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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Application for Consent to Transfer of Control of Telecommunications de Puerto Rico Inc. from Verizon to América Móvil (WT Docket No. 06-113)

Dear Ms. Dortch:

This letter briefly supplements the Applicants' previous submissions relating to the ownership of América Móvil, S.A.B. de C.V. ("América Móvil"), the purchaser in the transaction at issue in these license transfer proceedings.

*First*, as the Applicants have explained previously, the Commission's rules establish a presumption that foreign ownership or control of greater than 25 percent is in the public interest where the entity or entities holding that interest are from World Trade Organization ("WTO") Member countries.<sup>1</sup> The Commission adopted this open entry standard to give effect to commitments that the United States made in the context of the WTO Basic Telecom Agreement.<sup>2</sup> The agency found that the open entry standard would result in benefits for U.S. consumers. In particular, U.S. consumers would benefit both from additional competition in the U.S. market, and from promoting further opening to U.S. carriers in foreign markets.<sup>3</sup> Or as then-Chairman Kennard put it, by adopting an open entry standard, the Commission was ensuring that the U.S. would "continue to spearhead" what he described as "the revolutionary journey to competition in many countries."<sup>4</sup> And the agency concluded that the open entry standard would "allow the Commission to grant the vast majority of applications swiftly," particularly since countries representing more than 90 percent of the global market were then members of the WTO.<sup>5</sup> Indeed, as

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<sup>1</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23896-8, 23913 (1997) ("*Foreign Participation Order*").

<sup>2</sup> *Id.* at 23896.

<sup>3</sup> *Id.* at 23896-7.

<sup>4</sup> *Id.* at Statement of Chairman William E. Kennard.

<sup>5</sup> *Id.* at 23913. *See also id.* at Statement of Chairman William E. Kennard.

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the Commission correctly recognized, failure to permit open entry into the U.S. market (or to promptly act on applications to enter) could have significant adverse consequences for broader U.S. interests around the globe, since other countries then would be unlikely to promptly permit entry into their markets by U.S. firms.

Consistent with its general open entry policy, the Commission also found that the presumption could be overcome only in truly “exceptional” cases where control of a U.S. carrier by a foreign carrier would pose a high risk to competition by virtue of the foreign carrier’s ability to exercise market power in its foreign market to favor its U.S. affiliate.<sup>6</sup> In “virtually all circumstances,” however, the Commission concluded that its existing safeguards, including the ability to classify the carrier as dominant on relevant routes, will be adequate.<sup>7</sup> In particular, the agency found that it is “highly unlikely that a carrier from a WTO Member country” that has open markets and a pro-competitive regulatory regime in place could pose such a very high risk to competition.<sup>8</sup>

*Second*, as the Applicants have explained at greater length in their previous submissions, the presumption in favor of entry fully applies here. América Móvil is a foreign entity whose home market is Mexico, a WTO Member country, under the Commission’s “principal place of business” test.<sup>9</sup> América Móvil is organized under the laws of Mexico, a substantial part of its equity ownership and voting control is Mexican,<sup>10</sup> and more of its revenues derive from its businesses in Mexico than from its businesses in any other country. The U.S. Trade Representative has previously confirmed that Mexico’s market is open and that Mexico has an

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<sup>6</sup> *Id.* at 23913-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 23914.

<sup>9</sup> *Id.* at 23941-2 (1997) (determination of an entity’s home market involves identifying and balancing five factors: 1) country of incorporation or organization; 2) nationality of investment principals, officers and directors; 3) country in which it is headquartered; 4) country in which the majority of its tangible property is located; and 5) country where it derives the greatest sales and revenues from its operations).

<sup>10</sup> In the case of América Móvil, approximately 34 percent of the total equity ownership, and approximately 72 percent of the full voting shares, is attributable to specifically identified Mexican citizens. In the case of the relevant subsidiaries, they are wholly owned by América Móvil and intervening subsidiaries which are all Mexican companies. *See* Letter from Michael G. Jones, Counsel to América Móvil, to Marlene Dortch, Secretary, FCC, at 1-2 (dated December 14, 2006).

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appropriate regulatory regime in place.<sup>11</sup> Accordingly, this is clearly not one of those “exceptional” cases under the terms of this Commission’s previous orders where the presumption in favor of entry can be overcome.

