Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 03-38
AT&T Emergency Petition for Settlements	)	
Stop Payment Order and Request for	)	
Immediate Interim Relief	)	
	)	
and	)	
	)	
Petition of WorldCom, Inc.	)	
For Prevention of "Whipsawing"	)	
On the U.S.-Philippines Route	)	

AT&T OPPOSITION TO APPLICATIONS FOR REVIEW.

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Dated: April 24, 2003.

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SUMMARY

The International Bureau found in its Order issued on March 10, 2003 that the Philippine Long Distance Company ("PLDT"), Globe Telecom ("Globe"), Bayan Telecommunications, Inc. ("Bayantel") and three other Philippine carriers, Digital Telecommunications Philippines, Inc. ("Digitel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subic"), unlawfully whipsawed U.S. carriers by acting in concert to block AT&T's traffic to the Philippines, and that several of these carriers also blocked WorldCom's Philippines traffic, to force an unjustified 50 percent increase in termination rates. The facts underlying this finding are demonstrated by the record and largely admitted by the Philippine carriers.

In determining that whipsawing occurred, the Bureau properly considered and dismissed the Philippine carriers' arguments that the Commission's anti-whipsaw policies do not apply because PLDT is not a monopolist and the Philippines supposedly is a competitive market, that the other Philippines carriers do not possess market power and did not act in concert, and that the Philippines is an ISR route and the requested rate increases would not exceed benchmark rates. PLDT, Globe and Bayantel and its U.S. affiliate ABS-CBN show no basis for Commission review of the Bureau Order by repeating those arguments here.

As the Bureau correctly stated in its fully reasoned decision, the Commission's anti-whipsaw policies prevent the abuse of foreign market power and promote the public interest in cost-based rates on all routes regardless of the type of traffic arrangement and of whether market power is abused by a single company or by different companies acting in concert. Applicants also fail to rebut the clear evidence of concerted action to seek and enforce higher rates set forth in the record. The Bureau action to address this whipsaw conduct was consistent

with precedent and well within the scope of its delegated authority under Section 0.261 to administer and enforce the policies and rules on international settlements.

There also is no basis to Applicants' claims that they were denied due process. The Bureau gave public notice of the AT&T and WorldCom petitions and the Philippine carriers had the opportunity to file comments, reply comments and *ex parte* comments and to hold *ex parte* meetings with Commission officials. Those actions more than satisfied any due process rights the Philippine carriers may have as foreign carriers that are not directly regulated by the Commission, including any right to a hearing. Applicants also received adequate notice of the remedial actions taken by the Bureau. As the *Argentina Order* makes clear, specific notice of the remedial measures that are imposed by the Bureau to combat whipsawing is not required because prior Commission decisions make clear that enforcement of the ISP may use all mechanisms within the Commission's authority to ensure nondiscriminatory accounting rate arrangements.

Lastly, any conflict between U.S. and foreign regulatory requirements affecting Philippine carriers was created by the Philippine regulator, not the Bureau, and the Commission's recent order eliminating its very limited comity-based call-back prohibition makes clear that no deference is required to foreign regulatory action that seeks to protect actions that harm competition.

For these and the other reasons set forth below, the applications should be denied.

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AT&T OPPOSITION TO APPLICATIONS FOR REVIEW

AT&T Corp. ("AT&T") hereby submits this Opposition to the applications for review filed on April 9, 2003 by the Philippine Long Distance Company ("PLDT"), Globe Telecom ("Globe") and ABS-CBN Telecom North America, Inc. ("ABS-CBN") and its affiliate, Bayan Telecommunications, Inc. ("Bayantel"), concerning the Order issued by the International Bureau on March 10, 2003.[1] Applicants show no basis for review of the finding by the International Bureau that PLDT, Globe, Bayantel, and three other Philippine carriers, Digital Telecommunications Philippines, Inc. ("Digitel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subic"), engaged in "whipsawing" by blocking AT&T's traffic to the Philippines, and that several of these carriers also blocked WorldCom's Philippines traffic, to force an unjustified 50 percent increase in termination rates. The Bureau acted well within the

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[1] *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief & Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route*, IB Docket No. 03-38, Order, (rel. Mar. 10, 2003), DA 03-581. The application by ABS-CBN and Bayantel is referred to herein as "ABS-CBN."

scope of its delegated authority by applying longstanding Commission rules and policies to the facts. The Bureau's findings and conclusions are required by the record, fully reasoned, and contain none of the substantive or procedural errors that Applicants assert. The applications accordingly should be denied.

COUNTER-STATEMENT OF THE FACTS.

The record shows that PLDT Globe, Bayantel, Digitel, Smart and Subic blocked AT&T's Philippines traffic beginning in early February, 2003, and that several Philippine carriers similarly blocked WorldCom's traffic, to force acceptance of an increase in termination rates for U.S.-Philippines traffic from 8 cents per minute to 12 cents per minute for calls terminated on fixed networks.[2] The Philippine carriers similarly sought to enforce increased rates for U.S.-Philippines traffic terminated on mobile networks from 12 cents per minute to 16 cents per minute.[3]

PLDT began requesting this increase from AT&T in November 2002, and Globe, Bayantel and Digitel shortly afterwards began requesting the same increase, to be effective on the same date (initially January 1, 2003, which was later changed to February 1, 2003).[4] PLDT

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[2] Order, ¶¶ 3-5; *AT&T Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, IB Docket 03-38, filed Feb. 7, 2003 ("AT&T Petition"), at 3-5 & Declaration of Mark Miller ("Miller Decl."); *AT&T Reply to Oppositions to Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, IB Docket 03-38, filed Feb 27, 2003 ("AT&T Reply"), at 3-6 & Att. A; *Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route*, IB Docket No. 03-38 ("WorldCom Petition"), filed Feb. 7, 2003, at 1-3.

[3] Order., ¶ 3; AT&T Petition at 4.

