



Technical Report

Competition Policy for the ITC Sector: Technical Assistance to the National Telecommunications Commission (October 2006 to July 2007)

by Atty. Jose Gerardo A. Alampay

Prepared for

**Commissioner Abraham Abesamis
National Telecommunications Commission
Republic of the Philippines**

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Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-03-00020-00, Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

This report was written by Atty. Jose Gerardo A. Alampay to summarize technical assistance provided to the Philippine National Telecommunications Commission (NTC) between October 2006 and June 2007 at the request of its former Commissioner, Ronald Olivar Solis, and Deputy Commissioners Jorge V. Sarmiento and Jamie M. Fortes, Jr., by letter dated May 5, 2006, to continue to help it formulate a competition policy/framework for the telecommunications sector. This framework is to provide guidelines to implement the provisions of the Public Telecommunications Policy Act that call for a competitive telecommunications market. In providing this assistance Atty. Alampay was ably assisted by Dr. Ma. Joy Abrenica, Economic Policy Accounting Expert, and Jhiedon Florentino, Research Associate, who produced the technical report that became the basis for NTC policy decisions, and by a Technical Working Group composed of private sector experts and NTC officials, who provided expert advice to the consultant team. It was a continuation of an earlier EMERGE task that ended in April 2006.

The views expressed and opinions contained in this publication are those of the author and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

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This report summarizes the activities pursued and milestones achieved in connection with the EMERGE Team's (Gigo Alampay, Joy Abrenica and Jhiedon Florentino) assistance to the National Telecommunications Commission (NTC) in its efforts to craft a competition policy framework for the Philippine ICT sector.

NARRATIVE BACKGROUND

At the request of NTC, from then Commissioner Ronaldo Solis, EMERGE provided NTC with technical assistance to help it formulate a competition policy/framework for the telecommunications sector. This competition policy/framework is to provide guidelines to implement the provisions of the Public Telecommunications Policy Act (Republic Act 7925, enacted on March 1995) that call for a competitive telecommunications market.

In this context, EMERGE, at NTC's request, had already been providing technical assistance to the Commission in its efforts to formally articulate how, as a regulator, it could apply competition policy and principles to promote healthy competition in the Philippine ICT market.

Prior to this extension of that TA, the assistance had already resulted in several key milestones, including particularly the drafting of two consultative documents:

- A Consultative Document on Competition Policy for the Telecommunications Sector which identified four key policy steps that the Commission should be considering:
 - Imposition of Significant Market Power (SMP) Obligations on Dominant Carriers
 - Local Loop Unbundling
 - Resale of Services; and
 - Ex-Post Regulation

- The drafting of a consultative document focused solely on the issue of SMP that is currently still being reviewed by the Commission, and is expected to be released for public comment in the near future.

This present extension was intended to continue the assistance as requested. Specifically, the NTC asked for assistance in the research and preparation of potential rules to govern SMP Obligations; and, more immediately, rules to

govern Reference Interconnection Offers (RIOs) which, on the basis of public hearings that were conducted, were deemed to be “low lying fruits,” i.e., important rules that had a chance of passing relatively easily and with more stakeholder support. RIOs (later renamed reference access offers, or RAOs) are default interconnection or access contracts that could be accepted at anytime by any access seeker, and would streamline negotiations processes, thereby fostering easier entry by small players into the market and promoting greater competition.

To ensure that private sector concerns were adequately addressed, the NTC invited several eminent resource persons from the private sector to be part of a volunteer Technical Working Group (TWG). With several decades of experience between them, these resource persons were joined by key NTC officials at the TWG.

EMERGE provided technical and logistical support to the NTC as it hosted the TWG over numerous meetings over four months (February to May 2007) to flesh out and address the highly technical issues that surrounded SMP and the RAOs to reflect the broader access issues that confronted not just telecommunications players, but various value-added service (VAS) providers as well. The EMERGE Team’s draft Rules (reviewed and approved in its tentative form by the NTC), provided the initial basis for all discussions, and was subsequently refined based on TWG inputs and later, on comments received from public hearings and written comments submitted by industry players.

More substantively, and in addition to assisting the NTC with the TWG, the EMERGE Team provided the NTC with research and technical assistance in preparing draft rules for SMP Obligations and RAOs resulting, very recently, in the issuance of a final Memorandum Circular for the latter.

Below is a table outlining the deliverables and accomplishments of the EMERGE Team for this Assistance to the NTC.

