Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Petitions for Protection from Whipsawing on the U.S.-Philippines Route	))))))	IB Docket No. 03-38

REPLY COMMENTS OF VERIZON

Verizon,[1] by its attorneys, files these Reply Comments to support two arguments made by parties opposing AT&T Corp.'s ("AT&T") and WorldCom Inc.'s ("WorldCom") request that the Federal Communications Commission ("FCC" or "Commission") order U.S. carriers to stop settlement payments to Philippine carriers.[2] First, Verizon agrees with the Philippines Long Distance Telephone Company ("PLDT"), Globe Telecom ("Globe") and Digital Telecommunications Philippines, Inc. ("Digitel") that the FCC should respect the authority of the Philippine regulator, the National Telecommunications Commission ("NTC"), and should defer to the NTC's decisions sanctioning the actions of Philippine carriers. Second, Verizon cautions that any other FCC action would arm AT&T and WorldCom with unfair bargaining power, enabling them to effect a "reverse whipsaw" on the U.S.-Philippines route. This would interfere with competitive markets and set a precedent for similar de facto regulation of overseas

---

[1] Verizon owns an indirect 17 percent interest in Bayan Telecommunications Company ("BayanTel"), an international and local exchange operator in the Philippines, and also holds interests in a number of other foreign carriers.

[2] AT&T Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief, IB Docket No. 03-38 (filed Feb. 7, 2003) ("AT&T Petition"); Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route, IB Docket No. 03-38 (filed Feb. 7, 2003) ("WorldCom Petition").

termination rates on other international routes. Such an approach could be seen as an attempt to interfere with developing initiatives of independent local regulators.[3]

I. THE PRINCIPLE OF INTERNATIONAL COMITY REQUIRES THE FCC TO RESPECT AND TO DEFER TO THE NTC.

The doctrine of international comity requires the FCC to refrain from overriding NTC orders sanctioning the activity about which AT&T and WorldCom complain. Pursuant to a July 2002 NTC order,[4] Philippine carriers harmonized interconnection rates for traffic terminating on their mobile and fixed networks and initiated negotiations with Philippine and international carriers to implement these new rates. More recently, on January 31, 2003, the NTC directed carriers under its jurisdiction to "maintain the status quo of the existing circuits."[5] Thereafter, on February 7, 2003—the same day that AT&T and WorldCom initiated this proceeding—the NTC noted:

> Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of US$0.19/minute for low middle income economies, such as the Philippines. It is also shown that these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per

---

[3] *See* Reply Comments of Verizon, International Settlements Policy Reform, International Settlement Rates, IB Docket Nos. 02-234 and 96-261 (filed Feb. 19, 2003) ("There is no basis for the FCC to intervene in [regulation of foreign mobile termination rates] and, indeed, such intervention might jeopardize recent efforts by independent foreign telecommunication regulators to address this issue.").

[4] *Implementing Rules and Regulations (IRR) for Specific Guidelines for Competitive Wholesale Charging for Interconnect Services*, NTC Memorandum Circular No. 09-07-2002, § 3 (b) (adopted July 31, 2002). This Memorandum Circular mandated that "[t]he charges for Interconnect Services should be non-discriminatory" and defined "non-discriminatory" to mean that, at a particular point of interconnection, the charges offered by a carrier to other carriers must be the same for all other carriers where those carriers are "utilizing the same infrastructure and functionality." *Id.* § 3(b). The Memorandum Circular also recognizes that the rates a provider charges to interconnecting carriers can not be higher than the internal price. *Id.* §3(c).

[5] NTC Memorandum Order (dated Jan. 31, 2003).

100 population which is US$0.238 per minute.[6]

On February 26, 2003, after nearly a month of consideration, the NTC informed the FCC that, absent "any provisional or interim arrangement" to replace expired agreements, "there would be termination [*i.e.,* cessation] of service" between affected U.S. and Philippine carriers.[7] The NTC further indicated that U.S. carriers unwilling to conclude an interim agreement "are thereby encouraged to seek other routes or options to terminate traffic to the Philippines."[8]

Verizon supports the NTC's request that the "FCC give due consideration to the official position taken by the Philippines regulatory body, consistent with international comity…"[9] "The doctrine of international comity reflects the broad concept of respect among nations. It involves one nation recognizing within its territory the laws of a foreign state."[10] Applied in this case, the doctrine of comity requires the Commission to honor the NTC's decisions regarding the termination rates charged by Philippine carriers to U.S. carriers and other carriers. As Globe notes, such deference would conform to the prior U.S. endorsement of each nation's sovereign right to regulate its telecommunications "in order to meet national policy objectives and, given

---

6 *Maintaining Status Quo of Existing Communications Circuits in the Interest of Public Service and National Welfare*, NTC Memorandum Order (dated Feb. 7, 2003).

