

**MEMORANDUM CIRCULAR
NUMBER 11-9-93**

**SUBJECT : IMPLEMENTING GUIDELINES ON THE PROVISIONS OF
E. O. 109**

Pursuant to Executive Order No. 109 and the powers vested upon the National Telecommunications Commission under Act No. 3846, as amended (Radio Control Law), Act No. 146, as amended (Public Service Act) and Executive Order No. 546 Series of 1979, the following guidelines on the provisioning of local exchange carrier services is hereby promulgated:

**ARTICLE I
SCOPE AND DEFINITION OF TERMS**

Section 1. This circular shall set the guidelines for the obligatory provisioning of local exchange carrier (LEC) services by the operators of international gateway facilities (IGF), the cellular mobile telephone service (CMTS) and other non-basic telecommunications services which are considered source of subsidy.

Section 2 As used in this circular, the following definitions shall apply:

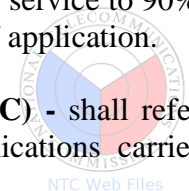
LOCAL EXCHANGE SERVICE AREA - shall refer to a defined area as determined by the Commission within a municipality or city or combinations of two or more cities and/or municipalities under a common local exchange rate schedule.

URBAN – shall refer to the local exchange service areas where the telephone density is more than 1 per 100 inhabitants and shall be based on the telephone density targets from the approved National Telephone Development Plan (NTDP), expressed as main station per 100 persons

RURAL – shall refer to local exchange service areas where the telephone density, as mentioned above is 1 per 100 inhabitants or less.

UNSERVED AREAS – shall refer to the local exchange telephone service areas within the Philippines where local exchange service is available but the number of existing telephone connections and available lines are less than the established telephone density as mentioned in the definition of URBAN or when the LEC cannot provide the service to 90% of the applicants within ten (10) working days from date of application.

PUBLIC TELECOMMUNICATIONS CARRIER (PTC) - shall refer to duly enfranchised and NTC certificated telecommunications carrier



and/or any entity duly authorized by law, including the government, to provide public telecommunications services.

BASIC TELECOMMUNICATIONS SERVICE – shall refer to local exchange residence and business telephone service and telegraph service without additional features.

ADDITIONAL FEATURES – shall refer to the enhancements made over the plain telephone/telegraph service for which the subscribers are made to pay additional charges.

NON-BASIC TELECOMMUNICATIONS SERVICE – shall refer to all types of telecommunications services not classified under basic telecommunications service.

INTERNATIONAL SWITCH TERMINATION – shall refer to a port in the switching international gateway system equivalent to 4KHz or 64 kbps (analog or digital) where international circuit terminates.

COMMISSION – shall refer to the National Telecommunications Commission

ARTICLE II SERVICE PACKAGING

Section 3. All existing authorized international gateway facilities (IGF) operators shall file petition for issuance of Certificate of Public Convenience and Necessity (CPCN) to install, operate and maintain local exchange carrier services in unserved and underserved areas, including Metro Manila within two (2) years from the effectivity of this Circular. The petition shall include among others, documents showing:

- 3.1 The list of proposed service areas after consultation with the Commission. The consultation is necessary to rationalize the provision of LEC services in the country.
- 3.2 The legal, financial and technical capabilities to undertake the proposed project/program;
- 3.3 The implementation time frame not to exceed three (3) years from the grant of the authority to install, operate and maintain LEC service; and

Section 4. All existing authorized IGF operators shall provide a minimum of three hundred (300) local exchange lines per one international switch

termination. All authorized IGF operators shall be required to provide a minimum of three hundred thousand (300,000) local exchange lines within a period of three (3) years from the date of authority to install, operate and maintain LEC service.

