

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
Puerto Rico Telephone Authority,
Transferor,
and
GTE Holdings (Puerto Rico) LLC,
Transferee,
For Consent to Transfer Control of
Licenses and Authorization Held by
Puerto Rico Telephone Company and
Celulares Telefónica, Inc.

File Nos. 03373 - 03384-CL-TC-98
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MEMORANDUM OPINION AND ORDER

Adopted: February 12, 1999

Released: February 12, 1999

By the Commission: Commissioner Furchtgott-Roth concurring in part with a separate statement to be released later.

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## I. INTRODUCTION

1. In this Order, we consider the applications filed by Puerto Rico Telephone Authority (PRTA) and GTE Holdings (Puerto Rico) LLC (GTE Holdings) pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended ("the Act"),<sup>1</sup> for approval to transfer control of certain wireless telecommunications licenses<sup>2</sup> and an authorization to provide international resale service held by PRTA's wholly-owned subsidiaries, Puerto Rico Telephone Company (PRTC) and Telefónica de Puerto Rico, Inc. (TPRI), from PRTA to GTE Holdings, which is a wholly-owned subsidiary of GTE Corporation (GTE).<sup>3</sup>

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<sup>1</sup> 47 U.S.C. §§ 214, 310(d).

<sup>2</sup> The licenses for which the parties seek approval to transfer control are listed in Appendix A.

<sup>3</sup> Applications of GTE Holdings (Puerto Rico) LLC for Transfers of Control of the Radio Licenses Held by the Puerto Rico Telephone Company, filed July 24, 1998 ("Radio License Applications"); Application of GTE Holdings (Puerto Rico) LLC and Puerto Rico Telephone Authority for Transfer of Control of International Section 214

In accordance with the terms of sections 214(a) and 310(d), PRTA and GTE Holdings (collectively, Applicants) must demonstrate that the transfer of the subject licenses and authorization will serve the public interest, convenience, and necessity.<sup>4</sup> For the reasons set forth below, we conclude that the Applicants have met their burden, and accordingly we grant their applications for transfer of control.

## II. BACKGROUND

### A. The Applicants

2. PRTA is an instrumentality of the Commonwealth of Puerto Rico ("Government").<sup>5</sup> PRTA wholly owns PRTC, which is Puerto Rico's leading provider of telecommunications services, including local exchange, intra-island long distance, wireless, and Internet access services, in both business and residential markets.<sup>6</sup> PRTC serves more than 1.3 million access lines, more than 155,000 cellular subscribers, and more than 237,000 paging customers.<sup>7</sup> In addition to its cellular and paging licenses, PRTC holds licenses in Puerto Rico in the personal communications service (PCS), narrowband rural radiotelephone, common carrier point-to-point microwave, digital electronic messaging, telephone maintenance and private carrier paging, and fixed satellite services.

3. GTE Holdings is a wholly-owned subsidiary of GTE.<sup>8</sup> Through various subsidiaries and affiliates, GTE provides local telephone service to more than 21.5 million access lines in 28 states.<sup>9</sup> It is a leading cellular, PCS, and paging operator, with the potential to serve 61.3 million wireless customers in 17

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Authorization, filed September 2, 1998 ("Section 214 Application") (collectively, the "Applications").

<sup>4</sup> See Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 19987, ¶¶ 29-36 (1997) (*BA-NYNEX Order*); Merger of MCI Communications Corp. and British Telecommunications PLC, GN Docket No. 96-245, *Memorandum Opinion and Order*, 12 FCC Rcd 15351, 15353, ¶ 2 (1997) (*BT-MCI Order*).

<sup>5</sup> Radio License Applications at 3. In addition to its ownership of PRTC, PRTA owns 100 percent of the stock of TPRI, 85.1 percent of the stock of Telecomunicaciones Ultramarines de Puerto Rico, Inc., which holds international and domestic fixed earth station and point-to-point telegraph and telephone station licenses, and approximately 19 percent of the stock of Telefónica Larga Distancia ("TLD"), a provider of off-island interstate and international service that is majority-owned by Telefónica Internacional, S.A. GTE Holdings is acquiring control only of PRTC. *Id.* at i, fn1.

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

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

<sup>8</sup> *Id.* at 1. We note that GTE Corporation has filed applications in connection with a proposed merger with Bell Atlantic.

<sup>9</sup> *Id.* at 5.

states.<sup>10</sup> GTE also offers nationwide long distance and international services and provides competitive local exchange service in several states.<sup>11</sup> GTE also operates in foreign markets, providing telecommunications services generally in Canada, Venezuela, Argentina, and the Dominican Republic, and paging services in China.<sup>12</sup> GTE does not offer telecommunications service within Puerto Rico, and does not own an attributable interest in any license to provide cellular, PCS, covered SMR or Part 22 paging services in Puerto Rico.<sup>13</sup> GTE Holdings has certified in its application that prior to the present transaction, GTE did not intend to compete in telecommunications service markets in Puerto Rico.<sup>14</sup> Compañía Dominicana de Teléfonos, a wholly-owned subsidiary of GTE Holdings operating under the name GTE International, does employ approximately 13 people in Puerto Rico selling microwave and private branch exchange equipment.<sup>15</sup>

## B. The Proposed Transaction

4. The proposed transfers of control are to proceed as part of a multi-step transaction. First, on September 1, 1998, PRTC was divided into two new companies, Celulares Telefónica, Inc. (CTI) and PRTC Merger Company, Inc. (PRTC), each of which is a wholly-owned subsidiary of PRTA.<sup>16</sup> PRTC's cellular, PCS, paging, and satellite earth station licenses were assigned to CTI on the same date.<sup>17</sup> Second, immediately prior to the transfer of control to GTE Holdings, PRTA will form a new wholly-owned subsidiary, Telecomunicaciones de Puerto Rico, Inc. (TELPRI), which will wholly own PRTC and CTI.<sup>18</sup> These transactions together constitute a *pro forma* reorganization.

5. Following the reorganization described above, GTE Holdings will initially acquire 51 percent plus one share of TELPRI's stock from PRTA for \$443.7 million, thus giving GTE Holdings 51

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

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 6, fn 9; Letter from Nancy J. Victory, counsel for GTE Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed February 12, 1999, at 1 ("GTE Holdings February 12, 1999 Letter").

<sup>14</sup> Radio License Applications at 26.

<sup>15</sup> *Id.* at 6, fn 9.

<sup>16</sup> Letter from Nancy J. Victory, counsel for GTE Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed February 5, 1999, at 1 ("GTE Holdings February 5, 1999 Letter"). PRTC Merger Company, Inc. will later be renamed Puerto Rico Telephone Company, Inc. Radio License Applications at 9. In this order, references to PRTC in the context of events occurring before the proposed transaction refer to the old Puerto Rico Telephone Company, and references to PRTC in the context of events occurring after the transaction is completed refer to the new Puerto Rico Telephone Company, Inc.

<sup>17</sup> Letter from Carmen Ana Culpeper, Executive Director, PRTA, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed September 18, 1998.

<sup>18</sup> Radio License Applications at 9-10.

percent plus one share indirect ownership of CTI and the new PRTC.<sup>19</sup> TELPRI or its subsidiaries will also "borrow \$1.565 billion in the financial markets, which will be raised without any credit support by GTE Holdings and the Government and will be paid as a special dividend to the Government."<sup>20</sup> Because GTE Holdings will assume partial responsibility for this debt when it acquires part ownership of TELPRI, the debt effectively increases the purchase price GTE Holdings will pay to PRTA.

6. Finally, through various financial mechanisms, a portion of the TELPRI shares held by both GTE Holdings and PRTA will be conveyed to Popular, Inc. (Popular),<sup>21</sup> several private investors not affiliated with the Government, and a "newly created PRTC employee stock ownership plan and trust."<sup>22</sup> At the conclusion of the proposed transaction, GTE Holdings, through its partial ownership of TELPRI, will own approximately 40 percent of PRTC and CTI, and PRTA will retain approximately 45 percent ownership of the companies.<sup>23</sup> GTE Holdings, however, will exercise control over the companies through several mechanisms.<sup>24</sup> Among other things, GTE Holdings will be entitled to elect five of nine TELPRI directors, thus giving it the ability to name the senior officers of TELPRI and its subsidiaries.<sup>25</sup> Additionally, a shareholder agreement among GTE Holdings, Popular, and the local investors will give GTE Holdings certain powers, and GTE Holdings has entered into a management agreement with TELPRI and PRTC to take effect after the transaction is completed.<sup>26</sup> GTE Holdings, Popular, and the local

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<sup>19</sup> *Id.* at 3, 11-12.

<sup>20</sup> *Id.* at 3. It appears that this amount, less transaction costs and an estimate of taxes payable, plus any cash or cash equivalents on hand of TELPRI and its subsidiaries, will be paid at closing as a dividend from TELPRI to PRTA. *See* Amended and Restated Stock Purchase Agreement, dated July 21, 1998 (Exhibit A to the Radio License Applications) (Sale Agreement) at section 1.03 and Appendix A (definition of "Dividend Amount").

<sup>21</sup> Popular is the holding company of Banco Popular de Puerto Rico, Puerto Rico's largest financial institution. Radio License Applications at 3.

<sup>22</sup> *Id.* at 3-4, 12-13.

<sup>23</sup> *Id.* at 4, 13. At the closing of the acquisition or shortly thereafter, the TELPRI shares retained by PRTA will be transferred to a newly created government instrumentality organized as a subsidiary of the Government Development Bank of Puerto Rico. *Id.* at 13 n.13. For convenience, we refer to this future entity as "PRTA."

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 4 n.5; GTE Holdings, February 5, 1999 Letter at 2; *see* Shareholders Agreement, § 2.1 (filed as an Attachment to the GTE Holdings, February 5, 1999 Letter). GTE Holdings states that it intends to name the chief executive officer of PRTC. Radio License Applications at 4. GTE Holdings' power is, however, limited by provisions requiring unanimous consent of the directors named by PRTA or approval by PRTA for certain major actions or actions directly affecting PRTA's interests, so long as PRTA and other entities of the Government of Puerto Rico own at least 10 percent of TELPRI's outstanding shares. *See* Shareholders Agreement, §§ 2.2, 2.3. PRTA is initially given the right to name three of TELPRI's directors, although that number will decrease as PRTA's ownership interest diminishes. Shareholder's Agreement, § 2.1.

<sup>26</sup> Radio License Applications at 4-5. CTI is not specifically a party to the agreement. However, because its direct parent is, the agreement may be interpreted as encompassing the provision of management services to CTI's wireless business. Letter from Nancy J. Victory, counsel for GTE Holdings, to Magalie Roman Salas, Secretary,

investors will also have an option to purchase additional TELPRI stock from PRTA at a fixed price within three years of the closing date, and PRTA will have a right to sell its shares through private placement or public offering.<sup>27</sup> The parties anticipate that PRTA will begin reducing its remaining interest in TELPRI beginning 18 months after closing in order to raise funds to finance obligations of the Government's retirement system.<sup>28</sup>

7. In addition to the transfer of control of wireless licenses held by PRTC and CTI, the parties also request approval to transfer control to GTE Holdings of an international switched resale section 214 authorization that the International Bureau has authorized for assignment from PRTA's subsidiary TPRI to CTI.<sup>29</sup> GTE Holdings agrees to accept control of this authorization, subject to all current and future Commission regulations, as well as the reporting conditions specified in the order granting TPRI its international section 214 authorization.<sup>30</sup>

### C. Regulatory and Legal History

8. On August 4, 1997, the Legislature of Puerto Rico passed Act No. 54, which authorized PRTA to establish a committee whose sole function was to divest PRTA's assets. The committee recommended the sale of PRTC to GTE, and PRTA entered into an agreement with GTE Holdings.<sup>31</sup> On June 23, 1998, the contract between GTE Holdings and PRTA for the acquisition of PRTC received the last of the necessary approvals from Puerto Rico's legislature, and the contract was approved by the Governor of Puerto Rico on June 24, 1998.<sup>32</sup>

9. On June 25, 1998, Telefónica Internacional, S.A., the parent company of Telefónica Larga Distancia de Puerto Rico, Inc. (TLD), submitted a competing bid for PRTC. The committee evaluated this proposal against GTE Holdings' bid, obtained an enhanced offer from GTE Holdings, and again recommended acceptance of GTE Holdings' bid.<sup>33</sup> The Governor approved the Sale Agreement on July 21, 1998.<sup>34</sup>

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Federal Communications Commission, filed February 10, 1999, at 1 n.2 ("GTE Holdings February 10, 1999 Letter").

