

# Competition in the Philippine Telecommunications Sector

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## INTRODUCTION

The basic economic theory states that unrestricted entry and robust competition create the most economic wealth for any society. With a more competitive industry, efficiency gains are to be achieved. Competitive and open environment in telecommunications should therefore be pursued to ensure that the society gets the most economic wealth from telecommunications.

This paper attempts to present the state of competition in the Philippine telecommunications sector from the viewpoint of the regulator.

The telecommunications sector is unique. It was regarded as a natural monopoly similar to the electric power sector until the 1990's when other forms of access technologies such as radio or wireless access that are more cost-effective were developed and made available. The development in access technologies opened the window for new entrants into the access services. The telecommunications sector was then opened to competition in most countries of the world including the Philippines.

Republic Act No. 7925 known as the Public Telecommunications Policy Act (1995) mandates the National Telecommunications Commission (NTC), the principal administrator of said law, to foster a healthy competitive environment, 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. The NTC since then has promulgated rules and guidelines in compliance with this mandate. Some of the issued rules and guidelines are briefly discussed in this paper.

How do we determine whether or not the NTC has complied with its mandate to foster a healthy competitive environment?

In 1997 the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) has developed a Reference Paper on Basic Telecommunications. The Reference Paper outlines the things that a regulator should accomplish to ensure effective competition in the telecommunications sector.

We shall be using the WTO Reference Paper on Basic Telecommunications as our gauge in determining compliance by NTC of its mandate under RA7925.

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## **BENCHMARK**

To gauge how far the Commission has gone in fostering healthy competitive environment the WTO Reference Paper on Basic Telecommunications (Paper) shall be used. The Paper touches on four (4) areas, namely: competitive safeguards, interconnection, transparency, and independence of regulator.

### ***1. Competitive Safeguards***

The Paper suggests that anti-competitive practices must be prevented and appropriate measures must be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. The anti-competitive practices include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

### ***2. Interconnection***

Interconnection must be ensured at any technically feasible point in the network. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favorable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, or terms, conditions (including technical standards and specifications) and cost-oriented rates that a transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

The procedures for interconnection negotiations must be made publicly available including interconnection agreements and reference interconnection offer.

A service supplier requesting interconnection must have recourse, either at any time or after a reasonable period of time which has been made publicly

known to an independent regulatory body to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

### **3. *Transparency***

Where a license is required, the following shall be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a license and
- (b) the terms and conditions of individual licenses.

The reasons for the denial of a license shall be made known to the applicant upon request.

The procedures for the allocation and use of scarce resources, such as frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

### **4. *Independent Regulator***

The regulatory body must be separate from, and not accountable to, any supplier of telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

## **THE NTC'S SCORECARD**

### ***A. Independent Regulator?***

The NTC was created in 1979 pursuant to Executive Order 546. NTC is a merger of the Telecommunications Control Bureau (TCB) and Board of Communications (BOC). The TCB before the merger regulates all radio stations including radio stations owned and operated by public telecommunications entities (PTEs) and broadcast entities. BOC, on the other hand, regulates the operation of public telecommunications networks and systems and the provision of public telecommunications and broadcast services to the public.

Under EO546 the NTC exercises the following functions, among others:

- a. Regulation of communication utilities and services, radio communications systems, wire and wireless telephone and telegraph systems, radio and television

broadcasting system and other similar public utilities including the rates for the services;

- b. Grant permits and licenses for the use of radio frequencies; and
- c. Management of the radio spectrum;

The NTC is composed of a Commissioner and two Deputy Commissioners, one of whom shall be a lawyer and the other, an economist. The NTC is under the supervision and control of the Ministry of Transportation and Communications (now Department of Transportation and Communications) except with respect to its quasi-judicial function, its decision shall be appealable to the Supreme Court.

Decisions of the NTC were signed only by the Commissioner from 1979 until 1997 when the Supreme Court in its decision in the case between Bell Telecommunications, Inc. and NTC ruled that the NTC is a collegial body.

RA7925, the Public Telecommunications Policy Act, which was enacted in 1995, has given NTC additional responsibilities, among others:

- a. Adopt an administrative process which would facilitate the entry of qualified service providers and adopt pricing policy which would generate sufficient returns to encourage them to provide basic telecommunications services in unserved and underserved areas;
- b. Mandate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services;
- c. Foster fair and market conduct through, but not limited to, the protection of telecommunications entities from unfair trade practices of other carriers; and
- d. Promote and protect consumers' welfare.

From 1979 up to end 2007 NTC has had 16 Commissioners. The average length of service of a Commissioner is 21 months. The longest term is 6 years and 7 months and the shortest term is 2 months. The Commissioner serves at the pleasure of the appointing authority. A Commissioner has no fixed term of office.

*Income/Appropriations of the NTC*

Following is the summary of the income and appropriations of the NTC from 2001 to 2007.

Year	Total Collections (PhP)	Appropriations (PhP)	% of Appropriations/Collection
2001	1,245,688,099.29	145,279,000.00	11.67
2002	1,423,730,473.44	147,697,000.00	10.37
2003	1,780,666,883.03	139,068,000.00	7.81
2004	1,495,221,468.13	139,874,000.00	9.35
2005	2,268,805,306.97	150,023,000.00	6.61

2006	2,125,640,356.97	143,971,000.00	6.77
2007	2,115,797,481.25*	203,201,000.00	9.60*

\* as of October 31, 2007

The figures show that the annual appropriation of NTC is less than 10% of its annual total income. The bulk of the income of the NTC is derived from supervision and regulations fees (SRF) and spectrum user fees (SUF) paid by the public telecommunications and broadcast entities. NTC's income is more than sufficient to cover its expenses.

## CONCLUSION

**NTC is separate from, and not accountable to, any supplier of telecommunications services but since the Commissioners of NTC has no fixed term of office and that it has no fiscal autonomy, NTC appears not totally independent. There is a need to give the Commissioners fixed term of office and the NTC fiscal autonomy to minimize, if not eliminate political pressures and make the NTC totally independent.**

### *B. Transparency?*

The NTC grants authorizations to install, operate and maintain public telecommunications networks and facilities and offer public telecommunications services, broadcast stations and cable television networks and services. It also grants permits and licenses for radio stations. The criteria and procedures for the grant of authorizations, permits and licenses are open to the public and posted in the NTC website.

