

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
)	IB Docket No. 03-38
AT&T Corp. 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)	
)	

**REPLY TO AT&T AND MCI OPPOSITIONS
TO GLOBE’S APPLICATION FOR REVIEW**

Globe Telecom Inc. (“Globe”) hereby replies to the Oppositions to its Application for Review filed by AT&T Corp. (“AT&T”)¹ and WorldCom, Inc. d/b/a MCI (“MCI”).² To support their claims of whipsawing in a competitive market like the Philippines, AT&T and MCI must establish that the Philippine carriers (the “carriers”) conspired to combine their market positions to obtain rates that the carriers, acting individually, could not obtain and that they exercised combined market power to retaliate against AT&T and MCI when they refused to accede to the increase. Parallel action is not sufficient to establish an anticompetitive conspiracy³ or support a charge of whipsawing. Rather, AT&T

¹ See *AT&T Opposition to Applications for Review*, IB Docket No. 03-38 (filed Apr. 24, 2003) (“*AT&T Opposition*”).

² See *MCI Opposition to Applications for Review*, IB Docket No. 03-38 (filed Apr. 24, 2003) (“*MCI Opposition*”).

³ See *Theatre Enterprises v. Paramount Film Distributing Corp.*, 346 U.S. 537, 541 (1954).

and MCI must provide evidence excluding the possibility of independent action⁴ and provide evidence that the carriers' actions constitute whipsawing. AT&T and MCI have failed to meet this evidentiary burden.

AT&T and MCI first try to establish a conspiracy by citing to allegedly uniform international termination proposals. However, there were meaningful differences in the proposed rates.⁵ There was a \$0.02 per minute difference between Globe's and PLDT's rates. Further, even the \$0.005 per minute variation between Globe's and Bayantel's rates would result in hundreds of thousands of dollars annually.⁶ Instead of a conspiracy, these varied rates actually represent competitive market forces at work. Two competitive carriers, Globe and Bayantel, offered lower rates to undercut PLDT, the dominant player in the Philippine market, which controls 67 percent of fixed lines and 45 percent of the mobile market.⁷ At the same time, the competitive carriers protected their independent economic self-interests in avoiding losses of \$0.04 per minute for terminating off-net traffic likely destined for PLDT's network.⁸ As the record shows, PLDT led the proposal to increase international termination rates.⁹

⁴ See *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

⁵ See *Globe Telecom, Inc. Application for Review* at 12, IB Docket No. 03-38 (filed Apr. 9, 2003) ("*Globe Application for Review*").

⁶ In 2001, Philippine carriers terminated 1,664,143,434 minutes of U.S. traffic. Assuming that Globe only terminates one-tenth of that traffic, the \$0.005/minute rate variance amounts to an \$832,071 savings for U.S. carriers. Assuming again that Globe terminates one-tenth of AT&T's 518,811,354 minutes to the Philippines, AT&T stands to save \$259,405. If Globe terminated one-tenth of MCI's 386,070,207 minutes to the Philippines, MCI would save \$193,035. See *2001 Annual Section 43.61 Traffic Report for All U.S. Points*, at Table A1 (p. 4), Table A13 (p. 47), and Table A37 (p. 116), available at http://www.fcc.gov/Bureaus/Common-Carrier/Reports/FCC-State_Link/Intl/4361-f01.pdf (last visited on May 2, 2003).

⁷ See *MCI Opposition* at 6, n. 12.

⁸ *AT&T Corp. 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*, IB Docket No. 03-38, DA 03-581, ¶ 12 (rel. Mar. 10, 2003) ("*Bureau Order*").

Globe and the other competitive carriers merely followed the price leadership of PLDT, which does not, standing alone, evidence conspiratorial behavior.¹⁰ It was in each of the competitive carriers' independent economic interest to follow PLDT's price leadership because the increase allows them to recover a greater portion of their fixed costs, which are higher than PLDT's.¹¹

AT&T and MCI also focus on the domestic interconnection agreements between the carriers as further evidence of a conspiracy. These individually negotiated agreements, which are wholly within the jurisdiction of the National Telecommunications Commission ("NTC")¹² and only set forth the rates the carriers charge each other, do not demonstrate concerted action to raise international termination rates. These domestic or backhaul rates naturally set "price floors" for international termination rates because carriers take into account the cost of accessing local networks in establishing their international termination rates.¹³ Uniform backhaul rates are not per se evidence of a conspiracy nor do they establish whipsawing. The NTC approved the domestic rates about which AT&T and MCI complain

⁹ See *Philippine Long Distance Telephone Company's Consolidated Opposition to AT&T and WorldCom Petitions*, Declaration of Ramon Alger P. Obias, ¶ 2, IB Docket No. 03-38, (filed Feb. 21, 2003).

¹⁰ See *Esco Corp. v. United States*, 340 F.2d 1000, 1007 (9th Cir. 1965) (holding that a competitor's decision to follow a price leader, standing alone, is not a violation of law); *In re Citric Acid Litigation*, 996 F. Supp. 951, 956 (N.D. Cal. 1998) (finding that a company's decision to follow any price increases by a competitor is not evidence of conspiratorial behavior, but simply normal business practice for a corporation selling all its production in a concentrated commodity market), *aff'd*, *7-UP Bottling Co. v. Archer Daniels Midland Co. (In re Citric Acid Litig.)*, 191 F.3d 1090 (9th Cir. Cal. 1999).

¹¹ See *Globe Application for Review* at 2.

¹² *Bureau Order*, ¶ 12.

