

**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)	

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

**TELEFÓNICA LARGA
DISTANCIA DE
PUERTO RICO, INC.**

By its Attorneys:

Richard Rubin
Angela R. Thompson
LeBoeuf, Lamb, Greene &
MacRae LLP
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009
Tel: (202) 986-8000
Fax: (202) 986-8102

July 31, 2006

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SUMMARY

In their Opposition, the Applicants erroneously persist in taking a narrow view of the public interest analysis that the Commission must undertake here. The standard they propose is unduly narrow because this is not merely an application for the transfer of control of wireless facilities or international facilities or even both in the typical circumstances where consumers and competition have other competing choices available -- it is to own and control, among other things, the seventh largest LEC in the United States, a monopolist and the sole ILEC in Puerto Rico. Moreover, this acquirer is unique in the context of such acquisitions -- it is a carrier with extraordinarily limited experience in wireline, none of it in the United States, inconsistent experience in wireless, and a checkered past replete with anticompetitive activities. Applicants prefer that the analysis occur in a vacuum because it is in their best interest that the Commission ignore the unique vulnerability of the telecommunications marketplace América Móvil seeks to enter.

The Commission's public interest analysis is not conducted in a vacuum. What may serve the public interest in a situation with a qualified transferee, facilities of limited significance operating in a healthy competitive marketplace, with adequate regulatory oversight, will not serve the public interest in a situation with a transferee of limited and ineffective experience and a well-documented history of anticompetitive conduct, the seventh largest local exchange carrier in the United States, having local market dominance at both ends of multiple international routes, operating in a marketplace where it will be a monopoly and dominant provider in each telecommunications market segment without significant regulatory oversight. As TLD and others have demonstrated, the instant proceeding represents the latter situation.

The Opposition only manages to further expose the Applicants' failure to meet their burden to establish that the proposed transfer of control of TELPRI by América Móvil would serve the public interest. The Opposition fails to address, much less respond to, many specific

reasons raised in the petitions and comments filed by TLD and others why the proposed transaction would not serve the public interest. Finally, the Opposition does not specifically respond to the substance or the need for numerous conditions urged by TLD and others in the event the Commission were to determine that the anticompetitive potential of the proposed transaction could somehow be addressed by the imposition of conditions.

In claiming that its takeover of TELPRI will serve the public interest in Puerto Rico, the Applicants ignore that (a) with limited wireline experience, América Móvil would be taking over the seventh largest LEC in the United States and the only ILEC in Puerto; (b) Puerto Rico is attempting to increase a wireline telephone penetration of below 70% up to the national average of 96%, yet América Móvil's wireline operating experience is limited to three Central American countries with wireline penetration rates of 3.8%, 8.9% and 13.4%; (c) it would be displacing Verizon, a company with greater scale and scope; (d) that only 11% of wireless subscribers in the United States opt for prepaid wireless while the income levels and credit in Puerto Rico, although low by U.S. standards, are higher than anywhere in Latin America where América Móvil has grown its prepaid wireless approach to the wireless marketplace; (e) Puerto Rico is not a "calling party pays" environment as is every other marketplace in which América Móvil operates; and (f) PRTC is not a rural carrier such that claimed benefits from América Móvil's experience with rural populations are neither quantified nor related to the situation in Puerto Rico.

Moreover, América Móvil's "commitments" to upgrading networks are neither backed by specific investment pledges nor are concrete enough to credit. América Móvil will make a decision to upgrade only after "an opportunity to analyze the matter." Indeed, América Móvil has yet to upgrade wireless networks to 3G anywhere in Latin America. Every effort by the Applicants to demonstrate public interest benefits from the proposed transaction has failed. There is no

reasonable basis to conclude that the Applicants have carried their public interest burden no matter what measuring rod is used.

América Móvil only knows how to be and behave like a monopolist. Its track record and that of commonly owned and operated companies bear this out time and again. The public interest demands more. While América Móvil seeks to distance itself from Telmex, it does not hesitate to mention Telmex's experience as the monopoly wireline carrier in Mexico when trying to establish its own credentials in that area. The truth is that América Móvil and Telmex share an identity of ownership, management and interest at virtually every turn and any effort by América Móvil to divorce itself of the well documented record of anticompetitive activities by Telmex is groundless. In addition, the TLD Petition recorded, supported by a sworn declaration, multiple instances where América Móvil has engaged in anticompetitive activities at the expense of TLD affiliates and others in the Central American countries where América Móvil enjoys monopoly status.

The Applicants also fail miserably to show how the proposed transaction will dilute existing market power or otherwise promote or facilitate the development of competition. In fact, the contrary is true. AT&T has a huge financial stake in América Móvil (\$4.2 billion) and in Telmex (\$2.2 billion) plus unrestrained participation at the Board of Directors level (*i.e.*, two seats at América Móvil) and at the Executive Committee level (one of three members at América Móvil), the governing bodies of the company, plus a significant role as strategic advisor on all aspects of company structure and operation. If the proposed transaction is implemented, AT&T will have the incentive and means to protect its multi-billion dollar investment in América Móvil, including América Móvil's billion dollar purchase of TELPRI, which has the second largest share of the Puerto Rico market, and at the same time, Cingular Wireless, its soon-to-be wholly-owned subsidiary, which has the largest share of the Puerto Rico wireless market. This

would place AT&T in a position which, because of the incentive to protect these current competitors, has the serious potential to diminish competition in the Puerto Rico wireless market.

The consequences go beyond the wireless market since AT&T is currently an active competitor in the intra-island, interstate and international telecommunications markets in Puerto Rico. In addition, América Móvil's 98%-owned affiliate, TracFone Wireless, the leading reseller of prepaid wireless, will have its presence in the market tied to TELPRI and perhaps Cingular. Finally, Telmex has already demonstrated an interest in the Puerto Rico telecommunications markets as an independent competitor to TELPRI through the joint venture with SBC (nee AT&T) in 2000. Thus, the proposed transaction would eliminate Telmex and, indeed, América Móvil, as potential independent competitors, and would actually diminish competition in the Puerto Rico telecommunications markets in various ways.

In the international services arena, the Applicants make a weak attempt to hide behind the WTO status of Mexico to preclude any Commission consideration of the anticompetitive activities of Telmex, América Móvil or any affiliates. It cannot shield itself in this manner. The WTO status of Mexico is relevant only for the limited purpose of deciding whether or not to grant an international Section 214 application and even at that, it is a rebuttable presumption which is defeated in this case by the very anticompetitive activities that Applicants attempt to shield.

Mexico's WTO status has no bearing on whether it is in the public interest of Puerto Rico to allow América Móvil to own and control TELPRI under the unique conditions of the telecommunications markets there. Even as to international telecommunications service routes, the proposed transaction goes well beyond a consideration of "dominant" status on routes where the applicant carrier has some affiliation with a carrier that has local market power on the foreign end. This proposed transaction involves six (6) international routes where América Móvil or Telmex would have monopoly or dominant local market power on both ends. The

Commission's rules concerning "dominant" classification on international routes and its associated safeguards were not tailored for not do they address the anticompetitive potential patent where a foreign carrier has market dominance on both ends of the routes. At a very minimum, neither América Móvil nor Telmex nor any of their affiliates must be authorized to provide any form of telecommunications services between Puerto Rico and any of these six countries.

If the Commission approves the transaction, it is essential that the Commission impose substantive and procedural conditions to deal with the anticompetitive potential that results from the entry of América Móvil and its affiliates in the Puerto Rico market. These conditions must provide for rapid review and intervention, with very strong punishment and penalties for noncompliance. Even the Puerto Rico Board, which implicitly acknowledges that it has little experience and few tools for effective oversight in such challenging circumstances, urges conditions for this transaction. Without such conditions, competition and consumers in Puerto Rico would be more vulnerable if this acquisition goes forward. The conditions must: (1) eliminate the anti-competitive financial and management ties between AT&T and América Móvil and its affiliate Telmex; (2) the anticompetitive dangers caused by the unprecedented control at both ends of international calls to and from Puerto Rico on certain routes; (3) provide for nondiscriminatory access to a whole host of network services and elements when those are offered to any company, whether those are covered by Section 252 or not, so that competition moves forward and delay, backsliding and discrimination are prevented; and ensure many other important public interest considerations.

For these reasons, TLD reiterates that the Commission deny the Application, or in the alternative, impose necessary conditions to ensure against anticompetitive potential.

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Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”), by its attorneys and pursuant to the Public Notice,¹ herein² replies to América Móvil’s and Verizon’s Opposition to Petitions to Deny (“Opposition”) filed by América Móvil, S.A. de C.V. (“América Móvil”) and Verizon Communications, Inc. (“Verizon”) and with the Federal Communications Commission (“FCC” or “Commission”) on July 24, 2006 in the above-captioned proceeding. On July 14, 2006, TLD filed a Petition to Deny, or, in the Alternative, Condition Commission Consent in connection

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.

with the captioned Application for consent to the transfer of control of Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”) from Verizon to América Móvil (the “Application”).³

A total of four (4) petitions to deny the Application were filed, including the TLD Petition.⁴ Each of these petitions seeks denial of the Application on a wide variety of grounds or, alternatively, that a set of specific conditions accompany a Commission consent.

In this reply, TLD addresses the Applicants’ opposition to the TLD Petition only.

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 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 local exchange carrier (“LEC”) in the United States and the only incumbent LEC (“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 2005 Form 10-K”).

