

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

In re Applications of)
)
PUERTO RICO TELEPHONE)
COMPANY, INC.)
)
For AWS/PCS Licenses in Auction 78)
ULS File No. 0003574136)

**AMENDMENT TO
REQUEST FOR DECLARATORY RULING**

Puerto Rico Telephone Company, Inc. (“PRTC”) hereby submits this Amendment to its Request for Declaratory Ruling pursuant to section 310(b)(4) of the Communications Act of 1934, as amended,¹ (the “Communications Act”) and the *Foreign Participation Order*,² which accompanied PRTC’s above-captioned application to participate in Auction 78. The purpose of this Amendment is to provide the Commission with updated ownership information regarding PRTC’s ultimate parent company, América Móvil, S.A.B. de C.V. (“América Móvil”).³ As noted in the original Request for Declaratory Ruling, PRTC requests section 310(b)(4) authority to hold interests in the AWS license that it won in Auction 78.

Background. On July 16, 2008, and in connection with its Short Form Application in Auction 78 for AWS/PCS wireless licenses, PRTC submitted a Request

¹ 47 U.S.C. § 310(b)(4).

² *Rules and Policies on Foreign Participation in the U.S. Telecomms. Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 24,891 at ¶ 323 (1997) (“*Foreign Participation Order*”).

³ América Móvil ultimately owns and controls 100 percent of PRTC.

for Declaratory Ruling pursuant to section 310(b)(4) of the Communications Act and the *Foreign Participation Order*.⁴ Subsequently, PRTC was the high bidder on one AWS license in Auction 78.⁵ On September 9, 2008, PRTC submitted its Long Form Application, which included a copy of the Request for Declaratory Ruling.⁶ That Request noted that PRTC had already received a declaratory ruling to hold common carrier wireless licenses and that its ownership was largely unchanged since the issuance of that ruling.⁷

On June 23, 2010, PRTC's ultimate parent company, América Móvil, requested that the Commission issue a declaratory ruling that the revised foreign ownership of América Móvil in excess of the 25 percent benchmark set forth in section 310(b)(4) is in the public interest.⁸ América Móvil explained that, in connection with two separate but concurrent tender offers, it has put into circulation certain Class L shares of América

⁴ See Puerto Rico Telephone Company, FCC Form 175, File No. 0003477339 (filed Jul. 16, 2008).

⁵ See *Auction of AWS-1 and Broadband PCS Licenses Closes*, DA 08-1953, Report No. AUC-08-78-E, Public Notice, 23 FCC Rcd 12749 (rel. Aug. 25, 2008).

⁶ See Puerto Rico Telephone Company, FCC Form 601, ULS File No. 0003574136, Exhibit B – Foreign Ownership (filed Sept. 9, 2008). On October 10, 2008, the Commission issued a Public Notice announcing that PRTC's Long Form Application was accepted for filing. See *Wireless Telecommunications Bureau Announces that Applications for Advanced Wireless Services Licenses are Accepted for Filing*, DA 08-2286, Report No. AUC-78, Public Notice, 23 FCC Rcd 14895 (rel. Oct. 10, 2008).

⁷ See *Verizon Communications, Inc. and América Móvil, S.A. De C.V. Application for Authority to Transfer Control of TELPRI*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195 at ¶¶ 65-67 (2007) (“*TELPRI Order*”).

⁸ See América Móvil, S.A.B. de C.V., Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934 that Foreign Ownership in Excess of Twenty Five Percent is in the Public Interest, File No. ISP-PDR-20100623-00012 (filed Jun. 23, 2010) (“*América Móvil Petition*”); see also América Móvil, S.A.B. de C.V., Supplement to Petition for Declaratory Ruling, File No. ISP-PDR-20100623-00012 (filed Jun. 25, 2010).

Móvil’s stock (the “issuance”), thus increasing the amount of Class L shares outstanding and increasing the holdings of Mr. Carlos Slim Helú and certain members of his immediate family (“the Slim family”) in América Móvil.⁹ In light of this pending petition for declaratory ruling, PRTC hereby amends its Request for Declaratory Ruling filed in connection with Auction 78 to reflect these changes – discussed below – in América Móvil’s ownership.

Updated Ownership Information.

PRTC will acquire a 100 percent interest in the AWS license it won in the auction. As the 100 percent ultimate parent of PRTC, América Móvil would acquire a 100 percent indirect ownership interest in the AWS license. The organizational structure set forth below helps explain how and is unchanged since the filing of the original petition:

- PRTC is a wholly-owned operating subsidiary of Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”), a United States corporation organized under the laws of the Commonwealth of Puerto Rico.
- TELPRI is wholly owned by an entity named Tenedora Telpri, S.A. de C.V. (“Tenedora”). Tenedora is a corporation organized under the laws of Mexico. Tenedora is wholly owned and controlled (99.99 percent) by Radiomóvil Dipsa, S.A. de C.V. (“Telcel”).¹⁰
- Telcel is wholly owned and controlled (99.99 percent) by Sercotel, S.A. de C.V. (“Sercotel”).¹¹ Telcel is a corporation organized under the laws of Mexico, and is América Móvil’s main operating subsidiary in Mexico.

⁹ *América Móvil Petition* at pp. 1-2.

¹⁰ The qualifying share of Tenedora, representing 0.01 percent of its capital stock, is owned by Amov IV, S.A. de C.V. (“Amov IV”) (This share is referred to as a “qualifying share” due to a corporate law requirement in Mexico stipulating that this organizational form have at least two shareholders.). Amov IV is a holding company organized under the laws of Mexico, and is wholly owned and controlled (99.99 percent) by Sercotel, S.A. de C.V. The qualifying share of Amov IV is held by Telcel.

