵ *Slim Pickings*, Wall St. J., A12, June 21, 2006.

broadband, Internet and voice-over-Internet," and (d) "Telmex's domination in fixed-line services has also damaged competition in the wireless market."⁹⁶

Also, Mexican government officials have noted the high costs to the Mexican people of not having a pro-competitive telecommunications environment, and the opposition of the dominant carriers to such a regime. As noted even by government officials in a March 14, 2006 Financial Times article:

Mexico's top competition official has urged the government of Vicente Fox to push ahead with reforms to the country's telecommunications market to allow companies to compete with Telmex, the privatised telephone monopoly. For months, the Federal Competition Commission (CFC) has been working with the Telecommunications and Transport Ministry (SCT) to lay the foundations for so-called "convergence" – allowing cable companies to offer telephone services while permitting telephone operators to provide video. But Eduardo Pérez Motta, who heads the commission, said he perceived a loss of momentum in recent months that could spell trouble in his fight to make Mexico a more competitive country.

I was very optimistic in November, and the SCT said they liked our proposals. What has happened since then? November has passed, so has December, January and February. And they haven't done anything," he told the Financial Times in a recent interview.

The SCT was unavailable for comment yesterday. Mr Pérez Motta's comments will fuel a raging debate in Mexico over the issue of competition – or the lack of it. At a conference last week, Guillermo Ortiz, the central bank governor, lashed out at the many virtual monopolies that dominate the country's corporate landscape.

In reference to the telecoms sector, though without mentioning Telmex, Mr Ortiz said: "The dominant industries and corporate groups do not like competition, and that affects Mexico's economic performance."

⁹⁶ *Id.*

Mr Pérez Motta insisted that introducing greater competition into the country's telecoms sector was central to making Mexico more competitive. "This is a once-in-a-lifetime opportunity," he said. "If we do it well we can change the telecommunications market and that of video, too. If we don't we will leave it the same or probably worse than it is today." Many economists and commentators have long complained about the dominance of Telmex, owned by Carlos Slim, Latin America's richest man. With about 18m lines, the company controls 94 per cent of all fixed phone lines. Mr Slim also controls an estimated 80 per cent of the mobile phone market.

The result is a virtual stranglehold on Mexico's telecoms market, and independent studies show that Mexico has some of the world's highest phone charges. . . .⁹⁷

E. América Móvil Ruled to Have Engaged in Anticompetitive Practices.

In an unpublished decision issued in March of this year, Mexico's antitrust commission, the Federal Competition Commission (Comisión Federal de Competencia, or "COFECO"), ruled that América Móvil, through its wholly-owned and dominant wireless subsidiary, Telcel,⁹⁸ engaged in anticompetitive practices by preventing subscribers from exchanging text messages with NII Holdings (Nextel) customers.⁹⁹

The monopolistic practice consisted of an act whose objective and effect was to substantially impede access to the market, through unilateral action consisting in refusing

⁹⁷ Adam Thomson, *Mexico competition chief urges telecoms reform*, Financial Times, Mar. 14, 2006.

⁹⁸ Telcel is the largest wireless provider in Mexico, with 35.9 million subscribers and 80% of the wireless market. See América Móvil Form 20-F at 15; see also IMF Report at 6 ("Telmex controls 96 percent of the fixed-line network and its sister company, Telcel, controls 80 percent of the mobile market").

⁹⁹ *Watchdog: Telcel wrong to refuse Nextel interconnection*, BNAméricas.com, July 5, 2006, available at <http://www.cellular-news.com/story/18125.php>.

to sell or provide to specific persons goods or services available and normally offered to others.¹⁰⁰

According to reports, COFECO emphasized that Telcel refused to interconnect unilaterally even though it had made such interconnection available to others.¹⁰¹

The conduct that we analyzed is considered contrary to the competitive process and free entry, being a restriction on the efficient functioning of the markets of goods and services.¹⁰²

The ruling follows a complaint brought in 2005 by NII Holding's (Nextel) that América Móvil's refusal to connect to Nextel México's network for text messaging kept a competitor from profiting from a growing market.¹⁰³ COFECO ruled that Telcel was guilty of monopolistic practices in violation of Article 10 of Mexico's competition law because of its refusal to allow text message exchange with Nextel México. COFECO has had five (5) proceedings concerning the monopolistic practices of Telcel and in three (3) of them has issued decisions against Telcel.¹⁰⁴

The COFECO decision followed América Móvil's refusal to comply with a decision of the Federal Telecommunications Commission (Comisión Federal de Telecomunicaciones, or "COFETEL") issued in January of this year that required Telcel and three other wireless operators to allow for their networks to exchange text messaging

¹⁰⁰ *Incurre Telcel en malas practicas*, www.vanguardia.com.mx. (English translation of a quote from the COFECO decision).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See* Telcel, operador dominante en mensajes cortos: CFC, Marcos A. Mares, La Cronica de Hoy, January 30, 2006 (English translation: "And why so much screaming and [soberazos] among operators in the text message market? Well, simply because it concerns a market that according to experts today has an approximate value of \$40 million dollars").