The reasons for the denial of any application for authority and/or permits and licenses are made known to the applicants. The applicants can appeal the denial. The timeline for the processing of permits and licenses are publicly available. The timeline for the processing of applications for authorizations, however, cannot be fixed because the applications undergo quasi-judicial process.

The procedure for the allocation and assignment of scarce public resource such as radio frequencies and numbers and the state of the allocated frequency bands are open to the public except the detailed assignments of the radio frequencies. The process is transparent and non-discriminatory.

The NTC promulgates rules and guidelines to implement the policies enunciated by law and by the Office of the President. In the exercise of its quasi-legislative power, the NTC conducts public consultations and hearings.

## CONCLUSION

**The processes at NTC are substantially transparent.**

### *C. Competitive Safeguards (anti-competitive subsidization)?*

#### *1. Virtual Monopoly of PLDT*

Prior to the issuance by the Department of Transportation and Communications (DOTC) of Department Circular 87-188 in 1987, the general policy of the government is integration of telecommunications companies by service. That is, only one company shall provide the national and international long distance voice services. That company should be the national voice carrier. At that time the national voice carrier was Philippine Long Distance Telephone Company (PLDT). All public coastal station services providers shall be integrated into one company. And so on. However, status quo was ordered in the international telex and data services. At that time there were four (4) international telex and data services providers, namely: Eastern Telecommunications Philippines, Inc. (ETPI), Philippine Global Communications, Inc. (PhilCom), Globe Mackay Cable and Radio Corporation (GMCR), the predecessor of Globe Telecom Inc. and Capitol Wireless, Inc. (CapWire).

#### *2. Regulated Competition*

DOTC Department Circular No. 87-188 enunciated the policy of regulated and fair competition in the telecommunications market. At that time, one of the areas identified by the NTC where there should be open competition is in the provision of customer premises equipment (CPE). CPEs are equipment used by the subscribers and end-users to connect to the services offered by the public telecommunications entities. The Commission promulgates MC No.1-04-88 in 1998 allowing customers to purchase their own terminal equipment from any dealer or supplier provided that such equipment is type approved by the Commission.

In 1988 the Commission broke the monopoly enjoyed by Pocketbell in the radio paging service. Pocketbell started commercial operations in 1975. In 1989 the Commission authorized Philippine Global Communications, Inc. (Philcom) and Eastern Telecommunications Philippines Inc. (ETPI) to provide international long distance telephone service. Several telecommunications companies were authorized to provide national long distance telephone service. PLDT's monopoly in the international and national long distance telephone services was likewise broken.

Also in the same year Express Telecommunications Company, Inc. (Extelcom) was authorized to provide cellular mobile telephone service (CMTS) providing competition to PLDT. A few months after, Pilipino Telephone Corporation (Piltel) was authorized to provide CMTS. Since PLDT and Piltel share the same CMTS frequencies, Piltel served the subscribers of PLDT. Piltel is a subsidiary of PLDT.

In 1991 DOTC issued DC No. 91-260 specifically directing NTC to define the boundaries of local exchange areas and authorize only one franchised Local Exchange Carrier within such areas. The DC exempted local exchange service from the coverage of DC No. 87-188. The local exchange service remained a monopoly until 1993 when EO109 started to be implemented.

### **3. *Universal Service Obligation***

Prior to the 1970's, the Bureau of Telecommunications (BUTEL), the predecessor of the Telecommunications Office (TELOF) assumed the obligation to provide universal service. BUTEL since its creation had installed local exchange lines and provide telephone service in as many cities and municipalities nationwide. In mid 1970's, BUTEL was ordered to stop installing local exchange networks and provide telephone service in PLDT service areas. In return the government has imposed universal service obligation to PLDT.

RA6849 enacted in 1989 created the Municipal Telephone Projects Office (MTPO) mandating such office to install, operate and maintain public calling offices or stations in all cities and municipalities in a period of 10 years. The project was renamed "*Telepono sa Barangay (TSB)*" extending the installation and operation of public calling offices/stations in the barangays. MTPO was able to install 1,055 public calling stations in 47 provinces while TSB was able to install public calling stations in 2,295 barangays in 15 provinces.

#### **3.1. *Backlog in Local Exchange Lines***

In 1992, the backlog in servicing applications for local telephone lines reached 1 million. The unexpressed demand, those that opted not to apply for telephone lines because they know that there are no telephone lines available, was estimated to be 1 million. Also at that time only 20% of the cities and municipalities have local telephone networks.

To address the backlog and to expand the local telephone network to cover more areas, the Office of the President issued EO109 mandating, among others, all authorized international gateway facilities operators to install 300 local exchange lines in unserved and underserved areas per 1 switch termination. The minimum number of international switch terminations is 1,000. At that time, international long distance telephone services are considered very profitable and can provide cross subsidy to local exchange services. Other carriers offering profitable services are likewise obliged to install local exchange lines. The rules implementing EO109 obliged, in addition to international long distance telephone service providers, all cellular mobile telephone service operators to install at least 400,000 local exchange lines. For every 10 local exchange lines installed in urban areas one local exchange line should be installed in rural areas.

### 3.2. Service Area Scheme

To implement EO109, the Commission used as strategy the service area scheme (SAS). The scheme (SAS) divided the country into 11 service areas. The 11 service areas were identified after a series of consultations with the industry players. The areas are combinations of areas with high demand (urban) and low demand (rural) for local telephone service using the demand forecast prepared by DOTC in 1991.

The carriers covered by EO109 were in the process of complying with their obligations when RA7925, the Public Telecommunications Policy Act, was enacted. RA7925 has adopted the universal service obligation under EO109 but has shortened the period of compliance from 5 to 3 years.

The goal of the SAS was to cover at least 85% of the areas nationwide.

The first 2 years of the 3-year period of compliance showed a very high increase in the number of local exchange lines installed and the number of areas covered. The installation of local exchange lines slowed down in the latter half of 1997 when financial crisis hit the region including the Philippines.

Below is a table showing the number of installed local exchange lines and the number of subscribed lines from 1992 to 2004.

