

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

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

**REPLY TO OPPOSITION**

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July 31, 2006

## Summary

The Telecommunications Regulatory Board of Puerto Rico (“Board”) hereby replies to the Opposition of América Móvil, S.A. de C.V. and Verizon Communications Inc (“Applicants”). In their Opposition the Applicants once again fail to commit to any credible public benefit to Puerto Rico. Even the vaunted commitment to bring 3G to Puerto Rico is hobbled by two caveats, and the touted “economies of scale and scope” do not exist in the U.S. wireline market, where América Móvil has no other operations. Further, it is reasonable to suppose that América Móvil’s preferred solution to penetration challenges will be to abandon the wireline infrastructure in favor of investment in wireless. But this will have a severely negative impact on developing competition in Puerto Rico.

The legal standard relied upon by the Applicants does not require “absolute certainty” or “iron-clad” commitments, but it does require some credible public interest benefit. In this case, there is none. Consequently, the Commission should impose conditions to remedy the failings of the Applications. These conditions should consist of reasonable and achievable performance measures designed to assure quality of service to Puerto Rico consumers and competitors and specific commitments on infrastructure investment to improve telephone penetration as well as for its expansion, improvement and modernization.

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**REPLY TO OPPOSITION**

The Telecommunications Regulatory Board of Puerto Rico (“Board”), by its attorneys, hereby responds to the Opposition filed by América Móvil, S.A. de C.V. (“América Móvil”) and Verizon Communications Inc. (“Verizon”, together “Applicants”) in connection with the above-captioned Applications requesting Federal Communications Commission (“FCC” or “Commission”) approval of a transfer of control of Telecommunicaciones de Puerto Rico (TELPRI) subsidiaries PRT Larga Distancia (“PRT LD”) and the Puerto Rico Telephone Company (“PRTC”). PRTC is the Incumbent Local Exchange Carrier in Puerto Rico. The Applications propose the transfer of control of TELPRI from Verizon to a wholly-owned subsidiary of América Móvil.

## **I. BACKGROUND**

### **A. Petitions to Deny**

A number of interested parties filed Petitions to Deny the applications, or comments requesting that the Commission take notice of public interest concerns.

#### **1. The Board**

The Board, the entity in Puerto Rico with responsibility for promoting competition and protecting the consumer, found the purported public interest benefits of the transaction to be hollow and meaningless, with no specifics or actual commitments. There were no credible public interest benefits described in the application. For that reason, the Board urged the Commission to deny the applications unless remediative conditions are imposed. Those conditions would require that PRTC meet specific quality of service measurement and reporting standards and make a substantial commitment on infrastructure investment. These regulations, which would be phased in over time, are both reasonable and achievable by any company genuinely interested in improving telephone service in Puerto Rico. Adoption of the standards would benefit both the retail and wholesale PRTC customer.

#### **2. Legislative Officials**

The Honorable Kenneth D. McClintock and the Honorable Orlando Parga, President and President Pro Temp of the Senate of Puerto Rico respectively, did not directly oppose grant of the applications.<sup>1</sup> However, they raised several public interest concerns including foreign control of a “virtual monopoly” in wireline telecommunications in Puerto Rico and resulting national security implications. The Legislators were not confident of the “promises” made in the application particularly given that Telmex, a close affiliate of América Móvil charges “some of the highest phone rates in the world.”<sup>2</sup>

#### **3. TLD**

Telefónica Larga Distancia de Puerto Rico (“TLD”), a provider of intrastate long distance service in competition with PRT LD, agreed with the Board that the

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<sup>1</sup> Hon. Orlando Parga is also Chairman of the Senate’s Committee on Federal and Consumer Affairs.