⁴ See Petition to Deny of the Telecommunications Regulatory Board of Puerto Rico, [WT] Docket No. 06-113 (July 14, 2006) (“Puerto Rico Board Petition”); Centennial Communications Corp. Petition to Deny, WT Docket No. 06-113 (July 14, 2006) (“Centennial Petition”); Petition to Deny of WorldNet Telecommunications, Inc., WT Docket No. 06-113 (July 14, 2006) (“WorldNet Petition”); see also Comments of Sprint Nextel Corporation, WT Docket No. 06-113 (July 24, 2006); Motion to Address Public Interest Concerns, WT Docket No. 06-113 (July 13, 2006). In addition, the U.S. Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security filed a letter requesting that the Commission defer action in this matter in order to afford an opportunity for them to address “potential national security, law enforcement, and public safety issues raised by the application. See Letter from Sigal P. Mandelker, Deputy Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 06-113 (July 14, 2006), at 1.

I. Applicants Have Failed To Meet Their Public Interest Burden

Sometimes -- and this is one of those times -- the more effort to defend only reveals the weakness of the original position.⁵ América Móvil has not shown, because it cannot show, that its proposed acquisition of TELPRI adds any public benefits. It is a sad commentary on its view of the concept of “public interest” that the most specific item that América Móvil can place before the Commission is that it has extensive experience with prepaid cellular cards and phones. This can hardly satisfy its public interest burden.

In an effort to bolster what is an unimaginatively weak and inadequate public interest showing in the Application, the Applicants try to quantify its claim that “América Móvil has extensive experience in designing products specifically for rural and low-income populations” by saying that “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.”⁶ This is meaningless babble.

In the first instance, prepaid cellular cards and phones are currently and readily available and, in fact, actively marketed at dozens of retail outlets in Puerto Rico by América Móvil’s own affiliate, TracFone Wireless, Inc. (“TracFone Wireless”), without any consideration of the acquisition of TELPRI by América Móvil.

⁵ With apologies to Procul Harum . . .

And so it was that later,
As the [Applicants] told [their] tale,
That [their] [arguments] at first just ghostly,
Turned a whiter shade of pale.

Procul Harum, *A Whiter Shade of Pale* (Olympic Studios 1967).

⁶ Opposition at 3.

Secondly, unlike América Móvil's experience in Central and South America where prepaid cellular cards and phones are mainstream, wireless service in the United States, including Puerto Rico, is more typically characterized by contract arrangements. Indeed, América Móvil itself recognizes that while its main wireless market, Mexico, is 93% prepaid, the prepaid segment in the United States is only 11%.⁷ América Móvil also has stated that “[b]ecause of this, in comparing effective rates with the U.S. (which has the lowest tariffs within the OECD), for instance, adjustments must be made to allow for the effects of lower subsidies on handset prices and the non-existence of the calling-party-pays system in that market, which results in greater costs to subscribers on incoming calls.”⁸ Rather than seeking to increase wireless penetration in Puerto Rico, where such penetration is already higher than in any country in which América Móvil operates, the focus ought to be on increasing wireline telephone penetration to the national average of 94%.⁹

Thirdly, América Móvil's experience in the provision of wireless service, particularly given its focus on prepaid wireless services, has been predominantly gained in a “calling party pays” environment which is clearly not the environment it will encounter in Puerto Rico.

Fourthly, the popularity of prepaid cellular cards and phones in América Móvil's wireless markets is more a function of the low income and poor credit than any innovative attribute.¹⁰

⁷ See América Móvil's First Quarter of 2006 Financial and Operating Report, at 2 (May 2, 2006), available at http://www.americamovil.com/docs/reportes/eng/2006_1.pdf.

⁸ *Id.*

⁹ See 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 26-26.

¹⁰ See Carolyn Said, *Cellular for the Credit-Chall[e]nged Prepaid calling cards bringing in new customers*, San Francisco Chronicle, Oct. 8, 1998, at G-3, available at

While the *per capita* income level in Puerto Rico (\$18,600) is low by U.S. standards (\$41,800), it is considerably higher than anywhere in Latin America (*i.e.*, Nicaragua -- \$2,900, Guatemala -- \$4,700, El Salvador -- \$4,700, and even Mexico -- \$10,000) and does not form a basis for a claim by América Móvil that it has special experience in serving U.S. citizens in Puerto Rico at these higher income levels.¹¹ América Móvil does not even allude to, much less present, any marketing or other studies or surveys that show a link between its proposed service and the demands, needs or desires of the consumers in Puerto Rico.

Simply put, prepaid cellular calling cards and phones are not a new or innovative service and is not properly tailored to the Puerto Rico market. The Applicants themselves downplay the role of prepaid wireless in this transaction.¹² The Applicants lack substance in defining it as a public interest benefit, and certainly do not carry América Móvil's public interest burden.

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1998/10/27/BU47787.DTL&type-tech>; *see also* Standard & Poor's, *Industry Surveys Telecommunications: Wireless* (May 26, 2005), at 26.

¹¹ The World Factbook, Central Intelligence Agency (United States, last updated July 20, 2006), *available at* <https://www.cia.gov/cia/publications/factbook/geos/us.html> (last visited July 31, 2006); Nicaragua (last updated July 20, 2006), *available at* <https://www.cia.gov/cia/publications/factbook/geos/nu.html> (last visited July 31, 2006); Guatemala (last updated July 20, 2006), *available at* <https://www.cia.gov/cia/publications/factbook/geos/gt.html> (last visited July 31, 2006); El Salvador (last updated July 20, 2006), *available at* <https://www.cia.gov/cia/publications/factbook/geos/es.html> (last visited July 31, 2006); Mexico (last updated July 20, 2006), *available at* <https://www.cia.gov/cia/publications/factbook/geos/mx.html> (last visited July 31, 2006). (

¹² *See* Public Interest Statement, Applications of Verizon Communications, Inc. and América Móvil, WT Docket No. 06-113 (filed May 9, 2006), at 7 (“Public Interest Statement”) (reference that TracFone Wireless, the largest pre-paid cellular provider “is of no practical significance” in this transaction).

The Applicants then repeat without any elaboration their claim that América Móvil has economies of scale and scope that form the basis of a public interest benefit in this proceeding.¹³ TLD has explained what seems to be obvious to all but América Móvil -- that whatever economies of scale and scope that América Móvil may have do not necessarily represent a match for, and certainly not an improvement over, Verizon, the current majority owner in control of TELPRI.¹⁴

América Móvil then seeks to avoid any comparison with Verizon because Verizon “has made the corporate decision to divest TELPRI.”¹⁵ There is a fundamental absurdity to this logic which TLD will not belabor beyond noting that the party with the burden will always find it preferable not to have a benchmark against which to be judged. Unfortunately for América Móvil, its burden is to show that the proposed transaction creates public interest benefits and there is no better way for América Móvil to hide the fact that no such benefits are created than to avoid any comparison to the status quo. The truth is that América Móvil brings nothing new to the public interest table.

While the Applicants state that América Móvil is the largest wireline carrier in Central America, TLD has previously explained that América Móvil’s experience with wireline operations is limited to 2% of its subscriber base, in three Central American countries where it enjoys monopolies and which have telephone penetration rates of 3.8% (Nicaragua), 8.9% (Guatemala) and 13.4% (El Salvador).¹⁶ The Applicants respond by referring to these

¹³ Opposition at 3.

¹⁴ TLD Petition at 16-17.

¹⁵ Opposition at 7.

¹⁶ See TLD Petition at 18; see also 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 31, 2006).

penetration rates as “relatively low.”¹⁷ They are not “relatively low.” They are abominably low and plainly unacceptable as a means of establishing qualifications of the proposed operator of the seventh largest ILEC in the United States.¹⁸ The public interest demands more.

In an effort to establish that América Móvil’s experience as a wireline operator is a positive public interest consideration, the Applicants state that “its parent company is under common control with the largest provider of wireline services in Mexico” namely Teléfonos de México, S.A. de C.V. (“Telmex”).¹⁹ Yet, in other places in the Opposition, the Applicants attempt to distinguish Telmex from América Móvil because it is convenient to avoid association with regulatory violations by Telmex.²⁰ The reality is that América Móvil and Telmex share an identity of ownership, control and interests so intimate as to make Telmex’s well documented anticompetitive market conduct a significant consideration in this proceeding.²¹

Applicants’ insistence that contractual formalities demonstrate América Móvil’s distinctness from Telmex ignore comprehensive overlaps between the two companies. Indeed, 11 of the 13 members of the América Móvil Board of Directors have positions with or other close ties to Telmex. That accounts for **all** of the América Móvil Board of Directors except for the two directors who are officers of AT&T, Inc. (“AT&T”).²² Indeed, Ing. Jaime Chico Pardo, the Chief Executive Officer and Vice Chairman of the Board of Telmex is a director of América

¹⁷ Opposition at n.9.

¹⁸ The Applicants also mischaracterize TLD’s point as an argument that such low penetration rates are evidence of a lack of investment by América Móvil. While that may well be true, TLD’s point is much more fundamental.

¹⁹ Opposition at 3.

²⁰ *Id.* at n.24.

²¹ See TLD Petition at 36-37, 42-45, 59-60.

²² *See id.* at 31.