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at ii, 5.

<sup>29</sup> Public Notice, "Overseas Common Carrier Section 214 Applications; Actions Taken," DA 98-1759 (Int. Bur. rel. Sept. 3, 1998).

<sup>30</sup> Section 214 Application at 2. *See* Telefónica de Puerto Rico, Inc., *Order, Authorization and Certificate*, 13 FCC Rcd 12344 (Int. Bur. 1998) (*TPRI Order*). *See also* ¶ 38, *infra*.

<sup>31</sup> *See* GTE Consolidated Opposition at 14-15.

<sup>32</sup> *See* Radio License Applications at i, ii.

<sup>33</sup> *See* GTE Consolidated Opposition at 15.

<sup>34</sup> *See* Radio License Applications at ii.

10. The parties submitted a filing with the United States Department of Justice (DOJ) as part of the pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.<sup>35</sup> On August 19, 1998, DOJ granted the parties' request for early termination of the waiting period, thus concluding the DOJ review process.<sup>36</sup> GTE Holdings has also requested certification as a common carrier from the Puerto Rico Telecommunications Regulatory Board (PRTRB). GTE Holdings states that it expects approval of this application by the end of the month.<sup>37</sup>

11. On July 24, 1998, PRTA, PRTC, and GTE Holdings filed applications with the Commission to transfer control of PRTC's radio licenses to GTE Holdings. On September 2, 1998, GTE Holdings and PRTA filed an additional application to transfer control of TPRI's international section 214 authorization. Eight parties, including providers of on-island and off-island telecommunications services in Puerto Rico, associations of such carriers, and representatives of labor and management interests, filed timely formal comments on the applications, petitions to deny the applications, or petitions to condition grant of the applications. These parties assert that the proposed transfer of control of the licenses and authorization to GTE Holdings is not in the public interest, and therefore that we should either deny or condition our approval of the proposed transaction.<sup>38</sup>

### III. LEGAL STANDARDS

12. Under section 214(a) of the Communications Act, subject to certain exceptions and provisos that are not relevant here, no carrier may acquire or operate any line, or engage in transmission by means of a line, unless and until it first obtains from the Commission a certificate of public convenience and necessity.<sup>39</sup> Section 310(d) provides, in pertinent part, that "[n]o construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."<sup>40</sup>

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<sup>35</sup> 15 U.S.C. § 18a.

<sup>36</sup> GTE Holdings February 5, 1999 Letter at 2.

<sup>37</sup> *Id.*

<sup>38</sup> The formal pleadings filed in this proceeding, along with short form citations, are listed in Appendix B. In addition to these formal pleadings, we received over 100 informal comments, many of them from residents of Puerto Rico. We have given all the formal and informal comments full consideration. We also note that the ABETG/Vizcarrondo Public Hearing Petition and the ABETG/Vizcarrondo Response filed on December 1 and 2, 1998, respectively, were not timely filed. Nonetheless, we will consider these pleadings and the responses to them in order to fully address the parties' concerns.

<sup>39</sup> 47 U.S.C. § 214(a).

<sup>40</sup> 47 U.S.C. § 310(d).

13. As we explained in the recent *WorldCom-MCI Order*, before the Commission can approve the transfer of control of authorizations and licenses in connection with a proposed merger or acquisition, sections 214(a) and 310(d) require the Commission to find that the proposed transfers will serve the public interest.<sup>41</sup> Thus, at a minimum, we must find that the proposed transaction will not interfere with the objectives of the Communications Act.<sup>42</sup> To determine whether the proposed transaction will be in the public interest, we must weigh the potential public interest harms of the transaction against the potential public interest benefits, including an evaluation of the possible competitive effects of the transfer.<sup>43</sup> Applicants bear the burden of proving that the transaction, on balance, will serve the public interest. Where necessary, the Commission can attach conditions to the transfer of authorizations or licenses to ensure that the public interest is served by the transaction.<sup>44</sup>

#### IV. ANALYSIS OF POTENTIAL PUBLIC INTEREST HARMS

##### A. Potential Competitive Harms

###### 1. Analytical Framework

14. In conducting our public interest analysis of competitive conditions in markets affected by the proposed transaction, we apply the analytical framework we have used in our decisions approving the mergers of Bell Atlantic and NYNEX ("BA-NYNEX"), British Telecommunications and MCI Communications Corp. ("BT-MCI"), and WorldCom, Inc. and MCI Communications Corp. ("WorldCom-MCI").<sup>45</sup> All of these orders followed the approach used in the *LEC In-Region Interexchange Order*,<sup>46</sup> where we found the DOJ and Federal Trade Commission 1992 Horizontal Merger Guidelines<sup>47</sup> to be a useful analytical tool for evaluating the likely competitive effects of mergers and acquisitions. Our

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<sup>41</sup> Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, *Memorandum Opinion and Order*, 13 FCC Rcd. 18025, 18030-32, ¶¶ 8-14 (1998) (quoting 47 U.S.C. § 214(a)) (*WorldCom-MCI Order*).

<sup>42</sup> *Id.* at 18030-31, ¶ 9.

<sup>43</sup> *Id.* (quoting *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953)).

<sup>44</sup> *Id.* (quoting 47 U.S.C. § 214(c), 47 U.S.C. § 303(r)).

<sup>45</sup> *BA-NYNEX Order*, 12 FCC Rcd. at 20000-01, 20007, ¶¶ 29, 36; *BT-MCI Order*, 12 FCC Rcd. at 15367, ¶ 33; *WorldCom-MCI Order*, 13 FCC Rcd. at 18035-39, ¶¶ 15-22; see also Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd. 8891, 8898, ¶ 12 (WTB 1997).

<sup>46</sup> Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 960149 & 96-61, *Second and Third Reports and Order*, 12 FCC Rcd. 15756 (1997) (*LEC In-Region Interexchange Order*).

<sup>47</sup> *Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992), 57 Fed. Reg. 41552 (Sept. 10, 1992).



framework is designed to ensure that our assessment of the competitive effects of a merger is based on generally accepted economic principles relating to market analysis.<sup>48</sup>

15. Under this analytical framework, we begin our analysis of potential anticompetitive effects by defining the relevant product and geographic markets. We then identify the market participants in those relevant markets, particularly those firms that are most likely to have substantial future competitive significance. Next, we consider whether the transaction is likely to result in either unilateral or coordinated effects that create, maintain, or enhance market power in the relevant markets. We also consider whether the transaction will impair our ability to implement and enforce the Communications Act's provisions to promote the opening of markets and constrain the anticompetitive exercise of market power as competition develops.<sup>49</sup> Any potential anticompetitive effects that we find will ultimately be balanced against the potential benefits to determine whether the proposed transaction will be in the public interest.<sup>50</sup>

16. As discussed above, PRTC is Puerto Rico's leading provider of telecommunications services, including local exchange, intra-island long distance, wireless and Internet access services, in both business and residential markets. Through various subsidiaries and affiliates, GTE provides local telephone services, wireless services, and nationwide long distance services. In several states, GTE provides competitive local exchange services. GTE also operates internationally, providing telecommunications services in Canada, Venezuela, Argentina, the Dominican Republic, and China. GTE does not offer telecommunications service within Puerto Rico.<sup>51</sup>

17. The parties opposing the acquisition on competitive grounds raise issues concerning the future state of competition in markets for three general groups of services -- local exchange and exchange access services, domestic long distance services, and international services. All of the allegations concerning the possible competitive effects of the proposed acquisition focus on the provision of local, domestic long distance, and international services to customers in Puerto Rico. There are no allegations in the record concerning the elimination of PRTC as a competitor in current GTE markets, and we see no reason to conclude that PRTC possesses any assets, capabilities, or incentives distinguishing it from any other telecommunications firms as a likely or potential entrant in those markets. Accordingly, we limit our analysis of the competitive effects of the acquisition to markets for the relevant services in Puerto Rico.

18. Because GTE does not currently compete in any telecommunications services market in Puerto Rico, the proposed transaction will not increase market concentration in any of these markets. We further conclude that the proposed acquisition is not likely to eliminate a significant potential competitor. Applicants assert that GTE had no plans to offer telecommunications services in Puerto Rico as a

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<sup>48</sup> *LEC In-Region Interexchange Order*, 12 FCC Rcd. at 15774, ¶ 26.

<sup>49</sup> *See BA-NYNEX Order*, 12 FCC Rcd. at 20008, ¶ 37; *WorldCom-MCI Order*, 13 FCC Rcd. at 18035-39, ¶¶ 15-22; Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee, *Memorandum Opinion and Order*, 13 FCC Rcd 21292, 21299-300, ¶¶ 15-17 (*SBC-SNET Order*).

<sup>50</sup> *See* ¶ 13, *supra*.

<sup>51</sup> *See* ¶ 3, *supra*.

competitor to PRTC,<sup>52</sup> and there is no evidence in the record that causes us to question that assertion.<sup>53</sup> Although GTE possesses significant financial resources and expertise, and has maintained a presence in Puerto Rico since the 1950s as a seller and servicer of telecommunications equipment,<sup>54</sup> the record does not show that it has sufficient telecommunications assets or brand name reputation in Puerto Rico to render it a significant potential competitor to PRTC. Based on these facts, we conclude that the acquisition by GTE Holdings of PRTC should not eliminate one among a limited number of most significant potential participants from Puerto Rican telecommunications markets.<sup>55</sup>

19. TLD, which provides interexchange and international services in Puerto Rico, argues that we should either assume that the proposed merger between GTE and Bell Atlantic has been approved when reviewing the applications before us, or we should defer consideration of the applications until after acting on the Bell Atlantic/GTE merger proposal.<sup>56</sup> We conclude, however, that for purposes of the instant proceeding, we must analyze the potential effects of the proposed transaction upon Puerto Rican telecommunications markets as they currently exist. The proposed merger between GTE and Bell Atlantic is, therefore, not germane to our analysis in this order. When we later review the applications that have been filed in connection with the proposed merger between GTE and Bell Atlantic, we will consider the potential competitive effects of that transaction in light of the acquisition of PRTC by GTE Holdings.

20. For these reasons, we will confine our analysis to the potential competitive harms that could arise if the facilities now controlled by PRTC were to come under the direct control of GTE Holdings, as well as to the potential harms that could arise if GTE Holdings engages in anticompetitive practices. In doing so, we recognize that GTE Holdings will assume control over bottleneck local exchange facilities needed by other providers to compete effectively for customers in Puerto Rico.<sup>57</sup>

## 2. Analysis

21. Carriers that provide local exchange, wireless, interstate, and international telecommunications services to customers in Puerto Rico, as well as associations including such carriers, have raised issues in connection with GTE Holdings' proposed acquisition of PRTC that are relevant to our competitive analysis. Many of these commenters propose that we grant the applications with conditions in order to address these competitive issues. We examine each of these issues in turn.

### a) Transition to Price Cap Regulation

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<sup>52</sup> Radio License Applications at 26.

<sup>53</sup> APCT states that in 1991, GTE Holdings was a finalist in the bidding to buy PRTA. *Id.* at iii, 8 fn. 19, 17. This earlier effort to purchase PRTC, however, does not suggest that GTE has ever contemplated entering the market in competition with PRTC.

<sup>54</sup> See APCT Petition at 17-18.

<sup>55</sup> See *SBC-SNET Order*, 13 FCC Rcd. at 21301, ¶ 19.

<sup>56</sup> TLD Petition at i.

<sup>57</sup> See APCT Petition at i, 2; KMC Petition at 12-13.

