

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 7000
Washington, DC 20530

Plaintiff,

v.

LIBERTY LATIN AMERICA LTD.,
1550 Wewatta Street, Suite 710
Denver, CO 80202

LIBERTY COMMUNICATIONS OF
PUERTO RICO LLC,
279 Ave. Ponce De Leon
San Juan, PR 00917

and

AT&T INC.,
208 South Akard Street
Dallas, TX 75202

Defendants.

Civil Action No. _____

COMPLAINT

The United States of America brings this civil antitrust action to enjoin the acquisition of certain assets of AT&T Inc. in Puerto Rico and the U.S. Virgin Islands by Liberty Latin America Ltd. and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. On October 9, 2019, Liberty Latin America Ltd. (“Liberty”) entered into an agreement to purchase the wireless and wireline telecommunications operations of AT&T Inc.

(“AT&T”) in Puerto Rico and the U.S. Virgin Islands. Liberty does not compete with AT&T in the U.S. Virgin Islands or in the provision of wireless telecommunications services in Puerto Rico. Liberty does, however, compete directly with AT&T in the provision of wireline telecommunications services in Puerto Rico. The proposed transaction would eliminate this competition.

2. Specifically, Liberty and AT&T currently compete to provide wireline telecommunications services over fiber-optic networks that they own in Puerto Rico. Liberty and AT&T use these networks to provide fiber-based connectivity and telecommunications services to enterprise customers across the island. The enterprise customers that purchase these services include businesses of all sizes as well as institutions, such as universities, hospitals, and government agencies. Enterprise customers use these services to reliably transport data among their offices and other locations, place phone calls, and access the internet at high speeds. Many enterprise customers demand the high levels of quality and reliability that fiber-based services provide.

3. Liberty and AT&T have two of the three most extensive fiber-based networks in Puerto Rico. For many buildings on the island, Liberty and AT&T are either the only two providers, or two of only three providers, that own a direct fiber connection to the building. For many other buildings to which Liberty and AT&T do not own direct fiber connections, they are the only two providers, or two of only three providers, with fiber located close enough to connect their networks to the building economically. Liberty and AT&T compete particularly closely for customers that have multiple locations spread across Puerto Rico and demand service from a single provider that can serve all of their locations over its network. The proposed acquisition thus would likely substantially lessen competition in the provision of fiber-based connectivity

and telecommunications services to enterprise customers in Puerto Rico in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. DEFENDANTS AND THE TRANSACTION

4. Liberty—a Bermuda corporation with its executive offices in Denver, Colorado—is a leading telecommunications provider in Latin America and the Caribbean. Across this region, Liberty provides video services, internet access, and home telephony services to more than 6 million subscribers and provides mobile wireless service to approximately 3.6 million subscribers. Liberty generates approximately \$3.9 billion in annual revenues. Through its subsidiary Liberty Communications of Puerto Rico LLC (“LCPR”), Liberty operates the largest cable company in Puerto Rico. In 2016, Liberty expanded its Puerto Rico operations by acquiring Cable & Wireless Communications Plc, which controlled Columbus International Inc., a leading provider of fiber-based connectivity and telecommunications services on the island. Today, Liberty operates a network that includes more than 3,000 route miles of fiber-optic facilities in Puerto Rico. Liberty uses this network to provide fiber-based connectivity and telecommunications services to enterprise customers located throughout the island.

5. AT&T—a Delaware corporation headquartered in Dallas, Texas—is a leading provider of telecommunications, media, and technology services globally. AT&T generates approximately \$180 billion in annual revenues. Beyond its well-known mobile wireless and residential telecommunications businesses, AT&T is also one of the largest providers of telecommunications services to enterprise customers in the United States. AT&T entered the Puerto Rico market in 2009 through its acquisition of the wireless and wireline operations of Centennial Communications Corp. Today, AT&T provides fiber-based connectivity and

telecommunications services to enterprise customers across Puerto Rico over a network that includes over 3,500 route miles of fiber-optic facilities.

6. On October 9, 2019, Liberty announced that it had agreed to purchase AT&T's wireless and wireline telecommunications operations in Puerto Rico and the U.S. Virgin Islands for \$1.95 billion in cash. Upon closing of the transaction, Liberty would take ownership of certain AT&T assets in Puerto Rico, including its wireless and wireline networks, wireless spectrum, contracts, real estate, and most of AT&T's customer relationships on the island.¹

III. JURISDICTION AND VENUE

7. The United States brings this action under the direction of the Attorney General and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Liberty, LCPR, and AT&T from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Liberty, LCPR, and AT&T are engaged in, and their activities substantially affect, interstate commerce. Liberty, LCPR, and AT&T sell wireline telecommunications services in Puerto Rico and the United States. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Defendants Liberty, LCPR, and AT&T have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b)(1) and (c).