[4] AT&T Petition at 3-4; Letter dated March 3, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T, at 2-3; Letter dated March 6, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T, at 1-2.

and the other Philippine carriers provided no evidence that this requested 50 percent increase was required by any increased cost of terminating inbound international calls from the United States.[5]

In January 2003, Globe entered into agreements with PLDT, Bayantel, Digital, Smart and other Philippine carriers to increase its domestic interconnection rate for incoming international calls received from these other Philippine carriers' international gateways from 8 cents to 12 cents on February 1, 2003.[6] PLDT and Globe have acknowledged that other Philippine carriers charge the same rates.[7] Under the same agreements, domestic "metered" calls in the Philippines terminating on Globe's local network are subject to an interconnection rate of 4.6 cents from January 1, 2003.[8]

No Philippine carrier has shown any cost justification for the increased domestic interconnection rate on incoming international calls. Similarly, no Philippine carrier has explained why incoming international calls are subject to a domestic interconnection rate of 12 cents, when domestic "metered" calls in the Philippines are subject to a much lower rate of 4.6 cents, although both types of calls are terminated on local networks in the Philippines in exactly the same way.

When AT&T refused to pay PLDT's requested increase, PLDT threatened to block AT&T's traffic to the Philippines and carried out this threat beginning on February 1,

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[5] AT&T Petition at 3.

[6] AT&T Petition at 4. Globe also agreed with these carriers that its domestic interconnection rate for incoming international calls terminating on a mobile network would increase from 12 cents to 16 cents on the same date. *Id.*

[7] PLDT Consolidated Opposition at 6, n.13 (Philippine carriers impose these charges on "*each other*") (emphasis added); Letter dated March 6, 2003 to Marlene H. Dortch, Secretary, FCC, from Tricia Paoletta, Counsel to Globe, at 1 ("charges for domestic interconnection between international gateway facilities ("IGF") and local exchange networks . . . for the most part are *identical*") (emphasis added).

[8] *Id.*, Attachment 1 at 14.

2003.[9] Since that date, PLDT has terminated almost none of AT&T's traffic.[10] Globe, Bayantel, Digital, Smart and Subic took similar action against AT&T on or around that date.[11]

I. THE BUREAU PROPERLY FOUND THAT THE PHILIPPINE CARRIERS ENGAGED IN WHIPSAWING.

The Bureau's findings that the Philippine carriers violated the Commission's longstanding prohibition on whipsawing, by using their control of termination facilities in the Philippines "to attempt to extract financial concessions from AT&T and WorldCom," properly applied longstanding Commission rules and policies to the facts shown by this record. Order, ¶¶ 10, 17. In upholding a similar Bureau order requiring U.S. carriers to stop all settlements payments to another foreign carrier that blocked AT&T's circuits, the Commission emphasized that such "retaliatory actions in response to AT&T's efforts to negotiate a more cost-based settlement rate constituted classic whipsawing, which the Bureau is clearly authorized to remedy under the ISP."[12] The Bureau's similar action here also falls well within the scope of the Bureau's delegated authority under Section 0.261(a)(8) "[t]o administer and enforce the policies and rules on international settlements."

The Bureau properly considered and dismissed the Philippine carriers' arguments that the Commission's anti-whipsaw policies do not apply because PLDT is not a monopolist and the Philippines supposedly is a competitive market, that the other Philippines carriers do not possess market power and did not act in concert, and that the Philippines is an ISR route and the

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[9] AT&T Petition at 4-5;

[10] AT&T Reply at 3. *See also, AT&T Report on the Status of its Efforts to Have its Circuits Fully Restored on the U.S.-Philippines Route*, IB Docket No. 03-38 (filed Mar. 25, 2003).

[11] AT&T Reply at 3-6 & Attachments A&B.

[12] *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 14 FCC Rcd. 8306, ¶13 (1999) ("*Argentina Order*"). *See also, id* (noting that "the Commission's authority to enforce the ISP is found in Section 201").

requested rate increases would not exceed benchmark rates. Applicants' similar arguments here provide no basis for review. As the Bureau correctly stated, the Commission's anti-whipsaw policies prevent the abuse of foreign market power and promote the public interest in cost-based rates pursuant to the Commission's longstanding directive that U.S. carriers "negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends."[13] Those policies apply on all routes regardless of the type of traffic arrangement and of whether market power is abused by a single company or by different companies acting in concert.

Contrary to the claims by Globe (pp. 22-23), the Bureau's explanation of the reasons for its rejection of Applicants' claims more than fully satisfies its obligations to "articulate a rational connection between the facts found and the choice made,"[14] such that "the agency's path may reasonably be discerned."[15]

1. <u>Applicants Show No Basis to Disturb the Bureau's Factual Findings.</u>

Applicants have previously acknowledged that they blocked some or all of AT&T's traffic to the Philippines, and they again show no legitimate basis for their actions.[16]

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[13] *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶¶ 1, 28 (1991).

[14] *Ohio Bell Telephone Co. v. FCC*, 949 F. 2d 864, 872 (D.C. Cir. 1991).

[15] *Atlantic Tele-Network, Inc. v. FCC*, 59 F. 3d 1384, 1390 (D.C. Cir. 1995). Globe also asserts (p. 22) that the Bureau "appears not to have read" the Philippine carrier *ex parte* presentations because it cited "only *ex partes* filed by AT&T and WorldCom." It is Globe that has failed to read properly, because the Order cites the Philippine carriers' *ex parte* presentations on no fewer than *five* occasions. *See* Order, n. 32, 42, 68, 78, 84. Moreover, an "agency is not obliged to summarize in its decision the contents of all of the documents in the record before it." *SBC Communications v. FCC*, 56 F. 3d 1484, 1492 (D.C. Cir. 1995.)

[16] *Philippine Long Distance Telephone Company's Consolidated Opposition to AT&T and WorldCom Petitions*, IB Docket 03-38, filed Feb. 21, 2003, at 2; *Opposition of Globe Telecom*, IB Docket 03-38, filed Feb. 21, 2003, at 3-4; *ABS-CBN Reply Comments*, IB Docket 03-38, filed Feb. 27, 2003 at 6. Under Rule 1.115(c), Applicants may not rely on "questions of fact or law upon which the designated authority has been afforded no opportunity to pass." Thus, all new facts asserted by Applicants should be stricken. Globe fails to comply with Section 1.115(f) requiring applications for review to be no longer than "25 double-space typewritten pages" by

PLDT does not deny blocking traffic, and claims that Globe and Bayantel only blocked "off-net" traffic destined for other Philippine carriers' networks are refuted by the data submitted by AT&T showing that Globe terminated virtually no AT&T calls after February 1, 2003, and that AT&T's "answer seizure ratio" for traffic sent to Bayantel, normally around 60 percent, fell to around 10 percent on February 6, 2003.[17] Both Globe and ABS-CBN improperly seek to raise new factual issues concerning this evidence for the first time on review.[18]

In any event, the Bureau correctly found that whipsawing occurred even if blocking was limited to "offnet" traffic. Order, ¶12. As described below, Globe (p. 5) fails to justify the blocking of offnet traffic as required by the new higher domestic interconnection rate for inbound international calls, because the Bureau properly found that the charging of those higher domestic interconnection rates by the Philippine carriers further demonstrates their concerted action to raise international termination rates. *Id*., ¶ 17, n.80.