22. Pursuant to section 61.39 of the Commission's rules, PRTC has elected to provide interstate access service under rate of return regulation. Because GTE is subject to price cap regulation, however, PRTC will be required within 12 months of our approval of this transfer of control to file interstate access tariffs for Puerto Rico using the price cap methodology.<sup>58</sup> Competing local and interexchange carriers claim that PRTC's existing rates are unreasonably high, and that the Commission should investigate these rates or conduct an audit before permitting PRTC to impose interstate access rates under the Commission's price cap rules.

23. Historically, the Commission has used a carrier's existing interstate rates as a starting point for price cap regulation because those rates were deemed to reflect a "reasonable operation of rate-of-return regulation" and were "in general the best that rate-of-return regulation can produce."<sup>59</sup> Commenters argue, however, that PRTC's rates do not meet this standard. Instead, commenters maintain, PRTC's current rates embody major inefficiencies, and a conversion at these current rates would afford PRTC opportunities to engage in cross-subsidization and cost-shifting. This, commenters add, would deny interstate customers a fair share of the substantial efficiency gains that conversion to price cap regulation should achieve.<sup>60</sup>

24. We do not believe that we should withhold approval of this acquisition, or attach a condition to our approval, relating to the transition of PRTC to price cap regulation under our rules. Instead, we believe that we have sufficient authority under the Act and under our price cap rules to ensure a reasonable starting point for price cap regulation.<sup>61</sup> We do note that we have rejected arguments in the past that we conduct either full-blown investigations or audits of incumbent LEC existing rates prior to the filing of interstate access rates under the Commission's price cap rules. To the contrary, we have held that where a LEC's rates became subject to an investigation which later resulted in a rate prescription, the Commission would adjust that LEC's price cap indices to reflect the rate prescription.<sup>62</sup> PRTC's customers will be protected following the initiation of price cap regulation because we retain the right to make

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<sup>58</sup> Section 61.41(c) of the Commission's rules provides that "[w]here a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that is not subject to price cap regulation, the latter telephone company shall become subject to price cap regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file price cap tariffs to be effective no later than that date in accordance with the applicable provision of this part 61." 47 C.F.R. § 61.41(c).

<sup>59</sup> See 47 C.F.R. § 61.41(c); Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, 6814-15 (*LEC Price Cap Order*), *erratum*, 5 FCC Rcd 7664 (CCB 1990), *modified on recon.*, 6 FCC Rcd 2637 (1991), *aff'd sub nom.* National Rural Telecom Association v. FCC, 988 F.2d 174 (D.C. Cir 1993).

<sup>60</sup> APCT Petition at v, 33-36; Sprint Comments at 3-13; TLD Petition at 15; APCT Reply Comments at 3-4.

<sup>61</sup> For instance, we can address the following issues in a future investigation or in response to a complaint: (1) the concern that GTE may try to include a management fee and a royalty fee to be paid to GTE affiliates in its initial price cap rates; and (2) the mechanics of how PRTC's rates would be affected by its withdrawal from the National Exchange Carrier Association (NECA) Carrier Common Line pool. See, e.g., TLD Petition at 9-14; ABETG/Vizcarondo Petition at 19-22; MCI WorldCom Comments at 4.

<sup>62</sup> See, e.g., *LEC Price Cap Order*, 5 FCC Rcd at 6816, ¶ 241.

adjustments to any relevant price cap indices if we later find that PRTC's rates prior to price caps were unlawful pursuant to a future investigation under section 204 or 205 of the Act or a future complaint under section 208 of the Act.<sup>63</sup>

25. We have long recognized that cost-plus rate of return regulation fails to provide carriers with the incentives to operate efficiently.<sup>64</sup> PRTC's operation as a rate-of-return carrier may well have had this effect. None of the parties to this proceeding, however, allege sufficient specific facts to support their assertions that PRTC's rates under rate of return regulation are unjust and unreasonable pursuant to section 201(b) of the Act. Moreover, it is not clear that conducting a utility rate investigation under rate of return regulation would produce a substantial benefit, because, at most, it would produce rates that by definition would reflect the inefficiencies of rate of return regulation. Thus, we are not at present convinced that a rate investigation would likely result in a rate prescription that is substantially different from the rates that are now in effect.

26. Finally, we believe that privatization and the implementation of price cap regulation for PRTC after the acquisition are the best means to achieve lower rates. The Commission's price cap regulation forces local exchange carriers to become more productive than the industry was under rate of return regulation. In particular, in 1997, we adopted a productivity factor of 6.5 percent, which requires price cap LECs generally to reduce access rates 6.5 percent relative to the rate of inflation.<sup>65</sup> We believe that the efficiency incentives of interstate price caps may result in lower prices for PRTC's other services, such as local exchange service.

b) Network Access for Local Exchange and Access Competitors

27. Several providers of telecommunications services in Puerto Rico and their associations argue that after the acquisition, GTE Holdings will have the incentive and the ability to abuse PRTC's monopoly position in the Puerto Rico local telecommunications market by, among other things, failing to allow PRTC's competitors reasonable access to its network. To address this situation, commenters propose a variety of conditions relating to PRTC's compliance with its interconnection and other network access obligations, as well as related provisioning and reporting requirements.<sup>66</sup>

28. We conclude that it is not necessary or appropriate to impose on PRTC and GTE Holdings the network access and related conditions that commenters suggest. First, many of the proposed conditions

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<sup>63</sup> 47 U.S.C. §§ 204, 205, 208.

<sup>64</sup> See *LEC Price Cap Order*, 5 FCC Rcd at 6790, ¶ 32; Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873 (1989).

<sup>65</sup> Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order in CC Docket No. 94-1, and Access Charge Reform, Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642 (1997) (*Price Cap Fourth Report and Order*).

<sup>66</sup> See, e.g., APCT Petition at 38-40; KMC Petition at 12-14; MCI WorldCom Comments at 5-6; PCIA Comments at 2-4; TLD Petition at 33; KMC Response at 2-3.

would simply require PRTC to comply with its existing legal obligations. For example, all incumbent LECs are required by law to comply with all of section 251's requirements and the Commission's currently effective rules implementing section 251.<sup>67</sup> Similarly, PRTC will remain legally bound to comply with its preexisting interconnection agreements. Indeed, GTE Holdings states that it will honor these agreements and make the benefits of these agreements available to other carriers, as required by law.<sup>68</sup> Commenters have not shown any special likelihood that GTE Holdings will fail to comply with these obligations. Indeed, with the exception of PCIA, no party even alleges that GTE has engaged in unlawful anticompetitive conduct with respect to network access requirements.<sup>69</sup> PRTC, of course, will remain obligated after the acquisition to comply with the requirements of section 251 of the Communications Act, the Commission's implementing rules, and PRTC's interconnection agreements with competitive LECs and CMRS providers. We see no need to condition our approval of this transaction expressly upon compliance with these obligations. To the extent any disputes may arise in the future concerning PRTC's compliance with these provisions, the aggrieved parties will have recourse to the full panoply of legal remedies, including remedies before this Commission (potentially including accelerated enforcement proceedings),<sup>70</sup> the PRTRB, and the courts.

29. We decline to require PRTC or GTE Holdings to comply with additional provisioning and performance monitoring requirements similar to those imposed upon Bell Atlantic in the *BA-NYNEX Order*. In the *BA-NYNEX Order*, the Commission conditioned its approval of various transfers in connection with Bell Atlantic's merger with NYNEX upon Bell Atlantic's agreement to comply with various requirements, including, among others, the preparation of quarterly Performance Monitoring Reports, provision and operational testing of uniform interfaces for use by carriers purchasing interconnection to obtain access to operations support systems, and good faith negotiation with carriers purchasing interconnection to establish reasonable performance standards in various areas.<sup>71</sup> The circumstances

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<sup>67</sup> See generally 47 C.F.R. Part 51; 47 U.S.C. §§ 251, 252. See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499 (1996), *vacated on jurisdictional grounds sub nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utilities Board II*), *rev'd in part, aff'd in part, and remanded in part sub nom. AT&T v. Iowa Utilities Board*, -- U.S. --, 1999 WL 24568 (Jan. 25, 1999) (*Iowa Utilities Board III*).

<sup>68</sup> GTE Consolidated Opposition at 31.

<sup>69</sup> PCIA alleges generally that although GTE has made significant progress toward entering into mutually agreeable interconnection arrangements with commercial mobile radio services (CMRS) providers, some carriers have still experienced difficulties, and that GTE has unlawfully assessed charges for the facilities used to deliver GTE-originated telecommunications to paging carriers' networks and has ceased processing interconnection requests from paging carriers who have filed complaints against GTE. PCIA Comments at 3. We note that issues regarding the charges that LECs may permissibly impose on paging carriers -- although not GTE's practices in particular -- are currently before the Commission in pending proceedings. In any event, PCIA's allegations regarding GTE's practices are too vague to demonstrate a likelihood of unlawful conduct.

<sup>70</sup> See 47 C.F.R. § 1.730.

<sup>71</sup> *BA-NYNEX Order*, 12 FCC Rcd. at 20070-76, ¶¶ 180-191; 20107-23, Apps. C and D. Other conditions imposed in the *BA-NYNEX Order* involved pricing of interconnection, transport and termination, and unbundled network elements based on forward-looking economic costs. *Id.* at 20110-11 (Conditions 5 and 6). At that time, the Commission's pricing rules had been stayed, *Iowa Utilities Board v. FCC*, 109 F.3d 142 (8th Cir. 1996), and then

attending this proposed acquisition, however, are quite distinct from the factual record underlying the *BA-NYNEX Order*. In the *BA-NYNEX Order*, the Commission's decision to impose conditions was based on specific potential competitive harms that arose because the proposed transaction involved two Bell Operating Companies with extensive assets that operated in contiguous territories, and in particular because Bell Atlantic controlled significant assets and capabilities that conferred upon it both the incentive and the ability to provide competitive services to customers then being served by NYNEX.<sup>72</sup> In this proceeding, by contrast, there is no evidence suggesting that GTE has even considered providing telecommunications services in competition with PRTC in Puerto Rico, and GTE's only presence in Puerto Rico has been in areas other than the provision of telecommunications service.<sup>73</sup> We therefore conclude that no basis has been shown for imposing conditions similar to those specified in the *BA-NYNEX Order*.

30. To the extent that commenters request that we impose other network access and related conditions, in addition to commitments to comply with existing obligations and conditions similar to those imposed in the *BA-NYNEX Order*,<sup>74</sup> we similarly decline to impose such conditions. The commenters have failed to show any special risk of harms in the market for local telecommunications services in Puerto Rico from this transaction that would render such conditions necessary. Should any supportable allegations come to our attention in the future that PRTC or GTE Holdings may not be complying with our network access requirements, we will diligently investigate those allegations, and we will take firm enforcement action against any violations that we may find.

c) Potential Anticompetitive Effects in Interexchange Markets

31. Some carriers and associations further argue that GTE should be prohibited from providing off-island long distance and international services until its PRTC affiliate complies with certain conditions. Specifically, commenters argue that PRTC should be required to provide non-affiliated carriers access to its local exchange network on terms and conditions equal to those granted to GTE and its affiliates. Commenters also ask the Commission to impose structural or accounting safeguards to prevent price squeezes<sup>75</sup> and cross-subsidization.

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vacated, *Iowa Utilities Board II*, 120 F.3d 753 (vacating rules on jurisdictional grounds alone without review on the merits). In light of the Supreme Court's recent decision in *Iowa Utilities Board III*, we believe it is unnecessary to impose conditions of this type under the circumstances of this case. See *Iowa Utilities Board III*, 1999 WL 24568 (holding that Commission has jurisdiction to design a pricing methodology).

<sup>72</sup> See *BA-NYNEX Order*, 12 FCC Rcd. at 20069-70, ¶¶ 177-179.

<sup>73</sup> See ¶ 3, *supra*.

<sup>74</sup> See, e.g., KMC Petition at 18 (stating that GTE Holdings and its affiliates should be prohibited from offering off-island services until GTE Holdings demonstrates "that the opportunity for fair and effective local exchange competition exists in Puerto Rico").