<i>Year</i>	1992	1993	1994	1995	1996	1997	1998
<i>Installed</i>	887,229	965,330	1,109,652	1,409,639	3,352,842	5,775,556	6,641,480
<i>Subscribed</i>	887,229	965,330	1,109,652	1,409,639	1,825,544	2,056,742	2,512,113
<i>Areas Served</i>	300	300	300	425	490	591	746

<i>Year</i>	1999	2000	2001	2002	2003	2004
<i>Installed</i>	6,811,616	6,905,962	6,918,726	6,918,726	6,918,726	6,918,726
<i>Subscribed</i>	2,892,333	3,061,387	3,315,091	3,310,933	3,299,361	3,437,491
<i>Areas Served</i>	757	815	864	917	940	967

The data showed that the number of areas provided with local exchange lines increased from 20% in 1992 to 46% in 1998 and 57% in 2004. The 26% increase was achieved within the period 1993 to 1998. This is the result of the mandatory installation of local exchange lines under the SAS. The result, however, is 28% short of the goal of the SAS.

The mandatory installation of a minimum of 300,000 and 400,000 local exchange lines imposed on international carriers and cellular mobile telephone service operators has increased the number of installed lines from 887,229 in 1992 to 6,641,480 in 1998, a 650% increase or an average annual increase of around 108%.

### ***3.3. Oversupply of Local Exchange Lines and Closure of the SAS***

There is no doubt that the SAS has greatly improved and increased the telephone density substantially achieving its purpose. The mandatory installation of minimum number of local exchange lines, however, has resulted to oversupply of local exchange lines. Due to the 1997 Asian financial crisis and the popularity of the cellphone service, the demand for local exchange lines has declined to a level way below the demand forecast prepared by DOTC in 1991. This resulted in high un-subscribed capacity.

To address the oversupply of local exchange lines, the Commission issued MC08-07-2001 allowing local exchange service operators to offer local measured service including prepaid services. While said measure helped the local exchange carriers, the increase in the take up of local exchange lines was very minimal.

The cost of maintaining the unsubscribed lines is shouldered by the subscribers.

In 2002, the Commission has recommended to the Honorable Secretary of the Department of Transportation and Communications the termination of the SAS and the adoption of a new strategy in order not to aggravate the oversupply situation and still comply with the mandatory installation of local exchange lines. The Honorable Secretary approved the recommendation on 18 April 2002.

The new strategy requires the carriers covered by EO109 and RA7925 to install public calling stations (PCS) instead of local exchange lines in unserved areas. Corresponding local exchange line credits shall be given to the carriers depending on the economic classification of the unserved areas.

### ***4. Cross Subsidy***

RA7925 mandated cross subsidy to local exchange networks. The following are the provisions of law on cross subsidy to local exchange services:

- a. Sec. 5.c provides that NTC shall "Mandate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services through appropriate modalities of interconnection and a reasonable and fair level of charges which make provision for cross subsidy to unprofitable local exchange service areas so as to promote telephone density and provide the most extensive access to basic telecommunications services available at affordable rates to the public";
- b. Second paragraph, Sec. 18 provides that "In adopting or approving access charge formula x x x x x x the Commission shall take into consideration the costs of the facilities needed to complete the interconnection, the need to provide cross subsidy to local exchange carriers to enable them to fulfill the primary national objective of increasing telephone density in the country and assure a rate of return on the total local exchange network investment that is at parity with those earned by other segments of the telecommunications industry"

The law acknowledges that local exchange service is not profitable and specifically provides that it shall be cross subsidized. The cross subsidy shall come from interconnection access charges paid by providers of international and national long distance services and mobile telephone service for accessing the local exchange networks.

The US Federal Communications Commission issued an Order setting a cap on international accounting rates in 1996. Said FCC Order set the accounting rate cap to USD0.38 per minute for all US traffic terminating in the Philippines. Prior to the issuance of the Order the accounting rate ranges from more than USD1.00 to USD3.00 per minute. The accounting rate settlement is normally 50:50, i.e., if the accounting rate is USD1.00 per minute, Philippine carriers receive USD0.50 per minute. With the said Order the margin of the Philippine international carriers decreased substantially affecting their ability to cross subsidize the local exchange service.

The profitability of the national long distance service on the other hand has been affected by text messaging service which started to become popular in 1999. The revenues derived from the national long distance service started to decline in 1999.

#### ***4.1. Rate Rebalancing***

In a meeting with the industry presided by the Commission sometime in 1996, the meeting agreed that in order to have effective competition in the local exchange service, the service rates should be rebalanced. Local exchange service is priced below cost in order to make said service affordable to many households. Rebalancing of rates would result to higher service rates. In order to equitably distribute the increase in the rates, the service should be metered. The heavy users will have to pay more than the light users.

Metered local exchange service will also make possible the imposition of interconnection charges between two local exchange networks operating within one local exchange area. With fixed monthly rates, the imposition of interconnection charges is not possible. When there are interconnection charges the interconnecting LECs will have the incentive to provide the interconnection facilities as every access to each network revenues are derived.

The Commission, in 1997 granted PLDT authority for the metering of local telephone calls. The House of Representatives conducted public hearings questioning the decision of the Commission. In 1999, the Commission modified the decision allowing PLDT to introduce metering of local telephone calls as an option the subscriber can avail. PLDT was ordered to maintain its fixed monthly rates. Subsequently in 2001 under MC 6-9-2001, the local exchange carriers are allowed to competitively offer metered local telephone service and prepaid local exchange services.

In 2005 NTC promulgated MC 05-08-2005 classifying voice over IP (VoIP) as a value added services allowing any entity at least 60% Filipino-owned to register and offer VoIP services. These Rules resulted to further decreases in international telephone service rates

The decrease in the ability of the international and national long distance telephone service to provide cross subsidy to the local exchange service puts a pressure on the cellular mobile telephone service.

#### ***4.2. Mobile Telecommunications Services***

In May 1988 the Commission issued MC No. 5-11-88 prescribing rules and regulations on the establishment and operation of cellular mobile radio systems and re-allocating frequency bands 825-845MHz paired with 870-890MHz and 890-915MHz paired with 935-960MHz for CMTS networks. In July of the same year, Philippine Long Distance Telephone Co. (PLDT) was authorized by the Commission to install, operate and maintain cellular mobile telephone system (CMTS) and offer cellular phone service using the advanced mobile phone system (AMPS), an American CMTS system standard operating in the 800MHz band. After 3 months from commercial operations the subscribers reached 3,000. PLDT applied and was authorized by the Commission to expand its CMTS network to serve 10,000 subscribers.

