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

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In the Matter of )  
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International Settlement Rates )  
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IB Docket No. 96-261

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF THE PHILIPPINES PARTIES

The National Telecommunications Commission of the Republic of the Philippines ("NTC"), Philippines Long Distance Telephone Company ("PLDT"), and Capitol Wireless, Inc., collectively "the Philippines parties," respectfully submit these comments on petitions for reconsideration or clarification of the Commission's Order in this proceeding.<sup>1/</sup> In their petition for reconsideration, the Philippines parties urged the Commission to reconsider the "benchmarks" approach adopted in the Order. The Philippines parties demonstrated that the Commission's approach would undermine, rather than advance, the Commission's and the Philippines parties' shared objective of promoting reform of the traditional accounting rate system and competition in the provision of international services.<sup>2/</sup>

The Philippines parties demonstrated, further, that there is no basis in law for the Commission's claim of authority to determine the settlement rates to be paid by U.S.

<sup>1/</sup> *International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280 (rel. Aug. 18, 1997) ("Order"). Petitions for reconsideration were filed on September 29, 1997, by the Philippines parties, MCI Telecommunications Corp., and AT&T Corp.

<sup>2/</sup> Petition of Philippines Parties at 1-2 and 18.

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international carriers to Philippines carriers for the termination of international traffic.<sup>3/</sup>

Enforcement of the benchmarks would constitute an attempt by the Commission to exercise jurisdiction and control over foreign carriers and foreign regulatory agencies, which authority the Commission indisputably lacks as a matter of U.S. and international law. Moreover, such action would invite regulators in other countries similarly to claim authority to set the settlement rates to be paid to and by U.S. carriers. Having itself claimed such authority, the Commission would be estopped by equity and law from challenging other sovereign nations' claim of jurisdiction. The resulting overlap in jurisdictional claims would produce the exact opposite result to the one desired by the Commission and the Philippines parties: gridlock and stalemate.<sup>4/</sup>

For these reasons and others elucidated in the petition, the Philippines parties respectfully urged the Commission to reconsider its findings that the Commission has authority (1) to determine the lawfulness of settlement rates charged by foreign carriers to U.S. carriers; and (2) to direct a U.S. carrier as to the amount that carrier may pay an unaffiliated entity for a service rendered by the unaffiliated entity to the U.S. carrier.<sup>5/</sup>

In sum, the Philippines parties demonstrated that the Commission not only lacks authority to impose the proposed benchmarks, but that the Commission's proposed approach would have the significant, unintended consequence of hampering continued progress toward the Commission's and the Philippines parties' mutual goal of orderly progress in reforming accounting rates and promoting competition.

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<sup>3/</sup> *Id.* at 6-17.

<sup>4/</sup> *Id.* at 22-23.

<sup>5/</sup> *Id.* at 23-24.

MCI's and AT&T's petitions for reconsideration focus narrowly on one aspect of the Commission's Order, the new benchmark conditions imposed on international Section 214 licensees. That MCI and AT&T generally endorsed the Commission's benchmarks is no surprise, since enforcement of the benchmarks would allow them to further increase their already supra-competitive profit margins on international services, to the continuing detriment of U.S. consumers.<sup>6/</sup>

MCI asks the Commission to modify the new Section 214 condition that requires a facilities-based carrier affiliated with a carrier at the foreign end of a U.S. international route to negotiate and have in effect, by April 1, 1998, a settlement rate at or below the benchmark rate prescribed by the Commission.<sup>7/</sup> MCI notes that this requirement could have the effect of requiring a carrier with an affiliation on a route to settle at the benchmark rate while other carriers, if not affiliated with a U.S. carrier serving the route, would not be subject to the benchmark rate until a later date. MCI claims that such a situation would put such nondominant foreign-affiliated carriers "at a serious competitive disadvantage vis-a-vis other unaffiliated (and in most cases dominant) foreign carriers."<sup>8/</sup> Whatever the merits of MCI's argument, its petition has the virtue of highlighting one of the myriad apparently unintended, potentially harmful consequences and market distortions that would result from enforcement of the Commission's Order. The Philippines parties stress, moreover, that the rule modification sought by MCI would in no way remedy the legal infirmities and policy shortcomings of the Commission's Order.

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<sup>6/</sup> *Id.* at 16 and n.33.

<sup>7/</sup> MCI Petition at 2-3.

<sup>8/</sup> *Id.* at 2.

MCI's petition also provides a concrete example of the conflicts of national laws caused by the Commission's Order. MCI notes that in certain countries, one carrier is authorized by law or regulation to negotiate accounting rates with foreign carriers, and that some of these countries have a rule equivalent to the FCC's rule requiring uniform settlement rates on a given route. On such routes, MCI states, "it would be impossible, as a matter of law," for a U.S. carrier with foreign affiliation "to get to the benchmarks" within the time-frame specified in the Order.<sup>9/</sup> The Philippines carriers note that the Commission's Order, unless reconsidered as proposed in their petition, will set the stage for many such conflicts as governments and regulators in foreign countries inevitably follow the Commission's misguided example and claim jurisdiction to dictate settlement rates on the U.S. route.

In its petition, AT&T asks the Commission to require that a carrier that is affiliated with a carrier at the foreign end of a U.S. international route be prohibited from providing service on the route unless it agrees to settle all traffic with U.S. carriers at a rate no higher than \$0.08 per minute.<sup>10/</sup> AT&T also asks that the Commission require that at least 50 percent of the switched traffic on a route be settled at or below \$0.08 per minute before permitting any entity to provide switched services over international private lines on the route.<sup>11/</sup> In addition, AT&T asks the Commission to revise the test for determining whether a foreign-affiliated carrier is engaging in a supposed "price squeeze" on an affiliated route.<sup>12/</sup>

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

<sup>10/</sup> AT&T Petition at 3.

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

<sup>12/</sup> *Id.* at 8.

AT&T's transparent objective in seeking these rule changes is to further restrict competition in the U.S. international services market and obtain regulatory protection from downward pressure on its inflated international service rates. It is patently absurd for AT&T, which can, and does, use its supra-competitive profits from international services to cross-subsidize its entry and participation in related markets, to be dwelling on other carriers' "incentives to engage in price squeezes."<sup>13/</sup> It is worth noting that the ominous threat against which AT&T urges Commission vigilance is that U.S. consumers would actually pay *less* for international services. The Philippines Parties doubt that U.S. consumers would view as "illusory"<sup>14/</sup> the lower calling rates that result from competition. The Commission should deny AT&T's reconsideration request forthwith.

Respectfully Submitted,



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October 24, 1997

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<sup>13/</sup> *Id.* at 6.

<sup>14/</sup> *Id.* at 7.

**CERTIFICATE OF SERVICE**

I, Katina Yates, hereby certify that on the 24th day of October, 1997, a true copy of the foregoing Comments of the Phillipines Parties was delivered, either by hand or first-class mail, to the following:

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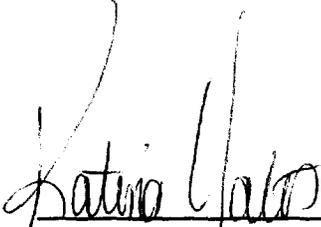
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