<sup>75</sup> In the *Access Charge Reform Order*, the Commission defined a price squeeze as "a strategy of predation that would involve the incumbent LEC setting high prices for interstate exchange access services, over which the LEC has monopoly power (albeit constrained by regulation), while its affiliate is offering 'low' prices for long distance services in competition with the other long-distance carriers. Access Charge Reform in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers in CC Docket No. 94-1, Transport Rate Structure and Pricing in CC

32. In 1987, in the *Puerto Rico Order*, the Commission required PRTC to comply with certain requirements, including requirements relating to equal access, network information disclosure, customer proprietary network information (CPNI), and reporting of service data, as a condition of obtaining section 214 authorizations to provide interstate and international facilities-based service.<sup>76</sup> These conditions were reaffirmed in several subsequent orders in connection with the provision of off-island service by PRTC's affiliates.<sup>77</sup> Most recently, in awarding an international resale section 214 authorization to TPRI, the International Bureau noted that the *Puerto Rico Order* conditions continue to apply to PRTC, and it evaluated PRTC's compliance with those conditions.<sup>78</sup> KMC argues that we should prevent the evasion of our earlier orders, and prevent other threats to competition, by affirming the applicability of the *Puerto Rico Order* to PRTC and conditioning the provision of off-island services by GTE and its subsidiaries on PRTC's compliance with the provisions of that order.<sup>79</sup> As discussed, we have consistently required PRTC to comply with the provisions of the *Puerto Rico Order* as a condition of its affiliates' provision of off-island services, and as a result PRTC is obligated to comply with those conditions today. Moreover, no party to this proceeding argues that these conditions should not continue to apply. Under these circumstances, we will not in this Order reexamine our policy of requiring PRTC's compliance with the *Puerto Rico Order* conditions in order for its affiliates to provide off-island service. Hence, we condition our approval of the transfers of control on PRTC's continued compliance with the conditions set forth in the *Puerto Rico Order*, to the extent they have not been supplanted by generally applicable regulatory requirements.<sup>80</sup>

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Docket No. 91-213, and End User Common Line Charges in CC Docket No. 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16100 (1997) (*Access Charge Reform Order*).

<sup>76</sup> Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, CC Docket No. 86-309, *Report and Order*, 2 FCC Rcd. 6600, 6605-09, 6611-12, ¶¶ 35-55, 68-70 (1987), *on recon.*, 8 FCC Rcd. 63 (1992).

<sup>77</sup> See *Telefónica Larga Distancia de Puerto Rico*, File Nos. I-P-C-81-039-A, A-1, *Memorandum Opinion, Order and Authorization*, 3 FCC Rcd. 5937, 5940 n.8 (CCB 1988); *Telefónica Larga Distancia de Puerto Rico*, File No. I-T-C-89-044, *Order, Authorization, and Certificate*, 4 FCC Rcd. 4496, 4497, ¶ 8 (Int. Fac. Div. 1989); *Telefónica Larga Distancia de Puerto Rico and LD Acquisition Corporation*, I-T-C-92-116-AL, *Memorandum Opinion, Order, Authorization and Certificate*, 8 FCC Rcd. 106, 115, ¶ 38 (1992).

<sup>78</sup> *TPRI Order*, 13 FCC Rcd. at 12351-53, ¶¶ 17-20.

<sup>79</sup> See KMC Petition at 15-18; *see also* MCI WorldCom Comments at 5 n. 3. KMC also asks that we require PRTC to comply with other conditions that it says are "like" those imposed in the *Puerto Rico Order*. KMC Petition at 15, 18. This request is addressed at para. 30, *supra*, and paras. 33-34, *infra*.

<sup>80</sup> As the International Bureau noted in the *TPRI Order*, the conditions in the *Puerto Rico Order* relating to PRTC's use and disclosure of its own customers' CPNI and other information have been supplanted by our rules implementing section 222 of the Communications Act. See *TPRI Order*, 13 FCC Rcd. at 12352, ¶ 18, *citing* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-115, *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 8061 (1998). PRTC continues, however, to be subject to the *Puerto Rico Order* requirement that it ensure that information about other off-island carriers' customers is not made available to PRTC's (or any affiliate's) off-island personnel. *TPRI Order*, 13 FCC Rcd. at 12352, ¶ 18. In addition,

33. We will not impose conditions other than those established in the *Puerto Rico Order*, such as structural safeguards, to prevent GTE from engaging in price squeeze behavior or cross-subsidization.<sup>81</sup> TLD argues that the proposed transaction would give GTE the ability and incentive to engage in a price squeeze that would harm competition in interexchange services, noting in particular that GTE affiliates would control both ends of a large percentage of interexchange calls originating or terminating in Puerto Rico.<sup>82</sup> We have, however, been presented with similar arguments in other merger transactions, and we have consistently declined either to deny approval to transfers of control or to condition our approval on the ground that existing statutory provisions and our existing rules provided insufficient safeguards against price squeeze behavior.<sup>83</sup> Indeed, in the *BA-NYNEX Order*, which involved a merger of two incumbent LECs that would result in an increase in the percentage of calls originating and terminating in-region, we rejected an identical argument.<sup>84</sup> TLD's further argument that it would be especially injured by a price squeeze because 95 percent of its customers are located in Puerto Rico similarly does not demonstrate that GTE could successfully implement a price squeeze notwithstanding our rules.<sup>85</sup> For the reasons discussed in our previous orders, we therefore dismiss the price squeeze arguments raised in this proceeding.<sup>86</sup>

34. We further conclude that, in light of our existing rules, special separation and reporting requirements are unnecessary to prevent GTE from engaging in cross-subsidization.<sup>87</sup> In particular, our rules require GTE to establish separate affiliates that comply with specific conditions of separation from PRTC for the provision of in-region CMRS and in-region interstate or international interexchange services.<sup>88</sup> In addition, PRTC will be subject to accounting and cost allocation requirements designed to deter discriminatory affiliate transactions and the anticompetitive shifting of costs between price-regulated

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we note that, as an incumbent LEC, PRTC is subject to the network disclosure requirements contained in Part 51 of our rules, 47 C.F.R. §§ 51.325-51.335, in addition to the network disclosure requirements of the *Puerto Rico Order*. See *TPRI Order*, 13 FCC Rcd. at 12353 n.44.

<sup>81</sup> See TLD Petition at 5, 34; APCTP Petition at 4, 40 (seeking such conditions).

<sup>82</sup> See TLD Petition at 10-11, 19-20.

<sup>83</sup> See *BA-NYNEX Order*, 12 FCC Rcd. at 20045, ¶ 117; *SBC-SNET Order*, 13 FCC Rcd. at 21304, ¶ 24.

<sup>84</sup> *BA-NYNEX Order*, 12 FCC Rcd. at 20045, ¶ 118.

<sup>85</sup> See TLD Petition at 10-11.

<sup>86</sup> Indeed, there is even less reason to believe a price squeeze could be successful today than at the time of the *BA-NYNEX Order*. In that Order, we noted some doubt about the efficacy of the interconnection and unbundled network elements provisions of section 251 of the Act in light of the decision in *Iowa Utilities Board II* striking down our pricing rules implementing those provisions on jurisdictional grounds. Since the Supreme Court's decision upholding our jurisdiction in *Iowa Utilities Board III*, those doubts no longer apply.

<sup>87</sup> See, e.g., APCT Petition at 40; KMC Petition at 9; TLD Petition at 34. We note that we specifically rejected the imposition of structural separation requirements on PRTC in the *Puerto Rico Order*. 2 FCC Rcd. at 6610-11, ¶¶ 62-66.

<sup>88</sup> 47 C.F.R. §§ 20.20, 64.1903.



and competitive services.<sup>89</sup> The record neither suggests that GTE may fail to comply with these requirements nor establishes any special reason why these requirements may be inadequate to prevent anticompetitive activity in this case.<sup>90</sup> We therefore conclude that existing safeguards are sufficient to ensure that GTE will not leverage its monopoly power in the Puerto Rican local exchange market into other markets through cost misallocation or affiliate transactions.

d) Potential Anticompetitive Effects on International Markets

35. GTE owns 100 percent of Compañía Dominicana de Teléfonos C. Por A. (Codetel), the incumbent provider of telecommunications services in the Dominican Republic. It also controls Compañía Anonima Nacional Teléfonos de Venezuela (CANTV), the incumbent provider in Venezuela. Commenters argue that GTE's affiliations with Codetel and CANTV present a risk of price squeeze behavior by GTE in its provision of international service between Puerto Rico and these two markets, and that safeguards are required to prevent such behavior.

36. TLD calculates that traffic between Puerto Rico and the Dominican Republic accounts for roughly half of international traffic to and from Puerto Rico.<sup>91</sup> It states that the opportunity for a price squeeze by GTE on this route "is at a maximum" because settlement rates paid by U.S. carriers to terminate traffic with GTE's affiliate Codetel "are significantly further above cost than the GTE/PRTC access charges are likely to be."<sup>92</sup> Similar conditions exist on the Puerto Rico-Venezuela route, according to TLD, due to GTE's control of the incumbent carrier CANTV.<sup>93</sup>

37. TLD requests that we require, as a condition of approving the proposed transaction, that settlement rates on the Puerto Rico-Dominican Republic and Puerto Rico-Venezuela routes be reduced to the Commission's international settlement rate benchmark of \$0.19 per minute.<sup>94</sup> MCI WorldCom requests that we modify the international section 214 authorization being transferred from PRTA to GTE Holdings to conform with the international authorization previously granted to GTE Telecom, another affiliate of GTE. It notes that GTE Telecom's authorization requires that U.S. carrier settlement rates with Codetel and CANTV be at or below the benchmark settlement rate of \$0.19 before GTE Telecom can provide facilities-based service to the Dominican Republic and Venezuela.<sup>95</sup> In addition, KMC requests that GTE

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<sup>89</sup> See 47 C.F.R. Part 32; 47 C.F.R. §§ 64.901-64.904.

<sup>90</sup> APCT notes that PRTC previously sought a waiver of section 20.20(a). APCT Petition at 40. An entity's request for waiver of a regulatory requirement, however, does not establish that it will fail to comply with that requirement once the waiver has been denied.

<sup>91</sup> TLD Petition at 19, 27.

<sup>92</sup> *Id.* at 26.

<sup>93</sup> *Id.* at 27.

<sup>94</sup> *Id.* at 34. See also MCI WorldCom Comments at 5 n.3.

<sup>95</sup> MCI WorldCom Comments at 5 n.3

not be permitted to provide international services on Puerto Rico routes until its Puerto Rican affiliate complies with the conditions imposed in the *Puerto Rico Order* and various other conditions.<sup>96</sup>

38. As discussed above, we are conditioning our approval of the transfers of control on PRTC's continued compliance with the conditions imposed in the *Puerto Rico Order*.<sup>97</sup> In addition, GTE Holdings has specifically committed to ensure fulfillment of two reporting conditions that the International Bureau imposed in May, 1998 on the international section 214 authorization originally granted to PRTA's subsidiary TPRI, for which GTE Holdings here requests a transfer of control.<sup>98</sup> We accept GTE Holdings' commitment to file these reports, and we specifically condition our grant of the international transfer application on GTE Holdings' satisfaction of these reporting conditions.

39. At the same time, we conclude that it is unnecessary to impose any other conditions on the provision of resold international service from Puerto Rico by CTI or any other GTE affiliate in order to prevent a price squeeze. In particular, we deny TLD's request that we require a flash-cut by Codetel and CANTV to the \$0.19 benchmark settlement rate as a condition of approving the instant applications for transfer of control. Such a condition conflicts with Commission policy and is not supported by the record. The Commission addressed in its *Benchmarks Order* the potential for price squeeze behavior by U.S. carriers that make settlement payments to affiliated foreign carriers to terminate U.S. international traffic.<sup>99</sup> In order to prevent predatory price squeeze behavior by U.S. carriers on routes where they have a foreign carrier affiliate, the *Benchmarks Order* prohibits U.S. carriers from initiating facilities-based service on an affiliated route until the affiliated foreign carrier negotiates a settlement rate with its U.S. carrier correspondents that is in effect and is at or below the relevant benchmark settlement rate for that route.<sup>100</sup> As GTE notes, however, the international section 214 authorization that would become controlled by GTE Holdings is limited to the provision of *resold* switched services.<sup>101</sup> PRTA's off-island subsidiary TPRI is not authorized to provide facilities-based service to the Dominican Republic and Venezuela.<sup>102</sup> The Commission in the *Foreign Participation Order* specifically rejected the need to impose a benchmarks

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<sup>96</sup> KMC Petition at 15-18.