The Commission authorized Express Telecommunications Company, Inc. (Extelcom) and Pilipino Telephone Company (Piltel) were authorized to install, operate and maintain CMTS and offer cellular phone service using AMPS standard in December 1988 and October 1990 respectively. The frequency band assigned to PLDT in its CMTS network, AMPS Band A, was assigned to Piltel. AMPS Band B frequency band was assigned to Extelcom. PLDT, in 1990 decided to let Piltel serve its 10,000 subscribers.

PLDT questioned the authority granted to Extelcom arguing that the franchise of Extelcom does not allow it (Extelcom) to operate mobile telephone network and offer mobile telephone service to the general public before the Court of Appeals. The case went up to the Supreme Court (SC). In 1991, the SC affirmed the CMTS authority granted to Extelcom by NTC. With Extelcom's more than two (2) years delay in the CMTS market, Piltel enjoyed a head start.

In the third quarter of 1992, the Department of Transportation and Communications (DOTC) issued Department Circular No. 92-269 superseding Department Circular No. 90-253. DC No. 90-253 limited the number of nationwide CMTS operators to two (2). The Commission in compliance to DC No. 92-269 issued MC No. 20-12-92 re-allocating frequency bands 824-849MHz paired with 869-890MHz and 890-915MHz paired with 935-960MHz for CMTS networks for CMTS and opened the market to more CMTS players.

The Commission authorized three (3) more CMTS operators, namely: Smart Communications, Inc. (Smart), Isla Communications Corporation (Isla now Innove), and Globe Telecom Inc. (Globe) in May 17, 1993, September 29, 1993 and September 30, 1993 respectively. The other applications for CMTS authority were archived due to non-availability of frequencies for CMTS after the re-allocated frequencies were assigned to Smart, Innove and Globe. Globe and Innove opted to build GSM networks (digital European CMTS standard) while Smart opted to install ETACS (Extended Total Access Communications System network. In less than 4 years, Smart has overtaken Piltel as the leader in the CMTS market.

The Commission, in 1997, issued MC No. 09-10-97 setting the rules and the criteria for the selection of qualified applicants to bid for the assignment of the allocated frequencies for public mobile telephone service (PMTS) in the 1800MHz and 1900MHz. The Commission has received 21 applications for PMTS operating in the 1800MHz band (known as personal communications networks, PCN, in Europe) and 1900MHz band (known as personal communications system, PCS, in America).The process, however, was stopped because of a legal issue raised by Bell Telecommunications, Inc. (Belltel) on the criteria used in the selection of the pre-qualified applicants.

In 1998, the CMTS operators requested for additional frequencies to serve the increasing demand for GSM cellphones. At this time the short messaging service or text messaging service started to gain popularity. In the same year, the Commission called the PCS/PCN applicants to a conference to get their concurrence to the assignment of 1800MHz band to existing CMTS operators. The PCS/PCN applicants concurred with the plan provided that their applications be treated as applications for the third generation mobile telecommunications system (3G). The Commission, in 1999, issued MC No. 03-03-99 allocating some frequencies in the 1800MHz band additional frequencies for existing CMTS operators.

The Commission in 2000 issued MC No. 09-03-2000 allocating more frequencies in the 1800MHz band for assignment to existing CMTS operators and to other public telecommunications entities that will be authorized to install CMTS networks and provide CMTS services. Bayan Telecommunications, Inc. (Bayantel) and Digital Telecommunications Philippines Inc. (Digitel) were granted authorizations to install CMTS networks and provide CMTS services in 2000. The authority granted to Digitel was later transferred to Digitel Mobile Philippines, Inc. (Sun Cellular), a wholly-owned subsidiary of Digitel. Extelcom questioned the authority granted to Bayantel before the Court of Appeals. The Supreme Court finally ruled in favor of Bayantel in 2003.

The number of GSM subscribers increased exponentially starting 1999 to 2002 because of the popularity of text messaging service. The Philippines has been tagged as the text capital of the world.

**Number of CMTS Subscribers**

<i>Operator</i>	1994	1995	1996	1997	1998	1999	2000
<i>Extelcom</i>	44,000	100,126	152,615	232,000	225,000	198,918	194,452
<i>Digitel</i>	*	*	*	*	*	*	*
<i>Globe</i>	9,012	71,000	95,342	168,545	320,562	1,097,933	2,744,641
<i>Smart</i>	147,397	322,736	711,067	943,075	1,188,090	1,553,029	3,515,293
<b>TOTAL</b>	<b>200,409</b>	<b>493,862</b>	<b>959,024</b>	<b>1,343,620</b>	<b>1,733,652</b>	<b>2,849,880</b>	<b>6,454,359</b>

<i>Operator</i>	2001	2002	2003	2004	2005	2006
<i>Extelcom</i>	94,452	9,896	9,896	3,670	0,374	10,374
<i>Digitel</i>	*	*	32,467	,200,000	,860,000	,000,000
<i>Globe</i>	5,599,867	6,753,799	8,800,000	12,513,973	12,500,000	16,659,742
<i>Smart</i>	6,377,682	8,599,306	12,944,197	19,208,232	20,408,621	24,175,384
<b>TOTAL</b>	<b>12,159,163</b>	<b>15,383,001</b>	<b>22,509,560</b>	<b>32,935,875</b>	<b>34,778,995</b>	<b>42,845,500</b>

NOTE: \* Started commercial operations in 2003

In December 2005, the Commission released its decision awarding 3G frequencies to four (4) applicants who passed the criteria pursuant to MC No. 07-08-2005. 3G frequencies were awarded to Smart Communications, Inc., Globe Telecom, Inc., Digitel Mobile Philippines, Inc. (Sun Cellular) and Connectivity Unlimited Resource Enterprise (CURE). These awardees have until 30 June 2008 to start commercial operations. Smart and Globe has started offering 3G services since middle of 2006. Sun Cellular and CURE are in the process of testing their respective 3G networks.

The four 3G operators have opted to install WCDMA, a European standard system for 3G.

The mobile telecommunications services remain profitable.

#### **4.3. Removal of Cross Subsidy**

Cross subsidy per se is not prohibited. What is prohibited is when a PTE is engaged in anti-competitive cross subsidization. Cross subsidy to unprofitable local exchange service is allowed. As a matter of fact it is mandatory pursuant to RA7925.