Móvil.²³ On behalf of Telmex, Mr. Pardo signs agreements with AT&T, as discussed *infra*. Richard Resnick, an AT&T officer who is also a member of the Telmex Board of Directors and one of four representatives on Telmex's Executive Committee, signs AT&T's agreements with América Móvil as well as those with Telmex. Moreover, the Chief Executive Officer of América Móvil was Director of Telmex's Mexican subsidiaries.²⁴ There are tremendous opportunities for the free flow of information among AT&T, América Móvil and Telmex. The well documented history of anticompetitive activity by Telmex is highly relevant here. The same people that control América Móvil also control Telmex.

Applicants illogically state that the fact that "Telmex has been found in violation of certain rules by Mexican regulators . . . shows that Telmex fully cooperates with the legal process in Mexico."²⁵ In truth, the fact that Telmex has been repeatedly impugned by Mexico's regulatory authorities is no evidence at all of any level of cooperation by Telmex. That is, unless Applicants mean to imply that Telmex brought its activities before the regulatory authorities voluntarily for a determination. That was clearly not the case. Moreover, the fact that Telmex refuses to comply with adverse decisions while it continues to litigate appeal after appeal is an abuse of the legal process to the extreme detriment of competition and consumers, and not, as Applicants portray, "legitimate legal disputes where Telmex was preserving its rights."²⁶ Its perceived legitimacy of an underlying dispute does not give Telmex the right to ignore an adverse ruling.

²³ See Form 20-F, América Móvil, SEC File No. 001-16269, at 69 (filed June 30, 2006) ("América Móvil 2005 Form 20-F"); Form 20-F, Teléfonos de México, S.A. de C.V., SEC File No. 001-32174, at 60 (filed June 30, 2006) ("Telmex 2005 Form 20-F").

²⁴ TLD Petition at 3 n.6; *see also* América Móvil 2005 Form 20-F at 74; Public Notice at n.10.

²⁵ Opposition at 15 n.24.

²⁶ *Id.*

The Applicants also claim that “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.”²⁷ In their Application and now their Opposition, Applicants twice fail to detail how this experience will be used in Puerto Rico. What Applicants do state is that the exceptionally low penetration rates in countries where América Móvil has monopoly wireline operations are because “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.”²⁸ It is far from clear how the same experience that has resulted in such unacceptably low telephone penetration rates in the only countries where América Móvil provides wireline telephone services will serve the public interest in Puerto Rico.

The truth is that Puerto Rico has a telephone penetration rate of less than 70% and both the Puerto Rico Telephone Company (“PRTC”) and the Puerto Rico Telecommunications Regulatory Board (“Puerto Rico Board”) have been pleading with the FCC that assistance from the Universal Service High Cost Fund is needed to raise Puerto Rico’s telephone penetration rate. There is no way that the exceptionally low telephone penetration rates associated with the entirety of América Móvil’s wireline telephone experience support the notion that with América Móvil at the helm, PRTC will increase Puerto Rico’s telephone penetration rate and benefit the public interest in Puerto Rico.

In other respects as well, the Applicants’ showing has thoroughly failed to progress beyond generalities and platitudes. For example, the Applicants state, without any support whatsoever, that “the transaction will enable the companies to achieve [benefits] more quickly

²⁷ *Id.* at 4.

²⁸ *Id.* at n.9.

and efficiently,” that the “transaction ‘is likely to accelerate’ certain claimed benefits” and that “the merger will expedite the deployment of [certain wireless] services.”²⁹ Put simply, there is no basis in the record for any of those statements. Indeed, despite its talk of upgrading PRTC’s wireless network to 3G standards, América Móvil has yet to implement 3G anywhere in Latin America. Viewing América Móvil’s experience in this light, it bears recalling that any suggestion by América Móvil that it will upgrade existing wireless networks depends upon “an opportunity to analyze the matter.”³⁰ That América Móvil would commit to a billion dollar transaction without having determined or even analyzed whether or not existing networks would be upgraded is lacking in credibility.³¹

The Applicants do not mention and clearly cannot provide the types of public interest benefits that have significance for Puerto Rico. These include enhancing competition, diminishing market power, greater telephone penetration, greater and more innovative services, better service quality and less reliance on public assistance such as Universal Service Fund mechanisms.

As stated by the Commission, “where potential harms appear less likely and less substantial . . . will [the Commission] accept a lesser showing [of potential benefits] to approve

²⁹ Opposition at 6. It is not clear to whom the Applicants are comparing América Móvil when it uses words such as “accelerate” and “expedite” since the Applicants believe that the current owner of TELPRI, Verizon, is not an appropriate baseline. *See id.* at 7.

³⁰ *Id.* at 3; *see also* Public Interest Statement at 4.

³¹ So long as the Puerto Rico wireless market remains competitive, 3G will be implemented regardless of the proposed transaction. The driver for the implementation of 3G will be competition, not the benevolence of a market-dominant carrier. *See* Puerto Rico Board Board Petition at 8.

the merger”³² The potential harms in the instant transaction have been shown by multiple petitioners to be more likely and more substantial.³³ Regardless, Applicants cannot even meet a reduced version of this burden.

The Commission must also consider “violations of antitrust or other laws protecting competition.”³⁴ Applicants ignore the decision of Mexico’s antitrust authority, Federal Competition Commission (Comisión Federal de Competencia, or “COFECO”), that América Móvil engaged in anticompetitive activities in its denial, even after having been required by the Federal Telecommunications Commission (Comisión Federal de Telecomunicaciones, or “COFETEL”), of interconnection to Nextel Communications, Inc. (“Nextel”) for exchange of short messages (“SMS”).³⁵ This is adjudicated misconduct highly relevant to the Commission’s assessment of América Móvil’s qualifications and whether the proposed transaction serves the public interest in Puerto Rico. An antitrust adjudication based on anticompetitive activities focused on a denial of interconnection is precisely the kind of information that undermines the

³² 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, 18531 ¶ 196 (2005) (“*Verizon/MCI Order*”).

³³ See Puerto Rico Board Petition at 8-13; Centennial Petition at 4-7; WorldNet Petition at 7-10.

³⁴ 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, 18379 ¶ 172 (2005) (“*AT&T/SBC Order*”); 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, 21549-50 ¶ 47, 51 & n.201 (2004), *reh’g denied*, 20 FCC Rcd. 8660 (2005) (“*Cingular/AT&T Wireless Order*”).

³⁵ See TLD Petition at 38-40. An appeal or a stay does not render the adjudication uncertain because neither action is substantive or could be read as changing the COFETEL finding of illegality or the COFECO determination of anticompetitive activities.

qualifications of América Móvil to take the unprecedented step of acquiring control of the seventh largest LEC in the United States.³⁶

II. The Commission’s Public Interest Analysis Must Consider The Telecommunications Marketplace And The State Of Telecommunications Regulation In Puerto Rico.

While the Applicants purport to show, albeit falling short, public interest benefits to Puerto Rico based on difficult terrain and low income, they blithely ignore the need for the Commission to take the uniqueness of the Puerto Rico telecommunications regulatory environment and the market dominance of PRTC into account in determining whether the acquisition of TELPRI by América Móvil benefits the public interest.

The Commission has acknowledged that it must “focus on whether the [transaction] will accelerate the decline of market power by dominant firms in the relevant communications markets”³⁷ Nowhere in the Opposition do the Applicants take issue with TLD’s discussion of the existing Puerto Rico telecommunications regulatory situation or PRTC’s marketplace dominance.³⁸

TLD has explained that that PRTC is the seventh largest LEC and Puerto Rico’s only ILEC, operating in an environment where PRTC has a monopoly in the residential local exchange service market and dominant positions in the business local exchange service, intra-island long distance, interstate long distance, international long distance and broadband service markets. The regulatory scheme is implemented without consideration of market power and, as a

³⁶ *AT&T/SBC Order*, 20 FCC Rcd. at 18379 ¶ 172, 18385 ¶ 185 n.468; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. 21548, 21549-50 ¶ 47, 51 & n.201.

³⁷ *Verizon/MCI Order*, 20 FCC Rcd. at 18444-45 ¶ 18 (2005); *AT&T/SBC Order*, 20 FCC Rcd. at 18302 ¶ 18.

³⁸ *See* TLD Petition at 10-16.

result, ten years after the Telecommunications Act of 1996,³⁹ Puerto Rico still has vast areas without access to a single competitive local exchange carrier (“CLEC”).⁴⁰ TLD has also explained the degree to which the Puerto Rico Board appears handicapped in its efforts to regulate PRTC.⁴¹ In this respect, the Applicants’ statement that “PRTC is also subject to extensive market-opening requirements and regulatory oversight of the TRB,” is a radical departure from reality.⁴² While the Puerto Rico Board has played an active role in inter-carrier interconnection arbitrations as required by the 1996 Act, PRTC’s residential and business services are not subject to any significant regulatory oversight. Even with regard to PRTC’s intra-island access charges,⁴³ the Puerto Rico Board has only been able to act when a complaint is filed by a third party. The fact that the Puerto Rico Board has provided the Commission with a set of Proposed Regulations for Quality of Service Measurement and Reporting and asked that the Commission require compliance as a condition to its approval of the proposed transaction only supports the fact that the Puerto Rico Board is of the view that it has significant limitations in what it can require PRTC to do.⁴⁴

As the dominant carrier, indeed monopoly carrier with respect to residential local exchange services market, PRTC can file a tariff and it will go into effect immediately regardless of complexity or implications for competition. The Puerto Rico Board appears powerless to take any formal unilateral action to stop this from happening. PRTC operates in Puerto Rico without

³⁹ 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.) (the “1996 Act”).