<sup>97</sup> See ¶ 32, *supra*.

<sup>98</sup> Section 214 Application at 3. Specifically, these conditions require TPRI to file with the International Bureau and with certain carriers a semiannual report regarding average intervals for installation of private line facilities, and to file with the International Bureau and all off-island carriers a semiannual report of historic and projected line and usage information. See *TPRI Order*, 13 FCC Rcd. at 12350, 12351, ¶¶ 15, 17.

<sup>99</sup> International Settlement Rates, IB Docket No. 96-261, *Report and Order*, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom.* Cable & Wireless P.L.C. v. FCC, No. 97-1612 (D.C. Cir. Jan. 12, 1999) .

<sup>100</sup> *Id.* at 19901-12 ¶¶ 207-231. In adopting this condition, the Commission found that several factors suggested price squeeze behavior may be potentially a greater problem on international routes than in the domestic interexchange context. *Id.* at 19904-5 ¶ 216.

<sup>101</sup> GTE Consolidated Opposition at 28-29.

<sup>102</sup> See *TPRI Order*, 13 FCC Rcd. 12344.

condition on an affiliated carrier's provision of resold, switched services to an affiliated market,<sup>103</sup> and nothing in this record establishes any special reason why the resold service at issue here should be treated differently. For this reason, we also reject as unnecessary and unsupported MCI WorldCom's request that we impose a benchmarks condition on the transfer of control over TPRI's international switched resale authorization to GTE Holdings. To the extent a GTE subsidiary seeks to provide *facilities-based* service between Puerto Rico and the Dominican Republic or Venezuela, that subsidiary will be subject to the *Benchmarks Order* condition.<sup>104</sup>

40. We also note that, in addition to adopting a benchmark settlement rate condition for affiliated U.S. carriers, the *Benchmarks Order* directed U.S. carriers generally to negotiate settlement rates not to exceed \$0.19 per minute with carriers in the Dominican Republic and Venezuela by January 1, 2001. U.S. carriers have, in fact, filed settlement rate arrangements with Codetel and CANTV that would reduce their respective settlement rates to the \$0.19 benchmark rate by the applicable target date of January 1, 2001.<sup>105</sup>

41. As noted above, the international section 214 authorization granted to TPRI will be assigned to CTI prior to consummation of the proposed transfer of control to GTE Holdings. Because CTI's international section 214 authorization is limited to the resale of unaffiliated U.S. carriers' switched services, we find that CTI will continue to be eligible for non-dominant carrier regulation on the routes between Puerto Rico and the Dominican Republic and Venezuela.<sup>106</sup>

## B. Other Public Interest Issues

### 1. Exercise of De Facto Control over PRTC by GTE Holdings

42. ABETG, which is a voluntary membership organization representing management employees of PRTC and CTI, and the Honorable Carlos Vizcarrondo, a member of the House of Representatives of the Commonwealth of Puerto Rico, contend that GTE Holdings has already assumed *de facto* control of the radio licenses of PRTC and CTI in violation of section 310(d) of the Communications Act of 1934.<sup>107</sup> ABETG/Vizcarrondo argue that courts have interpreted section 310(d) to prohibit *de facto*

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<sup>103</sup> Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, 12 FCC Rcd 23891, 23977 (1997) (*Foreign Participation Order*) ("no danger of anticompetitive effects results from a switched reseller's provision of service to an affiliated market").

<sup>104</sup> Indeed, the facilities-based authorizations already granted to GTE subsidiaries GTE Telecom and GTE Mobilnet contain the benchmarks settlement rate condition for service to the Dominican Republic and Venezuela. *See* GTE Telecom Incorporated and GTE Mobilnet, ITC-95-443, *Order, Authorization and Certificate*, 13 FCC Rcd. 4378 (Telecom. Div., 1998).

<sup>105</sup> *See id.* at 4393, ¶ 41. *See also* GTE Consolidated Opposition at 29-30.

<sup>106</sup> *See* 47 C.F.R. § 63.10(a)(4) (providing that a carrier is presumptively regulated as non-dominant in its provision of international switched services on any route where it provides such service solely by reselling the switched services of unaffiliated U.S. international facilities-based carriers).

<sup>107</sup> ABETG/Vizcarrondo Petition at i, 9-16.

as well as *de jure* transfers of control without the Commission's authorization.<sup>108</sup> ABETG/Vizcarrondo contend that the Commission and the courts have traditionally examined six factors to determine whether an outside company is exercising *de facto* control over an entity: 1) whether the licensee has unfettered use of all facilities and equipment; 2) who controls daily operations; 3) who determines and carries out policy decisions, including preparing and filing applications with the Commission; 4) who is in charge of employment, supervision, and dismissal of personnel; 5) who is in charge of the payment of financing obligations, including expenses arising out of operating; and 6) who receives the monies and profits from the operation of the facilities.<sup>109</sup> ABETG/Vizcarrondo further contend that Article V of the Sale Agreement imposes notification and consent obligations on PRTA's two operating subsidiaries for certain activities undertaken before completion of the formal transfer of control that cause GTE Holdings to violate section 310(d).<sup>110</sup> ABETG/Vizcarrondo argue that these conditions clearly preclude the subsidiaries' unfettered use of their facilities, promote undue control by GTE Holdings of the current licensees' daily operations, and affect the subsidiaries' ability to determine and carry out policy decisions and the hiring of employees. ABETG/Vizcarrondo contend that these provisions also constitute *prima facie* evidence that GTE Holdings has extensively intruded into and exercised control over the licensees' finances, including the expenses arising out of operating.<sup>111</sup> In their Response, ABETG/Vizcarrondo further contend that several recent actions by GTE, including the designation of future PRTC and CTI officers and consultations with employees of those companies, show that GTE has been impermissibly exercising *de facto* control over PRTC and CTI.<sup>112</sup>

43. GTE Holdings and PRTA rebut the charges raised in the ABETG/Vizcarrondo petition, arguing that the Sale Agreement provisions, taken individually or collectively, do not grant GTE Holdings impermissible control over PRTC and CTI, but are ordinary and reasonable investor protections designed to ensure that PRTC does not depart from its own ordinary business practices without first obtaining the consent of the buyer, which GTE Holdings claims will not unreasonably be withheld.<sup>113</sup> PRTA and GTE Holdings contend that many transactions approved by the Commission contain agreements similar to those cited by ABETG/Vizcarrondo.<sup>114</sup>

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<sup>108</sup> *Id.* at 9, citing *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>109</sup> *Id.* at 9-10, citing *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42 (1994); *LaStar Cellular Telephone Co.*, 5 FCC Rcd. 3286 (1990); *Intermountain Microwave*, 24 RR 983 (1963).

<sup>110</sup> *Id.* at 11-13.

<sup>111</sup> *Id.* at 13.

<sup>112</sup> ABETG/Vizcarrondo Response at 6-11.

<sup>113</sup> GTE Consolidated Opposition at 19; PRTA Reply Comments at 13, citing *Baker Creek Communications, L.P.*, FCC File No. 0000000111, *Memorandum Opinion and Order*, DA 98-1921 (WTB rel. Sep. 22, 1998) ("Investment protection provisions . . . do not automatically constitute the potential to exercise control. . .").

<sup>114</sup> GTE Consolidated Opposition at 19, 21-23; PRTA Reply Comments at 13-14, citing MCI/WorldCom Agreement, BA/NYNEX Agreement, and SBC/PacTel Agreement.

44. We believe the provisions cited by ABETG/Vizcarrondo fall within the scope of accepted purchaser safeguards that the Commission has previously found not to constitute a premature transfer. Specifically, the provisions include limitations on the target companies entering into new lines of business,<sup>115</sup> making substantial and material alterations to current contracts or agreements,<sup>116</sup> disposing of material assets,<sup>117</sup> and making substantial outlays of capital.<sup>118</sup> In addition, the activities cited in the ABETG/Vizcarrondo Response show only that GTE Holdings is preparing to assume control of PRTC and CTI once the transaction is completed, not that it controls these companies today. Consequently, we find no violation of section 310(d).

## 2. Unjust Enrichment

45. Under Section 1.2111(a) of the Commission's rules, "[a]n applicant seeking approval for a transfer of control or assignment . . . of a license within three years of receiving a new license through a competitive bidding process must, together with its application for transfer of control or assignment, file with the Commission's [sic] statement indicating that its license was obtained through competitive bidding." Section 1.2111(a) further requires the applicant to file the associated contracts for sale, option agreements, or other documents disclosing the consideration that the applicant would receive in return for the transfer or assignment of its license.<sup>119</sup>

46. ABETG/Vizcarrondo contend that the applications for transfer of control are flawed as the applicants have not made an appropriate unjust enrichment showing as required by Section 1.2111(a), thereby violating section 308(b) of the Communications Act.<sup>120</sup> ABETG/Vizcarrondo acknowledge that the applicants affirm in their unjust enrichment showing that PRTC's PCS authorizations were obtained

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<sup>115</sup> See, e.g., *McCaw Cellular Communications, Inc., Memorandum Opinion and Order*, 4 FCC Rcd 3784, 3790, ¶ 40 (1989) (*McCaw*) (provision in Sale Agreement requiring prior approval of British Telecom USA Holdings, Inc., before McCaw Cellular Communications, Inc. could enter into a non-telecommunications-related business protects investor does not constitute a transfer of control).

<sup>116</sup> See *News International, PLC, Memorandum Opinion and Order*, 97 FCC 2d 349, 351 n.7 (1984) (certain covenants maintaining the *status quo* between the time of the agreement and the time of closing are not of decisional significance).

<sup>117</sup> See, e.g., *McCaw*, 4 FCC Rcd at 3789, ¶ 38 (provision in Sale Agreement requiring prior approval before McCaw may dispose of large blocks of cellular or non-cellular assets merely protects investor and does not constitute a transfer of control).

<sup>118</sup> See *Flathead Valley Broadcasters, Memorandum Opinion and Order*, 5 RR 2d 74, 76 (1965) (security provision limiting capital expenditures, *inter alia*, without written permission of mortgagee does not transfer control of operation to mortgagee. Rather, the provision merely protects against "unusual expenditures of working capital.").

<sup>119</sup> 47 C.F.R. § 1.2111(a).

<sup>120</sup> ABETG/Vizcarrondo Petition at 16-18. See 47 U.S.C. § 308(b) ("All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical and other qualifications of the applicant to operate the station . . .").

through competitive bidding within the past three years, and they submit a copy of the Sale Agreement.<sup>121</sup> However, ABETG/Vizcarrondo contend that the applicants did not include several other contracts in the unjust enrichment showing, even though they are required by section 1.2111(a) and are mentioned on the list of exhibits to the Sale Agreement. GTE Holdings responds that the applicants' submission fully documents the consideration that PRTA will receive for the transfer of its licenses, and that the other agreements properly were not submitted because they do not address this issue.<sup>122</sup>

47. We conclude that PRTA has made a sufficient unjust enrichment showing under section 1.2111(a). Under section 1.2111, a purchaser of an auctioned license pursuant to a set-aside, installment financing, or bidding credits may be required to make a payment to the government as a condition of transferring that license under terms that would otherwise constitute unjust enrichment.<sup>123</sup> PRTA, however, did not acquire its licenses pursuant to a set-aside, installment financing, or bidding credits. Under these circumstances, we find that PRTA's unjust enrichment showing, which consists of a disclosure that PRTA purchased PCS licenses through competitive bidding within the previous three years and submission of the Sale Agreement,<sup>124</sup> is sufficient.<sup>125</sup>

### 3. Other Matters

48. HIETEL/UIET and ABETG/Vizcarrondo, which together represent PRTC's skilled labor, professional, technical, and managerial employees, raise several additional issues. Specifically, these commenters claim that approval of this transaction would compromise the sovereignty of Puerto Rico and that the people of Puerto Rico were never consulted in the sale of PRTC.<sup>126</sup> It is alleged that the decision to sell PRTC should have been considered at a referendum because under the Constitution of Puerto Rico there are certain subjects on which the Legislative and Executive Branches cannot act without consulting the people.<sup>127</sup> Commenters further argue that the procedures under which the transaction was negotiated and approved violated the Puerto Rico statute authorizing negotiation of the sale, as well as other principles of Puerto Rican law.<sup>128</sup> In addition, it is asserted that a majority of the Puerto Rican people oppose the

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<sup>121</sup> See Radio License Applications at 17 and Exhibit A.