<sup>2</sup> Legislators’ Motion at 4, citing *The Wall Street Journal*, June 21, 2006 at A12.

applicants have shown no meaningful public interest benefits and pointed to perceived detriments as evidence that the Commission should deny the application. Among these detriments would be the anti-competitive impact of acquisition by América Móvil and Telmex, both known as ruthless defenders of market power with a history of impeding competition and opposing measures that would increase the level of competition. In Puerto Rico, where the market is vulnerable to this competition-limiting behavior, acquisition of the monopoly ILEC would be uniquely detrimental. TLD also noted the stake that AT&T has in América Móvil and Telmex and raised concerns about control over both ends of international calls to countries that account for the heaviest traffic to and from Puerto Rico.

**4. Centennial**

Centennial Communications Corp (“Centennial”), a facilities-based Competitive Local Exchange Carrier competing with PRTC, was concerned that the transaction would transfer control of a major American ILEC to a foreign entity without any “discernable natural affinity” for fulfilling the obligations of the 1996 Communications Act.<sup>3</sup> Centennial’s objective is to assure that the new owners of PRTC will devote the time, management attention, and financial resources adequate to ensure compliance with PRTC’s duty to open the market. To remedy this concern, Centennial proposed three conditions, including outside compliance auditing, protection from cross-subsidization and attention to national security and law enforcement issues.

**5. Department of Justice**

The Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security, requested that the FCC defer action on the application until resolution of national security, law enforcement and public safety issues.

**6. WorldNet**

WorldNet Telecommunications, Inc. (“WorldNet”), another CLEC competitor of PRTC, argued that the transaction would cause substantial competitive harm to the

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<sup>3</sup> Centennial Petition at 5.

market in Puerto Rico. Unlike any other acquisition, this is a case of a dominant ILEC being ultimately controlled by a dominant foreign carrier, with both carriers having “long anticompetitive track records.”<sup>4</sup> Accordingly, the public interest requires that the Commission deny the transaction or adopt conditions and safeguards to assure the continued competitive development of the Puerto Rico market.

## 7. Sprint

Sprint Nextel Corporation (“Sprint”) did not file a Petition to Deny, but did comment expressing its concern that PRTC’s dominant position in Puerto Rico renders other service providers vulnerable to anti-competitive practices. Sprint is particularly concerned that a minimum allocation of resources to meet other service provider’s needs, will damage the growth of competition in Puerto Rico. Sprint suggests that the transaction be conditioned upon sustained, measured and monitored performance in meeting obligations to customers.

### B. The Opposition

América Móvil and Verizon (“the Applicants”) oppose the Petitions to Deny. First they insist that the transaction will produce public benefits, as claimed in the Applications. Second, they claim that Commission precedent does not require iron-clad commitments or absolute certainty. All that is needed is a determination that the transaction as a whole is in the public interest. This determination is achieved through a balancing test. Where, as in this case, potential harms are unlikely, “demonstration of potential benefits need not be as certain.”<sup>5</sup>

Next the Applicants claim that the transaction will not adversely affect competition in any market, since there is no increase in concentration. Moreover, the state of competition is healthy, as both Centennial and WorldNet admit to success and the Board has stated that Puerto Rico today is “characterized by competition.”<sup>6</sup>

The Applicants also dismiss concerns about América Móvil’s foreign ownership, claiming that granting an authorization to an entity from a WTO-member country does not raise

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<sup>4</sup> WorldNet Petition at 2.

<sup>5</sup> Opposition at 5.

<sup>6</sup> *Id.* at 10.

competitive concerns. Further, claims against América Móvil and Telmex’s anticompetitive behavior lack substance. The Applicants argue that the Commission should reject complaints about PRTC’s past performance and should refuse to impose conditions related to them.

## II. ARGUMENT

### A. The Applicants Again Fail To Demonstrate Concrete Public Benefits

In their Opposition, like their Applications, the Applicants pay great lip service to the public interest benefits they claim will result from the transaction. But, once again, they fail to commit to any credible benefit to Puerto Rico. For example, a close reading of the Opposition uncovers statements concerning experience in designing products for rural and low-income populations, but finds no mention of a commitment to bring specific products to the Puerto Rican market. Even the vaunted commitment to bring 3G to Puerto Rico is hobbled by not one, but two, caveats: First, the commitment is only to “pursue the best means of achieving this upgrade.”<sup>7</sup> Second, even that pursuit cannot begin until “after an opportunity to analyze the matter.”<sup>8</sup> With these qualifications, how can they claim this is a “clear and substantial” public benefit?