¹⁰⁴ *Id.*

with Nextel.¹⁰⁵ Nextel had complained to COFETEL that Telcel, as the dominant carrier, and other wireless operators were deliberately excluding Nextel México while allowing exchanges amongst themselves. Nextel México's vice president, Gustavo Cantu, was quoted as saying that "Telcel, being the biggest, is the one that has set the conditions."¹⁰⁶

América Móvil disclosed these proceedings briefly in its Form 20-F but they are not mentioned in the Application.¹⁰⁷

F. Telmex is the Subject of VoIP Blocking Complaints.

Telmex has been accused by consumers and competitors of blocking Voice over Internet Protocol ("VoIP"), a technology that allows long-distance telephone calls to be made across a broadband internet connection at a cost lower than that associated with traditional fixed-line telephony services. Telmex faces direct competition with respect to international and domestic long distance and local services from VoIP and has stated that VoIP services affect its revenues because it is unable to collect interconnection or termination fees associated with traditional fixed-line service.¹⁰⁸ Vonage, which offers VoIP services by use of a voice modem, has alleged that Telmex identifies VoIP users based on the kind of traffic they send and slows down the customer's broadband speed to

¹⁰⁵ *Nextel Financials To Fuel LatAm Expansion*, Bus. Monitor Telecomm. Report, May 2, 2006; Anthony Harrup, *Nextel Mexico Says 3 Cell Cos Reject Text Msg Swap*, Dow Jones Newswires, Jan. 27, 2006, available at <http://www.cellular-news.com/story/15817.php>.

¹⁰⁶ Anthony Harup, *Nextel Mexico Calls for Fair Play in Text Messaging*, Dow Jones Newswires, Aug. 20, 2005, available at <http://www.cellular-news.com/story/13811.php>; see also *Telcel en malas practicas*, supra note 100 ("In its analysis, [COFECO] also considered that Telcel has the largest participation in the market in the nine cellular regions, with a great advantage over Telefonica, its closest competitor.")

¹⁰⁷ América Móvil Form 20-F at 83.

¹⁰⁸ Telmex Form 20-F at 18, 24.

disrupt the quality.¹⁰⁹ A spokeswoman for Telmex denied these allegations and stated that Vonage's service was not properly configured with Telmex.¹¹⁰ Skype, another internet telephone service provider, has alleged that Telmex has blocked users from its website that users must access to make calls, but cautioned that it could not determine whether the access issue was deliberate or a temporary glitch.¹¹¹

G. This Transaction Would Provide América Móvil and Its Affiliates Unprecedented Monopoly Power On Both Ends of International Voice and Data Traffic Originating and Terminating in Puerto Rico, Endangering Consumers and Competition.

Not only would América Móvil have sweeping dominance in Puerto Rico if consent to the transaction is given, but it or its affiliates would also have monopoly power over local and other communications service in other nations which account for the largest exchanges of communications traffic with Puerto Rico, certainly based on TLD's experience. For TLD, two foreign nations that account for heavy international traffic to and from Puerto Rico are the Dominican Republic¹¹² and Mexico, although the other nations where América Móvil and its affiliates have market power on a national or regional basis are important as well, including Brazil, Guatemala, Nicaragua and El

¹⁰⁹ Jonathan Clark, *Users decry decline in service*, The Herald Mexico, May 8, 2005, at 1, available at http://www2.eluniversal.com.mx/pls/impreso/version_imprimir?id_notas=10420&tabla=miami_h; Ben Charny, *Mexico telephone operator under VoIP Fire*, CNet Networks, Inc., Apr. 25, 2005, available at http://news.com.com/Mexico+telephone+operator+under+VoIP+fire/2100-7352_3-5681542.html.

¹¹⁰ Clark, *supra*, note 109.

¹¹¹ Clark, *supra*, note 109; Charny, *supra*, note 109.

¹¹² As América Móvil notes, it is in the process of acquiring Codetel, the monopoly wireline carrier in the Dominican Republic, from Verizon. See América Móvil Form 20-F at 16-17 (Verizon Dominicana C. por A. owns 100% of Codetel).

Salvador. This is not a mere affiliation but actual monopoly control over a state-equivalent service territory in the United States and over foreign destination markets that are significant traffic routes. This market power can affect virtually every international market,¹¹³ however defined.

TLD is unaware of any prior acquisition in the United States that posed the prospect of such complete monopoly power by a single entity and its affiliates on both ends of international traffic and various stages along the way. The loss of transparency and potential for abuse – not only regarding international traffic but domestic traffic as well – through a myriad of shifting and difficult to detect means at changing locations is enormous. As discussed throughout this pleading, Telmex and its affiliates have engaged in behavior which has effectively limited competition and the opportunities of domestic and international entrants year-after-year.

