

United States. In fact, for years the United States benefitted from high settlement rates for record traffic and sought as part of its policy goals to maintain those rates because the imbalance benefitted the U.S. record carriers. Now, the United States' interests have changed. In either circumstance, however, it seems unlikely the United States would permit a foreign action similar to that in the Order that would restrict its domestic carriers' ability to negotiate settlement rates for terminating traffic on their own networks.

## **II. The Order Is Certain To Make Accounting Rate Reform More Difficult, Not Easier**

The Commission's enactment of the Order can only reasonably lead foreign governments to undertake appropriate defensive measures to protect their carriers. The Commission falsely believes that it may dictate what U.S. carriers pay foreign correspondents, which is the equivalent of determining those foreign carriers' rates. Regulators from other countries could make similar assertions of authority, unjustly granting themselves power mirroring the power unjustly claimed by the FCC. Having already claimed authority to act in such a manner, the FCC would be estopped by equity and law from claiming that other sovereign nations did not have power effectively to dictate what U.S. carriers may charge their foreign counterparts or what those nations' carriers are prohibited or required to pay. This would necessarily lead to overlapping claims of jurisdiction and abject confusion among carriers as to which set of contradicting requirements they should obey. Such a scenario could well lead to telecommunications service disruption on affected routes and potentially result in economic and political fallout in developing countries.

Adding to this potential confusion, the Order could also undermine legitimate development goals of many countries, including the Philippines, leading to ruinous economic consequences and, ultimately, harming the U.S. public interest.<sup>53/</sup> As explained in the discussion of universal service priorities above, the international service rate base in developing nations, such as the Philippines, subsidizes critical national projects, such as telecommunications infrastructure development. The Order risks rapidly reducing these subsidies, resulting in drastically diminished telecommunications infrastructure build-out and, in turn, diminishing overall economic development. These developments would quickly lead to lower quality service for all consumers, including U.S. consumers calling the impacted countries.

### **III. The FCC Must Take Action to, at a Minimum, Partially Reverse the Order**

The opportunity for the FCC to play a role of enlightened leadership in the process of international accounting rate reform has not yet passed. While the Commission has, in the ways detailed above, overstepped its legal authority, the Philippines parties believe that the Commission can begin to rectify its errors by partially reversing, at minimum, the following two findings put forth in the Order:

- (1) That the FCC may determine the lawfulness of settlement rates charged by foreign carriers to U.S. carriers.

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<sup>53/</sup> "Disruption of either U.S. carriers' or foreign carriers' networks would not be in the public interest," Order at ¶ 21.

- (2) That the FCC has the authority to direct a U.S. carrier as to what that carrier can pay an unaffiliated entity for a service rendered by the unaffiliated entity to the carrier.

The Philippines parties wish to reiterate that they do not challenge the authority or obligations of the FCC to ensure that collection rates charged by U.S. international carriers are just and reasonable.

#### **IV. Conclusion**

The Philippines parties believe that, unless the Commission acts to partially reconsider and partially reverse its findings in the Order, the Order will be counter-productive to the goals enunciated in it. The FCC's assertion of jurisdiction over foreign carriers is offensive to the sovereignty of all nations and is a *de facto* claim of suzerainty over foreign regulatory bodies and foreign governments. It threatens to unwind the multilateral system that has underlain the provision of international communications for decades. The Order does not simply contravene established practices and international comity -- it also seriously transgresses international and U.S. domestic law.

By claiming to vest the FCC with the authority to determine the lawfulness of foreign rates and the lawfulness of payments made by U.S. carriers to unaffiliated third parties, the Order grants the Commission powers unforeseen in the Communications Act and unparalleled in the FCC's history. In addition, even if the Order were lawful, which clearly it is not, it fails the standard of practicability by not providing an adequate framework to determine how foreign rates will be assessed in relation to the proposed benchmarks.

The Philippines parties believe that the FCC's goals of encouraging competitive markets and access charge reform would be best served if the Order were reconsidered and vacated in the respects detailed above. In addition, the FCC should refrain from issuing any order or entertaining any complaint under the authority claimed herein until addressing this petition. PLDT will be objecting to, and seeking stay of, the Commission's recent order regarding certain petitions for waiver of the International Settlements Policy,<sup>54/</sup> which appears to assert similar authority, although that order does not make explicit the basis for its issuance.

Respectfully Submitted,



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September 29, 1997

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<sup>54/</sup> ISP Waiver Order (rel. September 10, 1997).

## **CERTIFICATE OF SERVICE**

I, Katina Yates, hereby certify that on the 29th day of September, 1997, a true copy of the foregoing Petition was delivered, either by hand or first-class mail, to the following:

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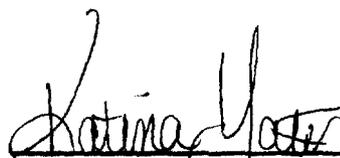
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