



MEMORANDUM CIRCULAR (MC) NO. 01-03-2010

SUBJECT: RULES ON THE ASSIGNMENT OF THE REMAINING ALLOCATED 3G RADIO FREQUENCY BAND

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 (R.A.) No. 7925, 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 interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates";

WHEREAS, R.A. No. 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, Memorandum Circular (MC) No. 07-08-2005 allocated 3G frequencies for assignment to five (5) qualified applicants;

WHEREAS, only four (4) of the nine (9) applicants qualified for the assignment of the allocated 3G frequencies pursuant to the rules prescribed under MC No. 07-08-2005;

WHEREAS, the remaining allocated 3G frequencies is available for assignment;

NOW, THEREFORE, pursuant to R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act and Executive Order (E.O.) No. 546 series of 1979, and in order to maintain, foster and enhance competition in the mobile telecommunications market, and to bring the benefits of efficient mobile technology to the general public, the National Telecommunications Commission hereby promulgates the following rules:

SEC. 1. FREQUENCY BAND AVAILABLE FOR ASSIGNMENT

1.1 The frequency band **1965-1975/2155-2165** or **1890-1900/1970-1980 MHz** is hereby reallocated for 3G services and made available for assignment to a qualified applicant.

SEC. 2. FILING OF APPLICATIONS

2.1 Only applicants with existing authorizations or pending applications for authorization to Install, Operate and Maintain Cellular Mobile Telephone System (CMTS) or Mobile



Telecommunications Networks shall be allowed to file their applications for the assignment of the frequency band subject of this Memorandum Circular.

2.1.1 Applications for the assignment of 3G frequencies shall be filed not later than TEN (10) days from the date of the effectivity of this Circular.

2.2 All applicants for the assignment of remaining 3G frequency band shall submit the following:

2.2.1 Proof that there is no outstanding or unpaid supervision and regulation fees (SRF), spectrum user fees (SUF), radio station license fees, permit fees and other fees imposed by the Commission pursuant to law, rules and regulations;

2.2.2 Certification of equity and/or company net worth of at least THREE BILLION PESOS (Php3,000,000,000.00), supported by the latest audited annual or interim financial statements, duly certified by an external auditor or other equivalent documentation;

2.2.3 Written undertaking that it shall interconnect with all 3G, cellular mobile telephone, local exchange and all other public networks pursuant to existing laws, rules and regulations on mandatory interconnection;

2.2.4 Written undertaking that it shall allow the sharing of its network and facilities with other 3G assignees in areas where demand does not allow more than one (1) 3G network;

2.2.5 Written undertaking that it shall negotiate roaming agreements with other 3G networks or existing duly authorized CMTS service providers;

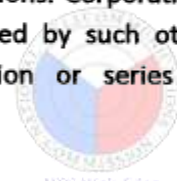
2.2.6 Written undertaking that it shall abide by the terms and conditions set by the Commission in cases where its negotiations for interconnection, sharing of networks and facilities and/or roaming fail within ninety (90) days from date of the start of negotiations for the same; and

2.2.7 A 5-year roll out plan to cover at least 80% of the provincial capital municipalities and 80% of all cities.

2.3 Entities may form consortia for purposes of applying for the assignment of the 3G radio frequency band. A consortium formed must provide the complete details of all its members, including the details of their ownership and control structure.

2.4 Entities with more than 50% of common stocks owned by the same person or group of persons shall be considered associated applicants, at the time of application, and such entities shall be allowed to elect one of them to proceed with the filing of the application.

2.5 Corporations related to one another by common control of voting stock and operated as parts of a system of enterprise shall be considered as affiliated corporations. Corporations related to another such that a majority of its directors can be elected by such other corporation either directly or indirectly through another corporation or series of corporations shall be considered as subsidiary corporations.



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2.5.1 Only one application shall be accepted from the aforementioned entities (2.3, 2.4 and 2.5). A subsidiary and/or affiliate of an entity which has submitted an application is disqualified from submitting a separate application.

SEC. 3. DETERMINATION OF QUALIFIED APPLICANTS

3.1 The Commission shall evaluate all applications to determine the qualified applicant/s after which the Commission shall send notices of the results of the evaluation to all applicants.

3.2 In evaluating applications, the Commission shall be guided by the policies enunciated in Sections 4(a), (b), (c) and (f) of R.A. No. 7925. As such, the remaining allocated 3G frequency band shall be granted to the best qualified who will use it efficiently and effectively to meet public demand for telecommunications service, ensure universal coverage and foster a healthy competitive environment.

3.3 The Commission shall evaluate the applicant's qualifications, such as, but not limited to track record when applicable, roll-out plan and financial soundness as a means to foster competition.

3.4 If the number of qualified applicants is more than one (1), the Commission shall conduct bidding pursuant to Section 15 of R.A. No. 7925.

SEC. 4. BIDDING PROCEDURE

4.1 Financial bids shall be submitted not later than SEVEN (7) days from the date the qualified applicants are determined and duly notified. The Commission shall set the date and time for the submission of final bids.