Deliverable	Outcome
Assistance in the organization and documentation of consultations, roundtable discussions, workshops and/or conferences with ICT sector stakeholders to solicit inputs and comments on the SMP Guidelines and RIOs, and to build broad-based support and appreciation for the same.	The EMERGE Team conducted and facilitated numerous roundtable discussions with the NTC and its Technical Working Group (composed of eminent representatives from the private sector, with decades of experience between them in the ICT industry). The Team also assisted the NTC by providing inputs during its public hearings, particularly on the issue of Reference Access Offers (RAOs, formerly referred to as RIOs).

<p>Assistance to the NTC in the formulation of appropriate Guidelines on the Imposition of Significant Market Power Obligations</p>	<p>The Team submitted its draft guidelines on Significant Market Power (SMP) obligations in May 2007 to the NTC for their review and disposition. The imposition of SMP obligations on dominant carriers was identified in a previous consultative document on Competition Policy as one of four major policy options that the NTC should consider to further foster competition the telecommunications sector.</p> <p>The NTC is requesting continued follow-on assistance in its consideration of SMP obligations, and on the broader effort of developing an overall competition policy framework.</p>
<p>Assistance to the NTC on the development of rules to govern Reference Interconnection Offers (RIOs)</p>	<p>As requested by the NTC, the Competition Policy Team prepared and submitted a set of draft rules for Reference Access Offers (RAO) in February 2007. This set of rules was formerly referred to as Reference Interconnection Offers (RIO), but, among others, at the last Technical Working Group meeting, it was determined that “access” was a broader and more accurate term to use than “interconnection.”</p> <p>The NTC released the draft rules for public comments and conducted a public hearing for the same in March 2007.</p> <p>The Team finalized and submitted its final draft of Rules on Reference Access Offers (RAO), including an accompanying explanatory memo on the same to and at the request of the National Telecommunications Commission (NTC) in May 2007.</p> <p><u>Major Success Milestone:</u> The NTC issued Memorandum Circular 10-07-2007 last July 19, 2007 which provided for the Rules on Reference Access Offers. (Copy attached)</p>



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION

MEMORANDUM CIRCULAR
No. 10-07-2007

SUBJECT: MANDATING THE DEVELOPMENT OF REFERENCE ACCESS OFFERS (RAO) TO FACILITATE FAIR AND EXPEDITIOUS INTERCONNECTION OR ACCESS BETWEEN SERVICE PROVIDERS

WHEREAS, the 1987 Constitution fully recognizes the vital role of telecommunications in nation-building and economic development;

WHEREAS, the State is committed to promote the rapid expansion of telecommunications services in all areas of the Philippines in order to attain universal access;

WHEREAS, under Republic Act 7925, otherwise known the Telecommunications Policy Act of 1995, the National Telecommunications Commission is mandated to ensure a healthy competitive environment for telecommunications services, one in which telecommunications carriers are free to make business decisions and to interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates;

WHEREAS, Section 19 (b) of Commonwealth Act No. 146, otherwise known as the Public Service Law, makes it unlawful for public services such as public telecommunications entities to adopt, maintain, or enforce any regulation, practice or measurement which are unjust, unreasonable, unduly preferential or unjustly discriminatory;

WHEREAS, Republic Act 7925 recognizes that fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services is necessary in order to achieve a viable, efficient, reliable and universal telecommunications services, and is therefore key to sustainable competition in the telecommunications industry;

WHEREAS, free and fair competition can be expected to lead to lower costs, more innovation, and greater choice and access, to the benefit of all consumers;

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, the Commission maintains the view that interconnection agreements should be left to commercial negotiations between service providers in a market environment where effective and sustainable competition exists;

WHEREAS the Commission recognizes however that the current telecommunications market is dominated by only a few players, and that therefore, market forces alone cannot be relied upon to ensure that non-dominant players are able to secure interconnection and access agreements expeditiously and under reasonable and non-discriminatory terms, to the detriment of free and sustainable competition, and ultimately, with adverse impact on consumer choice and welfare;

WHEREAS, giving access seekers the option of accepting set reference access offers from access providers will help to facilitate interconnection or access between market players;

WHEREAS, requiring default offers, without the regulatory body prescribing the terms and conditions of the same, as a means of facilitating interconnection or access between market players has been adopted by more than 70 countries as a regulatory strategy to ensure fairness, reasonableness and efficiency of interconnection agreements;