⁴⁰ See TLD Petition at 12-13 and *infra*.

⁴¹ See *id.* at 13-15.

⁴² Opposition at 20.

⁴³ See TLD Petition at 15 and n.38.

⁴⁴ See Puerto Rico Board Petition at 13 and Attachment B.

any rate regulation – neither rate-of-return nor price cap.⁴⁵ There are no limits on the rates it can charge or the profits it can make. There is no cost methodology in place that can be applied to PRTC’s local residential or local business rates and it is widely recognized that such rates are not based on cost. Even with regard to PRTC’s intra-island access charges,⁴⁶ the Puerto Rico Board has only been able to act when a complaint is filed by a third party. Both competition and consumers are victims here.

The Applicants’ efforts to distinguish away PRTC’s statements to the Commission that it faces no competition in Puerto Rico are ineffective. They are just another step in the evolution/devolution of a position on the subject that reflects convenience to whatever argument is made necessary by its context rather than the consistency demanded by the facts. The language in PRTC’s March 29, 2005 PRTC Letter to the Commission⁴⁷ is stark and its plain meaning is unqualified and unmistakable. It states that the percentage of subscribers that PRTC serves is likely very close to total subscribership on the island, 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 and that the only facilities-based wireline competitor it faces is focused on the business market and new commercial and residential development. The March 29, 2005 PRTC

⁴⁵ In this regard, the Applicants’ discussion of Commission “regulatory safeguards other than price caps that reduce the incentive and ability of local exchange carriers to engage in improper cross-subsidization” (Opposition at 12) does not apply to local and intra-island services under the jurisdiction of the Puerto Rico Board. Perhaps PRTC would like to suggest to the Puerto Rico Board that it adopt a similar set of regulatory safeguards.

⁴⁶ See TLD Petition at 15 and n.38.

⁴⁷ 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”). A copy of the March 29, 2005 PRTC Letter is appended hereto as Exhibit 2.

Letter also states that wireless is a complementary service to wireline.⁴⁸ Simply put, as PRTC states, its wireline operation faces virtually no competition, intramodal or intermodal.

The inconsistency between two current positions, one that it faces significant competition and the other that it faces no competition, is not made to dissipate by the contexts in which they are voiced. The former is a position born of a need to convince the Commission that the proposed transaction will not affect competition in the Puerto Rico telecommunications markets, while the latter is taken in an effort to show the need for Puerto Rico's participation in the Universal Service High Cost Fund. In point of fact, the context in which PRTC makes its arguments is significant only because it reflects that its position on the issue has extreme variance depending on the then needs of its self-interest. Despite the Applicants' efforts to defuse this inconsistency, it is clear that PRTC's two positions cannot materially coexist in any legally rational way.

In the TLD Petition, TLD explained that Puerto Rico had a unique telecommunications marketplace environment with very low levels of competition and a telecommunications regulatory environment not conducive to the development of such competition.⁴⁹ In truth, PRTC has a monopoly in the residential local exchange services market and supra-majority dominance in the business local exchange services market, the intra-island, interstate and international service markets as well as in the broadband services market. The Applicants do not present any

⁴⁸ *Id.*

⁴⁹ *See* TLD Petition at 11-13. In the Local Competition Report, released after the filing of the TLD Petition, the data continues to confirm that Puerto Rico is third highest (to Alaska and North Dakota – states that are much larger, have less population and have fewer access lines than Puerto Rico) among all states and highest among all states with population in excess of one million in terms of zip code areas that do not receive service from even one CLEC. *See id.* at 12; FCC, Local Telephone Competition: Status as of December 31, 2005, at Table 17 (released July 26, 2006), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266595A1.pdf (“FCC Local Telephone Competition Report”). This is more than three and one-half times the national average. *Id.*

market share numbers or otherwise deny PRTC's monopoly or dominant status in the various Puerto Rico telecommunications markets.

Instead, the Applicants focus on the fact that some competitors exist although they do not identify what market segments they serve, whether they are facilities-based or whether they have had any impact on PRTC's market monopoly or dominance. As PRTC stated in the March 29, 2005 PRTC Letter (at 1), there is a single cognizable facilities-based competitor in the local exchange market and that competitor is focused on the business market and new residential development.⁵⁰ There is no facilities-based competitor serving the existing residential local exchange market – as to which the Commission's most recent data for Puerto Rico indicates that 83% of all PRTC lines are provided to residential customers.⁵¹ Even as to the business local exchange service market, where PRTC faces limited cognizable competition from one facilities-based carrier and one resale-based carrier, PRTC's market share is significantly higher than 60%. In the intra-island, interstate and international telecommunications markets in Puerto Rico, PRTC enjoys similar market dominance.

The Applicants are correct in one respect – that the wireless market in Puerto Rico is currently competitive,⁵² with Cingular and Verizon Wireless (PRTC) having leading market shares of approximately 32% and 24%, respectively.⁵³ That will change should the transaction

⁵⁰ In this regard, Applicants' reference to Centennial Communications Corp. ("Centennial") as "one of the largest facilities-based competitors in Puerto Rico" is a gross overstatement. Opposition at 10. The truth is that Centennial is the only real facilities-based competitor in Puerto Rico. Even the Applicants themselves know this as they quote approvingly from the WorldNet Petition with respect to its plans to become "the second truly facilities-based competitor to PRTC." *Id.*

⁵¹ See Local Competition Report at Table 12. The 83% figure is 7% higher than the next highest state.

⁵² See Opposition at 9.

⁵³ See TLD Petition at 26, 28 and 53.

be approved as proposed since AT&T will have a multi-billion dollar stake and influential voice in Verizon Wireless (PRTC) through América Móvil (and additionally through Telmex) and it also has complete ownership and control of Cingular. Through AT&T's common interests, América Móvil and Cingular, together having an approximately 56% market share, will not be dedicated competitors in Puerto Rico. Beyond this, the Applicants present no data, information or other evidence to support its statement that intermodal competition exists in Puerto Rico at a level that has any significant effect on PRTC's monopoly or dominant status in any of Puerto Rico's telecommunications markets.⁵⁴

The current market structure and regulatory environment in Puerto Rico, which dramatically differ from elsewhere in the United States, have been hostile to telecommunications competition. This problem is exacerbated by the fact that TELPRI is an integrated company, owning 100% of its long distance service arm, Puerto Rico Larga Distancia, Inc., and has no structural separation with its wireless operation (currently branded as Verizon Wireless). The sharing of facilities, equipment, resources, personnel and, most significantly, information cannot be monitored by the Puerto Rico Board. As a result, the local, long distance, broadband and wireless operations of TELPRI have access to each other's competitively sensitive information as well as that of their competitors and, in view of PRTC's residential local exchange service monopoly, the information of the subscribers to the long distance services of their competitors. The integrated and market dominant nature of TELPRI, together with the current regulatory scheme and the limitations on the Puerto Rico Board's authority, make it virtually impossible for

⁵⁴ This is an issue that was briefed in a recent proceeding before the Puerto Rico Board but which was left unresolved when PRTC abruptly withdrew the tariff revisions that were the subject of the proceeding. *See* TLD Petition at 13; *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).

the Puerto Rico Board to monitor, detect and address instances of cross-subsidization, cost shifting and price squeeze activities by the TELPRI service providers.

It is against this competitively vulnerable backdrop that the Commission must determine the effects of the proposed transaction on competition and consumers in Puerto Rico. América Móvil knows no better than what it has learned and practiced in Nicaragua, Guatemala, El Salvador and, in the case of Telmex, Mexico.

III. The Proposed Transaction Will Not Enhance Or Promote Telecommunication Service Competition In Puerto Rico.

The Applicants agree that a favorable public interest determination by the Commission requires a conclusion that the “transaction on balance will enhance and promote, rather than eliminate or retard, competition.”⁵⁵ This is the Applicants’ burden.⁵⁶ Yet, Applicants make no effort at all to demonstrate how this transaction “will enhance and promote” competition in the Puerto Rico telecommunications markets. Instead, it focuses on whether or not the proposed transaction will diminish competition, claiming, of course, that it will not.⁵⁷ The Applicants’ discussion is too narrowly focused.

Even so it ignores that Telmex, as América Móvil’s predecessor-in-interest with respect to wireless properties, has previously shown a concrete interest in the Puerto Rico telecommunications marketplace and the proposed transaction eliminates any possibility of independent entry by Telmex or América Móvil. In a 2000 joint venture with SBC Communications, Inc. (“SBC”) (nee AT&T), Telmex entered the Puerto Rico market with a 50%

⁵⁵ Opposition at n.3 (quoting 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)).

⁵⁶ See, e.g., *AT&T/SBC Order*, 20 FCC Rcd. at 18300 ¶ 16; *Sprint/Nextel Order*, 20 FCC Rcd. at 13976-77 ¶ 20.

