

March 4, 2003

Via Electronic Mail

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply Comments of ABS – CBN Telecom North America, Inc.:
Affidavit of Mariel Esquerra, IB Docket No. 03-38

Dear Ms. Dortch:

Transmitted herewith, on behalf of ABS – CBN Telecom North America, Inc., (“ABS – CBN”) is the original “Affidavit of Mariel Esquerra” (“Affidavit”) in the above-referenced docket.

This Affidavit was previously filed with the FCC as a facsimile copy and comprised Exhibit 1 to ABS – CBN’s February 27, 2003 “Reply Comments”.

In the event there are questions concerning this matter, please contact me.

Sincerely,

/s/ Gregory C. Staple

Affidavit of
Mariel Esguerra,
Head – International Services
Bayan Telecommunications, Inc.

1. My name is Mariel Esguerra. I am the Head of International Business at Bayan Telecommunications, Inc. ("Bayantel"). In that capacity I am familiar with Bayantel's provision of international telecommunications services to and from the United States and other countries, including the volume of telecommunication traffic and settlement rates. Since 2000, I have personally overseen the negotiation of settlement terms and conditions with U.S. international telecommunication carriers, including AT&T.

2. Bayantel is a comparatively new Philippine carrier which only began service in the late 1994. The company provides both local exchange and long distance services, including international communications. As of October 1, 2002, the company served approximately 180,000 access lines (less than 7% of total landlines) in geographically limited portions of the Philippines (portions of Metro Manila, Bicol and selected local exchange areas in the Visayas and Mindanao). To provide nationwide terminations, Bayantel relies upon interconnection agreements with Philippine local exchange and mobile carriers, such as the Philippine Long Distance Telephone Company ("PLDT") which controls approximately 70% of local landlines, and Smart Communications, Inc. ("Smart"), the largest Philippine cellular telephone carrier which reportedly has over 8.9 million subscribers, Globe Telecoms ("Globe") with 6.6 Million mobile subscribers and others.

3. In recent years, the Philippine market has been characterized by a two-tiered set of rates for interconnection with one interconnection rate for landline carriers and a second higher interconnection rate (typically \$.04 more) for mobile carriers. This two-tiered structure has placed increasingly higher costs on Bayantel as more and more calls are completed on wireless networks. Significantly, the Philippines now has over 16 million cellular subscribers but only approximately 3 million wireline accounts. (In August 2002, the Philippine Supreme



Court upheld the grant of a fourth nationwide cellular license to Bayantel, but the network is not yet operational.)

4. In view of the above, Bayantel has previously supported a uniform interconnection rate for wireline and wireless networks and the application of this same rate to international settlements. In fact, in December 2002, Bayantel proposed such a uniform wireline/wireless settlement rate to AT&T. (See, e.g., Attachment A hereto). However, this approach is no longer economically viable because Philippines wireless carriers have continued to request a \$0.04 higher interconnection charge that applies to wireline networks. As a result, effective February 1, 2003, Bayantel has faced \$.12 per minute wireline and \$.16 per minute mobile network interconnection charges from Philippine carriers.

5. Taking into account these developments, Bayantel has had no choice but to propose a minimum rate of \$.125 wireline per minute and \$.165 mobile network per minute settlement charges to its international correspondents. A great majority of Bayantel's correspondents have agreed to these revised rates. Five of the Seven (5/7) U.S. international carriers with which Bayantel has direct connections have also agreed to the revised \$.125 wireline/\$.165 mobile rate, effective February 1, 2003. Negotiations between WorldCom and Bayantel are continuing.

6. Under its International Telecommunications Services Agreement (ITSA) with AT&T, settlement rates are not fixed after 2002. Bayantel therefore, as early as October 2002, informally advised AT&T that it wished to revise the rates in January 2003 and on December 18, 2002 transmitted a formal proposal to AT&T. It proposes a uniform \$.125/minute rate for fixed and mobile terminations effective February 1, 2003. See Attachment A. On January 10, following receipt of a new access charge notice from Philippine mobile operators, Bayantel advised that its mobile interconnection rate would be revised to \$.165/minute, effective February 1, 2003. See Attachment B. On January 29, 2003 AT&T rejected Bayantel's proposed rates (see Attachment C) and on February 11, 2003, Bayantel received a proposal from AT&T

that the settlement rate be \$.065/minute for fixed on-net traffic (see Attachment D). AT&T also stated that it would be willing to pay interim rates at the January 2003 level “[i]f Bayantel stops blocking our circuits.” To preserve its options in the absence of a continuing settlement impasse, on February 10, 2003, Bayantel gave notice to AT&T that it intended to terminate its correspondent agreement with AT&T in 180 days. See Attachment E.

7. Bayantel has not formally responded to AT&T’s \$.065/minute counterproposal at this time. However, despite the absence of an agreed settlement rate, Bayantel has not “blocked” AT&T’s traffic, as AT&T has alleged to the FCC. In January 2003, AT&T sent Bayantel approximately 2 million minutes of U.S. inbound traffic. All of this traffic was accepted by Bayantel. A small portion of this traffic, about 18%, was transit traffic destined for “off-net” dialing codes – that is, for subscribers not served by Bayantel. During the first two weeks of February, AT&T continued to send Bayantel approximately the same volume of traffic (e.g. approximately 800,000 on-net minutes) but, in the absence of an agreed settlement rate, Bayantel declined to continue transiting off-net traffic since it would lose \$.04 or more on each minute (the difference between the pre-existing 2002 settlement rate and the new domestic interconnection rates faced by Bayantel). Bayantel correspondent agreements do not require that it unconditionally accept all inbound traffic destined for other Philippine dialing codes (*i.e.*, for other carriers).

8. Bayantel has not received any complaints from its subscribers (or the subscribers of other Philippine carriers) asserting that they cannot receive incoming calls from the U.S.. Bayantel therefore assumes that service between U.S. & Philippines destined for Bayantel’s subscribers is not being disrupted.

9. The statements in this affidavit are true and correct to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 27th day of February 2003 at QUEZON CITY.


Mariel Esguerra
Community Tax Cert. No. 21569966
On February 12, 2003
At Quezon City

Subscribed and sworn to before me this 27th day of February, 2003. at QUEZON CITY

Doc. No. 10018
Page No. 1
Book No. 111-A
Series of 2003.

Notary Public

IBP No. 1-3-03

The original Attachments A to E of this Affidavit have been redacted pursuant to the Freedom of Information Act, 5 U.S.C. § 522(b), and Sections 0.457 and 0.459 of the Commissions Rules, 47 C.F.R. §§ 0.457 and 0.459, as was originally submitted to the FCC in facsimile format on behalf of ABS – CBN, February 27, 2003.