

MEMORANDUM CIRCULAR
No. 10-10-2003

SUBJECT : IMPLEMENTING RULES AND REGULATIONS GOVERNING COMMUNITY ANTENNA/CABLE TELEVISION (CATV) AND DIRECT BROADCAST SATELLITE (DBS) SERVICES TO PROMOTE COMPETITION IN THE SECTOR

WHEREAS, community antenna/cable television (CATV) system and direct broadcast satellite (DBS) system as direct-to-home/direct-to-user (DTH/DTU) service help provide the public with wider access to more sources of news, information, education, science and technology, entertainment and other programs/contents complementing other forms of mass media;

WHEREAS, the State, may by law regulate the operations of CATV and DBS services to protect public interest and promote the general welfare;

WHEREAS, Art. XII, Section 19 of the Philippine Constitution mandates the State to regulate or prohibit monopolies when the public interest so requires, and disallows combinations in restraint of trade or unfair competition;

WHEREAS, it is the policy of the State to promote a healthy competitive environment and to protect consumers' welfare against monopoly or quasi-monopolistic powers by operators and program/content providers in the provision of CATV and DBS services thereby ensuring to all operators, the consumers and the general public with fair, reasonable and continued access to diverse programs and contents, in the interest of public service;

WHEREAS, the absence of fair competition in the CATV and DBS market will deprive subscribers and consumers of a wider variety of choices and diversity of programming content, and is detrimental to public interest and the accelerated development of said industry;

WHEREAS, any contract or arrangement entered into between operators and program/content providers which tends or aims to exclude, inhibit, and frustrate their ability to offer diverse programs to the subscribing public may hinder the growth and sustained development of the industry to the prejudice of the subscribing public;

WHEREAS, in some instances, in the interest of public service, when justified and properly regulated, exclusive contracts can encourage investment, expand access to unserved and underserved areas, and promote opportunities for existing and new entrants to the CATV and DBS markets;

NOW THEREFORE, to promote fair and healthy competition in the industry, prevent monopoly or any combination in restraint of trade or unfair competition, and so

as to provide the country with the widest access possible to sources of news, information, entertainment and data available, the National Telecommunications Commission (NTC) pursuant to the powers vested upon it by law and Department Circular No. 2003-01 dated 03 March 2003, hereby issues the following guidelines:

ARTICLE 1. DEFINITION OF TERMS

Section 1. For purposes of these rules and regulations, the following definitions shall apply:

- a. **“Cable Television System or Community Antenna Television (CATV)”** - refers to any facility that, in whole or in part, receives directly or indirectly over the air, and amplifies or otherwise modifies and improves the received signal broadcast by one or more television, satellite or radio stations and distributes such signal by wire, fiber optic or cable to subscribing members of the public who pay for such service(s).
- b. **“Direct Broadcast Satellite (DBS) Service”** – refers to the service that delivers TV programs to the home through a satellite receiving dish, rather than through a cable system landline wherein pictures are sent aloft, bounced off a satellite transponder and returned directly to the subscriber’s home; also known as direct-to-home/direct-to-user (DTH/DTU) broadcast system.
- c. **“Commission”** shall refer to the National Telecommunications Commission.
- d. **“Exclusive Contracts”** shall refer to contracts and/or other arrangements that grant, or have the effect of granting sole or exclusive rights to air or broadcast programs/content to one or some CATV/DBS operators to the exclusion of other CATV/DBS operators.
- e. **“Program/Content Provider”** shall refer to any entity engaged in the business of providing, distributing and/or selling of television programs and signals through satellite technology or any other technology, in whole or in part, to authorized CATV and DBS operators.

ARTICLE 2. DEVELOPMENT OF COMPETITION AND DIVERSITY IN PROGRAMS/CONTENT DISTRIBUTION

Section 2. **General Rule.** As a general rule, exclusive contracts between CATV/DBS operators and program/content providers, (collectively, the “Parties”) and/or any behavior that is tantamount to exclusivity, including but not limited to discrimination in the supply of programs or content, are presumed to be anti-competitive and contrary to sound public policy. Except as otherwise provided under these guidelines, exclusive contracts and/or any exclusive arrangements between the parties are prohibited.

Section 3. ***Exceptions.*** Any CATV/DBS operator seeking to execute an exclusive contract with a program/content provider shall submit a petition to the Commission seeking approval for the same.

The Commission shall entertain any petition to approve an exclusive contract, unless it is shown:

- (a) that all parties to the contract have agreed to submit any dispute pertaining thereto to the jurisdiction of competent Philippine authorities, *and*
- (b) that all foreign and local program/content providers have registered with the Commission and in the case of a foreign program/content provider it shall not only register with the Commission but has appointed a local agent to whom notices and other official correspondence may be sent.

