JOINT MEMORANDUM CIRCULAR
No. ______________________

SUBJECT: RULES AND REGULATIONS ON THE SELECTION
OF A NEW MAJOR PLAYER IN THE PUBLIC
TELECOMMUNICATIONS MARKET

WHEREAS, Sec. 24, Article II of the 1987 Philippine Constitution declares that the
State recognizes the vital role of communication and information in nation-building.
WHEREAS, the entry of a new major player in the telecommunications market is a
matter of paramount national interest which shall redound to the benefit of the public
by ensuring genuine competition in the country’s telecommunications industry;
WHEREAS, Section 5 of RA 10844, otherwise known as the “Department of
Information and Communications Technology (DICT) Act of 2015”, provides that the
DICT shall be the primary policy, planning, coordinating, implementing, and
administrative entity of the Executive Branch of the government that will plan,
develop, and promote the national ICT development agenda;
WHEREAS, President Rodrigo R. Duterte directed the NTC and the DICT to ensure
the entry of a new major player in the telecommunications industry;
WHEREAS, Republic Act No. (RA) 7925 or the Public Telecommunications Policy
Act recognizes the vital role of telecommunications to national development and
security;
WHEREAS, the International Telecommunication Union reports that broadband
penetration impacts GDP growth from 0.025% to 1.38% for every 10% increase in
penetration;
WHEREAS, Section 5 of RA 7925 declared that the “NTC shall be the principal
administrator of this Act and as such shall take the necessary measures to implement
the policies and objectives set forth in this Act”;
WHEREAS, based on the 2016 annual report submitted by the telecommunications
companies, there are two (2) dominant telco players in the Philippine market with a
minimum of forty percent (40%) market share each;
NOW, THEREFORE, pursuant to Republic Act No. (RA) 7925 (Public
Telecommunications Policy Act), Act No. 3846 (Radio Control Law), as amended,
EO 546 series of 1979 and in faithful compliance with Department of Information and
Communications Technology (DICT) Memorandum Order No. 001, series of 2018,
the following rules and regulations to facilitate the selection of a new major player
(NMP) in the public telecommunications market are hereby promulgated:

SECTION 1. DEFINITION OF TERMS

1.1. Congressional franchise refers to a subsisting telecommunications franchise
to install, operate and maintain fixed (wired and wireless) networks, mobile
networks, and offer all types of national and international telecommunications
services at the time of the bid and which will not expire on or before 31
December 2023.
1.2. **Related Party** refers to a “company’s subsidiaries, as well as affiliates and any party (including their subsidiaries, affiliates and special purpose entities), that the company exerts direct or indirect control over or that exerts direct or indirect control over the company; the company’s directors; officers; shareholders and related interests (DOSRI), and their close family members, as well as corresponding persons in affiliated companies. This shall also include such other person or juridical entity whose interest may pose a potential conflict with the interest of the company.”¹

1.3. **Net Present Value** (NPV) of committed investments refers to the application of an annual discount rate of ten percent (10%) to the annual amounts of committed investments to convert them into present values;

1.4. **Telecommunications Facilities** refers to (a) apparatus comprising an electronics communications network, (b) apparatus used for the switching and routing of signals, and (c) software and stored data. ²

1.5. **Net Book Value** (NBV) of telecommunications facilities refers to the historical cost of telecommunications facilities minus accumulated depreciation, if any. Details of the NBV of telecommunications facilities shall be presented and contained in the required Lapsing Schedule. The basis for the NBV of telecommunications facilities shall be the audited financial statements (AFS) as of 31 December 2017 or applicable month in 2017 if the fiscal year is employed;

1.6. **Lapsing Schedule of Telecommunications Facilities** is the detailed report/table of telecommunications facilities presenting historical cost and corresponding accumulated depreciation (e.g. description of the telecommunication facilities, quantity, date of acquisition, historical cost, estimated useful life, depreciation for the year and accumulated depreciation)

1.7. **Bidder’s liabilities** refers to the Participant’s uncontested obligations as of 31 January 2018 to the NTC, if any, i.e. Supervision and Regulation Fees (SRF), Spectrum User Fees (SUF), penalties, surcharges and interests.

