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IMPLEMENTING GUIDELINES ON DEVELOPING REFERENCE ACCESS OFFERS

NTC MEMORANDUM ORDER NO. 02-04-2009, April 14, 2009

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PREAMBLE

WHEREAS, a ubiquitous and efficient telecommunications network is vital to nation-building and economic development;

WHEREAS, under Republic Act 7925, otherwise known the Public Telecommunications Policy Act of the Philippines (1995), the National Telecommunications Commission (hereafter the Commission) is mandated to ensure a healthy competitive environment for telecommunications services;

WHEREAS, effective and efficient interconnection is key to sustainable competition in the telecommunications industry;

WHEREAS, under Executive Order 59, all public telecommunications entities are mandated to provide interconnection and the Commission is vested with the power to ensure that interconnection agreements are fair, reasonable and non-discriminatory;

WHEREAS, in the face of increasing market concentration, deteriorating financial position of many non-dominant service providers, and large differences in negotiating power between service providers, it is appropriate for the Commission to establish a framework to ensure that the market functions effectively;

WHEREAS, a regulatory framework to ensure that markets function effectively for interconnection agreements to be fair, reasonable and non-discriminatory is in the best interest of consumers;

WHEREAS, technological changes, expansion of market boundaries and emergence of new services and business practices, underscore the need for new and more substantive regulatory framework for access to and interconnection of networks;

WHEREAS, Memorandum Circular No. 14-7-2000 provides specific guidelines on some key technical and economic aspects of interconnection, to promote fair, transparent, efficient and non-discriminatory access and interconnection arrangements;

WHEREAS, Memorandum Circular No. 09-07-2002 prescribes wholesale pricing principles and guidelines aimed at transforming the structure of interconnection charges to cost-based;

WHEREAS, Memorandum Circular No. 10-07-2007, issued by the Commission on July 19, 2007, requires all public telecommunications entities to develop and publish a Reference Access Offer;

WHEREAS, a Reference Access Offer contains the prices, terms and conditions, including technical information, ordering and provisioning procedures and service level details, of the network access that a public telecommunications carrier proposes to provide to other service providers;

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WHEREAS, under the said circular, the Commission commits to issuing more detailed guidelines for developing Reference Access Offer;

WHEREAS, the publication of instruments similar, if not equivalent to Reference Access Offers has helped to promote transparency of interconnection agreements, as well as ensure their fairness, reasonableness and efficiency, in more than 70 countries around the world;

WHEREAS, greater transparency in access arrangements will reduce access-related disputes and to protect non-dominant service providers against discrimination and abuse of market power by dominant providers;

WHEREFORE, the Commission, by virtue of the powers vested upon it by law, does hereby promulgate the following rules and regulations:

Article I
DEFINITION OF TERMS

For purposes of this Memorandum Order, the following terms and phrases shall have the assigned meaning unless the context otherwise requires:

a) “Access” means making available the facilities and/or services of one undertaking to another, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers, among others: access to network elements and associated facilities (including the local loop and facilities and services necessary to provide services over the local loop), which may involve the connection of equipment, by fixed or non-fixed means; access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to fixed and mobile networks, in particular for roaming; and access to virtual network services;
b) “Access charges” pertain to the remuneration paid to an access provider by an access seeker for the former providing the latter access to its network, systems, facilities, or customer base;
c) “Access deficit charge (ADC)” is the difference between the required revenue to recover the cost of the line service and the total revenue from retail monthly services fees and the revenue from interconnection;
d) “Access provider” is a public telecommunications entity (PTE) requested to supply access to its network, system, facilities and/or customer base by another PTE or value-added service provider (VASP);
e) “Access seeker” is a PTE or VASP requesting access to the network, system, facilities or customer base of another PTE;
f) “Commission” refers to the National Telecommunications Commission;
g) “Enhanced services” refers to a service which adds a feature or value to basic telephone service not ordinarily provided by a PTE such as format, media, conversion, encryption, enhanced security features, paging, internet protocol, computer processing and the like; provided that in the provision of such service, no law, rule, regulation or international convention to which the Philippines is a signatory, is circumvented or violated. For purposes of these rules and regulations, enhanced services shall also mean value-added services, and vice-versa;
h) “Fully Distributed Cost” is a costing methodology based on historical accounting costs which assigns shared and common costs to various services for which those costs are incurred;
i) “Interconnection” means the linkage by wire, radio, satellite or other means, of two or more existing telecommunications carriers or operators with one another for the purpose of allowing or enabling the subscribers of one carrier or operator to access or reach the subscribers of the other carriers or operators. Interconnection is a specific type of access implemented between public network carriers or operators.
j) “Local Exchange Carrier” is a PTE providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice service, in a geographic area anywhere in the Philippines;
k) “Long Run Incremental Cost (LRIC)” is a costing methodology based on forward-looking costs of network infrastructure and facilities which measures the added or extra cost in providing a service, over a long-term (generally interpreted to mean 10 to 15 years);