Another of the touted benefits is América Móvil’s economies of scale and scope. However, there is no economy of scale or scope in América Móvil’s operation of a Local Exchange Carrier in the United States. PRTC would be the only such operation conducted by América Móvil, as the Board pointed out in its Petition. Thus, PRTC will not have the alleged benefits of América Móvil economies of scale in the wireline operations in Puerto Rico, as compared to those currently enjoyed as part of Verizon. The economies of scale with regard to the wireline operations will not be the same if PRTC’s control is transferred to a smaller entity. The Opposition gives little comfort that extensive operations in Central America will be of value to a customer in Puerto Rico. The Applicants have failed to give a single practical example of how Central American scale and scope will convert to a benefit in operating a LEC in the U.S. The Application admitted to a strategy adjusted to the “specifics of each national market.”<sup>9</sup>

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<sup>7</sup> Opposition at 3.

<sup>8</sup> *Id.*

<sup>9</sup> Application at 5.

Having been challenged to describe how this converts to a “scale and scope” benefit in a market where América Móvil has no other operations, the Applicants are silent.

Third, the Applicants cryptically refer to experience in providing service in areas with “difficult-to-serve terrain” and dramatic urban/rural differences.<sup>10</sup> But again they fail to provide any meaningful statement of how they would overcome these challenges and bring that experience to Puerto Rican consumers. Without specifics from the Applicants, it is necessary to use evidence from the countries where América Móvil operates as the wireline provider to understand how they would overcome these challenges. It is not astounding to note that in Guatemala, El Salvador and Nicaragua, wireless use is at least double, in one case more than triple, that of wireline use.<sup>11</sup> A valid conclusion from the Applicants’ statements is that the challenges will be overcome by abandoning the wireline infrastructure. This conclusion is reinforced by the Applicants’ recurrent use of wireless examples to demonstrate competence and innovation (e.g. prepaid wireless services, migration to 3G). Indeed, América Móvil concedes that its solution to universal connectivity is to promote “wireless alternatives and prepaid services.”<sup>12</sup>

The Applicants suggest (at 14) that extensive competition in Puerto Rico will motivate América Móvil to invest (presumably in the wireline infrastructure) to remain competitive. First, we would caution against describing local telephone competition as “extensive”. Indeed a review of the FCC’s recent report on the status of competition would suggest that competition in Puerto Rico is “developing”. Indeed, the Board’s efforts have been focused on nurturing that developing competition.<sup>13</sup> Second, at this stage in the development of competition, competitors

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<sup>10</sup> Opposition at 4.

<sup>11</sup> According to The World Factbook , produced by the Central Intelligence Agency, the respective wireline and wireless breakdowns of telephone lines as of 2004 were:

	<u>Guatemala</u>	<u>El Salvador</u>	<u>Nicaragua</u>
Wireline:	1,132,100	887,800	214,500
Wireless:	3,168,300	1,832,600	738,600

It should be noted that in 2004, PRTC had 1,111,900 wireline telephones in use, according to the CIA. See <https://www.cia.gov/cia/publications/factbook/index.html>. At present, there are over 1,800,000 wireless phones in Puerto Rico.

<sup>12</sup> Opposition at 9.

<sup>13</sup> See *Local Telephone Competition: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, July 2006, available at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

remain highly dependent on the PRTC network and “back office” infrastructure. A failure to commit to maintaining, much less upgrading, these assets could have an adverse impact on those competitors.

The Board is legitimately concerned that the Applicants will not even commit to maintaining the wireline infrastructure as it currently stands, much less commit to the improvements we believe are necessary to provide quality service to the consumer and competitive opportunity to other service providers. There is no hope for continued wireline competition in Puerto Rico if Puerto Rico Telephone Company allocates only minimal resources to wireline activities. Thus, not only is there no commitment to a public benefit offered by the Applicants, there is at least the implication that their methodology may be seriously harmful.