IV. BACKGROUND

10. Wireline telecommunications services are critical for transporting the data that individuals, businesses, and other entities transmit. Wireline telecommunications services

¹ The transaction does not include AT&T's DIRECTV assets in Puerto Rico, any submarine cables and landing stations, certain "global" customer contracts, or spectrum in the 3650-3700 MHz and 39 GHz ranges.

provided over fiber-optic networks generally provide a higher level of quality and reliability than other types of wireline telecommunications services, such as those provided over legacy copper telephone network facilities or coaxial cable facilities.

11. Businesses and other institutions, such as universities, hospitals, and government agencies, that purchase telecommunications services are often referred to as “enterprise customers.” Enterprise customers generally require higher-quality and more-reliable telecommunications services than the residential telecommunications services that are purchased by consumers. For example, many enterprise customers require very high levels of dedicated bandwidth to allow them to transmit large volumes of data among their offices, and many require services that offer penalty-backed service quality guarantees in order to ensure business continuity. Fiber-based services often carry these features. Accordingly, many enterprise customers depend on fiber-based services to enable their day-to-day operations.

12. In Puerto Rico, fiber-based telecommunications networks include the fiber cables that connect individual buildings to the rest of a provider’s network; the fiber cables and related equipment in a provider’s network used to transport traffic within a municipality; and the fiber cables that connect municipalities to one another across the island. Fiber cables that connect an individual building, such as an office building, to a provider’s network are often referred to as “last-mile” connections. Without a last-mile connection to the building, customers cannot send data to or receive data from any point outside of the building. Without the networks to which those last-mile connections connect, customers cannot communicate with other buildings in the same municipality or reach any points beyond.

13. Liberty and AT&T possess two of the three most extensive fiber-based networks in Puerto Rico. Each owns thousands of last-mile fiber connections, fiber facilities in

municipalities across the island, and a fiber-optic “ring” that connects the municipalities to one another. The only other provider with a comparable fiber-based network is the incumbent local telephone company on the island, Puerto Rico Telephone Company, Inc., which does business as “Claro.” Together, Liberty, AT&T, and Claro account for the vast majority of sales of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico.

V. RELEVANT MARKETS

14. The provision of fiber-based connectivity and telecommunications services to enterprise customers constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

15. Fiber-based connectivity allows for data to be physically transported across fiber-optic facilities, and telecommunications providers utilize this connectivity to offer a range of telecommunications services. Enterprise customers purchase these services to reliably transport data among their offices and other locations, place phone calls, and access the internet at high speeds. Enterprise customers that purchase fiber-based connectivity and telecommunications services would not turn to other connectivity technologies (such as copper or coaxial cable) in sufficient numbers to make a small but significant increase in price of fiber-based connectivity and telecommunications services unprofitable for a provider of these services.

16. Providers of fiber-based connectivity and telecommunications services to enterprise customers maintain island-wide price lists that apply across Puerto Rico. The actual prices charged for services, however, frequently vary significantly from these lists, as prices are often determined through promotional rates or on an individual basis. In some instances, customers purchase service for individual locations. In other instances, customers purchase packages of services for multiple locations. Many customers with multiple locations spread

throughout Puerto Rico demand service from a single provider that can serve all of their locations over its network. Providers with island-wide, fiber-optic networks are best suited to supply such customers.

17. The relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the island of Puerto Rico. The relevant geographic market is best defined by the locations of the customers who purchase fiber-based connectivity and telecommunications services. Enterprise customers located in Puerto Rico purchase fiber-based connectivity and telecommunications services from providers that can provide service to their locations. Enterprise customers located in Puerto Rico are unlikely to move their offices or other buildings in order to purchase fiber-based connectivity and telecommunications services from firms that do not offer service to their locations. For these reasons, a hypothetical monopolist of fiber-based connectivity and telecommunications services for enterprise customers in Puerto Rico likely would increase its prices in that market by at least a small but significant and non-transitory amount. Therefore, Puerto Rico is a relevant geographic market and “section of the country” within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. ANTICOMPETITIVE EFFECTS

18. The transaction likely would substantially lessen competition in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico.