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l) “Point of Interconnection (POI)” refers to the point where signals are conveyed from one telecommunications network to another telecommunications network;
m) “Point of Presence (POP)” is a specific point as defined on the network where a point of interconnection shall occur in such a way that interconnection between service providers can be made efficiently and effectively;
n) “Public Switched Telephone Network (PSTN)” refers to interconnected, voice-oriented public telephone networks of PTEs on which calls can be made to all customers of all PTEs;
o) “Public Telecommunications Entity (PTE)” refers to a duly enfranchised and Commission-certified telecommunications carrier and/or any entity duly authorized by law to provide public telecommunications services;
p) “Reference Access Offer” is a statement of the conditions, prices and terms a PTE proposes to provide access to its network, facilities, systems or customer base to another PTE or VASP;
q) “Total Element Long Run Incremental Cost (TELRIC)” is a variant of LRIC; it measures the incremental cost of providing a given network element;
r) “Total Service Long Run Incremental Cost (TSLRIC)” is another variant of LRIC; it measures the incremental cost of providing a given end-user service which may use several network elements;
s) “Value-added Service Provider (VASP)” is an entity which, relying on the transmission, switching and local distribution facilities of a PTE, offers enhanced services beyond those originally provided for by such carriers. A PTE duly authorized by the Commission to provide enhanced services shall likewise be deemed a VASP;

Article II
PRINCIPLES, SCOPE AND STRUCTURE OF RAO

Section 1. General Principles of Access

1. A Reference Access Of fer (RAO) shall embody the same general principles prescribed for interconnection, as set out in Section 3, Article III of MC No. 14-7-2000, to wit:

(i) Access should enable subscribers or customers of the access provider and access seeker to communicate with each other (any-to-any);
(ii) Access should be across interfaces of sufficient functionality (end-to-end interoperability);
(iii) Access should directly follow the principle of fair compensation, compliance on commercial obligation (timely settlement, including payment) and service specific usage of access facilities (no irregular and/or traffic access or bypass);
(iv) The access provider and access seeker should have equal responsibility in ensuring that access is provided in a swift and efficient manner (equal responsibility);
(v) A request for access should be satisfied in a timely fashion (access on request);
(vi) Access should be prompt, efficient and seamless to the subscribers or consumers of both the access provider and access seeker (prompt, efficient and seamless);
(vii) Access agreements should satisfy the government’s telecommunications policies and its commitments or obligations under international agreements.

2. An Access Provider must treat an Access Seeker on a nondiscriminatory basis in relation to the supply of an Access Service, including but not limited to, taking all reasonable steps to ensure that the terms, conditions and prices of access are equivalent to that which the Access Provider provides to itself, its affiliates, or other access seekers.

3. Access must be provided: (i) under fair and reasonable terms, conditions and prices; (ii) in a sufficiently unbundled manner so that the Access Seeker does not pay for network components or facilities that it does not require; (iii) in a timely fashion; and (iv) for transparent and cost-based charges.

Section 2. Obligation to Develop a RAO

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1. All PTEs are required to submit to the Commission a RAO for each of the access services applicable to it that have been specified by the Commission in the immediately following section, within ninety (90) days from the date of effectivity of these Guidelines.

2. The prices, terms and conditions stipulated in the RAO should represent an Access Provider's definite offer, sufficient in substance and form so that an Access Seeker that accepts the offer may not be refused access.

Section 3. Services That Must be Offered under RAO

1. The Commission shall specify the access services that must be offered under RAO. Such determination shall be based on the Commission's determination of services that are vital to promoting competition in the telecommunications market.

2. Based on the current state of competition in the telecommunications market, the Commission has determined that the following access services must be offered under RAO:

(i) Fixed network origination service for calls between an end-user's customer premises equipment (CPE) on the fixed network and the nearest POI or POP, including the signaling required to support such a service;
(ii) Fixed network termination service for calls between the nearest POI or POP and an end-user's CPE on the fixed network, including the signaling required to support such a service;
(iii) Fixed network transit service for calls conveyed between local exchanges of fixed network call origination and termination, involving at least one tandem exchange;
(iv) Mobile network origination service for calls between an end-user's CPE (i.e., handset or radio) on the mobile network and nearest POI or POP, including the signaling required to support such a service;
(v) Mobile network termination service for calls between the nearest POI or POP and an end-user's CPE (i.e., handset or radio) on the mobile network, including the signaling required to support such a service;
(vi) Mobile network transit service for calls conveyed between local exchanges of mobile network call origination and termination, involving at least one tandem exchange;
(vii) Fixed internet call origination service for calls between an end-user's CPE or network termination unit (NTU) on the fixed network and the nearest POI or POP, including a modem or data call over voice bandwidth supporting Internet Protocol, where these calls can be reliably distinguished from voice calls, and includes support for dedicated dial prefixes or dial codes to differentiate such calls at the first switch where required;
(viii) Fixed internet call termination service for calls between the nearest POI or POP to a customer's (usually a VASP) CPE or NTU connected to the fixed network, including transmission links from POI or POP to the customer premises with data rate capacity as requested by the access seeker, and supporting Internet Protocol;
(ix) Fixed internet call transit service for calls conveyed between local exchanges of fixed internet call origination and termination, involving at least one tandem exchange;
(x) Mobile internet call origination service for calls between an end-user's CPE (i.e., handset or radio) on the mobile network and the nearest POI or POP, including a modem or data call over voice bandwidth supporting Internet Protocol, where these calls can be reliably distinguished from voice calls, and includes support for dedicated dial prefixes or dial codes to differentiate such calls at the first switch where required;
(xi) Mobile internet call termination service for calls between the nearest POI or POP to a customer's (usually a VASP) CPE or NTU connected to the mobile network, including transmission links from POI or POP to the customer premises with data rate capacity as requested by the access seeker, and supporting Internet Protocol;
(xii) Mobile internet call transit service for calls conveyed between local exchanges of mobile internet call origination and termination, involving at least one tandem exchange;
(xiii) Retail narrow band access services provided to VASPs via a dial-up connection over a PSTN circuit;
(xiv) Broadband access services provided to VASPs over dedicated capacity, xDSL-upgraded copper lines, upgraded cable networks or other platforms capable of supporting two-way data transmission at high speeds;
(xv) Mobile data origination for data or equivalent service functionality conveyed between an end-user's mobile handset on a cellular mobile network and the POI or POP to another mobile network; and