⁵⁷ See Opposition at 8-9.

ownership interest in the holder of the cellular license now held by Cingular.⁵⁸ It subsequently sold its interest to SBC which later placed it in Cingular which, should the BellSouth Telecommunications, Inc. (“BellSouth”) transaction go forward, will become solely owned and operated by AT&T.⁵⁹

The Applicants also belittle the possible competitive loss of TracFone Wireless, 98% owned by América Móvil, as “of no practical significance” “because TracFone Wireless serves only approximately 3,300 subscribers in Puerto Rico.”⁶⁰ What is of interest here is that while América Móvil claims prepaid wireless as a significant public interest benefit of the proposed transaction, it is quick to minimize its significance as a source of competition and effectively concedes that since the leading prepaid wireless company has only 3,300 subscribers in Puerto Rico, there is every reason to believe that Puerto Rico will not be fertile ground for América Móvil’s prepaid wireless service. Moreover, it is the effect of eliminating TracFone Wireless as a competitor that matters here. If TracFone Wireless is in the essentially unregulated business of reselling prepaid wireless and it is the largest such company in the United States and América Móvil plans a major effort with prepaid wireless, it is not difficult to see whose wireless services will be the beneficiary of TracFone Wireless’ business activities.

In addition, while AT&T is currently an active competitor in Puerto Rico’s intra-island, interstate and international telecommunications markets, it will cease to be an independent competitor should the transaction be completed as proposed. AT&T has a multi-billion dollar

⁵⁸ See TLD Petition at 34.

⁵⁹ See *id.* at 26.

⁶⁰ Opposition at 9.

financial stake and influential voice in América Móvil⁶¹ who would become the owner and operator of TELPRI's wireline and its wireless networks. The potential for less than full competition and for preferential and discriminatory treatment is patent.

In the TLD Petition, TLD gave first-hand accounts of multiple instances of anticompetitive conduct by América Móvil and its affiliates.⁶² These accounts were verified by sworn statement. There was no denial from the Applicants -- and América Móvil in particular. Instead, Applicants contend that TLD's account of its experience with América Móvil and its affiliates constitutes "unresolved disputes" and therefore should not be considered relevant by the Commission in assessing América Móvil's qualifications in this proceeding.⁶³ The highly specific, verified and uncontested accounts of América Móvil's anticompetitive behavior are very relevant to a public interest determination in this particular case. Indeed, the Commission has clearly stated that, as part of its public interest analysis, it takes "**allegations** of anticompetitive conduct into consideration."⁶⁴

TLD is not requesting that Applicants discuss public interest benefits with "absolute certainty or iron-clad commitments."⁶⁵ It need not do so because the Applicants' showing is utterly lacking in concreteness and in defining any benefit in the context of the relevant telecommunications markets in Puerto Rico. General statements about future 3G networks "after an opportunity to analyze the matter,"⁶⁶ are not helpful to América Móvil's cause.

⁶¹ See TLD Petition at 53 and *infra*.

⁶² See *id.* at 46-49.

⁶³ See Opposition at 16.

⁶⁴ TLD Petition at 9 (citing *AT&T/SBC Order*, 20 FCC Rcd. at 21593 ¶ 185 n.468) (emphasis added).

⁶⁵ Opposition at 4.

⁶⁶ *Id.* at 3.

IV. The Proposed Transaction Creates An Anticompetitive Identity Of Interests Between The Two Largest Wireless Carriers In Puerto Rico.

In the TLD Petition, TLD established beyond any reasonable doubt that AT&T's participation in América Móvil and its ownership of Cingular create an untenable anticompetitive situation in Puerto Rico which would provide América Móvil with cross-interests in Cingular and Verizon Wireless, the two largest wireless carriers in Puerto Rico who, together, have a market share well in excess of 50%. Added to PRTC's monopoly or market dominant power in every other telecommunications market in Puerto Rico, a dominant position in the currently competitive wireless market, would give América Móvil market power in every Puerto Rico telecommunications segment.

Specifically, TLD identified (a) the significant financial stake that AT&T has in each and both of América Móvil and Telmex, (b) the independent participation of two AT&T members at the Board of Directors level of América Móvil, and (c) the independent participation of one AT&T officer on the three-member Executive Committee of América Móvil.

The Applicants respond that because Section 1.2112 of the Commission's rules requires that applicants identify only parties to an application that have a 10% or greater ownership interest (direct or indirect, voting or non-voting) in the applicant, none of TLD's statements are relevant.⁶⁷ This is plainly wrong. Section 1.2112 is a reporting requirement whose purpose is to identify ownership in an applicant. It does not address nor is it intended to address the parameters or content of a public interest analysis of the effect of a transaction on competition in a telecommunications market.

The Applicants completely ignore the economic value of AT&T's ownership interest and attempt to hide behind the ownership percentages. The Applicants do not dispute that AT&T's

⁶⁷ See *id.* at 27 n.63; see also 47 C.F.R. § 1.2112.

ownership interest in América Móvil is currently valued at \$4.2 billion, that its ownership interest in Telmex is currently valued at \$2.2 billion for a total of \$6.4 billion.⁶⁸ Try as they might, there is no way for the Applicants to make the value of AT&T's investment in América Móvil and Telmex look small. Even América Móvil's acquisition of 100% of TELPRI would be approximately \$1.75 billion, which is considerably less than the value of AT&T's investment in América Móvil and even moreso when compared to AT&T's investment in América Móvil and Telmex together. In fact, the entire planned capital expenditure for América Móvil in 2006 is only \$3 billion.⁶⁹ The Applicants do not dispute that this is a highly significant investment amount that AT&T would be incented to protect.

In opposition to TLD's assertion that AT&T's investment in América Móvil "can be expected to influence boardroom and competitive marketplace behavior,"⁷⁰ the Applicants refer to the trust which holds AT&T's shares. The Applicants completely miss TLD's point. The assertion had nothing to do with votes at the shareholder level. As América Móvil clearly states: its "Board of Directors has broad authority to manage our company"⁷¹ and that "[o]ur bylaws provide that the Executive Committee may generally exercise the powers of the Board of Directors, with certain exceptions."⁷² As TLD has previously stated, the reasonable conclusion is that the vote at the shareholder level does not drive the important management decisions for América Móvil and it is the fact that AT&T does have a vote and a voice at the Board of Directors and Executive Committee that is more meaningful for purposes of this proceeding.

⁶⁸ TLB Petition at 27 (citing 2005 Annual Report, AT&T, Inc. (Feb. 16, 2005), at 69 ("AT&T 2005 Annual Report"), available at http://att.sbc.com/Investor/ATT_Annual).

⁶⁹ América Móvil 2005 Form 20-F at 47.

⁷⁰ TLD Petition at 27.

⁷¹ América Móvil 2005 Form 20-F at 68.

⁷² *Id.* at 71.

AT&T's participation at the Board level with two AT&T officers and one of a three-member Executive Committee is where and how "boardroom and competitive marketplace behavior" will be influenced.

The Applicants do not deny that AT&T's participation at the Board of Directors and Executive Committee levels is independent of and not subject to any insulation that may be afforded by the trust at the shareholder level. Thus, there is both the incentive and the means for potential anticompetitive activity in the form of collusive conduct by the two largest wireless carriers in the market and preferential treatment to these wireless carriers by the monopoly wireline carrier and by the nation's largest prepaid wireless reseller, each of which is or would be owned and controlled by América Móvil.

The Applicants refer to and quote from a June 6, 2006 Letter from América Móvil to the Telecommunications & Media Section of the Department of Justice's Antitrust Division to make the point that it has agreed to certain insulating protections between América Móvil on the one hand and AT&T and Cingular on the other.⁷³ This letter is not part of this or any other record of a Commission proceeding and it is unclear what significance the Department of Justice attaches to América Móvil's statements or whether they are enforceable. Without an opportunity to review the exchange of correspondence with the Telecommunications & Media Section of the Department of Justice's Antitrust Division concerning this issue, TLD's comments on this matter are necessarily limited.

In particular, TLD notes that the quoted sections of the letter concern a direct relationship between Cingular and América Móvil. However, ultimately, it is AT&T that has the cross-

⁷³ See Opposition at n.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) ("June 6, 2006 Letter")).

interests, directly through Cingular and indirectly through América Móvil. The only reference to AT&T addresses the flow of information from América Móvil to AT&T employees, officers, directors serving on Cingular’s Board of Directors or otherwise having ““direct involvement in Cingular’s day-to-day competitive activities in Puerto Rico.””⁷⁴ Aside from wanting to see the language in context, TLD notes that there is nothing in that language which would prevent an AT&T officer on the América Móvil Board of Directors or on the América Móvil Executive Committee from sharing with América Móvil any information concerning Cingular’s day-to-day competitive activities or market strategy in Puerto Rico. Nor does it prevent an AT&T officer on the América Móvil Board of Directors or on the América Móvil Executive Committee from obtaining from América Móvil any information concerning América Móvil’s day-to-day competitive activities or market strategy in Puerto Rico and sharing that information with Cingular. This includes information concerning both América Móvil’s wireline and wireless operations. At a minimum, the Applicants should be required to file in this proceeding the correspondence on this matter with the Telecommunications & Media Section of the Department of Justice’s Antitrust Division, it should be made available for comment by interested parties and should form the basis for developing specific conditions should the Commission ultimately be inclined to grant its consent to the Application.

Finally, the Applicants ignore completely the tangled web of operational relationships between AT&T and América Móvil and Telmex.⁷⁵ For example, starting in 2002, América Móvil has paid AT&T (through its affiliate, SBC) \$1 million per year pursuant to a

⁷⁴ *Id.*

⁷⁵ *See* TLD Petition at 8, 25-26.

