

EXHIBIT B: FOREIGN OWNERSHIP

Pursuant to Attachment E of the Closing Public Notice in Auction 78,¹ Puerto Rico Telephone Company, Inc. (“Applicant”) hereby submits a copy of its request for a foreign ownership ruling pursuant to section 310(b)(4) of the Communications Act of 1934, as amended. The request for a foreign ownership ruling was filed with the Applicant’s Short-Form Application, which was submitted on July 16, 2008 (*see* File No. 0003477339).

¹ Public Notice, *Auction of AWS-1 and Broadband PCS Licenses Closes*, DA 08-1953 (rel. Aug. 25, 2008), Attachment E (“Instructions for Competing FCC Form 601 and FCC Form 602”), at E-8.



Auctions

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Applicant: **Puerto Rico Telephone Company, Inc.**
Resubmission Filing Closes: **07/17/2008 6:00 PM (ET)**
Status: **Submitted**

Auction 78

AWS-1 & Broadband PCS

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Auction Application Submit Confirmation

Your Auction Application has been received on 7/16/2008 at 3:23 PM. Your file number is 0003477339. Please [print](#) your application for your records.

AUCTION APPLICATION MANAGER

[▶ Upfront Payment Calculator/Form 159](#)

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Common Questions

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

In re Application of)
)
PUERTO RICO TELEPHONE)
COMPANY, INC.)
)
For AWS/PCS Licenses in Auction 78)

**REQUEST FOR DECLARATORY RULING
(REVISED)**

Puerto Rico Telephone Company, Inc. (“PRTC”) hereby submits this 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 to accompany its application in Auction 78 for Advanced Wireless Services (“AWS”) and broadband Personal Communications Services (“PCS”) licenses. PRTC requests that the Commission find that PRTC’s current section 310(b)(4) authority to hold interests in common carrier radio (or wireless) licenses also applies to any such licenses that PRTC may acquire in Auction 78. Alternatively, PRTC requests that the Commission extend its section 310(b)(4) authority to hold interests in common carrier radio licenses to include licenses that PRTC may acquire in Auction 78.

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, 24,033 at ¶ 323 (1997) (“*Foreign Participation Order*”).

Just over a year ago this Commission reviewed and approved América Móvil, S.A.B. de C.V.'s ("América Móvil's") ownership interest in PRTC, as well as América Móvil's qualifications (as a foreign corporation based in a WTO Member country) to hold indirect interests in common carrier radio licensees, pursuant to section 310(b)(4) of the Communications Act.³ Additionally, the Commission imposed on PRTC an ongoing obligation to apprise the Commission of certain changes in ownership of its stock to ensure consistency with the public interest.⁴ No material changes have occurred in PRTC's Mexican foreign ownership since the Commission granted the previous authorizations.⁵ Thus, the AWS/PCS licenses that PRTC may acquire through the upcoming auction raise no new foreign ownership issues that this Commission has not already addressed. For this reason, the Commission should either find that PRTC's existing section 310(b)(4) public interest finding in the *TELPRI Order* covers any AWS/PCS licenses PRTC wins, or alternatively extend such finding to include the AWS/PCS licenses.

I. THE COMMISSION'S RECENT RULING ON FOREIGN OWNERSHIP UNDER SECTION 310(b)(4) SHOULD APPLY TO ANY AWS/PCS LICENSE PRTC MAY ACQUIRE.

This Commission recently reviewed PRTC's foreign ownership and granted América Móvil, a company organized under the laws of Mexico, authority to hold a 100

³ See *Verizon Communications Inc., Transferor, and América Móvil S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, Mem. Op. & Order & Decl. Ruling, 22 FCC Rcd 6195, at ¶¶ 59, 61-63 & 68 (2007) ("*TELPRI Order*").

⁴ See *TELPRI Order* at ¶¶ 65-66.

⁵ This excludes typical day-to-day stock transactions in the open market that effectively change "ownership" but do not trigger any of the conditions imposed on PRTC by the Commission.

percent indirect ownership interest in PRTC and its common carrier radio licenses and section 214 authorizations. Specifically, on March 26, 2007, in *Verizon Communications, Inc. and América Móvil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, the Commission determined that “public interest considerations weigh[ed] in favor of approving, with conditions, the Transfer of Control Application and the proposed foreign ownership” of PRTC and its United States parent company, Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”).⁶

In making this determination, the Commission made certain threshold determinations about the foreign ownership and control of América Móvil and whether it qualified as a foreign investor from a WTO country. Specifically, the Commission found that (1) América Móvil and its indirect subsidiaries (that are detailed in the next section) have their principal places of business in Mexico; (2) the shares held in América Móvil by Mexican citizens constitute 95 percent of América Móvil’s full voting shares and that the majority interest in these shares is held by Mr. Carlos Slim Helú and members of his immediate family, all of whom are Mexican citizens; and (3) Mr. Slim exercises control of América Móvil.⁷ Further, the Commission found that the unidentified foreign equity and voting interests in América Móvil largely consisted of Class L shareholders, that have the right to elect only two of América Móvil’s board of directors and have voting rights limited to the ability to vote as a group to block only certain significant corporate

⁶ *TELPRI Order* at ¶ 61.

