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April 12, 2005

RECEIVED
APR 1 2 2005
Federal Communications Commission
Office of Secretary

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

Re: Request for Further Information Regarding IB Dockets 03-38, 02-324, 96-261

Dear Ms. Dortch:

This letter is submitted on behalf of The Philippine Long Distance Telephone Company ("PLDT"), in response to the March 11, 2005 letter (the "Access Letter") submitted by Access International ("Access") in response to questions raised with Access by the Commission's International Bureau.[1]

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[1] *See* letter to Mitchell F. Brecher, Counsel for Access International, from James Ball, Chief, Policy Division, International Bureau, Federal Communications Commission, dated Feb. 23, 2005 (the "Bureau's Inquiry").

Access submitted another letter, dated March 30, 2005, which by and large simply repeats the same unsubstantiated charges of Access' previous submissions which are not worthy of belaboring the record with further response. Access' one new claim regards PLDT's alleged interference with Access' use of 800 numbers in the Philippines, PLDT presumes that Access is referring to PLDT's uncovering and reporting the illegal use of a local access number in the Philippines by "Filam Phone Club" (an entity that PLDT believes to be affiliated with Access) to bypass Philippine international gateway facilities and charges. The use by Filam of a local access number (not an 800 number or equivalent) to originate international calls from the Philippines violated both Philippine law and PLDT's interconnection agreements with other Philippine carriers. Filam's activities were further unlawful in the Philippines because Filam is not authorized telecommunications carrier in the Philippines. *See* note 2 *infra*. In any event, if Filam (or Access) has an issue to raise in this respect, the proper forum to do so is before the Philippine telecommunications regulatory agency, the National Telecommunications Commission ("NTC"), and not the FCC. Although this particular matter arises purely under (footnote cont'd on next page)

For almost the last year, Access has made vague and unsupported allegations of misconduct against PLDT ostensibly to express concern about competitive conditions in the US-Philippines telecommunications market. In fact, Access has been using the Commission's processes, and the resultant delay the Commission's normalization of telecommunications relations between the United States and the Philippines, as leverage to force PLDT to settle what PLDT has emphasized to the Commission is a wholly unrelated commercial dispute between PLDT and Access.

The Bureau's Inquiry, among other things, asked Access to explain the nature of its dispute with PLDT and how maintaining the application of the ISP to the Philippines, as Access has urged, has any bearing on this dispute or would otherwise be of benefit to U.S. consumers. [2]

The Commercial Dispute:

In response to the Bureau's Inquiry, Access has been forced to concede that, in its words, its dispute with PLDT is "a private dispute."[3] The so-called "pattern anticompetitive behavior" (sic) which Access describes is, again by Access' own description, a dispute over call record data.[4] PLDT disputes Access' overbilling claims —for the record we submit on behalf of PLDT a summary of its dispute with Access in Attachment A to this letter.[5] In brief:

Philippine telecommunications law and regulation, as noted in footnote 5 below, Filam's suspect business practices are not limited to its illegal use of local access numbers in the Philippines.

[2] Access' other claim, that PLDT has not allowed Access to use toll free numbers to originate outbound international calls from the Philippines for Access' customers is even further from any relevant mark. As set forth in PLDT's October 15, 2004, response to this and other Access charges, even if Access's claims were cognizable by the Commission, they are unfounded. PLDT's allegedly discriminatory conduct is a product of domestic Philippines telecommunications regulation, not anti-competitive conduct by PLDT. Under Philippines law and regulation, only International Gateway Facility (IGF) licensed operators are authorized to originate international calls from the Philippines.

[3] Access Letter at 2 (response to Question 4).

[4] *Id.*

[5] As set forth in the Attachment, the dispute dates back to charges incurred by Access in 2001 and earlier, have no relationship whatsoever to the 2003 "whipsawing" complaint by AT&T and MCI. *See, 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*, Order on Review, 19 FCC Rcd 9993 (2004) (*"AT&T/MCI Order on Review"*).

