

**MEMORANDUM CIRCULAR  
NO. 09-07-02**

**SUBJECT: IMPLEMENTING RULES AND REGULATIONS (IRR) FOR  
SPECIFIC GUIDELINES FOR COMPETITIVE WHOLESALE  
CHARGING FOR INTERCONNECT SERVICES.**

**PREAMBLE**

WHEREAS, The State recognizes the vital role of telecommunications in nation-building and economic development and in its desire to attain universal access, it shall promote the rapid expansion of telecommunications services in all areas of the Philippines in order to maximize the use of all available telecommunications facilities, and to ensure that every user of the public telecommunications shall have access to such facilities at a mandated standard of service and at reasonable prices;

WHEREAS, under Republic Act 7925, otherwise known as the Telecommunications Policy Act of 1995, the National Telecommunications Commission is mandated to ensure equity, reciprocity and fairness in adopting an access charge formula or revenue sharing agreement between interconnecting public telecommunications entities;

WHEREAS, Memorandum Circular No. 14-07-2000, issued by the Commission on July 14, 2000, provides a new regulatory framework for interconnection of the networks of public telecommunications entities to address the legal, economic and technical constraints that continue to hamper the continued growth and development of the sector;

WHEREAS, under the said circular, the Commission is tasked to establish and prescribe wholesale pricing principles and guidelines in order for the PTEs to provide telecommunications services at prices that are transparent, reasonable and having regard to economic feasibility;

WHEREAS, under the said circular, the Commission is tasked to undertake mediation in a negotiation where the public interest warrants, or to arbitrate a dispute arising from a failure in negotiation between PTEs regarding interconnection.

WHEREAS, the Commission proposes to implement a smooth progression from the existing interconnect arrangements to the cost based interconnect arrangements envisaged under Memorandum Circular No. 14-07-2000.



WHEREAS, the provisions set out in these implementing rules and regulations represent the first step in moving towards cost base interconnect, by establishing fair and consistent charging principles which take into account the costs of providing the services.

WHEREFORE, the Commission, by virtue of the powers vested upon it by law, does hereby promulgate the following implementing rules and regulations;

**Article I**  
**APPLICABILITY OF THE PROVISIONS**

Section 1. These rules shall be applicable to all duly authorized public telecommunications entities (PTEs) as defined in R.A. 7925.

**Article II**  
**DEFINITION OF TERMS**

Section 2. The definition provided in Section 2 of Memorandum Circular No. 14-07-2000 and Section 2 Memorandum Circular No. 06-09-2001 are carried forward and are applicable to these implementing rules and regulations. In addition, the following words and phrases shall have the meaning assigned to them unless the context otherwise requires:

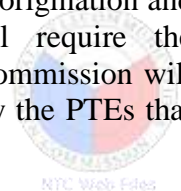
- a. **Basic Interconnect Service** – A fixed or mobile network interconnect service supplied by a PTE which provides the signaling and functionality to connect calls between an end-user and the point of interconnect to another PTE for voice or data calls in either direction.
- b. **Ancillary Interconnect Service** – Any interconnect service serving as supplements to basic interconnect service.
- c. **Cost based Interconnect Charges** – Interconnect charges that are calculated using appropriate cost principles to be determined by the Commission.
- d. **Retail Service** – A Telecommunications Service provided by PTEs to End-Users.

**Articles III**  
**GENERAL PRINCIPLES RELATING TO THE CHARGES FOR INTERCONNECT SERVICES**

Section 3. The charges, terms and conditions for the supply of Basic and Ancillary Interconnect Services shall be pursued through bilateral negotiations subject to the following principles.

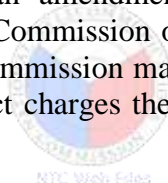


- a. The charges for Interconnect Services shall be consistent with the principles and requirements set out in Section 18 of RA7925 and Section 5, 10, 11, 12, Article XI and Article XII of MC of MC 14-07-2000.
- b. The charges for Interconnect Services should be non-discriminatory, meaning:
  - (i) At a particular POI, the charges offered by a PTE to other PTEs, should be the same for all PTEs where they are utilizing the same infrastructure and functionality
  - (ii) Where a PTE with end-user access infrastructure at a particular POI offers to another PTE a volume discount, this same volume discount shall be offered to all other PTEs who are interconnected or who seek interconnection at the same POI irrespective of whether they have competing end-user access infrastructure in the same area or not.
- c. The charges that a PTE applies to other PTEs for equivalent Interconnect Services and/or Retail Services must not be higher than the internal transfer prices for Interconnect Services and/or Retail Services applied by it to its own internal businesses.
- d. A PTE must not make the supply of an Interconnect Service conditional upon the supply of another service, facility or equipment. Factors which may have the effect of making supply conditional shall include the following:
  - (i) contractual terms or conditions;
  - (ii) where the charge for a bundled offering of two or more services is less than the sum of the charges for the individual component services, facilities and/or equipment to other PTEs, end users or itself.
- e. Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses which unreasonably restrict an interconnected PTE from directing traffic to another PTE in the same or another area. As a general principle, clauses in contracts and agreements which restricted interconnected PTEs from exercising choice of supply between PTEs for origination and termination of telecommunications traffic shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTEs that these are done in the interest of public service.