7 Letter from Armi Jane R. Horje, Commissioner, and Kathleen G. Heceta, Deputy Commissioner, the Republic of the Philippines, Department of Transportation and Communications, National Telecommunications Commission to The Honorable Commissioners, FCC (dated Feb. 26, 2003) ("NTC February 26, 2003 Letter").

8 *Id.*

9 *Id.*

10 *Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service*, Notice of Proposed Rulemaking, FCC 02-28, IB Docket No. 02-18, RM-9249, ¶ 4 (rel. Feb. 13, 2002) ("*Enforcement of Other Nations' Prohibitions NPRM*").

asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right."[11] Indeed, comity is well-deserved where the foreign policy in question complies with a foreign nation's international obligations.

The Philippine regulations here appear consistent with the Philippine's international commitments. First, the rates proposed by the Philippine carriers are fifty percent less than the accounting rates set forth for the Philippines in International Telecommunication Union ("ITU") Recommendation D.140. Second, the NTC's interconnection principles established in 2000, appropriately take into account "relevant cost trends" as required by the International Telecommunication Regulations, Art. 6, § 6.2. Verizon submits that "relevant cost trends" which the NTC can take into account include the difficulties faced by carriers around the globe in gaining access to capital, the slow-down in capacity sales and attendant reduction in prices charged to consumers, and the losses incurred by carriers as bankrupt correspondents default on their obligations. Third, the 2000 NTC principles satisfy Recommendation D.140's proposal that "accounting rates for international telephone service should be cost-oriented and should take into account relevant cost trends" and that this principle should be applied "to all relations on a non-discriminatory basis."[12]

Moreover, FCC deference to the NTC would conform to agency precedent.[13] The

---

[11] Globe Opposition at 14, *citing,* International Telecommunication Regulations, Preamble; General Agreement on Trade in Services, Preamble, *reprinted in Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements*, H.R. Doc. No. 103-316, Vol. 1 (1994).

[12] ITU-T Recommendation D.140 at 3-4.

[13] *See* Globe Opposition at 10; PLDT Opposition at 22.

Commission has required U.S. carriers to comply with international law and the laws of the countries in which they operate.[14] Requiring similar compliance in this case is particularly apt because the NTC's and FCC's interests are aligned.

The NTC's February 7, 2003 order sanctioned a $0.12 interconnection rate for international traffic terminated in the Philippines. The FCC's *Benchmarks Order* sanctioned a higher $0.19 interconnection rate for this same route. The D.C. Circuit has concluded that the establishment of a benchmark accounting rate is a lawful exercise of the FCC's jurisdiction over U.S. carriers.[15] The NTC, through its memorandum and orders regulating international telecommunications services, draws on the same regulatory authority possessed by the FCC and exercised in the *Benchmarks Order*.[16] The FCC should respect the NTC's parallel exercise of authority over Philippine carriers. As Verizon recently noted in another FCC proceeding, such deference is particularly appropriate because "[i]t is local regulators, not the Commission, who are in the best position to decide whether to regulate…rates."[17] In this case, respect for the NTC's rate regulation would also be fair because the Philippines and the vast majority of other countries have complied with the *Benchmarks Order,* even though it unilaterally required foreign carriers to manage their costs with a steep decline in revenue.

A failure by the FCC to show consideration for the NTC's sanctioned rate increase would

---

[14] *See In re VIA USA, Ltd Telegroup, Inc.*, Order, Authorization and Certificate, 9 FCC Rcd 2288, 2292 (1994), *aff'd*, 10 FCC Rcd 9540 (1995).

[15] *Cable and Wireless plc*, 166 F.3d at 1229.

[16] Globe Opposition at 11-12; PLDT Opposition at 22; *International Settlement Rates*, 12 FCC Rcd 19806 (1997), *aff'd sub nom.*, *Cable and Wireless plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999) ("*Benchmarks Order*").

[17] Verizon International Settlements Policy Reform Reply Comments at 7.

broadcast to the world that the U.S. lacks faith in the ability of other sovereign nations with independent regulators to meet their international commitments or to set their own telecommunications policies. Such a U.S. vote of "no confidence" would impair the ability of foreign regulators to perform their duties. It would also contravene the U.S. coordinated position in the on-going WTO services negotiations, which seeks to encourage other Members to establish independent regulatory bodies. If such bodies' decisions are not provided comity by the U.S. government, the coordinated U.S. position would be jeopardized. Rather than taking the action requested by AT&T and WorldCom, the FCC should continue to engage in a constructive dialogue on principles for intercarrier compensation with the Philippine regulator.

