

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Applications of

VERIZON COMMUNICATIONS INC.,
Transferor,

and

AMÉRICA MÓVIL, S.A. DE C.V.,
Transferee,

WT Docket No. 06-113

for Consent to the Transfer of Control of
Entities Holding Commission Licenses and
Authorizations Pursuant to Sections 214 and
310(d) of the Communications Act

**AMÉRICA MÓVIL'S AND VERIZON'S
OPPOSITION TO PETITIONS TO DENY**

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I. INTRODUCTION AND SUMMARY

The transfer of control of Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”) and its subsidiaries from Verizon Communications Inc. (“Verizon”) to América Móvil, S.A. de C.V. (“América Móvil”) is in the public interest and should be approved.

América Móvil is a large wireline and wireless communications firm that brings substantial economies of scope and scale as well as experience in serving customers in similar socioeconomic and geographic conditions as found in Puerto Rico. The transaction does not produce any offsetting competitive harms because the only overlap involves América Móvil’s limited provision of resold prepaid wireless service to a few thousand Puerto Rico consumers in a wireless market that is intensely competitive.

The commenters do not seriously claim that the transaction will increase concentration in any market or otherwise harm competition. A number of commenters nonetheless argue that the benefits described in the Application are not large or concrete enough for the Commission to credit, or are not backed by adequate commitments. But these commenters ignore that the benefits described are both clear and substantial. In any case, the Commission has held that great detail and certainty regarding a transaction’s benefits are not required where, as here, there are no harms that such benefits need to outweigh. The Commission should also reject several commenters’ speculation that América Móvil may not offer the same benefits that Verizon provides as an owner. Verizon has made a decision to divest its Caribbean and Latin American assets, including its interest in TELPRI. The appropriate analysis, therefore, is whether TELPRI combining with América Móvil is in the public interest, recognizing that Verizon will no longer control TELPRI.

For the most part, the commenters attempt to use this proceeding to air a list of (mostly outdated) grievances against TELPRI and impose related conditions that supposedly will ensure that local wireline markets in Puerto Rico are open to competition. But these arguments have nothing to do with this transaction, which does not affect local wireline markets or TELPRI's obligations to comply with the Commission's market-opening rules. Moreover, the Commission has repeatedly held that non-merger-specific issues like these are properly addressed in other fora. In fact, many of the issues that the commenters raise here already are being addressed, or have been addressed, elsewhere.

The commenters also try to make an issue of the fact that América Móvil is foreign-owned. But the Commission has held that where, as here, the transferee is from a World Trade Organization ("WTO") country, the transaction is entitled to presumption that it is in the public interest, and the commenters fail to rebut that presumption here. The only legitimate concern here involves national security, and that concern will be addressed by the other government agencies charged with overseeing that issue. Although the commenters claim that América Móvil will withdraw investment from Puerto Rico or fail to comply with U.S. law, they provide no basis for the Commission to credit these wholly speculative assertions. The fact that América Móvil is a foreign corporation in no way affects the ability of this Commission or the Puerto Rico TRB to require TELPRI to comply with applicable rules and regulations.

For the reasons set forth above, the Commission should reject the petitions to deny and grant the application to transfer control of the licenses and authorizations at issue.

II. THE TRANSACTION WILL PRODUCE PUBLIC INTEREST BENEFITS WITH NO OFFSETTING COMPETITIVE HARMS

A. The Transaction Will Produce Public Interest Benefits

The Application demonstrated that this transaction will benefit Puerto Rico consumers in three ways. First, it will bring consumers the benefits of América Móvil's operating experience and business approach that it developed in offering service throughout the Americas. *See* Public Int. Stmt. at 3-4. Among other things, América Móvil has extensive experience in designing products specifically for rural and low-income populations. *See id.* For example, América Móvil is a pioneer in offering prepaid wireless services on a large scale, which has helped bring wireless services to many customers for whom traditional wireless pricing plans were impractical. *See id.* América Móvil also has extensive experience in upgrading wireless networks to provide a cohesive evolutionary path to a third-generation ("3G") network. América Móvil is committed to assuring 3G service for its wireless subscribers in Puerto Rico and is committed, after an opportunity to analyze the matter, to pursuing the best means of achieving this upgrade. *See id.* at 4.

Second, the transaction will bring consumers the benefits of América Móvil's economies of scale and scope. *See id.* at 4-5. As the Application demonstrated, América Móvil is a global provider of communications services with extensive operations throughout the Americas. América Móvil is the largest *wireline* operator in Central America; its subsidiaries are the primary wireline providers in Guatemala, El Salvador, and Nicaragua, and its parent company is under common control with the largest provider of wireline services in Mexico ("Telmex"). *See id.* at 3. América Móvil also serves more than 100 million wireless subscribers in fourteen countries. *See id.* at 2.

Third, América Móvil will bring consumers in Puerto Rico its experience in providing service in areas with difficult-to-serve terrain and dramatic urban/rural differences. *See id.* at 5-6. As the Application demonstrated, and as the comments confirm, delivering telecommunications services throughout Puerto Rico has historically been a challenge.¹ América Móvil has experience in developing innovative ways to overcome these challenges, and will bring that experience to Puerto Rican consumers. *See id.*

The commenters do not dispute the importance of these benefits. They instead claim that the benefits described in the Application are not large or concrete enough for the Commission to credit, or are not backed by adequate commitments.² As demonstrated in the Application and above, however, the benefits that América Móvil will bring to Puerto Rico are both clear and substantial. In any event, the Commission's settled precedent does not require absolute certainty or iron-clad commitments that these benefits be achieved. The Commission's ultimate responsibility is to determine whether the transaction as a whole is in the public interest.³ To make this determination, the

¹ *See* Public Int. Stmt. at 6; Petition to Deny of WorldNet Telecommunications, Inc. at 25 (July 14, 2006) (hereinafter "WorldNet"); Petition to Deny of the Telecommunications Regulatory Board of Puerto Rico at 10 (July 14, 2006) (hereinafter "TRB"); Petition to Deny, or, in the Alternative, Condition Commission Consent of Telefonica Larga Distancia de Puerto Rico, Inc. at 18 (July 14, 2006) (hereinafter "TLD").

