

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Philippine Long Distance Telephone Company,)	
Complainant,)	
)	
v.)	File No. E-95-26
)	
DialBack USA, Inc.,)	
Defendant.)	

ORDER

Adopted: May 19, 2000

Released: May 22, 2000

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On October 14, 1997, Philippine Long Distance Telephone Company (PLDT) filed the above-captioned supplemental complaint for damages against DialBack USA, Inc. (DialBack). Prior to that, on August 13, 1997, pursuant to sections 1.724(b) and (d) of the Commission's rules, the Common Carrier Bureau found DialBack to be in default in the liability phase of this proceeding. 47 C.F.R. § 1.724(b), (d). *See Philippine Long Distance Telephone Co. v. DialBack USA, Inc.*, 12 FCC Rcd. 12,010 (1997). The Common Carrier Bureau also found that DialBack had violated, among other things, sections 203 and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 203, 214, as alleged by PLDT in its original complaint, by providing international call-back service using uncompleted call signaling to the Philippines. On May 17, 2000, PLDT filed a motion for leave to withdraw the supplemental complaint for damages pending against DialBack, without prejudice.

2. We are satisfied that allowing PLDT to withdraw the complaint will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission. Furthermore, we believe that it is appropriate to grant this dismissal without prejudice, since DialBack has not yet filed its answer to PLDT's complaint. *Accord, e.g.*, Fed. R. Civ. P. 41(a)(1) (allowing a plaintiff to dismiss an action without prejudice by filing a notice of dismissal before service of an answer by the adverse party). We note that this action does not affect the validity of the order issued in the liability phase of this proceeding.

3. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 208, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, and 0.311, that the motion for leave to withdraw the above-captioned supplemental complaint without prejudice IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned supplemental complaint IS DISMISSED WITHOUT PREJUDICE and that the proceeding IS TERMINATED.

5. IT IS FURTHER ORDERED that this Order is effective immediately upon release thereof.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau