Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Whipsawing by Philippines Long Distance Telephone Company on the U.S.-Philippines Route	)))	File No. _____

PETITION OF WORLDCOM, INC., FOR PREVENTION OF "WHIPSAWING" ON THE U.S. - PHILIPPINES ROUTE

WorldCom, Inc. ("WorldCom") hereby submits this Petition requesting that the Commission take action to prevent the Philippines Long Distance Telephone Company ("PLDT") from abusing its market power in the Philippines to discriminate against WorldCom by blocking WorldCom's international direct dial ("IDDD") traffic destined for PLDT's network in the Philippines. PLDT's action is a classic whipsaw. To prevent PLDT from continuing to abuse its market power to the detriment of U.S. consumers and carriers, the Commission should immediately order all U.S. carriers to suspend all payments to PLDT until PLDT fully restores international service between WorldCom and PLDT.

I. FACTUAL BACKGROUND.

PLDT has blocked WorldCom's traffic in retaliation for WorldCom's refusal to agree to a unilaterally imposed increase of greater than 50% in the international settlement rates paid to PLDT for terminating traffic on its network in the Philippines. In fact, WorldCom received similar letters demanding similar increases in rates for both fixed and mobile destined traffic from all nine of its correspondents in the Philippines within the period December 13, 2002 and

January 10, 2003. PLDT, however, is the only Philippines carrier to have carried through on its threat to completely block WorldCom's traffic.

PLDT's first demand arrived on January 9, 2002. In that letter, despite ongoing attempts to negotiate new settlement rates, PLDT informed WorldCom that it would unilaterally raise its settlement rates for traffic terminating on both fixed lines and mobile phones in the Philippines, threatening that,

> [s]hould MCIWorldCom [sic] not agree with PLDT's new rates, we leave it to your discretion as to how your traffic to the Philippines will be routed. However, should said traffic be coursed through PLDT-MCIWorldCom direct circuits and overflow routes effective on February 1, 2003 and any date thereafter, PLDT will take this as MCIWorldCom's constructive acceptance of the new PLDT rates…. [1]

On January 15, 2003, WorldCom responded to PLDT that settlement rates must be agreed mutually and could not be agreed by "constructive acceptance." WorldCom held further negotiations with PLDT at the Pacific Telecommunications Conference in Hawaii held from January 19 to 23, 2003. At that time, PLDT reiterated the unilateral position it had put forward in its notifications sent to WorldCom prior to the meeting. WorldCom stated that it could not agree to a rate increase without cost justification, and that the bilaterally agreed rates should apply until new rates were mutually agreed, consistent with the bilateral agreement under which PLDT and WorldCom operate. On January 30, 2003, PLDT sent another letter to WorldCom formally threatening to block WorldCom's traffic. In the letter, PLDT states that, given WorldCom's refusal to accede to its unilateral demands by February 1, 2003,

> PLDT shall be constrained to suspend accepting traffic from MCIWorldCom until such an agreement has been reached. *We have no*

[1] Letter from Edgardo SB. Antonio II, Head – Correspondent Relations 1, PLDT to Mark Dodman, Director – Asia Pacific, WorldCom, January 9, 2003 (copy attached to this Petition as Attachment 1).

> *alternative but to protect those carriers that have agreed to accept our proposed termination rates* [emphasis added].[2]

In a good faith effort to convince PLDT not take the drastic action of blocking service provided to the customers of WorldCom and PLDT, WorldCom attempted to compromise with PLDT by making a counterproposal on January 30, 2003. In a clear display of its market power in the Philippines, PLDT simply responded that the new termination rates would come into effect "for all relations without exception." PLDT then stated that "we have to suspend services with parties who have not accepted the new rates…. This is fair to all our partners who have accepted the new rates and will keep the new rates stable."[3]

Soon after midnight Philippines time, 11:00A.M. EST, PLDT began blocking WorldCom's traffic. Since that time, no calls from the U.S. to the Philippines by WorldCom customers have completed over our direct circuits with PLDT. PLDT has acknowledged that it is blocking WorldCom's traffic as a result of WorldCom's refusal to agree to PLDT's unilateral rate increase demands. The Commission should act immediately to reverse this obvious whipsaw against U.S. carriers.