⁷ *Id.* at ¶ 62.

actions to protect their investments.⁸ Thus, the influence of these shareholders is insulated and minimized.

Based on these findings, the Commission concluded that América Móvil is a Mexican-controlled company and that América Móvil's 100 percent indirect ownership of PRTC (and its common carrier radio licenses and section 214 authorizations) is consistent with the public interest.⁹ To ensure that América Móvil continues to have its principal place of business in Mexico or another WTO Member country and is managed by Mexican or other WTO Member citizens, the Commission imposed certain conditions: (1) that América Móvil obtain prior Commission approval, pursuant to section 310(b)(4), before the company goes private, or otherwise issues or causes to be issued, directly or indirectly, as a result of any share repurchase, redemption, or other recapitalization, securities that would represent more than five percent of its equity or voting interests; and (2) that América Móvil notify the Commission within 10 days of notification to the company that a person has acquired through one or a series of transactions, directly or indirectly, the beneficial ownership of securities that would represent more than five percent of any class of equity security of the company.¹⁰ América Móvil has complied and will continue to comply with these conditions.

PRTC files this Petition to accompany the short-form application that it submitted to participate in the upcoming Auction 78 and to potentially acquire additional common

⁸ *Id.* at ¶¶ 59, 61-63 & 68.

⁹ *Id.* at ¶ 62.

¹⁰ *Id.* at ¶¶ 65-66. In addition, the grant of the Section 310(b)(4) declaratory ruling was also subject to the requirement that the equity and/or voting interests of Mr. Slim and members of his immediate family not exceed, without prior Commission approval, an aggregate three percent above the levels they held upon closing of the merger between América Móvil and América Telecom, S.A.B. de C.V. *Id.* at ¶ 67. América Móvil has complied and will continue to comply with this requirement.

carrier wireless licenses. PRTC submits that the Commission need not issue a declaratory ruling, given the agency's prior section 310(b)(4) ruling approving PRTC's current foreign ownership and the existing commitment imposed by the Commission to ensure foreign ownership remains consistent with the public interest. Nonetheless, should the Commission determine that a new declaratory ruling is necessary, PRTC hereby requests such a ruling to extend its current section 310(b)(4) authority to hold interests in potential AWS/PCS licenses that PRTC may acquire through the upcoming auction.

II. ALTERNATIVELY, THE COMMISSION SHOULD EXTEND ITS RECENT RULING ON PRTC'S FOREIGN OWNERSHIP TO INCLUDE ANY AWS/PCS LICENSE PRTC MAY ACQUIRE.

In the event that PRTC is the winning bidder for licenses in the upcoming AWS/PCS auction, PRTC will acquire a 100 percent interest in any AWS/PCS licenses it acquires through the auction. In turn, América Móvil – the parent company that ultimately owns and controls 100 percent of PRTC – also would acquire a 100 percent indirect ownership interest in the AWS/PCS licenses. The organizational structure set forth below helps explain how:

- PRTC is a wholly owned operating subsidiary of 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”).¹¹

¹¹ 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.

- Telcel is wholly owned and controlled (99.99 percent) by Sercotel, S.A. de C.V. (“Sercotel”).¹² Telcel is a corporation organized under the laws of Mexico, and is América Móvil’s main operating subsidiary.
- Sercotel, América Móvil’s main holding company subsidiary, is wholly owned and controlled (99.99 percent) by América Móvil.¹³ Both Sercotel and América Móvil are corporations organized under the laws of Mexico.

In the *TELPRI Order*, the Commission found that Sercotel, Telcel and Tenedora have their principal places of business in Mexico, a WTO member.¹⁴ América Móvil is a publicly traded corporation organized under the laws of and headquartered in Mexico. A majority of its directors and officers are Mexican citizens,¹⁵ and its businesses in Mexico account for more revenue than its businesses in any other country. Mr. Slim and certain members of his immediate family (all of whom are Mexican citizens) directly and indirectly hold approximately a 33 percent equity interest and a 66 percent voting interest in América Móvil.¹⁶ There are no other beneficial owners of a 10 percent or greater equity interest in América Móvil. Aggregating the full voting shares held directly and indirectly by Mr. Slim and certain members of his immediate family, the full voting

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

¹³ The qualifying share of Sercotel is owned by Amov IV.