**B. The Applicants Effectively Concede That They Have Failed to Demonstrate Concrete Public Benefits**

In their Opposition, the Applicants effectively concede that their purported benefits are not concrete by recasting the argument into one where “settled precedent” does not require “absolute certainty” or “iron-clad commitments.”<sup>14</sup> Rather, they claim that the Commission must determine whether the transaction as a whole is in the public interest. They suggest a “sliding scale” approach where, when potential harms are unlikely, “demonstration of potential benefits need not be as certain.”<sup>15</sup>

However, in the cases cited by the applicants for the idea that benefits do not have to include “iron-clad commitments,” the level of specificity was much greater than that provided by the Applicants. In the *WorldCom/MCI* merger for example, the Commission found a “sufficient showing here of potential benefits to find that, on balance, the merger is in the public interest, convenience and necessity.”<sup>16</sup> The Commission was able to point to specific examples of public benefits stemming from the combination of WorldCom’s and MCI’s assets, supported by various

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<sup>14</sup> Opposition at 4.

<sup>15</sup> *Id.* at 5, citing *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) (*WorldCom/MCI*).

<sup>16</sup> *WorldCom/MCI* at ¶ 198.

pleadings and *ex parte* declarations.<sup>17</sup> There is no such support here, only vague statements and meaningless promises, conditioned on future “analysis”.

In the case of the PacifiCorp/Century merger, cited by the Applicants, the public interest showing was clearly weaker than in the *WorldCom/MCI* case, but nevertheless stronger than in the instant case.<sup>18</sup> For example, the Commission relied on a statement by Century that it anticipated spending \$25 million more on capital expenditures than Pacific Holding intended to do. This expenditure would be used to install digital loops and upgrade switching capability.<sup>19</sup> In this case, not only is there no commitment to network infrastructure improvements, there is not even an unqualified statement to that effect. There is, in short, nothing in the way of evidence of any public interest benefit coming from this transaction except for unsupported generalizations.

It is, of course, true that the Commission must employ a balancing test weighing any public interest harms against public interest benefits. But in this case there is nothing to put on the scale that says “benefits”.

### **C. Imposition of Remediative Conditions Would Serve the Public Interest**

In its Petition to Deny, the Board proposed remediative conditions in the form of specific steps to improve retail and wholesale service in Puerto Rico. The Board provided a report from Telcordia Technologies Inc. (“Telcordia”) including proposed regulations for “Quality of Service” metrics.

In their Opposition, the Applicants reject the Board’s Quality of Service measurements as being inappropriate because they refer to ongoing proceedings or because they involve contract disputes.<sup>20</sup> The Applicants are wrong. There is no ongoing proceeding involving application of the Telcordia performance measures to PRTC. In the Board’s Petition we discussed a potential rulemaking which would apply the performance measures to other telecommunications service

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<sup>17</sup> *Id.* at ¶ 199, ns. 560-564.

<sup>18</sup> *Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 8891 (1997) (*PacifiCorp/Century*).

<sup>19</sup> *Id.* at ¶ 41.

<sup>20</sup> Opposition at 21.

providers, but no such proceeding has been initiated. Second, these performance measures are not included in any of PRTC's interconnection agreements and are not the subject of any contract disputes between PRTC and any CLEC. While some agreements make provision for performance measures, the Telcordia measures are quite different in that they are not the result of negotiation, but of a careful study of state, federal and NARUC quality measurement programs. They also include both retail and wholesale standards, while performance measures developed for interconnection agreements will likely involve only wholesale standards.