However, RA7925 imposes the obligation to provide cross subsidy to local exchange service only to a specific segment of the telecommunications industry, namely: international and national long distance services and radio mobile telephone service. Due to developments in technology coupled with the international pressure to reduce settlement rates, the margin of the international and national long distance

services providers continues to shrink affecting their ability to cross subsidize the local exchange service.

Below are figures showing the financial performance of PTEs with international and national long distance networks, PTE with only local exchange service in more than five local service areas and PTE operating in only five local service areas.

***Company A (Large PTE with international networks but without mobile networks)***

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	35.62B	42.66B	41.72B	44.27B	46.06B	44.90B	45.15B	46.02B	48.08B	47.57B
<i>OpExp</i>	22.03B	35.40B	34.43B	38.90B	39.00B	38.75B	40.94B	38.36B	46.12B	46.92B
<i>LocRev</i>	9.13B	15.02B	15.27B	18.25B	21.48B	21.11B	20.29B	19.91B	19.96B	16.42B
<i>NLDRev</i>	5.93B	8.48B	9.81B	10.14B	8.22B	7.58B	6.35	6.66B	4.97B	6.63B
<i>ILDRev</i>	17.76B	15.90B	14.44B	12.85B	11.27B	9.99B	12.13B	11.51B	11.75B	9.48B
<i>Dat Rev</i>			1.95B	2.85B	4.71B	5.37B	5.61B	6.93B	10.26B	13.57B

***Company B (Medium PTE with international networks but without mobile networks)***

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	710M	627M	3.68B	4.82B	6.52B	5.60B	6.23B	5.78B	5.45B	4.91B
<i>OpExp</i>	1.82B	3.06B	3.18B	3.60B	5.17B	4.43B	6.26B	4.25B	4.19B	4.24B
<i>LocRev</i>	624M	1.19B	1.45B	2.04B	2.99B	2.71B	3.23B	2.62B	2.67B	2.56B
<i>NLDRev</i>	437M	841M	1.15B	1.69B	888M	1.24B	1.05B	906M	822M	295M
<i>ILDRev</i>	756M	1.03B	1.08B	1.09B	2.64B	1.65B	1.95B	2.26B	1.96B	1.66B

***Company C (Medium PTE with international networks but without mobile networks)***

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	2.12B	4.65B	4.90B	5.40B	4.82B	4.0B	3.83B	4.07B	4.05B	4.52B
<i>OpExp</i>	2.29B	4.31B	5.44B	5.38B	5.79B	4.54B	4.95B	4.68B	4.90B	4.60B
<i>LocRev</i>	989M	2.26B	1.86B	2.02B	1.95B	1.84B	1.80B	1.88B	1.90B	1.89B
<i>NLDRev</i>	217M	591M	569M	487.6M	498.3M	454.6M	254.8M	156.3M	161.2M	261.8M
<i>ILDRev</i>	574M	1.23B	1.32B	948.4M	909.2M	678.8M	823.9M	1.10B	795.8M	834.5M

***Company D (Medium PTE without international and mobile networks)***

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	238.2M	325.5M	332.4M	341.4M	369.9M	367.1M	307.2M	329M	309M	301M
<i>OpExp</i>	162.7M	234.8M	263.6M	270.9M	303.1M	321.9M	283.5M	371M	307M	276M
<i>LocRev</i>	108.1M	124.1M	116.6M	144.6M	163.4M	157.4M	149.4M	148M	155M	172M
<i>NLDRev</i>	86.8M	132.7M	133.1M	120.1M	161.2M	163.8M	123.1M	104M	89M	71M
<i>ILDRev</i>	43.4M	80.5M	82.7M	76.8M	45.2M	45.9M	34.7M	76M	65M	58M

**Company E (Small PTE without international and mobile networks)**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	21.16M	25.04M	27.10M	30.42M	30.70M	31.82M	35.70M	45.39M	43.45M	40.99M
<i>OpExp</i>	21.47M	25.19M	27.56M	31.54M	31.60M	32.01M	35.48M	48.92M	50.35M	52.88M
<i>LocRev</i>	11.35M	13.60M	14.27M	16.33M	16.00M	12.78M	14.38M	18.71M	16.62M	19.04M
<i>NLDRev</i>	8.65M	10.27M	11.48M	13.18M	14.23M	13.85	20.89M	29.40M	26.29M	21.32M
<i>ILDRev</i>	1.05M	1.10M	1.24M	0.80M	0.44M	5.13M	0.39M	0.43M	0.54M	0.63M

On the other hand the financial performance of the mobile telecommunications service providers remains positive.

**Company F**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	939M	1.64B	10.02B	15.89B	29.80B	43.48B	60.74B	72.3B	78.98B	83.07B
<i>OpExp</i>	3.61B	4.99B	8.70B	15.23B	22.66B	34.98B	38.10B	44.98B	44.38B	45.39B
<i>NLDRev</i>					102M	170M	230M	388M	50M	104M
<i>ILDRev</i>	165M	473M	539M	233M	22M	13.9M	33M	48.85M	5.67M	17.70M
<i>Innt Rev</i>					6.96B	11.07B	15.06B	17.02B	17.58B	17.52B
<i>MobRev</i>	4.47B	6.57B	8.54B	15.11B	19.90B	28.52B	39.93B	52.27B	55.64B	56.20B

**Company G**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>OPRev</i>	2.63B	5.45B	9.44B		39.93B	53.19B	57.98B	61.68B	61.74B	60.25B
<i>OpExp</i>	3.39B	5.14B	7.73B	15.23B	20.78B	31.25B	38.97B	40.78B	44.05B	41.43B
<i>NLDRev</i>	70.18M	64.94M	177.8M	421.2M	1.87B	1.69B	1.29B	511M	402M	357M
<i>ILDRev</i>	599M	1.28B	1.74B	657M	2.52B	3.19B	3.42B	3.28B	2.48B	696M
<i>Innt Rev</i>					8.21B	12.80B	15.42B	12.87B	12.78B	13.89B
<i>MobRev</i>	1.35B	2.57B	6.12B	15.69B	17.68B	26.31B	31.55B	38.46B	37.36B	35.69B

**CONCLUSION**

It can be shown from the figures cited above that the ability of the national and international long distance telephone services to cross subsidize the unprofitable local exchange service is adversely affected by the continues decline in the revenues from these services. With substantial reduction in the margin from these services there is a need to reduce the cross subsidy. It would be best if a legislation establishing a national ICT development fund is enacted.