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(xvi) Mobile data termination for data or equivalent service functionality conveyed between the POI or POP to another mobile network and an end-user's mobile handset on a cellular mobile network.

3. The Commission may revise, i.e., modify, expand or shorten, the above list of access services, when it deems expedient and after due public consultation.

Section 4. General Form of RAO

1. The RAO must:

(i) be written as a draft access agreement;
(ii) be comprehensive and complete with regard to the terms, conditions prices of access that a carrier is willing to offer any Access Seeker;
(iii) have sufficient details to allow an Access Seeker determine if it would accept the offer without having to engage in negotiations with the Access Provider; and
(iv) conform with the technical, operational and commercial guidelines set out in this Memorandum Circular.

2. The RAO shall have two parts: the main clauses or articles and a set of schedules or annexures. The main clauses must be generic and universal, i.e., they could apply to any Access Seeker. The schedules must be specific to the requirements of the Access Seekers.

3. The main clauses or articles of a RAO and the contents of each may include, but are not limited to the following:

(i) Scope and Definition of Services: purpose of access agreement; type of access service; definition of key terms in the agreement
(ii) Points of Interconnection (POIs) and Interconnection Facilities: interconnection principles, namely: that parties agree to connect and keep connected their systems at mutually agreed feasible POIs, and that Access Provider commits to supply requested telecommunication services, facilities and information relating to interconnection; traffic routing principles; arrangements at the POI; co-location of apparatus and plant;
(iii) Network and Transmission Requirements: requirement for mutual notification of network changes and capacity forecasts, e.g., traffic forecasts for each POI, local number requirements, default and redundant routing arrangements; rights and obligations of each party with respect to ordering and provisioning of access facilities; confidentiality requirements and procedures to ensure no anti-competitive use of order information; points of contact; order format and procedures; procedures to expedite specific orders; coordination process for migration of customers between operators; procedures for ordering operator to arrange for all equipment installations and changes at end-user premises; order confirmation and order rejection procedures, timely notification, notification of additional charges, etc.; order completion notification and reporting requirements
(iv) Traffic Measurement and Routing: delineation of responsibilities in measuring and reporting traffic; measurement and reporting procedures; rules for routing of different types of traffic
(v) Infrastructure Sharing and Collocation: availability of poles, conduits, towers, rights of way, and other infrastructure that may be shared with Access Seekers; procedures, if any, for determining available capacity of infrastructure to be shared; procedures for allocating capacity among requesting operators (e.g., first-come, first-served); prices and/or costing method for infrastructure sharing; provision and pricing of supplementary services for shared infrastructure (electrical power, securing systems, maintenance and repair, etc.); availability of actual and virtual co-location (e.g., transmission facilities on exchange premises); list of addresses where collocation is available; procedures for determining available space; reservation of expansion space; prices and/or costing method for allocated space; provisioning and pricing of supplementary services for collocated space (e.g., electrical power and emergency back-up power, lighting, air conditioning, security and alarm systems, etc.); procedures for ensuring access to and security of collocated facilities;
(vi) Charging Mechanisms, Billing and Settlements: scope of billing arrangements and responsibilities; billing procedures; payment terms and conditions; billing disputes and reconciliation procedures;