*Third*, as the Applicants also have explained, just as América Móvil’s home market is a WTO Member country, there also is no question that América Móvil is controlled by residents of a WTO Member country – again, Mexico. Indeed, approximately 72 percent of voting control is known to be held directly by Mexican citizens. This fact should be dispositive here because, in assessing the ownership of a foreign investor for these purposes, the key inquiry is regarding control. Since the open entry presumption can be overcome only by a determination that the foreign investor, through its foreign carrier affiliate, poses a very high risk of anti-competitive conduct, it is appropriate to focus on entities that can control the activities of that investor in the U.S. and foreign market. For these purposes, voting control in particular is key because it is voting control that will determine a company’s activities. Thus, while the Commission also looks at equity ownership, its policies focus separately and primarily on voting control because of the recognition that ownership interests often do not indicate where actual control of a company lies.<sup>12</sup>

In the case of publicly traded companies like América Móvil, this focus on voting control is particularly appropriate. Large, publicly traded companies often have several classes of stock, some of which provide the holder limited or no voting rights. Holders of such stock thus effectively have no influence over the corporation or corporate decisions. As the Applicants have previously explained, holders of the L Class of América Móvil’s stock have such limited rights.

Further, where a company’s equity is publicly traded and widely held, it is typically not possible to know definitively who all the shareholders are. For example, stock

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<sup>11</sup> Press Release, U.S. Mission to the United Nations in Geneva, Statements by the U.S. Representative at the Meeting of the WTO Dispute Settlement Body (DSB), *Mexico – Measures Affecting Telecommunications Services: Status Report by Mexico*, WT/DS204/9/ADD.8 (Aug. 31, 2005), available at <http://www.us-mission.ch/Press2005/0831DSB.htm>.

<sup>12</sup> See, e.g., *Wilner & Scheiner*, 103 F.C.C. 2d 511 ¶¶ 17-20 (1985); *Vodafone Americas Asia Inc. (Transferor), Globalstar Corporation (Transferee) Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, DA 02-1557, 17 FCC Rcd 12849 ¶¶ 25-26 (2002) (“*Vodafone Americas Asia Inc.*”).

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may be purchased through brokerage houses and held in street name, which may not always reflect actual ownership. The Commission has recognized this in both the domestic and international context. For example, in *Vodafone Americas Asia Inc.*, the FCC approved a transfer of control even though it was “concerned” that Loral, a publicly-traded Bermuda company with controlling indirect ownership in the transferee, had recordkeeping that might not “accurately reflect all of its foreign ownership, due to the fact that stock is often purchased through brokerage houses and held in street name, which does not necessarily reflect actual ownership.”<sup>13</sup> In describing foreign interests attributable to Loral, the Commission did not address the issue of stock held in street name, but rather noted that: a group of French companies had an aggregate interest of 6.2 percent; 1.26 percent of the outstanding shares of Loral were registered to foreign entities with addresses in WTO Member countries; no further information was provided as to foreign ownership of Loral’s capital stock; and Lockheed Martin, a U.S. Corporation, was Loral’s greatest shareholder with a 15.3 percent interest. The Commission nevertheless determined that the transfer of control should be permitted.

Here, as noted above, there is no question that control of América Móvil is held by residents of Mexico. Indeed, the Applicants have explained that more is known about the equity ownership and control of América Móvil than is known about most U.S. publicly traded companies. With respect to control, approximately 95 percent of voting control of América Móvil is known to be held by Mexican citizens, primarily Carlos Slim Helú and certain members of his immediate family, or by SBC International, Inc., a U.S. company that holds its shares through a Mexican trust that is required to vote its shares in the same manner as the majority of shares of that class. In other words, significantly more than 75 percent of voting control is held by citizens of WTO Member countries. Or to put it another way, the percentage of voting interest that could even theoretically be held by residents of non-WTO Member countries is well below the 25 percent threshold (and below 5 percent of voting control) for the presumption in favor of open entry to apply.

*Fourth*, under these circumstances, a separate analysis of equity ownership is not meaningful because it is already known that the acquirer is a Mexican company that is controlled by Mexican citizens. Nonetheless, to the extent it provides additional comfort, all available information shows that more than 75 percent of América

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<sup>13</sup> *Vodafone Americas Asia Inc.*, 17 FCC Rcd 12849 ¶¶ 43, 53.



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Móvil’s equity also is held by individuals or entities with addresses in WTO Member countries.