Section 5. An authorized IGF operator shall be considered to have complied with the provisions of Article II Section 4 hereof if any of the following conditions is satisfied:

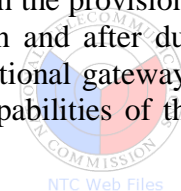
- 5.1 The IGF operator on its own shall have provided LEC service and/or Public Calling Offices (PCOs) pursuant to Article II Section 4.
- 5.2 The IGF operator shall have provided LEC service and/or PCOs as part-owner of the LEC and/or PCO operators provided that the compliance shall be based on the extent of international gateway facilities operator's equity exposure in the LEC and/or PCO. This provision shall not apply if the LEC from which the IGF operator acquires equity is also an authorized operator of IGF.
- 5.3 A PTC affiliated to an existing authorized IGF operator shall have been authorized to assume the obligation to provide the local exchange lines and/or PCOs as required Article II Section 4 hereof. An affiliated PTC is herein defined as an entity that directly or indirectly controls, or is controlled by or is under common control together with another entity through the possession of the power to direct or cause the direction of the and policies or enterprise whether through the ownership of equity, interlocking directorate or common management, by contract or otherwise.

Section 6. As the IGF operator increases its international switch terminations in excess of 1,000 there shall be a corresponding increase in the local exchange lines pursuant to Section 4 hereof.

Section 7. All IGF operator shall provide at least one (1) rural local exchange line for every then (10) urban local exchange lines installed.

Section 8. An IGF which provides PCOs in an unserved rural barangay shall be deemed to have installed local telephone subscriber lines equal to the number of households in that particular barangay divided by 10.

Section 9. Public telecommunications carriers that have complied with the provisions of Sections 4 and 7, may be authorized upon application and after due notice and hearing to install, operate and maintain international gateways and/or CMTS subject to legal, financial and technical capabilities of the PTCs.



Section 10. Applicant for new IGF operation shall not be granted authority unless it can show by substantial and convincing evidence that it can establish the necessary foreign correspondentship and that it can provide local exchange service pursuant to Article II Section 4 and 7 within five (5) years from grant of authority. The grant of authority shall consider the viability of the IGF service and its being able to provide a source of subsidy for LEC service until the said service shall have been priced reflecting cost.

Section 11. The subsidiaries of public telecommunications carriers operating an authorized international gateway as defined in E. O. 109 shall not be allowed to operate other international gateway pursuant to Executive Order No. 59.

**ARTICLE III
CELLULAR MOBILE TELEPHONE SYSTEM (CMTS)
AND OTHER NON-BASIC TELECOMMUNICATIONS SERVICES**

Section 12. Authorized IGF, upon application and after due notice and hearing may be authorized to provide CMTS and other non-basic telecommunications services which are possible sources of subsidy.

Section 13. The grant of authority to applicant for CMTS shall consider the viability of the CMTS service and its ability to provide a source of subsidy for LEC service, until the LEC service shall have been prices reflecting cost. Authorized CMTS providers shall be required to provide four (4) local exchange lines per one (1) CMTS subscriber line.

Section 14. Authorized nationwide CMTS operators shall be required to provide a minimum of 400,000 local exchange lines within a period of five (5) years from the effectivity of this Circular. Authorized regional CMTS operators shall be required to provide a minimum of 40,000 local exchange lines within a period of five (5) years. The provision of local exchange service shall comply with the provisions of Article II Sections 7 and 8.

Section 15. Authorized CMTS operator shall be required to file a separate petition for authority to provide local exchange service in accordance with the preceding paragraphs. The petition shall, include among others, documents showing:

- 15.1 The list of service areas upon consultation with the Commission.
- 15.2 The timetable of project implementation not to exceed five (5) years from the grant of authority; and



15.3 The legal, financial and technical capability of the applicant;

Section 16. Authorized operators of non-basic telecommunications services shall plow back their profit in excess of the total company's 12% ROI taking into consideration the historical value (acquisition cost) of its plant in service into the local exchange service by investing in the local exchange service, by establishing their own local exchange network or by acquiring equity from existing local exchange carriers.

ARTICLE IV BILLING AND COLLECTION

Section 17. Each LEC and CMTS services provider shall perform billing and collection services on behalf of the providers of domestic toll service and/or IGF operators that have customers in the local carrier's service territory. The billing and collection services shall be furnished under contracts negotiated between the local carrier and each toll carrier.