PLDT's actions also are not justified by there being "no contracts in place" between PLDT and AT&T, because the Bureau correctly found that the underlying service agreement remains in effect and requires "continuance of telecommunications services between

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attaching as "Appendix 1" five pages of single-spaced argument listing purported "defects" in the Bureau's Order that are asserted to render the decision "arbitrary and capricious." *See* Globe Appendix 1 at 1. Globe's Appendix should also be stricken.

[17] AT&T Reply at 4-5 & Attachment C.

[18] *See* 47 CFR Section 1.115 (c). Globe's new allegation (Appendix 1, at 4) that AT&T has ASRs "in the 30's for on-net traffic sent to Globe" and that AT&T caused low ASR's by "sending more off-net traffic than normal to Globe, with full knowledge that Globe will not terminate that traffic" is not supported by evidence in the record and should be stricken. Contrary to the claims by ABS-CBN (p. 6, n. 20), ASR data "for AT&T's traffic to Bayantel" could not reasonably be interpreted to refer only to off-net traffic, and AT&T's use of this standard industry methodology required no further explanation, as shown by AT&T's citations to relevant ITU authority. *See* AT&T Reply, n. 2 (citing ITU-T Recommendations E.425, Nov. 1998, Section 1.3 ("ASR gives the relationship between the number of seizures that result in an answer signal and the total number of seizures.") & E.437, May 1999, Section 3.1.

the Philippines and the United States," notwithstanding any expiration of rates contained in a separate annex.[19] The record shows that the expiration of rate agreements between U.S. and foreign carriers is a frequent occurrence, and the industry practice is to continue service while negotiations continue, not to block traffic.[20]

2. The Commission's Anti-Whipsaw Rules Apply to All Carriers That Exercise Market Power.

PLDT wrongly contends (p. 8) that the Bureau's Order fails to take account of "competitive alternatives to PLDT" in the Philippines. Even if such purported alternatives were relevant here, which they are not, because the record shows that all other Philippine carriers have sought the same rate increases from U.S. carriers as PLDT,[21] they would not preclude application of the anti-whipsaw rules to PLDT. Just like other Commission safeguards preventing harm to U.S. competition from the control of foreign bottleneck facilities,[22] the anti-whipsaw rules apply to all carriers that possess market power over foreign termination facilities. The Commission has

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[19] AT&T Reply at 6 & n.12; Order, ¶15. AT&T also showed that similar agreements are in effect with Globe. AT&T Reply at 6-7 & n.13. Globe offered no rebuttal to these facts but now charges (p. 10) that the Bureau "ignored the facts of this case" by "blindly accepting" AT&T's interpretation of the agreement "without independently reviewing the agreement." Because Globe did not challenge AT&T's interpretation -- and still offers no alternative interpretation -- no further review of the agreement was required.

[20] AT&T Reply at 7. Contrary to Globe's claim (p. 10), AT&T's refusal to pay Globe's requested rate increase was not a refusal "to negotiate." There also is no basis to Globe's contention (*id.*) that these events did not take place at "the negotiation stage."

[21] WorldCom Petition at 1 (reporting that "all nine"of WorldCom's correspondents in the Philippines have demanded the same 50 percent rate increases). Thus, the existence of "nine IGFs" in the Philippines noted by Globe (p. 9) does not provide any effective alternative means of termination. Globe also provides no evidence that the "three other Philippine IGF operators" with which AT&T does not have correspondent relationships, all very small carriers, have sufficient capacity to terminate AT&T's substantial traffic volumes.

[22] *See, e.g.,* 47 C.F.R. Section 63.10 (dominant carrier rules).

made clear that its whipsaw rules are not limited to monopolists,[23] and the Bureau has applied those rules to the Mexican carrier, Telmex, which has market power but is not a monopolist.[24] PLDT's efforts (p. 15) to distinguish the *Argentina Order* on this basis are unavailing.[25]

PLDT also fails to show (p.10) that the Philippines route is competitive by claiming it qualifies for removal of the ISP, because any such action by the Bureau -- which has not occurred -- would not show the existence of competitive alternatives to PLDT.[26] The Arbinet data cited by PLDT (pp. 14-15) does not refute the evidence of a "cartel price," or allow U.S. carriers to avoid the anticompetitive effects of that cartel price, because the Bureau correctly concluded (Order, n. 84) that this data shows "a significant increase" after the Philippine carriers raised rates on February 1, 2003.[27]

As the Bureau found, PLDT indisputably has market power because it is the dominant local exchange carrier in the Philippines with sixty-seven percent of wireline local access lines, besides controlling about forty-five percent of the wireless market. Order, ¶ 11.

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[23] *1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd. 7963, ¶ 30 (1999) ("*ISP Reform Order*") ("We believe there still may be a danger that a carrier that possesses market power would have the ability to whipsaw U.S. carriers because such a foreign carrier may unilaterally set the prices, terms and conditions under which U.S. carriers are able to exchange traffic.")

[24] *Sprint Communications Company*, 13 FCC Rcd. 24,998, ¶ 7 (1998).

[25] PLDT also fails (p. 16) to distinguish the *Argentina Order* in other respects. It is not correct that "no rate agreement" was in place between PLDT and AT&T, because the underlying service agreement remained in effect, or that AT&T "refused to negotiate," since a refusal to agree to PLDT's requested terms is not a refusal to negotiate. PLDT incorrectly suggests that the *Argentina Order* only ordered the payment of the lowest rate offered to other carriers, because the Bureau also ordered all U.S. carriers to stop making payments until all circuits were fully restored. 14 FCC Rcd. 8306, ¶ 1; 11 FCC Rcd. 18,014, ¶ 15 (1996).