NOW, THEREFORE, pursuant to Republic Act 7925, and in order to maintain and foster fair competition in the telecommunications industry, and to ensure that interconnection and access agreements between market players can be reached freely, fairly and expeditiously in order to promote healthy competition in the market, to the benefit of the general public, the National Telecommunications Commission (the Commission/NTC, for brevity) hereby promulgates the following rules:

Article I. DEFINITION OF TERMS

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

- a) "Access" means making available one's network, facilities and/or services to another, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing telecommunications services and/or value added services;
- b) "Access provider" refers to a public telecommunications carrier, duly enfranchised and licensed to provide a public communications network or an associated facility and/or services;
- c) "Access seeker" refers to a duly licensed and/or registered telecommunications or value-added service provider looking to use or gain access to another telecommunications provider's network, facilities and/or services.
- d) "Commission" refers to the National Telecommunications Commission;
- e) "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.
- f) Reference Access Offer (RAO) refers to a default offer or agreement containing the terms and conditions, including prices, on which a public telecommunications entity is prepared to provide access and other related services to any access seeker.

Article II. REFERENCE ACCESS OFFERS (RAO)

1. Obligation to Develop RAO

- 1.1 All authorized public telecommunications entities are required to submit to the Commission a Reference Access Offer (RAO) for each of the access services, enumerated in Article II, Section 2, that are applicable to it.
- 1.2 The RAO shall contain the terms and conditions for which an access provider is prepared to provide access to its telecommunications network or facility to any requesting service provider.

2. Services Covered by RAO

- 2.1 The following services, whether domestic or international, must be offered under RAOs:

- (a) Fixed network origination/transit/termination services
- (b) Mobile network origination/transit/termination services
- (c) Fixed internet access call origination/transit/termination services
- (d) Mobile internet access call origination/transit/termination services
- (e) Retail narrowband and broadband services (for VASP connection)
- (f) Mobile data origination/termination services

2.2 The foregoing list may be revised, i.e., modified, expanded or shortened, by the Commission at an appropriate time, after due public consultation.

3. General Form of RAO

3.1 The RAO must be comprehensive and complete with regard to the terms and conditions, including prices, that an access provider is willing to offer any access seeker.

3.2 The RAO must have details sufficient to allow an access seeker determine if it would accept the offer without having to engage in negotiations with the access provider.

3.3 The main clauses or articles of a RAO may include, but is not limited to:

- (a) Scope and Definition of Services
- (b) Points of Interconnection (POIs) and Interconnection Facilities
- (c) Network and Transmission Requirements
- (d) Traffic Measurement and Routing
- (e) Infrastructure Sharing and Collocation
- (f) Charging Mechanisms, Billing and Settlements
- (g) Technical Service Commitments and Fault Repairs
- (h) Data Interchange and Treatment of Customer Information
- (i) Ancillary Services
- (j) Interconnection User Charges
- (k) Other Commercial Terms and Conditions
- (l) Fundamental Technical Plans
- (m) Confidentiality, Liability and Indemnities
- (n) Contract Termination and Review
- (o) Disputes
- (p) Notices

3.4 The RAO shall also be accompanied, as appropriate, by schedules which may vary depending on the requirements of the access seeker. Such schedules may include, but are not necessarily limited to:

- (a) Specific details on Points of Interconnection
- (b) Interconnect Usage Charges
- (c) Charges for use of Unbundled Network Elements
- (d) Charges for Sharing of Infrastructure Elements
- (e) Charges for Miscellaneous Services
- (f) Schedule of Standards and Specifications
- (g) List of infrastructure and their respective capacity that are available for sharing

3.5 The cost model used by the carrier as basis for computing interconnection-related charges shall be submitted to the Commission, together with the proposed RAO.

3.6 The terms and conditions in the RAO are deemed valid offers for a period of three (3) years, unless otherwise specified or otherwise allowed by the Commission. A period

shorter than three (3) years, but not less than one (1) year, may be stipulated for the price offer, provided that the conditions that would prompt the access provider to modify its price offer are clearly stated in the RAO.