II. VIOLATION OF THE COMMISSION'S WHIPSAWING POLICY.

PLDT has offered no valid justification for raising its rates. PLDT has not even attempted to demonstrate that the cost for terminating traffic in the Philippines suddenly increased. Rather, PLDT simply demanded the rate increase because it appears to believe it can. Now, PLDT has blocked WorldCom's traffic in an obvious attempt to play one U.S. carrier off

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[2] Letter from Edgardo SB. Antonio II, Head – Correspondent Relations Division 1, PLDT, to Gene Spinelli, Regional Vice President, WorldCom, January 30, 2003 ("January 30th Letter") (copy attached to this Petition as Attachment 2).

[3] Letter from Ramon P. Obias, Vice President, PLDT, to Gene Spinelli, Regional Vice President, WorldCom, January 31, 2003 ("January 31st Letter") (copy attached to this Petition as Attachment 3).

against another.

PLDT's action undermines the Commission's longstanding policy goal of achieving cost-oriented settlement rates. As the Commission stated recently, "reductions in settlement rates not only move prices closer to cost, but also lead to stimulation of usage of the telephone network, greater technological innovation, and declining per unit costs."[4] Significant settlement rate reductions over the past two or three years have brought these benefits to the U.S.-Philippines route. The actions of PLDT and other Philippines carriers will reverse these benefits.

Moreover, PLDT's attempt to block WorldCom's traffic is a blatant violation of the Commission's longstanding policy against "whipsawing".[5] As the Commission has repeatedly explained, whipsawing involves the ability of a foreign carrier to exploit its market power to extract for itself unduly favorable terms and conditions from U.S.-international carriers on an international route by setting competing U.S. carriers against one another.[6]

This is a classic case of whipsawing. PLDT has demanded higher rates from all U.S. carriers. WorldCom understands that at least one large U.S. carrier, Sprint, has agreed to the higher rates with PLDT. WorldCom and AT&T, however, have refused to agree. Therefore, PLDT has blocked the traffic of WorldCom and AT&T, but has not blocked the traffic of other

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[4] *International Settlements Policy Reform,* IB Docket No. 02-324, *International Settlement Rates*, IB Docket No. 96-261, Notice of Proposed Rulemaking, FCC 02-285, rel. October 11, 2002 ("*ISP Reform NPRM*") at ¶ 17.

[5] *See, e.g., In the Matter of Atlantic Tele-Network, Inc. Application for Authority to Acquire and Operate Facilities for Direct Service Between the U.S. and Guyana*, Order on Review, 8 FCC Rcd 4776 (1993); *In the Matter of AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18,014 (1996); Order on Review, 14 FCC Rcd 8306 (1999); *In the Matter of AT&T Corp., MCI Telecommunications Corp., Sprint, and LDDS WorldCom Petitions for Waiver of the International Settlements Policy to change the Accounting Rate for Switched Voice Service with Peru*, Order and Authorization, 11 FCC Rcd 13,799 (1996); *In the Matter of AT&T Corp. and MCI Telecommunications Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Bolivia*, Order and Authorization, 11 FCC Rcd 13,799 (1996); *In the Matter of Sprint Communications Company, L.P.*, Memorandum, Opinion and Order, 13 FCC Rcd 24,998 (1998).

[6] *ISP Reform NPRM* at ¶ 2.

U.S. carriers, including Sprint. PLDT's obvious intent is to force WorldCom to give in to its demands to avoid a prolonged competitive advantage to its competitors who are able to complete traffic to PLDT. PLDT should not be permitted to abuse its market power to force unjustified rate increases any longer.

The Commission has taken action in the past to address a very similar situation in Argentina. In that case, Telintar, a dominant carrier in Argentina, blocked the circuits of AT&T in retaliation for AT&T's efforts to negotiate lower accounting rates. Other U.S. carriers had agreed to a higher rate and Telintar did not block those carriers' circuits. In response, the International Bureau ordered all facilities-based U.S. carriers that directly corresponded with Telintar to suspend all settlement payments to Telintar until voice service was restored with AT&T, and to pay at the lowest existing settlement rate in effect with other U.S. carriers upon resumption of service retroactively.[7] In the *Telintar Order*, the Bureau concluded that it must order a suspension of payments to Telintar because, "Telintar has used its market power to discriminate against individual U.S. carriers to win concessions in accounting rate negotiations…. This unprecedented discriminatory and retaliatory behavior constitutes classic whipsawing and violates our International Settlements Policy (ISP)."[8]

We are now faced with a nearly identical situation. PLDT has used its market power to discriminate against WorldCom to win concessions in its international settlement rate negotiations. PLDT has acknowledged in writing that it would block WorldCom's traffic in retaliation for WorldCom's refusal to accept PLDT's unilateral rate demands. Moreover, PLDT

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[7] *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18,014, at 18,017-018 (1996) ("*Telintar Order*").