[26] Additionally, as the Bureau correctly notes, the Commission has expressly reserved the right to take remedial action on routes where it has removed the ISP. Order, ¶ 14; *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 30.

[27] Similarly, AT&T has shown that alternative routes entail "increased cost and frequently reduced quality." AT&T Reply at n.5.

PLDT admits these are "dominant market shares."[28] PLDT's claim of nondominance (*id.*) because local exchange is allegedly the "wrong market" is refuted by the *Foreign Participation Order*, which found that "local access facilities or services on the foreign end" is a relevant market because it "involve[s] services or facilities necessary for the provision of U.S. international services."[29]

The Bureau also properly applied the Commission's anti-whipsaw rules to Globe, Bayantel and the other Philippine carriers that have engaged in concerted action to whipsaw AT&T. Order, ¶¶ 12, 17. The Commission anticipated this situation when it expressly provided for "appropriate remedial action" where "a foreign carrier that otherwise might appear to lack market power might possess some ability unilaterally to set rates for terminating U.S. traffic due to government policies or *collusive behavior* in the foreign market."[30] The Commission thus specifically recognized that non-dominant carriers may exercise market power through concerted action, as occurred here. Moreover, the non-dominant carriers involved here certainly exercised market power by engaging in concerted action with a dominant carrier.[31]

Similarly, the Bureau properly did not grant the so-called "waiver" request by ABS-CBN (p. 18), which showed no "good cause," as required by Section 1.3, to preclude the application of "appropriate remedial action" to its Philippine affiliate for engaging this whipsaw

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[28] Attachment to Letter dated March 6, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T ("PLDT Management Presentation, Philippine Equity Roadshow," Sept. 16, 2002), at 5.

[29] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23,891, ¶ 145 (1997). *See also, Bell Canada Petition for Declaratory Ruling*, 16 FCC Rcd. 12465 (2001) (denying request for nondominant treatment because of continued market power over local exchange services).

[30] *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 30 (1999) (emphasis added).

[31] *See DeLoach v. Phillip Morris Cos.*, 2001 Trad. Cas. ¶ 73,409 (M.D.N.C. July 24, 2001) (liability under Section 2 of the Sherman Act based on collusion with dominant entity).

in collusion with other Philippine carriers. Any prospect of "disproportionate harm" to Bayantel or its U.S. affiliate from a stop payment order should have dissuaded Bayantel from engaging in concerted action to whipsaw AT&T.

3. The Bureau Properly Determined That the Philippine Carriers Engaged in Concerted Action to Increase Rates and Whipsaw U.S. Carriers.

Applicants also fail to rebut the clear evidence of collusion set forth in the record.[32] PLDT asserts (p. 13) it did not act in concert with other Philippine carriers to demand the same rate increases because it previously sought to raise termination rates in May 2002. However, the record shows that in May 2002 PLDT merely asked for rates to be "adjusted upwards" from July 2002.[33] PLDT first requested a 50 percent increase to 12 cents in a confidential communication with AT&T in *November 2002* -- shortly before Globe, Bayantel and Digitel also requested increases to 12 cents in separate confidential communications with AT&T.[34] PLDT again fails to explain why these Philippine carriers all privately requested the same rate increase at the same time if they were not seeking to raise rates in concert.

Globe (p. 12) relies on minor variations in the rate increases requested by the Philippine carriers that also fail to show independent action. Globe merely confirms that the Philippine carriers raised international termination rates from the former levels of 8 cents for

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[32] *See* AT&T Petition at 3-4, Attachment 1 & Miller Decl.; AT&T Reply at 10-11; Letter dated March 6, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T; Letter dated March 7, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T.

[33] Letter dated March 6, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T, at 1. PLDT again implicitly acknowledges that it made no request for 12 cents in May 2002, since neither PLDT's application (p. 5) nor the Supplemental Obias Declaration (¶ 7) contends that PLDT made such a request at that time and merely state that PLDT sought an undefined "increase."

[34] *Id*.

fixed traffic and 12 cents for mobile traffic to new "rate floors" of 12 cents for fixed traffic and 16 cents for mobile traffic.

Incredibly, PLDT (p. 14) contends that the Philippine carriers took "diverse" retaliatory actions against AT&T and WorldCom after February 1, 2003 that "are the opposite of concerted behavior." The record of this proceeding shows otherwise, with no fewer than six Philippine carriers engaging in complete or partial blocking by against AT&T beginning on or shortly after February 1.

Applicants notably fail to rebut the clear evidence of collusion to raise international termination rates provided by the agreements summarized in Globe's January 29, 2003 SEC filing.[35] As noted above, both PLDT and Globe have admitted that other Philippine carriers charge the *same* rates. Thus, the fact that there are "separate" agreements between Philippine carriers for these rates, as PLDT contends (p. 12), is irrelevant. PLDT also claims (*id*.) that these agreements "in no way prevent" Philippine carriers "from charging U.S. carriers *less* than that rate [*i.e*., "the rate at which one Philippine carrier may charge another for terminating 'off-net' international traffic"] for U.S. traffic terminated in the Philippines." This claim is expressly contradicted by Globe (pp. 5, 12), which contends it was forced to stop terminating AT&T's off-net traffic for this very reason -- because under these "new higher domestic interconnection charges" it "faced losses of approximately $0.04 per minute if it continued to terminate AT&T's off-net traffic." Bayantel attempted to justify its blockage of AT&T's off-net traffic on the same grounds.[36]

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[35] AT&T Petition, Attachment 1.

[36] ABS-CBN Reply, Affidavit of Mariel Esguerra, ¶ 7.