Mandating a particular segment of the telecommunications industry to cross subsidize the unprofitable local exchange service is anti-competitive. While the national and international long distance telephone service operators are required to

**provide cross subsidy to unprofitable local exchange service, the VoIP operators and other operators of profitable broadband services are not required. The law should therefore be amended to mandate all providers of telecommunications services to provide cross subsidy in a transparent manner.**

#### **D. Interconnection?**

##### **1. Equal Access**

In order for all national and international long distance telephone service operators to have equal access to the subscribers of local telephone service, the NTC has assigned three (3) digit access codes to all long distance service providers. Subscribers have to dial the 3-digit access code to use the national and international networks of the long distance services providers. Code "0" and code "00" are default access codes for national and international long distance services respectively.

While the use of 3-digit access codes is necessary to maintain level playing field, it has to be supported by agreements on collections. In the case of Philcom, it opened its international networks to all subscribers of PLDT. The subscribers have to dial access code "102" to access Philcom's international networks and avail of international long distance service. Philcom had difficulty collecting and was not able to collect from the users of its network as it has no record of the addresses of the subscribers. This resulted in Philcom's writing off huge amounts of money. Later, Philcom resorted to pre-registration. Only those pre-registered can avail of the international long distance service of Philcom.

Before the entry of Pilipino Telephone Corporation (Piltel) in the radio paging service, the radio paging service providers were accessed using a 7-digit telephone number. When Piltel begun offering the service, PLDT has agreed to allow Piltel, a subsidiary of PLDT, to use 3-digit access code. This prompted the Commission to assign 3-digit access codes to all radio paging service providers.

All other networks were then assigned access codes each.

##### **2. Mandatory Interconnection**

Unlike other services where service providers have direct access to consumers, national and international long distance services providers do not have direct access to consumers. These providers must interconnect their networks to the network providers providing direct access to consumers.

With the opening of competition in the national and international long distance service, policy and rules on mandatory interconnection become necessary. DOTC DC No. 90-248 which was issued in 1990 enunciated the following policies:

- a. All facilities offering public telecommunications services shall be interconnected into the nationwide telecommunications networks;

- b. The interconnection of networks shall be effected in a fair and non-discriminatory manner and within the shortest timeframe practicable;
- c. The precise points of interface between service operators shall be as defined by NTC, and the apportionment of costs and division of revenues resulting from interconnection of telecommunications network shall be approved and/or prescribed by the NTC;
- d. All other matters being equal, traffic settlement agreements shall be based upon a recovery of toll-related costs and a fair return on the investment of both companies in the facilities employed in making the toll calls exchanged between the systems. Unless otherwise mutually agreed, the toll carrier shall meet the local exchange carrier at the main distribution frame of the exchange designated by the local exchange carrier; and
- e. Subsidies shall be recognized and approved on the basis of sound public policy.

To implement the policies enunciated under DOTC DC No. 90-248, the NTC promulgated MC No. 7-13-90 in July 1990. MC No. 7-13-90 provides, among others,

- a. Adherence by interconnecting parties to the prescribed technical and service performance standards;
- b. Party that fails to meet standards shall provide interface equipment and devices; trunk requirements shall be based on best estimates and studies conducted jointly by the parties;
- c. Parties shall share the cost of interconnection in accordance with their respective responsibilities; and, traffic settlement agreements shall be based upon: (1) recovery of toll-related costs and a fair return on investment of both companies in the facilities used in making the toll calls between the systems and (2) subsidy to local exchange carriers.

The revenue sharing between the interconnecting parties pursuant to the decision of NTC in CN88-145 is 30-40-30 (originating LEC - national long distance service provider - terminating LEC) for national toll traffic. For international toll traffic, the LEC retains 9% of the collection rate (amount paid by the calling party in the Philippines for outgoing paid calls. For incoming calls the LEC receives 9% of the gross collection rate (the Philippines share in the incoming paid international calls).

Recognizing that interconnection is very essential for effective competition in the telecommunications industry and in order to create a universally accessible and fully integrated nationwide telecommunications network and encourage greater private sector investment, the Office of the President issued Executive Order No. 59 mandating compulsory interconnection of authorized public telecommunications carriers. EO59 provides, among others,

- a. Interconnection shall be within a reasonable time frame and sufficient capacity to conveniently meet all reasonable traffic demands;

- b. Interconnection shall permit customer of either part freedom of choice on whose system the customer wishes his call to be routed;
- c. Interconnection shall be negotiated and effected through bilateral negotiations between the parties. If parties fail to reach an agreement within ninety (90) days from date of notice to NTC, the NTC shall, on application of any of the parties, determine the terms and conditions that the parties have not agree upon;
- d. Interconnection shall allow re-routing of calls to other international gateways in case an international gateway is rendered inoperative. A public telecommunications carrier shall be allowed to operate and international gateway as may be necessary to service its own network requirements. Subsidiaries of authorized international gateway operators shall not be allowed to operate another international gateway;
- e. For traffic settlements:
  - 1. Midpoint circuit interconnection between parties;
  - 2. For LEC settlement shall be on the basis of volume of traffic on the local connection based on per minute with day and night rate differential. In case of store-and-forward services, settlement shall be on the basis of equivalent monthly trunk line charges as generally charged by the LEC to its customer owning their own PABX;
  - 3. For national long distance service, the per minute rate shall be based on the principle of recovery of the toll related cost and fair return of the investment of the facilities employed in making toll call exchange between the systems;
  - 4. Subsidies which shall be approved on the basis of the sound public policy shall be allowed in two (2) ways: (a) surcharge to be kept by the system that employs the operator for operator-assisted calls, and (b) access charge - assistance to the unprofitable rural telephone development, remote pay stations, etc.
- f. Interconnection shall be effected in a non-discriminatory manner; and
- g. Any violation of the EO and after due notice and hearing, the NTC may impose the following penalties:
  - 1. Imposition of fines, penalties and sanctions as may be allowed or prescribed by existing laws;
  - 2. Suspension of further action on all pending and future applications for permits, licenses or authorizations of the violating carrier or operator;
  - 3. With the approval of the President, directive to appropriate financial and lending institutions to withhold the releases on any loan or credit accommodation which the violating carrier or operator may have with them;
  - 4. Disqualification of the employees, officers or directors of the violating carrier from being employed in any enterprise or entity under the supervision of the NTC; and

5. In appropriate cases, suspension of the authorized rates for any service or services of the violating carrier or operator without disruption of its services to the public.

