



Technical Report

Voice over Internet Protocol Regulations

by Atty. Jose Gerardo A. Alampay

Prepared for

**Commissioner Ronald O. Solis
National Telecommunications Commission
Republic of the Philippines**

Submitted for review to

USAID/Philippines OEDG

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**Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE)
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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-00-00-03-00020 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) at the request of its Commissioner, Ronald Olivar Solis, to help design appropriate NTC regulations for voice over internet protocols (VoIP).

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.

**FINAL REPORT ON EMERGE TECHNICAL ASSISTANCE
TO THE NATIONAL TELECOMMUNICATIONS COMMISSION
ON VOICE OVER INTERNET PROTOCOL**

Background

This is a final report on USAID/EMERGE assistance to the National Telecommunications Commission (NTC) regarding the latter's efforts to craft formal rules to govern Voice over Internet Protocol (VoIP).¹ This assistance culminated last August 23, 2005 with the issuance of NTC Memorandum Circular 05-08-2005.

This Memorandum Circular officially classified Voice over Internet Protocol (VoIP) as a value-added service (VAS), and provided for the rules to govern the offering of VoIP to the public. The classification of VoIP as VAS affirmed the Philippine government's commitment to a more competitive telecommunications industry, not only because it provided long-awaited regulatory clarity on the issue, but also because it allowed a broader set of providers to compete in the market. Specifically, the offering of VoIP was clearly interpreted as not being limited only to telecommunications entities. Rather, VAS providers (particularly Internet Service Providers or ISPs) were henceforth allowed to offer VoIP.

The successful and sustained assistance on VoIP addressed a glaring absence of clear rules on new and/or emerging technologies, particularly Voice over Internet Protocol (VoIP), which was hampering investment, innovation and competition, and limiting consumer choice and competition in the ICT sector.

THE IMPACT OF THE ISSUANCE WAS IMMEDIATE AND DRAMATIC AS INCUMBENT TELECOMMUNICATIONS COMPANIES BEGAN OFFERING INTERNATIONAL DIRECT DIALING RATES AT UP TO 75% DISCOUNTS (IN SOME CASES FALLING TO 8 TO 10 CENTS FROM 40 CENTS A MINUTE) WITHIN DAYS OF THE ISSUANCE OF THE CIRCULAR.

Current State of EMERGE Assistance to NTC

At the NTC's request, EMERGE continues to provide technical assistance to the Commission in its efforts to further promote competition and innovation in the ICT sector. Specifically, EMERGE is presently providing technical and research support for NTC efforts to formulate a competition policy framework for the telecommunications sector.

**Summary of Milestones and Deliverables under EMERGE Assistance
(Attachments accompanying this Report)**

1. Draft Rules on VoIP
2. Accompanying Explanatory Memorandum of Draft Rules on VoIP
3. MC 05-08-2005: Final Rules on VoIP
4. Accompanying Explanatory Memorandum on MC 05-08-2005
5. Official NTC Guidelines for the Registration of VoIP Providers

¹ It should be pointed out that the assistance is actually the result of sustained USAID support spanning at least two USAID-funded projects (EGTA and EMERGE). Specifically, the assistance began with technical support under the auspices of USAID's Economic Governance Technical Assistance (EGTA) which led to the issuance by the NTC of a Consultative Document on VoIP and culminated with the issuance by the NTC on August 23, 2005 of Memorandum Circular 05-08-2005.

Draft Rules on VoIP

The following draft rules for VoIP are hereby issued for public review, consideration and comment. All interested parties are hereby informed that a public hearing on these draft rules shall be held on May 3, 2005 starting from 2 o'clock in the afternoon at the NTC Multi-Purpose Hall, 4th Floor NTC Building, BIR Road, Diliman, Quezon City, Republic of the Philippines. All interested parties are further encouraged to submit their comments or inputs in writing to the Commission (preferably with soft copies thereof) on or before such hearing date.

National Telecommunications Commission
 Memorandum Circular (DRAFT)
 No. _____

Subject: VOICE OVER INTERNET PROTOCOL (VOIP)

WHEREAS, the 1987 Constitution fully recognizes the vital role of communications in nation building and provides for the emergence of communications structures suitable to the needs and aspirations of the nation;

WHEREAS, VOIP, provides users with an efficient, reliable and economical means of communication;

WHEREAS, VOIP, as an application that digitizes and transmits voice communications in packets via the Internet, making possible convergence with other applications which distinguishes this from traditional telephony that is conducted through circuit switched connections;

WHEREAS, added competition in and deployment of VOIP can help achieve the broader policy objectives of Republic Act 7925, otherwise known as The Public Telecommunications Policy Act of the Philippines, to develop and maintain "a viable, efficient, reliable and universal telecommunications infrastructure using the best available and affordable technologies," and to improve and extend "services to areas not yet served";