Furthermore, Verizon agrees with the NTC, PLDT, Digitel and Globe that grant of the relief requested by AT&T and WorldCom—a *de facto* declaration that all rate increases are impermissible—would be contrary to the public interest in reversing the current economic downturn.[18] The likely outcome of such decision would be to diminish foreign carriers' willingness to agree to reduced rates.[19] Understandably, foreign carriers would be loath to reduce rates that could never again be increased. Accordingly, grant of AT&T's request would harm the long-term U.S. consumer interest in lower prices.

II. FCC ACTION TO PROTECT AT&T AND WORLDCOM WILL HARM COMPETITION ON THE U.S-PHILIPPINES ROUTE.

Grant of the relief AT&T and WorldCom request would give those carriers sufficient

---

[18] NTC February 26, 2003 Letter at 2 (noting that the FCC's deference to the Philippine regulatory body would serve "the interest of all economies"); Globe Opposition at 16; PLDT Comments 23 (noting that "Philippine economic conditions....[should] be respected"); Digitel Comments at 8 ("fixed line carriers the world over are experiencing financial difficulties").

[19] Globe Opposition at 16; PLDT Opposition at 18.

negotiating power to whipsaw Philippine carriers.[20] AT&T and WorldCom seek a Commission order precluding all U.S. carriers from making payments to Philippine carriers accused of whipsawing until those carriers restore allegedly disrupted circuits.[21] Sanctioning non-payment would arm AT&T and WorldCom with superior leverage in negotiations with Philippine carriers. With the FCC's backing, AT&T and WorldCom could pit one Philippine carrier against another to obtain rates more favorable than those offered to other international carriers. This clearly fits within AT&T's and WorldCom's definition of whipsawing.[22] Moreover, the whipsaw would likely succeed because a defiant Philippine carrier would be denied payment from all U.S. carriers and consequently lose current, and perhaps future, revenue to competitors that yielded to AT&T's and WorldCom's rate demands.[23] A successful reverse whipsaw would also give AT&T and WorldCom an unfair competitive advantage over other U.S. carriers sending traffic to the Philippines that are already contractually obligated to pay the very rates AT&T and WorldCom refuse to accept.[24] It might even encourage other carriers to engage in price arbitrage—routing their Philippines-bound calls through AT&T and WorldCom, to the competitive harm of other

---

[20] Digitel Comments at 2-3 (alleging an AT&T "penchant" for whipsaw behavior).

[21] AT&T Petition at 1; WorldCom Petition at 1.

[22] *See* Whipsawing is "a form of anticompetitive behavior that involves the ability of foreign carriers to obtain unduly favorable terms and conditions from U.S.-international service providers by setting competing U.S. carriers against one another." *Petitions for Protection from Whipsawing on the U.S.-Philippines Route*, Public Notice, IB Docket No. 03-38, DA 03-390 (rel. Feb. 10, 2003).

[23] Globe Opposition at 17.

[24] Digitel Comments at 8-9 (noting that "the majority of foreign administrations, including many U.S. carriers, already agreed to the new termination rates"); Globe Opposition at 17; PLDT Opposition at 27 ("[O]ther carriers would suffer competitive disadvantages *vis á vis* AT&T and WorldCom if those two carriers received a preferential rate by virtue of the FCC's actions.").

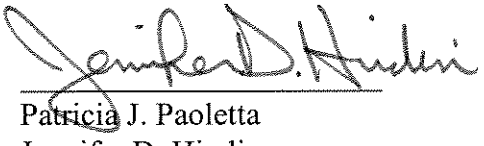
U.S. carriers. As Globe notes, the FCC has not advocated arbitrage activities on routes where an independent regulator has endorsed a uniform termination rate.[25] Finally, AT&T and WorldCom would likely return to the FCC time and time again for permission to stop international termination payments and thus strong-arm foreign carriers and overseas regulators repeatedly into accepting their rate demands, undermining the authority of overseas regulators.

III. CONCLUSION

In sum, grant of AT&T's and WorldCom's petitions would harm, not benefit, the international telecommunications services market. Verizon agrees with those commenters that urge the Commission to defer to the Philippine regulator and to deny AT&T's and WorldCom's attempt to garner FCC support for a reverse whipsaw.

Respectfully submitted,

VERIZON

By: 

Patricia J. Paoletta
Jennifer D. Hindin
Heather O. Dixon
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Counsel for Verizon

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
VERIZON
1515 N. Courthouse Road, Suite 500
Arlington, VA 22201-2909
(703) 351-3158

Counsel for Verizon

February 27, 2003

[25] Globe Opposition at 18-19, *citing VIA USA, Ltd.*, 9 FCC Rcd at 2290 (prohibiting U.S. carriers from offering international call-back service using an uncompleted call signaling configuration in countries that ban such activity).