² *See* TLD at 18-20; TRB at 8-10.

³ *See, e.g., Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18493, ¶ 16 (2005) ("*Verizon/MCI Order*") (public interest test satisfied when "transaction, on balance, serves the public interest"); *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 157 (1997) (public interest test satisfied when "transaction on balance will enhance and promote, rather than eliminate or retard, competition").

Commission “employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits” to determine whether the “proposed transaction, on balance, serves the public interest.”⁴ “This sliding scale approach suggests that, where, as here, potential harms are unlikely, Applicants’ demonstration of potential benefits need not be as certain.”⁵

In the PacifiCorp/Century merger, for example, the Commission held that the public interest standard was met even though “Applicants have not established the existence of substantial pro-competitive efficiency benefits to consumers,” and even though it found other evidence “that the merger may produce additional public interest benefits for some consumers, especially those in rural communities through plant upgrades and investment in enhanced telecommunications services” was “entitled to limited weight since Applicants have made no commitment to make those upgrades.”⁶ The Commission held the public interest standard was nonetheless met “given the absence of any evidence that the proposed merger may inhibit or delay the development

⁴ *Verizon/MCI Order* ¶ 16.

⁵ *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, ¶ 197 (1998). *See also Global Crossing Ltd. and Frontier Corporation Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as Amended*, Memorandum Opinion and Order, 14 FCC Rcd 15911, ¶ 26 (1999) (“We need not ascertain the exact magnitude of the public interest benefits of the proposed merger because ‘where, as here, potential harms are unlikely, Applicants’ demonstration of potential benefits need not be as certain.”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292, ¶ 45 (1998) (same).

⁶ *See, e.g., Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc. a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, ¶ 3 (1997).

of competition.”⁷ Thus, even though the benefits here are both clear and substantial, even if the Commission were to conclude otherwise, the result would be the same.

A number of commenters also claim that the benefits set forth in the Application are not merger-specific and already exist or could be achieved in other ways. *See* TRB at 8-10; TLD at 18-22. But, even assuming it was possible for the parties to achieve the benefits of this transaction in other ways, the transaction will enable the companies to achieve them more quickly and efficiently. The Commission has previously held that where a transaction “is likely to accelerate” certain claimed benefits, the Commission will credit that as an independent public interest benefit even if the merging parties could have achieved the underlying benefits “acting independently or in contractual arrangements with each other and other service providers.”⁸

For example, TRB argues (at 8) that the Commission should ignore América Móvil’s experience in upgrading wireless networks to provide state-of-the-art services when calculating the benefits of the transaction to Puerto Rico consumers because “[g]iven the demand and competition for wireless service in Puerto Rico, it seems clear that this purported ‘benefit’ is inevitable, no matter who controls PRTC.” Even assuming that were true, the merger will expedite the deployment of these services. América Móvil has already upgraded its wireless networks in Mexico, Brazil, Colombia, Ecuador, Guatemala, Nicaragua, Argentina, Uruguay, El Salvador, and Honduras, is presently

⁷ *Id.* *See also Application of Contel Corporation and GTE Corporation for Consent to the Transfer of Control of Authorizations Held by Contel Subsidiaries*, Memorandum Opinion and Order, 6 FCC Rcd 1003 (1991).

⁸ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 160 (2000).

upgrading its wireless networks in Chile and Peru, and is committed to do the same in Puerto Rico. *See* Public Int. Stmt. at 4.⁹

TRB also claims (at 9) that because “PRTC would be the only U.S. company owned by América Móvil, there seems no benefit to economies of scale that are not presently enjoyed by a subsidiary of Verizon.” But this is the wrong comparison. Verizon has made the corporate decision to divest TELPRI together with its other Caribbean and Latin American telecommunications operations as a “natural step in the evolution of [its] growth and shareholder value creation strategies.”¹⁰ In the wake of this decision, the relevant question is not whether the economies of scale that América Móvil brings are comparable to those of Verizon, but whether they are greater than TELPRI would enjoy on its own, which they are,¹¹ as shown in the public interest statement in the Application.¹² In any event, the FCC has repeatedly approved the transfer of LECs from

⁹ TLD suggests (at 18-19) that the relatively low wireline penetration rates in several Central American countries in which América Móvil is the primary local exchange carrier is evidence of a lack of investment. This is untrue. Those countries are very challenging to serve due to various factors outside of América Móvil’s control, such as difficult terrain and dramatic urban/rural differences. América Móvil has nonetheless been very creative in addressing the challenges of universal connectivity posed by rural and insular markets, promoting, for example, wireless alternatives and prepaid services.

¹⁰ Press Release, Verizon Communications Inc., *Verizon to Sell Caribbean and Latin American Telecom Operations in Three Transactions Valued at \$3.7 Billion* (Apr. 3, 2006), <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93365>.

¹¹ 47 U.S.C. § 310(d) (“Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”).

¹² *See* Public Int. Stmt. at 3-6.

larger companies to smaller companies where the economies of scale of the buyer may have been less than or different from the seller.¹³

There also is no merit to TRB's claim (at 9) that, "given the overwhelming preponderance of wireless customers" that América Móvil serves, the economies it brings are likely to accrue only to wireless and not wireline customers. As noted above and in the Application, América Móvil has extensive wireline operations in the Americas. The fact that its wireless operations are larger is irrelevant. Moreover, for purposes of the Commission's public interest analysis, the relevant question is whether the benefits outweigh the harms looking at the transaction as a whole, not whether the benefits accrue to a particular type of customer. *See pp. 4-5, supra.*

B. The Transaction Will Not Adversely Affect Competition In Any Market

The Application demonstrated that this transaction does not involve any increase in concentration in any market. *See Public Int. Stmt. at 6-11.* América Móvil's only presence in Puerto Rico involves the limited provision of resold prepaid wireless services through its affiliate, TracFone Wireless, Inc. ("TracFone"). *See id.* at 6, 8; WorldNet at 24-25 (conceding that América Móvil "is predominantly a wireless carrier" and "has only