WHEREAS, VOIP can provide economic benefits over legacy networks in the form of greater efficiencies and lower costs;

WHEREAS, the widespread use and deployment of VOIP is hampered by the absence of formal rules or guidelines that will clarify the legal and regulatory rules for VOIP, and govern the provision and use of VOIP by the public;

WHEREAS, premature intervention in or regulation of VOIP as a nascent technology risks stifling innovation and competition in information and communications technologies (ICT);

WHEREAS, minimal regulation on VOIP will encourage the development of new applications and services that can enhance Philippine competitiveness in the global ICT market;

NOW, THEREFORE, pursuant to RA 7925, otherwise known as the Public Telecommunications Policy Act, EO 546 series of 1979, and DOTC Memorandum dated November 25, 2003, and in order to maintain and foster fair competition in the

telecommunications industry, and to bring the benefits of efficient VOIP technology to the general public, the National Telecommunications Commission hereby promulgates the following guidelines:

- Sec. 1 Voice over Internet Protocol (VOIP) shall be classified as a Value Added Service within the contemplation of RA 7925, otherwise known as the Public Telecommunications Policy Act.
- Sec. 2 Definitions –
- (a) *Public telecommunications entity (PTE)* - any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation.
 - (b) *Value-added service (VAS)* - enhanced services beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers, where “ordinarily provided” services shall mean voice services offered through circuit switched networks.
 - (c) *Voice Over Internet Protocol (VOIP) Service* - provision of voice communication using Internet Protocol (IP) technology, instead of traditional circuit switched technology.
 - (d) *Customer Premises Equipment (CPE)* - equipment located in the premises of a customer which is not part of but connected to the system or network of the PTE.
- Sec. 3 Any person or entity seeking to provide VoIP for use by the public for compensation shall register themselves as such with the Commission prior to operation as a VoIP provider.
- Sec. 4 No value-added service provider shall provide VoIP services to the public for compensation – where such services require access to and/or use of a network provider’s network, facilities and/or equipment – unless it has entered into an agreement with such network provider as to the terms and conditions of fair and reasonable access and/or interconnection charges for such access and/or use.

In cases where the VAS provider and network provider refuse to negotiate for the interconnection of their networks, the Commission may, upon the complaint of any interested party or upon its own initiatives, intervene and assume jurisdiction over the matter and immediately direct physical interconnection of the networks of the parties under such terms and conditions it may deem proper under the circumstances.

Nothing in this paragraph shall, however, prevent the parties to negotiate and execute an interconnection agreement and submit the same to the Commission for approval. For this purpose, the parties shall be given a period of ninety (90) days from receipt of notice of the filing of the complaint within which to negotiate and execute an interconnection agreement, Provided, that until an interconnection agreement is executed the interconnection mandate adverted in the immediately preceding paragraph shall remain in full force and effect.

- Sec. 5 Network providers shall ensure equal access in terms of quantity and quality, at the same prices for substantially similar services to VAS providers; and shall not discriminate between VAS providers. For this purpose, the parties shall submit a copy of their agreements on these matters for purposes of the monitoring and supervision by the Commission.
- Sec. 6 No public telecommunications entity, network provider or other entity providing Internet access to subscribers and VAS providers, shall impede or degrade the access of such subscribers and VAS providers to the Internet content of another applications or service provider, except where such access demonstrably threatens the integrity of their network or facilities.
- Sec. 7 Network and/or internet service providers shall not require subscribers to purchase/use or to refrain from purchasing/using any IP-enabled service as a precondition to obtaining their broadband service.
- Sec. 8 The sale, lease, importation, distribution and/or provision of customer premises equipment (CPE) designed to enable or ease the use of VoIP shall be governed by the existing rules and regulations on CPE's.
- CPE's and/or accessories designed to enable or ease the use of VOIP, connected to the networks of PTE's shall be type approved/accepted by the Commission. VOIP equipment and/or accessories not connected with the network of PTE's shall not require type approval/acceptance except when the VOIP equipment and/or accessories use radio spectrum.
- Sec. 9 Repealing Clause – Any rule, regulation, circular, order or memorandum, or parts thereof, inconsistent with this memorandum circular are deemed amended or revoked.
- Sec. 10 Effectivity – This memorandum circular shall take effect fifteen (15) days after publication in a newspaper of general circulation, and three (3) certified true copies furnished to the UP Law Center.

Quezon City, Philippines _____

RONALD OLIVAR SOLIS
Commissioner

KATHLEEN G. HECETA
Deputy Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

Republic of the Philippines
NATIONAL TELECOMMUNICATIONS COMMISSION
Commission on Information and Communications Technology
BIR Road, Diliman, Quezon City

MEMORANDUM
FOR
VOICE OVER INTERNET PROTOCOL (VOIP)
(with attached draft rules)

I. Statement on the Commission's Mandate

The National Telecommunications Commission (hereinafter "Commission"), in issuing this memorandum and draft rules for public comment, seeks to bring clarity and certainty to the regulatory treatment of Voice over Internet Protocol (VoIP) technology.