Contrary to Globe's claim (p. 11) that these agreements on domestic interconnection rates "could not reasonably be interpreted" to show collusion on international termination rates, PLDT has shown exactly how they are used to communicate international rate levels. PLDT has stated that "when Philippine carrier A requests that Philippine carrier B pay an interconnection rate of X cents when B sends A international traffic, B can surmise that X is at or near the rate that A charges non-Philippine carriers for terminating international calls directly with it."[37]

There also is no justification for the unreasonably high level of the domestic interconnection rate for terminating international calls on local networks, which is now 160 percent greater than the domestic interconnection charge for terminating Philippines domestic "metered" traffic, although both types of traffic are terminated on local networks in the Philippines in exactly the same way.[38] By agreeing to pay most or all of the entire international termination rate received from a foreign carrier when they send incoming international traffic to another Philippine carrier's network, the Philippine carriers (1) effectively agree on price floors for international traffic, and (2) agree that the international termination rates they charge for traffic destined for other carriers' networks will not undercut those other carriers' international termination rates. Thus, the Bureau properly found that Globe's SEC filing "further demonstrates" their concerted action to raise international termination rates. *Id.*, ¶ 17, n.80.[39]

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[37] Letter to dated Mar. 5, 2003 to Donald Abelson, Chief, International Bureau, from Thomas Leuba, Counsel to PLDT, at 1.

[38] *See* Letter dated March 3, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T, at 2; Letter dated March 6, 2003 to Donald Abelson, Chief, International Bureau, from James Talbot, AT&T, at 2.

[39] *See also, e.g.*, *Interstate Circuit v. United States*, 306 U.S. 208 (1939) (unlawful conspiracy may be inferred where the economic interests of the parties would, but for a conspiracy, have induced the parties not to coordinate their actions.) But for the Philippine

The March 12, 2003 Order issued by the Philippine regulator cited by PLDT (p. 13), stating that "actions taken by Philippine carriers in compliance with the domestic law on interconnection and non-discriminatory charges do not constitute concerted anti-competitive action," fails to rebut this finding. The Philippines has no legal or regulatory requirement that each international or local exchange carrier must charge the same termination rate for international traffic. The Philippine interconnection regulations merely require *non-discriminatory* interconnection rates for access to the local network when "the same infrastructure and functionality" is used, which is not the same as requiring that all carriers must charge the same rate. Additionally, both the Philippine regulator and PLDT have made clear that there is no regulation of international termination rates in the Philippines.[40] Therefore, the concerted conduct among the Philippine carriers can claim no protection from any foreign legal or regulatory requirement.

In any event, the Commission has made clear that "government policies" may also allow nondominant carriers to exercise market power over rates and require remedial action.[41] Therefore, even a showing that the Philippine carriers' concerted conduct was required by foreign law would provide no basis for review of the Bureau Order.

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carriers' conspiracy to increase international termination rates, their economic interests would have induced them to seek to increase inbound international call volumes by offering lower prices than their competitors.

[40] Letter dated February 26, 2003 from Armi Jane R. Borje, Commissioner, and Kathleen G. Heceta, Deputy Commissioner, NTC to the Federal Communications Commission, filed Feb. 26, 2003, at 1 (PLDT, Obias Decl., Exhibit 4) ("termination rates are private commercial arrangements entered into by carriers of their own free will"); PLDT Consolidated Opposition, Exhibit 11 (PLDT filing with the Philippines National Telecommunications Commission on February 3, 2003 stating that "Neither the Honorable Commission nor any other Philippine governmental agency has the power or authority to impose these termination rates on PLDT").

[41] *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 30.

4. The Commission's Anti-Whipsaw Policies Are Fully Applicable Below Benchmark Rates.

There is no basis to Applicant's claims that Bureau action to prevent whipsaws to coerce rate increases is constrained by benchmark rates.[42] Nothing in the *Benchmarks Order* establishes any such limitation, and Applicants cite no such language. That is not surprising, because nothing in the *Benchmarks Order* removes the need for the continued application of the Commission's anti-whipsaw policies after benchmarks are achieved.

The Commission's longstanding policy is to encourage the negotiation of cost-based rates, which are far below benchmarks.[43] Thus, the *Benchmarks Order* makes clear that benchmark rates "exceed, usually substantially, any reasonable estimate of the level of foreign carriers' relevant costs of providing international termination service," and that the Commission's "goal is cost-based settlement rates."[44] The Commission's anti-whipsaw policies are clearly necessary to achieve this goal. [45]

Under its delegated authority to administer and enforce the Commission's policies and rules on international settlements, the Bureau is authorized to prevent whipsawing wherever foreign carriers abuse their market power to whipsaw U.S. carriers seeking to "negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends,"

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[42] Globe at 14-15, 19; PLDT at 17-18.

[43] *See, e.g., Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶¶ 1, 28.

[44] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶¶ 19, 44 (1997) ("*Benchmarks Order*").

[45] PLDT (p. 15) fails to distinguish the *Argentina Order* because the rates at issue were "substantially above" the relevant benchmark. Before noting that fact, the *Argentina Order* first stated that the rates were "substantially above a *cost-based* level," and further stated "the Bureau is clearly authorized to remedy under the ISP" foreign carrier "retaliatory actions in response to AT&T's efforts to negotiate a more *cost-based* accounting rate" that it did not limit by reference to any benchmark. 14 FCC Rcd. 8306, ¶13 (emphasis added).

irrespective of whether rates are below benchmarks that the Commission has made clear are far above cost. Therefore, the Order properly states (¶ 16) that the benchmarks policy "in no way supersedes the Commission's continuing policy against anti-competitive whipsawing."

Similarly, because the Commission's policy is to encourage the reduction of rates to cost-based levels, the Commission prohibits *all* "non-cost-based increases in, or surcharges to, the accounting rate," unless these are shown to be in the public interest.[46] As noted by the Order (¶ 15), "the Bureau has not previously approved settlement rate increases proposed by U.S. carriers on U.S. international routes," and a "strong" public interest showing is required to justify a proposed increase. Thus, PLDT (p. 17) mistakenly contends that a "new rule" is imposed here. Since 1991, the Commission has maintained a clear requirement for the cost-justification for all termination rate increases, and the *Benchmarks Order* does nothing to limit this requirement. Indeed, the Commission's policy of encouraging cost-based rates requires its continued application below benchmark rates.

The Bureau, therefore, acted in compliance with longstanding Commission policy in rejecting Applicants' claims that the Commission's anti-whipsaw policies do not apply below benchmarks, and that all below-benchmark rates are "presumptively just and reasonable,"[47] and Applicants show no basis for review by rehashing those arguments here. This latter claim is also

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[46] *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶¶ 1-3, 16 & n. 30. *See also, id.*, ¶ 19 (emphasizing that it would be "difficult for carriers to meet" this burden of proof). A U.S. carrier must show that a proposed surcharge "is cost-based or that the surcharge is accompanied by a reduction in the accounting rate and results in a lower overall accounting rate" with the foreign carrier. *AT&T Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Haiti*, 13 FCC Rcd. 18,739, ¶ 5 (1998). *See also, e.g., RSL Com U.S.A., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with the Dominican Republic*,14 FCC Rcd. 1010, ¶ 4 (1999).