The Commission has previously recognized that Telmex engaged in discriminatory behavior and that U.S. carriers on the U.S.-Mexico route seeking to compete in the Mexican market face ongoing challenges and possible anticompetitive

¹¹³ See, e.g., *United States v. Sprint Corporation*, Civ. Action No. 95 CV 1304, Competitive Impact Statement of the U.S. Department of Justice, (D.D.C. July 13, 1995), available at <http://www.usdoj.gov/atr/cases/sprint1.htm>. In re Federal-State Joint Board on Universal Service (“For purposes of analyzing the vertical effects of this transaction, however, it is not necessary to distinguish between individual telecommunications services, since the monopoly power of DT and FT affects all of the possible markets at issue.” *Id.* at p. 5) Among the abuses that the Department of Justice (“DOJ”) anticipated, in a situation which involved a minority investment of only 20% by companies with control principally at one end of a U.S. communication rather than both as in this transaction, were an increased incentive and ability to favor affiliates and harm competitors in various ways, including as to price, terms, conditions, quality, innovation, denying operating agreements or providing them only on discriminatory terms, cross-subsidize, price squeeze, abuse competitively sensitive information, etc. See also *United States v. MCI Communications Corp*, Civ. Action No 94-1317, Memorandum of the United States in Support of Modification of the Final Judgment (D.D.C. July 7, 1997), available at <http://www.usdoj.gov/atr/cases/f0000/0070.htm>.

behavior.¹¹⁴ Of course, these observations were prior to Telmex or its affiliates seeking to own a monopoly in the United States that will make it even easier to mask anticompetitive conduct.

This transaction intolerably enhances the incentive and ability of América Móvil and its affiliates to raise prices and otherwise harm consumers, as well as harm competition.

H. The United States Government Has Been Harshly Critical of Telmex and of the Telecommunications Environment in Mexico.

The 2006 National Trade Estimate Report on Foreign Trade Barriers (“NTE”), an annual report documenting foreign trade and investment barriers and U.S. efforts to reduce and eliminate those barriers, submitted by President Bush to Congress, states as to telecommunications in Mexico:

Among Mexico’s greatest challenges, is promoting telecommunications competitiveness. Telmex continues to dominate the market and retain influence over the Secretariat of Communications and Transport (SCT) and the Federal Communications Committee (COFETEL). Both agencies have failed to adequately resolve disputes and act upon competitors’ claims of market discrimination. The few times the government has attempted to take action to improve competitiveness, Telmex has successfully blocked enforcement by using court-ordered injunctions and other legal maneuvers.¹¹⁵

¹¹⁴ In re AT&T Corp., *et al.*, DA 04-434, Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Mexico, *Order* (Feb. 20, 2004).

¹¹⁵ National Trade Estimate Report on Foreign Trade Barriers, at 451 (Mar. 31, 2006) (“2006 NTE Report”), *available at* [http://www.ustr.gov/Document_Library/Reports_Publications/2006/2006_NTE_Report/Section_Index.html?ht=](http://www.ustr.gov/Document_Library/Reports_Publications/2006/2006_NTE_Report/Section_Index.html?ht=;); *see also* 2006 NTE Report at 452; National Trade Estimate Report on Foreign Trade Barriers, at 421 (Mar. 31, 2005), *available at* http://www.ustr.gov/Document_Library/Reports_Publications/2005/2005_NTE_Report/Section_Index.html (“Mexico’s former state-owned telecommunications monopoly (Telmex) continues to dominate Mexico’s telecom sector.”).

In comments filed with the Office of the United States Trade Representative, the United States Council for International Business, an affiliate of the International Chamber of Commerce, has publicly urged that “the continuing major problems concerning Mexico’s failure to allow fully open markets in domestic services, foreign investment, and the lack of an effective and independent regulator” be addressed. In particular, the USCIB notes the “prohibition on foreign ownership and control” and the “lack of effective regulation and anti-competitive practices.”¹¹⁶

The Commission has also witnessed Telmex’s anticompetitive conduct and noncompliance first hand,¹¹⁷ and in 2000 stated that “[o]ver the past three years, the

¹¹⁶ Comments of the United States Council for International Business, USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements (Dec. 16, 2005), at 10-11, *available at* http://www.uscib.org/docs/Final_2005_1377_Comments.pdf. Although Telmex and Telcel-- América Móvil's affiliated companies-- obviously hold dominant telecommunications market positions where they operate, their dominant positions have not triggered additional regulatory obligations as is typically the case elsewhere. Although the Federal Telecommunications Law permits obligations to be imposed in the areas of pricing, quality of service and information disclosure on carriers with significant market power, Telmex has not officially been declared a dominant operator and has not been subjected to these obligations. Moreover, the convergence that has helped to drive facilities-based competition in some US markets has not been allowed in Mexico. In particular, cable television companies have not been authorized to provide telephone service, even though the regulations contemplate that possibility. Mexico's electric company, CFE, has not been permitted to provide telecommunications services using its network, although it unsuccessfully sought permission to do so.

¹¹⁷ Sprint Communications Company, L.P., ISP-97-M-708, DA 98-2401 (released November 24, 1998), at 9-11 (“Whipsawing”) (Recognizing the U.S.-Mexico route is of unusual importance because of the high level of traffic and the extent to which traffic is unbalanced in favor of terminations by Telmex.) The Commission found that Telmex was using its dominant market position to play U.S. carriers to play off one another to impose terms and conditions that are unduly favorable to Telmex). There, the Commission also recognized the subtle forms of retaliation a dominant carrier can apply: “For example, a foreign carrier could retaliate simply by refusing to negotiate with other U.S. carriers. More aggressive forms of retaliation include diverting a disproportionate share of traffic to the U.S. carrier that agreed to the foreign carrier's' demands or cutting off circuits of U.S. carriers that refuse to agree to the foreign carrier's terms. *Id.* at n.21.

