

**Memorandum Circular
No. 05-08-2005**

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