

MEMORANDUM CIRCULAR
No. 07-08-2005

SUBJECT: RULES AND REGULATIONS ON THE ALLOCATION AND ASSIGNMENT
OF 3G RADIO FREQUENCY BANDS

Pursuant to RA7925 (Public Telecommunications Policy Act), Act3846, as amended (Radio Control Law), and EO546 series of 1979, the following rules and regulations on the allocation and assignment of Third Generation Mobile Telecommunications system (3G) radio frequency bands are hereby promulgated.

SECTION 1. ALLOCATION OF RADIO FREQUENCY BANDS FOR INTERNATIONAL
MOBILE TELECOMMUNICATIONS 2000 (IMT2000) OR THIRD
GENERATION (3G) MOBILE TELECOMMUNICATIONS

- 1.1 The following radio frequency bands as identified by the International Telecommunications Union (ITU) are hereby re-allocated for the use of international mobile telecommunications (IMT2000) or 3G mobile telecommunications in the Philippines and shall form part of the National Radio Frequency Allocation Table (NRFAT), namely:

825 – 845MHz*
870 – 890MHz*
1880 – 1900MHz
1920 – 1980MHz
2110 – 2170MHz
2010 -2025MHz

The above-allocated frequency bands shall be made available for assignment to not more than five (5) qualified public telecommunications entities (PTE).

*These frequencies are currently assigned to existing CMTS operators.

SECTION 2. TRANSFER OF AFFECTED USERS

- 2.1 The transfer of affected duly authorized users of the herein allocated 3G radio frequency bands shall be governed by Section 603 of Memorandum Circular No. 03-03-96.

SECTION 3. CRITERIA TO BE USED IN THE SELECTION OF QUALIFIED PUBLIC
TELECOMMUNICATIONS ENTITIES

- 3.1 Only entities with authorizations to install, operate and maintain cellular mobile telecommunications system (CMTS) or 3rd generation mobile telecommunications system (3G) shall be accepted as applicants for the assignment of herein allocated 3G radio frequency bands.

- 3.2 Existing duly authorized cellular mobile telephone service providers opting to upgrade their networks to 3G shall qualify as applicants for the assignment of 3G frequencies subject to the provisions of the applicable Sections hereof, more particularly, Section 3.6 and Sections 4, 5, 6, and 7.
- 3.3 An entity intending to operate a 3G mobile telecommunications system shall file its application for authority or certificate of public convenience and necessity (CPCN) to install, operate and maintain a 3G mobile telecommunications system to the Commission not later than thirty (30) calendar days from the effectivity of this Circular. The applicant shall possess the following minimum qualifications:
- a. Holder of a valid Congressional franchise;
 - b. For new public telecommunications entities, the minimum paid-up capital stock shall be PhP100 million;
 - c. For existing duly authorized PTEs, debt to equity ratio shall be 70:30 with total investments in the CMTS or 3G networks of at least PhP400 million already included in the calculation of the debt to equity ratio; and
 - d. Must prove that it has the technical capability to install, operate and maintain the proposed CMTS or 3G networks.

The application shall undergo quasi-judicial process. The process shall be completed within sixty (60) calendar days from date of the effectivity of this Circular.

3.4 The documentary as well as oral evidence submitted by applicants for the assignment of the radio frequency bands for Second Generation Mobile Telecommunications System (2G) (public mobile telecommunications system or PMTS) networks shall be updated. The process of updating shall be completed not later than sixty (60) calendar days from the date of effectivity of this Circular.

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

3.6 Applications for the assignment of 3G radio frequency bands shall be accepted not later than ninety (90) calendar days from the effectivity of this Circular. The qualified applicants shall be determined using the following criteria:

- a. For existing authorized PTEs, no outstanding unpaid supervision and regulations fees (SRF), spectrum user fees (SUF), radio station license fees, permit fees and other fees imposed by the National Telecommunications Commission pursuant to law, rules and regulations.
- b. Must submit a written undertaking that it shall interconnect with all 3G networks, cellular mobile telephone networks, local exchange networks and

all other public networks pursuant to existing laws, rules and regulations on mandatory interconnection.