¹³ See *ITU D.140 General Tariff Principles*, Annex A (allowing consideration of the cost of access to national or local networks in establishing cost-oriented accounting rates).

about and found no anticompetitive conduct in the establishment of these rates.¹⁴ The Bureau cannot supplant the NTC's judgment and determine that these domestic agreements in fact resulted from collusion.¹⁵

MCI attempts to establish that the carriers acted contrary to their independent economic self-interests in setting higher international rates.¹⁶ MCI wrongly assumes that the prior international termination rate of \$0.08 per minute covered all the carriers' direct costs. Recent events resulting in devaluation of the peso and an attendant hike in the cost of debt service have increased the cost of providing all telecommunications services in the Philippines.¹⁷ In addition, contrary to AT&T's and MCI's expectations of continuously lower international rates, "things have been bottoming out, and the crisis in the industry has led companies to review their rates."¹⁸ Indeed, Dr. Tim Kelly, head of the International Telecommunications Union Strategy and Policy Unit, has stated that "[i]t's not logical or

¹⁴ Contrary to MCI's implication that the NTC believes that the carriers colluded, Armi Jane Borje, the head of the NTC, has stated that he saw nothing illegal in the increase and that it really was not collusion. See H. Asher Bolande, *Philippine Call Dispute Pressures Global Rates*, *The Asian Wall Street Journal*, Feb. 27, 2003, at A1 (*"The Asian Wall Street Journal Article"*).

¹⁵ See, e.g., *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 415-417 (1986) (reiterating that rates found to be "reasonable and non-discriminatory" by the Interstate Commerce Commission could not be the basis for private antitrust action). See also *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 405 (1990) (holding that the act of state doctrine prohibits private suits where the relief sought requires a U.S. court invalidate the official act of a foreign sovereign performed within its own territory").

¹⁶ *MCI Opposition* at 7.

¹⁷ *Globe Application for Review* at 16; *Philippine Long Distance Telephone Company's Application for Review of the International Bureau's March 10, 2003 Order*, IB Docket No. 03-38, Supplemental Declaration of Ramon Alger P. Obias ¶ 6 (filed Apr. 9, 2003) (*"PLDT Application for Review"*). See also *ITU D.140 General Tariff Principles*, Annex A (allowing investment costs (*i.e.* depreciation, interest expenses on loans and a reasonable return on equity) to be considered as direct costs).

¹⁸ See *The Asian Wall Street Journal Article* (quoting Dr. Tim Kelly).

possible that prices can fall forever.”¹⁹ Dr. Kelly also noted that things may have “bottomed-out” more quickly in the fiercely competitive Philippine market.²⁰

Finally, disregarding that its switched voice services (“SVS”) rate agreement with Globe has expired and that terminating off-net traffic would result in a loss of \$0.04 per minute for Globe, AT&T asserts that Globe’s refusal to terminate its off-net traffic constitutes retaliation. Globe’s most recent SVS rate agreement with AT&T expired on January 31, 2003 and no new agreement was reached because of AT&T’s failure to negotiate with Globe. Without any SVS rate agreement, Globe’s actions to stop terminating AT&T’s off-net traffic cannot be deemed retaliatory. Moreover, Globe continued to terminate AT&T’s on-net traffic without any agreement until the NTC Order dated March 12, 2003—and AT&T’s continued non—made it impossible to do so.

For the reasons set forth above, Globe respectfully requests that the Commission overturn the Bureau Order.

Respectfully submitted,

GLOBE TELECOM, INC.

By: /s/ Patricia J. Paoletta
Patricia J. Paoletta
Heather O. Dixon
Kyong H. Wang
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Counsel for Globe Telecom, Inc.

May 5, 2003

¹⁹ *Id.*

²⁰ *Id.*

CERTIFICATE OF SERVICE

I, Lori A. Alexiou, hereby certify that on May 5, 2003, I caused a copy of the foregoing Globe Telecom Inc. ("Globe") Reply to AT&T and MCI Oppositions to Globe's Application for Review to be mailed via first-class postage prepaid mail to the following:

William S. Pamintuan
Pamintuan Peneyra Dira & Arpon
110 E. Rodriquez, Jr. Avenue
Bagumbayan
Quezon City
*Counsel for Digital
Telecommunications Philippines, Inc.*

Michael J. Mendelson
Jones Day
51 Louisiana Avenue
Washington, D.C. 20001-2113
Counsel for Digicel Limited

Scott A. Shefferman
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036
Counsel for WorldCom, Inc.

Douglas Schoenberger
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
Counsel for AT&T

James J.R. Talbot
One AT&T Way
Room 3A230
Bedminster, NJ 07921
Counsel for AT&T Corp.

Albert Halprin
Halprin Temple
555 12th Street, N.W.
Suite 950 North
Washington, D.C. 20004
*Counsel for Smart Communications,
Inc.*

Gary B. Olivar
BayanTel Corporate Center
Maginhawa Corner Malingap Streets
Teachers' Village, Curman,
Quezon City
*Chief Financial Officer, Bayan
Telecommunications, Inc.*

Gregory C. Staple
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-1008
*Counsel for ABS-CBN Telecom North
America, Inc.*

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
*Counsel for Philippine Long Distance
Telephone Company*

Thomas R. Leuba
Sullivan & Cromwell
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
*Counsel for Philippine Long Distance
Telephone Co.*

Armi Jane R. Borje
Republic of the Philippines
National Telecommunications
Commission ("NTC")
Bir Road, East Triangle, Diliman,
Quezon City
Commissioner, NTC

Michelle Mesen
Cable & Wireless USA
1130 Connecticut Avenue, N.W.
Suite 1201
Washington, D.C. 20036
*Sr. Manager, International
Government Relations*

Jennifer Hindin
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Verizon


Lori A. Alexiou