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Vinson&Elkins
ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604
www.velaw.com

Gregory C Staple
Direct Dial 202-639-6744
Direct Fax 202-879-8944
gstaple@velaw.com

February 27,2003

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

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

Re: ABS-CBN Telecom North America, Inc.
Reply Comments
IB Docket No. **03-38**

Dear Ms. Dortch

Transmitted herewith, on behalf **of** ABS-CBN Telecom North America, Inc. (ABS-CBN Telecom), are an original and four copies of "Reply Comments" in the above-referenced docket. As explained below, a redacted FCC Public File Copy of the "Reply Comments" is also enclosed because the attachments to Exhibit 1 to the Reply Comments are being filed pursuant to a confidentiality request.

Confidentiality Reauest

Exhibit 1 to the Reply Comments consists of an Affidavit by an executive officer of Bayantel Telecommunications, Inc. (Bayantel), an affiliated Philippine international carrier, which has correspondent relations with ABS-CBN Telecom as well as AT&T and other U.S. carriers. The Affidavit contains relevant facts regarding international telecommunications service arrangements between the U.S. and the Philippines, including recent negotiations between Bayantel and AT&T. Corporate correspondence between Bayantel and AT&T is also provided in Attachments A to E to the Affidavit.

The aforementioned correspondence is privileged and contains commercially sensitive information which would not ordinarily be disclosed to third parties. Accordingly, **ABS** CBN Telecom requests that Attachments **A** to E **of** Exhibit **1** be kept confidential and withheld from public inspection pursuant to the Freedom of Information Act, 5 U.S.C. § 522(b), and Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459.

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In keeping with the above confidentiality request, ABS-CBN Telecom is also submitting a redacted version of its Reply Comments that omits the attachments to Exhibit 1. The redacted version of the application is marked "FCC Public File Copy."

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

very truly yours,

Gregory C. Staple

Enclosures:

Public file copy of redacted application

Original and four copies of non-redacted application

PUBLIC INSPECTION COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of AT&T Corp. and WorldCom, Inc. Petitions For Protection From Whipsawing on the U.S.-Philippines Route	)))))	IB Docket No. 03-38

To: International Bureau

ABC-CBN TELECOM REPLY COMMENTS

ABS-CBN Telecom North America, Inc. (ABS-CBN Telecom), by its attorneys, hereby files these "Reply Comments" in'opposition to the February 7, 2003 "Emergency Petition For Settlement Stop Payment Order And Request for Immediate Interim Relief" filed by AT&T Corp. (AT&T) on February 7,2003.'

I. SUMMARY

AT&T has not met the Virginia Petroleum Jobbers Assn.[2] standard for obtaining the emergency relief it has requested which would amount to a partial stay of the Section214 authority granted to ABS-CBN Telecom and other U.S. international carriers serving the Philippines. Moreover, any across-the-board stay which bars ABS-CBN Telecom from making payments to competitive Philippine carriers, such as Bayan Telecommunications, Inc.

[1] See FCC Public Notice, "Petition For Protection From Whipsawing On the US. –Philippines Route," DA 03-390, February 10,2003.

A related February 1, 2003 "Petition of WorldCom, Inc. For Prevention of 'Whipsawing' on the US.-Philippines Route" is also referenced in the FCC's Public Notice. But WorldCom's petition only asks the FCC to prevent the Philippine Long Distance Telephone Company ("PLDT") from abusing its market power by *infer alia,* ordering U.S. carriers to suspend all payments to PLDT until PLDT fully restores international service between WorldCom and PLDT. ABS-CBN Telecom does not have an international settlement agreement with PLDT and hence takes no position on WorldCom's petition. Significantly, WorldCom has not asked the FCC to interfere with the settlement terms which U.S. international carriers have with Philippine carriers that lack any market power, such as Bayantel.

[2] See Virginia Petroleum Jobbers Ass'n v. FPC 259 F.2d 921 (D.C. Cir. 1958) upon which AT&T relies for the grant of emergency relief. See AT&T Petition at pp. 14-15.