¹³ *See, e.g., Streamlined Domestic Section 214 Application Granted*, Public Notice, 19 FCC Rcd 15604 (W.C. Bur. 2004) (approving transfer of control of Verizon Hawaii to the Carlyle Group on a streamlined basis notwithstanding objections that the sale would "diminish the efficiency of Hawaii's only incumbent network's operations support system"); *Application of Verizon Hawaii Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance) and Verizon Select Services Inc., and Paradise MergerSub, Inc. for Consent to Transfer Control of Verizon Hawaii Inc.*, Order on Reconsideration, 19 FCC Rcd 24110 (2004) (denying petitions for reconsideration); *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc. Applications for Consent to Transfer Control*, Order and Authorization, 18 FCC Rcd 23140 (Chiefs, IB, WC, WT Burs. 2003) (approving the transfer of control of GTE Pacifica, the ILEC in Saipan, Tinian and Rota, to Guam, from a Verizon subsidiary to Pacific Telecom is a direct, wholly-owned subsidiary of Prospector Investment Holdings Inc. ("Prospector"), a privately-held corporation incorporated in the Cayman Islands, British West Indies).

a minor presence in Puerto Rico’s wireless market”). The theoretical loss of TracFone as an independent source of resale competition is of no practical significance, both because TracFone serves only approximately 3,300 subscribers in Puerto Rico, and because, as other parties here concede, there is very extensive competition from other wireless providers throughout Puerto Rico.¹⁴ The Commission has held that “[t]ransactions that do not significantly increase concentration or result in a concentrated market ordinarily require no further competitive analysis.”¹⁵ That standard is easily met here.

TLD nonetheless states (at 34) that the merger eliminates América Móvil as a “potential additional competitor in a market sorely in need of competition.” But TLD fails to provide any evidentiary support for this claim. As the Application demonstrated, América Móvil is not properly viewed as a significant potential competitor because it provides service only on a resale basis and does not own wireless spectrum. *See* Public Int. Stmt. at 7-8. In any event, the Puerto Rico wireless market is highly competitive, with multiple facilities-based providers (*e.g.*, Sprint Nextel, Cingular, Centennial, SunCom, and Movistar) as well as a host of Mobile Virtual Network Operators (*e.g.*, Earthlink Wireless, Liberty Wireless, Movida, Virgin Mobile, and Mobile ESPN). *See id.* at 8.

¹⁴ *See* Public Int. Stmt. at 8; Centennial Communications Corp. Petition to Deny at 9 (July 14, 2006) (hereinafter “Centennial”) (“competition in Puerto Rico wireless markets is relatively robust”).

¹⁵ *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, ¶ 31 (2005). *See also Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 69 (2004).

The Application also demonstrated that, although the Commission does not need to analyze competition for any other services in connection with the proposed transaction -- because América Móvil and PRTC do not compete for any other services -- it can take comfort from the fact that there is extensive competition for the other services that the Commission has analyzed in past mergers, including the same types of extensive intermodal competition that the Commission has found on the U.S. mainland. *See* Public Int. Stmt. at 9-11; *Verizon/MCI Order* ¶ 101. The comments confirm this. For example, Centennial, one of the largest facilities-based competitors in Puerto Rico, states (at 7) that “[w]e have deployed extensive fiber and wireless facilities to provide real facilities-based competition to PRTC. Competition has resulted in lower prices and better service for Puerto Rico consumers.” WorldNet states (at 6-7) that, although it initially decided to provide resale and UNE-P service in Puerto Rico, it “now has deployed its own soft switching and other broadband network equipment and will soon join Centennial to become the second truly facilities-based competitor to PRTC” and “is poised to bring advanced broadband service” to Puerto Rico consumers. The TRB -- the agency charged with overseeing telecommunications competition in Puerto Rico -- acknowledges (at 3) that Puerto Rico today is “characterized by competition and increasing sensitivity to the right of consumers to expect consistent high-quality service.”

No commenter disputes any aspect of the competitive showing made in the Application. Nor does any commenter argue, much less demonstrate, that the merger will increase concentration in any relevant market in Puerto Rico. Several commenters nonetheless claim that PRTC has a dominant share of the local wireline business in

Puerto Rico. *See* WorldNet at 5; TLD at 11.¹⁶ But even assuming this were true, it is irrelevant, because the merger does not increase concentration in that segment of the communications market. Moreover, as the Commission has found in recent merger orders, static market share data is entitled to little weight given the rapid and ongoing changes in the industry. For example, the Commission has found that market share data “does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage,” nor, in the case of enterprise customers, does it reflect the fact that “myriad providers are prepared to make competitive offers.” *Verizon/MCI Order* ¶ 74. With respect to mass-market customers, the Commission has similarly found “competition from a variety of providers of retail mass market services,” including VoIP, wireless, and cable competitors. *Id.* ¶ 101; *see id.* ¶¶ 86, 88, 90-91. As a result, “market shares may misstate the competitive significance of existing firms and new entrants.” *Id.* ¶ 74. Even aside from the fact that this transaction has no effect on the local wireline business, the Application demonstrated that these same forms of competition are occurring in Puerto Rico, and no commenter disputes that showing. That should be the end of the matter.

Centennial claims (at 12) that América Móvil’s “wireless focus, combined with PRTC’s dominant position in the landline market, will create a strong temptation to try to

¹⁶ TLD also claims (at 11-12) that a March 29, 2005 letter that PRTC filed with the FCC claims that there is limited competition in Puerto Rico. That is not true. The letter does not state the competitive alternatives are limited in Puerto Rico overall, but only in those areas where PRTC itself does not provide service. It is in that limited context -- which TLD misleadingly omits from its selective quotation -- that the letter states that “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].” Letter from Nancy J. Victory, Counsel for Puerto Rico Telephone Company, Inc., to Jeffrey Carlisle, FCC, CC Dkt. No. 96-45, at 1 (filed Mar. 29, 2005).

extract additional revenues from landline residential customers to subsidize wireless (and/or business-landline) activities.” But as the Commission has acknowledged, it has adopted a number of regulatory safeguards other than price caps that reduce the incentive and ability of local exchange carriers to engage in improper cross-subsidization.