The Applicants also claim that the Board incorrectly found that the Commission imposed similar requirements in connection with the GTE/PRTC and the Bell Atlantic/GTE transactions.<sup>21</sup> We agree with the Applicants that the Commission refused to impose "network access and related conditions" in the GTE/PRTC acquisition Order.<sup>22</sup> But this was based upon the fact that these conditions would require compliance with "existing legal obligations," such as Section 251 of the Act.<sup>23</sup> That is not the case with the Telcordia performance measures which require improvements separate and apart from those which have hitherto been imposed on PRTC. It is also true that the Commission did not require PRTC to comply with additional "provisioning and performance monitoring requirements," such as those imposed in the BA/NYNEX Order.<sup>24</sup> However the Commission did condition approval on compliance with conditions imposed in a prior order; including a semiannual report regarding average intervals for installations of private line facilities and a semiannual report of historical and projected line and usage information.<sup>25</sup> This is the reference the Board made and it is at best mischievous for the Applicants to suggest otherwise.

More importantly, the Applicants do not address the commitments made by GTE upon its purchase of PRTC. As the Board pointed out in its Petition, GTE specifically committed to

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<sup>21</sup> Opposition at 22.

<sup>22</sup> *Puerto Rico Telephone Authority and GTE Holdings (Puerto Rico) LLC, For Consent to Transfer Control of Licenses and Authorization Held By Puerto Rico Telephone Company and Celulares Telefonica, Inc.* Memorandum Opinion and Order, 14 FCC Rcd 3122 at ¶27 (1999) (*GTE/PRTC*).

<sup>23</sup> *Id.*

<sup>24</sup> Opposition at 22, citing *GTE/PRTC* at ¶28.

<sup>25</sup> *GTE/PRTC* at n. 98

invest over \$1 billion dollars and to improve service quality. In granting the transfer of control to GTE the Commission found that

GTE Holdings commitment to invest substantial sums in infrastructure improvements and improve service quality are sufficiently detailed and credible.<sup>26</sup>

It was the Board's intention in discussing the prior acquisition only to point out the contrast between the detailed and credible commitments made by GTE and the vague and qualified statements of the Applicants.

Similarly, contrary to the Applicant's implication, the Board's discussion of the *Bell Atlantic/GTE* merger did not claim that the conditions imposed on the parties were imposed on PRTC.<sup>27</sup> Rather, the purpose of the discussion was to illustrate an example of a Commission finding that a merger was not in the public interest absent conditions. The Board pointed out that

the Commission found that voluntary merger conditions by GTE and Bell Atlantic, as well as conditions imposed by the Commission would mitigate the public interest harms of the merger and would provide countervailing public interest benefits.<sup>28</sup>

The voluntary commitments were to a Carrier to Carrier Performance Plan, including Performance Measurements. Obviously, if these conditions had applied to the Puerto Rico Telephone Company, there would be no need for the conditions proposed by the Board in this proceeding.

In sum, the Applicants have failed to show that the proposed acquisition is in the public interest. This transaction can only be redeemed by accepting remedial conditions aimed at assuring improved service quality and adopting a significant and substantial program for the expansion, modernization and improvement of all segments of the wireline infrastructure.<sup>29</sup>

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<sup>26</sup> *GTE/PRTC* at 58.

<sup>27</sup> Board Petition at 6. See *GTE Corporation and Bell Atlantic Corporation For Consent To Transfer Control of Domestic and International Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd. 14032 (2000) (*BA/GTE*).

<sup>28</sup> Board Petition at 6.

<sup>29</sup> We believe that specific attention must be paid to new urban developments and congested areas, as well as remote and isolated areas. In addition investment for the substitution of obsolete and aerial plant with modern and buried plant must be made.

### III. CONCLUSION

For the reasons given herein, the Commission should deny the Application unless remediative conditions are imposed. Those conditions should consist of reasonable and achievable performance measures designed to assure quality of service to Puerto Rico consumers and specific commitments on infrastructure investment to improve telephone penetration as well as for its expansion, improvement and modernization.

Respectfully submitted,

**TELECOMMUNICATIONS REGULATORY  
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July 31, 2006

## CERTIFICATE OF SERVICE

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

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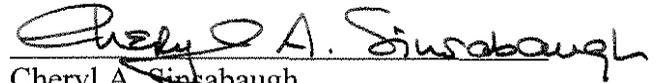
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