This effort was undertaken by the Commission pursuant to DOTC Memorandum dated November 25, 2003 which directed the Commission to:

1. Determine the regulatory implications of using VoIP as an available and affordable technology that may be used to improve and extend services to unserved and underserved areas, and help achieve universal access to information and communication services;
2. Conduct public hearings and consultations with concerned stakeholders including, but not limited to, public telecommunications entities, internet service providers, cable operators, ICT entrepreneurs and investors and other interested parties, for the purpose of obtaining wide feedback on procedures, rules and regulations for VoIP; and to
3. Promulgate the necessary implementing rules and regulations and guidelines – consistent with the foregoing, and particularly, the principles and objectives of fair and equitable competition, and increased consumer choice and welfare – that will govern the deployment and use of VoIP by businesses and the general public.

The Commission is of the opinion that its mandate requires, as a first and primary step, an interpretation and clarification of the legal nature of VoIP – in a manner that encourages fair and equitable competition, increases consumer choice and welfare, and is consistent – always – with the letter and spirit of Philippine law, particularly Republic Act 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines.

The Commission is also of the view that the question that begs clarification is NOT whether VoIP should be deployed, or whether public access to VoIP should be encouraged. It is the Commission's position – validated by the comments and position papers submitted as well as the public hearing conducted last November 19, 2004, that in this matter, public policy and private sector interests converge and that everyone will benefit if VoIP is widely available.

Telecommunications costs can be expected to fall, while wider broadband deployment will be encouraged as more people see the benefits and uses of emerging information and communications technologies, such as VoIP. The tangible economic benefits to particular sectors of our population – from the families of overseas Filipino workers to our exporters to call center operations and business process outsourcing industries, among others – will not be trivial.

In this light, a hands-off policy, such as that which the Commission has adopted in the past, no longer serves the public interest. It is the Commission's position that regulatory clarity is now a necessary precondition if meaningful investment and innovation in, and public access to and use of VoIP is to grow.

Simply put therefore, the question before the Commission, is not if, but rather how – under current Philippine law – rules that encourage the deployment and use of VoIP ought to be crafted.

II. The Regulatory Nature of VoIP under Philippine Law

VoIP, under Republic Act 7925, clearly falls within the broad definition of “telecommunications” under R.A. 7925, to wit:

Telecommunications - any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means. (RA 7925, sec. 3a)

It is crystal clear that “telecommunications” covers VoIP, and, all other Internet services which rely on processes which enable the relay and reception of data through technological means.

This seemingly all-encompassing definition of “telecommunications” is a primary argument raised by opponents of any move on the Commission's part to classify VoIP as a value-added service (VAS). They submit that under this

definition, only “telecommunications entities” are allowed to offer telecommunications services.

It is a common assumption that to determine who may offer VoIP, the Commission must first make a determination of whether VoIP is either a “telecommunications” or a “value-added” service. The problem with this assumption, however, is that it mistakenly presumes that both types of services are mutually exclusive services.

Under RA 7925, value-added services form a particular category of telecommunications services. Thus, Article IV of RA 7925 identifies the following categories of telecommunications entities:

- SEC. 8. *Local Exchange Operator.* -
- SEC. 9. *Inter-Exchange Carrier.* -
- SEC. 10. *International Carrier.* -
- SEC. 11. *Value-added Service Provider.* -**
- SEC. 12. *Mobile Radio Services.*
- SEC. 13. *Radio Paging Services.* -

By making and identifying these categories, Congress, in its wisdom, construed value-added services as a subset of the broader set of telecommunications services.

In the context of VoIP, this clarification is particularly critical because it allows for the legal possibility of classifying VoIP as VAS, notwithstanding that the broad definition ascribed by lawmakers to “telecommunications” clearly covers it.

The issue as to who may or may not be allowed to offer VoIP to the public for compensation will therefore be settled by determining whether the term “value-added services” also applies to VoIP.

RA 7925, however, does not directly define “value-added services.” It does, nonetheless, provide a definition for “value-added service provider”:

Value-added service provider (VAS) - an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers. (*cite*)

From this definition, there is no doubt that Congress intended the definition for VAS, i.e., a “value-added service” is an enhanced

(telecommunications) service beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers.

Does VoIP fall under this definition? **IT DOES, AND ON THE BASIS OF BOTH LAW AND SOUND PUBLIC POLICY, VOIP IS A VALUE-ADDED SERVICE.**

*VoIP as an Enhanced
Telecommunications Service*

It is important to recognize VoIP as an undeniable enhancement of traditional voice service.