These regulatory developments were the adoption and implementation of detailed cost allocation rules and related cost accounting safeguards that separate nonregulated service costs from regulated service costs, the implementation of cost accounting mechanisms to enforce the joint cost rules including the filing and approval of cost allocation manuals, the requirement that carriers submit to independent audits, and the establishment of the Automated Reporting and Management Information System (ARMIS).¹⁷

In any event, even in the unlikely event that TELPRI was able to engage in cross-subsidization undetected, Centennial provides no basis to assume that TELPRI could successfully use this strategy to harm competition in the intensely competitive wireless or business markets.

Finally, TLD claims (at 41) that the merger will affect international voice traffic between Puerto Rico and a number of foreign countries in which América Móvil or its affiliates are the primary local exchange carrier. But the Commission’s rules already contain competitive safeguards applicable where a U.S. international carrier is or becomes affiliated with a foreign carrier with market power on the foreign end of a

¹⁷ *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, ¶ 12 (1991) (citing *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities & Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates*, Report and Order, 2 FCC Rcd 1298, 1329-31 (1987); *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC’s Rules)*, Report and Order, 2 FCC Rcd 5770 (1987)).

particular route.¹⁸ The Commission has found that “these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anti-competitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate.”¹⁹ As stated in the Application, América Móvil has agreed to be regulated as dominant on the relevant routes, *see* Application at 11-12 (answers to Questions 16 & 17 pursuant to Rule 63.24(e)(2)), and is therefore subject to the full effect of these competitive safeguards.

III. AMÉRICA MÓVIL’S FOREIGN OWNERSHIP DOES NOT RAISE ANY LEGITIMATE CONCERNS

The fact that América Móvil is a foreign-owned corporation in no way changes the fact that the transaction is in the public interest and should be approved. As explained in the Application, the Commission has established a rebuttable presumption that granting a Section 214 authorization or Title III licenses to transmit on radio frequency spectrum to an entity from a WTO member-country does not raise competitive concerns, except where there is a “very high risk to competition” in a U.S. market that cannot be

¹⁸ *See* 47 C.F.R. §§ 1.767(1), 1.768(f), 63.10(c), (e); *see also* *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, ¶ 25 (2001) (“*Submarine Cable Order*”).

¹⁹ *Verizon/MCI Order* ¶ 178 n.482 (citing *Submarine Cable Order* ¶ 23); *see also* *Global Crossing Ltd. and GC Acquisition Limited Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 18 FCC Rcd 20301, ¶ 45 (2003); *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, ¶¶ 397-98 (2000) (“*Bell Atlantic/GTE Merger*”).

addressed by existing conditions the Commission places on U.S. international carriers considered dominant under its rules.²⁰

Unable to demonstrate that the foreign ownership aspects of this transaction pose any risk to competition -- much less a very high risk as required by the Commission's rules -- the commenters object to América Móvil's foreign ownership on various other grounds. As demonstrated below, these claims are uniformly misplaced.

First, a few commenters speculate that, because of the challenges that América Móvil and Telmex face in their home markets, they will withdraw resources from PRTC's wireline business.²¹ There is no basis for such claims. América Móvil and Telmex are large corporations with substantial resources. There is no reason to believe that they will have a limited amount of resources to invest in Puerto Rico simply because of increased competition they face in other markets. To the contrary, América Móvil's decision to invest in Puerto Rico will be based on the conditions in Puerto Rico, not in other countries. And given that there is extensive competition in Puerto Rico, there is every reason to believe that América Móvil will be required to invest to remain competitive. As the Commission has recognized, facilities-based competition induces incumbent carriers to invest.²²

²⁰ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶¶ 50-52 (1997) ("*Foreign Carrier Participation Order*"); see Application at 5.

²¹ See WorldNet at 24-26.

²² See, e.g., *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783, ¶ 2 (2004) ("We believe that unbundling rules based on a preference for facilities-based competition will provide incentives for both incumbent LECs and competitors to innovate and invest.").

Second, a number of commenters claim that América Móvil will not carry out or comply with legal and regulatory obligations applicable to PRTC.²³ These cynical claims are premised on vague assertions that América Móvil’s “corporate culture” is different from a U.S. corporation and on discussions of (frequently dated) disputes (and allegations) involving América Móvil and Telmex in non-U.S. jurisdictions. But the mere fact that laws and regulations are different in the foreign countries in which América Móvil operates in no way suggests that it is incapable of or uncommitted to complying with U.S. laws and regulations. Nor is there any basis to believe that this Commission (or the TRB) would be unable to enforce its rules against América Móvil.²⁴ In fact, both América Móvil (and, incidentally, Telmex) have U.S.-based investments that already are subject to FCC oversight.²⁵

²³ TLD at 35-38; Centennial at 5-7; WorldNet at 24.

²⁴ While commenters claim that Telmex has been found in violation of certain rules by Mexican regulators, this is irrelevant here. For one thing, this shows that Telmex fully cooperates with the legal process in Mexico. For another thing, these incidents involved legitimate legal disputes where Telmex was preserving its rights. Nothing about Telmex’s conduct suggests that América Móvil would fail to comply with the FCC’s rules and policies. *See Foreign Carrier Participation Order* ¶ 53. Moreover, América Móvil and Telmex are separate publicly traded companies with fiduciary obligations to their distinctive shareholders. América Móvil and Telmex are ultimately under common control, but there is no basis (and petitioners have alleged none) to indicate that the requirements incident to separate publicly traded companies are not observed. Indeed, the existence of contractual relationships and operational agreements between the two companies, which are referenced by both TLD and WorldNet, is evidence that such distinctions are observed. *See* TLD at 3; WorldNet at 4-5. The simple fact is that Telmex is not a party to the acquisition of PRTC and should not be considered as such.

