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February 11, 1998

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FEB 11 1998

Federal Communications Commission
Office of Secretary

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

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 Telephone Company, and Capitol Wireless, Albert Halprin and Kevin McGilly met with Mr. Ari Fitzgerald, Legal Advisor to Chairman Kennard, on February 11, 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: Ari Fitzgerald

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International Settlement Rates

IB Docket No. 96-261

Presentation to
Mr. Ari Fitzgerald
Legal Advisor to Chairman Kennard

On behalf of

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

February 11, 1998

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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)
 - But Practical and Actual Effect Is to Dictate Unilaterally the Settlement Rate and Transition Period on the U.S.-Philippines Route

International Settlement Rates

- FCC Offers Two Theories to Support Claim of Jurisdiction Over Settlement Payments to Foreign Carriers
 - 1) Disallowance Power Applies to Settlement Rates Because They Are Reflected in Collection Charges (End-User Rates)
 - 2) Communications Act Gives FCC End-to-End Authority Over U.S. Foreign Telecommunications

International Settlement Rates

- Theory One: Disallowance Power
 - *Western Electric*: FCC Disallowance Power Does Not Include Power to Dictate Payments to Unaffiliated Entities
 - *Access Charges Order*: Not Applicable Because FCC Does Not Have Jurisdiction Over Both Carriers

International Settlement Rates

- Theory Two: End-to-End Jurisdiction
 - *RCA Communications*: In No Way Stands for the Proposition That the FCC May Regulate Payments by U.S. Carriers to Foreign Correspondents

International Settlement Rates

- In Short, FCC's Assertion of Jurisdiction Over Payments by U.S. Carriers to Unaffiliated Foreign Carriers Is Unprecedented and Unsupported by FCC or Case Law
- FCC Is Seeking Indirectly to Exercise Jurisdiction Over the Foreign End of International Communications
 - **But** FCC "May Not Accomplish Indirectly That Which... It May Not Do Directly" (8th Circuit, January 22, 1998)

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