As an initial matter, information available to América Móvil shows that nearly 85 percent of América Móvil’s equity currently is held by individuals or entities who are citizens of WTO Member countries or who have registered addresses in the United States or other WTO Member countries. To put it another way, this information accounts for all but about 15 percent of total equity ownership. Of course, this does *not* mean that the remaining interest is held by citizens of non-WTO Member countries. Quite the contrary, because the vast majority of the world’s population lives in WTO Member countries, virtually all of the equity (if not all) is likely to be held by citizens of such countries.<sup>14</sup> But it is strong evidence that equity ownership, like voting control, is overwhelmingly held by interests from WTO Member countries.

Because América Móvil has provided further details on this calculation in a parallel submission, we will only briefly summarize them here. As the Applicants have previously explained, América Móvil has three classes of stock:

<b>Class</b>	<b>Percent of Total Equity</b>	<b>Percent of Voting Control</b>
AA	approx. 33%	approx. 95%
A	approx. 2%	approx. 5%
L	approx. 65%	None

The AA shares are those described above with voting control, and are known to be held by citizens of WTO Member countries (Mexico and the United States).

Some A shares and L shares trade as American Depositary Shares or Receipts (“ADS” or “ADR”), where one ADS or ADR is the equivalent of 20 shares of stock. These trade on stock exchanges in Germany, Spain, and the United States – all of which are WTO Member countries. The registered addresses of some of the holders of ADSs or ADRs are known. Approximately 30 percent of A shares trade as ADSs and approximately 64 percent of L shares trade as ADSs. Some of the ADSs are

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<sup>14</sup> Given the nature of the countries that are not WTO Members (*e.g.*, Ethiopia, Palau, Somalia), they are highly unlikely to have citizens with stockholdings in a publicly-traded company like América Móvil.

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held by individuals, and some are held by Participants – custodial banks or brokers. América Móvil has determined that all but a tiny fraction of the individuals or Participants holding ADSs have registered addresses in the United States or other WTO Member countries. In addition, Carlos Slim Helú and certain members of his immediate family own approximately 14 percent of the L shares.<sup>15</sup> As noted above, this information alone is sufficient to determine that nearly 85 percent of América Móvil’s equity is held by individuals or entities who are citizens of WTO Member countries or who have registered addresses in the United States or other WTO Member countries.<sup>16</sup>

Moreover, the fact that more than 75 percent of América Móvil’s equity can be attributed to citizens of WTO Member countries or entities with addresses in WTO Member countries can be confirmed by other sources as well. In particular, institutional investors (such as pension funds and investment partnerships), and managers of mutual funds, that operate in the U.S. are required to file certain forms with the Securities and Exchange Commission (“SEC”) describing their holdings. As a supplement to other available information, Verizon independently examined the reports on file with the SEC for information relating to the holders of América Móvil’s equity. Because this information was compiled at a different point in time from different (and more limited) sources than those available to América Móvil, and is likely less complete, the precise percentages necessarily will differ slightly from those outlined above. Nevertheless, this analysis likewise establishes that as of the end of the third quarter, 2006, more than 80 percent of América Móvil’s equity was held by individuals or entities who are citizens of WTO Member countries or who have registered addresses in the United States or other WTO Member countries. The steps taken to make this determination are described in more detail in the attachment.

As América Móvil has previously informed the Commission, América Telecom, S.A. de C.V. merged with and into América Móvil as of February 15, 2007. The merger does not significantly change the results of the analysis of SEC filings described above. As described in the attachment, even after the merger, the information in the SEC filings still shows that more than 75 percent of América

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<sup>15</sup> América Móvil is contemporaneously submitting a separate *ex parte* filing detailing this analysis.

<sup>16</sup> See contemporaneously filed América Móvil *ex parte* submission for the specifics on these calculations.



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Móvil's equity is held by individuals or entities who are citizens of WTO Member countries or who have registered addresses in the United States or other WTO Member countries. Again, of course, this does not suggest that the remaining interest is not also owned by WTO Member countries and much (or all) of it undoubtedly is. But it does provide still further comfort that América Móvil's shares are overwhelmingly held by WTO Member residents.