²⁵ América Móvil is already regulated by the FCC with respect to its operation of Tracfone in the U.S., *see* International Authorizations Granted, *Public Notice*, 18 FCC Rcd 9121 (2003) (File No. ITC-214-20030401-00162) (grant of Tracfone International 214 Authorization), and is in good standing. Though not a party to this application, América Móvil’s affiliate Telmex is the owner of carriers regulated by the FCC. *See, e.g.,* International Authorizations Granted, *Public Notice*, 18 FCC Rcd 7142 (2003) (File No. ITC-214-20030312-00131) (granting Telmex USA authority to provide international telecommunication services); International Authorizations Granted, *Public Notice*, 19 FCC Rcd 2136 (2004) (File No. ITC-ASG-20031126-00544) (granting authority for Telmex to acquire indirect control of LATAM Telecomunicaciones, L.L.C.). *See also*

Finally, the commenters recite a number of past and ongoing complaints that have been brought against América Móvil or Telmex in foreign countries. But the Commission has repeatedly refused to address in a merger proceeding “alleged character concerns based upon specific, unresolved disputes with the Applicants.” *Verizon/MCI Order* ¶ 188. The Commission has instead held that such complaints are more appropriately addressed in other fora, *see id.*, and the same conclusion applies here.

In any event, these claims lack substance. For example, a number of commenters suggest that, because the WTO brought claims against Telmex in 2004, América Móvil will engage in anticompetitive behavior in Puerto Rico. Those claims, however, have been fully resolved to the satisfaction of the United States Trade Representative (“USTR”). In 2000, the USTR raised concerns regarding Mexico’s compliance with certain of its telecommunications commitments under the General Agreement on Trade in Services (“GATS”). Following subsequent discussions, Mexico reduced domestic interconnection rates and introduced measures to regulate Telmex as a dominant carrier.²⁶ In February 2002, USTR requested that a WTO panel examine remaining unresolved issues regarding Mexico’s international telecommunications regime. In April 2004, the

Applications of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212, ¶ 26 (2002) (showing foreign investment in the context of the FCC’s approval of Telmex’s prior investment in XO Communications); *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 25459, ¶ 31 n.72 (2000) (showing foreign investment in the context of Telmex’s prior investment in SBC’s CCPR Services, Inc. in Puerto Rico and USVI Cellular Telephone Corporation in the U.S. Virgin Islands).

²⁶ See United States Trade Representative, *Dispute Settlement Update* 6-7 (Nov. 15, 2005), available at http://www.ustr.gov/assets/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/asset_upload_file343_5697.pdf.

WTO panel issued a report that clarified Mexico's GATS obligations and recommended that Mexico bring its regulatory regime into conformity with those obligations.²⁷ Mexico and the United States subsequently reached agreement on the timeframe and steps required to implement the panel report. In 2004, Mexico modified its international telecommunications rules to allow the competitive negotiation of international interconnection rates, and in 2005 Mexico enacted new rules to allow the resale of international and long distance services. As a result, the U.S. and Mexico informed the WTO in August 2005 that Mexico had taken the steps required under the agreement, and the USTR expressed its satisfaction that Mexico had fulfilled its commitment to take remedial regulatory measures.²⁸

IV. THE COMMISSION SHOULD REJECT CLAIMS REGARDING PRTC'S EFFORTS TO OPEN LOCAL WIRELINE MARKETS IN PUERTO RICO TO COMPETITION AND TO IMPOSE RELATED CONDITIONS

As demonstrated above and in the Application, this transaction does not involve any increase in concentration in local wireline markets in Puerto Rico or affect PRTC's obligations to comply with the market-opening requirements of the 1996 Telecommunications Act and the Commission's rules. Several commenters nonetheless raise claims regarding PRTC's past performance in opening local wireline markets in Puerto Rico to competition.²⁹ These petitioners also seek to impose related conditions

²⁷ See World Trade Organization, *Mexico – Measures Affecting Telecommunications Services: Report of the Panel*, WT/DS204/R (Apr. 2, 2004), available at http://www.wto.org/English/tratop_e/dispu_e/204r_e.pdf.

²⁸ Press Release, U.S. Mission to the United Nations in Geneva, Statements by the U.S. Representative at the Meeting of the WTO Dispute Settlement Body (DSB), *Mexico – Measures Affecting Telecommunications Services: Status Report by Mexico*, WT/DS204/9/ADD.8 (Aug. 31, 2005), available at <http://www.us-mission.ch/Press2005/0831DSB.htm>.

²⁹ See WorldNet at 7, 14-19; Centennial at 2, 8.

regarding PRTC’s wireline operations – conditions that these parties have been unsuccessful in achieving in other fora, including past merger proceedings involving PRTC. Arguments regarding PRTC’s market-opening measures have no link to this transaction, and under settled Commission precedent should therefore be addressed, if at all, “in a broader proceeding of general applicability” or in other fora such as complaint proceedings.³⁰

Indeed, many of the same claims raised here also were raised in the Verizon/MCI proceeding, where the Commission concluded that “many of the concerns expressed by WorldNet regarding Puerto Rico Telephone Company (PRTC) are not merger-specific, and thus need not be addressed in this proceeding.” *Verizon/MCI Order* ¶ 191 (footnote omitted). The Commission further noted “that a number of issues raised by WorldNet are the subject of pending proceedings.” *Id.* ¶ 191 n.517. The Commission concluded that, “because we do not find any likely anticompetitive effects requiring remedy . . . we reject WorldNet’s request for conditions.” *Id.* ¶ 191. The same conclusion is warranted here.

In any event, the comments regarding PRTC’s market-opening measures are not only irrelevant, but also factually misplaced and contrary to the large and rapidly growing level of competition in Puerto Rico. For example, WorldNet and Centennial complain that “PRTC’s current wholesale provisioning and operations are not sufficient to provide meaningful competitive entry in the wireline market in Puerto Rico.”³¹ But the facts on the ground show otherwise. As noted above, WorldNet acknowledges elsewhere in its

³⁰ *Verizon/MCI Order* ¶ 188 (quoting *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, ¶ 43 (1999)); *id.* ¶ 55 n.157 (citing additional precedent to this effect).

³¹ WorldNet at 16; *see* Centennial at 10.

pleading (at 6) that it is competing successfully in Puerto Rico; it has built “a strong customer base” and “now has deployed its own soft switching and other broadband network equipment.” According to one analyst, WorldNet “is currently the third-largest local telecommunications provider on the island, with a share exceeding 15% of the local market.”³² Centennial likewise admits (at 10) it is competing successfully, and even cites a study showing that it has gained ten percent of the “local fixed-line market.” The TRB likewise acknowledges (at 3) that Puerto Rico is “characterized by competition.” These marketplace realities belie the claim that PRTC’s market-opening measures have somehow been inadequate.