[47] PLDT at 17-18; Globe at 14.

refuted by the fact that Section 64.1001 continues to apply to accounting rate arrangements with foreign dominant carriers, requiring the filing of all modifications in rates and public interest determinations by the Bureau, including where rates are below benchmarks.[48] If all rates below benchmarks were "presumptively just and reasonable," as Applicants contend, the Commission would not require the filing of any below-benchmark rates.

5. <u>The Bureau is Fully Authorized to Enforce Anti-Whipsaw Policies on ISR Routes.</u>

Applicants also show no inconsistency between the Bureau's action and the authorization of the Philippines route for ISR. There is no basis to PLDT's assertion (p. 18) that merely by authorizing U.S. carriers to depart from the ISP requirements for nondiscriminatory accounting rates and the equal division of accounting rates at both ends of the route, the Commission has precluded remedial action against whipsaws on ISR routes. The *ISP Reform Order* expressly retained the ISP on all ISR routes and noted the potential harm from "any practice by which a foreign carrier terminates U.S.-inbound traffic at low rates and exercises its market power to require that U.S. carriers pay much higher rates to terminate traffic in the foreign market."[49]

As the Bureau reaffirms, the purpose of the Commission's ISR policy is to "promote more cost based accounting rates," Order, ¶13, not to allow foreign carriers to frustrate achievement of that objective through whipsaws and price increases. Consequently, as the Bureau correctly states, "the Commission has always retained the ISP, and its safeguard against 'whipsawing,' along with the 'No Special Concessions' rule, on routes approved for the provision of ISR." *Id.*

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[48] Modified filing requirements apply on routes authorized for ISR. *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 67.

[49] *ISP Reform Order*, 14 FCC Rcd. 7963, ¶¶14, 62.

6. <u>The Bureau Properly Found No Evidence of Increased Termination Costs.</u>

PLDT wrongly claims (p. 10) that the Bureau improperly relied on AT&T's rates under 3 and 4 cents to other countries in the Asia-Pacific region, like the Philippines, because these countries were placed in different development categories under the *Benchmarks Order*. In fact, the Bureau did not rely on those rates for its finding that the requested rate increases are not cost-justified. Instead, the Bureau merely listed the rates noted by AT&T and based its finding on the absence of any evidence in the record showing that the requested increases are cost-justified. Order, ¶¶ 11, 15 & n.44.[50] Notably, Applicants do nothing to remedy that deficiency here.[51]

PLDT asserts (p. 5) that it sought to increase rates because of a decline in traffic volumes and "two years of heavy losses on fixed traffic" after it reduced rates to 8 cents in 2000, but PLDT has reconfirmed that freely negotiated rate in *nine* rate agreements with AT&T since

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[50] In fact, two of the Asia Pacific countries listed, Malaysia and South Korea, are in the upper middle income category, which is subject to the same benchmark rate as the Philippines. The separate middle income categories were merely "for purposes of the transition periods" to benchmarks completed in 2002. *Benchmarks Order*, ¶110. AT&T also has rates under 8 cents with six lower middle income countries, including Indonesia, and terminates substantial traffic volumes under 8 cents in China, a "low" income country. Letter dated Mar. 5, 2003 to Paul Margie, Legal Adviser to Commissioner Michael Copps, from James Talbot, AT&T, at 1. As shown by these rates, termination costs in all countries have been greatly reduced since the benchmarks were established in 1997 using retail tariff data that is now more than seven years out of date.

[51] PLDT's assertion (Application, Obias Decl., ¶ 9) that these rates are justified by its "Cost Manual," which has not been placed on the record and is not even publicly available, does not begin to make that showing. The ITU benchmarks referenced by the NTC (PLDT Obias Decl., Exhibit 2 at 2) do not show these rates are cost-justified because ITU Recommendation D.140 Annex E specifically states, at paragraph E.3.2, that those benchmarks are *not* to be "taken as cost-orientated levels." Globe wrongly claims (Appendix at 3) that the Philippines has agreed to no international standard limiting cost justification to "actual costs of termination." ITU Recommendation D.140 states that "the remuneration for the use of telecommunication facilities made available to Administrations should cover the costs incurred in providing those facilities," which excludes unrelated "costs of operation" referred to by Globe (*id.*).

then, including four such agreements since July 2002. Additionally, PLDT's annual reports in 2000 and 2001 show that rate reductions increased PLDT's inbound call volumes by 133.9 percent in 2000 and by 17.9 percent in 2001, and increased PLDT's inbound call revenues from 66 percent of PLDT's international long distance revenues in 1999, to 73 percent of those revenues in 2000, and to 78 percent of those revenues in 2001.[52]

Globe (p. 16) and PLDT cannot justify their rate increases by changes in the dollar-peso exchange rate. Far from "forc[ing]" increased international termination rates, as PLDT contends, the 8-cent rate is now much more valuable to Philippine carrier than before.[53]

II. THE BUREAU ACTED IN ACCORDANCE WITH DUE PROCESS.

There also is no foundation to Applicants' assertions that they were denied due process. The Bureau placed the AT&T and WorldCom petitions on public notice on February 10, 2003, and invited comments and reply comments by interested parties.[54] Order, ¶ 9. PLDT and Globe filed oppositions on February 20, 2003, and Globe, ABS-CBN and Bayantel filed reply comments on February 27, 2003. *Id*., ¶ 9 & n. 33. PLDT and Globe subsequently filed

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[52] *See* PLDT Annual Report 2000 at 34; PLDT Annual Report 2001 at 37. Similarly, Commission data cited in the Bureau Order shows huge increases in U.S-outbound traffic to the Philippines, with volumes growing each year from 1997-2001 "by approximately thirty-three percent" and higher outpayments to Philippine carriers in 2001 than in 1997. Order, ¶ 2 & n.7. *See also*, ABS-CBN at 2 (acknowledging that the U.S.-Philippines route "is one of the fastest growing . . . in the world").