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(vii) Technical Service Commitments and Fault Repairs: general commitment of Access Provider to provide services of the quality comparable to what it provides to itself or its affiliates or subsidiaries or other parties (specific service performance standards to be specified in appendix); testing and maintenance, i.e., right to make reasonable tests and to schedule service interruptions; procedures to minimize disruption; procedure for trouble reports; notice periods; response time standards; duty to investigate own network before reporting faults to interconnecting operator; responsibilities of parties to take necessary precautions to prevent interference with, or interruptions of, other parties' networks or customers;
(viii) Data Interchange and Treatment of Customer Information: method and format of data interchange between carriers, including data interfaces, software, forms, etc.; data types and systems for which data is to be interchanged (e.g., new facilities and service orders, network changes and forecasts, billing, number allocations and other data required for call routing, customer listings, access to network databases, etc.); confidentiality procedures for customer information
(ix) Ancillary Services: type of operator assistance services to be provided, including directory assistance, translation services, fault report routing, etc.; call handling and operations procedures; fees and billing procedures; subscriber listings; repair and maintenance services; other services provided by one or other operators to increase mutual operating efficiencies;
(x) Interconnection Usage Charges: structure of interconnection charges that may include: one-time set up charges for establishing specific interconnect facilities, rental charges for use of ports and interconnect links and other facilities, and usage charges for use of network elements;
(xi) Other Commercial Terms and Conditions: general provisions regarding supply of services and facilities (e.g., that such facilities shall be used only for agreed purpose, not to be used for bypass of traffic and not to be resold to other parties unless agreed otherwise; third party rights; provision on who bears the cost of upgrading and modifying interconnecting networks to meet service requirements of Access Seeker; applicable laws, i.e., agreement to be governed by, and interpreted in accordance with, the laws of the relevant jurisdiction;
(xii) Fundamental Technical Plans: responsibilities and rights of parties with respect to: network management, maintenance, integrity, safety and protection; traffic and link measurements; and foreseeable or foreseen degradation in traffic performance;
(xiii) Confidentiality, Liability and Indemnities: provisions regarding non-disclosure to third party of information exchanged between contracting parties; liabilities, indemnification and limitation of liabilities for breach of agreement; force majeure, i.e., list of conditions for which non-performance of interconnection agreement obligations will be excused;
(xiv) Contract Termination and Review: grounds for termination (e.g., regulatory or court orders, bankruptcy, insolvency, receivership, cessation of business, etc.); termination restrictions; termination procedures, including advanced notice requirements, payment of non-recoverable interconnection costs incurred by disconnected operator, dealings with end-users, communication restriction, etc., disconnection cutover procedures
(xv) Disputes: procedures for resolution of disputes under agreement, e.g., negotiations, referral to regulator, arbitrator or court, selection of, and procedures for arbitration;
(xvi) Notices: procedures for notifications, petitions, claims and other communications related to the agreement.

4. The schedules accompanying the main clauses or articles include, but not limited to:

(i) Specific details on Points of Interconnection: identification of POIs (geographical location, address, present state) indicating type of selector (e.g., local, transition, international); description of network facilities to be interconnected; capacity and/or traffic volume requirements; conditions limiting supply; identification of which party is to provide which facilities; technical specifications, e.g., calling line identification specifications, advanced digital feature specifications, basic and ISDN call control interface specifications; type of signaling networks; signaling POIs locations (i.e., Signal Transfer Points); point codes; technical interface specifications; diagram of signaling interconnection architecture;
(ii) Interconnect Usage Charges: specific set-up, rental and usage charges;

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(iii) Charges for use of Unbundled Network Elements (where applicable): usage charges for specific network elements such as: access loop, remote subscriber units (RSUs), links to RSUs, local exchanges (LEs), links to LEs, LE transmission link, tandem exchange switch (TAX), TAX to international gateway link, international gateway element, etc.;
(iv) Charges for Sharing of Infrastructure Elements: specific type of facility, charges and other pertinent details;
(v) Charges for Miscellaneous Services: specific type of facility, charges and other pertinent details;
(vi) Schedule of Standards and Specifications: quality of service standards such as: average time for provisioning interconnection circuits, switching and transmission quality measures on interconnected circuits (e.g., probability of blockage at peak hours, transmission delay and loss), percentage of interconnection cutovers on scheduled dates;
(vii) List of infrastructure and their respective capacity that are available for sharing

5. A cost model which is the basis of access prices offered by an Access Provider shall be submitted to the Commission, together with the proposed RAO. On request of the concerned carrier, the Commission will not publish said cost model to protect the carrier's commercial interest.

6. The terms and conditions in the RAO must conform to the guidelines on the technical, operational and commercial arrangements set out in Articles IV and V of this Memorandum Circular.

7. The prices, terms and conditions in the RAO are deemed valid offers for a period of 3 years, unless otherwise specified. The Commission may allow a shorter offer period if it is in the long-term interest of end-users.

Section 5. Approval of RAO

1. An Access Provider shall submit its proposed RAO and supporting cost model to the Commission within 90 days from the time it is directed to do so.

2. The Commission shall determine if the terms and conditions stipulated in the RAO are reasonable, fair, consistent and non-discriminatory.

3. In determining whether the RAO proposed by a carrier conforms to the aforementioned principles, the Commission shall have regard, among others, to the following factors:

(i) the long-term interests of end-users;
(ii) the legitimate business interests of both access provider and seeker;
(iii) the economically efficient use of a telecommunications network or facility; and
(iv) the operational and technical requirements for the integrity and safety of use of a telecommunications network or facility.

4. Within 90 days from the date the proposed RAO is received, the Commission shall communicate in writing its decision to the concerned carrier.

Alternatively, the Commission may inform the concerned carrier if it would require additional time to complete its review. If the Commission fails to communicate with the concerned carrier either its decision or its need for additional time within 90 days from the date of receipt, the proposed RAO shall be deemed approved by the Commission and binding on the access provider.

5. If the Commission disapproves of some provisions in the proposed RAO, it shall inform the concerned access provider in writing of its disapproval and the modifications required for the proposed RAO to meet the Commission's standard. The access provider shall be given 30 days to modify the proposed RAO. Within 30 days from the submission of the modified RAO, the Commission shall render its final decision on the proposal. If the

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Commission takes no action within 30 days, the proposed RAO is deemed approved.

If after submission of the modifications, the concerned access provider's submitted RAO still do not meet the Commission's standard, the Commission may then order or mandate such specific terms and conditions as will enable the RAO to meet its required standard, after which such revised RAO shall be deemed approved and binding on the access provider; Provided however, that nothing in this paragraph shall prevent parties from negotiating and executing a subsequent access agreement and submitting the same to the Commission for approval.