(Bayantel), an affiliate, would be grossly anti-competitive and threaten ABS-CBN Telecom's economic livelihood. The great majority of ABS-CBN Telecom's revenues are derived from serving the US.-Philippine route although the company bills only approximately 1% of overall U.S. traffic to the Philippines. Consequently, if the FCC grants AT&T any interim relief, the legal standard aside, the order should exclude U.S. settlement payments made to non-dominant Philippine international carriers.[3] U.S. carriers with de *minimus* traffic on the route (*i.e.*, with less than 2% of traffic according to the FCC's latest international telecommunications data) should also be excluded from any order.

II. INTRODUCTION

ABS-CBN Telecom is a small U.S. facilities-based provider of international telecommunications that specializes in serving the Filipino community. Its affiliate, Bayantel, is a competitive local and long distance carrier in the Philippines.

In a misguided effort to resolve a settlement dispute with the dominant Philippine carrier, AT&T would have the Bureau disrupt the interconnection arrangements which all U.S. carriers have with all of their Philippine correspondents, whether or not any specific Philippine carrier has market power and regardless of the circumstance under which a Philippine carrier is alleged to have "blocked" AT&T's traffic.

The U.S.-Philippines route is competitive as the FCC acknowledged in 2000 when it authorized International Simple Resale (ISR) services to the Philippines! More than a dozen facilities-based U.S. carriers now compete for traffic on this route as well as multiple Philippine carriers. It would thus be entirely counterproductive for the FCC to try and mitigate an alleged

[3] Notably, the recent "Comments of Digicel Limited" in this docket would also have the consumers limit any stop payment order to settlements with the dominant Philippine carriers.

[4] See Public Notice DA-00-2356 (October 19,2000).

injury to one carrier by blocking all competitive transactions on this route and preventing any U.S. carrier from making timely settlement payments to their Philippine correspondents. AT&T's proposed remedy is, at best, overbroad and is not justified by the available evidence regarding the alleged disruption of U.S. international traffic by competitive Philippine carriers, such as Bayantel, which lack market power. Nor, in any case, has AT&T met the legal standard for obtaining interim relief.[5]

As documented in Exhibit 1 hereto, despite the absence of an agreed settlement rate, Bayantel continues to terminate the great majority of AT&T's inbound traffic and has only declined to transit that portion of AT&T's traffic which is not destined for Bayantel subscribers but rather must be transited – wholly at Bayantel's expense – to the customers of PLDT or other Philippine carriers. Bayantel cannot reasonably be expected to involuntarily accept such AT&T traffic at a settlement payment of $.085/minute, the January 2003 rate, or less (on February 10, AT&T proposed to settle at $.065/minute – see Exhibit 1) when Bayantel must pay its major domestic correspondents, primarily PLDT, a $0.12/minute or greater interconnect charge to terminate the traffic; the domestic interconnect charge for Philippine cellular carriers is now $.16/minute.

Because the resolution of the current dispute over U.S.-Philippine settlement rates is inextricably tied to the issue of domestic interconnection charges, the FCC should not act

[5] AT&T has not shown: (1) that it s likely to prevail on the merits – i.e., that non dominant Philippine carriers, such as Bayantel, have whipsawed AT&T by unlawfully refusing to terminate AT&T traffic or that there is a legal basis for the FCC to suspend the payment terms in all of the private correspondent agreements between U.S. carriers and their Philippine counterparts even though the settlement rates are below the $.19 per minute FCC benchmark (2) that it will suffer irreparable harm – AT&T has multiple routing options for terminating Philippine traffic and is the wealthiest US. carrier serving this route with 2001 retained revenues per minute three times higher than the average U.S. carrier; (3) that no private party will be harmed – to the contrary, ABS-CBN Telecom may be put out of business by a blanket stop payment order; (4) that the public interest will not be harmed – again, on the contrary, the relief AT&T seeks would be grossly anti-competitive and enable it to gain market share and revenues at the expense of its competitors, and thus to further increase consumer charges on the US.-Philippines route. So far as ABS CBN Telecom and Bayantel are concerned, AT&T's Petition thus manifestly fails to meet the FCC's standard for injunctive relief under Virginia Petroleum Jobbers Assn. v. FPC, supra.

precipitously. Competition is likely to be best served by permitting all carriers to continue to negotiate, subject to the oversight of the Philippine regulator, the National Telecommunications Commission (NTC).[6]

At a minimum, the FCC should limit any interim relief or stop payment order to settlements with any dominant Philippine carrier which has unlawfully blocked the traffic of a U.S. carrier.' Any order of interim relief should also exempt any U.S. carrier with a de *minimus* (*i.e.*, < 2%) market share on the Philippines route. There simply is no record basis for penalizing a U.S. carrier which corresponds with a non-dominant Philippine carrier, such as Bayantel, or which has a de *minimus* share of U.S. outbound traffic on this route.

Beyond that, any across-the-board stop payment order would have an unjustified and potentially devastating economic impact on small international carriers, such as ABS-CBN Telecom. Although ABS-CBN Telecom historically has originated a small percentage of U.S. billed traffic on the U.S.-Philippines route, the company's Philippine traffic accounts for the bulk of its business. A blanket stop payment order which precludes ABS-CBN Telecom from terminating traffic in the Philippines might well put it out of business and cede its historic traffic base to AT&T and other U.S. competitors. Consequently, if the Bureau decides to grant any interim relief, it must be carefully tailored to avoid such an anti-competitive result.

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[6] **The NTC has already issued two orders regarding the current settlement disputes between U.S. and Philippine carriers and, among other things, has expressly instructed Philippine carriers to maintain the flow of bilateral traffic where effective correspondent agreements exist. See, *e.g.*, the NTC's "Memorandum Order" adopted February 7, 2003 at ¶1.**

[7] **See, *e.g.*, Public Notice, DA03-456 (February 19,2003).**

111. DISCUSSION

The current dispute over international settlement rates on the U.S.-Philippines route stems, in part, from the efforts of various Philippine carriers to establish a common, cost-related domestic interconnection rate for both mobile and fixed networks. Mobile networks have grown very rapidly in the Philippines and there are currently an estimated 16 million mobile subscribers as compared to approximately 3 million wireline ones. The historic disparity between the interconnection rates for domestic carriers (most recently $.08/minute for wireline and $.12/minute for mobile networks) encouraged network arbitrage and has unfairly advantaged major wireline carriers which have mobile affiliates, such as PLDT and Smart Communications, Inc. (Smart).[8] For that reason, Bayantel and some other Philippine carriers have favored a uniform (*i.e.*, reciprocal) interconnection charge for both mobile and fixed networks which would equally apply for the termination of international traffic. See Exhibit 1, ¶4.

To date, however, Philippine wireline and mobile carriers have been unable to resolve their differences regarding the appropriate structure for domestic interconnection rates. Consequently, in the absence of agreement and to reduce further incentives for arbitrage, Bayantel decided to modify its interconnection charges in 2003 to approximately match the pre-existing mobile interconnection rates of $.12/minute. The same rate was proposed for international correspondents because any disparity in the domestic and international interconnect rates would only encourage local carriers to re-import or "trombone" their traffic via an offshore point. Subsequently, however, Philippine mobile carriers have re-established the differential

[8] The PLDT website states that as of September 30, 2002: "PLDT's fixed line business maintained its dominant position with over 2.1 million subscribers and a market share of 70 percent." PLDT reported that subscribers served by its mobile service affiliate "reached almost 8 million. . . This represents a 57 percent share of the total wireless market in the Philippines." See http://www.pldt.com.ph/articles/11-05-2002.html.

between fixed and mobile rates by increasing their own interconnect rates to $.16/minute, an increase which, in turn, has been reflected in Bayantel's international settlement rates.

Bayantel has advised ABS-CBN Telecom that five of the seven U.S. international carriers it corresponds with have agreed to the new (February 1) settlement rates proposed by Bayantel and other Philippine carriers. Negotiations between WorldCom and Bayantel are continuing. AT&T, in contrast, has proposed a $.065/minute settlement rate to Bayantel for on-net fixed traffic and currently appears to be more interested in securing Governmental backing to advance this negotiating objective than engaging in good faith commercial negotiations.

Whatever the outcome of the current negotiations between AT&T and Philippine carriers, however, there is no legal or public policy basis for the FCC to bar ABS-CBN Telecom from continuing to pay mutually agreed settlement rates to Bayantel (or any other non-dominant carrier) for terminating Philippine traffic. Bayantel has no market power and has not whipsawed AT&T or any other U.S. carrier. The allegation that Bayantel has blocked "the large majority of traffic sent by AT&T" (Petition, p.5 and Miller Aff. ¶13) is simply untrue.

As of January 1, 2003, AT&T and Bayantel had not reached agreement on a new settlement rate under their International Telecommunications Service Agreement (ITSA). Nevertheless, despite the risk of nonpayment,[9] in January 2003, Bayantel accepted approximately 2 million minutes of AT&T inbound traffic, less than 20% of which was destined for non-Bayantel subscribers. See Exhibit 1, ¶7. During the first two weeks of February, and again, despite the absence of any agreed settlement rate, Bayantel accepted a comparable volume (approximately 800,000 minutes) of AT&T traffic, declining only the small percentage of traffic (under 20%) estimated to be destined for dialing codes not generally served by the Bayantel

[9] The ITSA states that if the parties have not agreed upon new accounting rates "settlements shall be deferred until the new rates are agree upon." See Exhibit 1 Attachment C hereto.

network. Bayantel has previously informed AT&T and other U.S. correspondents as to the provincial dialing codes served by its own network and Bayantel has never agreed unconditionally to accept inbound U.S. traffic destined for "off-net" Philippine dialing codes, whether originated by AT&T or by other U.S. carriers.

There is also no factual basis for AT&T's allegation (Petition, p.4) that Bayantel has acted in concert or colluded with other Philippine carriers to block AT&T's traffic or otherwise whipsaw the company. AT&T's principal "evidence" is that Bayantel entered into an amended domestic interconnection agreement with Globe Telecom Inc. (Globe) containing $.04 higher charges during the same month Globe concluded amended interconnect agreements with PLDT and other Philippine carriers. This hardly implies that Bayantel colluded with Globe and PLDT to block AT&Ts traffic or raise AT&T's international settlement costs. As Globe has explained, the company is obliged by Philippine law to offer equivalent, non-discriminatory interconnection terms to all Philippine carriers." Bayantel has no agreement with Globe (or PLDT) regarding the terms on which the two carriers will terminate AT&T's international traffic. Similarly, contrary to AT&T's Petition (see also Miller Aff. ¶10) Bayantel did not provide a parallel notification to AT&T in January 2003 that AT&T's traffic would not be terminated unless AT&T paid increased settlement fees. See Exhibit 1, Attachments A and B.

The nub of AT&T's complaint – that a foreign carrier is using its market power to compel AT&T to agree to a higher settlement rate – is simply inapplicable so far as Bayantel is concerned. Bayantel lacks market power and it has continued to accept all of the AT&T (and non-AT&T) U.S. originated traffic destined for the regions where its wireline customers are located. However, as AT&T acknowledges, Bayantel serves less than 8% of wireline subscribers

[10] See "Opposition of Globe Telecom," February 21, 2003. p. 7.

in the Philippines (see the Miller Aff. at ¶ 6). It has no ability to affect the international settlement terms offered by local wireline networks operated by other Philippine carriers, principally PLDT, which controls approximately 70% of local landlines. Thus, AT&T cannot logically contend that any decision by Bayantel to reject "off-net" AT&T traffic stems from Bayantel's market power. On the contrary, it is precisely because Bayantel has no power over the interconnect rates charged by PLDT and other connecting carriers that Bayantel is unwilling to transit AT&T's traffic to these carriers at rates which have not been mutually agreed. To penalize Bayantel or its U.S. affiliate, ABS-CBN Telecom, in these circumstances would make a mockery of the FCC's anti-whipsawing policies because the fundamental predicate for remedial action – market power – does not exist here."