In sum, all available information confirms that the current transaction is fully entitled to the presumption in favor of entry and the license transfers that are the subject of this proceeding should be promptly approved.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory  
Counsel to Verizon

Enclosures: Explanation of Method of Analysis of América Móvil Ownership

cc: Helen Domenici  
Francis Gutierrez  
James Ball  
David Strickland

## **EXPLANATION OF METHOD OF ANALYSIS OF AMÉRICA MÓVIL OWNERSHIP**

In connection with the Application for Consent to Transfer of Control of Telecommunicaciones de Puerto Rico Inc. from Verizon to América Móvil (WT Docket No. 06-113), Verizon asked Wiley Rein LLP (“Wiley Rein”) to assist it in obtaining information regarding the ownership of the equity of América Móvil S.A. de C.V. (“América Móvil”) from publicly available sources. This narrative describes what was done to obtain such information.

Wiley Rein attorneys and paralegals first looked at Forms 13F, which are filed by institutional investment managers pursuant to Rule 13f under the Securities Exchange Act of 1934. With the help of Lexis-Nexis, we identified 383 13F filings by institutional investment managers reporting holdings of América Móvil securities on the last day of the quarter ending on or about September 30, 2006. We then went to the Securities and Exchange Commission’s (“SEC’s”) Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system, and collected the class and number of América Móvil securities held by each of the 383 institutional investment managers, as listed in the Forms 13F. Based upon the address listed on each form, all of these managers appear to be from countries that are members of the World Trade Organization (“WTO”).

Wiley Rein attorneys and paralegals also looked at Forms N-Q filed by management investment companies under the Investment Company Act of 1940. With the help of Lexis-Nexis, we identified 177 N-Q filings by management investment companies reporting holdings of América Móvil securities for the quarter ending on or about September 30, 2006. Again, we went to the EDGAR database on the SEC’s website and collected the class and number of América Móvil securities held by each of the 177 management investment companies, as listed in the Forms N-Q. Based upon the address listed on each form, all of these investment companies appear to be from WTO Member countries.

Many of the América Móvil securities listed in both types of forms were identified as held in the form of American Depositary Shares (“ADS”), each representing the right to receive twenty shares of A or L stock. For purposes of calculation, we assumed that all securities described in the forms as ADS, depository receipts, sponsored shares, foreign shares or shortened forms of these descriptions referred to ADS. We multiplied the number of such securities listed on the forms by twenty to compute the number of individual shares held. (It is possible that other descriptions used on the forms also represent ADSs worth 20 shares, rather than individual shares, but to be conservative we counted other forms of descriptions as individual shares.)

In addition, for purposes of calculation, we assumed that the securities listed on the forms related to A and L shares, and not AA shares. América Móvil has previously reported to the Commission that AA shares are full voting shares, whose ownership is generally known and which are typically not offered on the public market.

Finally, in comparing the results of our review of both types of forms, we eliminated from our aggregate share counts any entries that, due to similar name and number of securities reported, might be duplicative.

Set forth below is a summary of our findings:

- Based upon its Information Statement in Connection with a Corporate Reorganization, filed with the SEC on November 29, 2006 (“Information Statement”),<sup>1</sup> as of October 31, 2006, América Móvil had the following capital structure: Series AA (full voting shares) – 10,910 million; Series A (full voting shares) – 575 million; Series L (limited voting shares) – 24,428 million. Together the shares in these classes totaled 35,913 million shares.
- Regarding the AA shares, as of October 31, 2006, América Telecom, S.A. de C.V. (“América Telecom”) owned 69.55 percent of these shares, SBC International, Inc. owned 26.30 percent of these shares and other known Mexican investors owned 4.15 percent of these shares. Thus, **all 10,910,000,000 shares of AA stock were held by investors known to be from WTO Member countries.**
- Regarding the A and L shares, as of October 31, 2006, América Telecom owned no A shares and 6,831,297,236 L shares. Further, América Telecom’s subsidiary, Corporativo Empresarial de Comunicaciones, S.A. de C.V. owned 211,249,500 L shares. Thus, collectively, **América Telecom and its subsidiary held 7,042,546,736 shares of L stock.**
- Our survey of Forms 13F as described above identified 7,834,315,262 shares of A or L stock that were held by institutional investment managers with listed addresses in WTO Member countries. Our survey of Forms N-Q identified 3,927,748,689 shares (3,971,566,529 shares adjusted downward to remove perceived possible duplication with reporting on Forms 13-F) of A or L stock that were held by management investment companies with listed addresses in WTO Member countries. Thus, **a total of 11,762,063,951 other shares of A and L stock were identified as being held by entities from WTO Member countries, based upon their listed addresses.**
- Therefore, based on the foregoing, **29,714,610,687 of the 35,913 million shares of all classes of América Móvil stock outstanding in the fall of 2006 were identified as being held by entities from WTO Member countries.** This was calculated by adding [10,910,000,000 shares of AA stock held by investors known to be from WTO Member countries] + [7,042,546,736 shares of L stock held by América Telecom and its subsidiary] + [11,762,063,951 shares of A and L stock gathered from Forms 13-F and N-Q and held by entities with listed addresses in WTO Member countries]. **This equals 82.72 percent of América Móvil stock.**