FCC's Enforcement Bureau on several occasions has considered allegations that Telmex has engaged in anticompetitive conduct harmful to competition in the United States international common carrier services market.”¹¹⁸

I. World Trade Organization Panel Finds that International Long Distance Rates Negotiated by Dominant Carrier Telmex, and other Practices, Do Not Comply

Mexico’s rules required U.S. carriers to connect with Mexican telecommunications providers in order to complete calls from the United States to Mexico, and granted Telmex-- Mexico’s dominant carrier-- the *exclusive* authority to negotiate the rate for connecting calls into Mexico. Rather than use that authority to set cost-based rates, **Telmex set artificially high interconnection charges** that U.S. carriers estimated resulted in excessive payments from U.S. consumers and companies of well above \$1 billion from 2000 to 2004.

In 2004, a World Trade Organization (“WTO”) panel found that Mexican companies had been overcharging U.S. companies and consumers on long-distance connection fees in violation of WTO obligations.¹¹⁹ The panel also found other competitive obstacles. The panel was formed

See also Telmex International Ventures USA, Inc., File ITC-97-127, Order to Show Cause (IB Nov. 24, 1998); News Release, Statement of FCC Chairman William E. Kennard on the International Bureau's Actions Concerning Accounting Rates on the United States/Mexico Route and Potential Violations of Telmex/Sprint Communications' Authorization to Serve Mexico (Nov. 24, 1998), *available at* <http://www.fcc.gov/Speeches/Kennard/Statements/stwek887.html> (“The allegations that Telmex may be stifling competition on the U.S.-Mexico route by denying facilities to, or discriminating against, U.S. carriers is a potentially serious development.”).

¹¹⁸ FCC’s Enforcement Bureau Proposes \$100,000 Fine Against Telmex USA for Failure to Provide Lines and Circuits to Competitors, Public Notice (Jan. 13, 2000). Although the proposed fine was subsequently cancelled because of a lack of clarity in the law, the Bureau's factual findings were not. *See* Telmex International Ventures USA, Inc., File No. EB-00-1H-0040, NAL/Acct. No. X32080002 (IB July 25, 2001).

¹¹⁹ Press Release, Office of the U.S. Trade Representative, *U.S. Wins Telecommunications Case against Mexico in WTO* (Mar. 12, 2004), *available at* http://ustr.gov/Document_Library/Press_Releases/2004/March/US_Wins_Telecommunications_Case_against_Mexico_in_WTO.html.

at the United States' request in 2002 to address outstanding international long-distance issues with Mexico.

J. The Experience of TLD and Its Affiliates With Anticompetitive Practices of América Móvil and Telmex.

TLD's affiliates operating in Mexico and other countries where Telmex and/or América Móvil or their affiliates have dominant market positions, have experienced a wide variety of anticompetitive practices at the hands of those companies. Given its documented history of anticompetitive practices, América Móvil cannot be found qualified to take control of the seventh largest local exchange carrier in the United States nor can its entry into a particularly vulnerable telecommunications marketplace such as Puerto Rico be deemed consistent with the public interest. There is no reason to believe that these companies will suddenly reverse operational policies and embrace the interests of competition and consumers. In this section, TLD presents a series of experiences with the anticompetitive practices of América Móvil in several Latin American countries.

In Mexico, Telcel, a subsidiary of América Móvil, through its network of distributors, makes large purchases of Telefónica Móviles' subscriber units (terminal) at their point of sale, including exclusive models, that are subsidized by Telefónica Móviles and then proceeds to disable and reconfigure them and provide them to its own subscribers for use on its network. TLD's affiliate, Telefónica Móviles, S.A., conducted an extensive investigation, in part with representatives of Mexico's Federal Bureau of Investigation, that revealed the storage of large quantities (2,000 at the time of the investigation) of Telefónica Móviles subscriber units in a Telcel warehouse and distribution center. Telcel's distributors have publicly offered these reconfigured units to

Telcel subscribers. In an effort to stop this anticompetitive practice, Telefónica Móviles filed a complaint on July 14, 2005 against Telcel with the COFECO.

Telefonica Moviles detected that Telcel and at least one of its distributors, has an ongoing campaign, including use of the media, since July of 2004, to offer existing subscribers of Telefónica Móviles to exchange subscriber units currently active on the Telefónica Móviles network for subscriber units activated on the Telcel network. This anticompetitive strategy is clearly intended by Telcel to leverage its 80% dominance of the market and artificially depress the competitiveness of other providers. In an effort to stop this anticompetitive practice, Telefónica Móviles filed a complaint on August 15, 2004 against Telcel with COFECO. COFECO has issued a ruling declaring Telcel presumptively responsible. COFECO has previously sanctioned Telcel for the same anticompetitive practice in at least two other cities in Mexico.