AT&T's contention that Bayantel has the power to extract price concessions from AT&T is also belied by the most recent traffic and revenue data published by the FCC. The data strongly suggests that it is AT&T's expectation of supra-normal profits on the Philippine route - not the level of Philippine settlement rates - that is the source of the current impasse. For example in 2001 (the latest published data), AT&T Corp. and its then partner, Concert Global Networks, reported billing approximately 519 million minutes of U.S. traffic to the Philippines and receiving gross revenues of approximately $.46/minute, of which $.36/minute was retained." By comparison, the average retained revenue per minute for all other U.S. carriers on

[11] All of the FCC orders cited by AT&T expressly assume the existence of market power. Notably, in the Argentine cases cited by AT&T, it was uncontested that the foreign carrier, Telistar, had an international service monopoly. See, *e.g.*, AT&T Corp. 11 FCC Rcd 18014 (1996) ¶1, n.1. See also Uniform Settlement Rates in Parallel International Communication Routes, 84 FCC 2d 121, n.3 (1980): "'Whipsaw' is the term used to describe the ability of the foreign correspondent to utilize its monopoly power to play one carrier against others to gain concessions and benefits from the U.S. international carriers."

[12] See 2001 International Telecommunications Data (filed as of October 31, 202), Industry Analysis & Technology Division, Wireline Competition Bureau, FCC January 2003, Table A-13.

this route, (that is, excluding AT&T) was only approximately $.11/minute.[13] From 2000 to 2001, FCC reports also show that AT&T's retained revenue per minute rose 300%[14] – all of which strongly suggests that it is AT&T, rather than any Philippine carrier, that has traditionally had the greatest market power on this route.[15]

By comparison to AT&T, the U.S. traffic base and revenues of ABS-CBN Telecom are de *minimus*. ABS-CBN Telecom originated less than 20 million minutes of traffic to the Philippines in 2001. Similarly, ABS-CBN Telecom's 2001 net revenues on this route were less than $2 million – approximately 1/100 of the net revenues of AT&T.[16]

In view of the foregoing, there is simply no legal or public policy basis for requiring ABS-CBN Telecom to disrupt its current provision of international telecommunications service to the Philippines or for ordering the company to stop making payments to Bayantel or other non-dominant Philippine carriers. Any such order would only strengthen the position of the dominant carriers now serving the U.S.-Philippines route– AT&T and PLDT - while jeopardizing the very existence of ABS-CBN Telecom.

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[13] Ibid., Table A.

[14] Compare Table A13 to the 2001 report supra with 2000 International Telecommunications Data (filed as of October 31, 2001), Industry Analysis Division, Common Carrier Bureau, December 2001, Table A-12.

[15] There is also considerable anecdotal evidence that AT&T has used that power to whipsaw Philippine carriers into accepting settlement rate concessions. For example, the February 21, 2003 "Comments" of Digital Telecommunications Phils., Inc. (Digitel) in this docket provides evidence (at pp. 2-3) that AT&T intentionally manipulated inbound traffic volumes to obtain settlement concessions from Digital. In a similar vein, Rogelio Quevedo, head of legal and carrier relations for Smart told the Manila press last week "From September 17 to October 11, 2002, AT&T reduced its traffic to Smart to virtually zero while negotiations between us for new termination rates were ongoing. They sent us an unmistakable signal of what they were capable of doing to a Filipino carrier like Smart." The Daily Tribune, February 21, 2003, available at http://www.tribune.net.ph/20030221/business/20030221.bus01.html. Any AT&T reduction of direct inbound traffic to one Philippine carrier, of course, would likely lead to an increase in "off-net" traffic to other Filipino carriers, such as Bayantel.

[16] See 2001 International Telecommunications Data, supra, Table A8.