Management Services Agreement which provides for AT&T’s “specialized professional counseling and advisory services in all or any one of the following areas:⁷⁶

1. Evaluation and counseling concerning material management decisions of [América Móvil].
2. Counseling relating to performance of material daily operations of [América Móvil].
3. Counseling connected with technical, administrative and financial planning.
4. Counseling in the subject matter of introduction of systems for management and operating control.
5. Counseling in the matter of design and planning of investment required for modernization of the technical infrastructure.
6. Counseling pertaining to policies in the file of rates, business relations and regulatory efforts.
7. Counseling as to the establishment of network construction procedures.
8. Generally, counseling concerning reorganization, modernization and restructuring of [América Móvil].

Thus, América Móvil is currently using AT&T for services that are intimately involved in virtually every aspect of América Móvil’s activities and strategies. This agreement between América Móvil and AT&T is signed on behalf of AT&T by Richard Resnick who, not coincidentally, is a director of Telmex and is one of four members on Telmex’s Executive Committee.⁷⁷

⁷⁶ See Form 20-F, América Móvil, SEC File No. 01-16269, at Ex. 4.4 (filed June 30, 2004) (“América Móvil 2003 Form 20-F”).

⁷⁷ See Telmex 2005 Form 20-F at 63 and Form 20-F, América Móvil, SEC File No. 001-16269, at Exs. 4.4 – 4.7 (filed June 30, 2004) (“América Móvil 2003 Form 20-F”). A Management Services Agreement, similar in content to the agreement between América Móvil and AT&T, was entered into between AT&T and Telmex in 2001. See Form 20-F, SEC File No. 333-13580, Teléfonos de México, S.A. de C.V. Telmex, at Ex. 4.5 (filed June 28, 2005) (“Telmex 2004 Form 20-F”); Form 20-F, SEC File No. 333-13580, Teléfonos de México, S.A. de C.V. Telmex, at Exs. 4.4 – 4.5 (filed June 28, 2004) (“Telmex 2003 Form 20-F”). That agreement was signed on behalf of Telmex, as have been subsequent amendments, by a person who serves as a director of América Móvil and, on behalf of AT&T, by Mr. Resnick. See *id.*; see also América Móvil 2005 Form 20-F at 69.

V. The Proposed Transaction Has Significant Anticompetitive Potential In International Telecommunications Services Between Puerto Rico And Foreign Points.

By resting its case on the World Trade Organization (“WTO”) status of Mexico, the Applicants ignore not just the breadth of the public interest analysis that must be undertaken but that WTO status only creates a rebuttable presumption in favor of granting applications for international Section 214 authorization which, limited as it is, can be defeated by other public interest factors.⁷⁸ In terms of the breadth of the public interest analysis, this is not, as Applicants would have it, strictly a matter of whether América Móvil should be permitted to provide international telecommunications services between the United States and Mexico or any other country for that matter. Nor is it merely a matter of whether América Móvil should be classified as “dominant” on any particular international routes. There are far greater issues at stake with the proposed purchase of the seventh largest LEC, located in a uniquely vulnerable telecommunications services marketplace, in the United States by a foreign company lacking in the necessary qualifications and with a well-documented history of anticompetitive activities.

Nonetheless, classification of América Móvil as “dominant” on a particular route and imposition of related safeguards for purposes of an international Section 214 authorization is a recognition of América Móvil’s market power on the foreign end of the route. It does not address a scenario where América Móvil has local telecommunications market power at both the domestic and foreign ends of the same route. This will be true on at least six (6) international routes (Puerto Rico/Dominican Republic, Puerto Rico/Mexico, Puerto Rico/Nicaragua, Puerto

⁷⁸ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891 ¶¶ 50-58 (1997), *order on reconsideration*, 15 FCC Rcd. 18158 (2000).

Rico/El Salvador, Puerto Rico/Brazil),⁷⁹ most notably on the Puerto Rico/Dominican Republic route where the vast majority of international traffic to/from Puerto Rico.⁸⁰

In the Opposition, Applicants undertake an abbreviated discussion that completely ignores the fact that the safeguards adopted for “dominant” carriers on particular international routes do not take this duality of market power into consideration.⁸¹ The potential to increase prices overall, to raise rivals' costs, to discriminate in price, quality and otherwise in favor of themselves and against competitors, to cross-subsidize, or to create anti-competitive tie-ins are enormous. With monopolies on local traffic at both ends, dominance of long distance and various forms of transport, control over what little broadband there is and in some markets wireless service as well, the situation is rife with opportunities to find ways to harm consumers and competition and shift anticompetitive conduct among points to make this hard to detect and police.

In addition, América Móvil would have market dominance in Puerto Rico’s intra-island long distance market, its interstate long distance service and, as a result of AT&T’s significant financial stake and commercial ties to América Móvil and Telmex, its wireless market. It would also be “the principal service provider in all telecommunications segments” in the Dominican Republic.⁸² As indicated *infra*, the appropriate remedy for this problem is to prohibit América Móvil and its affiliates, including Telmex, from providing international telecommunications services on any routes where they own, operate or control the dominant local market carrier at

⁷⁹ Public Notice, FCC, 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, DA 04-1584 (May 28, 2004).

⁸⁰ See TLD Petition at 42.

⁸¹ See Opposition at 12-13.

⁸² Form 10-K, Verizon Communications Inc., SEC File No. 1-8606, at 14 (filed Mar. 14, 2006) (“Verizon Form 10-K”).

both ends of the route. More specifically, the current routes would be between Puerto Rico and any of the following foreign destinations: Dominican Republic, Mexico, Nicaragua, Guatemala, El Salvador and Brazil.

As to international telecommunications services only, any presumption tied to membership in the WTO in this case is rebutted by Telmex's unique role in the only WTO adjudication of failure to comply with obligations under the telecommunications agreements of the WTO. That matter was resolved only after an unprecedented and unique determination at the WTO-level. The Applicants' efforts to dismiss this matter as resolved and of no relevance here is badly misplaced. The issue is not whether the WTO violations are ongoing or resolved but, rather, why they happened at all and why it took so long and such process to get them resolved. It is Telmex's continued and consistent pattern of such anticompetitive conduct that lies at the core of this particular concern.

Even today, the United States has continuing telecommunications issues with Telmex. As explained in the TLD Petition, the 2006 National Trade Estimate Report on Foreign Trade Barriers ("NTE"), President Bush informed Congress that "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."⁸³ Indeed, despite an obvious monopoly in wireline, Telmex has managed to avoid being labeled as a "dominant carrier" by Mexico regulators such that obligations regarding pricing, quality of service and

⁸³ See TLD Petition at 43 (quoting 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=;).

information disclosure reserved for dominant carriers have not been made applicable to Telmex.⁸⁴

It is also significant that while the United States government very publicly complains that “[t]he 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,” América Móvil believes that “these incidents involved legitimate legal disputes where Telmex was preserving its rights.”⁸⁵ It is this very difference in approach to competition that exemplifies the attitude of América Móvil and Telmex -- that it is perfectly acceptable to blatantly mask and prolong anticompetitive activities by gaming the legal process. In the case of América Móvil, the recent determination by Mexico’s antitrust authority that it had engaged in anticompetitive activities by denying SMS interconnection to a wireless competitor despite having been ordered to provide such interconnection by COFETEL is perhaps a more specific example.⁸⁶ Importation of this philosophy into the United States where pro-competition is the policy of the land is very troubling and carries with it great potential for market abuse.

TLD submits that, having rebutted the general presumption in favor of WTO countries, an examination of the effective competitive opportunities afforded to United States and other carriers in the home telecommunications markets of América Móvil and Telmex will require a conclusion by the Commission that the proposed transaction does not serve the public interest and a denial of the Application.

⁸⁴ See TLD Petition at n.116.

⁸⁵ 2006 NTE Report at 451; Opposition at n.24.

⁸⁶ TLD Petition at 39-40.

VI. Alternatively, if the Proposed Transaction is Allowed, the Commission Must Impose Specific and Substantive Conditions, as even the Puerto Rico Regulatory Board Urges.

In the TLD Petition, TLD urged that if the Commission allows this transaction to proceed, it must impose an array of specific and substantive conditions on the acquirer in order to protect and further the public interest. TLD has already advised the Commission of some specific conditions that should be imposed. Strong and clear conditions, very short timetables to obtain review and regulatory intervention to enforce them, and substantial and certain penalties for noncompliance, are all vital to protect consumers and competition in the vulnerable Puerto Rico market against the acquirer's inexperience with wireline service, United States markets and regulatory obligations, and against its track record and that of its commonly-owned affiliates in resisting competition. The call to impose conditions on this transaction now comes from numerous parties in their Petitions to Deny or Comments, including the Puerto Rico Board. The Applicants respond that conditions should not be imposed because these conditions are not relevant, claiming that the proposed conditions are not merger-specific. This response is as factually inaccurate as it is unconvincing.

TLD's most significant concern in the event that the Commission were to permit América Móvil to take control of TELPRI is that a set of unambiguous and readily enforceable conditions be adopted to assure that América Móvil will work towards the opening of local telecommunications markets in the manner contemplated by the 1996 Act. This means both pre- and post- network access conditions. The proposed transaction creates a web of cross-interests involving América Móvil, TELPRI, AT&T, Cingular and perhaps even others given the uncertainty created by the Applicants' failure to supply transaction and other documents makes it impossible to tell what others may exist. Moreover, the relationship between the proposed transaction and the conditions of the affected markets, in terms of competition and regulation

must be considered. The dearth of competition and the lack of market-power based regulation in the Puerto Rico telecommunications markets creates a fertile environment for a company with the legacy and anticompetitive activities of América Móvil, as these have been described at length in the TLD Petition, in this Reply and elsewhere by others. The proposed transaction has great potential for undue preferences, discrimination and anticompetitive activities both within and outside the ambit of laws and regulations.

