

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

In the Matter of	)	
	)	
América Móvil, S.A.B. de C.V.	)	File No. EB-11-IH-0216
	)	
Parent of Puerto Rico Telephone Company, Inc.	)	NAL/Acct. No. 201132080032
	)	
Apparent Liability for Forfeiture	)	FRN No. 0015025067
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** June 22, 2011

**Released:** June 22, 2011

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that América Móvil, S.A.B. de C.V. (“América Móvil”), the parent company of Puerto Rico Telephone Company, Inc. (“PRTC”), a common carrier radio licensee, apparently violated section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and the terms of a Commission order<sup>2</sup> by willfully issuing additional equity stock that resulted in additional indirect foreign ownership in PRTC beyond the percentage permitted by section 310(b)(4) and the Commission’s *2007 MO&O and Declaratory Ruling*. Based on our review of the undisputed facts in this matter, and for the reasons discussed below, we find that América Móvil is apparently liable for a forfeiture of \$16,000.

**II. BACKGROUND**

2. Section 310(b)(4) of the Act establishes a 25 percent limit for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees.<sup>3</sup> This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>4</sup> A licensee must file a petition for declaratory ruling to obtain Commission approval before direct or indirect foreign ownership of its U.S. parent company exceeds the 25 percent limit.<sup>5</sup> In addition, a licensee that has already received

<sup>1</sup> 47 U.S.C. § 310(b)(4).

<sup>2</sup> *In the Matter of Verizon Communications, Inc., Transferor, and América Móvil, S.A.B. de C.V., Transferee*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Red 6195 (2007) (“*2007 MO&O and Declaratory Ruling*”).

<sup>3</sup> 47 U.S.C. § 310(b)(4).

<sup>4</sup> *Id.*; see also *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Red 22612, 22621 (Int’l Bur. 2004) (“*Foreign Ownership Guidelines*”).

<sup>5</sup> *Id.* at 22639.

Commission approval to exceed the 25 percent benchmark up to a certain level of foreign ownership must seek further Commission approval before it may increase its foreign ownership above that level.<sup>6</sup>

3. PRTC holds various common carrier radio licenses and provides wireless telecommunications service in Puerto Rico.<sup>7</sup> PRTC is a wholly-owned subsidiary of América Móvil, a publicly-traded corporation organized and headquartered in Mexico that provides wireless telecommunications services in Latin America through various operating subsidiaries.<sup>8</sup>

4. In the *2007 MO&O and Declaratory Ruling*, the Commission approved the transfer of control of licenses and authorizations held by Telecomunicaciones de Puerto Rico, Inc. (“TELPRI”), through its wholly-owned subsidiary PRTC, from Verizon Communications, Inc. (“Verizon”) to América Móvil.<sup>9</sup> The Commission also granted América Móvil’s petition for declaratory ruling permitting indirect foreign ownership in PRTC in excess of the 25 percent limit set forth in section 310(b)(4) of the Act.<sup>10</sup> Specifically, the Commission authorized the indirect foreign ownership in PRTC by Mr. Carlos Slim Helú and members of his immediate family (collectively, the “Slim Family”).<sup>11</sup> At that time, the Slim Family had a 32.33 percent equity and 66.21 percent voting interest in América Móvil.<sup>12</sup> As a condition of its grant of the transfer of control and petition for declaratory ruling, the Commission required América Móvil to obtain prior Commission approval, pursuant to section 310(b)(4), “before the company goes private, or otherwise issues or causes to be issued, directly or indirectly, without limitation, as a result of any share purchase, redemption, or other recapitalization, securities that would represent more than 5 percent of its equity or voting interests (whether full or limited voting interests).”<sup>13</sup> In addition, the Commission required that the equity and/or voting interests held directly or indirectly in América Móvil by the Slim Family not exceed, without prior Commission approval, an aggregate three percent above the levels they held at that time.<sup>14</sup>

5. On June 23, 2010, América Móvil submitted an updated Petition for Declaratory Ruling requesting that the Commission find the proposed foreign ownership structure of América Móvil in

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

<sup>7</sup> *2007 MO&O and Declaratory Ruling*, 22 FCC Rcd at 6196-97, ¶ 2.

<sup>8</sup> *Id.* at 6198, ¶ 7.

<sup>9</sup> *Id.* at 6227, ¶ 73. At the time of this transaction, TELPRI was owned by Verizon and certain other shareholders, but was controlled by Verizon. *Id.* at 6196, ¶ 2. Both TELPRI and its wholly-owned subsidiary PRTC are organized under the laws of the Commonwealth of Puerto Rico. TELPRI is wholly owned by Tenedora Telpri, S.A. de C.V. (“Tenedora”), which in turn is 99.99 percent owned and controlled by Radiomóvil Dipsa, S.A. de C.V. (“Telcel”), and is 0.01 percent owned by Amov IV, S.A. de C.V. (“Amov IV”). Telcel is 99.99 percent owned and controlled by Sercotel, S.A. de C.V. (“Sercotel”), and is 0.01 percent owned by Amov IV. Sercotel is 99.99 percent owned and controlled by América Móvil, and is 0.01 percent owned by Amov IV. Amov IV is 99.99 percent owned and controlled by Sercotel and is 0.01 percent owned by Telcel. Tenedora, Telcel, Amov IV and Sercotel are all organized under the laws of Mexico. *See International Authorizations Granted*, Public Notice, DA 11-259 (Int’l Bur. 2011) (“2011 Public Notice”).