To implement EO59, NTC has promulgated MC9-7-93 in July 1993. The salient provisions in said MC are:

1. All IXC's and IGF's shall interconnect with all LEC's to provide freedom of choice to toll facilities.
2. Interconnection among authorized public telecommunications carriers shall be compulsory and negotiated between parties. If after 90 days from start of negotiations an agreement cannot be reached, any of the parties can request the Commission to formally hear the parties to draw up the terms and conditions of the Interconnect Mandate.
3. The transmission link/s and terminating facilities needed to effect interconnection shall be provided by each of the interconnecting parties in accordance with the traffic requirements of each of the parties.
4. Public telecommunications carriers shall provide as many points of presence as necessary to effect an efficient interconnection.
5. Local exchange provider or carrier (LECs) shall agree with the inter-exchange carrier and/or the IGF operator interconnecting with the former to provide an exclusive fixed carrier access code with prior coordination and subject to the approval of the Commission, in order that any subscriber of the LEC may access the long distance carrier of choice.
6. The LEC's shall prepare "cost manual" which shall be the basis of the access charge.

### ***3. Delays in Interconnection***

Despite the promulgation of MC9-7-93, there were delays in the interconnection of PTEs due to prolonged negotiations. Parties to the negotiations consume a lot of time discussing details of the technical and commercial terms. This prompted the Commission to review the rules on interconnection and promulgate MC14-7-2000, Revised Rules on Interconnection, in July 2000. Among the salient points of said MC are:

1. Prescribed obligations on all PTEs and major PTEs. Major PTEs are those that can materially affect the market, directly or indirectly, for basic and/or enhanced telecommunications services as a result of: a) its control over essential facilities; and b) use of its position in the market.
2. PTEs are prohibited to disconnect, disrupt or discontinue an interconnection or bar or in any manner impede the access by its subscribers or customers to subscribers or customers of a PTE interconnected with it without the prior written approval of the Commission.

3. Detailed rules on negotiations, including the date negotiations are considered to have started as basis for the 90-day period of negotiations, mediations and compulsory arbitration and interconnection mandate.
4. Detailed rules on the measurement of calls and collection of charges.
5. Rules in the establishment and location of points of interconnection and interconnection of systems.
6. Sharing of costs of interconnection and efficient provisioning of capacity.
7. Unbundling of network elements.
8. Rules on the maintenance, fault reporting and clearance procedures.
9. Guidelines in interconnect service charging including charging for ancillary interconnect service.
10. Standards for physical and virtual collocation.

While guidelines for interconnect charging were provided in the revised interconnection rules, detailed rules on how interconnect charging are to be computed were not provided. Proposed rules on wholesale charging based on long run incremental costs (LRIC) were prepared and subjected to public hearing. However, strong opposition from service providers, particularly the access providers, stalled the promulgation of the proposed rules. Instead MC No.9-7-2002, Implementing Rules and Regulations for specific guidelines for competitive wholesale charging for interconnect services. The MC, however, just set the general principles relating to the charges for interconnect services.

From 2002 up to 2006, the Commission has mediated 36 interconnection disputes. The disputed issues were:

For new interconnection

1. Commercial (who will shoulder the cost of interconnection)
2. Limited interconnection facilities
3. Technical details (routing of traffic)
4. Allegations of unethical practices committed by access seekers

For existing interconnection

1. Billing dispute (overbilling, toll bypass traffic)
2. Blocking of interconnection due to ISR/bypass
3. SIM blocking (for international SMS due to absence of an interconnection agreement)
4. Technical issues (low completion, restricted access, congestion)
5. Commercial (who will shoulder cost of interconnection for additional E1s)
6. Reduction of domestic access charge
7. Failure to remit payment

To address issue on the provision of interconnect facilities between local exchange networks operating in a local calling area, the Commission promulgated MC No. 9-7-2007, rules on the interconnection of local exchange carriers in local calling areas, in July 2007. The rules specifically provide:

1. No interconnection and access charges between local exchange carriers (LEC) operating in a local calling area.
2. Each LEC shall provide the trunks/circuits necessary to interconnect its local exchange network to the other local exchange network.
3. If the interconnection requires the installation of radio facilities, each interconnecting LECs shall provide the required space and termination free of charge. Each interconnecting LEC shall allow ingress, with at least 24-hr notice, of personnel from the other LEC for the sole purpose of repair and maintenance of the radio facilities.

To address the other issues, to Commission promulgated MC No. 10-7-2007, mandating the development of reference access offers (RAO) to facilitate fair and expeditious interconnection or access between service providers. The MC mandated all PTEs to submit to the Commission RAO for approval. The RAO shall be the minimum access a PTE can offer to access seekers. Access seekers can seek network access and/or access to services/applications.

If an access seeker agrees to the approved RAO of an access provider, there is no need for negotiations. The RAO shall be the interconnection agreement between the access seeker and the access provider. An access seeker can, however, negotiate for better terms. The agreement is subject to the approval of the Commission. Any portion of the agreement better than the RAO shall automatically form part of the RAO.

The rules on RAO, however, cannot be fully implemented as it requires the promulgation of detailed rules on technical, operational and commercial terms. The draft of the proposed detailed rules is being prepared and is expected to be promulgated within the second quarter of 2008.

#### ***4. Case between Globe and Smart on Interconnection of SMS***

In 1999, Smart filed a case against Globe for refusing to interconnect the latter's SMS to the SMS of Smart. Smart has replaced its analog ETACS cellphone network to digital GSM in order to introduce SMS. SMS gained popularity in 1999.

Globe argued that the SMS could not be interconnected to other SMS because it (SMS) is a special feature of the GSM. The Commission in its decision dated 19 July 1999 ruled that SMSs are value added services and should be interconnected. Under the same decision Globe and Smart were meted fines for offering SMS without registration.

Globe appealed the case before the Court of Appeals (CA). The CA issued a temporary restraining order. On 22 November 2002 the CA promulgated a decision affirming in Toto the NTC Order. On the same day, Globe and Smart voluntarily agreed to interconnect their respective SMS systems. Globe filed a Motion for Partial Reconsideration (MR). Globe in its MR sought for scrapping of the fine imposed by NTC. The MR was denied. Globe elevated the case to the Supreme Court (G.R. No. 143964). The SC ruled that NTC cannot impose fine on Globe.