- c. Must submit a written undertaking that it shall allow the sharing of its network and facilities with other 3G players in areas where demand does not allow more than one (1) 3G network.
- d. Must submit written undertaking that it shall negotiate roaming agreements with other 3G networks or existing duly authorized CMTS service providers.
- e. Must submit a 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 to reach agreements within ninety (90) days from date of the start of negotiations for the same.
- f. Must submit proof of track record in the operation of mobile telecommunications systems particularly 3G networks.
- g. Must submit a 5-year roll-out plan to cover at least 80% of the provincial capital towns/cities and 80% of the chartered cities.
- h. Must submit schedule of rates for the different types of 3G services to be offered. The schedule of rates shall be the maximum rates that can be charged within the first twenty four (24) months from start of commercial operations which shall not be later than thirty (30) months from date of award of the 3G radio frequency bands. Other 3G services not included in the submitted list may be offered subject to prior approval by the Commission;

3.7 Entities with applications for the assignment of the 3G radio frequency bands may form a consortium. A consortium formed must provide the details of all its members, including the details of their ownership and control structure.

3.8 Applicants for the assignment of the herein allocated 3G radio frequency bands shall be ranked based on the track record, roll-out commitments and rates to be charged from consumers/subscribers/users.

SECTION 4. DETERMINATION OF QUALIFIED APPLICANTS

- 4.1 The Commission shall, not later than ninety (90) days from the effectivity of this Circular, evaluate all applications for the assignment of the 3G radio frequency bands and determine the best qualified applicants using the criteria described in Sec. 3.6 of this Circular. Within ten (10) days after the determination of the best qualified applicants, the Commission shall send notices of the results of the evaluation to all applicants.

SECTION 5. PERFORMANCE BONDS

- 5.1 All applicants for the assignment of 3G radio frequency bands shall post performance bond equivalent to PHP300M. The performance bond shall be

submitted to the Commission not later than ninety (90) days from the effectivity of this Circular.

SECTION 6. SPECTRUM USER FEES

6.1 The annual spectrum user fees (SUF) for the allocated and assigned 3G radio frequency bands shall be:

FOR PAIRED 3G RADIO FREQUENCY BANDS

- a. for the first 5MHz, the SUF shall be PhP5,000,000.00 per MHz;
- b. for each additional 1MHz or fraction thereof in excess of the first 5MHz but not exceeding 10MHz, the SUF shall be PhP8,000,000.00 per MHz;
- c. for each additional 1MHz or fraction thereof in excess of the first 10MHz but not exceeding 15MHz, the SUF shall be PhP10,000,000.00 per MHz;
- d. for each additional 1MHz or fraction thereof in excess of the first 15MHz, the SUF shall be PhP15,000,000.00 per MHz.

FOR UNPAIRED 3G RADIO FREQUENCY BANDS

- a. for the first 5MHz, the SUF shall be PhP3,000,000.00 per MHz;
- b. for each additional 1MHz or fraction thereof in excess of the first 5MHz but not exceeding 10MHz, the SUF shall be PhP6,000,000.00 per MHz;
- c. for each additional 1MHz or fraction thereof in excess of the first 10MHz but not exceeding 15MHz, the SUF shall be PhP8,000,000.00 per MHz;
- d. for each additional 1MHz or fraction thereof in excess of the first 15MHz, the SUF shall be PhP12,000,000.00 per MHz.

6.2 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 25% penalty shall be imposed on the balance. Additional 1% per month penalty shall be imposed on the outstanding unpaid SUF.

6.3 An additional SUF of PhP2M shall be imposed on each authorized 3G network operator for every 100,000 additional subscribers/users in excess of the first 4 million subscribers/users. The number of subscribers/users to be used in the computation of the SUF for the current year shall be based on the number of subscribers/users reported by each authorized 3G network operator at the end of the immediately preceding year or one-half (1/2) of the maximum capacity of the access codes assigned as of the immediately preceding year; whichever is higher.

