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July 9, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: AT&T Emergency Petition for Settlements Stop Payment Order, IB Docket No. 03-38.

Dear Ms. Dortch:

This letter responds to the letter dated June 25, 2003 and attached *ex parte* presentations filed by Globe Telecom ("Globe") and the letter dated May 30, 2003 filed by Smart Communications, Inc. ("Smart").

Neither of these *ex parte* filings rebuts the clear evidence of concerted conduct by Philippine carriers to force a 50 percent increase in termination rates by blocking U.S. traffic. That conduct indisputably constitutes unlawful whipsawing, as the International Bureau correctly determined (Order, IB Docket No. 03-38, rel. Mar. 10, 2003), and continues today, four months after the Bureau order was issued. Globe, Smart and other Philippine carriers thus contemptuously flout the Bureau's mandate that all circuits should be fully restored. Indeed, Smart has recently increased its whipsaw of AT&T by cutting off AT&T's Home Country Direct services. Globe and Smart also provide no justification for increasing international rates. They thus further demonstrate that that the pending applications for review of the Bureau order are without merit and should be denied. As the Bureau properly ordered, U.S. carrier payments should remain suspended until Philippine carriers restore all circuits on this route.

Globe's denial of concerted conduct (p. 1) and claim that higher rates are cost justified (*id.*) do not withstand scrutiny. The facts clearly show "an express contract and unity of purpose on the part of Globe, PLDT, Smart and other Philippine carriers to raise termination rates for international services," as the Bureau found (Order, ¶ 17, n.80), and Globe shows no basis to disturb that finding. First, Globe fails to rebut the clear evidence of collusion provided by the agreements summarized in its January 29, 2003 SEC filing raising domestic interconnection charges for terminating international calls on local networks from 8 to 12 cents. Notably, Globe's claim (p. 2) that "the domestic interconnection agreements did not set international termination rates" is contradicted by Globe's statement in the very next paragraph of its letter that "the domestic interconnection rates effective February 1, 2003 forced it to refuse to terminate AT&T's off-net traffic after that date because Globe would have incurred a $0.04 per minute loss."[1] Thus, as Globe has admitted, these interconnection rates "set 'price floors'" for international traffic. (Globe Reply to AT&T and MCI Oppositions to Globe's Application for Review, filed May 5, 2003, at 3.)

Additionally, by establishing this domestic interconnection rate at an unreasonably high level comprising all or most of the entire international termination rate received from a foreign carrier, the Philippine carriers effectively agree not to undercut each other's international termination rates. (*See* AT&T Opposition to Applications for Review, filed April 24, 2003, at 12.) In attempting to explain why domestic interconnection charges for terminating international calls on local networks are set at such an unreasonably high level -- 160 percent greater than the domestic charge for terminating Philippines domestic "metered" traffic, although both types of traffic are terminated on local networks in exactly the same way -- Globe further confirms the close, and unnecessary, linkage between the Philippine carriers' domestic interconnection charges for terminating international calls on local networks and their international termination rates. According to Globe (p. 3), domestic interconnection charges for terminating international calls on local networks are "indexed to the U.S. dollar" -- the same currency used for U.S. carriers' international termination rates on this route -- while other domestic interconnection rates "traditionally have been expressed in Philippine Pesos." By linking their domestic interconnection charges for terminating international calls on local networks to the U.S. dollar, the Philippine carriers ensure that these charges will continue to comprise all or most of the international termination rate, and thus will continue to prevent any reduction in international termination rates, irrespective of any fluctuation in the value of the Philippine Peso. Thus, Globe's efforts to explain away the Philippine carriers' agreements summarized in its SEC filing serve only to underscore the collusive nature of these arrangements.

Globe does no better in attempting (p. 2) to explain why the Philippine carriers all requested the same rate increase at the same time in their separate, private negotiations with AT&T if they were not seeking to raise rates in concert. Minor variations in the higher rates demanded by Globe, PLDT and Bayantel do not show that those carriers acted independently in seeking rate increases. They simply show that the Philippine carriers raised rates from the former level of 8 cents for international traffic terminated on fixed networks and 12 cents for

[1] Globe falsely contends (p. 2) that it "continued to terminate AT&T's on-net traffic." AT&T has shown that Globe terminated virtually no AT&T calls after February 1, 2003. (See AT&T Opposition to Applications for Review, filed Apr. 24, 2003, at 6; 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 4-5 & Attachment C.)

traffic terminated on mobile networks to new rate floors of 12 cents for fixed traffic and 16 cents for mobile traffic. (*See* Globe Attachments B & C.)