<sup>122</sup> GTE Consolidated Opposition at 24-26.

<sup>123</sup> See 47 C.F.R. § 1.2111(b)-(d).

<sup>124</sup> Radio License Applications at 17 and Exhibit A.

<sup>125</sup> We further note that ABETG/Vizcarrondo claim that the agreements which were not submitted would show that PRTA received inadequate, not excessive, compensation. The unjust enrichment rules are not intended to ensure that the transferor of a license is adequately compensated.

<sup>126</sup> See HIETEL/UIET Petition at 3-4.

<sup>127</sup> ABETG/Vizcarrondo Petition at 28.

<sup>128</sup> *Id.* at 26-33; HEITEL/UIET Petition at 4.

transaction.<sup>129</sup> Further, the commenters contend that the people of Puerto Rico will experience negative effects from PRTC's transition from a government-owned entity to a private concern.<sup>130</sup> HIETEL/UIET argue that as a government-owned entity, PRTC is required to place the needs of the Puerto Rican community ahead of any profit consideration, whereas GTE Holdings will place the highest priority on obtaining profits.<sup>131</sup> The commenters contend that the people of Puerto Rico have grown "emotionally attached" to and "financially dependent" on PRTC, and that the GTE Holdings-PRTC transfer will disrupt that "attachment."<sup>132</sup> Finally, certain commenters contend that the purchase price is too low.<sup>133</sup>

49. Although we are sympathetic to the concerns of the petitioners, we have no jurisdiction to address the contention that the sovereignty of Puerto Rico would be compromised if the transaction is approved. Nor can we respond to allegations grounded in Puerto Rican law.<sup>134</sup> We recognize the controversial nature of the Puerto Rico Government's decision to sell PRTC, and we understand the deeply held views on both sides of that decision. We believe, however, that questions such as whether the decision to sell PRTC is in the best interest of the people of Puerto Rico and whether the purchase price agreed upon was fair are matters within the domain of the duly constituted authorities of Puerto Rico.<sup>135</sup>

## V. POTENTIAL PUBLIC INTEREST BENEFITS

50. Having examined the potential public interest harms of the proposed acquisition, we next examine the potential benefits attributable to the transaction. Applicants contend that the acquisition of PRTC by GTE Holdings will promote the public interest by transferring control of a government-owned system to a telecommunications company with extensive experience in providing local services within the

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<sup>129</sup> ABETG/Vizcarrondo Hearing Petition at 2.

<sup>130</sup> HIETEL/UIET Petition at 3.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> ABETG/Vizcarrondo Petition at 7-9, 31.

<sup>134</sup> We note that at least three lawsuits have been filed in the Puerto Rico courts challenging aspects of this transaction under Puerto Rico law. We understand that all of these lawsuits have been dismissed, although an appeal of one of the dismissals is pending and the time for appealing another has not expired. *See* GTE Holdings February 10, 1999 Letter at 1; *see also* GTE Holdings February 5, 1999 Letter at 2. We believe that the Puerto Rico judicial system is the proper forum in which to address these issues.

<sup>135</sup> We do note that GTE Holdings has committed to help the people of Puerto Rico adjust to the privatization of PRTC by pledging not to raise PRTC's rates for basic residential service for three years. *See* ¶ 62, *infra*. We also note GTE Holdings' contention that the process of privatizing PRTC has been one of the most public and vigorously debated endeavors in the recent history of Puerto Rico, and its claim that by the petitioners' own account, the process through which the government of Puerto Rico endeavored to sell PRTC attracted great public interest, media coverage, and legislative investigation. GTE Consolidated Opposition at 16.

United States as well as internationally.<sup>136</sup> Applicants further contend that GTE Holdings' parent company has the financial wherewithal to support PRTC, and that GTE's experience and technical prowess will enable GTE Holdings to effectively manage PRTC and introduce new and advanced services.<sup>137</sup> In this regard, GTE Holdings states that it is committed to PRTC's investing \$1 billion over five years to improve telephone service in Puerto Rico.<sup>138</sup> GTE Holdings also offers commitments to improve PRTC's overall service, refrain from raising rates for basic residential service for three years, provide Internet access at discounted rates to educational institutions, and avoid involuntary termination of PRTC employees.<sup>139</sup>

51. In the following paragraphs, we first describe individually each of the potential public interest benefits that the applicants claim will flow from this transaction, as well as any comments regarding those claimed benefits. We then analyze as a whole the extent to which this transaction will promote the public interest by conferring public benefits, and weigh those benefits against any public interest harms.

#### **A. Summary of Potential Public Interest Benefits**

##### **1. Benefits of Privatization**

52. GTE Holdings argues that this transaction will promote longstanding Commission policy objectives in favor of privatization.<sup>140</sup> MCI WorldCom contends that GTE Holdings' claim that "privatization" is among the principal public interest benefits is unfounded because the Government of Puerto Rico had decided to privatize PRTC even before GTE Holdings submitted a bid.<sup>141</sup> GTE Holdings argues that the Commonwealth's willingness to privatize and the success of privatization hinged on the existence of a qualified buyer with a strong commitment to serving the public.<sup>142</sup>

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<sup>136</sup> Radio License Applications at 19; GTE Consolidated Opposition at 4.

<sup>137</sup> Radio License Applications at 20.

<sup>138</sup> *Id.*; see also GTE Consolidated Opposition at 5-6, *citing* Declaration of Alfred C. Giammarino (filed as an Exhibit to the Joint Application) (stating that GTE Holdings has specifically committed to invest more than \$850 million in facilities and services during the next five years and has projected an investment of more than \$300 million of unallocated funds to permit PRTC to react in a timely fashion to market conditions or meet unanticipated expenses, and that this investment will promote upgrades in PRTC's facilities and improvements in services.)

<sup>139</sup> GTE Consolidated Opposition at 6-10.

<sup>140</sup> *Id.* at 4.

<sup>141</sup> MCI WorldCom Comments at 3.

<sup>142</sup> GTE Consolidated Opposition at 3-4, *citing* S. Karene Witcher, "New Zealand: Increased Competition and Privatization Benefit Both Consumers and the Telecom Industry", *The Asian Wall Street Journal* (June 10, 1997, available at 1997 WL-WSJA 11009855); Jason Leuck, "Telecommunications Liberalization and Privatization: the Baltics and Central and Eastern Europe," *Bus. Am.* (July 1, 1997) (available at 1997 WL 10005692); "Puerto Rico Privatizes PRTC, Seeks Greater Gateway Role", *Telecommunications Reports* (Jan. 19, 1998).



## 2. GTE Holdings' Commitments

53. *Investments.* GTE Holdings states that it has specifically committed to invest more than \$850 million in facilities and services during the next five years and has projected an investment of more than \$300 million of unallocated funds to permit PRTC to react in a timely fashion to market conditions or meet unanticipated expenses, and that this investment will promote upgrades in PRTC's facilities and improvements in services.<sup>143</sup> ABETG/Vizcarrondo and MCI WorldCom dispute GTE Holdings' claim that its arrival into Puerto Rican markets will speed the deployment of upgraded and expanded services.<sup>144</sup> MCI WorldCom argues that GTE Holdings has not described with any particularity the "new and advanced" services that PRTC would provide in Puerto Rico following the acquisition, the benefits that would accrue to customers from these services, or the projected date of their availability.<sup>145</sup> ABETG/Vizcarrondo contend that GTE Holdings' promise (not contained in the Sale Agreement) to invest over \$1 billion over the next five years to further improve PRTC's facilities is meaningless in light of two facts: (1) that PRTC's entire network is technologically superior to GTE's entire network, and (2) that over the past 5 years PRTC's total capital expenditures in PRTC's facilities amounted to over \$1.6 billion.<sup>146</sup> ABETG/Vizcarrondo further contend that the reason for GTE Holdings' smaller projected investment is that PRTC's primary goal was a commitment to offer the best available technology to the largest number of people, whereas GTE Holdings' goal is generating huge profits.<sup>147</sup> MCI WorldCom claims that GTE Holdings' promise is misleading since most of GTE Holdings' projected expenditures are those which PRTC would otherwise make in the course of normal system growth and maintenance.<sup>148</sup> MCI WorldCom also claims that GTE Holdings has not claimed that PRTC, with \$1.2 billion in annual operating revenues, would be unable to fund capital expenditures at the same level as GTE Holdings proposes.<sup>149</sup>

54. *Service Quality.* GTE Holdings claims that it will apply GTE's expertise to promote improved overall service by improving customer service, network management, and long distance, wireless and internet services.<sup>150</sup> GTE Holdings claims that as an affiliate of the nation's fourth-largest LEC, its capabilities and know-how are a matter of public record, and it lists GTE's accomplishments in the areas of customer service improvements, network management, wireless improvements, long distance, and internet

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<sup>143</sup> GTE Consolidated Opposition at 5-6, *citing* Declaration of Alfred C. Giammarino (filed as an Exhibit to the Radio License Applications); *see also id.* at 2.

<sup>144</sup> ABETG/Vizcarrondo Petition at 24-25; MCI WorldCom Comments at 4-5.

<sup>145</sup> MCI WorldCom Comments at 5.

<sup>146</sup> ABETG/Vizcarrondo Petition at 24-25. ABETG/Vizcarrondo note that the difference between PRTC's past \$1.6 billion investment and GTE Holdings' promised future \$1 billion investment becomes even greater when one factors in financial present value. *Id.*

<sup>147</sup> *Id.* at 25. *See also* HIETEL/UIET Petition at 3.

<sup>148</sup> MCI WorldCom Comments at 4.

<sup>149</sup> *Id.*

<sup>150</sup> GTE Consolidated Opposition at 6-7.

services.<sup>151</sup> GTE Holdings also cites GTE's efforts in tackling the Year 2000 problem.<sup>152</sup> GTE Holdings lists a number of potential post-acquisition projects that it intends to undertake, including microwave network upgrades, ATM network engineering design and optimization, point-of-sale devices, external plant construction plans, intraLATA toll dialing parity implementation, residential terminal equipment evaluation, and central office planning.<sup>153</sup> In response, ABETG/Vizcarrando contend that GTE's history in both United States and foreign markets shows that GTE Holdings will direct its investment only toward improving service for high-end customers, and not for the mass market.<sup>154</sup> MCI WorldCom argues that PRTC could have purchased GTE's management expertise through a management contract without relinquishing PRTA's control.<sup>155</sup>

55. *Residential Rates.* GTE Holdings pledges that its tariffs for basic residential service will not be raised for three years after the closing date of the transaction, unless PRTC is required to raise rates pursuant to applicable law.<sup>156</sup> GTE Holdings claims that this commitment ensures that local telephone customers will not bear any risk of rate increases in the wake of the transaction.<sup>157</sup> ABETG/Vizcarrando question whether GTE Holdings can keep this commitment, arguing that the transition from rate of return to price cap regulation will impose a great burden upon federal and local universal service programs since the competitive nature of the access environment in Puerto Rico renders it unlikely that PRTC will be able to raise its common carrier line (CCL) rates to entirely replace the revenue lost from the common line pool. Hence, the company will seek cost recovery in the least competitive intrastate market, which includes local basic services.<sup>158</sup> ABETG argues that Puerto Rican consumers can ill-afford an increase in rates since Puerto Rico has a per capita income approximately one-third that of the U.S. mainland and an unemployment rate of over 13%. ABETG argues that a rate increase would hamper efforts to improve the household penetration rate for telephone service, which currently stands at 76% of Puerto Rican households as compared to over 95% penetration in the U.S. mainland.<sup>159</sup>

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<sup>151</sup> *Id.* at 6-8.