The Commission recognizes that VoIP technology has developed and continues to improve by leaps and bounds; and that the quality of VoIP transmission is nearly equal to the quality of traditional voice telephony. It is foreseen that voice transmitted through VoIP or through the PSTN will have no perceptible audible differences in the near future.

This functional equivalence is another argument offered by those opposed to the classification of VoIP as VAS. The principle of technology neutrality, they submit, requires that the Commission's interpretation be consistent regardless of what technology is used to transmit voice.

That may be so. However, VoIP does not merely involve converting and reassembling voice to and from data packets at the points of transmission and destination.

VoIP technology offers far more advanced and different service attributes than traditional voice services. VoIP is an advanced communications application that can converge voice communications seamlessly with other digital applications.

VoIP allows customer service representatives to provide better service by having instant access to customer records even as they are communicating via VoIP. Overseas family workers can "talk" to their loved ones at the same time that their respective images are being shown on their computer screens.

Other service attributes that already exist and are being offered in other jurisdictions include nomadic capabilities; voice mail that can be accessed, saved or forwarded by computer as an electronic file; and advanced call management features such as personalized call logs, phone books and click to dial functions.

Other applications using VoIP surely remain undiscovered or untapped. The innovative and entrepreneurial spirit, as well as the benefits to the consumer of freer competition in the ICT sector that Philippine public policy seeks to promote will not be encouraged – and indeed will be unduly hampered – by regulatory failure to recognize the non-trivial differences between VoIP and traditional voice.

*VoIP as a Service Beyond those
Ordinarily Provided by Local Exchange
and Interexchange Operators, and
Overseas Carriers*

In determining what services are “ordinarily provided” by local exchange and inter-exchange operators and carriers, the Commission believes that the legislative intent must be construed strictly in terms of what was being ordinarily offered at the time RA 7925 was passed, i.e. in 1995.

To do otherwise would create a legal and regulatory dilemma for the Commission.

Note that as stated previously, Internet services – relying as they do on processes that allow the relay of data through technological means – would also fall under the definition of “telecommunications.” Internet services have always been classified as VAS since the mid 1990s precisely because they were “not ordinarily offered” by carriers and operators at that time.

It would not be correct to say that internet service providers should no longer be allowed to offer their services because duly enfranchised PTEs ordinarily offer those very same Internet services today. This could not have been the legislative intent. And in any event, the offering of Internet services has been allowed by law to VAS providers, and cannot arbitrarily be taken without violating the due process protections afforded under the Constitution.

To do so would surely discourage innovation, and unduly promote unfair competition as carriers and operators could simply wait for VAS providers to innovate and then proceed to undercut their efforts by “ordinarily offering” those proven services in the future.

This include the offering of derivative technologies and/or applications, such as VoIP, that are the result of innovations on the use of Internet Protocol.

We believe, therefore, that the definition of “value added services,” i.e., “enhanced services beyond those ordinarily offered by LECs, IECs and overseas carriers,” must be construed strictly and interpreted to cover only

those services that were ordinarily offered by the said carriers and operators at the time that Republic Act 7925 was passed.

In this context, the Commission further notes that, at the time the law came into force, only voice services that were offered through the use of traditional circuit switched networks can be construed as having been “ordinarily offered by LECs, IECs and overseas carriers,” and that, therefore, any other voice service that is offered to the public not using the traditional circuit switched network technology – as in the case of VoIP – must be classified as a Value Added Service.

In sum, the Commission strongly believes that because traditional voice and VoIP services are NOT the same, the traditional voice regulations and licensing requirements should not apply to VoIP.

Furthermore, VoIP by definition, is not offered via circuit switched networks, and therefore, cannot be considered to have ordinarily been offered by LECs, IECs and overseas carriers. It is, therefore, a Value Added Service

The Commission recognizes that a necessary consequence of settling the regulatory status of VoIP as a value added service is that it becomes timely for the Commission to likewise consider a few other related issues.

The Commission is resolved to tread lightly, and will not be rushed to take premature action that could stifle, rather than enhance, innovation, development and deployment of VoIP. It is nonetheless prepared to seek actively the proper balance between the sometimes competing policy interests of promoting free and equitable competition; encouraging investments and innovation in the ICT sector; ensuring consumer protection, wider choices, and promote public welfare.

With this in mind, it is the Commission’s position that:

- (a) To monitor quality and to protect the public from fly-by-night operators and providers, VoIP providers, while not required to obtain a license, shall be required to register themselves as such with the Commission prior to operation.
- (b) Network providers must provide equal access and the same prices for substantially similar services to VAS providers. For this purpose, a copy of all contracts between network providers and VAS providers shall be submitted to the Commission for purposes of monitoring and possible regulation.
- (c) Network providers and other entities providing Internet access to subscribers shall be proscribed from impeding or degrading access to the

Internet content of another applications or service provider, except where such access demonstrably threatens the integrity of the network.