¹⁴ See *TELPRI Order* at ¶¶ 52, 62. The facts underlying this finding have not materially changed.

¹⁵ Pursuant to América Móvil’s by-laws, a majority of its directors must be Mexican citizens and elected by Mexican stockholders.

¹⁶ Although no individual member of the Slim family directly or indirectly owns a 10% or greater equity interest in América Móvil, the controlling interest in América Móvil’s shares is held by the Slim family, as the Commission has acknowledged. *TELPRI Order* at ¶ 62 (2007).

shares held by AT&T, Inc.¹⁷ and the full voting shares held by other Mexican investors, Mexican citizens hold approximately 95 percent of América Móvil's full voting shares.

As described in Section I above, based on materially the same facts demonstrating that Mexico is the relevant home market or principal place of business for the section 310(b)(4) analysis of "entry" into the U.S. market by América Móvil and its subsidiaries, the Commission recently granted América Móvil the authority to hold a 100 percent indirect ownership interest in PRTC and its common carrier wireless licenses and section 214 authorizations.¹⁸ In doing so, the Commission found that "the public interest ... warrant[s] grant of this transaction."¹⁹ No material changes have occurred in PRTC's Mexican foreign ownership since that authorization was granted. Accordingly, the instant petition seeks a declaratory ruling extending PRTC's current section 310(b)(4) authority to hold interests in potential AWS/PCS licenses that PRTC may acquire through the upcoming auction.

III. PUBLIC INTEREST STATEMENT

The public interest will be served if the Commission extends PRTC's current section 310(b)(4) authority to hold interests in common carrier radio licenses to encompass the potential AWS/PCS licenses that PRTC may acquire in the upcoming auction. In the *Foreign Participation Order*, the Commission concluded that allowing additional foreign investment in common carrier wireless licensees beyond the 25 percent benchmark of section 310(b)(4) will promote competition in the U.S. market, thereby

¹⁷ AT&T Inc.'s 24.5 percent of outstanding Class AA shares of América Móvil is held through a Mexican trust, which requires that the shares be voted in the same manner as the majority of the outstanding Class AA shares.

¹⁸ See *TELPRI Order* at ¶¶ 61-63, 68.

¹⁹ *Id.* at ¶ 59.

serving the public interest.²⁰ The Commission, therefore, adopted a presumption in favor of allowing such investment if the investment is from entities organized under the laws of WTO Member countries.²¹ As the Commission recently concluded, América Móvil is primarily controlled by investment from Mexico, a WTO Member country.²²

This Commission has already determined that the public interest would be served by allowing América Móvil to hold up to a 100 percent indirect ownership interest in PRTC and its common carrier wireless licenses and section 214 authorizations.²³ The same public interest rationale that applied in that decision should apply with equal force to the AWS/PCS licenses that PRTC may acquire in the upcoming auction. The Commission should therefore issue a declaratory ruling extending PRTC's section 310(b)(4) authority to acquire these licenses, to the extent such extension of authority is needed.

IV. SECURITY AGREEMENT

PRTC notes that it is subject to a Security Agreement between, inter alia, TELPRI and the U.S. Department of Justice and Homeland Security, effective as of December 15, 2006 and attached to the FCC Memorandum Opinion and Order and Declaratory Ruling of March 26, 2007 in WT Docket No. 06-113. PRTC, TELPRI, and América Móvil hereby acknowledge that the Security Agreement, by its terms, will apply to any licenses acquired by PRTC in this auction, as well as to the facilities constructed with respect to

²⁰ *Foreign Participation Order* at ¶ 111.

²¹ *Id.* at ¶¶ 50, 111-12.

²² *See TELPRI Order* at ¶¶ 61-62.

²³ *Id.* at ¶¶ 59, 61-63 & 68.

and services provided using the licenses, once PRTC begins to provide service over the spectrum covered by the licenses.

V. CONCLUSION

For the reasons stated herein, and to the extent necessary, PRTC respectfully requests that the Commission extend its current section 310(b)(4) authority to hold interests in common carrier wireless licenses and section 214 authorizations to encompass the AWS/PCS licenses that PRTC may acquire in the upcoming auction.

Respectfully submitted,

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