[53] Supp. Obias Decl., ¶ 6. At the former exchange rate of 20 pesos to the dollar, 8 cents is worth 1.6 pesos, while at the current rate of 53 pesos to the dollar, 8 cents is worth 4.24 pesos. Globe illogically seeks (p. 16) to justify the new requested 12-cent rate as being the same as the new domestic interconnection rate under the irrelevant *former* exchange rate. Globe also ignores the fact that its agreements described in its SEC filing for domestic interconnection for international calls are in dollars, and that the 12-cent rate set forth in those agreements is 160 percent more than the domestic interconnection rate for metered traffic. The purported AT&T "profit margin" cited by Globe (*id*.) is nothing of the kind, since it ignores many AT&T costs, including termination costs for U.S.-inbound calls, origination costs for U.S.-outbound calls, and all marketing and billing costs, and has no relevance to the costs incurred by Globe.

[54] The Bureau also granted a one-day extension of the comment period. Order, n. 27.

various *ex parte* letters with the Commission and held *ex parte* meetings with Commission and Bureau officials.[55] Those actions more than fully satisfied any due process rights the Philippine carriers may have concerning this ISP enforcement action, and provided adequate notice of the enforcement measures that were taken.

1. <u>The Philippine Carriers Had Full Notice and Opportunity For Comment.</u>

The Bureau provided the Philippine carriers with far greater notice and opportunity for comment than were provided in previous ISP enforcement actions upheld by the Commission. The *Argentina Order* was issued following notice to Telintar, the whipsawing foreign carrier, by copy of a Bureau letter to the Argentine regulator requesting assistance in restoration of service on the route and after U.S. State Department contacts with the Argentine government.[56] There was no public notice, and Telintar did not file comments with Commission.

In rejecting Telintar's claim that it was denied due process because "it did not receive notice that the Bureau might require U.S. carriers to stop making settlement payments," the Commission emphasized that Telintar "had notice of the rulemaking underlying our ISP, and was therefore on notice the discriminatory practices contravening the ISP would be subject to enforcement action."[57] Similarly, in rejecting a foreign carrier challenge to a Bureau order requiring payment of a lower accounting rate on the U.S.-Peru route, the Commission also emphasized that because Bureau enforcement of the ISP regulates U.S. carriers and only indirectly affects foreign carriers, "[t]he Bureau therefore had no obligation to serve the

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55 *See, e.g.*, *See* Order, n. 32, 42, 68, 78, 84. *See also*, Globe at 18, n.60 (acknowledging an *ex parte* meeting with the Bureau). Globe wrongly claims it "in effect" received no hearing based on the purported lack of citations to its *ex parte* presentations. As noted above, the Bureau has no obligation to summarize each such presentation.

56 *Argentina Order*, 14 FCC Rcd. 8306, ¶ 24.

57 *Id.*, ¶ 23.

modification requests on any foreign carrier or to seek comment from them."[58] Additionally, the D.C. Circuit has made clear that the Commission is authorized to regulate the rates U.S. carriers pay to foreign carriers, that it may do so specifically to prevent whipsawing, and that the Commission "does not regulate foreign carriers or foreign telecommunications services" when it takes such action.[59]

These precedents demonstrate that PLDT, Globe and Bayantel were on notice that their whipsaw conduct would be subject to enforcement action because they had notice of Commission rulemakings establishing those enforcement policies. The Bureau's public notice, therefore, afforded these foreign carriers that are not regulated by the Bureau Order far greater notice and opportunity for comment than was required. Their claims to the contrary fail to address these precedents and establish no basis for review.[60]

Globe's further claims (pp. 17-18) that the Bureau improperly used rulemaking procedures and denied it a hearing were not raised before the Bureau and therefore cannot be raised here.[61] Globe also ignores the Commission's broad discretion to proceed through rulemaking or adjudication, which is hornbook law, and wrongly contends (p. 18) that trial-type

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[58] *Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Peru*, 14 FCC Rcd. 8318, ¶ 25 (1999).

[59] *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1229-30 (D.C. Cir. 1999). There is accordingly no basis to Globe's claims (pp. 15, 20) that the Bureau Order interferes with the findings of foreign regulators and impermissibly regulates foreign carriers, and (p. 16) that the Commission lacks jurisdiction to determine whether international termination rates are cost-based.

[60] *See* Globe at 17-20; PLDT at 21-22. The 35-day notice period provided for responses to benchmark enforcement petitions referenced by PLDT has no relevance here. The Commission's prior decisions establish that foreign carriers are entitled to no such notice where the Bureau is acting to enforce the ISP.

[61] Globe raises a "question of law on which the designated authority has been afforded no opportunity to pass." 47 C.F.R. Section 1.115 (c).

hearings are required for all adjudicatory action.[62] Such hearings are required "only '(w)hen rules (or adjudications) are required by statute to be made (or determined) on the record after opportunity for an agency hearing,'" and there is no statutory requirement for a trial-type hearing here.[63] ABS-CBN (p. 21) and PLDT (p. 22, n. 80) mistakenly assert that a formal hearing is required by Section 205. The Philippine carriers were afforded full opportunity to file comments, respond to comments by others and hold *ex parte* meetings with Commission and Bureau officials, which more than satisfies any Section 205 hearing requirement.[64]

2. <u>There Was Adequate Notice of the Bureau's Enforcement Action.</u>

The same Commission precedents require the dismissal of Applicants' claims that they were denied adequate notice of the remedial actions taken by the Bureau. In response to the similar argument by Telintar that it had received no notice that the Bureau might impose a stop payment order, the Commission made clear in the *Argentina Order* that no such specific notice was required because Telintar was already on notice that discriminatory practices would result in

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[62] Charles H. Koch, Administrative Law and Practice, Vol. 1, (West 1985), at 71 ("As to the question of whether to proceed by rulemaking or adjudication, the choice has been left to the sound discretion of the agencies.")