(d) Network providers shall not be allowed to require subscribers to purchase/use or to refrain from purchasing/using any IP-enabled service as a precondition to obtaining their broadband service.

(e) The Commission shall issue additional rules as may be necessary.

The Commission believes that these are reasonable rules that will help create competitive market conditions conducive to the continued and accelerated deployment of, and innovation in VoIP services.

The final key consideration that needs to be addressed is the determination of a fair and equitable pricing system for the use by VoIP providers of PTE network, facilities and equipment. As a matter of fundamental fairness, the Commission acknowledges that network providers are and must be entitled to reasonable compensation for the use of their equipment and facilities by VoIP providers. For now, however, the terms and conditions for access to and use of networks, facilities and equipment by VoIP providers shall be left to the parties to negotiate, unless the Commission is petitioned to intervene, or otherwise is convinced as to why and how it must step in, if at all.

Finally, consistent with the Commission's current policy of light but proactive regulation, it shall hold additional hearings on the attached draft Memorandum Circular to allow interested parties to provide input and comment, if any, to include the above-discussed issues pertaining to access and interconnection charges, and/or security and privacy issues.

Quezon City, Philippines, March 29, 2005.

RONALD OLIVAR SOLIS
Commissioner

KATHLEEN G. HECETA
Deputy Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

Memorandum Circular

No. _____

Subject: VOICE OVER INTERNET PROTOCOL (VOIP)

WHEREAS, the 1987 Constitution fully recognizes the vital role of communications in nation building and provides for the emergence of communications structures suitable to the needs and aspirations of the nation;

WHEREAS, the promotion of competition in the telecommunications market is a key objective of Republic Act No. 7925 (RA 7925, for brevity), otherwise known as The Public Telecommunications Policy Act of the Philippines, which mandates that “a healthy competitive environment shall be fostered, 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, RA 7925 further defines the role of the government to “promote a fair, efficient and responsive market to stimulate growth and development of the telecommunications facilities and services.”

Whereas, new technologies – such as VoIP – are blurring the traditional boundaries between computers, telecommunications, and broadcasting; and continue to fundamentally alter the structure, economics and nature of competition in the telecommunications sector.

WHEREAS, RA 7925 introduces the novel concept of a “value-added service (VAS) provider” which is defined as “an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.”

WHEREAS, Section 11 of RA 7925 provides that that VAS providers need not secure a franchise, provided that they do not put up their own network.

WHEREAS, VAS is not strictly a public service offering in the way that voice-to-voice lines are, but is merely supplementary to the basic service.

WHEREAS, given that it is not possible to accurately know or predict what other value added services would be available in the future, and consistent with the national interest in encouraging competition and innovation, services “ordinarily offered by local exchange and inter-exchange

operators and overseas carriers” under RA 7925 must be construed strictly in terms of services ordinarily offered by such operators and carriers at the time the said law was passed;

WHEREAS, services ordinarily offered by the aforementioned operators and carriers at the time RA 7925 was passed were limited to voice services offered through circuit switched networks;

WHEREAS, the National Telecommunications Commission believes that a forward-looking definition of the term “Value-Added Services” would serve the interests of clarity, innovation, competition, and regulatory consistency;

WHEREAS, VOIP, as an application that digitizes and transmits voice communications in packets via the Internet, enhances or improves upon traditional telephony that is conducted through circuit switched connections by allowing the convergence of voice with other data applications, and by providing economic benefits in the form of greater efficiencies and lower costs;

WHEREAS, added competition in and deployment of VOIP can help achieve the broader policy objectives of RA 7925 to develop and maintain “a viable, efficient, reliable and universal telecommunications infrastructure using the best available and affordable technologies,” and to improve and extend “services to areas not yet served”;

WHEREAS, the widespread use and deployment of VOIP is hampered by the absence of formal rules or guidelines that will clarify the legal and regulatory rules for VOIP, and govern the provision and use of VOIP by the public;

WHEREAS, premature intervention in or regulation of VOIP as a nascent technology risks stifling innovation and competition in information and communications technologies (ICT);

WHEREAS, minimal regulation on VOIP will encourage the development of new applications and services that can enhance Philippine competitiveness in the global ICT market;

NOW, THEREFORE, pursuant to RA 7925, Executive Order (EO) No. 546 series of 1979, and Department of Transportation and Communications (DOTC) Memorandum dated November 25, 2003, and in order to maintain and foster fair competition in the telecommunications industry, and to bring the benefits of efficient VOIP technology to the general public, the National Telecommunications Commission (the Commission/NTC, for brevity) hereby promulgates the following guidelines:

Sec. 1 Voice over Internet Protocol (VOIP) shall be classified as a Value Added Service within the contemplation of RA 7925, otherwise known as the Public Telecommunications Policy Act.