TLD and WorldNet argue that a waiver petition filed by the TRB at the FCC provides a more pessimistic account of the state of competition in Puerto Rico than the one TRB provides here.³³ The petition to which they refer was filed more than two and a half years ago seeking a waiver of the Commission’s rules in order to require PRTC to provide unbundled circuit switching to enterprise customers. As the commenters fail to note, however, the Commission rejected the petition.³⁴ And, in the time since that rejection, competition has only increased. Indeed, WorldNet itself now claims it has “deployed its own soft switching,” which puts the lie to the claims in TRB’s petition that competitors needed unbundled access to PRTC’s circuit switches.

³² Augusto Durand, *WorldNet: A Visionary Approach to Telecom*, Caribbean Bus., Mar. 31, 2005, at 46. PRTC believes that the fifteen percent market share reported in this article is conservative.

³³ TLD at 15-16; WorldNet at 14-16.

³⁴ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 245 (2005) (“TRRO”).

WorldNet also claims (at 12) that PRTC “has never been the subject of a state or federal proceeding to determine its compliance with the competitive mandates of the Act” and has “been operating virtually free of regulatory oversight.”³⁵ That is nonsense. PRTC is subject to Sections 251 and 252 and the Commission’s implementing rules, just like all other incumbent local exchange carriers in the U.S. And like ILECs on the mainland, PRTC has gone through the process of negotiating interconnection agreements with CLECs, arbitrating those agreements, and defending them in court.³⁶ PRTC is also subject to extensive market-opening requirements and regulatory oversight of the TRB, which notes here (at 3) that it “has presided over fourteen interconnection arbitrations; has approved forty interconnection agreements; . . . and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico.”

For the same reasons, there is no basis for the Commission to use this proceeding to impose conditions that duplicate the unbundling and interconnection requirements of Section 251,³⁷ or to require new performance measures,³⁸ as several commenters urge.

³⁵ Although WorldNet’s main complaint appears to be that PRTC was not also subject to the largely parallel market-opening requirements of Section 271, it was Congress’s considered judgment that such additional requirements were unnecessary for any ILEC other than the Bell companies. This is obviously not the appropriate forum in which to revisit that determination.

³⁶ See *WorldNet Telecomms. v. P.R. Tel. Co.; Telecomms. Regulatory Bd. of P.R.*, Nos. 06-1563, 06-1564, 06-1565, 06-1566 (1st Cir. Mar. 6, 2006). WorldNet complains (at 21) that it “has had to fight PRTC every step of the way.” But as Centennial acknowledges (at 8), the litigation between PRTC and competitors has been the result of “legitimate, good faith disagreements . . . regarding how the Puerto Rico Telecommunications Board (‘TRB’) should interpret and enforce [1996 Act and Puerto Rico Law 213] obligations.” In any event, the Commission has rejected similar claims in prior merger proceedings where, as here, the ILEC’s conduct is merely an attempt to preserve its legal rights and did not result in “a violation of any law.” *Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 571 (1999) (“*GTE/PRTC Merger*”).

³⁷ See TLD at 53-55.

For the most part, these conditions “would simply require PRTC to comply with its existing legal obligations,” including “preexisting interconnection agreements,” and are therefore inappropriate.³⁹ Moreover, these conditions repeat requests that competitors (including TLD and WorldNet) are currently making in ongoing interconnection negotiations.⁴⁰ The Commission has “a long-standing policy” of not getting involved in ongoing contract disputes,⁴¹ and other conditions relate to disputes TRB is already addressing⁴² or seek regulation that this Commission has already considered and rejected.⁴³

³⁸ See TLD at 56-58; WorldNet at 31-33, 36; Centennial at 8-11; TRB at 12-13.

³⁹ *Applications of Puerto Rico Telephone Company and GTE Holdings (Puerto Rico) LLC for Consent to Transfer Control of Licenses and Authorization*, Memorandum Opinion and Order, 14 FCC Rcd 3122, ¶ 28 (1999) (“*GTE/PRTC Merger*”).

⁴⁰ PRTC’s interconnection agreement with WorldNet (including performance standards, liquidated damages, and various resale issues) is the subject of the TRB arbitration proceeding currently pending before the First Circuit. See *WorldNet Telecomms. v. P.R. Tel. Co.; Telecomms. Regulatory Bd. of P.R.*, Nos. 06-1563, 06-1564, 06-1565, 06-1566 (1st Cir. Mar. 6, 2006). TLD’s current interconnection agreement with PRTC provides for performance measures and monthly reports. See *Interconnection and Resale Agreement Between Puerto Rico Telephone Company, Inc. and Telefonica Larga Distancia*, Section 9.1, JRT-INT-0011 (filed Apr. 6, 2000). PRTC and TLD are currently negotiating a new interconnection agreement, and many of the conditions raised by TLD are included within those negotiations.

⁴¹ See, e.g., *Verizon/MCI Order* ¶ 108 n.327 (“The Commission has a long-standing policy of refusing to adjudicate contract law questions for which a forum exists in the state courts.” (citing *S.A. Dawson D/B/A Dawson Associate, Assignment of Licenses for 900 MHz Specialized Mobile Radio Station WNVE296 at Bithlo City, Florida*, File No. 9512R106102, Memorandum Opinion and Order, 17 FCC Rcd 472, ¶ 7 (2002) (finding that contractual matters between parties are ordinarily addressed by courts rather than the Commission)); *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (finding that the Commission should not condition a license transfer upon transferee’s adherence to transferor’s contractual obligations, as doing so would necessarily prejudice the terms and conditions of the contract).