4.2 The qualified bidders shall bid for the annual spectrum user fees (SUF). The minimum bid price shall be Php65 Million for the paired 10MHz.

4.3 The Commission may schedule a pre-bid conference not later than TEN (10) days prior to the date of the submission of the bids.

4.4 Bid security bond equivalent to 30% of the minimum bid price of Php65 Million shall be submitted together with the financial bid.

SEC. 5. SPECTRUM USER FEES

5.1 The annual Spectrum User Fees (SUF) shall be the amount offered by the winning bidder.

5.2 The SUF shall be paid not later than 31 January of each year. A penalty of 25% shall be imposed if the amount is not paid within the prescribed period. If the SUF is not paid in full, the penalty shall be imposed on the balance. Additional 1% per month penalty shall be imposed on the outstanding SUF.

5.3 The annual SUF for the frequencies awarded without bidding shall be equivalent to the SUF specified in Sec. 6.1 and Sec. 6.3 of MC No. 07-08-2005.

SEC. 6. TRANSFER OF AFFECTED USERS



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6.1 The transfer of affected duly authorized users of the herein allocated 3G radio frequency band shall be governed by Section 603 of MC No. 03-03-96.

SEC. 7. PERFORMANCE BONDS

7.1 The assignee/winning bidder of the frequency band shall post a performance bond (cash, surety or property) equivalent to 30% of the roll out cost for the first two (2) years but not below ONE BILLION PESOS (Php 1 Billion) to continue for five (5) years or upon completion of the roll out, whichever comes earlier, not later than ten (10) days after the grant of the frequencies. The performance bond shall be forfeited in favor of the government if the grantee fails to comply with the approved roll-out schedule.

SEC. 8. OBLIGATIONS OF THE ASSIGNEE

8.1 The assignee/winning bidder shall comply with the following obligations:

- a. The assignee/winning bidder shall pay an annual SUF as prescribed in Sec. 5 hereof;
- b. Commence the installation and construction of the 3G network and facilities not later than twelve (12) months from the date of award;
- c. Start commercial operation not later thirty (30) months from date of award;
- d. Cover at least 80% of the provincial capital municipalities and 80% of all cities within sixty (60) months from the date of the award;
- e. Strictly comply with the prescribed service performance standards;
- f. Interconnect with all 3G, cellular mobile telephone, local exchange and all other public networks pursuant to existing laws, rules and regulations on mandatory interconnection;
- g. Share its 3G network and facilities with other 3G players in areas where demand does not allow more than one 3G network at mutually agreed prices or at prices set by the Commission. Only 3G operators that have complied with their approved roll-out plans can share their networks and facilities subject to mutually agreed commercial terms and conditions;
- h. Negotiate roaming agreements with other 3G networks and existing duly authorized CMTS service providers and where parties fail to enter into a mutual agreement within ninety (90) days from the start of commercial operations of the 3G operators, the Commission shall prescribe the terms and conditions for roaming. The terms and conditions for roaming prescribed by the Commission shall only be effective for a period not exceeding three (3) years; and
- i. Comply with all relevant laws and regulations.

SEC. 9. SANCTIONS



9.1 The assignee/winning bidder shall at all times be updated in the payment of the annual SUF. Failure to settle the outstanding SUF after a reasonable period of time from due date thereof, shall be a ground for the recall of the assigned 3G radio frequency bands.

9.2 The failure of the assignee/winning bidder to comply with any of the obligations specified in Section 8 hereof shall be a cause for the cancellation of its authority to provide 3G services, and for the recall of the assigned 3G radio frequency band.

9.3 The assignee/winning bidder shall be subject to strict monitoring for compliance with its roll out requirements and its failure to comply with the said commitments shall result in the recall of the frequency assignment along with the forfeiture of the performance bonds and/or guarantees.

9.4 The assignee/winning bidder is prohibited from selling, leasing, encumbering, alienating or conveying in any manner the frequency assigned to it, nor can the assignee/winning bidder itself or the control thereof be sold, leased, encumbered, alienated or conveyed in any manner to another entity with an existing assignment of 3G frequency, or by affiliated or subsidiary companies of such entity. Upon the Commission's determination that such sale, lease, encumbrance, alienation or conveyance in any manner has taken place, the same shall result in the recall of the frequency assignment.

SEC. 10. FINAL PROVISION

10.1 Any circular, order, memoranda or parts thereof inconsistent herewith are deemed repealed or amended accordingly.


SEC. 11. EFFECTIVITY

11.1 This MC shall take effect fifteen (15) days after its publication in a newspaper of general circulation and three (3) copies hereof furnished the University of the Philippines Law Center.

Quezon City, Philippines. 12 March 2010.


GAMALIEL A. CORDOBA
Commissioner


JAIME M. FORTES, JR.
Deputy Commissioner


D. MICHAEL N. MALLILIN
Deputy Commissioner