Section 6. Modification of terms and conditions in RAO

1. An Access Provider is not allowed to modify or withdraw its RAO after it has been submitted to the Commission, unless otherwise approved upon petition, by the Commission.

2. Any access agreement adopted pursuant to an approved RAO may not be terminated by an access provider prior to the end of the period at which the RAO is valid, without the approval of the Commission.

3. The terms and conditions of the access agreement that is entered into pursuant to a RAO may not be modified or amended except by mutual written consent of the parties concerned and with the approval of the Commission.

4. When deemed necessary to promote the long-term interest of end-users, the Commission may direct a carrier to modify any provision in its RAO, or approve a proposed modification thereof, in which case, all access agreements entered into pursuant to the relevant RAO must be amended accordingly.

Section 7. Publication of RAO

1. The Commission shall publish in its website all approved RAOs. Some portions of the RAO may however be withheld for publication on motion of the carrier making the offer and if the Commission determines that the pertinent portions contain proprietary or commercially sensitive information.

2. All carriers mandated to develop RAO(s) are also obliged to publish the same in their respective websites.

Article III
ACCESS AGREEMENTS

Section 1. An Access Seeker may seek access with an Access Provider on terms and conditions specified in an approved RAO or in a negotiated individualized agreement.

Section 2. All access agreements, whether entered into in pursuant to an approved RAO or individualized agreement, will not become effective until approved by the Commission.

Section 3. Access Pursuant to an Approved RAO

1. When an access seeker unconditionally accepts a RAO, it shall notify the Access Provider of its acceptance. The Access Provider shall execute the access agreement based on the terms and conditions contained in its RAO within 30 days from date of formal notification by an Access Seeker.

2. The access agreement entered into by parties based on a RAO shall be submitted to the Commission for approval within ten (10) days from date of execution. Unless certain stipulations in the agreement deviate from the provisions in the RAO, the Commission's approval of the agreement shall be rendered within two (2) days from date of filing. If the Commission takes no action within 2 days from date of filing, the agreement will be deemed approved.

3. In case some clauses in the agreement deviate from the terms and conditions stipulated in the RAO, the

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agreement shall be considered a negotiated individualized agreement between the Access Provider and Access Seeker. The agreement must be submitted to the Commission within ten (10) days from date of execution for approval within thirty (30) days from date of filing.

Section 4. Access Pursuant to an Individualized Agreement

1. In case the Access Seeker elects to obtain access through an individualized agreement, it s hall notify of its intention to negotiate the same with the Access Provider. Pending the conclusion of the negotiations for the individualized agreement, it may avail, in the interim, of the services that it requires at prices and on terms and conditions stipulated in the RAO of the Access Provider.

2. Individualized access agreements shall be submitted to the Commission within ten (10) days from date of execution for approval within thirty (30) days from date of filing. If the Commission takes no action within 30 days, the agreement is deemed approved.

3. The Commission shall reject an individualized agreement, or order its modification or amendment, if the terms and conditions of the same discriminate against other Access Seekers that entered into agreement with the Access Provider under the terms and conditions of an approved RAO.

4. The NTC shall publish on its website a list of all individualized agreements, specifying the parties involved and services covered, that have been approved, either directly or by lapse of the 30-day period. Any interested Access Seeker, whether covered by an existing RAO or individualized agreement or not, may then request the NTC for an official copy of any such individualized agreements, and may call for a renegotiation of its existing agreements with the Access Provider, if it deems necessary in light of the terms of the approved individualized agreement. The Access Seeker may also petition the NTC to intervene if renegotiation efforts fail.

Article IV
TECHNICAL SPECIFICATIONS AND OPERATIONAL REQUIREMENTS OF ACCESS

Section 1. POI and Interconnection Principles

1. An Access Provider shall specify in its RAO technically feasible points at which it would permit interconnection without additional charge, the means by which access will be achieved, and the additional charges to the access seeker if the latter requests POIs other than those offered.

2. The terms and conditions pertaining to the establishment of POI must not be less favorable to the Access Seeker as those provided in Articles VII and VIII of Memorandum Circular 14-7-2000.

3. Pursuant to Executive Order No. 59, Republic Act No. 7925, the Access Provider is required to specify as many points of presence (POPs) as necessary to effect an efficient interconnection.

4. The RAO shall contain information about the type of traffic to be carried across the offered POIs, type of signaling networks or standards, signaling POIs locations, point codes, technical interface specifications and signaling interconnection architecture.

5. The Access Provider shall publish in its website and specify in the RAO the following information on each of the offered POI:

> (i) Geographical location, address and present state, including the type of selector (e.g., local, transition, international);
> (ii) Type of equipment, location of the equipment, capacity of selector, architecture and other information about the network essential for interconnection;

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(iii) Number of groups associated with each POI; and
(iv) Significant factors affecting the availability of POIs.

Section 2. Network and Transmission Requirements

1. A RAO shall specify the rights and obligations of each party with respect to ordering and provisioning of interconnection facilities, procedures and timeframes for ordering and notification of order confirmation, rejection and completion. Such stipulations must not be more burdensome or less favorable to any Access Seeker as those provided in Article X of Memorandum Circular 14-7-2000.