⁴² For example, while WorldNet complains (at 33) about PRTC’s policies with respect to transit traffic, the TRB has a pending proceeding to address this issue. See *Regulation of Transit Traffic Service In Puerto Rico*, No. JRT-2003-SC-0002 (TRB filed June 20, 2002) (formerly No. JRT-2002-CCG-0001). In addition, the TRB’s comments indicate (at 12-13) that it “expects to issue a rulemaking” to consider proposed

TRB nonetheless argues (at 4) that it would be consistent with precedent to impose conditions subjecting PRTC to performance measurements. TRB claims that the Commission imposed similar requirements on PRTC in connection with the GTE/PRTC⁴⁴ and Bell Atlantic/GTE mergers.⁴⁵ That is not true. In approving the 1999 GTE/PRTC transaction, the FCC specifically *rejected* requests to impose “a variety of conditions relating to PRTC’s compliance with its interconnection and other network access obligations, as well as related provisioning and reporting requirements.”⁴⁶ The Commission found that “many of the proposed conditions would simply require PRTC to comply with its existing legal obligations,” and that “PRTC [would] remain legally bound to comply with its preexisting interconnection agreements.”⁴⁷ The Commission also “decline[d] to require PRTC or GTE Holdings to comply with additional provisioning and performance monitoring requirements” such as those adopted in the merger of two Bell Operating Companies, Bell Atlantic and NYNEX. The Commission

performance measures that would apply to “all telecommunications services providers in Puerto Rico, not only to the Puerto Rico Telephone Company.”

⁴³ For example, WorldNet seeks (at 36) a requirement that PRTC make stand-alone DSL available for resale. The Commission has rejected such a requirement. *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 51-61 (2005). TLD requests (at 53-55) that the FCC require PRTC to make available to all carriers any commercial agreements that PRTC has negotiated with other carriers. However, the FCC has never required that ILECs do this. Similarly, WorldNet’s request (at 32) to treat Puerto Rico differently and mandate access to unbundled network elements regardless of impairment was rejected by the Commission in the Triennial Review Remand proceeding. *See TRRO* ¶ 222 n.608 (rejecting WorldNet’s claim that “competitive LECs are uniquely impaired in Puerto Rico”).

⁴⁴ *GTE/PRTC Merger*, 14 FCC Rcd 3122.

⁴⁵ *Bell Atlantic/GTE Merger*, 15 FCC Rcd 14032.

⁴⁶ *GTE/PRTC Merger* ¶ 27.

⁴⁷ *Id.* ¶ 28.

ultimately concluded that, because PRTC would remain subject to the Commission's 1987 Puerto Rico Order, additional regulation was "unnecessary." Similarly, the Commission did not impose any of the conditions adopted in the GTE/Bell Atlantic Order (including the performance-related conditions quoted by the TRB) on PRTC. Contrary to TRB's suggestion, PRTC and the entire Puerto Rico service area were excluded from the list of GTE affiliates that were covered by the Order's conditions.⁴⁸

Finally, a few commenters claim that América Móvil will be less likely to comply with PRTC's existing regulatory obligations going forward, because América Móvil is a foreign corporate entity that has not been conditioned by a "decade of operating under the 1996 Act."⁴⁹ These commenters suggest that a host of conditions are necessary to ensure such compliance.⁵⁰ But this groundless speculation about América Móvil's familiarity with U.S. law is not a valid basis for imposing conditions. As the Commission has held, "aggrieved parties will have recourse to the full panoply of legal remedies, including remedies before this Commission (potentially including accelerated enforcement proceedings), the PRTRB [Puerto Rico Telecommunications Regulatory Board], and the courts."⁵¹

⁴⁸ See *Bell Atlantic/GTE Merger*, App. D.

⁴⁹ Centennial at 6, 10; see also Motion to Address Public Interest Concerns of Puerto Rico Senators at 5 (July 13, 2006) (hereinafter "Puerto Rico Senators") ("Strong regulation and federal agency controls should be tailored for foreign wire-line communications companies.").

⁵⁰ See Centennial at 5, 8-16; Puerto Rico Senators at 5-6.

⁵¹ *GTE/PRTC Merger* ¶ 28 (footnote omitted).

V. THE COMMISSION SHOULD ALSO REJECT REQUESTS FOR OTHER CONDITIONS

In addition to their requests for conditions regarding the opening of local wireline markets, the commenters also seek to impose a litany of other conditions on PRTC. But the commenters fail to link any of these conditions to the competitive effects of this transaction. As the Commission has held, it “will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.”⁵² None of the conditions proposed here come close to meeting this established standard. As demonstrated above and in the Application, this transaction does not cause any competitive harms because América Móvil does not compete with PRTC in the delivery of any communications service, except for América Móvil’s limited provision of resold prepaid *wireless* services. Even apart from this, the proposed conditions are flawed for multiple additional reasons and should be rejected.

First, WorldNet asks (at 35) the Commission to waive termination charges and impose a two-year “fresh look” for all PRTC customer contracts in Puerto Rico. *See* Centennial at 14-16 (advocating a “fresh look” for government contracts). WorldNet requested a nearly identical condition in the Verizon-MCI transaction, which the Commission “reject[ed]” because it was not “[transaction]-specific, and thus need not be

⁵² *Verizon/MCI Order* ¶ 19 (footnote omitted) (“Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.” (footnotes omitted)); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 43 (2004); *Application of General Motors Corporation and Hughes Electronics Corporation and The News Corporation Limited for Authority to Transfer Control*, Memorandum Order, 19 FCC Rcd 473, ¶ 131 (2004).

addressed in this proceeding.”⁵³ As in that proceeding, WorldNet has failed to demonstrate any link between the transaction and its proposed condition. The Commission should accordingly again reject WorldNet’s request. Moreover, WorldNet filed a complaint on this issue with the TRB⁵⁴ and later withdrew this complaint with prejudice,⁵⁵ which further demonstrates that this is not the appropriate forum to address its concerns.

Second, several commenters ask the Commission to freeze or cap various wholesale and retail rates as a condition of approval.⁵⁶ But these commenters fail to show that this transaction is likely to lead to higher rates. And the parties to this transaction do not have any overlapping wireline operations. The situation here is therefore distinguishable from the recent Verizon/MCI and SBC/AT&T mergers. In any event, to the extent there are concerns about PRTC’s intrastate or interstate rates in the future, the proper way to address them is to file a complaint with the TRB or FCC, respectively.

⁵³ *Verizon/MCI Order* ¶ 191 (footnote omitted).

⁵⁴ See WorldNet Telecommunications Inc.’s Request for Suspension and Investigation of Tariff Pursuant to Art. III-7(c) of Act 213, *WorldNet Telecomms., Inc. v. PRTC*, No. JRT-2003-Q-0143 (TRB filed Aug. 15, 2003).