On February 15, 2007, América Telecom completed its merger with and into América Móvil. According to the Merger Exchange Notice to the Shareholders of América Telecom, filed with the SEC on January 17, 2007 (“Merger Exchange Notice”), as a result of the merger, 603 million L shares of América Móvil were canceled. The remaining shares held by América Telecom were canceled and reissued. Shareholders of América Telecom could exchange their América

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<sup>1</sup> The Information Statement relates to the merger of América Telecom with and into América Móvil, which is described below.

Telecom shares for shares in América Móvil pursuant to an exchange process that ended on February 15, 2007. Shareholders of América Telecom received shares of each of the series of shares of América Móvil proportionally to their holdings of América Telecom, but could request AA or L shares in different proportions. Fulfillment of such requests was subject to restrictions in América Móvil's bylaws concerning the nationality of the holders of AA shares (which América Móvil has previously explained).<sup>2</sup>

The merger of América Telecom into América Móvil does not significantly change the results of the analysis above as it still permits more than 75 percent of the stock of América Móvil to be identified as held by entities from WTO Member countries. Our analysis on this point is summarized below:<sup>3</sup>

- The cancellation of the 603 million L shares resulted in a change in the number of outstanding shares of América Móvil as follows: Series AA (full voting shares) – 10,910 million; Series A (full voting shares) – 575 million; Series L (limited voting shares) – 23,825 million. This totals 35,310 million outstanding shares.
- According to the Merger Exchange Notice, América Telecom and its subsidiary held a total of 7,587,453,264 AA shares and 7,042,546,736 L shares. As part of the merger, 603,143,698 L shares were cancelled, leaving América Telecom with a total of 14,026,856,302 total shares in América Móvil. América Móvil has also previously reported to the Commission that Mr. Carlos Slim Helú and certain members of his immediate family owned 82 percent of the equity of América Telecom. (This is confirmed as of October 31, 2006 by the Information Statement.). **Thus, Mr. Carlos Slim Helú and his family members are assumed to have received 82 percent of the shares of the exchanged shares of América Móvil or 11,502,022,168 shares.**
- As noted above, the remaining holders of AA shares – SBC International, Inc. (2,870 million shares) and known Mexican investors (453 million shares) – are from WTO Member countries. **Thus, 3,323,000,000 AA shares were held by other investors from WTO Member countries.**
- Also as noted above, our survey of Forms 13F identified 7,834,315,262 shares of class A or L stock that were held by institutional investment managers with listed addresses in WTO Member countries; our survey of Forms N-Q identified 3,927,748,689 shares of A or L stock that were held by management investment companies with listed addresses in WTO Member countries. **Thus, a total of 11,762,063,951 other shares of A and L stock could be identified as held by entities from WTO Member countries, based upon their listed addresses.**

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<sup>2</sup> The terms and effect of the merger are described in detail in filings with the FCC, including the Information Statement and the Merger Exchange Notice.

<sup>3</sup> The following calculations are based upon the limited information available in public filings, which preceded the actual exchange of shares by América Telecom's shareholders. As a result, the numbers in these calculations may differ from the calculations submitted by América Móvil in its contemporaneously-filed *ex parte* submission.

- **Therefore, even after the merger of América Telecom with and into América Móvil, 26,587,086,119 of the 35,310 million shares of all classes of América Móvil stock could be identified as held by entities from WTO Member countries.** This was calculated by adding [11,502,022,168 shares of exchanged stock Carlos Slim Helú and his family are assumed to have received] + [3,323,000,000 shares of AA stock held by other investors known to be from WTO Member countries] + [11,762,063,951 shares of A and L stock gathered from Forms 13-F and N-Q and held by entities with listed addresses in WTO Member countries]. **This equals 75.296 percent of América Móvil stock.**