<sup>152</sup> *Id.* at 8.

<sup>153</sup> *Id.*

<sup>154</sup> ABETG/Vizcarrando Response at 3-6.

<sup>155</sup> MCI WorldCom Comments at 4. MCI WorldCom contends that the proposed transaction contains three Agreements -- the "Management Agreement," the "Technology Transfer Agreement," and the "Option Agreement" -- in which PRTC appears to be paying GTE Holdings for management expertise, and notes that GTE Holdings has neither provided copies of these agreements nor described their material terms. *Id.*

<sup>156</sup> Sale Agreement, section 6.07; GTE Consolidated Opposition at 9.

<sup>157</sup> GTE Consolidated Opposition at 9.

<sup>158</sup> ABETG/Vizcarrando Petition at 20.

<sup>159</sup> *Id.* at 20-21. ABETG/Vizcarrando further contend that if GTE Holdings keeps its temporary temporary pledge not to raise rates, doing so may lead to erosion of its earnings, and that the annual payment of the fee contained in the management agreements will insulate GTE Holdings from the effects of this erosion and cause the effects of this drop in earnings to be borne primarily by other shareholders. *Id.* at 20 n.8.

56. *Internet Access.* GTE Holdings claims that its acquisition of PRTC will facilitate the availability of Internet services to educational institutions across Puerto Rico.<sup>160</sup> GTE Holdings claims that from the closing date of the transaction until the fifth anniversary of this order, PRTC will provide non-profit secondary and post-secondary educational institutions in Puerto Rico Internet access at a 35% discount, thus making Internet availability more affordable and accessible for the Commonwealth's schools.<sup>161</sup>

57. *Employee Commitments.* Finally, GTE Holdings, claiming that it recognizes the importance of stability in PRTC's employee base to the welfare of Puerto Rico's economy, has pledged not to make any involuntary terminations, except for cause, of PRTC employees employed on May 27, 1998.<sup>162</sup> GTE Holdings contends that this commitment not only will provide stability for PRTC's employees, but also will benefit the Puerto Rican economy generally.<sup>163</sup> ABETG/Vizcarrondo and HIETEL/UIET argue that this commitment is inadequate to protect the interests of PRTC's employees.<sup>164</sup>

## B. Analysis

58. We agree with APCT that applicants cannot meet their burden of showing that this transaction will benefit the public interest by simply reciting a list of vague, speculative claims.<sup>165</sup> We determine, however, that these applicants have demonstrated that this transfer will result in significant acquisition-specific benefits. In particular, we find that telecommunications consumers and the people of Puerto Rico will benefit from private ownership of the island's principal local exchange service provider by a well-financed and experienced company. Although we note that the government of Puerto Rico had decided to pursue privatization even before GTE Holdings submitted a bid, completion of the privatization process depends on reaching agreement with a qualified buyer, obtaining necessary approvals, and closing the transaction. We also find that GTE Holdings' commitments to invest substantial sums in infrastructure improvements and improve service quality are sufficiently detailed and credible. We believe these improvements are specifically attributable to GTE Holdings' purchase of PRTC because the record does not demonstrate that such upgrades would have occurred absent the acquisition. Finally, we believe the public could benefit from GTE Holdings' commitments to maintain residential rates and provide Internet access to educational institutions, as well as GTE Holdings' commitments to PRTC's employees.

59. In support of our conclusion, we further note that this transaction has been approved by the legislature and Governor of the Commonwealth of Puerto Rico, the duly elected representatives of the people of Puerto Rico. Finally, we need not ascertain the exact magnitude of the benefits of the proposed

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<sup>160</sup> GTE Consolidated Opposition at 9.

<sup>161</sup> *Id.* at 10.

<sup>162</sup> Sale Agreement, section 9.02; GTE Consolidated Opposition at 9.

<sup>163</sup> GTE Consolidated Opposition at 9.

<sup>164</sup> *See* ABETG/Vizcarrondo Response at 13-15; HIETEL/UIET Petition at 3.

<sup>165</sup> APCT Petition at 19; *see also* ABETG/Vizcarrondo Petition at 22-25.

acquisition because "where, as here, potential harms are unlikely, the Applicants' demonstration of potential benefits need not be as certain."<sup>166</sup>

## VI. MISCELLANEOUS ISSUES

### A. Request for Hearing

60. After the close of the period for filing formal comments, ABETG/Vizcarrondo requested that the Commission conduct one or more public hearings in Puerto Rico concerning the proposed transaction.<sup>167</sup> They argue that the majority of the Puerto Rican people oppose the transaction, and that a public hearing is necessary because the Commission's processes are unknown to the Puerto Rican people, English is a hardship for many, and many view the instant proceeding as "pro forma."<sup>168</sup>

61. Although we recognize the importance within Puerto Rico of the Government's decision to sell control of PRTC, we do not believe that the public hearing requested is warranted under the circumstances of this case. Section 309(e) of the Act specifies that in a licensing proceeding, "[i]f . . . a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding [of public convenience and necessity] . . . , it shall formally designate the application for [a] hearing."<sup>169</sup> The hearing requirement therefore is triggered in one of two ways. First, a party may raise factual questions in its petition to deny. Second, the Commission may lack sufficient information on which to make an informed judgment.<sup>170</sup>

62. We do not believe that the request here comes close to meeting either of these two standards. First, the issues raised in the request and the record here do not reflect disputes over material facts, but focus on issues concerning the competitive impact of the merger and the public interest.<sup>171</sup> As the D.C. Circuit has articulated, these types of issues "'manifestly do not' require a live hearing."<sup>172</sup> Second,

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<sup>166</sup> *SNET-SBC Order*, 13 FCC Rcd. at 21315, ¶ 45 citing *WorldCom-MCI Order*, 13 FCC Rcd. at 18134-36, ¶ 194.

<sup>167</sup> ABETG/Vizcarrondo Public Hearing Petition at 1-2.

<sup>168</sup> *Id.* at 2.

<sup>169</sup> 47 U.S.C. § 309(e).

<sup>170</sup> See *United States v. FCC*, 652 F.2d 72, 89 (D.C. Cir. 1980) (*en banc*) (affirming the Commission's decision, in *Satellite Business Systems*, 62 FCC 2d 997 (1977), *recon denied*, 64 FCC 2d 872 (1977), to grant Satellite Business Systems authority to construct domestic satellites and fixed domestic satellite earth stations).

<sup>171</sup> We further note that ABETG/Vizcarrondo did not attach a supporting affidavit to their petition. Section 309(d)(1) requires that a petition to deny "shall contain specific allegations of fact . . . supported by affidavit." 47 U.S.C. § 309(d)(1).

<sup>172</sup> *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1497 (D.C. Cir. 1995) (quoting *United States v. FCC*, 652 F.2d at 89-90).

we conclude that the voluminous record here provides us with sufficient evidence to determine, without conducting an evidentiary hearing, that the Applicants' request serves the public interest, convenience, and necessity. The record before us includes not only formal comments, but also a large number of informal comments in the form of letters, many from individual citizens in Puerto Rico, that raise a wide range of issues concerning this transaction. The request for hearing does not identify any issues or information relevant to our review under the Communications Act that is likely to come out at a public hearing that has not already been presented to us in this proceeding and addressed in this Order. We note that we routinely decide applications of this kind without conducting public hearings.

63. We are well aware that many Puerto Ricans do not support their Government's decision to relinquish control over PRTC. We do not believe, however, that this political opposition requires us to schedule a public hearing. As we have stated, we do not view it as within our province under the Communications Act to second guess a decision made by the elected representatives of the people of Puerto Rico.<sup>173</sup>

## B. Common Ownership

64. Applicants request that, pursuant to section 212 of the Communications Act and Part 62 of the Commission's rules, the Commission find and declare that, upon consummation of the Sale Agreement, GTE and PRTC and their subsidiaries will be "commonly owned carriers" as that term is defined in the Commission's rules.<sup>174</sup> Under section 212, a person generally may not hold the position of officer or director of more than one carrier subject to the Act unless authorized by the Commission upon a showing that neither public nor private interests will be affected thereby. A person may, however, upon due finding by the Commission, hold interlocking officerships or directorships in "two or more carriers, one of which directly or indirectly owns more than 50 percent of the stock of the other carrier or carriers, or 50 percent or more of whose stock is owned directly or indirectly by the same person."<sup>175</sup>

65. GTE Holdings asserts that after the merger, GTE Holdings and PRTC will be under common ownership because GTE Holdings will temporarily control 51 percent plus one share of TELPRI's stock, and even after some of this stock is transferred to other parties, GTE Holdings will continue to exercise *de jure* and *de facto* control over PRTC.<sup>176</sup> TLD contends, however, that the statutory and regulatory definition of common ownership creates a bright-line test that requires greater than 50 percent ownership, and has nothing to do with *de jure* or *de facto* control.<sup>177</sup> TLD further contends that the prohibition on interlocking directorates in section 212 of the Act was "designed to guard against

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<sup>173</sup> See ¶ 49, *supra*.

<sup>174</sup> Radio License Applications at 15.

<sup>175</sup> 47 U.S.C. § 212; 47 C.F.R. § 62.2(c). We note that we have forborne from enforcing section 212 against CMRS providers, *see* 47 C.F.R. § 20.15(b)(2), and that we have proposed to forbear from enforcing section 212 and Part 62 of our rules against all common carriers. *See* 1998 Biennial Regulatory Review -- Repeal of Part 62 of the Commission's Rules, CC Docket No. 98-195, *Notice of Proposed Rulemaking*, FCC 98-294 (rel. Nov. 17, 1998).

<sup>176</sup> Radio License Applications at 15.

<sup>177</sup> TLD Petition at 28.

anticompetitive behavior arising from the interlocking of companies through sharing of officers or directors."<sup>178</sup> TLD argues that when carriers are commonly owned, the Commission treats them as a single entity that cannot engage in collusive behavior and that is exempt from the prohibition on interlocking directorates. TLD argues that this treatment is inappropriate when the 50 percent test is not satisfied.<sup>179</sup>

66. GTE Holdings contends in reply that its initial commitment to acquire 51 percent plus one share of TELPRI satisfies the specific benchmark in section 212 for a finding of common ownership, even though some of this stock may later be purchased by other investors.<sup>180</sup> Furthermore, GTE Holdings contends that at the end of the transaction it will clearly retain *de jure* and *de facto* control of PRTC.<sup>181</sup> Specifically, it will be entitled to elect a majority of TELPRI's directors and thus to name all of its senior officers, and it intends to name the chief executive officer of TELPRI. Additionally, GTE Holdings claims that a post-transaction shareholder agreement will give it added control over the governance and operations of PRTC.<sup>182</sup> GTE Holdings contends that the Commission has previously held that control or common ownership may exist even when an entity holds less than 50 percent of a carrier's stock, and that the touchstone of control is the ability to determine a company's policies and conduct its affairs.<sup>183</sup> GTE Holdings maintains that at the close of the transaction, it will clearly meet this test.<sup>184</sup> GTE Holdings contends that both the language and the legislative history of section 212 support this interpretation.<sup>185</sup>

67. On the record before us, we cannot conclude that GTE and GTE Holdings, on the one hand, and TELPRI, PRTC, and CTI, on the other hand, will be under common ownership after the acquisition within the meaning of section 212 and our implementing rules. Although GTE Holdings will briefly own more than 50 percent of TELPRI's stock, the sale documents contemplate that its ownership share will be less than 50 percent at the end of the transaction. Although GTE Holdings argues that section 212 does not require ownership to remain over 50 percent, that interpretation not only would render the

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<sup>178</sup> *Id.* at 29, citing Amendment of Part 62 of the Commission's Rules, CC docket No. 84-1330, *First Report and Order*, 101 F.C.C. 2d 495, 495, ¶ 2 (1985).