Section 4. ***Filing of Application and Notice of Hearing.*** After the filing of the petition and the payment of the required fees, the Commission shall promptly cause the same to be docketed, the notice of hearing issued and the case forwarded to the Legal Department for hearing.

The petitioner shall cause the notice of hearing to be published once in one (1) newspaper of general circulation at least fifteen (15) days before the date of hearing. During such time, any interested party may file its position/comment as to why the petition should not be approved.

Failure on the part of the petitioning CATV/DBS operator to show that such exclusive contract is not anti-competitive, nor violative of sound public policy, or that such exclusive agreement serves the public interest shall cause the Commission to void the exclusively clauses and/or provisions of such contract, but shall not affect the validity of its other remaining portions or sections.

If the Commission determines, however, that the petitioner has made a persuasive public interest showing, it shall issue an order granting the petition and approving the exclusive contract.

The Commission shall render its decision within thirty (30) days from date of initial hearing, without prejudice to the Commission taking any appropriate action which it deems necessary, at any time.

ARTICLE 3. EXISTING CONTRACTS

Section 5. Existing contracts between CATV/DBS operators and program/content providers are presumed valid and shall be respected.

The Commission may, however, *motu proprio* or upon the verified petition of any interested party, require any CATV/DBS operator who has entered into a contract with a program/content provider, to submit the same for review by the Commission to determine whether the said contract or any provision therein appears to establish a relationship of exclusivity between the parties.

Failure on the part of the concerned CATV/DBS operator to show that such contract, if found to be exclusive in nature, is not anti-competitive, nor violative of sound public policy, or that such exclusive agreement serves the public interest, shall cause the Commission to void the exclusivity clauses and/or provisions of such contract, but shall not affect a validity of the remaining portions or sections.

ARTICLE 4. CRITERIA FOR DETERMINING APPROVAL OF CONTRACT

Section 6. In determining whether permission should be granted to such petitioning CATV/DBS operator, the Commission shall take the following criteria into consideration.

- (a) the effect of such exclusive contract on the development of competition and program distribution, including the protection of small or new entrants in the CATV/DBS markets;
- (b) the effect of such exclusive contract on investment in the CATV/DBS industry particularly in unserved and/or underserved areas;
- (c) the effect of such exclusive contract on diversity of programming;
- (d) the duration of the exclusive contract; and
- (e) such other factors as may be relevant to promote healthy competition and local content development in the CATV/DBS industry.

ARTICLE 5. CONFIDENTIALITY

Section 7. The Commission shall take all appropriate measures to protect the confidential nature of any contract submitted for its review.

ARTICLE 6. OBLIGATION OF CABLE TV/DBS OPERATORS

Section 8. As a general rule, the reception, distribution and/or transmission by any CATV/DBS operator of any television signals without any agreement with or authorization from program/content providers are prohibited. The CATV/DBS operators

must strictly observe a policy of self-censorship in the retransmission of these programs to subscribers.

ARTICLE 7. PENALTIES

Section 9. In cases of violations of any of the provisions of the Memorandum Circular, the Commission may, after due notice and hearing, impose such administrative fines, penalties and sanctions as may be allowed or prescribed by existing laws including, where appropriate, suspension and/or revocation of existing authorizations and/or suspension of further action on all pending and future applications of the violating party.

ARTICLE 8. SUNSET PROVISION.

Section 10. The prohibition on exclusive contracts, and the requirement of Commission's approval of such contracts, shall automatically expire ten (10) years from effectivity of this Circular unless expressly extended, after public notice and consultation, by the Commission on the ground that the prohibition continue to be necessary to promote competition in the CATV/DBS market, diversity in the distribution of programs/content, and/or to protect public interest and welfare.

ARTICLE 9. SEPARABILITY CLAUSE

Section 11. The declaration of nullity or unconstitutionality of any provision or section of these guidelines shall not affect the validity and effectiveness of the other provisions or sections hereof.

ARTICLE 10. REPEALING CLAUSE

Section 12. All existing memoranda, circulars, rules and regulations inconsistent herewith are hereby repealed or amended accordingly.

ARTICLE 11. EFFECTIVITY

Section 13. This Memorandum Circular shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; Provided, that at least three (3) certified copies hereof be filed with the University of the Philippines Law Center.

(Signed)
ARMI JANE R. BORJE
Commissioner

(Signed)
KATHLEEN G. HECETA
Deputy Commissioner

(Signed)
JORGE V. SARMIENTO
Deputy Commissioner