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May 4, 2005

VIA ELECTRONIC FILING

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 Response to April 12, 2005 Letter from the Philippine Long Distance Telephone Company

Dear Ms. Dortch:

On behalf of our client, International Access, Inc. d/b/a Access International (Access), this letter is submitted in response to the April 12, 2005 letter of the Philippine Long Distance Telephone Company in the above-captioned matter.

As described in prior correspondence and pleadings filed in these proceedings, Access is a provider of wholesale international telecommunications services. Service to the Philippines is a substantial portion of its business. In letters to the Commission dated March 11, 2005 and March 30, 2005, Access described the fact it and the Philippine Long Distance Telephone Company (PLDT) several years ago had been embroiled in a dispute regarding service provided by PLDT to Access and, to date, efforts by the companies to resolve that dispute have not been successful. Access disagrees with the manner in which PLDT has characterized that dispute. Moreover, Access takes serious exception to the wholly unsupported assertion in PLDT's letter that Access has been using the pending proceedings as "leverage" to force PLDT to resolve that commercial dispute. Access has participated in these proceedings for one purpose only: to urge the Commission not to remove the Philippines from the list of countries to whom the Commission's International Settlements Policy (ISP) is applicable until such time as the Commission is able to conclude, based on a record consisting of publicly-available information, that removal of the ISP on the United States – Philippines route would serve the public interest. For reasons which Access previously has provided, removal of the ISP on the United States – Philippines route at this time would not serve the public

interest. (See, for example, Comments of International Access, Inc. d/b/a Access International, filed June 28, 2004).

Despite the fact the PLDT has submitted a five page letter and nine pages of attachments describing in detail its side of the Access – PLDT commercial dispute (not surprisingly, Access disagrees with the prejudicial and inaccurate manner in which PLDT has set forth its version of the "facts" of that dispute), the existence of that dispute is not central to the question before the Commission. The question before the Commission is whether the ISP should be removed on the U.S. – Philippines route. (See Public Notice – Commission Announces Pleading Cycle for Comments and Replies in Proceeding on Routes Believed to be Benchmark-Compliant, DA 04-1585, released May 28, 2004). As the Commission has acknowledged on many prior occasions, the ISP was established to prevent whipsawing of U.S. carriers by foreign carriers with market power and for the ultimate benefit of U.S. consumers. In 2003, the Commission, by its International Bureau, took the highly unusual step of directing U.S. carriers to suspend payments to PLDT and other Philippine carriers.(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.*, 19 FCC Rcd 9993 (2004)) This extraordinary action was deemed necessary because the Philippine carriers, acting in cartel-like unison behavior and led by PLDT (the only Philippines carrier presumed by the Commission to possess market power), engaged in blocking of U.S.-originated traffic destined for the Philippines. The blocking was done for the sole purpose of extracting from the major U.S. carriers (and ultimately their customers) higher settlement payments. As described by Access in previous submissions, these activities were part of an array of anticompetitive actions led by PLDT.

In addition to directing U.S. carriers to suspend payments to PLDT and other Philippine carriers, the International Bureau took another unusual, but highly necessary step, in light of PLDT's conduct: it reimposed the ISP on the U.S. – Philippines route. ("We now enforce the restrictions of the ISP on the U.S. – Philippines route in order to address anticompetitive behavior through the requirement of nondiscrimination among U.S. carriers and to permit the monitoring of U.S. carrier compliance with the ISP through the public filings of accounting rates." *Id.* at ¶ 23.) Reimposition of the ISP is contrary to the pro-competitive deregulatory policy which has been a central tenet of the Commission's international policy agenda for more than a decade. Notwithstanding that policy which led to the removal of the ISP on other international routes where the settlement rates are below benchmark levels, the International Bureau (affirmed by the Commission) wisely recognized that PLDT's "strong arm" tactics necessitated that the ISP once again apply on the U.S. – Philippines route.

Despite the International Bureau's stop payment directive, the PLDT-led blocking strategy was successful: U.S. carriers are today paying higher settlement rates than they were prior to the blocking (albeit probably below the $0.19 per minute benchmark established by the Commission in 1997). Unfortunately, no one other than the Philippine carriers and those U.S. carriers who have agreed to those higher rates even know how much higher are the settlement rates than those which were in effect prior to the blocking of traffic in 2003. In fact, no one knows whether U.S. carriers are settling traffic with PLDT at nondiscriminatory rates. This is so because those rates are not on file

and are not publicly-available, notwithstanding the fact that the ISP requires filed, publicly-available and nondiscriminatory rates. Since the two year old secret "interim" arrangements are not publicly-available, no one other than the U. S. carriers and Philippine carriers who have entered into those secret agreements even know for certain what are the current "interim" rates. Access has heard rumors that some U.S. carriers have agreed to pay $0.12 per minute to terminate traffic to the Philippines ($0.16 for mobile termination). It also has heard reports (unconfirmed) that several of the major U.S. carriers are having their traffic terminated for less than those rates. The point is that no one, including the Commission, knows for sure which U.S. carriers are terminating traffic to which Philippine carriers, at which rates.

The stated excuse for keeping the prevailing settlement rates on the U.S. – Philippines route secret is that they remain – more than two years after the International Bureau issued its Stop Payment Order – "interim" rates. As Access described in its March 30 letter, the responses submitted to the International Bureau by several U.S. carriers indicate clearly and unequivocally that PLDT will not enter into permanent settlement arrangements until the Commission accedes to PLDT's demand that it no longer be subject to the ISP.

In other words, PLDT's position seems to be that it will not enter into ISP-compliant arrangements with U.S. carriers until the Commission declares that the ISP no longer applies on the U.S. – Philippines route. Of course, once the Commission were to so declare, PLDT would no longer be under any obligation to enter into permanent, publicly-available, nondiscriminatory settlement arrangements with any U.S. carriers. PLDT would be free to select which U.S. carriers with whom it will do business, how much to charge each of those carriers for terminating U.S.-originated traffic, and all of that could be done wholly outside the purview of the Commission – just as it is today under the two year old charade of "interim" arrangements even though the ISP remains nominally in effect on the U.S. – Philippines route.

In summary, whether or not the Commission should remove the Philippines from the list of countries still subject to the ISP should not depend on whether Access and PLDT are able to resolve their commercial dispute. Rather, it should depend on whether the Commission is able to conclude based on publicly-available evidence that there is sufficient competition on the route to drive down prices and prevent discriminatory conduct, and that PLDT no longer has the ability or the incentive to extract settlement rate increases by whipsawing U.S. carriers and by entering into secret deals with U.S. carriers of its choosing.

Respectfully submitted,

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d/b/a Access International

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