4. Access through an Approved RAO

- 4.1 When an access seeker unconditionally accepts the RAO, it shall notify the access provider of its acceptance. The access provider then shall execute the access agreement based on the terms and conditions contained in the RAO within 30 days from date of formal notification by an access seeker.
- 4.2 The access agreement entered into by parties based on the RAO shall be submitted to the Commission for approval within ten (10) days from date of execution. The Commission's approval of the agreement shall be rendered within thirty (30) days from date of filing. If the Commission takes no action within the said 30-day period, the agreement shall be deemed approved.

5. Alternative Mode of Entering into Access Agreement through Individualized Agreement

- 5.1 Access seekers may, at their option and sole discretion, choose to negotiate a separate or individualized agreement with an access provider, under terms and conditions different from the RAO.
- 5.2 In case the access seeker opts for an individualized agreement, it shall notify of its intention to negotiate the same with the access provider. Pending the conclusion of the negotiations for the individualized agreement, the access seeker may nonetheless avail of the services that it requires at prices and on terms and conditions specified in the RAO.
- 5.3 Individualized agreements shall be submitted to the Commission within ten (10) days from date of execution for its approval. If the Commission takes no action within thirty (30) days, the agreement shall be deemed approved.
- 5.4 In the event that the Commission finds an individualized agreement to be unreasonably discriminatory against other licensees, it may either reject the said individualized agreement, or require that the terms and conditions be incorporated into the RAO and extended to all other existing agreements.

6. Approval of RAO

- 6.1 The Commission shall publish Guidelines for Developing RAO, which shall contain, among others, description of the minimum contents of RAO, principles that must be observed in stipulating technical, operational and commercial terms and conditions of access, and acceptable approaches to setting access charges during and post transition period, within sixty (60) days from the date of effectivity of this Memorandum Circular.
- 6.2 All access providers shall submit their proposed RAOs and supporting cost models to the Commission within sixty (60) days from the date of issuance of Guidelines for Developing RAO.
- 6.3 The Commission shall determine if the terms and conditions stipulated in the RAO are reasonable, fair, consistent and non-discriminatory.

- 6.4 The terms and conditions of access are deemed discriminatory if they have an effect on the quality and timing of access that are not equivalent to that which the access provider supplies to itself or affiliates.
- 6.5 In determining whether the RAO proposed by an access provider conforms to the aforementioned principles, the Commission shall have regard, among others, to the following factors:
 - (a) the long-term interests of end-users;
 - (b) the legitimate business interests of both access provider and seeker;
 - (c) the economically efficient use of a telecommunications network or facility; and
 - (d) the operational and technical requirements for the integrity and safety of use of a telecommunications network or facility.
- 6.6 The Commission shall communicate its decision, in writing, to the concerned carrier within thirty (30) days from the date of filing of the proposed RAO. If the Commission fails to communicate with the concerned carrier either its decision or an extension of review period within thirty (30) days from the date of receipt, the proposed RAO is deemed approved by the Commission and binding upon the access provider.
- 6.7 If the Commission disapproves of some provisions in the proposed RAO, it shall inform the concerned carrier in writing of its disapproval and the modifications required for the proposed RAO to meet the Commission's standard. The carrier shall be given fifteen (15) days to appeal the Commission's decision or modify the proposed RAO. Within fifteen (15) days from the submission of the modified RAO, the Commission shall render its final decision on the proposal. If the Commission takes no action within the said fifteen (15) days, the proposed RAO is deemed approved.

Article III. TRANSITORY PROVISIONS

1. Parties with interconnection or access agreements existing at the time that this Memorandum Circular takes effect shall have a period of one (1) year to renegotiate, amend, revise or modify the terms and conditions of their agreement to comply with the provisions of this Memorandum Circular.
2. In case of delays in the Commission's approval of the RAO, the terms and conditions of existing individualized agreement shall remain valid until a new agreement in pursuance of an approved RAO is reached and approved.

Article IV. PENALTIES FOR VIOLATION

Noncompliance with the provisions of this Circular 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 noncompliant carrier:

- (a) Administrative fines, penalties and sanctions as may be allowed or prescribed by existing laws; and
- (b) Suspension of further action on all pending and future applications for permits, licenses or authorizations of the violating carrier or operator.

Article V. FINAL PROVISIONS

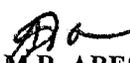
1. Any portion or section of these rules which may be declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.

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

Quezon City, Philippines, 19 July 2007



JORGE V. SARMIENTO
Deputy Commissioner



ABRAHAM R. ABESAMIS
Commissioner



JAIME M. FORTES, JR.
Deputy Commissioner