2. The timeframes specified in the RAO for the provision of additional circuits must be consistent with Section 10.4, Article III of Memorandum Circular 9-7-93.

3. The Access Seeker accepting the RAO shall provide information to the access provider through a formal communication about the location of POIs that it is requesting, traffic forecasts for each POI (in volume or data rate, as appropriate), number of ports/connection inlets and outlets, other facilities it may require for interconnection and time schedule.

4. Within ten (10) days from receipt of such formal communication, the access provider shall respond to the request, either accepting or proposing an alternative, to meet fully or partially the requirements of the access seeker. If the access provider does not respond within 10 days, the request is deemed accepted and the obligation of the access provider to supply the requested facilities within the timeframe specified in the RAO, and under the supervision of the NTC, shall commence.

5. A RAO shall contain specific timeframes by which an access provider is obliged to provide advance notice to the access seeker concerning changes in network and facilities that may affect interconnection arrangements between them.

6. The access provider shall bear all costs necessary to restore agreed upon access arrangements that may have been affected by changes in its network and facilities.

Section 3. Traffic Measurement and Routing

1. A RAO shall describe the responsibilities of parties with regard to measurement and reporting of traffic. Absent specific provisions in a RAO, the provisions of Article VI of Memorandum Circular No. 14-7-2000 are deemed to apply.

2. The Access Provider shall stipulate in its RAO that it commits to nondiscriminatory routing of traffic.

3. The RAO shall provide for how the costs of restoration shall be shared by the Parties in cases of major network breakdown.

Section 4. Infrastructure Sharing and Collocation

1. The access provider shall include in its RAO:

(i) A list of infrastructure being offered for sharing with access seekers;
(ii) Addresses where collocation is available and preferred type of collocation;
(iii) Procedures for determining available capacity, requesting reservation of space, and allocating capacity among requesting operators;
(iv) Prices and/or costing method for sharing of infrastructure and collocated space;
(v) Provision and pricing of supplementary services, e.g. electrical and emergency back-up power, lighting, air conditioning, security systems, maintenance and janitorial services, etc.; and

(vi) Procedures for gaining access to and ensuring security of collocated facilities.

2. The standards of physical and virtual collocation stipulated in Article XV of Memorandum Circular 14-7-2000 shall apply.

3. The Access Provider shall publish in its website or in its RAO an updated list of its infrastructure, their location and capacity available for sharing.

4. The Commission may require the Access Provider to prove that physical collocation is not technically feasible if such is not offered, and why the alternative method of interconnection offered is the most efficient under the circumstances.

5. Shared infrastructure shall be made available to all access seekers on a nondiscriminatory basis. A first-come, first-served basis for allocating capacity shall be preferred unless a more efficient procedure is offered.

6. Access seekers that do not use ordered infrastructure capacity within a set timeframe may be required to return it. The access provider may impose penalty on or seek indemnification from the Access Seeker for excess orders.

Section 5. Billing and Settlement

1. Both parties are obliged to collect, store and exchange data relating to traffic passing through their network to facilitate inter-carrier charging and settlement.

2. The Access Provider shall stipulate the billing arrangements such as:

(i) the frequency and period when a bill or invoice is expected to be sent to the other party;
(ii) due date of payment;
(iii) punitive interest rate to be applied on payments made after due date; and
(iv) legal course of action of the access provider if an invoiced amount remains outstanding after a specified time period.

Such stipulations should not be more burdensome or less favorable to the Access Seeker as those provided in Sections 18 and 19, Article VI of Memorandum Circular 14-7-2000.

3. The Commission reserves the right to audit the billing system of the Access Provider when it deems necessary.

4. The Access Provider may invoice the access seeker for charges applicable to prior billing period, provided that said charges can be reasonably substantiated. The access provider shall have a six-month timeframe within which it may be allowed to invoice retrospectively. In the absence of a prior written agreement, the access seeker shall not be required to pay for omitted charges beyond this six-month period.

5. A RAO shall provide mechanisms to enable parties concerned to settle bilaterally disputes arising from accuracy of traffic measurement before seeking regulatory intervention. For example, the parties may jointly select an auditor to assist in the resolution of a dispute. In which case, all related costs shall be shared by the parties. Where no resolution is possible and regulatory intervention is sought by either party, the Commission may require the parties to submit their Call Data Records (CDRs) for audit.

Section 6. Technical Service Commitments and Fault Repairs

1. An access provider shall commit to provide the quality of service comparable to what it provides to itself and to its affiliates or subsidiaries or to any other recipient of its services. Further, it shall maintain and repair faults on interconnection links in the same manner as it maintains facilities and repair faults within its own network.

2. Quality of service (QoS) commitments shall constitute an integral component of the RAO. Said commitments

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must conform to performance standards set out by the Commission or international bodies such as the International Telecommunications Union (ITU). The performance standards shall be specified f or all types of interconnection links between two networks and shall be binding on both parties.

3. A RAO shall contain specific timeframes for fault rectification.

4. The access provider shall stipulate reasonable and fair remedies to the access seeker in cases of:

(i) delays in establishing a POI;
(ii) delays in supplying an interconnection service; and
(iii) any interruption in the supply of interconnection service, measured from the time notice of interruption is served by the access seeker to the access provider, in excess of a stipulated permissible outage period for that service.