[8] *Id*. at 18,014, ¶ 2.

has admitted in writing that it would not block other carriers' traffic, indicating that suspension of WorldCom's service would be "fair to all our partners who have accepted the new rates and will help keep the new rates stable."[9]

III. THE COMMISSION SHOULD IMMEDIATELY ORDER ALL U.S. CARRIERS TO SUSPEND ALL PAYMENTS TO PLDT.

The Commission should take immediate action to order all U.S. facilities-based carriers that correspond directly with PLDT to suspend all payments to PLDT, and to maintain the payment suspension until PLDT has fully restored circuits and is accepting all traffic from WorldCom and other U.S. carriers terminating on its network in the Philippines. Moreover, the Commission should order all U.S. facilities-based carriers with direct relations with PLDT to, upon resumption of payments, to pay no more than the lowest international settlement rate previously agreed to with PLDT by that U.S. carrier retroactive to February 1, 2003. As noted above, the Commission took precisely this action in similar circumstances in the *Telintar Order*. The Commission should not allow a foreign carrier with market power to whipsaw U.S. carriers under any circumstances.

IV. PLDT US LTD. HAS VIOLATED THE TERMS OF ITS SECTION 214 AUTHORIZATION.

Finally, PLDT's whipsaw of U.S. carriers is made even more egregious by the fact that PLDT has taken advantage of the Commission's foreign carrier entry rules to obtain a global facilities-based Section 214 authorization that authorized its affiliate, PLDT US Ltd., to provide services on the U.S.-Philippines route.[10] PLDT US Ltd. has violated at least two of the

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[9] See January 31st Letter, Attachment 3.

[10] ITC-21-20010302-00125 (PLDT US Ltd. is treated as dominant on the U.S.-Philippines route). The authorization was granted on March 28, 2001, Public Notice, Report No. TEL-00372, DA NO. 01-785 (Mar. 29, 2001).

conditions of its authorization. First, Condition (4) requires PLDT US Ltd. to comply with the Commission's International Settlements Policy (ISP). The ISP contains a prohibition on whipsawing, which PLDT's parent has clearly violated. Second, Condition (9) of the PLDT US Ltd.'s authorization requires it to comply with the "No Special Concessions" rule. The No Special Concessions rule prohibits any authorized U.S. carrier from accepting an exclusive arrangement with a foreign carrier with market power involving services, facilities or functions on the foreign end that are necessary for the provision of international services where the arrangement is not offered to similarly situated U.S. carriers, 47 C.F.R. § 63.14.

Put simply, PLDT US Ltd. has accepted an arrangement to interconnect its international facilities to its parent PLDT, a foreign carrier with market power, where other U.S. carriers, including WorldCom and AT&T, have not been offered the same arrangement, i.e., our connection with PLDT has been blocked. The Commission should consider taking action against PLDT US Ltd. for these violations of its Section 214 authorization.

V. CONCLUSION

For the reasons stated herein, the Commission should take immediate action to suspend payments to PLDT by U.S. carriers. The Commission must send a message that it will not permit foreign carriers with market power to whipsaw U.S. carriers. WorldCom respectfully requests that the Commission take action as soon as possible, given the ongoing harm being suffered by WorldCom and its customers as a result of the suspension of service by PLDT. Further harm is suffered each day that WorldCom is unable to complete calls directly to PLDT.

Respectfully submitted,

WORLDCOM, INC.

By: /s/ Scott A. Shefferman

Kerry E. Murray
Scott A. Shefferman
Julie M. Kearney
1133 19th Street, NW
Washington, DC 20036
(202) 736-6064

Its Attorneys

February 7, 2003

ATTACHMENT 1

cc. GS

File

FACSIMILE MESSAGE

January 9, 2003

To: **Mr. Mark Dodman**
Director – Asia Pacific
MCIWorldCom IS&C
Fax No.: +1 914 881 6263

Copy: **Mr. Cesar "Bobby" Castro**
Representing MCIWorldCom IS&C in the Philippines
Fax No.: +63 2 810 5374

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: TERMINATION RATES TO PHILIPPINES FIXED

Ref.: PLDT Fax CRD1/0103/005/m

Dear Mark,

Thank you for your email reply dated December 14, 2002. As you know, since early 2002, PLDT had given advice to, and discussed fully with MCIWorldCom, of PLDT's impending rate alignment*. Please note that PLDT's 12 to 14 US cents rate to Philippine mobile has been in effect for more than a year now.