Telefónica Móviles has also experienced Telcel's use of its market power to require exclusivity from content providers. Telefonica Moviles filed a complaint before the COFECO, which issued a ruling declaring the practice to be monopolistic and issued a cease and desist order. Other Telcel practices to maintain its dominance include charging cheaper rates for calls between two of its own subscribers than those involving subscribers of competitors' services. Also, Telmex has successfully maintained its status as the only carrier in Mexico authorized to terminate calls in 50% of the 397 local calling areas that make up Mexico, where it charges a much higher per minute rate. In addition, Telmex and Telcel have strongly and successfully opposed the implementation of "number portability." Finally, the vast commercial real estate holdings affiliated with the América Móvil and Telmex groups of companies, such as shopping centers and retail

distribution chains, are actively engaged in assisting Telmex and its affiliates by refusing to carry and distribute Telefónica products.

In Guatemala, where América Móvil owns and operates Telgua, the monopoly wireline carrier, and the country has a wireline telephone penetration rate of less than 4%, Telgua regularly abuses its market dominance. For example, it overcharges for fixed-mobile calls (paying the wireless operator only for the precise time of the interconnection regardless of what is charged to the fixed service subscriber). More specifically, Telgua pays the wireless carrier less than one-third of what it charges its fixed service subscribers for the same call, and that is without taking into consideration a significant surcharge it imposes on the subscribers. Telgua has been the focus of proceedings because of its anticompetitive conduct, including number blocking, delays in interconnection, among others.

In addition, Telgua has refused to accept an authorized arbitrator's ruling that it must implement "calling party pays" and has rejected efforts by wireless carriers to implement that scheme. Telgua also continues to charge other carriers 75% more for all calls that are destined for the other carriers' networks despite legislative and contractual provisions to the contrary. Although it has agreed to lower those rates to the same rates that it charges for termination of calls on its own network, Telgua is now once again before the regulatory authorities for not complying with that agreement. Having also been required to reimburse the other carriers this year for these overcharges, it has yet to do so. Finally, with respect to international calls terminated on its network, Telgua charges local carriers significantly more for delivering such international traffic to the Telgua network than it does to international carriers that deliver the traffic directly to the

Telgua network. The obvious result is that costs increase for other local carriers, and international carriers are economically incented to deliver their traffic directly to Telgua only.

In El Salvador, another country with a very low telephone penetration rate, where América Móvil owns and operates CTE, S.A. de C.V. (“CTE”), the dominant wireline operator, Telefónica has encountered anticompetitive activities by CTE, including the masking of automatic number identification by assigning wireless numbers to fixed lines. The numbering plan in El Salvador distinguishes between fixed and mobile services, using a different number code to identify each. CTE offers its largest fixed wireline customers products in which the originating ANI is masked with the use of a wireless-coded number. That enables CTE to avoid the “calling party pays” charge for calls that originate on the fixed network and are destined for a wireless network. This allows CTE to offer its services below true cost, to the detriment of unaffiliated wireless carriers. CTE also engages in cross-subsidization among the services of its affiliated companies, wired, wireless, Internet and cable alike – something that enables the offering of service packages to all segments of the market at prices significantly below cost, resulting in a lessening or even elimination of competition. Finally, competing operators, including TLD's affiliate, have experienced significant delays and denials in negotiating interconnection and other commercial agreements for network services, as well as provisioning and performance by CTE despite contracts requiring otherwise. The net result is added costs to competitors and formidable barriers to entry.

VI. Mexico's Limitation on Foreign Investment in Telecommunications Companies

In view of the fact that the proposed transaction is, at its core, an effort by a Mexico monopolist to take control of the seventh largest local exchange carrier in the United States, the Commission should take into consideration the laws in Mexico which limit the ability of U.S. and other foreign entities from investing in telecommunications companies in Mexico.

The Foreign Investment Law and the Federal Telecommunications Law restricts foreign investment in telecommunications to 49% of the capital of Mexican companies operating in the telecommunications sector, with exceptions for certain mobile companies and the use of "neutral" capital. The exception applicable to certain mobile operators permits foreign investment to reach 100% of the capital of the company.¹²⁰ This means that the reverse of the proposed transaction would not be allowed to happen in Mexico. The very control that América Móvil seeks over TELPRI would not be permitted if América Móvil were a U.S. company and TELPRI were a Mexico company.

Moreover, América Móvil, as well as Telmex, state that:

[A]s required by Mexican law, our bylaws provide that "any alien who at the time of incorporation or at any time thereafter acquires an interest or participation in the capital of the corporation shall be considered, by virtue thereof, as Mexican in respect thereof and shall be deemed to have agreed not to invoke the protection of his own government, under penalty, in case of breach of such agreement, of forfeiture to the nation of such interest or participation."¹²¹

¹²⁰ It is important that the definition of cellular services according to Mexican regulation does not include the provision of long distance mobile services. As a result, in order to provide long distance mobile services it is necessary to have a subsidiary hold the required license, and this subsidiary is affected by the 49% foreign ownership limitation.

¹²¹ América Móvil Form 20-F at 96.

Under this provision, a non-Mexican shareholder is deemed to have agreed not to invoke the protection of his own government by asking such government to interpose a diplomatic claim against the Mexican government with respect to the shareholder's rights as a shareholder with respect to its investment in América Móvil. If the shareholder invokes such governmental protection in violation of this agreement, its shares could be forfeited to the Mexican government. According to América Móvil and Telmex, Mexico law requires that such a provision be included in the bylaws of all Mexican corporations unless such bylaws prohibit ownership of shares by non-Mexican persons.¹²²

In addition, according to the bylaws of América Móvil and Telmex, their so-called AA shares with more desirable voting rights can only be held by non-Mexican investors through a trust (with a Mexican financial institution as trustee) that “effectively neutralizes” the voting rights of the non-Mexican investor. AA shares can only be held or acquired by:

- Mexican citizens,
- Mexican corporations whose capital stock is held completely by Mexican citizens and whose articles of incorporation contain a foreigner exclusion clause,
- Mexican corporations whose articles of incorporation provide that at least 51% of their capital stock may only be held or acquired by (i) Mexican citizens, (ii) Mexican corporations whose articles of incorporation contain a foreigner exclusion clause or (iii) Mexican corporations that allow minority foreign participation,
- Mexican credit and insurance companies,
- Mexican investment companies operating under the Investment Companies Law and Mexican institutional investors as defined in the Mexican Securities Market Law, and
- Trusts expressly permitted to acquire AA Shares in accordance with Mexican law

¹²² *Id.* at 96-97; Telmex Form 20-F at 86.

and in which (i) the majority of the trustee's rights are held by Mexican citizens, corporations whose capital stock is completely held by Mexican citizens, and Mexican credit, insurance and investment companies or (ii) the AA Shares controlled by the trust represent a minority of the outstanding AA Shares and are voted in the same manner as the majority of the outstanding AA Shares.¹²³

According to América Móvil and Telmex, their bylaws state that non-Mexican investors cannot hold AA Shares except through trusts that effectively neutralize their votes, and that if foreign governments or states acquire the América Móvil or Telmex AA Shares, such shares would immediately be rendered without effect or value.¹²⁴

VII. Alternatively, the Anticompetitive Potential of the Proposed Transfer Requires the Imposition of Specific Conditions on Any Commission Consent.

As explained above, the acquisition of control of PRTC by América Móvil would result in significant harm to competition and consumers in Puerto Rico. In the event that the Commission nonetheless decides to allow the proposed transaction to go forward, it must adopt several conditions as part of any order approving the proposed acquisition in order to prevent the anticompetitive harms. The key to the effectiveness of any conditions that respond to the potential for anticompetitive harms is the real prospect of enforcement. To that end, TLD urges the Commission to adopt the following conditions and that each condition require the filing of a quarterly certification of compliance accompanied by a report of the relevant activity during the applicable quarter:

- 1. Before consummating this acquisition, América Móvil and Telmex should be required to eliminate completely AT&T's direct and indirect economic and ownership interests in América Móvil and Telmex, so that AT&T will not have an economic or ownership interest in PRTC (including Verizon Wireless) on the one hand and Cingular on the other.**

¹²³ América Móvil Form 20-F at 95; Telmex Form 20-F at 86.

¹²⁴ América Móvil Form 20-F at 95; Telmex Form 20-F at 86.

The companies that will own and operate the local wireline monopoly in Puerto Rico and dominate the long-distance market, the broadband access market and the largest *two* cellular carriers in Puerto Rico-- which together total well in excess of 50% of the wireless market-- will have overlapping ownership to the tune of several billion dollars if this transaction is approved. That merger-specific development is wrought with anticompetitive implications and should not be permitted – today, the leading wireless provider in Puerto Rico, Cingular, with a share of approximately 32%, is not affiliated with either the wireline monopoly or number two wireless provider. AT&T’s interest and involvement with the acquirer here is obviously significant and substantial, including voting membership on the Board and Executive Committee of the acquirer, along with a multi-billion dollar ownership interest. This transaction is not conducive to a robustly competitive environment. To the extent that the acquirer may argue that AT&T’s ownership interest is insignificant, they should be required to buy it out.

2. América Móvil must be required to provide, on a nondiscriminatory basis, unbundled network elements that it makes available to any carrier in Puerto Rico.

When the Commission removed certain network elements from the list of required unbundled network elements, it did not state that the voluntary offering of such network elements was exempted from Title II of the Act. The fact that these elements are not required to be offered on an unbundled basis does not mean that such offerings are deregulated. This means that if an ILEC chooses to offer these elements on an unbundled basis to another carrier pursuant to a commercial agreement, that offering must comply with the “reasonableness” requirements contained in Section 201(b) of the Communications Act and the prohibition against unjust and unreasonable discrimination

contained in Section 202(a) of the Act. Thus, if PRTC enters into a commercial agreement with AT&T, for example, which governs the provision of certain network elements on an unbundled basis, and TLD requests the same network elements also on an unbundled basis, PRTC must provide them lest it be guilty of unjust or unreasonable discrimination in violation of Section 202(a).

For over a year TLD has been requesting from PRTC the same network elements that, on information and belief, PRTC is providing to at least one other carrier on an unbundled basis pursuant to a commercial agreement.¹²⁵ To this date, TLD still does not have access to these elements to TLD.