We note, however, that despite the termination in 2001 of contractual relations between Access and PLDT, Access, through Filam Phone Club, continues to tout to Filipino Americans its so-called "union" and "partnership" with PLDT, even going so far as to show a picture of (footnote cont'd on next page)

- Beginning in December 1999, Access did not pay in full the amounts invoiced to it by PLDT. The dispute centered around reported minutes of usage. PLDT's analysis demonstrated that Access' switch failed to report approximately 10% of the calls sent by Access to PLDT. By May 2001, PLDT had unpaid receivables from Access of approximately US$7.5 million, later increasing to almost US$9 million. Finally, with little prospect of payment, PLDT deactivated Access' circuits; and

- Through August of 2003, made every effort to resolve the payment dispute, indicating potential areas of flexibility to Access as possible ways to compromise some of the outstanding payments in dispute and invited Access to make a settlement proposal. Despite PLDT's entreaties, Access never made a serious settlement offer.

Access' response to the Bureau's Inquiry fails to disclose that there have been numerous meetings, and correspondence between the parties, and tens of thousands of dollars in legal fees and other expenses incurred by PLDT, dating back to 2000 in an effort to reach a settlement. Yet, throughout the entire period, despite several entreaties to do so, Access has never made a concrete offer to settle its US$9 million debt for outstanding charges to PLDT. PLDT's willingness to consider compromise and its invitation to Access to make a settlement offer is reflected in the letter from PLDT's counsel to counsel for Access on August 29, 2003, attached hereto as an exhibit to Attachment A to this letter. Neither before nor since that letter was sent has Access ever made a serious financial settlement offer. Instead, Access has chosen to complain to the FCC in order to have the FCC pressure PLDT to restore circuits to Access and essentially forgive Access' debt.

PLDT is frankly mystified by Access' claim that Access has more recently contacted PLDT to enter into a new agreement for the termination if its traffic by PLDT. To the extent that such contact may have been made, we have no record of it. In any event, PLDT's position *vis-à-vis* a new settlement agreement with Access is as stated in its August 2003 letter to Access. PLDT is willing to negotiate a new agreement with Access, but PLDT is not willing to do so unless, as part of that agreement, Access agrees to pay its outstanding debt (or a mutually agreed settlement thereof) to PLDT for

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telephone calling cards, with PLDT's logo side-by-side with Filam, thereby misleading U.S. consumers into believing that Filam is offering telecommunications from PLDT. *See* Filam Phone Club advertisement in FCDonline (a Filipino American on-line business directory) at www.fcdonline.com/profiles/pages/filam.htm. A copy of this advertisement is attached hereto as Attachment B. We further note that there appears to be no record of the Filam Phone Club in the Commission's files, including as to any Section 214 authorization.

services previously rendered by PLDT to Access. PLDT will not, however, agree to provide Access new service while Access bobs and weaves, but fails to agree to settle the amount it owes PLDT for previous service, anymore than PLDT (or, to its knowledge, any other Philippine or U.S. carrier) would agree to continue to provide service to any other company so far in arrears on payments due to it. This position is neither discriminatory nor anticompetitive nor, as discussed below, except as a matter "green mail" tactics, does this billing and payment dispute have anything whatsoever to do with the Commission's ISP.

No Relation To ISP:

This then leads to Access' response to the pointed questions posed to it by the Bureau's Inquiry: whether "the Commission's decision regarding removal of the ISP from the U.S.-Philippines route [would] have any bearing on resolution of" Access's dispute with PLDT (Question 4) and whether maintaining the ISP would enhance competition or otherwise benefit U.S. consumers (Question 6). To these questions, Access offers no relevant response whatsoever.

With respect to the bearing of the Commission's ISP to Access' dispute with PLDT, Access does no more than assert that, but it does not explain how or why, its dispute with PLDT is "germane to the Commission's ISP."[6] Such a naked assertion is no justification at all for Access' position. Access would have been more candid to admit that its strategy has been to try to hold up the ordinary removal of ISP from the U.S.-Philippines route, to use as a card, to pressure PLDT to forgive Access' outstanding debt to it. Understanding, of course, that such green mail tactics would not be sanctioned by the Commission, Access is left simply to assert that its dispute with PLDT is "germane" to the ISP issue, daring not to state further the relevance of the two matters to each other.