Sec. 2 Definitions –

- a. *Customer Premises Equipment (CPE)* refers to equipment located in the premises of a customer which is not part of but are connected directly to the system or network of the PTE.

- b. *Enhanced Services* shall mean those services that improve upon the quality and/or functionality of services ordinarily offered by local exchange and inter-exchange operators and overseas carriers.
- c. *Public telecommunications entity (PTE)* refers to any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation.
- d. “*Services Ordinarily Provided for by Local Exchange and Inter-Exchange Operators and Overseas Carriers*” refer to voice services offered through circuit switched networks.
- e. *Value-added services (VAS)* refer to enhanced services beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers through circuit switched networks.
- f. *Voice Over Internet Protocol (VOIP) Service* is the provision of voice communication using Internet Protocol (IP) technology, instead of traditional circuit switched technology.

Sec. 3 Any person or entity seeking to provide VoIP for use by the public for compensation shall register themselves as such with the Commission prior to operation as a VoIP provider.

Local exchange and interexchange operators and overseas carriers are hereby allowed to offer VoIP without need of further registration, provided that, consistent with RA 7925:

- a. they ensure that such VoIP offerings are not cross-subsidized from the proceeds of their utility operations;
- b. other providers of VoIP are not discriminated against in rates nor denied equitable access to their facilities; and
- c. separate books of accounts are maintained for VoIP.

Sec. 4 No value-added service provider shall provide VoIP services to the public for compensation – where such services require access to and/or use of a network provider’s network, facilities and/or equipment – unless it has entered into an agreement with such network provider as to the terms and conditions of fair and reasonable access and/or interconnection charges for such access and/or use.

In cases where the VAS provider and network provider refuse to negotiate for the interconnection of their networks, the Commission may, upon the complaint of any interested party or upon its own initiative, intervene and assume jurisdiction over the matter and immediately direct physical interconnection of the networks of the parties under such terms and conditions it may deem proper under the circumstances.

Nothing in this paragraph shall, however, prevent the parties from negotiating and executing an interconnection agreement, and from submitting the same to the Commission for approval. For this purpose, the parties shall be given a period of ninety (90) days from receipt of notice of the filing of the complaint within which to negotiate and execute an interconnection agreement, Provided, that until an interconnection agreement is executed the interconnection mandate adverted to in the immediately preceding paragraph, if any, shall remain in full force and effect.

Sec. 5 Network providers shall ensure equal access in terms of quantity and quality, at the same prices for substantially similar services to VAS providers; and shall not discriminate between VAS providers. For this purpose, the parties shall submit a copy of their agreements on these matters for purposes of the monitoring and supervision by the Commission within thirty (30) days upon their execution.

Sec. 6 No public telecommunications entity, network provider or other entity providing Internet access to subscribers and VAS providers, shall impede or degrade the access of such subscribers and VAS providers to the Internet content of another applications or service provider, except where such access demonstrably threatens the integrity of their network or facilities.

Sec. 7 Network and/or internet service providers shall not require subscribers to purchase/use or to refrain from purchasing/using any IP-enabled service as a precondition to obtaining their broadband service.

Sec. 8 The sale, lease, importation, distribution and/or provision of VOIP equipment, software and/or accessories that are not directly connected with the network of PTE's, such as those that are connected directly to computers to enable access to purely Internet-based VoIP services, shall be allowed. Customer premises equipment (CPE) designed to enable or ease the use of VoIP shall be governed by the existing rules and regulations on CPE's.

Sec. 9 Repealing Clause – Any rule, regulation, circular, order or memorandum, or parts thereof, inconsistent with this memorandum circular are deemed amended or revoked.

Sec. 10 Effectivity – This Memorandum Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation, and three (3) certified true copies furnished to the University of the Philippines Law Center.

Quezon City, Philippines 23 AUGUST 2005

RONALD OLIVAR SOLIS
Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

JAIME M. FORTES, JR.
Deputy Commissioner

**EXPLANATORY MEMORANDUM
and
MEMORANDUM CIRCULAR
for
VOICE OVER INTERNET PROTOCOL (VoIP)**

On 29 March 2005, the National Telecommunications Commission (the Commission, for brevity) issued a memorandum (hereafter referred to as the 29 March 2005 memorandum) and a draft memorandum circular on Voice over Internet Protocol (VoIP, for brevity) and invited comments thereon from the public. In order to provide an opportunity for the further explication of the comments submitted for its consideration, and as part of the administrative process leading to the formulation of a regulatory framework on the said subject, the Commission conducted a public hearing on May 3, 2005. Expectedly, the Commission received varied comments on the proposed regulatory treatment of VoIP, particularly on the proposed classification of VoIP as a value-added service (VAS, for brevity). Most of the questions raised in the comments submitted to the Commission have already been properly threshed out in the 29 March 2005 memorandum and need no further elaboration. The Commission, however, finds it appropriate to issue the following memorandum to further explain the necessity of providing a categorical definition of VAS.