3. PRTC must be required to provide on a nondiscriminatory basis, any network elements, services, or bundle, including switching, ordering, provisioning or billing, that it offers any carrier in Puerto Rico.

Puerto Rico has seen very little wireline competition and none to speak of with respect to facilities-based residential local exchange service. This acquirer has no history of cooperating with regulators or even potential competitors to open markets to competition and has very little wireline experience and expertise altogether. Nor does the Puerto Rico Board have any history of aggressively opening the local monopoly to competition, and the Puerto Rico government is and has been a significant owner of PRTC. At the very least, so that delay, litigation expense, and the type of strategic

¹²⁵ See Worldnet Telecommunications, Inc., Letter to Puerto Rico Board, Docket No. JRT-2003-AR-0001 (Nov. 12, 2004) (referencing PRTC's provision to Worldnet Communications, Inc. ("Worldnet") of "unbundled switching (including a UNE-P replacement for both enterprise and mass market customers), high capacity loops, and dedicated transport.") Although this letter is dated before the Commission released its decision implementing the Court's conclusions and directive on February 4, 2005, the reality is that by including these network elements in a commercial agreement and not in an interconnection agreement as would have been the case before the DC Circuit's opinion on the matter, PRTC and Worldnet clearly intended to have the commercial agreement reflect the D.C. Circuit's opinion.

incompetence by local wireline monopolies that slowed local competition and long-distance entry is not replicated in Puerto Rico after this merger, all competitors should be extended access now on a nondiscriminatory basis to any network element, services, or bundle — including price and terms — that PRTC currently offers by agreement or otherwise to any entity. These terms should remain on offer for no less than four (4) years after closing. This is intended to ensure that all competitors will have access to what PRTC has offered any of them today, providing some protection against the worst post-merger backsliding and stalling of competitive opportunity.

- 4. PRTC must be prohibited from discriminating unreasonably in favor of its affiliates in establishing the rates, terms and conditions of any network services, including network elements, special access services, interconnection, ordering, provisioning or billing. PRTC must not provide special access offerings to its affiliates that are not available to similarly situated special access customers on the same terms and conditions.**

If enforced, this condition may help to level the playing field and reduce the probability that the merger will lead to anticompetitive discrimination. This will provide an important benchmark for assessing competitive performance. This also will prevent PRTC from imposing expensive obligations on competitors that it does not impose upon itself or its affiliates, e.g., preventing TLD from interconnecting directly with PRTC's mobile service provider (Verizon Wireless), thereby raising rivals' costs by requiring them to also pay PRTC landline. Also, given the unusual post-merger dominance of the acquirer or its affiliates on both ends of so many calls – not only in Puerto Rico, but also in Brazil, the Dominican Republic, Guatemala, Mexico and Venezuela, some of which are the leading international telecommunications traffic destinations from Puerto Rico, this obligation is particularly valuable to help curb discrimination.

5. PRTC must be required not to give undue preferences to its affiliates or unreasonably discriminate against other customers or competitors in grooming traffic.

This nondiscrimination condition is important for reasons similar to those discussed above in relation to other conditions.

6. PRTC must be required to establish performance standards for each service that it provides to other carriers, and must protect the confidential information of its competitors.

It is crucial that there be performance standards in conjunction with the other conditions and, regardless, to measure and hold accountable the performance of this relatively inexperienced wireline operator. Furthermore, the relationships and overwhelming market share that the acquirer would have in Puerto Rico and on the other end of so many international calls, provides a disturbing opportunity to obtain and use confidential non-public information.

7. América Móvil must be required to offer cost-based direct interconnection to PRTC's wireless and wireline networks.

As discussed earlier, TLD exchanges considerable long-distance traffic with PRTC's wireless network and PRTC forces TLD to route that traffic through PRTC's wireline network even though it is destined for subscribers of PRTC's wireless network. The net result is that TLD incurs two sets of charges, one from PRTC's wireline network and another from PRTC's wireless network, thereby distorting TLD's ability to offer a competitive long-distance service to its own subscribers on calls to PRTC's wireless subscribers. This advantages PRTC's long-distance service.

PRTC also should be required to initiate a proceeding to establish that the rates at which it offers interconnection and other services are cost-based.

8. PRTC must be subject to a workable compliance process, and liquidated damages and penalties for noncompliance, in connection with all of its obligations under this agreement.

PRTC should be required to submit written reports on a regular basis concerning the performance and satisfaction of each condition and such reports should be sworn to as accurate on penalty of perjury by senior executives and the Board of the acquirer.

Liquidated damages should be provided to those, including competitors, who were intended to be protected against the acquirer's failure to comply with these conditions, and such damages should escalate with the seriousness, duration, and repetition of each violation. The acquirer should also pay legal fees to participants in any proceeding who allege such violations if the violations are either established or settled.

9. América Móvil must be required to include facilities in PRTC's existing service area in future reports showing monthly performance results for special access provisioning measured in accordance with Service Quality Measurement Plan for Interstate Special Access Services adopted in the *AT&T/SBC Order*.¹²⁶

This performance reporting condition is important for reasons similar to those discussed above in relation to other conditions.

10. PRTC must be required to reduce all special access rates to reasonable levels.

This condition is important to avoid the abuse of market power and unreasonably raising rivals' costs.