[63] *American Telephone & Telegraph Co. v. FCC*, 572 F. 2d 17, 21-22 (2d Cir. 1978), quoting 5 U.S.C. Sections 553(c), 554(a). The cases cited by Globe (p. 18, n.62) do not state otherwise. *Alaska Airlines, Inc. v. Civil Aeronautics Board*, 545 F. 2d 194 (D.C. Cir.1976) involved a different agency required by a different and unrelated statute "to give the parties [which were subject to agency jurisdiction] notice and afford an opportunity for a hearing", *Id*. at 203. *SBC Communications v. FCC*, 56 F. 3d 1484, 1496 (D.C. Cir. 1995) *upheld* the Commission's denial of a hearing in a cellular radio license transfer proceeding and emphasized that "[t]he . . . Commission's discretion is paramount" in that decision. Globe also erroneously contends (p. 18) that "substantial and material" questions of fact are involved here. As shown above, the facts underlying the Bureau's finding are largely uncontested, and Globe made no request to the Bureau for a hearing on this or any other basis.

[64] *Id*. at 22 (opportunity to file comments and respond to comments by others satisfies any hearing required by Section 205). *See also*, *Western Union Telegraph Co. v. FCC*, 665 F. 2d 1126, 1151 (D.C. Cir. 1981) ("[i]t is settled law that FCC policy decisions impacting, but not setting, rates may, when appropriate, be made in an informal rulemaking rather than in an adjudicatory ratemaking proceeding").

enforcement action.[65] The Commission further noted that its prior decisions made clear that "the Commission may enforce the ISP requirements using whatever mechanisms that are within the Commission's authority to ensure nondiscriminatory accounting rate arrangements."[66]

Because the ISP has been the Commission's primary regulatory safeguard against whipsawing,[67] the reimposition of the specific requirements of the ISP clearly is within such authority, and also comprises "appropriate remedial action" by the Commission in response to the exercise of market power by nondominant carriers through government policies or collusive action as described by the *ISP Reform Order*.[68] Neither Applicants nor U.S. carriers, therefore, were denied adequate notice of this action.[69] Additionally, the D.C. Circuit has made clear that there is no unlawful "abrogation of contracts" through such action, contrary to PLDT's claim here (p. 22).[70] This remedy is not "unnecessarily broad" as ABS-CBN contends (p. 22) because it is no broader in scope than the stop payment order, is narrowly focused on preventing any continuation of the discrimination found by the Bureau, and also is of very limited duration.[71]

ABS-CBN (p. 22) wrongly claims that the Commission's request for comment on reimposition of the ISP in a pending rulemaking precludes this remedy here. Whether remedial action should remain available after the ISP is removed following any adoption of the different thresholds proposed in the rulemaking is a separate issue from the availability of that remedy

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65 *Argentina Order*, 14 FCC Rcd. 8306, ¶ 23.

66 *Id*., n. 54.

67 *See, e.g., ISP Reform Order*, 11 FCC Rcd. 7963, ¶ 9 ("This policy [the ISP] was developed to prevent foreign carriers from engaging in 'whipsawing'").

68 *Id*., ¶ 30.

69 *See Argentina Order*, 14 FCC Rcd. 8306, ¶ 23. *See also, e.g., Applications of Larry S. Magnuson, Fornia Communications, Rudy Leroy Spirk*, 3 FCC Rcd. 1708, ¶ 8 (1988).

70 *Cable & Wireless P.L.C.*, 166 F.3d at 1231-32.

71 *See* Order, ¶ 30 (ISP to apply for sixty day period).

today.[72] Lastly, contrary to the claim by Globe (p. 21), the stop payment order is not "retroactive," because it only applies to payments made from the date of the order.[73]

III. NO DEFERENCE TO THE PHILIPPINES REGULATOR IS REQUIRED.

Globe (p. 24) has it exactly backwards when it contends that the Bureau Order "creates an impossible situation for Philippine carriers," and the Commission should "defer" to the Philippines regulator, the NTC. Globe itself makes clear that the the NTC, created any such situation by acting on March 12, 2003 "[i]n response" to the Bureau Order and "directed all Philippine carriers not to accept terminating traffic via direct circuits from U.S. facilities-based carriers who do not pay them for services rendered." Therefore, it is the Philippine regulator that has chosen to "paralyze[] Philippine carriers" in this way, not the Bureau.[74]

The Commission's recent Order eliminating its limited comity-based call-back prohibition reaffirms that "foreign governments may not, simply by enacting domestic legal, regulatory, or procedural measures, require the United States to implement such measures as a matter of international law."[75] The Commission further emphasizes that "the benefits of

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[72] AT&T's comments in that proceeding referenced by Globe (p. 20) did not address the whipsaw conduct engaged in here. ABS-CBN is also wrong in claiming (p. 24) that proportionate return ratios cannot be reestablished, since they merely require each foreign carrier to apportion return traffic in accordance with the inbound traffic it receives.

[73] The *Argentina Order* provides direct precedent for the Bureau's prohibition of all payments. 14 FCC Rcd. 8306, ¶ 1; 11 FCC Rcd. 18,014, ¶ 15.

[74] PLDT and Globe and the other Philippine carriers did not block U.S. traffic pursuant to any law or regulatory requirement, as the February 26, 2003 letter from two NTC commissioners (Globe Exhibit 8) confirms, by merely stating that it is "*understood* that absent any provisional or interim arrangement or agreement, there would be termination of service between the parties" -- which ignores the obligations of the Philippine carriers under their underlying service agreements to continue services and maintain circuits.

[75] *Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-Back*, IB Docket No. 02-18, Order (rel. Mar. 28, 2003), FCC 03-63, ¶13.

supporting clear and consistent policies that promote all forms of competition outweigh any benefits derived from recognition and assistance in the enforcement of foreign laws intended to prohibit such competition."[76] That is particularly the case where, as here, the foreign regulatory action protects whipsaw conduct that directly harms U.S. carriers and consumers.[77]

Respectfully submitted,

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Dated: April 24, 2003.

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[76] *Id.*, ¶11. The call-back services affected by the former policy were marketed to foreign consumers, unlike the U.S.-outbound calls involved here.

[77] PLDT (pp. 23-24) shows no violation of ITU or WTO obligations. The D.C. Circuit has affirmed that Commission regulation of U.S. carriers is consistent with ITU obligations, *Cable & Wireless P.L.C.*, 166 F.3d at 1230, and PLDT's WTO claim is premised on a mischaracterization of the Order, which does not describe any different treatment of U.S. and foreign carriers.

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, hereby certify that on this 24th day of April, 2003, a copy of the "AT&T Opposition to Applications for Review" was by first class mail to the persons listed below.

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