

Greenberg Traurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

September 23, 2004

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

Attn: Chief, Policy Division, International Bureau

Re: IB Docket No. 02-324 International Settlements Policy Reform
IB Docket No. 96-261 International Settlement Rates

Dear Ms. Dortch:

This letter is submitted on behalf of our client, International Access, Inc. d/b/a Access International (“Access”). By public notice issued August 31, 2004, the Commission lifted the International Settlements Policy on certain routes deemed to be benchmark-compliant. See Public Notice – Commission Lifts the International Settlements Policy on Certain Benchmark-Compliant Routes, Seeks Further Comment on Other Routes, DA 04-2832, released August 31, 2004. By that public notice, the Commission announced that it was lifting the International Settlements Policy (“ISP”) on 26 international routes based upon its conclusion that the current settlement rates in effect on those routes are in conformance with the settlement rate benchmarks established by the Commission. Importantly, the Commission also stated that it was not eliminating the ISP on several other routes which could not be determined to be benchmark-compliant. One of the routes for which the Commission was unable to conclude that elimination of the ISP would serve the public interest is the U.S. – Philippines route.

In previous filings in these proceedings, Access articulated its strong opposition to removal of the Philippines from the ISP. As Access explained in initial comments, reply comments and in a July 20, 2004 letter, the settlement rates currently in effect between U.S. carriers and Philippine carriers are not publicly-available, are not filed with the Commission, and are, as represented by those carriers, secret “interim” arrangements. Whether or not those secret, interim rates are at, below or above benchmark cannot be determined since those rates are not known. More importantly, even if, as asserted by several U.S. carriers and by the Philippine Long Distance Telephone Company (“PLDT”), the rates are below benchmark, there seems to be little question

that those secret interim rates are higher than the settlement rates which had been in effect prior to January 2003, and that those rate increases are the direct result of conduct engaged in by the Philippine carriers, led by PLDT, to establish rate floors above previously-negotiated rates. Indeed, it was this very conduct of PLDT and other Philippine carriers which the Commission determined to constitute unlawful “whipsawing” of U.S. carriers. See 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, 18 FCC Rcd 3519 (2003); *aff’d. on review*, FCC 04-112, released June 4, 2004.

While the status of the U.S. – Philippines route remains pending and subject to further Commission study, Access hereby brings to the Commission’s attention several additional examples of recent anticompetitive behavior by PLDT which are undermining the development of competition on the route.

Subsequent to issuance of the August 31, 2004 public notice, Access has learned about certain pricing behavior being engaged in by PLDT, directly and through its affiliate, PLDT (US), which demonstrates that these companies are selling retail services to consumers at prices below what are believed to be current settlement rates. Attached to this letter are photocopies of an international prepaid calling card. According to the card, “Network provided by PLDT (US) Limited a wholly-owned subsidiary of PLDT.” Also attached is a cashier’s receipt issued by Seafood City, a retail establishment in West Covina, California which sells the PLDT/PLDT US calling cards. According to that receipt, a PLDT card listed as a \$5.00 card sells for \$4.00 and provides for 30 minutes of international calling. In addition, attached is a page from the PLDT website (www.pldtonline.com) which contains a rate table for international calls using PLDT’s prepaid calling cards. According to that table, the applicable per minute prepaid calling card rate for calls to the Philippines is \$0.137 per minute.

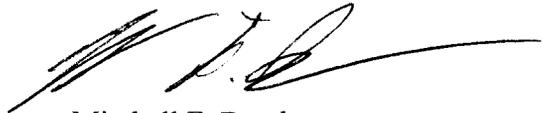
While the current settlement rates between the U.S. and the Philippines remain secret and interim, press reports indicate that PLDT and the other Philippine carriers have succeeded in raising the settlement rate from \$0.08 per minute to \$0.12 per minute. In short, PLDT, through its PLDT US affiliate, is selling international service to the Philippines for only \$0.0017 per minute more than the current settlement rate. Moreover, Access understands that PLDT typically pays commissions of thirty percent on the sale of its calling cards. Payment of a 30 percent commission on a \$0.137 call would reduce the net revenue to PLDT to \$0.0959 per minute – well below the secret interim settlement rate now believed to be in effect, and even further below the prices available to companies like Access which are not able to enter into agreements with PLDT at that secret interim rate. That \$0.0959 per minute revenue amount is further reduced by the domestic transmission costs incurred by PLDT (US). PLDT uses toll free (1-800) service to enable its customers located in the U.S. to reach its domestic point of presence.