As to the broader question posed by the Commission, as to how competition is enhanced or the U.S. consumer benefited by maintaining the application of the ISP to the U.S.-Philippine route, Access gives no answer at all. Indeed, Access merely offers its own slanted rehash of the whipsawing complaint proceeding brought against Philippine carriers by AT&T and MCI. But, in the very Commission decision upon which Access relies, the Commission made clear that if Access had more "expansive competitive concerns" regarding PLDT and other Filipino carriers, Access needed to make its case under the procedures outlined in the Commission's ISP Reform Order,[7] which Access has continually failed to do. Simply citing back to the Commission's

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[6] Access Letter at 2 (Response to Question 4.)

[7] *AT&T/MCI Order on Review*, 19 FCC Rcd at 9995 n.9.

AT&T/MCI Order on Review clearly does not satisfy this requirement, especially in light of the fact that the complaining carriers in that proceeding, AT&T and MCI, both support the lifting of the application of the ISP to the U.S.-Philippine route.

The Commission has given Access multiple opportunities, most recently in the Bureau's Inquiry, to make its case as to why its dispute with PLDT justifies the continuing application of the ISP to the U.S.-Philippines route. Access has utterly failed to offer any justification for continuing to do so. Accordingly, PLDT respectfully urges the Commission expeditiously to lift the ISP from the U.S.-Philippines route, putting the Philippines on an even international telecommunications plan with 162 other countries as to which the ISP has already been lifted.

Respectfully submitted,

Henry Goldberg
Jonathan Wiener

Attorneys for
Philippine Long Distance Telephone Company

cc: Mr. Mitchell F. Brecher
Mr. James Ball
Ms. Kimberly Cook
Mr. Mark Uretsky
Ms. Claudia Fox
Mr. James J.R. Talbot
Mr. Craig Silliman
Mr. Gregory C. Staple
Ms. Patricia Paoletta
Mr. David Nall
Commissioner Ronald Solis

ATTACHMENT A

EXPLANATION OF PLDT'S CONTRACT DISPUTE WITH ACCESS INTERNATIONAL

In May 1999, The Philippine Long Distance Telephone Company ("PLDT") entered into a value-added service agreement (the "VAS Agreement") with Access International, Inc. ("Access"). Later in 1999, PLDT entered into a prepaid service card agreement (the "Prepaid Card Agreement") with Access and, in early 2000, PLDT and Access entered into a facilities management agreement (the "Facilities Management Agreement").

Beginning in December 1999, Access did not pay in full the amounts invoiced to it by PLDT under the VAS Agreement. Month after month, PLDT requested full payment of its invoices by Access, and month after month its requests went unanswered. The dispute centered around reported minutes of usage. In 2000, the number of minutes reported by Access was 7% below that recorded by PLDT; during the first seven (7) months of 2001, this disparity grew worse with Access underreporting at a level of 9% below that recorded by PLDT. Access' underpayments to PLDT were further exacerbated by overcredits claimed by Access for traffic it alleged to have delivered to PLDT under the Prepaid Card Agreement.

In an effort to help reconcile differences in reporting, PLDT's Network Surveillance and Investigation team conducted a comparison of raw data contained in CDR tapes recorded by Access and PLDT during a single period in September 2000. This analysis demonstrated that Access' switch failed to report approximately 10% of the calls sent by Access to PLDT. In a single month, this discrepancy accounted for approximately 1.6 million minutes of traffic. Further, Access' actually reporting minutes to PLDT was another 800,000 minutes below what it own switch recorded.

PLDT made good faith efforts, for over a year, to work with Access to resolve the payment disputes. Access did nothing to address the problem, other than to stall. A year into the dispute, Access sought to excuse its failure to provide PLDT with supporting call record data, requested over and over again by PLDT during the previous year, stating that it had "been tremendously busy" and "the flue bug has bit the company." By March 2001, PLDT had unpaid receivables from Access of approximately 7.5 million dollars, and made clear to Access that, while PLDT valued its relationship with Access, the situation could not be allowed to continue. Finally, in July 2001, with so much money outstanding, PLDT felt that it had no other choice but to deactivate Access' circuits, and PLDT did so.