#### ***5. Case between Globe and Smart and Piltel on promotional rates for SMS between Piltel and Smart***

Piltel was allowed to offer “*Gaan Talk*” promo (PhP10/3 minutes call) on 15 March 2006 and “*Gaan Text*” promo (unlimited text) on 06 September 2006 provided that the calls and texts are “on-net” only, i.e., Piltel-Piltel only. On 11 April 2006, NTC allowed Smart to offer promotional on-net text for one day plus a one-time 5-minute on-net call. Smart defined “on-net” texts as texts to brands powered by Smart network. To clarify, Smart and Piltel in separate letters in July 2006 said that “on-net” texts shall be limited to Smart-to-Smart and Piltel-to-Piltel texts. NTC found that text messages are sent between Piltel and Smart. Globe filed two (2) cases against Smart and Piltel for offering promotional rates that are below cost and is therefore predatory and anti-competitive. Smart and Piltel were found to have violated Sec. 4, Article IV of NTC MC No. 14-7-2000 and were required to pay fines in the amount of PhP51,000 (ADM CN2006-040) and PhP364,800 (ADM CN2006-055).

In another case, ADM CN2007-201, Globe prayed that NTC revoke and/or recall its approvals of the “All Texts Plus” promo of Piltel and Smart and the “*Gaan Text Plus P10*” promo of Piltel which were allowed by NTC on 23 March 2007 and 26 March 2007 respectively. The two (2) promos allowed text messages to be sent between Smart and Piltel. NTC found that the questioned promos violated the “non-discriminatory” rule and recalled its approvals as far as texts between Piltel and Smart are concerned.

#### ***6. Competition v Consumer Benefit***

While it is said that competition benefits consumers, the same may not be true in the cases cited above.

When two (2) networks are interconnected, the subscribers of one network can call the subscribers of the other network. The two networks must be connected. Since the traffic between the two networks involves three (3) facilities, namely: network 1, network 2 and the interconnection facilities, there are three costs that should be recovered.

On the other hand, if a telecom service provider uses the network of a network provider and offers the same service as the network operator, the call uses only one

network. Cost of the call is therefore lower than when there are two networks interconnected.

Smaller telcos claim that offering lower prices for “on-net” than “off-net” calls or texts is anti-competition as it undermines the viability of the smaller telcos. On the other hand consumers should not be made to pay for facilities that they do not use.

## **CONCLUSION**

**The NTC has issued rules to address interconnection issues as they developed. NTC has been reactive. NTC can only do much within the limits of the law. The law provides that LECs must be cross subsidized, interconnection charges should therefore include subsidy to LEC. The law also provides that the interconnection charges must be negotiated. Only when the parties cannot come to a mutual agreement within a reasonable time can NTC intervene and approve a formula for interconnection charges. There is a need for a law allowing NTC to prescribe interconnection charges.**

## **SUMMARY**

NTC has tried and continues to try its best to comply with its mandate of fostering healthy competition in the telecommunications market. But its efforts appear not enough to fully realize effective competition as explained in the foregoing discussions. The failure is partly due to the limitations of existing laws and the shortage of experts in the field of telecommunications economics.

### **On the independence of the NTC**

At present NTC Commissioners have no fixed term of office. They serve at the pleasure of the appointing authority. Also, NTC has no fiscal autonomy. Its budget comes from Congress. As such they are subjected to political pressures.

There have been bills filed reorganizing NTC. The proposed legislation will give the Commissioners fixed term of office and fiscal autonomy to the Commission. If enacted, Commissioners, having fixed term of office, may be able to resist political pressures and NTC can hire experts to make the Commission proactive and not reactive as it is at present.

### **On transparency**

NTC can be regarded as substantially transparent. Rules, guidelines and other issuances by NTC cannot be promulgated without undergoing public consultations and hearings. The criteria for the issuance of authorizations, licenses and permits including the processing timeline are open to the public. The reasons for the denial of applications are properly explained and the applicant can avail of the appeal processes which are also open to the public.

### **On anti-competitive cross-subsidization**

The law mandated the national and international long distance telephone service and mobile telephone service providers to cross subsidize the unprofitable local exchange networks. These services were considered very profitable in the 1990's when the law was enacted. Due to the developments in technology and the international pressure to reduce the rates for international long distance telephone service, the revenues from national and international long distance telephone services dropped substantially adversely affecting the ability of these services to provide the mandated cross subsidy. There is therefore a need to reduce the cross subsidy and/or come up with legislation establishing a national ICT development fund.

The oversupply of local exchange lines, as a result of the implementation of the SAS, has increased the cross subsidy required for the operation and maintenance of the unprofitable local exchange networks.

To reduce cross subsidy, the rates for local exchange service should be increased. But allowing increases in local exchange service rates are politically and socially unacceptable. The local exchange service providers are aware of this. They are offering other telecommunications services, value added services, which are deregulated using the local exchange lines to reduce the cross subsidy. However, these efforts may not be sufficient to totally remove cross subsidy.

The law mandating a segment of the telecommunications industry to cross subsidize the unprofitable local exchange service should be amended. The amended law should mandate all providers of telecommunications services to provide cross subsidy in a transparent manner.

### **On interconnection**

Since 1990 when DOTC issued a policy requiring mandatory interconnection of national and international long distance telephone service networks to local exchange networks, to the issuance of EO59 in 1993 by the Office of the President expanding the coverage of mandatory interconnection to all public telecommunications networks, and to the enactment of RA7925 in 1995 adopting EO59, NTC has promulgated several rules and guidelines on mandatory interconnection. Such rules and guidelines have always been reactions to issues prevailing at the time of the issuance of said rules and guidelines.

With these issuances, technical issues have been substantially addressed. What remains to be addressed is the issue on interconnection and access charges. Interconnection charges include the cross subsidy to local exchange networks. For as long as the cross subsidy remains a component of interconnection charges, commercial issue will always be a contentious issue.

The existing law provides that interconnection charges should be negotiated by the interconnecting parties. Only when the parties cannot arrive at a mutual agreement within a reasonable time can NTC intervene and prescribe the terms of the interconnection including the interconnection access charges. More often than not the smaller telcos agree to the terms imposed by the bigger telcos to avoid NTC prescribing the interconnection charges. There is a need to amend the law allowing NTC to set interconnection and access charges.