¹¹ The qualifying share of Telcel is owned by Amov IV.

- Sercotel, América Móvil's main holding company subsidiary, is wholly owned and controlled (99.99 percent) by América Móvil.¹² Both Sercotel and América Móvil are corporations organized under the laws of Mexico.

As noted by América Móvil in its *Petition*, América Móvil's ownership has recently changed slightly. In connection with two separate but concurrent tender offers commenced by América Móvil to acquire outstanding shares of Telmex International, S.A.B. de C.V. and Carso Global Telecom, S.A.B. de C.V. (the "Telmex Entities"), América Móvil issued on June 16, 2010 an amount of Class L shares equal to 42.21 percent of the Class L shares outstanding before the issuance, which represents 26.28 percent of the total equity of América Móvil before the issuance. The acquisition of the Telmex Entities was structured as tender offers made by América Móvil for the outstanding shares of the Telmex Entities, in exchange for which (i) tendering shareholders of Telmex International, S.A.B. de C.V. would receive cash or Class L shares of América Móvil, at the option of the tendering shareholder; and (ii) tendering shareholders of Carso Global Telecom, S.A.B. de C.V. would receive Class L shares of América Móvil. The period to participate in the tender offer expired on June 10, 2010, and 92.08 percent of the acceptances were tendered on that day.

As a result of the issuance of the Class L shares, the Slim family's equity holdings in América Móvil have increased from 32.4 percent immediately prior to the issuance to 40.18 percent. The voting percentage of the Slim family in América Móvil was 65.5 percent before the issuance and remains unchanged after the issuance, given that only shares with limited voting rights were issued.

¹² The qualifying share of Sercotel is owned by Amov IV.

In its *Foreign Participation Order*, the Commission found that “additional foreign investment can promote competition in the U.S. market,” and that “the public interest will be served by permitting more open investments by entities from World Trade Organization (“WTO”) member countries in U.S. common carrier wireless licenses.”¹³ In light of these findings, the Commission replaced its equivalent competitive opportunities analysis with a rebuttable presumption in favor of entry for applicants from WTO-member countries.¹⁴ The Commission has subsequently affirmed that policy on several occasions,¹⁵ including in its *TELPRI Order*.¹⁶

América Móvil remains a publicly traded corporation that is organized and headquartered in Mexico. A majority of its directors and officers are Mexican nationals, and its businesses in Mexico account for more revenue than its businesses from any other country. The majority of the voting shares of América Móvil are held by the Slim family, all of whom are Mexican citizens. Thus, under the “principal place of business” analysis adopted by the Commission in the *Foreign Carrier Entry Order*¹⁷ and affirmed in the

¹³ *Foreign Participation Order*, 12 FCC Rcd 23,891 ¶ 111.

¹⁴ *Id.* ¶ 50.

¹⁵ *See, e.g., Aerial Communications, Inc. et al.*, Memorandum Opinion and Order, 15 FCC Rcd 10089 (IB/WTB 2000) at ¶ 9 (when analyzing proposed foreign investment in common carrier licensees, the Wireless and International Bureaus are “guided ... by the U.S. Government’s commitment under the World Trade Organization (“WTO”) Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition”); *VoiceStream Wireless Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 3341, 3348 ¶ 16 (2000) (there is a “strong presumption that no competitive concerns are raised by ... indirect foreign investment[s]” from WTO member countries).

¹⁶ *TELPRI Order*, 22 FCC Rcd 6195 at ¶¶ 65-68.

¹⁷ *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 ¶¶ 199-208 (1995) (“Therefore, in determining an alien entity’s home market for purposes of our public interest determination under Section 310(b)(4), we will identify: (1) the country of its incorporation, organization, or charter; (2) the nationality

Foreign Participation Order,¹⁸ it is clear that América Móvil’s “home market” is Mexico. As such, América Móvil remains entitled to the presumption in favor of entry.

Following the issuance of the Class L shares, approximately 96.66 percent of América Móvil’s full voting shares are held by Mexican or U.S. citizens. As noted above, the Slim family holds 65.5 percent of the voting shares. Other Mexican investors hold approximately 7.49 percent of the voting shares, and AT&T, Inc. (“AT&T”) holds 23.67 percent of the voting shares through a Mexican trust which effectively neutralizes the AT&T vote. With respect to América Móvil’s equity ownership, 40.18 percent of the equity is held by the Slim family following the issuance of the Class L shares, and 8.93 percent of the equity is held by AT&T. Moreover, as the Commission noted in the *TELPRI Order*, to the extent that certain foreign voting and equity interests in TELPRI are unidentified, such interests consist largely of América Móvil’s Class L shareholders.

The Commission further observed that:

These shareholders have the right to elect only two members (representing a minority) of América Móvil’s board of directors, and have the right as a group to block only certain significant corporate actions to protect their investments. We thus find that the corporate governance of América Móvil is structured to prevent these shareholders from dominating the management of corporate affairs and to minimize their influence. While these shareholders as a group represent more than half the equity investment in América Móvil, the limits placed on their ability to influence management mitigates our

of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. If all five of these factors indicate that the same country should be considered to be the entity’s home market, it will be presumed to be so, subject only to rebuttal based on clear and convincing evidence to the contrary.”).

¹⁸ *Foreign Participation Order* ¶ 116.

concern in this case with the level of unidentified non-U.S., non-Mexican foreign ownership.¹⁹

Thus, the updated foreign ownership of PRTC is consistent with the public interest and the relevant precedent for declaratory rulings under section 310(b)(4).

Conclusion. For the reasons stated herein, PRTC respectfully requests section 310(b)(4) authority to hold interests in the AWS license that PRTC won in Auction 78.

Respectfully submitted,

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¹⁹ *TELPRI Order* ¶ 63.