Globe is equally unsuccessful in attempting to show that its 50 percent rate increase is cost-justified. Neither Globe nor any other Philippine carrier has put forward evidence of any increase in the incremental termination costs of inbound international calls, and Globe does nothing to remedy that deficiency. Indeed, Globe does not even address the incremental cost of providing international termination services, which is "the additional cost that a firm incurs to provide *that service*." (*International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 40 (1997) (emphasis added).) Globe's complaint (p. 1) that "its government-mandated build-out and servicing of 1.4 million local lines" has resulted in "substantial debt" and made its entire "wireline business non-profitable" fails to show any increase in those incremental termination costs. Moreover, the devaluation of the Philippine Peso has made the U.S. dollars received by Philippine carriers for the termination of U.S. calls more, not less, valuable than before. And the Commission has repeatedly rejected claims that U.S. consumers should be required to subsidize foreign infrastructure development through high settlement rates. (*See id.*, ¶¶ 142-151; ¶ 143 ("to the extent that settlement payments have been used for telecommunications infrastructure development, alternative funding mechanisms, from both public and private sources, must be identified"); *Atlantic Tele-Network, Inc. Request for a Waiver of the Benchmark Settlement Rate on the U.S.-Guyana Route*, 16 FCC Rcd. 20263, ¶ 8 (2001).)

In any event, Globe's attempt to portray itself as the poverty-stricken victim of high debt service costs is belied by its First Quarter 2003 financial results showing that its telecommunications business as a whole is highly profitable, with increased revenues, EBITDA and net income, and a "stable leverage profile." (*See* Globe Attachment A at 15-16. *See also*, *Deutsche Telecom Offers Holding In Philippine Globe*, Jun. 27, 2003, at http://sg.biz.yahoo.com/030627/15/3c5fu.html ("In the first quarter of this year, [Globe's] net profit jumped 39% to PHP2 billion even after certain charges, with revenue up 24% at PHP11.74 billion"); *Moody's Reviews Globe Telecom's Ba3 Long Term Ratings For Possible Upgrade*, Apr. 22, 2003 ("Globe now enjoys a solid operating and financial risk profile").)

Contrary to Globe's further claims (p. 4), the barrier to further progress in this matter is not any "conflict[]" between the orders of the Commission and the Philippines regulator, but the continuing refusal of Globe and other Philippine carriers to negotiate lower termination rates.[2] AT&T remains ready to engage in such negotiations at the earliest possible opportunity and has made repeated approaches to Globe and the other Philippine carriers, but thus far without any meaningful result.

Smart makes no attempt to show that the increased rates it has demanded are cost-justified or to challenge the Bureau's findings of concerted conduct and apparently takes the position that U.S. carriers and U.S. consumers should be required to pay any higher rates Smart believes are "justified and appropriate." (Smart May 30 letter at 1.) Moreover, Smart conspicuously omits any mention of the fact that its "attempts to negotiate a new termination

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[2] Globe also incorrectly contends (*id.*) that it is owed $8 million by AT&T, since that amount is largely offset by receivables due from Globe to AT&T of almost $6 million.

rate" (*id.*) have primarily consisted of collective action with other Philippine carriers to set higher rate levels and to retaliate against U.S. carriers that resist those increases. Far from "not constitut[ing] what has always been defined as whipsawing," as Smart contends (p. 2), such conduct falls well within the scope of the Commission's anti-whipsaw policies, as the Bureau order makes clear. (Order, ¶¶ 10-12.) Those policies protect U.S. carriers and consumers against the abuse of foreign market power, whether exercised unilaterally or through collective action. Such abuse is ongoing here -- as Smart acknowledges (p. 2), there is a "serious disruption of traffic on the U.S.-Philippines route." Indeed, Smart has taken further action to increase the scope of its whipsaw of AT&T by blocking all AT&T's Home Country Direct access codes on its network since June 5, 2003.

As part of its whipsaw of AT&T, Smart also has given notice of termination of its service agreement with AT&T. Smart has made that linkage abundantly clear in its letter to AT&T dated February 11, 2003 (attached to Smart's *ex parte* letter dated April 2, 2003) and reaffirms that linkage here (p. 4). Accordingly, Smart must rescind its notice of termination before the suspension of U.S. carrier payments may be lifted. The full restoration of service required by the Bureau order also requires Smart to rescind its contract termination notice that seeks to achieve the exact same objective as its disruption of AT&T's circuits. Otherwise, foreign carriers would be able to avoid the Commission's anti-whipsaw remedies simply by terminating their agreements with U.S. carriers.[3]

As AT&T has made clear, it will pay outstanding amounts to Smart when it is authorized to do so. However, as noted above, the Bureau order prohibits AT&T from making payment to Smart until AT&T's services are fully restored. AT&T therefore encourages Smart to cease its whipsaw conduct and to begin negotiations on rates with AT&T as soon as possible.

Respectfully submitted,

James J. R. Talbot /ha

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cc: James Ball, FCC
Lisa Choi, FCC
Patricia Cooper, FCC
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3 Smart fails to show any inconsistency between requiring rescission of Smart's termination notice and the requirement of the Bureau Order that new traffic arrangements between U.S. and Philippine carriers must be compliant with the ISP. (Smart Letter at 4.) Smart confuses the underlying service agreement with the separate annex on rates that is subject to periodic updates. (*See* Order, ¶ 15, n.69.) Thus, new ISP-complaint agreements on rates would be set forth in the annex on rates pursuant to the underlying service agreement.

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