Republic Act No. 7925, otherwise known as the Public Telecommunications Act of the Philippines, defines a “VAS provider” as “an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.” As previously stated in the 29 March 2005 memorandum, while the statute gives a categorical definition of a VAS provider, it does not explicitly define what VAS is or what types of services are to be included therein.

NTC Memorandum Circular No. 8-9-95 (MC No. 8-9-95, for brevity), or the Implementing Rules and Regulations of Republic Act No. 7925, is similarly unavailing. Section 420 thereof states as follows –

“VALUE ADDED SERVICES (VAS)

“(a) A non-PTE VAS provider shall not be required to secure a franchise from Congress.

“(b) A non-PTE VAS provider can utilize its own equipment capable only of routing, storing and forwarding messages in whatever format for the purpose of providing enhanced or augmented telecommunications services. It shall not put up its own network. It shall use the transmission network, toll or local distribution, of the authorized PTES.

“(c) The provision of VAS shall not in any way affect the cross subsidy to the local exchange network by the international and national toll services and CMTS service.

“(d) Entities intending to provide value added services only shall submit to the commission application for registration for approval. The application form shall include documents showing, among others, system configuration, mode of operation, method of charging rates, lease agreement with the PTE, etc.

“(e) The application for registration shall be acted upon by the Commission through an administrative process within thirty (30) days from date of application.

“(f) PTEs intending to provide value added services are required to secure prior approval by the Commission through an administrative process.

“(g) VAS providers shall comply strictly with the service performance and other standards prescribed commission.”

MC No. 8-9-95 does, however, define what enhanced services are, namely, “a service which adds a feature or value not ordinarily provided by a public telecommunications entity such as format, media conversion, encryption, enhanced security features, computer processing, and the like.”¹

¹ Section 001 (15) of MC No. 8-9-95

While the definition of VAS and the type of service that may be classified as such may be inferred from the aforementioned provisions of MC No. 8-9-95, the same are, according to the Supreme Court in the case of *Globe Telecom, Inc. vs. National Telecommunications Commission*,² “still too sweeping.” In the said case, the High Court likewise ruled, among others, that –

“The NTC should not be necessarily faulted for such indistinct formulation since it could not have known in 1995 what possible VAS would be available in the future. The definition laid down in the Implementing Rules may validly serve as a guide for the NTC to determine what emergent offerings would fall under VAS.

“Still, owing to the general nature of the definition laid down in the Implementing Rules, **the expectation arises that the NTC would promulgate further issuances defining whether or not a specific feature newly available in the market is a VAS.** Such expectation is especially demanded if the NTC is to penalize PTEs who fail to obtain prior approval in accordance with Section 11 of the PTA. To our knowledge, the NTC has yet to come out with an administrative rule or regulation listing which of the offerings in the market today fall under VAS or ‘enhanced services.’”

The abovequoted ruling of the Supreme Court recognizes the fact that the Legislature unequivocally intended the Commission to promulgate either a definition of VAS or an enumeration of the types of services which are to be included therein. Furthermore, it bears pointing out that the decision does not rule out the possibility of the formulation of a comprehensive definition of VAS; it merely lays down the expectation that the Commission should promulgate further issuances defining whether or not a specific feature newly available in the market is a VAS in view of the general nature of the definitions laid down in MC No. 8-9-95. Thus, to avoid further confusion, the Commission deemed it appropriate to promulgate a categorical definition of VAS.

It is important to stress that prior to the promulgation of the draft rules on VoIP, there had yet been no categorical definition of VAS promulgated by the Commission. Fortunately, however, the efforts of the Commission to provide regulatory clarity on the legal nature of VoIP, and particularly, the studied determination reached by the Commission that

² 435 SCRA 110

VoIP should properly be classified as a VAS, provided a timely and appropriate opportunity to finally establish such a categorical definition. Indeed, the Commission found that an unequivocal definition of the term “Value-Added Services” in the draft rules for VoIP is inevitable and necessary, and that, therefore, the adoption of such a definition is, in fact, already being debated in, and subjected to the same administrative process that the draft rules on VoIP are presently undergoing.

With the definition of a VAS provider under RA 7925 serving as a guidepost, therefore; and considering that the services ordinarily offered by public telecommunications entities at the time RA 7925 was enacted into law were limited to voice services offered through circuit switched networks; and finally, in the context of the arguments and points raised by the Commission in its explanatory memorandum on VoIP dated March 29, 2005, the Commission hereby defines VAS as “enhanced services beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers through circuit switched networks.”