After the deactivation of Access' circuits, there were discussions and correspondence between the parties, through August of 2003, in an effort to resolve the payment dispute. In the course of these discussions, PLDT indicated potential areas of flexibility to Access as possible ways to compromise some of the outstanding payments in dispute and invited Access to make a settlement proposal. PLDT's position, then and now, is reflected in its counsel's letter to Access dated August 29, 2003, which is attached hereto as an exhibit.

The bottom line, however, is that despite PLDT's entreaties, Access never made a serious settlement offer. Instead, Access' position essentially never went beyond, restore circuits, and then, through some vague, undefined, and indeterminant process, we will see if we can work out the issue of our prior debt. Having already extended itself for eighteen months - far more than PLDT's normal practice - continuing to make service available to Access even while it continued to underreport its usage and underpay on accounts due to PLDT, PLDT had, and has, no reasonable commercial basis for continuing in this fashion.

In summary, currently, taking all of the agreements into account, PLDT calculates that Access owes PLDT more than USD$9 million, all for services up to and including 2001. Access may dispute this amount, but there can be no legitimate claim that the dispute is anything more than a commercial one, well outside of the purview of Commission regulation. The record demonstrates, moreover, that after the payment dispute first arose PLDT continued to provide service to Access for more than a year, during which time Access continued to underreport its usage and underpay PLDT, and during which period PLDT made a continuing effort to reach resolution of the amounts in dispute without taking more serious action. It was only when these efforts produced no result and Access' outstanding debt to PLDT began to skyrocket that PLDT took the action that it did.

Further, while PLDT remains willing to consider a *bona fide* settlement offer from Access, PLDT will not, and should be expected to, enter into a new agreement with Access and make available additional services, with so much debt outstanding from Access to PLDT under previous agreements.

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August 29, 2003

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Re: **PLDT/Access International**

Dear Peter:

This is in response to your July 28, 2003 letter.

When you and I met last year, you raised the distinct possibility that this matter could be settled by Access International paying PLDT an amount and the parties then entering into a contract for future work. In all of our discussions, that has been the underlying theme, namely a payment by Access International and a new contract. I have told that to my client numerous times, encouraging PLDT to meet with Mr. Wade of Access International on that basis. My client agreed.

In discussions between you and me, it was made clear that Access International was not promising any particular amount to be paid. And I had no doubt, nor did my client, that the opening offer from Access International would be a low one from PLDT's point of view, and the contractual terms proposed by Access International would be a good one from the standpoint of Access International. But nonetheless, a written proposal specifying the amount to be paid, and the terms and conditions of a new contract, would, we hoped, get the parties moving towards settlement.

In correspondence and discussions between Mr. Wade of Access International and Mr. Panlilio of PLDT, it was clear that a written settlement proposal would be put forward by Mr. Wade before the meeting. That was the reason for the written agenda.

Instead, shortly before the meeting, Mr. Wade presented a written agenda with no specifics. There was no dollar amount, even a low amount, offered to resolve all past disputes. There were no terms and conditions specified for the future relationship. The

MORRISON & FOERSTER LLP

Peter A. Schwartz, Esq.
August 29, 2003
Page Two

agenda was rather one sided, containing language favorable to Access International. That one sided aspect is not a problem. It was anticipated.

What was not anticipated was a failure for there to be a dollar amount presented to resolve the past or specifics for a new relationship.

Mr. Wade in his July 18, 2003 letter to PLDT stated that his agenda targeted a fresh approach. It did not. There was nothing there to which PLDT could have responded.

It is PLDT's understanding from Mr. Donald Felbaum of Optel that he also felt that Access International had the obligation to present a proposal with specifics. That clearly was not done.

Keep in mind that this written proposal can be presented in many ways. It can be nonbinding. It can be a range. It can be in whatever manner Mr. Wade thinks will help move the parties along.

I do not believe that all is lost. I do not see why, even at this stage, Mr. Wade cannot present in writing the written settlement proposal we have been asking for for quite some time, namely a dollar amount to resolve all prior disputes and the material terms and conditions of a new relationship. I have no idea how PLDT will respond to such specifics. I do not think PLDT knows, until it sees such a proposal.

Is there any chance of Mr. Panlilio and PLDT receiving such specifics?