IV. CONCLUSION

The FCC should not adopt any order regarding settlement payments on the U.S.-Philippines route pending further negotiations between those U.S. and Philippine carriers that have yet to agree upon 2003 settlement terms. At a minimum, the FCC should limit any stop payment order to settlements with any dominant Philippine carrier which has unlawfully blocked the traffic of a U.S. carrier. There is no evidence that ABS-CBN Telecom or its Philippine affiliate, Bayantel, has unlawfully blocked AT&T's traffic or whipsawed AT&T in any other respect. Likewise, any stop payment orders should exempt any U.S. international carrier with a de *minimus* amount of U.S.-billed traffic on this route (*e.g.*, less than 2% according to the FCC's most recent published reports).

Respectfully submitted,

Gregory C. Staple
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W., Suite 600
Washington, DC 200004-1008
(202) 639-6500

CERTIFICATE OF SERVICE

The undersigned, an employee of Vinson & Elkins L.L.P. hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered or send by facsimile*, to the following:

Donald Abelson*
Chief
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Kathy O'Brien*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Jackie Ruff*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Claudia Fox*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Jim Ball*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Patricia Cooper*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Lisa Choi*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Anita Dey*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

*Bryan Tramont
Senior Legal Advisor
Office of Chairman Michael K. Powell
Federal Communications Commission
445 – 12th St., S.W., Room 8-B201
Washington, D.C. 20554

*R. Paul Margie
Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 – 12th St., S.W., Room 8-A302
Washington, D.C. 20554

*Jennifer Manner
Legal Advisor
Office of Commissioner Kathleen Abemathy
Federal Communications Commission
445 – 12th St., S.W., Room 8-B115
Washington, D.C. 20554

*Barry Ohlson
Interim Legal Advisor
Office of Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 – 12th St., S.W., Room 8-C302
Washington, D.C. 20554

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*Samuel L. Feder
Legal Advisor
Office of Commissioner Kevin Martin
Federal Communications Commission
445 – 12th St., S.W., Room 8-A204
Washington, D.C. 20554

*Breck J. Blalock
Deputy Chief, Policy Division
International Bureau
Federal Communications Commission
445 – 12th St., S.W., Room 6-A764
Washington, D.C. 20554

Kenny E. Murray
Scott A. Shefferman
Julie M. Kearney
1133 19th St., N.W.
Washington, DC 20036

Counsel for WorldCom Inc.

Patricia J. Paoletta
Jennifer D. Hindin
Suzanne Yelen
Heather O. Dixon
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006

Counsel for Globe Telecom

Margaret K. Pfeiffer
Thomas R. Leuba
Sullivan & Cromwell LLP
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

Counsel for PLDT

Michael J. Mendelson
Jones Day
51 Louisiana Ave.
Washington, D.C. 20001

Counsel for Digicel Limited

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

Counsel for Verizon

Henry Goldberg
Jonathan Wiener
Joseph Godles
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036

Of Counsel for PLDT

Mark C. Rosenblum
Lawrence T. LaFaro
James J.R. Talbot
AT&T Corp.
1 AT&T Way
Bedminster, NJ 07921

Counsel for AT&T Corp.

PUBLIC INSPECTION COPY

William S. Pamintuan
Ricardo M. Dira
Digital TelecommunicationsPhils., Inc.
110 E. Rodriguez, Jr. Ave.
Bagumbayan, Quezon City
Philippines 1100

Michele Dawson

Michele Dawson

February 27, 2003

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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 $.165 mobile network per minute settlement charges to its international correspondents. A great majority of Bayantel's correspondents have agreed to these revised rates. Five of the Seven (5/7) U.S. international carriers with which Bayantel has direct connections have also agreed to the revised 8.125 wireline/$.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 mort 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.

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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. 100; 8
Page No. 4
Book No. XVI-A
Series of 2003.

Notary Public
ATTY. [illegible]
NOTARY [illegible] 12-31-03
PTR. [illegible] Q.C. 1-2-03
IBP NO. 562326 Q. C. 1-3-03

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Attachments A to E of Exhibit 1 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, 0.459.