In addition to the anticompetitive pricing behavior in the U.S. being engaged in by PLDT directly and through its PLDT (US) affiliate, the Commission should be aware of certain PLDT conduct in the Philippines which also is distorting competition on the U.S. – Philippines route. PLDT refuses to make available to Access and other U.S. carriers Philippine toll free numbers

(e.g., 1-800 numbers). The unavailability of Philippine toll free access numbers precludes those U.S. companies from being able to offer their customers the ability to initiate calls while in the Philippines. The Philippine-American community is an important part of Access's customer base as well as that of other carriers. Those carriers' customers are unable to use their calling cards purchased in the U.S. to originate calls from the Philippines. PLDT (US) customers are able to use their U.S.-purchased calling cards to initiate calls from the Philippines. This is so simply because PLDT makes available toll free access numbers to its affiliate but not to its competitors.

Access respectfully submits that the information contained herein provides further reason why the U.S. – Philippines route remains subject to anticompetitive behavior and why the ISP should not be eliminated for that route.

Respectfully submitted,



Mitchell F. Brecher
Counsel for International Access, Inc.
D/B/A Access International

Attachments

cc: Mr. Donald Abelson
Mr. James Ball
Ms. Alexandra Field
Ms. Kimberly Cook
James J.R. Talbot, Esq.
Robert J. Aamoth, Esq.
Gary Epstein, Esq.
Gregory C. Staple, Esq.
David A. Nall, Esq.
Scott A. Shefferman, Esq.
Henry Goldberg, Esq.

//213365

INTERNATIONAL PRE-PAID CALLING CARD

Dialing Instructions

1. Please dial the following number:
1-866-FOR-PLDT (1-866-367-7538)

2. Enter your PIN number

Scratch here

875 5007 440

Serial No.

10206284

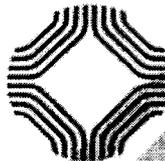
3. For CALLS WITHIN THE US (Alaska, Hawaii and Canada), DIAL.
1 + Area Code + Telephone Number
For INTERNATIONAL CALLS (destinations outside the US), DIAL.
011 + Country Code + Area Code + Telephone Number

If you make a mistake in dialing, press " * * " key to start again.

Rates are subject to change without prior notice. Non-refundable. PLDT US Retail Inc. is not responsible for loss, theft, or unauthorized use of card or card number. Card will expire three (3) months after first use. Calls are billed at 1-minute increments. Charges commence when call is answered. No daily service charge. No connection charge. No hidden charges. Calls made from payphones may be subject to surcharges imposed by payphone providers.

For Customer Service, call 1-866-PLDT-SVC (1-866-7538-782) or visit our website at www.pldtglobal.com

Network provided by PLDT(US) Limited, a wholly-owned subsidiary of PLDT.



PLDT

PLDT US Retail Incorporated
Prepaid Phone Card

\$5



SEAFOOD CITY WEST COVINA
1525 AMAR RD.
WEST COVINA, CA 91792

9/14/2004 11:47:51 AM 8 290 8 40
Cashier: Sofonias R.

PHONE CARD PLDT \$5	4.00
* You Saved \$1.00	
SUBTOTAL	4.00
TAX 0.00	
TOTAL	4.00 *
CASH	20.00
CHANGE	16.00

You Saved \$1.00

Thank You!!!
for shopping
SEAFOOD CITY SUPERMARKETS

* 30 minutes =
13.3 ¢ / minute

[Home](#) | [About Us](#) | [Customer Support](#)

[BUY ONLINE](#) | [PREPAID PHONE CARDS](#) | [PLDT PHONE SERVICE](#) | [G](#)

PLDT TIME

Local Time
Sep 14, 3:41 PM
Manila
Sep 15, 3:41 AM

JOIN THE CLUB

Become a member to buy calling cards, order service, and much more!

RECENT ORDERS

Login to view your orders

DAILY PROVERB

Come unto me, all ye that labour and are heavy laden, and I will give you rest.
Matthew 11:28

WHAT'S NEW

SM Gift Certificates

Live Radio Station feed from the Philippines!

SEARCH FOR

Advanced Search

News, Entertainment & Search provided by YEHEY.COM

ePhone Card Rate

The following are ePhone Card rates for individual countries in US dollars. T subject to change without notice.

Search Rates

Country

Country	Rate Per Minute
Philippines	0.137

[Back to ePhone Card Help](#)

Sariling Atin -- In Touch with Friends & Family

COPYRIGHT (C) 2003 BY PLDT ONLINE. PRIVACY POLICY.