⁵⁵ See WorldNet Telecommunications Inc.’s Motion to Withdraw Claims With Prejudice, *WorldNet Telecomms., Inc. v. PRTC*, No. JRT-2003-Q-0143 (TRB filed Dec. 21, 2005). The TRB granted WorldNet’s Motion and dismissed the complaint with prejudice on January 25, 2006. See *WorldNet Telecomms., Inc. v. PRTC*, No. JRT-2003-Q-0143 (TRB Jan. 25, 2006) (Resolution and Order granting WorldNet’s Motion to Withdraw Claims Prejudice).

⁵⁶ WorldNet at 32, 34; TLD at 58; Centennial at 12-14.

Third, some commenters argue that the transaction will pose national security concerns due to América Móvil's foreign ownership.⁵⁷ They claim that América Móvil should accordingly be required to: (1) place American citizens in all top management positions of PRTC; (2) waive any long-term service commitments in contracts with any U.S. government agency;⁵⁸ and (3) disclose all equity and non-equity affiliations with other carriers and other documents relating to the proposed transaction.⁵⁹ As noted above, however, other government agencies charged with overseeing national security will be reviewing this transaction.⁶⁰ The Commission has historically deferred to these other agencies to address national security concerns, and should do the same here.⁶¹ In any event, these proposed conditions are misplaced. The U.S. government regularly utilizes service providers with foreign ownership for a wide variety of services. The commenters fail to demonstrate why América Móvil in particular is more of a national security concern than any other organization with a foreign ownership interest. Indeed,

⁵⁷ The Department of Justice has requested (at 1) that the Commission “defer action on the applications . . . until such time as DOJ, FBI, and DHS (i) notify the Commission that potential national security, law enforcement, and public safety issues raised by the application have or have not been resolved, and (ii) on that basis, request appropriate action by the Commission.” Verizon and América Móvil are cooperating with the Departments to facilitate their review. In the interim, the Commission should continue its analysis so that it will be prepared to rule promptly on the pending transfer application.

⁵⁸ Puerto Rico Senators at 5-6; Centennial at 3, 14-15.

⁵⁹ TLD at 58-60.

⁶⁰ As noted in the Application, América Móvil and Verizon plan to voluntarily submit the proposed transaction to the Committee on Foreign Investment in the United States for review pursuant to 31 C.F.R. § 800.404. Application at 4.

⁶¹ See, e.g., *Constellation, LLC, et al. and Intelsat Holdings, Ltd. Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, Memorandum Opinion and Order, IB Dkt. No. 05-290, FCC 06-85, ¶ 52 (June 19, 2006) (“In assessing the public interest, we . . . accord deference to Executive Branch expertise on national security and law enforcement issues.”); *Foreign Carrier Participation Order* ¶¶ 61-66.

imposing such a requirement would be contrary to the FCC's treatment of foreign investment in telecommunications companies.⁶² It also makes no sense; no such condition applies to U.S.-owned corporations, which are therefore free to appoint non-U.S. citizens to management positions.

Finally, TLD asserts (at 52) that América Móvil 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 PRTC's wireless operations) on the one hand and Cingular on the other." This claim is misplaced. As an initial matter, even assuming that AT&T's ownership interest in América Móvil would give it some influence over PRTC's operations, there is no basis to assume that AT&T could use that influence to harm competition in the Puerto Rico wireless market, which is subject to competition from multiple providers besides Cingular and PRTC's wireless operations. In any event, AT&T's ownership interest in América Móvil is well below the ten percent threshold that is considered necessary even to identify an ownership interest, let alone raise a concern that an entity could exercise a meaningful influence under the FCC's rules,⁶³ and this transaction does not change that.

Because AT&T would not meet this threshold -- either before or after this transaction -- TLD speculates (at 27) that AT&T's investment in América Móvil "can be

⁶² See *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses, Section 310 of the Communications Act of 1934, as amended, Initial Authorizations and Transfers of Control and Assignments of Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612 (Int. Bur. 2004).

⁶³ See 47 C.F.R. § 1.2112 (requiring each applicant for a license, authorization, assignment, or transfer of control to identify all parties that have a ten percent or greater ownership interest (direct or indirect, voting or non-voting) in the applicant).

expected to influence boardroom and competitive marketplace behavior.” There is no merit to this claim. First, as discussed in the Application, América Móvil’s bylaws require non-Mexican entities to hold their shares through a trust that effectively neutralizes their votes. Pursuant to this arrangement, AT&T does not vote independently, but instead the trustee must vote the AT&T interest with the América Móvil majority shareholders. AT&T also cannot exert influence by threatening to withhold its vote, because the ownership structure of América Móvil is such that AT&T’s shares are not required to achieve a majority.

TLD also claims that AT&T has the right to fill two of the seats on América Móvil’s twelve-seat board of directors, but this likewise does not raise concerns that AT&T will be able to exert undue influence. In a June 6, 2006 letter to the Telecommunications & Media Section of the Department of Justice’s Antitrust Division, América Móvil has committed to “assure that competitively sensitive information will not flow between” Cingular and América Móvil, and that it would “not seat as a member of its board of directors” or “employ as an officer” any officer or director of Cingular.⁶⁴ América Móvil also confirmed that any individual “responsible for the day-to-day management of Cingular’s operations in Puerto Rico” would be foreclosed from serving as an officer or director of América Móvil.⁶⁵ In addition, América Móvil pledged that competitively sensitive information relating to its business in Puerto Rico would neither be made available to Cingular nor to AT&T employees, officers, or directors serving on

⁶⁴ Letter from Alejandro Cantu Jimenez, General Counsel, América Móvil, to Michael J. Hirrel, Telecommunications & Media Section of the United States Department of Justice’s Antitrust Division (June 6, 2006).

⁶⁵ *Id.*

CERTIFICATE OF SERVICE

I, Rebekah P. Goodheart, hereby certify that on July 24, 2006, I caused a true and exact copy of the forgoing “América Móvil’s And Verizon’s Opposition To Petitions To Deny” to be delivered by via electronic mail to:

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