<sup>10</sup> *Id.* at 6225, ¶ 68.

<sup>11</sup> *Id.* at 6219, ¶ 53.

<sup>12</sup> *Id.* at 6219-20, ¶¶ 54-56.

<sup>13</sup> *Id.* at 6224, ¶ 65.

<sup>14</sup> *Id.* at 6225, ¶ 68.

excess of the 25 percent benchmark set forth in section 310(b)(4) is in the public interest.<sup>15</sup> In the petition, América Móvil acknowledged that on June 16, 2010, it issued additional stock that increased the Slim Family's equity holdings in América Móvil from 32.4 percent to 40.18 percent.<sup>16</sup> The Slim Family's voting interest in América Móvil was unchanged.<sup>17</sup> América Móvil explained that, "[d]ue to an oversight, which América Móvil regrets, América Móvil inadvertently did not seek Commission approval prior to the issuance" of the stock.<sup>18</sup> América Móvil also stated that, as the parent of PRTC, it takes its obligations under the FCC's rules and the *2007 MO&O and Declaratory Ruling* very seriously and has put into place internal measures to ensure that such an oversight does not reoccur.<sup>19</sup>

6. On February 7, 2011, the International Bureau granted América Móvil's petition for declaratory ruling to permit the Slim Family to hold a 40.18 percent indirect equity interest in PRTC.<sup>20</sup> The International Bureau granted the petition "without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules."<sup>21</sup> The International Bureau subsequently referred the matter to the Enforcement Bureau for possible enforcement action.

### III. DISCUSSION

7. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>22</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act,

<sup>15</sup> América Móvil, S.A.B. de C.V., Petition for Declaratory Ruling, filed June 23, 2010 ("2010 Petition"). The International Bureau placed América Móvil's Petition for Declaratory Ruling on public notice as acceptable for filing on August 5, 2010. See *Non-Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-01445NS (Int'l Bur. Aug. 5, 2010).

<sup>16</sup> *2010 Petition* at 3-4. Specifically, América Móvil stated that in connection with two separate but concurrent tender offers commenced by América Móvil to acquire outstanding shares of Telmex Internacional, S.A.B. de C.V. ("Telmex Internacional") and Carso Global Telecom, S.A.B. de C.V. ("Carso Global"), (collectively, the "Telmex Entities"), it issued an amount of Class L shares equal to 42.21 percent of the Class L shares outstanding before issuance, which represents 26.28 percent of the total equity of América Móvil before the issuance. The acquisition of the Telmex Entities was structured as a tender offer by América Móvil for the outstanding shares of the Telmex Entities, in exchange for which (i) tendering shareholders of Telmex Internacional would receive cash or Class L shares of América Móvil, at the option of the tendering shareholder; and (ii) tendering shareholders of Carso Global would receive Class L shares of América Móvil. The period to participate in the tender offers expired on June 10, 2010, and 92.08 percent of the acceptances were tendered on that day. Therefore, América Móvil stated, only as of June 11, 2010 did it know the number of Class L shares that it would be required to issue in response to the tender offers. As a result of the issuance of the Class L shares, the Slim Family's equity holdings in América Móvil increased from 32.4 percent immediately prior to the issuance to 40.18 percent. *Id.*

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* América Móvil initially requested that the Commission grant its petition for declaratory ruling *nunc pro tunc*. *Id.* On June 25, 2010, América Móvil supplemented its petition for declaratory ruling to withdraw its request that the Commission grant the petition *nunc pro tunc*. América Móvil, S.A.B. de C.V., Supplement to Petition for Declaratory Ruling, filed June 25, 2010.

<sup>19</sup> 2010 Petition at 4.

<sup>20</sup> See 2011 Public Notice.

<sup>21</sup> *Id.*

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

irrespective of any intent to violate” the law.<sup>23</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>24</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>25</sup> To impose a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>26</sup> The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act, a rule, or a Commission order.<sup>27</sup> As set forth below, we conclude that América Móvil is apparently liable for forfeiture for its apparent willful violation of section 310(b)(4) of the Act and the *2007 MO&O and Declaratory Ruling*.<sup>28</sup>

8. Section 310(b)(4) of the Act establishes a 25 percent limit for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees and requires prior Commission approval for foreign ownership in excess of that level.<sup>29</sup> The *2007 MO&O and Declaratory Ruling* authorized indirect foreign ownership by the Slim Family in PRTC but explicitly required América Móvil to obtain prior Commission approval “before the company goes private, or otherwise issues or causes to be issued, directly or indirectly, without limitation, as a result of any share purchase, redemption, or other recapitalization, securities that would represent more than 5 percent of its equity or voting interests (whether full or limited voting interests).”<sup>30</sup> The *2007 MO&O and Declaratory Ruling* also required that the equity and/or voting interests held directly or indirectly in América Móvil by the Slim Family not exceed, without prior Commission approval, an aggregate three percent above the levels they held at that time.<sup>31</sup>