<sup>179</sup> *Id.* at 29-31.

<sup>180</sup> GTE Consolidated Opposition at 26.

<sup>181</sup> *Id.* at 26-27.

<sup>182</sup> *Id.* at 27.

<sup>183</sup> *Id.* at 27, citing *Metromedia Inc., Memorandum Opinion and Order*, 98 FCC 2d 300 (1984), *recon. denied*, 56 Rad. Reg. 2d (P&F) 1198 (1985), *appeal dismissed*; *California Ass'n of the Physically Handicapped v. FCC*, 778 F.2d 823 (D.C. Cir. 1985); *George F. Cameron Jr. Communications (KROQ)*, 91 FCC 2d 870 (Rev. Bd. 1982), *recon. denied*, 93 FCC 2d 789 (1983), *applications for review dismissed as moot*, 56 RR 2d 825 (1984); *McCaw Cellular Communications Inc., Memorandum Opinion and Order*, 4 FCC Rcd 3784, 3789, ¶ 34 (1989); *New International, Memorandum Opinion and Order*, PLC, 97 FCC 2d 349, 356, ¶ 34 (1984).

<sup>184</sup> GTE Consolidated Opposition at 27.

<sup>185</sup> *Id.* at 27-28, citing H.R. Rep. No. 2540, 84th Cong., 2nd Sess. 2, *reprinted in* 1956 U.S. Code Cong. & Admin. News 4134, 4135.

statute meaningless, but is plainly inconsistent with our rules.<sup>186</sup> Moreover, the plain language of the statute and regulations requires over 50 percent direct, indirect, or common ownership, regardless of *de jure* or *de facto* control. In this regard, GTE Holdings cites ample authority that one party may control another without owning a majority of its stock, but these cases are not on point because they do not address the express majority ownership requirement of section 212.<sup>187</sup> We therefore decline to issue the finding of common ownership that Applicants request. We note, however, that the Commission has the power to authorize interlocking officerships and directorates upon a showing that neither public nor private interests will be adversely affected thereby.<sup>188</sup> In the event that prospective officers or directors of the companies involved in this transaction file applications under section 62.11, we delegate to the Wireless Telecommunications Bureau authority to decide such applications, and we direct the Bureau to resolve such applications promptly.

## VII. CONCLUSION

68. After considering all of the issues raised by commenters and parties opposing Applicants' requests, we conclude that the proposed acquisition by GTE Holdings of PRTC is unlikely to produce any meaningful public interest harms. We also find that it is likely to produce at least some tangible public interest benefits. Accordingly, subject to the conditions in the following paragraph, we grant Applicants' requests that control over the licenses and authorization at issue currently held by PRTC, CTI, and TPRI be transferred to GTE Holdings in connection with their transaction.

## VIII. ORDERING CLAUSES

69. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the specific applications filed by Puerto Rico Telephone Authority (PRTA), Puerto Rico Telephone Company (PRTC), and GTE Holdings (Puerto Rico) LLC (GTE Holdings) in the above-captioned proceeding ARE GRANTED, conditioned upon GTE Holdings' compliance with the conditions established in *Telefónica de Puerto Rico, Inc., Order, Authorization and Certificate*, 13 FCC Rcd 12344 (Int. Bur. 1998), and upon PRTC's continued compliance with the conditions imposed in *Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, Report and Order*, 2 FCC Rcd. 6600 (1987), as discussed in ¶ 32 and note 80 of this Order.

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<sup>186</sup> See 47 C.F.R. § 62.25 (authorization to hold interlocking directorates is automatically cancelled at any time carriers cease to be commonly owned).

<sup>187</sup> We also do not credit GTE Holdings' argument that references to "indirect" ownership in Sections 212 and 62.2(c) establish that *de jure* or *de facto* control will suffice. We interpret "indirect" ownership in accordance with its common meaning of ownership through an intermediary.

<sup>188</sup> 47 U.S.C. § 212; 47 C.F.R. § 62.11.

70. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the above grant shall include authority for GTE Holdings to acquire control of:

- a) any authorization issued to PRTC and its affiliates that are the subject of this transaction during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;
- b) construction permits held by licensees involved in this transfer that mature into licenses after closing and that may have been omitted from the transfer of control applications; and
- c) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

71. IT IS FURTHER ORDERED that all references to GTE Holdings, PRTA, and PRTC in this Order shall also refer to their respective officers, directors and employees, as well as to any affiliated companies and their officers, directors and employees, to the extent consistent with the context of the reference.

72. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the Petition of Asociacion Bonafide de Empleados Telefónicos Gerenciales (Bonafide Association of Puerto Rico Telephone Company Managerial Employees) and the Honorable Carlos Vizcarrondo, Member of the House of Representatives of the Commonwealth of Puerto Rico, to Deny the Grant of the Radio License Applications IS DENIED.

73. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the Petition of Hermandad Independiente de Empleados Telefónicos and the Unión Independiente de Empleados Telefónicos to Deny the Radio License Applications IS DENIED.

74. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the Petition of the Asociacion de Proveedores Competitivos de Telecomunicaciones, Inc. to Condition the Grant of the Radio License Applications IS DENIED.

75. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a),



214(c), 309, and 310(d), that the Petition of KMC Telecom, Inc. to Deny, or in the Alternative to Condition the Grant of, the Radio License Applications IS DENIED.

76. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the Petition of Telefónica Larga Distancia de Puerto Rico, Inc. to Condition the Grant of the Radio License Applications IS DENIED.

77. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 309(d), that the Petition of Asociacion Bonafide de Empleados Telefónicos Gerenciales (Bonafide Association of Puerto Rico Telephone Company Managerial Employees) and the Honorable Carlos Vizcarrondo, Member of the House of Representatives of the Commonwealth of Puerto Rico for Public Hearings IS DENIED.

78. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 212 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 212, and section 62.12 of the Commission's rules, 47 C.F.R. § 62.12, that the request of GTE Holdings for a declaration of common ownership between GTE Holdings and its affiliates, on the one hand, and PRTC and its affiliates, on the other hand, IS DENIED.

79. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**APPENDIX A  
List of Licenses**

**Part 22 - Broadband Cellular Service**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>	<u>Market No.</u>
03373-CL-TC-98	Puerto Rico Telephone Company	KNKA384	0091B
03374-CL-TC-98	Puerto Rico Telephone Company	KNKA399	0147B
03375-CL-TC-98	Puerto Rico Telephone Company	KNKA460	0202B
03376-CL-TC-98	Puerto Rico Telephone Company	KNKA464	0204B
03377-CL-TC-98	Puerto Rico Telephone Company	KNKA471	0169B
03378-CL-TC-98	Puerto Rico Telephone Company	KNKN371	0725B
03379-CL-TC-98	Puerto Rico Telephone Company	KNKN397	0726B
03380-CL-TC-98	Puerto Rico Telephone Company	KNKN414	0727B
03381-CL-TC-98	Puerto Rico Telephone Company	KNKN486	0728B
03382-CL-TC-98	Puerto Rico Telephone Company	KNKN505	0723B
03383-CL-TC-98	Puerto Rico Telephone Company	KNKN532	0724B
03384-CL-TC-98	Puerto Rico Telephone Company	KNKN957	0729B

**Part 24 - Personal Communications Service (“PCS”)**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>	<u>Market No.</u>
50516-CW-TC-98	Puerto Rico Telephone Company	KNLG211	B488 - Block E
50517-CW-TC-98	Puerto Rico Telephone Company	KNLH423	B489 - Block D

**Part 22 - Narrowband Paging Service**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0000001430	Puerto Rico Telephone Company	KKB724, KNKC341, KNKC869 & KNLW497

**Part 22 - Narrowband Rural Radiotelephone Service**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
22760-CR-TC-98	Puerto Rico Telephone Company	WAF797

22761-CR-TC-98 Puerto Rico Telephone Company WBB821, WBB823  
& WOG21

**Part 101 - Common Carrier Point-to-Point Microwave Service**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
9713708	Puerto Rico Telephone Company	WBB286 (1 of 63)

**Part 101 - Digital Electronic Message Service (“DEMS”)**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
9713707	Puerto Rico Telephone Company	WHB418 (1 of 5)

**Part 90 - Land Mobile Service  
Telephone Maintenance and Private Carrier Paging**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
910998	Puerto Rico Telephone Company	KCZ959 (1 of 4)

**Part 25 - Fixed Satellite Service**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
1330-DSE-TC-98	Puerto Rico Telephone Company	E970101

**SECTION 214 APPLICATION**

The following application for consent to transfer of control of CTI, a subsidiary of PRTA to GTE Holdings.

**File No.**

ITC-T/C-19980902-00605 Celulares Telefónica, Inc.

**APPENDIX B**  
**List of Formal Pleadings**

**Applications**

July 24, 1998

Applications of GTE Holdings (Puerto Rico) LLC for Transfers of Control of the Radio Licenses Held by the Puerto Rico Telephone Company ("Radio License Applications")

September 2, 1998

Application of GTE Holdings (Puerto Rico) LLC and Puerto Rico Telephone Authority for Transfer of Control of International Section 214 Authorization ("Section 214 Application")

(collectively, the "Applications")

**Comments and Petitions to Deny or Condition**

October 1, 1998

Petition of the Asociacion Bonafide de Empleados Telefónicos Gerenciales (Bonafide Association of Puerto Rico Telephone Company Managerial Employees) and the Honorable Carlos Vizcarrondo, Member of the House of Representatives of the Commonwealth of Puerto Rico, to Deny the Grant of the Radio License Applications ("ABETG/Vizcarrondo Petition")

Petition of Hermandad Independiente de Empleados Telefónicos and the Unión Independiente de Empleados Telefónicos to Deny the Applications ("HIETEL/UIET Petition")

October 2, 1998

Comments of Sprint Communications Company L.P. on the Radio License Applications ("Sprint Comments")

October 9, 1998

Petition of the Asociacion de Proveedores Competitivos de Telecomunicaciones, Inc. to Condition the Grant of the Applications ("APCT Petition")

Petition of KMC Telecom, Inc. to Deny, or in the Alternative to Condition the Grant of, the Radio License Applications ("KMC Petition")

Comments of MCI WorldCom, Inc. on the Applications ("MCI WorldCom Comments")

Comments of the Personal Communications Industry Association on the Applications ("PCIA Comments")

Petition of Telefónica Larga Distancia de Puerto Rico, Inc. to Condition the Grant of the Applications ("TLD Petition")

### **Reply Comments and Oppositions to Petitions**

October 20, 1998

Reply Comments of APCT ("APCT Reply Comments")

Consolidated Opposition filed by GTE Corporation and GTE Holdings (Puerto Rico) LLC to the Petitions to Deny, Petitions to Condition, and Comments ("GTE Consolidated Opposition")

Reply Comments of Puerto Rico Telephone Authority and Opposition of Puerto Rico Telephone Authority to the Petitions ("PRTA Reply Comments") (erratum received November 5, 1998)

### **Responses to Reply Comments and Responses to Oppositions to Petitions**

October 30, 1998

Response of KMC to the GTE Consolidated Opposition and to the PRTA Reply Comments, ("KMC Response")

December 2, 1998

Response of ABETG and the Honorable Carlos Vizcarrondo to the Reply Comments and to the GTE Consolidated Opposition ("ABETG/Vizcarrondo Response")

December 16, 1998

Response of PRTA to the ABETG/Vizcarrondo Response ("PRTA Response")

### **Petition for Public Hearings**

December 1, 1998

Petition of ABETG and the Honorable Carlos Vizcarrondo for Public Hearings ("ABETG/Vizcarrondo Public Hearing Petition")

December 15, 1998

Reply of GTE to ABETG/Vizcarrondo Public Hearing Petition ("GTE Public Hearing Reply")