Further, the access provider shall stipulate procedures to enable the access seeker avail of said remedies.

Section 7. Data Interchange and Treatment of Customer Information

1. The access provider shall stipulate the data to be exchanged with the access seeker and the method and format of data interchange.

2. The access provider shall stipulate in a RAO that all information generated within its network as a result of or in connection with the supply of interconnection service to the access seeker is the confidential information of the access seeker. Thus, provisions in Section 9 of this Article apply on the use and disclosure of such information.

3. It is generally considered unethical for an access provider or seeker to communicate with the end-users of the other party, particularly for purposes of soliciting accounts. The access provider may however stipulate in the RAO the limited circumstances when communication with the other party's end-users is allowed and the manner of communication. Under no circumstance, however, will such communication involve attribution of blame for a fault, suspension of service, or poor quality of service to the other party.

Section 8. Ancillary Interconnection Services

1. The access provider shall specify the types and prices or individual costs of ancillary interconnection services that are bundled with the interconnection service it is offering, e.g., subscriber listings, operator assistance services, etc.

2. Charges for ancillary interconnection services shall be specified separately from charges for basic interconnection service.

3. The access provider must at least offer to supply directory assistance functions to the access seeker.

Section 9. Confidentiality, Liability and Indemnities

1. Unless the parties agree to stipulate otherwise, all confidential information of one party may not be used or copied by the other party, nor disclosed or communicated to any third person, except for the purposes of implementing the terms and conditions of the interconnection agreement.

2. The RAO shall contain liability provisions that apply to both parties, i.e., reciprocal. The designation of the party at fault for purposes of determining liability must be consistent with the principle that the risk should be placed on the party which has the greater ability to control it.

3. The access provider shall stipulate the type and amount of indemnity that one party is entitled when it incurs a

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loss caused by the negligence, intentional act or omission of the other party.

Section 10. Contract Termination and Review

1. The access provider shall stipulate specific and valid grounds for suspension and termination of core services, such as, for example, failure of the access seeker to pay interconnection fees or breach of material obligation by the access seeker.

2. Reasonable timeframes for prior notice of suspension or termination of interconnection service must be specified in the RAO.

3. The suspension and termination procedures must be clearly stipulated in the RAO. These may involve advanced notice, payment of non-recoverable interconnection costs incurred by the disconnected operator, computation and payment schedule for disconnection costs, disconnection cutover procedures and dealings with end-users, etc.

Section 11. Dispute Resolution

1. The RAO shall have clear provisions in managing disputes; procedures for resolution of disputes; selection of, and procedures for, arbitration; and timeframes for escalation at management levels and or referral to regulator, arbitrator or court.

2. Alternatively, the parties may agree to form an arbitration committee, composed of one representative each from the contracting parties and a third party member, whose decision shall be final and binding on the parties unless there is manifest error in the decision or the same is contrary to law.

Article V
COMMERCIAL TERMS OF ACCESS

Section 1. Structure of Access Charges

1. Where applicable, the access provider shall clearly distinguish the following types of access-related charges:

(i) A one-time set-up charge for establishing or augmenting interconnection facilities;
(ii) Structure and prices of basic interconnection/access service;
(iii) Charges for ancillary interconnection services; and
(iv) Access Deficit Contribution (ADC).

2. Where major reconfiguration of the Access Provider’s network or facilities is required by interconnection, the one-time set-up charge shall be proportionate to the asset provided to the Access Seeker.

3. The prices for basic interconnection service must be consistent with the provisions of Sections 2 and 3 of this Article.

4. Charges for ancillary interconnection services must include only costs associated with the delivery of pertinent services to the Access Seeker and attributable portion of a reasonable return on efficient level of investment in the assets employed to provide the ancillary service.

5. Compensation for access deficit shall be guided by the provisions in Section 4 of this Article.

Section 2. Cost-oriented Access Charges

1. All access-related charges stipulated in the RAO must be reflective of costs underlying the services offered, including a reasonable return on efficient level of investments.

2. The burden of demonstrating the cost orientation, reasonableness and fairness of the interconnection charges shall lie with the Access Provider. The cost model accompanying the proposed RAO shall serve this purpose.

3. The Commission may require an Access Provider to supply full justification for its offered access charges and direct the same may to adjust said charges, where appropriate.

Section 4. Cost Methodology

1. The Commission shall designate the three (3) years following the effectivity date of this Memorandum Circular as a transition period to the next phase when all interconnection charges will be benchmarked henceforth using the cost principle of Total Service Long-run Incremental Cost plus mark-up (TSLRIC plus). TSLRIC is based on the difference in costs between producing a service and not producing it, with costs reckoned in terms of current technology. A mark-up, representing a reasonable allocation of forward-looking joint and common costs, supplements TSLRIC to allow recovery of indirect costs. This cost accounting will not be imposed on Access Providers until such time that the Commission issues a detailed methodology.

2. During the transition period, the Access Provider must demonstrate that the interconnection charges stipulated in the RAO do not exceed the costs calculated based on the principle of Fully Distributed Cost (FDC).

3. Nothing in this Memorandum Circular shall be construed to limit the Access Provider from offering access charges based on more efficient cost methodologies such as Long-run Increment Cost (LRIC), TSLRIC with or without mark-up and Total Element Long-run Incremental Cost (TELRIC), during and post transition period.