Section 18. In the event that a toll carrier and LEC or CMTS services provider are unable to arrive at an argument, the Commission shall impose a settlement after due notice and hearing within sixty (60) days from the date the matter is brought before the Commission.

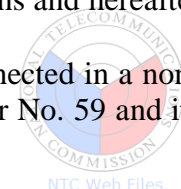
Section 19. In cases where the LEC or CMTS subscriber pays part of the total amount due for both local and toll services rendered the amount paid shall be proportionately applied to the bill. In cases of customer nonpayment of bills for domestic and/or international toll service, the LEC or CMTS services provider shall discontinue both local and toll services.

ARTICLE V OTHER REQUIREMENTS

Section 20. The obligation to provide LEC services shall remain in force for as long as the IGF, CMTS and other non-basic telecommunications services providers hold their authorization to provide their respective services or until such time that the price of the LEC service reflects actual costs.

Section 21. The foregoing provisions shall be without prejudice to the requirements of Franchise and Certificate of Public Convenience and Necessity and other requirements pursuant to existing laws, rules and regulations and hereafter be promulgated.

Section 22. All public telecommunications networks shall be interconnected in a non-discriminatory manner in accordance with Executive Order No. 59 and its implementing guidelines.



- Section 23.** No other company or entity shall be authorized to provide local exchange service in areas where the LECs comply with the relevant provisions of NTC MC No. 10-17-90 and NTC MC No. 10-16-90 and that the local exchange service area is not underserved.
- Section 24.** In local exchange service areas where there are more than one authorized LEC, the LEC networks shall be interconnected in such a manner that would ensure efficient and effective conveyance of traffic from a subscriber of one LEC to the subscriber of the other LEC.
- Section 25.** The numbering plan shall, in consultation with the industry be amended to allow the entry of other LECs in underserved areas, subject to the approval of the Commission.
- Section 26.** The public telecommunications service providers shall incorporate in their annual reports submitted to the Commission on or before 31 March of each year financial information that would make explicit the internal subsidy flows.
- Section 27.** Authorized public telecommunications carriers shall be required to deposit in escrow in a reputable bank 20% of the investment required for the first two years of the implementation of the proposed project.
- In addition to the escrow, the authorized public telecommunications carriers shall be required to post a performance bond equivalent to 10% of the investment required for the first two years of the approved project but not to exceed P500 Million. The performance bond shall be forfeited in favor of the government in the event that the authorized PTC fail to comply with the terms and conditions of the authority granted.
- Section 28.** All authorized inter-exchange carriers shall be required to provide facilities to link all LECs to the national and international network in accordance with MC 9-7-93.
- Section 29.** The provision of local exchange telephone service shall conform to the approved National Telecommunications Development Plan (NTDP).

ARTICLE VI PENAL PROVISIONS

- Section 30.** Violators of this circular shall be subject to the penalties provided for in Executive order No. 59 and its implementing guidelines.



Section 31. Authorizations granted to IGF and/or CMTS operators who fail to provide local exchange service pursuant to this Circular shall be cancelled after due notice and hearing.

ARTICLE VII TRANSITORY PROVISIONS

Section 32. PTCs with pending applications for IGF, CMTS and other non-basic telecommunications services need not revise their applications with the Commission. However, upon issuance of the Provisional Authority or CPCN as the case may be, they shall be given a period of three (3) months within which to submit and file the necessary applications for local exchange service in accordance with the provisions hereof.

Section 33. Existing telecommunications service providers offering IGF, CMTS and non-basic telecommunications services which are sources of subsidy shall comply with the provisions of this circular within five (5) years from the effectivity of this circular.

ARTICLE VIII FINAL PROVISIONS

Section 34. Any portion or section of this Circular which may be declared to be invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.

Section 35. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this circular are repealed or amended accordingly.

Section 36. This circular shall take effect fifteen (15) days after its publication in the official gazette or newspaper of general circulation, provided further that at least three (3) certified copies thereof shall be filed with the University of the Philippines Law Center.

Done in the City of Quezon, this 17th of September in the year of our Lord, nineteen hundred and ninety three.

(SGD.) SIMEON L. KINTANAR
Commissioner