Sincerely,

Howard B. Soloway

MORRISON & FOERSTER LLP

Peter A. Schwartz, Esq.
August 29, 2003
Page Three

bcc: Mr. Al Panlilio
Mr. Florentino D. Mabasa, Jr. (by fax)

Attachment B

FILAM PHONE CLUB, Telecommunications Company

FILAM Phone Club: Taking Care of Your Long Distance Communication Needs

The long search for the long distance phone service for Filipinos is finally over.

How many times have you been victimized by phone companies who tell you that they offer low long distance rates, only to find out that you are not actually paying that low? One way or another, most of us have fallen to these traps, these offers that lure us into calling more because we though we'd be paying less.

FILAM Phone Club, led by its president, William W. Wade, has tied up with PLDT, undoubtedly the Philippines' biggest telephone company and the union has brought about a long distance phone service for Filipinos where they can expect to enjoy substantial savings. Let us count the ways why **FILAM Phone Club** should be the Filipinos' one and only way of communicating with friends and relatives in the Philippines.

FILAM Phone Club utilizes the best state-of-the-art fiber optic digital switching technology and this offers customers the utmost confidence in placing these long-distance calls. Confidence that the call that used to be static- and echo-filled call is now so crystal-clear clear that the person on the other line would actually think you are in town and that you are making a call from the kapit-bahay's phone.

The partnership of the **FILAM Phone Club** and PLDT brings together a combined track record of more than 100 years of successful and ground-breaking experience in the telecommunications industry. William assures everyone that **FILAM Phone Club** personnel are dedicated to providing each and every client with the personal attention that would give you complete satisfaction with their service. With a Customer Service department that is available 24/7, you can never go wrong.

With a great support team behind, William wants to make sure that if customers ever encounter problems with the phone service, there is a person on the other end of the line who really cares and who's gonna go the extra distance to make you feel comfortable.
If you think that you have seen the lowest long-distance rate to the Philippines, you haven't seen what **FILAM Phone Club** has to offer. Not 37 or 32 cents per minute. Not even 29 or 25 cents. For only 22.9 cents per minute, you have all the reasons to make your next phone call longer than the usual. You'll have more stories to share, more laughter to hear and more memories to reminisce.

FILAM Phone Club offers its subscribers 30/6 seconds incremental billing. This means that if you talk on the phone for 30 seconds or less, you only pay for the 30 seconds that you used your phone. After 30 seconds, your call will be billed in 6 second increments. So if your call is 32 seconds, you are charged for 36 seconds or if you talk for 37 seconds, you pay for 42 seconds, and so on.

Most phone companies bill calls in 60-second increments, meaning that you are charged a full minute even if you use just 30 or 40 seconds. With FILAM Phone Club's 30/6 second increment billing plan, you save a lot of money. What makes the price even better is the fact that it is available 24 hours a day, seven days a week.

As soon as you subscribe, you will receive a permanent world-wide ATM-type calling card which you can use when you leave your house. You can also choose your own collector's card design from six cards exquisitely designed with top Philippine tourist destinations like Mayon Volcano or Banawe Rice Terraces. As usual, there are no gimmicks nor service charge nor maintenance fees here. Nor are there surcharges or hidden costs or monthly fees.
The charge is the same as when you use your phone at home and the card can be used world-wide in 66 different countries. So whether you are in Chicago with your friends or in New York with your girl-friend or back home in sunny Southern California, you enjoy the

same low rate when you call the Philippines.

The whole package to make your next long distance call a really wonderful experience is with the **FILAM Phone Club**. Add to that the fast connect time, unrestricted calling access, programming of up to 25 speed dial numbers, a button that allows for mistake correction, the # (pound) button that makes a call go through faster easier and is available for multiple calls in one session and an assurance that there are definitely no hidden charges, monthly fees or fine print.

FILAM Phone Club is not just another low-cost phone company. "Three words — quality, price and service," says William. It won't quite sink in until you use their service more frequently. You have nothing to lose, but everything to gain and save. "We feel good about the product because of the integrity behind it. It is fun at the same time because we are giving quality service to Filipinos to begin with. It is something very personal and that telephone is your *lifeline to family and relatives* at home in the Philippines," he ends.

For more information about **FILAM Phone Club** and how you can avail of the wonderful services that they offer, feel free to call **1-800-220-5194** now.