

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

**IMPLEMENTING GUIDELINES ON DEVELOPING REFERENCE
ACCESS OFFERS**

PREAMBLE

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

WHEREAS, under Republic Act 7925, otherwise known as 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;

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);

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 Offer (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

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;