This definition, the Commission believes, is not only consistent with the language and spirit of RA 7925. It will also foster innovation and promote competition and efficiency to the benefit of both providers and the consuming public alike.

RONALD OLIVAR SOLIS

Commissioner

JORGE V. SARMIENTO

Deputy Commissioner

JAIME M. FORTES, JR.

Deputy Commissioner

MEMORANDUM ORDER

No. 3-11-2005

SUBJECT : GUIDELINES FOR THE REGISTRATION OF VoIP SERVICE PROVIDERS AND RESELLERS

Pursuant to MC 05-08-2005 (Voice over Internet Protocol), the National Telecommunications Commission (Commission) hereby issues the following guidelines for the registration of VoIP service providers.

1. A VOIP Service Provider shall refer to a person or entity providing VoIP services to the public, directly or through resellers, for compensation. Any person or entity that intends to derive or source VOIP from a duly registered VOIP provider under an agreement to resell the service directly to retail end-user customers, shall register with the Commission as a Reseller.
2. Entities intending to register as a *VoIP service provider* are required to submit/pay the following documents/fees, in addition to those required to be submitted/paid for VAS registration:
 - a. Certified true copy of the Securities and Exchange Commission (SEC) Registration or Department of Trade and Industry (DTI) Registration showing, among others, that the entity is at least sixty percent (60%) owned by Filipino citizens, and that the paid up capital is at least ten million pesos (P10,000,000.00);
 - b. Valid facilities/network lease agreement with duly authorized facilities/network providers;
 - c. Valid interconnection agreements with duly authorized access facilities/network providers, such as the local exchange network, cellular mobile network, trunk radio network, broadband access network, etc., where applicable under Section 4 of MC 05-08-2005; and
 - d. List of cities and municipalities where the VoIP service will be offered;
 - e. Filing Fee : PhP 180.00;
 - f. Registration Fee : PhP50,000.00/year.

3. Persons or entities intending to register as a *VoIP service reseller* are required to submit/pay the following documents/fees, in addition to those required to be submitted/paid for VAS registration:
 - a. Certified true copy of the Securities and Exchange Commission (SEC) Registration or Department of Trade and Industry (DTI) Registration showing, among others, that the entity at least sixty percent (60%) owned by Filipino citizens;
 - b. Certified true copy of a reseller agreement with a duly registered VoIP service provider;
 - c. Filing Fee : PhP 180.00;
 - d. Registration Fee: PhP5,000.00/year.
4. Certificates of Registration (COR) issued to VOIP Providers and Resellers shall be valid for a period of one (1) year, and are renewable thereafter.
5. Each VoIP service provider shall post a performance bond in the amount of five million pesos (PhP 5,000,000.00) to guarantee the delivery of VoIP service to the public. VOIP Resellers shall likewise post a performance bond in the amount of one million pesos (PhP 1,000,000.00). The performance bond shall be from a registered insurance or surety company preferably from the Government Service Insurance System.

The performance bond shall be for the duration of the validity of the certificate of registration as a VoIP service provider or reseller. These entities shall at all time be covered by a performance bond. The performance bond shall be forfeited in favor of the government in the event that these entities fail to deliver VoIP service pursuant to NTC rules and regulations.

6. Each registered VoIP service provider shall be assigned a VoIP service prefix "09xx". Only a user/customer/subscriber with an assigned VoIP subscriber number shall be allowed to originate and/or receive VoIP calls/traffic.
7. Only Duly registered VoIP service provider shall be allowed to offer VoIP service using "Toll Free" service. Each registered VoIP service provider offering this type of service shall be assigned a "Toll Free" access telephone number "1801-xxx-yyyy". Code "yyyy" shall be assigned to duly registered VoIP service providers. Code "xxx" shall be assigned to duly authorized local access network providers as follows:

<i>Code</i>	<i>Local Access Network Provider</i>
100 – 199	PAPTELCO Members
200	Bayan Telecommunications, Inc.
201	Bell Telecommunications Philippines, Inc.
203	Digital Telecommunications Philippines, Inc.
204	Innovate Communications, Inc.
205	Philcom Corporation
206	Philippine Long Distance Telephone Corp.
207	Pilipino Telephone Corporation
208	Telecom Technologies Philippines, Inc.
209	Telecommunications Office (CICT)
302	Express Telecommunications, Inc.
303	Globe Telecom, Inc.
306	Smart Communications, Inc.
400 – 404	3G Network Operators

8. All VoIP calls/traffic, outgoing and incoming, shall pass through duly registered/authorized VoIP service providers.

These guidelines shall take effect immediately.

Quezon City, Philippines _____.

RONALD OLIVAR SOLIS
Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

JAIME M. FORTES, JR.
Deputy Commissioner