11. PRTC must submit a list of wire centers in PRTC's service territory for which América Móvil claims there is no impairment.

Wireline competition and broadband deployment has moved too slowly in Puerto Rico. This information will help define the issues in an environment where regulators have done little ratemaking or otherwise provided competitive tools.

¹²⁶ *AT&T/SBC Order* at App. F, Attachment A.

12. Prohibit América Móvil/PRTC from proposing elimination of the intra-lata toll market on a mandatory basis – e.g., a mandatory island-wide calling zone – for a minimum of three years after closing.

PRTC proposed to exploit its local monopoly and eliminate intra-island wireline competition by making the entire island a single calling zone on a *mandatory* basis, even though many residential customers currently make few if any interlata calls at all and many others choose to purchase intra-island long-distance from a carrier other than PRTC. PRTC offers an optional island-wide bundle now, but many customers have not chosen to buy it, so the PRTC proposal would have forced them to do so. Given the local wireline monopoly, this rate plan would have eliminated competitive intralata and inter-island long distance providers. In response, TLD brought a preemption petition before the Commission and only after it was fully briefed at considerable expense, PRTC withdrew the rate plan that would have achieved this result. This acquisition should not become a device to renew an abandoned anticompetitive strategy and raise rivals' costs, and also cast competitive doubts by promptly renewing such anticompetitive plans.

13. América Móvil must be directed to publicly disclose all equity and non-equity affiliations with other carriers.

14. Appendix G of SBC/AT&T and Appendix F of Verizon/MCI Orders.

The Commission should include conditions not specifically discussed here that were imposed in these transactions.

VIII. Disclosures Should Be Required

There are several documents that the Commission should require the Applicants to submit. First are the transaction documents that govern the proposed acquisition of TELPRI by América Móvil. Without a review of all documents related to the proposed transaction, there is no way to tell the true nature and effect of the acquisition. There is

no way to know what agreements other than price have been entered into by the parties; what commitments have been made that affect the dominant operations of PRTC and its affiliates in Puerto Rico; and the impact on heavily trafficked international routes such as between Puerto Rico and the Dominican Republic, where América Móvil and Telmex will hold monopolies at both ends. The impact of such agreements and commitments on competition, let alone on consumers, could be devastating in a telecommunications marketplace already extremely vulnerable to market abuse and anticompetitive practices. Without a review of such agreement(s), there is no way for the Commission or the public to know whether they contain non-compete provisions, reversionary interests, options, competitive trade-offs between the parties, or other provisions that are relevant to the competition analysis to be performed by the Commission.

Second are the trust documents that are said to neutralize AT&T's shareholder voting power within América Móvil and Telmex. There is no way to tell what other provisions or agreements exist that could affect the way shares are voted, or how the Board of Directors votes, or how Executive Committee votes are cast. Nor can it be discerned what existing or future quid pro quos have been arranged among the affiliated companies that could affect competition in Puerto Rico or elsewhere.

Finally, a full disclosure of the operational and commercial arrangements that América Móvil and Telmex have entered into or expect to enter into that could affect telecommunications competition in Puerto Rico. Part of the Commission's responsibility in its public interest analysis is to determine whether the proposed transaction will result in a decline of market power. On the face of all available facts, there is no reason to make that conclusion. If there are agreements that bear on that inquiry, the Applicants

should be required to submit them for a sunshine review. Pursuant to Section 308 of the 1996 Act, the Commission can request additional information it feels is needed of the Applicants in order to conduct its analysis of the competitive effects of the transaction.

IX. Conclusion

For the reasons stated herein, the acquisition of control of PRTC by América Móvil is a recipe for disaster. The public interest demands better. TLD urges the Commission to deny the Application. In the alternative, the Commission should condition any grant of the Application as indicated herein.

Respectfully submitted,

TELEFÓNICA LARGA DISTANCIA DE
PUERTO RICO, INC.

A handwritten signature in cursive script, reading "Angela R. Thompson", is written over a horizontal line.

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Its Attorneys

July 14, 2006

Exhibit 1

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

In the Matter of)	
)	
Verizon Communications, Inc., Transferor)	
)	
and)	WT Docket No. 06-113
)	DA 06-1245
America Movil, S.A. de C.V., Transferee)	
)	
Applications for Consent to Transfer of Control of Licenses and Authorizations)	

DECLARATION OF RAFAEL SERRANO

I, Rafael Serrano, under penalty of perjury declare and say as follows:

1. I am the Marketing and Strategy Vice-President for Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD").
2. I have read and am familiar with the Petition to Deny or, in the Alternative, Condition Commission Consent to which this Declaration is appended and which is to be filed with the Federal Communications Commission (the "Petition").
3. The facts alleged in the Petition are true and correct to the best of my knowledge, information and belief.



Rafael Serrano

Dated: July 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by electronic mail or First Class mail, postage prepaid, upon on the following persons.

Dated at Washington, D.C. this 14th day of July, 2006.

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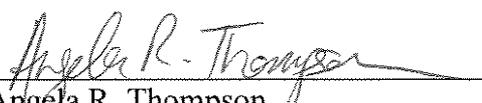
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