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January 27, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

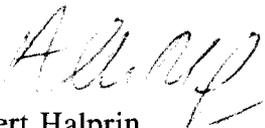
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JAN 27 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte
IB Docket No. 96-261
International Settlement Rates

Dear Ms. Salas:

On behalf of the National Telecommunications Commission of the Philippines, Philippine Long Distance Company, and Capitol Wireless, Albert Halprin and Kevin McGilly met with Commissioner Furchtgott-Roth, his Chief of Staff, Paul Misener, and his Common Carrier Legal Advisor, Kevin Martin, on January 27, 1998. We discussed the above parties' joint petition for reconsideration of the Commission's Order in IB Docket No. 96-261. We request that a copy of the attached presentation, which was distributed at the meeting, be included in the record of this proceeding.

Sincerely,


Albert Halprin

cc: Commissioner Furchtgott-Roth
Mr. Paul Misener
Mr. Kevin Martin

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International Settlement Rates

IB Docket No. 96-261

Presentation to
Commissioner Furchtgott-Roth

On behalf of

National Telecommunications Commission
Philippine Long Distance Telephone Company
Capitol Wireless, Inc.

January 27, 1998

International Settlement Rates

- Benchmarks Order (IB Docket 96-261)
 - FCC Established “Benchmarks That Will Govern the International Settlement Rates That U.S. Carriers May Pay Foreign Carriers to Terminate International Traffic” (para. 1)
 - FCC Stated That It “Will Ensure Compliance With Our Settlement Rate Benchmarks” (para. 187)

International Settlement Rates

- Benchmarks Order (IB Docket 96-261)
 - FCC Denied That Enforcement of Benchmarks Would “Constitute the Exercise of Jurisdiction Over Foreign Carriers” (para. 279)
- Practical and Actual Effect Is to Dictate Unilaterally the Settlement Rate and Transition Period On the U.S.-Philippines Route

International Settlement Rates

- Two Bases for FCC's Claim of Jurisdiction:
 - Payments by U.S. Carriers to Foreign Carriers for Terminating Traffic Are Reflected in Collection Charges (end-user rates)
 - End-to-End Authority Over U.S. Foreign Telecommunications

International Settlement Rates

- FCC Has No Authority to Control or Regulate Payments By U.S. Carriers to Unaffiliated Entities
- FCC Cannot, Directly or Indirectly, Seek to Exercise Jurisdiction Over Foreign End of International Communications
 - FCC “May Not Accomplish Indirectly That Which... It May Not Do Directly” (8th. Circuit, January 22, 1998)

International Settlement Rates

- Cases Cited by FCC Do Not Support This Unprecedented Action
 - *RCA Communications v. U.S.*: In No Way Grants FCC Power to Regulate Payments by U.S. Carriers to Foreign Correspondents
 - *Western Electric*: FCC Disallowance Power Does **Not** Include Power to Dictate Payments to Unaffiliated Entities
 - *Access Charges*: Not Applicable Because FCC Does Not Have Jurisdiction Over Both Carriers

International Settlement Rates

- FCC Does Not Have Authority Under U.S. Law Unilaterally To Set Settlement Rates
 - FCC Has Jurisdiction To Regulate U.S. Carriers' Collection Charges and Rates for Terminating Inbound International Traffic
 - FCC Does **Not** Have Authority to Regulate Rates Charged By Philippines Carriers for Terminating International Traffic
 - FCC Does **Not** Have Jurisdiction to Regulate Payments By U.S. Carriers to Unaffiliated Foreign Correspondents

Accounting Rate Reform

- The Government of the Philippines, PLDT, and Capitol Wireless Are Committed to Competition and Reform of International Accounting Rates
 - 10 National and International Long Distance Carriers
 - 68 Local Exchange Carriers
 - 6 Cellular Operators
- Accounting Rate Has Fallen Approximately 40% Since 1990

Accounting Rate Reform

- The FCC and the Philippines Parties Share Objectives and Pro-Competitive Approaches
- Reform of Accounting Rates Should Be Pursued on a Cooperative, Bilateral Basis
 - FCC's Unilateral Approach is Counterproductive
 - FCC's Approach Will Slow Genuine Reform

Accounting Rate Reform

- Reform Must Take Proper Account of Legitimate Policy Considerations
 - Policies Governing Allocation of Joint and Common Costs
 - Universal Service Obligations of Philippine International Carriers
- Transition Period For Lower Settlement Rates Must Be Mutually Agreed
 - FCC's Proposed Transition Period Is Purely Arbitrary