We look forward to your agreement to the new PLDT rates earlier advised and discussed. Should MCIWorldCom not agree with PLDT's new rates, we leave it to your discretion as to how your traffic to the Philippines will be routed. However, should said traffic be coursed through PLDT-MCIWorldCom direct circuits and overflow routes effective on February 1, 2003 and any date thereafter, PLDT will take this as MCIWorldCom's constructive acceptance of the new PLDT rates and rate arrangement being legally binding on both PLDT and MCIWorldCom.

Thank you for your kind understanding and cooperation.

Best regards,

Edgardo SB. Antonio II
Head – Correspondent Relations 1

**Details as attached*

PLDT

ATTACHMENT 2

cc: M DORMAN

File

FACSIMILE MESSAGE

January 30, 2003

To: **Mr. Gene Spinelli**
Regional Vice President
MCIWorldCom IS&C
Fax No.: +1 914 881 6263

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: TERMINATION RATES TO THE PHILIPPINES

Reference: PLDT Fax CRD1/0103/030/f

Dear Gene,

We acknowledge receipt of your fax message of January 15, 2003 addressed to Mr. Zarate, on subject.

PLDT and MCIWorldCom IS&C's latest agreement with regard to the termination rates provides that the rates stated therein shall apply for the period covering October 1, 2002 until December 31, 2002 (the "Term") and has been verbally extended to January 31, 2003.

Considering that we have proposed new termination rates (our letters dated December 13, 2002, January 9 and 10, 2003) which are to be effective 1 February 2003, and that an agreement with you has not yet been reached on termination rates to the Philippines, PLDT shall be constrained to suspend accepting traffic from MCIWorldCom until such an agreement has been reached. We have no alternative but to protect those carriers that have agreed to accept our proposed termination rates.

Thank you very much for your understanding.

Best regards,

Edgardo SB. Antonio II
Head – Correspondent Relations 1 Division

Copy: CD Castro Fax No. +63 2 810 5374

Ed66/fcal1b

ATTACHMENT 3

Philippine Long Distance Telephone Company
General Office P.O. Box 2148, Makati City, Philippines

Fax

January 31, 2003

To	: Mr. Gene Spinelli	Worldcom	Fax no. : +1 914 881 6263
Copy	: Mr. Mark Dodman	Worldcom	
	Mr. Cesar D. Castro	Worldcom Manila	+63 2 8105374
From	: PLDT Manila		+63 2 815 8599
Ref.	: PLDT Fax IBD-0103--F GCS		
Subj.	: **NEW TERMINATION RATES TO THE PHILIPPINES**		

Dear Gene,

This has reference to your fax dated January 30, 2003 concerning the above subject. I note your counterproposal and must reiterate to you the position of PLDT:

- The new termination rates to the Philippines, which are the same set of new rates we proposed to all our partners, will come into effect on February 1, 2003 for all relations without exception.
- We are open to further discussions with Worldcom until February 28, 2003 and even beyond. However, to avert disputes in invoices and payments, we have to suspend services with parties who have not accepted the new rates as well as the constructive acceptance arrangement we indicated in our previous letter/s. Such service suspension would take effect from February 1, 2003 until the time an agreement is reached. This is fair to all our partners who have accepted the new rates and will help keep the new rates stable.
- As explained by our International Business team to your Mr. Cesar Castro, an alternative way forward is that Worldcom sign a short-term agreement with PLDT reflecting our new rates for say, the February 1-28, 2003 period so that services can continue while discussions are on-going.

Look forward to a favorable reply from Worldcom.

Very truly yours,

RAMON P. OBIAS
Vice President

pca/worldcomroua2

CERTIFICATE OF SERVICE

The undersigned, an employee of WorldCom, Inc., hereby certifies that the foregoing document was mailed this date by First Class U.S. mail, postage prepaid, or was hand-delivered*, to the following:

Donald Abelson*
Chief
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Kathy O'Brien*
International Bureau
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Carolyn Pratt

February 7, 2003