América Móvil should not be allowed to pick and choose with whom it enters into agreements, how long it takes it to negotiate and implement those agreements while it or its affiliates pillage the market and performance of those agreements. América Móvil should not be permitted to engage in the types of anticompetitive conduct for which it is well known in other countries, be it the dissemination of misleading information to its captive local exchange subscribers regarding the services and activities of its competitors, interfering with the distribution networks of its competitors, service plans that are intended to drive out competitors by using price squeezes, cost-shifting, cross-subsidization, etc. They cannot be permitted to abuse a weak regulatory scheme that has no rate regulation mechanism, does not require them to cost-based their rates, follow any particular cost accounting system, allows their tariffs to go into effect immediately without any initiative by the local regulatory authority.

Most particularly, América Móvil must be required to file with the Commission reports that identify any agreements to which it is or becomes a party that concern the provision of network elements in an either bundled or unbundled fashion. In the event that any such agreement governs the provision, on an unbundled basis, of mass market switching, local loop or any other network element which it is not currently required to provide on an unbundled basis, América Móvil must provide such network elements on an unbundled basis to other carriers

upon reasonable request in accordance with the requirements of Title II, including but not limited to Sections 201 and 202. The fact that it is not required to provide such elements on an unbundled basis in the first instance does not mean that it can choose to provide those elements on that basis without having to comply with the requirements of Title II.

TLD again urges that the conditions enumerated and discussed in the TLD Petition be granted. For present purposes, TLD highlights the following:

- elimination of AT&T's direct and indirect *multi-billion dollar* direct and indirect ownership interests in América Móvil and Telmex, which includes one of the three Telmex Board's three Executive Committee seats (something the Applicants simply ignored in their Opposition), because a continued financial interest of this magnitude alone, let alone coupled with an influential governance voice, together with AT&T's well compensated role as a strategic advisor in virtually all aspects of the life of the acquiring entities, would anti-competitively link together the number one and two wireless carriers in Puerto Rico, and diminish or eliminate AT&T's status as a competitor in the intrastate, interstate and international telecommunications services markets;
- access for every carrier in Puerto Rico on a nondiscriminatory basis -- without favoring any PRTC affiliate -- to every PRTC agreement or offer of network elements, services, bundles, etc., including switching, local loop, transport, interconnection, special access, unbundled network elements as well as ordering, provisioning, billing, and performance, etc., that PRTC offers or provides to any carrier in Puerto Rico;
- protection against the unprecedented leverage and anticompetitive potential that the acquirer and its affiliates would have regarding certain international traffic to and from Puerto Rico, namely on at least six (6) international routes, between Puerto Rico and the Dominican Republic, Mexico, Nicaragua, El Salvador, Guatemala or Brazil where América Móvil or Telmex would have local monopolies on **both** ends of the routes and dominate a broad range of other services, which requires more regulation than is contemplated by classification as "dominant," such as prohibiting América Móvil and its affiliates from carrying traffic on those international routes and requiring that PRTC and its affiliates assign all of that international traffic to other, unaffiliated, carriers commensurate with the market share on that route of those unaffiliated carriers in the prior year;
- protection of confidential information obtained from competitors;
- provision of direct interconnection to PRTC's wireless (where it has been provided to others, affiliated or otherwise, so that companies like PRTC can pass long-distance traffic directly to its wireless operation as does PRTC, rather than

pay twice to pass that traffic to PRTC and then to its wireless operation) and wireline networks, on a cost-based arrangement;

TLD also notes that it and WorldNet have each urged the same condition: prohibit PRTC from proposing for at least three years to mandate that the entire island be a single local calling area, eliminating intra-island toll calling, an anticompetitive and competitively devastating proposal that PRTC recently withdrew under pressure after its rivals spent a good deal of their money fighting it, including by the filing of a petition at the Commission to declare that the mandatory rate plan would violate the 1996 Act.

In its Petition, WorldNet also suggests other necessary and appropriate conditions, including valuable performance metrics and liquidated damage requirements. Centennial too suggests useful conditions, including appointment at PRTC's expense, of a performance monitor to supervise satisfaction of various requirements. Sprint's suggestions are consistent with those and include requirements of fair and nondiscriminatory treatment of competing carriers, and adoption of specific performance metrics, including those based on current performance.

Perhaps most importantly, the Puerto Rico Board also urges denial of the transaction, or, alternatively, that the Commission adopt conditions. Their call for assistance is necessary, appropriate, and should be respected, by imposing conditions, albeit much strengthened ones. The Puerto Rico Board's request is significant for at least two reasons. First, the Puerto Rico Board correctly recognizes that this transaction is competitively problematic, with "purported public interest benefits" that are "hollow and meaningless with no specifics or commitments."⁸⁷ Because the experience of the acquirer is poorly matched to the responsibilities it will have and

⁸⁷ Puerto Rico Board Petition at 2.

the market it would operate in, and because the transaction poses a significant threat to consumers and to competition, it is not in the public interest as proposed by the Applicants.⁸⁸

Second, this request to the Commission for assistance reflects that the Puerto Rico Board will, as TLD has pointed out, have great difficulty in fostering competition and effectively protecting against, detecting, deterring, and punishing anticompetitive behavior by América Móvil -- let alone do so in a timely fashion. As discussed *supra*, the Puerto Rico Board lacks experience or legal authority in many areas -- it has *never* even adopted a methodology by which to determine whether PRTC's rates are cost-based, let alone conduct a full scale review of those rates. Nor does it impose a regulatory regime on PRTC that reflects PRTC's very clear dominance -- it applies the same regulatory regime to other carriers who obviously are not similarly situated in terms of market power -- having none -- or resources. Regulating such differently situated carriers in the same fashion is anticompetitive, rather than even-handed.

The Puerto Rico Board's proposed conditions represent a valuable contribution. We applaud the Puerto Rico Board for this important first step which underscores the necessity of this Commission denying the Applications or approving only on the basis of strong and rapidly enforceable conditions. The standards that the Puerto Rico Board proposes should be viewed as a starting point, but these conditions must be improved upon because they set the bar far too low, with almost non-existent penalties, and no pricing review or guidance. Performance, provisioning and other standards and metrics also must be more concrete, and should be enforceable more simply and rapidly so that the sort of dilatory conduct for which the United States, international and even Mexican authorities, among others, have criticized Telmex and its affiliates, cannot raise rivals costs and delay and impede competition in Puerto Rico.

⁸⁸ *Id.* at 12.

The principal argument that Applicants offer against conditions is that the proposed conditions are not linked to the competitive effects of the merger.⁸⁹ But that is wrong. This would-be acquirer and its affiliates have a disturbing track record of evasion when they are obliged to comply with pro-competitive requirements and objectives, and do so in a timely fashion. Their record of integrity and compliance with law regarding such obligations is poor. Moreover, the acquirer lacks significant relevant experience in providing wireline service anywhere, including in the United States. That inexperience and troubling track record puts consumers and competition squarely at risk, particularly because Puerto Rico is insular, the monopoly stranglehold is strong, consumers effectively have no other local wireline choice, and there is no history of strong regulation. This makes it particularly important to impose strong and clear conditions, with rapid review of any disputes and clear and substantial sanctions for noncompliance, in order to preserve existing competition, promote more, and prevent backsliding and many of the problems that arose when the 1996 Act regime was new to ILECs. Moreover, conditions sought in order to address the unprecedented control that the acquirer and its affiliates would have on both sides of certain international calls to and from Puerto Rico *are* merger specific, as are conditions dealing with AT&T's overlapping ownership interests.

VII. CONCLUSION

Wherefore, for the foregoing reasons, TLD respectfully requests that the Commission find that the proposed transaction does not further the public interest, and deny the Application.

⁸⁹ Opposition at 24.

Alternatively, in the event the Commission is inclined to grant the Application, it should impose the conditions discussed in the TLD Petition and in this Reply.

Respectfully submitted,

TELEFÓNICA LARGA DISTANCIA DE
PUERTO RICO, INC.



Richard Rubin
Angela R. Thompson
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, NW
Washington, D.C. 2000-5728
(202) 986-8000

Its Attorneys

July 31, 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
América Móvil, S.A. de C.V., Transferee)	
)	
Applications for Consent to Transfer of Control of Licenses and Authorizations)	

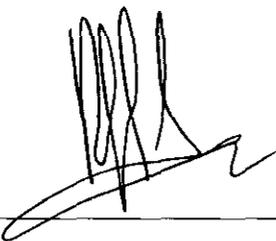
DECLARATION OF RAFAEL SERRANO

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

I am Marketing and Strategy Vice President for Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD").

I have read and am familiar with the Reply to América Móvil's and Verizon's Opposition to Petitions to Deny ("Reply") to which this Declaration is appended and which is to be filed with the Federal Communications Commission (the "Petition").

The facts alleged in the Reply are true and correct to the best of my knowledge, information and belief.



Dated: July 31, 2006

EXHIBIT 2



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

March 29, 2005

Nancy J. Victory
202.719.7344
nvictory@wrf.com

Mr. Jeffrey Carlisle
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, Southwest
Washington, D.C. 20554

Dear Mr. Carlisle:

We wish to express our thanks for taking the time to again meet with Puerto Rico Telephone Company ("PRT") to discuss the pressing need for the Federal Communications Commission ("FCC") to adopt a universal service mechanism directed at non-rural insular areas. This letter provides you with additional information further detailing the conditions in Puerto Rico warranting prompt restoration of high-cost funding as well as responds to the specific questions raised in our meeting. As detailed below, this funding is crucial to the success of the company's ongoing efforts to expand subscribership and maintain affordable rates in Puerto Rico.