9. The undisputed facts in this case show that on June 16, 2010, América Móvil deliberately issued additional stock that represented more than 5 percent of its equity interest and increased the Slim Family’s equity holdings in América Móvil from 32.4 percent to 40.18 percent prior to obtaining Commission approval.<sup>32</sup> Accordingly, we conclude that América Móvil apparently willfully violated section 310(b)(4) of the Act and the *2007 MO&O and Declaratory Ruling*.

10. The Commission’s *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$8,000 for violations of the alien ownership restrictions.<sup>33</sup> América Móvil is therefore apparently liable for a base forfeiture of \$8,000 for its willful violation of section 310(b)(4) of the Act and

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<sup>23</sup> 47 U.S.C. § 312(f)(1).

<sup>24</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>25</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting*”).

<sup>26</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>27</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

<sup>28</sup> 47 U.S.C. § 310(b)(4); *2007 MO&O and Declaratory Ruling*, 22 FCC Rcd at 6196.

<sup>29</sup> 47 U.S.C. § 310(b)(4).

<sup>30</sup> *Id.* at 6224, ¶ 65.

<sup>31</sup> *Id.* at 6225, ¶ 68.

<sup>32</sup> See *supra* para. 5.

<sup>33</sup> *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113 (1997); 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures.

the *2007 MO&O and Declaratory Ruling*.<sup>34</sup> The Commission's rules provide, however, that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act<sup>35</sup> and Section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation ... and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>36</sup> We conclude that América Móvil's ability to pay warrants an upward adjustment of the base forfeiture amount. To ensure that a proposed forfeiture is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies, such as América Móvil,<sup>37</sup> may be subject to proposed forfeitures that are higher than the base forfeiture amount.<sup>38</sup> Given América Móvil's size and its ability to pay a forfeiture, we conclude that an upward adjustment of the base forfeiture amount from \$8,000 to \$16,000 is appropriate.

11. While América Móvil claimed that the violation was a result of an inadvertent oversight,<sup>39</sup> it is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.<sup>40</sup> Moreover, América Móvil's assertion that it has put into place internal measures to ensure that such an oversight does not reoccur, while laudable, does not mitigate its liability for the instant violation. Accordingly, we find that América Móvil is apparently liable for a total forfeiture of \$16,000 for its willful violation of section 310(b)(4) of the Act and the *2007 MO&O and Declaratory Ruling*.

#### IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Act,<sup>41</sup> and section 1.80 of the Commission's rules,<sup>42</sup> that América Móvil, S.A.B. de C.V. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$16,000 for willfully violating section 310(b)(4) of the Act and the *2007 MO&O and Declaratory Ruling*.

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, América Móvil, S.A.B. de C.V. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>34</sup> See e.g., *Satamatics, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21011, 21015, ¶ 11 (Enf. Bur., Investigations and Hearings Div., 2007) (proposing an \$8,000 forfeiture for violation of alien ownership restrictions).

<sup>35</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>36</sup> 47 C.F.R. § 1.80(a)(4).

<sup>37</sup> América Móvil's Annual Report for 2010 indicates that the company had total revenues of approximately 607.8 billion Mexican pesos (approximately \$48.1 billion U.S. dollars) and net income of approximately 98.9 billion Mexican pesos (approximately \$7.8 billion U.S. dollars). See América Móvil, S.A.B. de C.V. 2010 Annual Report, SEC Form 20-F, at <http://www.sec.gov/Archives/edgar/data/1129137/000119312511138519/d20f.htm>.

<sup>38</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, ¶ 24.

<sup>39</sup> *2010 Petition* at 4.

<sup>40</sup> See *Southern California Broadcasting*, 6 FCC Rcd at 4387, ¶ 3 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

<sup>41</sup> 47 U.S.C. § 503(b).

<sup>42</sup> 47 C.F.R. § 1.80.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). América Móvil, S.A.B. de C.V. will also send electronic notification within forty-eight (48) hours of the date said payment is made to Terry.Cavanaugh@fcc.gov and Kathy.Berthot@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeitures, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Commission’s rules.<sup>43</sup> The written statement must be mailed to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. The written statement should also be emailed to Terry.Cavanaugh@fcc.gov and Kathy.Berthot@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>44</sup> For answers to questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by certified mail, return receipt requested, to counsel for América Móvil, S.A.B. de C.V., Michael G. Jones, Esq., Wilkie Farr & Gallagher LLP, 1875 K St, NW, Washington D.C. 20006-1238.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

<sup>43</sup> See 47 C.F.R. §§ 1.80(f)(3), 1.16.

<sup>44</sup> See 47 C.F.R. § 1.1914.