- f. Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses, which unreasonably restrict an interconnected PTE from terminating the contract. As a general principle, clauses in contracts and agreements, which restrict a PTE from terminating a contract for supply of Interconnect Services, shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTE that the same are in the public interest and provided that any such restriction shall not be more than one (1) year from the date of commencement of the supply of services. Factors which may constitute an unreasonable restriction on termination of the contract include:
  - (i) penalty payments to be paid on early termination;
  - (ii) unreasonably long periods for notification of termination;
  - (iii) penalties in relation to volume discounts received where the agreement has been in force for a period of longer than one year.
- g. The service quality and reliability of Interconnect Services and long distance carriage services provided by a PTE to another PTE shall be no less favorable than that provided by the PTE to its own internal businesses, subsidiaries, related entities, any other PTE or end-user, for equivalent services.
- h. Predatory pricing shall not be allowed. In general, a charge will be considered predatory if it is below the appropriate cost of supplying the service, and/or is at a level that is so low that it cannot be sustained in the long term when compared to the charges for Interconnect Services.
- i. In all instances, the charges shall not be of a level that is above competitive parity. In general, a charge will be considered to be above competitive parity when the charge for Interconnect Services is higher than the market price of a Retail Service supplied using that Interconnect Service or an equivalent service.
- j. A PTE must not into agreements with other PTEs to restrict the supply of Interconnect Services to other PTEs.

Section 4. Upon the execution of an interconnect agreement or an amendment thereto, interconnecting PTEs shall submit a report to the Commission of their interconnect charges. In the event of a dispute, the Commission may require the interconnecting PTEs to submit the interconnect charges they impose on their own internal businesses and subsidiaries.



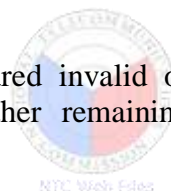
- Section 5. The Commission shall apply the principles set out in this Memorandum Circular and such other relevant memoranda in the implementation and administration of all matters relating to the charges for Interconnect Services.
- Section 6. The Commission and all PTEs shall apply the principles defined in this Memorandum Circular in a uniform and consistent manner to all Interconnect Services offered by any PTE to any other PTE.
- Section 7. The charges shall be negotiated on a commercial basis. In calculating the charges, the PTE shall take into account the attributable costs of the service, share of business overhead costs and rate of return, which shall be estimated on a fair and reasonable basis. In general, fair and reasonable means that the charges for such services shall recover only the attributable proportion of the efficient operating and maintenance costs, an attributable proportion of the return of an efficient level of investment in assets utilized in providing the services over a reasonable economic asset life (i.e.: economic depreciation), and encompass a reasonable return on investment in assets employed to provide the Interconnect Services.
- Section 8. In the event that PTEs are unable to agree on the charges for Interconnect Services and in the exercise of its functions, the Commission shall apply the principles adopted in this Memorandum Circular and may take into account the following factors;
- (i) the information available to the Commission on the costs of providing the services;
  - (ii) the relativities between the cost of providing different Interconnect Services;
  - (iii) the relativities between the costs of providing an Interconnect Service and the charges for Retail Services provided using that Interconnect Service.

**Article IV  
CONSTRUCTION OF THE RULES**

- Section 9. These rules shall be interpreted to promote and encourage interconnection between and among all the telecommunications carriers.

**Article V  
FINAL PROVISIONS**

- Section 10. Any portion or section of these rules which may declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.



Section 11. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this memorandum circular are hereby repealed or amended accordingly.

Section 12. This Memorandum Circular shall take effect (15) days following its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; *Provided*, that at least three (3) certified copies thereof be filed with the University of the Philippines Law Center.

Quezon City, Philippines, 31 July 2002.

**(SGD.) ELISEO M. RIO, JR.**  
Commissioner

**(SGD.) KATHLEEN G. HECETA**  
Deputy Commissioner

**(SGD.) ARMI JANE R. BORJE**  
Deputy Commissioner