Subscribership in Puerto Rico

PRT 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 PRT serves – 70 percent as compared to a national average penetration total of 94.2 percent – is likely very close to total subscribership on the island.⁴

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 PRT. This is based on the fact that the areas in which PRT'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.

PRT's sole major facilities-based wireline competitor is focused on the business market and new commercial and residential development. Likewise, wireless carriers, including PRT's affiliated wireless provider, have the same difficulties as

⁴ The FCC's subscribership reports and wireless competition reports do not provide granular data or analysis of such conditions in Puerto Rico. This data are also not publicly available from other resources of which we are aware.

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PRT 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.

Overall, PRT estimates that 200,000 households in approximately 200 remote communities have no access to any telecommunications infrastructure, this represents approximately 14.5 percent of all households on the island (200,000 out of 1.369 million). The total penetration rate in Puerto Rico – even assuming a very high and unlikely percentage of households subscribing to alternative providers – would still be significantly below the national average, and significantly below the mainland state with the lowest penetration rate, Arkansas (88 percent).

Conditions in Puerto Rico

Puerto Rico's economic conditions create significant challenges to providing affordable telecommunications to all of its citizens. The difficulties in operating and serving Puerto Rico are attributable, in part, to the dichotomy between very low incomes and very high costs of living and to provide service.

The high costs on the island are due to the need to ship all materials to the island, the corrosive nature of the environment, and unpredictable and sometimes destructive tropical weather conditions. For instance, Hurricane Jeanne caused over \$11.5 million in damage to PRT facilities alone in 2004. The inadequate basic infrastructure in some areas, including the lack of passable roads and electricity, further complicate efforts to provide telecommunications services. The need to install and maintain transmission facilities in rough, hilly terrain with heavy vegetation also increases significantly the cost to provide service.

Updated 2003 data reveal that Puerto Rico still lags substantially behind the mainland with respect to average incomes. Puerto Rico's average income (\$16,800) is only half the national average (\$34,459), and two-thirds that of the poorest U.S. state, Mississippi (\$23,343).⁵ In combination, these conditions make the construction and maintenance of telephone infrastructure more costly but make it infeasible for PRT to recover these increased costs from its subscribers.

⁵ See, e.g., U.S. Bureau of Economic Analysis; http://www.bea.doc.gov/bea/dn/nipaweb/nipa_underlying/Index.asp; CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/rq.html>

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Universal Service Funding to Puerto Rico

PRT is projected to receive \$0 in high-cost loop support in 2005. The majority of high-cost carriers on the mainland receive both loop support and access support (either Interstate Common Line Support (ICLS) or Interstate Access Support), but PRT will only receive access support in 2005: approximately \$71.5 million in ICLS funding that offsets its substantial costs of providing interstate access services in Puerto Rico. These funds are vital to ensuring that access costs and interexchange service in Puerto Rico remain affordable. ICLS funds do not, however, provide any support to counteract the considerable intrastate loop costs in Puerto Rico. Receipt of support under one component of the universal service program bears no relation on a carrier's eligibility or need for support under different components of the universal service fund.

Similarly, Lifeline support, which provides direct subsidies to end-users to offset the monthly cost of telephone service, is a separate universal service program that is not, nor was it ever intended to be, a stand-alone solution to subscribership and affordability concerns. Because it is a direct pass through to consumers, PRT itself receives \$0 Lifeline support. Lifeline support does not provide any funding to ensure that PRT has the resources necessary to build out the network to unserved communities, or to upgrade and maintain existing network facilities. Approximately 26 percent of eligible households in Puerto Rico (107,000 out of approximate 400,000 eligible households) currently participate in the FCC's Lifeline program. This is consistent with the national average for Lifeline participation (33.7 percent), and significantly higher than the participation rates in many poor mainland states: Mississippi 6.9 percent, Wyoming 7.2 percent. *See Lifeline and Link Up*, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, Appendix K (Apr. 29, 2004).

Non-Rural Mechanism's Impact on Puerto Rico

Under the FCC's traditional high-cost loop funding policies, Puerto Rico used to receive as much as \$51 million in annual funding, the second highest amount of any jurisdiction, based substantially on the disproportionately high cost of service in Puerto Rico. The FCC's adoption six years ago of a non-rural fund, coupled with the decision to force non-rural insular areas under this fund, eliminated all funding for Puerto Rico. The non-rural fund's forward-looking cost-based synthesis model – based on mainland input and assumptions – cannot accurately predict the

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conditions or the costs associated with delivering service to a remote insular area like Puerto Rico. Indeed, the model does not even come close.

The disparity between reported costs and the costs projected by the synthesis model for Puerto Rico further underscore the inconsistent results of applying the model to insular areas. The model underestimates the actual embedded cost to provide service to Puerto Rico by more than 250 percent. Specifically, the synthesis model projects total PRT costs (combined study areas) of approximately \$359 million, yet ARMIS reports demonstrate that the actual embedded cost to provide service was approximately \$1.434 billion.⁶

The elimination of all high-cost loop funding to Puerto Rico is thus flatly inconsistent with real world conditions in Puerto Rico, and has resulted in stagnated, if not decreased, subscribership levels and capital expenditures in Puerto Rico.

PRT has proposed to the FCC on multiple occasions in multiple proceedings a targeted solution to remedy this oversight and address the dire situation in Puerto Rico. Specifically, PRT has proposed the adoption of a non-rural insular fund, similar to, but distinct from, the rural fund – Puerto Rico is the only non-rural insular area that is also high-cost. Further, this proposal would only restore minimal impact on the total size of the universal service fund, as it would only restore, not increase, previously received funding levels. What is more, this funding would directly benefit a population segment that clearly warrants federal aid.

Accordingly, we urge the Commission to move promptly to adopt PRT's proposal and to cure the exclusion of non-rural insular areas from universal service relief.

⁶ Compare Synthesis Model, Summary Column GB-GF to ARMIS Reports 4301, 4303. In addition, PRT is the *only* carrier for which the total lines projected by the synthesis model are *lower* than the total lines reported by carriers in the 2002 ARMIS reports. PRT reported 1.29 million lines, yet the synthesis model projected only 1.09 million lines. Compare synthesis model, Summary Tab, Column B with 2002 ARMIS Reports, 4301, Table 2, Line 2150.

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Such action is crucial to ensure that all Americans have access to affordable telephone service as promised in the Telecommunications Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy J. Victory".

Nancy J. Victory

cc Cathy Carpino
Narda Jones
Richard Lerner
Lisa Gelb
Jeremy Marcus
Katie King

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 31st day of July, 2006.

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
Verizon
1515 Courthouse Road
Arlington, VA 22201
michael.e.glover@verizon.com

Nancy J. Victory
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington DC 200006
nvictory@wrf.com

Philip L. Verveer
Michael G. Jones
Daniel K. Alvarez
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington DC 20006
pverveer@willkie.com
mjones@willkie.com
dalvarez@willkie.com

Alejandro Cantú Jiménez
América Móvil, S.A. de C.V.
Lago Alberto 366
Torre 1, Piso 2
Aolonia Anahuac
11320 Mexico, D.F.
acantu@americamovil.com

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Erin McGrath
Mobility Division
Wireless Telecommunications Bureau
445 12th Street, SW
Room 6338
Washington, DC 20554
erin.mcgrath@fcc.gov

Susan Singer
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
445 12th Street, SW
Room 6338
Washington, DC 20554
susan.singer@fcc.gov

David Krech
Policy Division
International Bureau
445 12th Street, SW
Room 7-A664
Washington, DC 20554
david.krech@fcc.gov

Susan O'Connell
Policy Division
International Bureau
445 12th Street, SW
Room 7-A664
Washington, DC 20554
susan.oconnell@fcc.gov

Jodie May
Competition Policy Division
Wireline Competition Bureau
jodie.may@fcc.gov

Hon. Kenneth D. McClintock
President
Senate of Puerto Rico
P.O. Box 9023431
San Juan, PR 00902
Senator_mcclintock@yahoo.com
oparga@senadopr.us

H. Russell Frisby, Jr.
James N. Moskowitz
Fleischman and Walsh, L.L.P.
1919 Pennsylvania Ave., N.W., Suite 600
Washington, DC 20006
jmoskowitz@fw-law.com
rfrisby@fw-law.com

Christopher W. Savage
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue., N.W., Suite 200
Washington, DC 20006
csavage@crblaw.com

Gail Cohen
Competition Policy Division
Wireline Competition Bureau
gail.cohen@fcc.gov

Neil Dollar
Office of General Counsel
neil.dellar@fcc.gov

Vonya B. McCann
David A. Nall
Sprint Nextel Corporation
401 9th Street, NW, Suite 400
Washington DC 20004
vonya.b.mccann@sprint.com
david.a.nall@mail.sprint.com

Veronica M. Ahern
Leslie Paul Machado
Nixon Peabody LLP
401 Ninth Street, NW – Suite 900
Washington, DC 20004
vahern@nixonpeabody.com
lmachado@nixonpeabody.com


Claire M. Brennan
Paralegal