19. This market is highly concentrated. Three providers—Liberty, AT&T, and Claro—account for the vast majority of sales. While other providers offer service in Puerto Rico, they collectively account for a small fraction of sales. These smaller providers generally

do not own networks of sufficient scale to enable them to compete effectively in many parts of the island.

20. In order for a provider to sell fiber-based connectivity and telecommunications services to enterprise customers over its own network, the provider must either own a last-mile connection to the customer's location or own fiber close enough to the location to allow the provider to build such a connection economically. For many buildings on the island, Liberty and AT&T are either the only two providers, or two of only three providers, that own a last-mile fiber connection to the building. For many other buildings, Liberty and AT&T are the only two providers, or two of only three providers, with fiber located close enough to the building to be able to construct such a connection economically.

21. A provider that does not own a last-mile connection to a particular customer location can serve enterprise customers at that location over another provider's last-mile connection. It can do so by purchasing wholesale fiber-based connectivity from another provider and reselling that connectivity as part of a broader package of services to the enterprise customer. However, providers that do not own island-wide networks, including a significant number of last-mile connections, are limited in their competitiveness because they are reliant on their wholesale providers for fiber-based connectivity and constrained by the terms that their wholesale providers set for this connectivity.

22. In Puerto Rico, telecommunications providers seeking wholesale fiber-based connectivity most often purchase this connectivity from Liberty, AT&T, or Claro. Other options are limited. Some providers may purchase wholesale connectivity from a subsidiary of Puerto Rico's public utility known as PREPA Networks ("PREPA"), which owns an island-wide fiber ring and is required by law to provide only wholesale connectivity to other telecommunications

providers rather than service directly to enterprise customers. PREPA owns far fewer last-mile connections than Liberty, AT&T, and Claro, however, and customers served over the PREPA network account for a very small fraction of the overall market.

23. As the providers with two of the three largest fiber-based networks in Puerto Rico, Liberty and AT&T compete vigorously for enterprise customers across the island. These customers include businesses of all sizes, as well as institutions, such as universities, hospitals, and government agencies. Given the breadth of their networks, Liberty and AT&T compete particularly closely for customers that have multiple locations spread throughout Puerto Rico and demand service from a single provider that can serve all of their locations over its network.

24. Competition between Liberty and AT&T for enterprise customers takes several forms. In some instances, Liberty or AT&T offers promotional rates or discounts in order to attract customers away from the other. In other instances, customers can extract concessions from Liberty or AT&T by threatening to switch to the other. Liberty or AT&T may also construct new fiber facilities in order to attract customers away from the other. Enterprise customers throughout Puerto Rico have experienced the benefit of this competition in the form of lower prices and higher-quality services.

25. The acquisition of AT&T's wireline telecommunications operations in Puerto Rico by Liberty would represent a loss of this competition. The highly concentrated market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would become even more concentrated. The loss of Liberty and AT&T as independent competitors would leave many customers with only one alternative provider and others with no competitive choice at all. This change would likely result in increased prices and lower-quality services for enterprise customers across the island.

VII. ABSENCE OF COUNTERVAILING FACTORS

26. Entry of new competitors in the relevant market is unlikely to prevent or remedy the proposed transaction's anticompetitive effects. Barriers to entry include (i) the substantial amount of time and expense required to construct a fiber-optic network, (ii) the need for a firm seeking to construct such a network to obtain the permits and approvals required to do so, (iii) the significant level of expertise required to successfully offer telecommunications services to enterprise customers, and (iv) the need for a provider to establish a brand and reputation that would allow enterprise customers to entrust the provider with supporting their day-to-day operations.

27. The proposed transaction would be unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VIII. VIOLATIONS ALLEGED

28. The acquisition of AT&T's wireline telecommunications operations in Puerto Rico by Liberty likely would substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

29. Unless enjoined, the acquisition would likely have the following anticompetitive effects, among others:

- a. competition in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would be substantially lessened;

- b. prices in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would increase; and
- c. quality of service in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would decline.

IX. REQUESTED RELIEF

- 30. The United States requests that this Court:
 - a. adjudge and decree that Liberty's acquisition of AT&T's wireline telecommunications operations in Puerto Rico would violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
 - b. permanently enjoin and restrain Liberty and AT&T and all persons acting on their behalf from carrying out the stock purchase agreement dated October 9, 2019, or from entering into or carrying out any contract, agreement, plan, or understanding, by which Liberty would acquire the assets that are subject to the agreement;
 - c. award the United States its costs for this action; and
 - d. award the United States such other and further relief as the Court deems just and proper.

Dated: October 23, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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