Section 5. Fully Distributed Cost

1. When the Access Provider elects to use fully distributed cost as basis for setting access charges, it shall observe the cost accounting methods and principles set out in this section.

2. All costs shall be allocated to services or products on the basis of causation, i.e., costs should be attributed to those services or products that cause the cost to be incurred.

3. An Access Provider may determine its own attribution method, provided it is consistent with the principle of causation, and subject to the Commission's approval and periodic review. The bases and assumptions used in the allocation must be documented and included in the cost model that the Access Provider is required to submit with its proposed RAO.

4. For consistency, comparability and transparency, the Access Provider should use the same attribution method in all its RAO and access agreements from year to year, unless it is able to demonstrate that a different attribution method is more appropriate because of changing technology.

5. The Access Provider, in its submission of the attribution method, shall clearly indicate why a particular cost item is associated with a particular access service by classifying pertinent costs according to the following categories:

> (i) Direct cost, i.e., cost which is incurred solely by a particular access service and is recorded in the accounts against the relevant access service;
> (ii) Directly attributable cost, i.e., cost which is incurred solely by a particular access service but is not recorded in the accounts against the relevant access service;
> (iii) Indirectly attributable cost, i.e., cost which is part of common costs but which can be attributed to a particular access service through a non-arbitrary and verifiable cause-and-effect relationship; and
> (iv) Unattributable cost, i.e., cost which is part of common costs and cannot be identified to a particular access service through a non-arbitrary and verifiable cause-and-effect relationship.

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Costs should be further classified as fixed, if they do not vary with the volume of service, or variable, otherwise.

6. The Commission may request an Access Provider to change, revise or modify its cost methodology, including the attribution method, where it is considered that the methodology does not meet the objectives of this Memorandum Circular.

Section 6. Removal of ADC

1. In accordance with Section 47, Article XII of Memorandum Circular 14-7-2000, ADC may be applied only if the Access Provider is a LEC but not when the interconnecting parties are both LECs.

2. Within no less than three years from the effectivity date of this Memorandum Circular, the Commission will continue to allow the Access Provider to include ADC among the charges it levies on the Access Seeker. However, the amount representing ADC must be clearly indicated in the schedule of interconnection charges.

3. The Commission may require the Access Provider imposing ADC to show that said amount relates only to the gap between actual line costs and line revenue, and to adjust the same if found excessive.

Article VI
EXERCISE OF REGULATORY FORBEARANCE

Section 1. A public telecommunications carrier may request to be exempted from the duty to publish RAO by submitting a written request for regulatory forbearance to the Commission.

Section 2. The Commission may forbear from applying the provisions of this Memorandum Circular, in whole or in part, on an enfranchised carrier if in its determination:

(i) enforcement is not necessary to the attainment of the policy objective, i.e., of ensuring sustainable competition through effective competition; and
(ii) forbearance will not impede the administration of this Circular.

Section 3. A public hearing may be held to assist the Commission in making a determination on the request for forbearance.

Section 4. The request for forbearance and the Commission’s Exemption Order (EO) shall be made public.

Section 5. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interests of end-users.

Article VII
TRANSITORY PROVISIONS

Section 1. Parties with existing interconnection agreements when this Memorandum Order takes effect shall have a period of one (1) year to renegotiate, amend, revise or modify the terms and conditions of their agreement to conform to the provisions of this Memorandum Circular. In case the parties fail to agree on such amendments, revisions or modifications, such shall be considered an access dispute, and upon petition of either party to the agreement, the Commission shall intervene in accordance with Section 14 of Memorandum Circular 14-7-2000.

Section 2. In the event the Commission is delayed in approving the proposed RAO of the Access Provider, the terms and conditions of existing individualized agreement shall remain valid until a new agreement pursuant to an approved RAO is forged.

Article VIII
PENALTIES FOR VIOLATION

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Section 1. Noncompliance with the provisions of this Order shall be subject to the same set of penalties applicable to violations of the rules and regulations of Executive Order 59. To wit, upon due notice and hearing, one or combination of the following penalties shall be imposed on a non-compliant carrier:

(i) Administrative fines, penalties and sanctions as may be allowed or prescribed by existing laws;
(ii) Suspension of further action on all pending and future applications for permits, licenses or authorizations of the violating carrier or operator;
(iii) Disqualification of the responsible employees, officers or directors of the violating carrier or operator from being employed in any enterprise or entity under the supervision of the Commission;
(iv) Suspension of the authorized rates for any service or services of the violating carrier or operator without disruption of its services to the public.

Section 2. The Commission may revoke its approval of the access agreement if the terms and conditions of the same are found non-compliant with the provisions of this Circular.

Article IX
FINAL PROVISIONS

Section 1. Any portion or section of these rules which may be declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.

Section 2. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this memorandum circular are hereby repealed or amended accordingly.

Section 3. This Memorandum Order shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; Provided, that at least three (3) certified copies thereof be filed with the University of the Philippines Law Center.

Adopted: 14 April 2009

(SGD.) RUEL V. CANOBAS
Commissioner

(SGD.) JORGE V. SARMIENTO
Deputy Commissioner

(SGD.) JAIME M. FORTES, JR.
Deputy Commissioner

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