6.4 Existing duly authorized cellular mobile telephone service providers opting to upgrade their networks to 3G using their existing assigned radio frequencies, and qualified pursuant to Sec.3.2 hereof, shall pay annual SUF of PhP65M for the first 10MHz x 2 radio frequency band plus PhP8M for each additional 1MHz x 2 of radio frequency in excess of the first 10MHz x 2. An additional SUF of PhP2M shall also be imposed for every 100,000 additional subscribers/users in excess of the first 4 million subscribers/users. The number of subscribers/users to be used in the computation of the SUF for the current year shall be based on the number of subscribers/users reported by each authorized 3G network operator at the end of the immediately preceding year or one-half (1/2) of the maximum

capacity of the access codes assigned as of the immediately preceding year; whichever is higher. 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 due is not paid in full the 25% penalty shall be imposed on the balance. Additional 1% per month penalty shall be imposed on the outstanding unpaid S of the SUF for the current year shall be based on the number of subscribers/users reported by each authorized 3G network operator at the end of the immediately preceding year or one-half (1/2) of the maximum capacity of the access codes assigned as of the immediately preceding year; whichever is higher SUF.

SECTION 7. OBLIGATIONS OF THE ASSIGNEES

7.1 The assignees shall comply with the following obligations:

- a. Within fifteen (15) days from the award of the 3G frequencies, they shall remit to the Commission payments for the SUF equivalent to one-half (1/2) of the amount specified in Section 6 if the award is made on or before 30 June and the full amount if award is made after 30 June covering the year when the award is made, and thereafter, pay annual spectrum user fees prescribed in Sec. 6 hereof;
- b. Increase the paid capital to PhP400 million not later than thirty (30) days from date of assignment of 3G radio frequencies (for new public telecommunications entities);
- c. Begin the installation and construction of the 3G network and facilities not later than twelve (12) months from date of award;
- d. Start commercial operation not later than thirty (30) months from date of award;
- e. Cover at least 80% of the provincial capital cities and towns and 80% of the chartered cities within sixty (60) months from date of award;
- f. Strictly comply with the schedule of rates submitted;
- g. Strictly comply with the prescribed service performance standards;
- h. Interconnect with all 3G networks, cellular mobile telephone networks, local exchange networks and all other public networks pursuant to existing laws, rules and regulations on mandatory interconnection;
- i. 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;

All assignees of 3G radio frequencies shall within one hundred twenty (120) days from date of assignment of the 3G radio frequencies shall jointly submit to the

Commission list of areas where sharing of networks and facilities shall be implemented including the pricing for the use of the networks and facilities.

- j. Negotiate roaming agreements with other 3G networks and existing duly authorized CMTS service providers. Only 3G operators that have complied with their approved roll-out plans can negotiate roaming agreements among themselves and with existing duly authorized CMTS service providers;

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.

- k. Submit an application for authority to install, operate and maintain local exchange lines or public calling stations in unserved and underserved areas pursuant to Sec. 12 of RA7925 not later than ninety (90) days from the assignment of the herein allocated 3G radio frequencies; and

- l. Comply with all relevant laws and regulations.

SECTION 8. SANCTIONS

8.1 3G network operators shall at all times be updated in the payment of the annual SUF. Failure to settle outstanding SUF after a reasonable period of time from due date thereof, shall be ground for the recall of the assigned 3G radio frequency bands.

8.2 The failure of 3G network operators to comply with any of the obligations specified in Section 7 hereof shall be a cause for the cancellation of their authority to provide 3G services, and for the recall of the assigned 3G radio frequency bands.

SECTION 9. FINAL PROVISION

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

9.2 This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation and three (3) certified true copies are furnished the UP Law Center.

Quezon City, Philippines 23 AUGUST 2005.

RONALD OLIVAR SOLIS
Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

JAIME M. FORTES, JR.
Deputy Commissioner