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

Re: Written Ex Parte Presentation
Petitions for Protection from Whipsawing on the U.S.-Philippines Route, IB Docket No. 03-38

Dear Ms. Dortch:

By its counsel, Globe Telecom ("Globe") hereby responds to the AT&T Corp. ("AT&T") written *ex parte* presentation submitted in the above-captioned docket on March 3, 2003.[1] As a threshold matter, Globe notes that it seeks an agreement with AT&T to continue termination of AT&T's switched voice traffic. Globe believes it is in its, AT&T's and the respective national interests of the Philippines and the U.S. to have maximum connectivity between the two countries. However, pending agreement with AT&T and while the Federal Communications Commission ("FCC") has this matter before it, Globe wishes to respond to several points raised by AT&T in its recent filings.

First, AT&T appears in its filings to conflate the charges for domestic interconnection between international gateway facilities ("IGF") and local exchange networks with the charges between foreign carriers and IGFs for the termination of international calls on local exchange networks. The former for the most part are identical.[2] The latter are not necessarily identical. For instance, as discovered during the course of this proceeding, Globe has proposed lower per-minute termination charges to AT&T than the Philippine Long Distance Telephone Company ("PLDT") has proposed:

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1 Letter from James J. R. Talbot, Senior Attorney, AT&T Corp., to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Mar. 3, 2003) ("AT&T Written Ex Parte").

2 As Globe explained in its Reply Comments, the market structure mandated by the Philippine government and the Philippine National Telecommunications Commission ("NTC") and the non-discrimination requirement promulgated by the NTC have tended to result in the establishment of similar interconnection charges by the Philippine carriers. Globe Telecom, Inc. Reply Comments, IB Docket No. 03-38, at 4-5 (filed Feb. 27, 2003).

	Globe	PLDT[3]
On-Net Fixed	$0.120	$0.125
Off-Net Fixed	$0.125	$0.145
On-Net Mobile	$0.160	$0.175
Off-Net Mobile	$0.165	$0.185

As AT&T itself notes, Globe's behavior is typical of new entrants in competitive markets. Globe is "seeking to compete with an incumbent like PLDT to terminate inbound international traffic … by offering lower rates."[4]

AT&T asserts that "there appears to be no legitimate business reason why Philippine carriers would agree to pay Globe all or most of their *entire* international termination rate when they send incoming international traffic to Globe's local network.."[5] However, the operator of the terminating network has the legal discretion to determine what the inbound rate to its network and subscriber base should be, so long as that rate is applied, as required by Philippine law, in a non-discriminatory manner. A new entrant would typically not charge different termination rates for its own network for inbound. Indeed, it would be difficult for Globe to sustain a situation where its local or mobile network receives a different fee from PLDT than from BayanTel for termination of traffic destined for the same subscriber. This is not the case for outbound, where pricing differs and is highly competitive. Globe has in fact been the pioneer in lowering rates for outbound.

AT&T claims that, "[u]nder normal industry practice, a carrier operating an international gateway facility sending incoming international traffic to another carrier's local network would be unwilling to pay more than the *local* interconnection rate."[6] Globe Telecom does not share that view with respect to traffic destined for a local network. The terminating carrier, as the provider of local

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3 *See* Philippine Long Distance Telephone Company's Consolidated Opposition to AT&T and WorldCom Petitions, IB Docket No. 03-38, at Exh. 9 (filed Feb. 21, 2003).

4 AT&T Written Ex Parte at 4.

5 *Id.* at 2.

6 *Id.*

exchange service to the called party, sets the rates. The originating carrier has little, if any, influence over these rates. This situation is not unique to the Philippines.

What should be of note is that Globe's IGF has not discriminated against AT&T vis-à-vis Globe's other correspondents that originate traffic. Of Globe's 34 major correspondents, 27 have already agreed to the new rates, and negotiations are ongoing with other carriers for the same rates. At the heart of AT&T's petition, and presumably AT&T's most desired outcome—is AT&T's wish that the FCC bestow on it the status of global wholesaler of preference with an unqualified right to pay a rate lower than what the terminating carrier charges everyone else in the world simply because that is all that AT&T would like to pay. That wish, however, should be beyond the purview of the FCC to grant.

Contrary to AT&T's view that NTC has no regulatory authority over international termination rates,[7] the rates between local networks and IGFs are subject to interconnection agreements and thus fall within the regulatory authority of the NTC. The rates that any local network charges to any IGF ought to be similar due to NTC's non-discrimination requirement. NTC has forborne from regulating the rates charged by IGFs to foreign correspondents for international termination. NTC's forbearance from setting a specific rate, but rather leaving negotiations to the market, is not evidence of lack of regulatory authority. The NTC presumably has the same regulatory authority over termination rates in its country as the FCC has in the United States.

AT&T maintains that any similarities in the cost structures of the smaller Philippine carriers are irrelevant because there is no evidence that these increases, or the new rates, bear any relationship to costs.[8] Globe submits that more appropriate Philippine fora exist for the evaluation of whether its (or any other Filipino carrier's) interconnection rates are cost-oriented. For example, AT&T could have raised its concerns regarding Globe's or any other Philippine carrier's interconnection rates at public hearings held by the NTC on its Memorandum Circular regarding interconnection. AT&T also could file a complaint with the NTC. The NTC is much better suited than the FCC to evaluate whether a Philippine carrier's interconnection rates are cost-oriented. Moreover, the United States is not the global arbiter of which rates are cost-oriented and which are not.

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[7] *Id.* at 3.

[8] *Id.* at 4.

AT&T again seeks to minimize its own misconduct on the U.S.-Philippines route, claiming that Globe "confuses the difference between the abuse of market power at the foreign end of a U.S. international route to require the payment of increased above-cost subsidies, which is the whipsaw conduct engaged in here, and the rate reductions that may result from the presence of multiple carriers at the foreign end where these are not obstructed by concerted conduct."[9] However, AT&T cannot minimize the impact of an FCC order assisting AT&T in negotiating termination rates lower than those agreed to by scores of other international carriers. AT&T would achieve a competitive advantage from its ability to terminate its own traffic at rates lower than those paid by other carriers. Moreover, because it could offer a lower wholesale rate, it would also be in a position to siphon wholesale minutes from other wholesale voice providers. This would only distort competition further.

Finally, AT&T points to the possibility of several Philippine carriers terminating circuits as the "exact same retaliatory measures," which allegedly demonstrate concerted action.[10] Given its decades of global dominance, AT&T has managed to conclude interconnection agreements with many foreign correspondents with comparable terms, those governing termination for non-payment. These contracts are reciprocal in nature and allow each party to terminate the contractual relationship in the event the other party does not pay its obligations therein. If all Philippine carriers terminate their relationships with AT&T because AT&T refuses to pay all of them for traffic—whether under cover of an FCC stop payment order or not—such actions would neither be retaliatory nor "concerted" *per se*. Such actions instead would represent the legitimate exercise by each Philippine carrier of its right to terminate its contract with AT&T. Globe continues to hope that it will reach agreement with AT&T regarding termination rates for switched voice termination and that Globe will not have to resort to enforcing its rights under contracts proposed and agreed to by AT&T.

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9 *Id.* at 5.

10 *Id.* at 2.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/Patricia J. Paoletta

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