**SECTION 2. QUALIFICATIONS OF THE PARTICIPANTS FOR THE SELECTION OF THE NEW MAJOR PLAYER (NMP)**

The Participant shall possess the following qualifications:

2.1. **Legal Qualifications**

a. Corporation with a Congressional franchise, or, if a consortium, Filipinos must have at least sixty percent (60%) interest in said consortium, and at least one of the members should be a holder of a Congressional franchise;

b. Is not a Related Party to any telecom group with a mobile and broadband wireless market share of at least forty percent (40%);

² As defined in Republic Act No. 10926.
c. No Bidder’s Liabilities.

2.2. Financial Capability

a. The Participant shall have a net worth of at least PhP10B as indicated in its latest audited financial statements; or

b. In case of a consortium, the participant should provide evidence that it has the capacity to raise equity from potential consortium members to enable it to have a net worth of at least PhP10B, provided that all ownership requirements under the law are complied with.

2.3. Technical Capability

The Participant, or at least one of the members of the consortium, shall have a proven technical capability in operating a telecommunications service.

SECTION 3. FREQUENCY ASSIGNMENTS

The NMP shall be assigned the following bands of radio frequencies:

<table>
<thead>
<tr>
<th>FREQUENCY BAND</th>
<th>FREQUENCY RANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>700 MHz</td>
<td>738 – 748 MHz</td>
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<tr>
<td></td>
<td>793 – 803 MHz</td>
</tr>
<tr>
<td>850 MHz</td>
<td>835 – 845 MHz</td>
</tr>
<tr>
<td>2100 MHz</td>
<td>1955 – 1965 MHz</td>
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<tr>
<td></td>
<td>1965 – 1975 MHz</td>
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<tr>
<td></td>
<td>2145 – 2155 MHz</td>
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<td></td>
<td>2155 – 2165 MHz</td>
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<tr>
<td>2010 MHz</td>
<td>2010 – 2025 MHz</td>
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<tr>
<td>2.5 GHz</td>
<td>2535 – 2555 MHz</td>
</tr>
<tr>
<td>3.3 GHz</td>
<td>3300 – 3400 MHz</td>
</tr>
<tr>
<td>3.5 GHz</td>
<td>3480 – 3520 MHz</td>
</tr>
<tr>
<td>10.5 GHz</td>
<td>10182 – 10259 MHz</td>
</tr>
<tr>
<td></td>
<td>10280 – 10294 MHz</td>
</tr>
<tr>
<td></td>
<td>10532 – 10609 MHz</td>
</tr>
<tr>
<td></td>
<td>10630 – 10644 MHz</td>
</tr>
</tbody>
</table>

(1) Contingent on the decision of the Supreme Court in the pending cases, i.e. Bayantel, et al.

SECTION 4. SELECTION PROCESS

4.1 The Selection Committee. The NTC shall create a Selection Committee for the purpose of undertaking the selection process.

The Committee shall be composed of a Chairperson and two (2) members.

The Chairperson shall create a Technical Working Group and/or Selection Committee Secretariat for technical and legal assistance.
4.2 Criteria for Award of NMP. The Selection Committee shall determine the NMP with the highest calculated and responsive bid out of all the Participants. The formula for the computation shall be as follows:

\[
\text{Highest Bid} = \text{NPV of committed investment for five (5) years} + \text{NBV of existing telecommunications facilities, if any}
\]

a. The Highest Bid shall be rounded down to the nearest peso.
b. The committed investment, exclusive of value added taxes, shall be indicated on a yearly basis.
c. The committed investment shall only be telecommunications facilities directly related to the installation, operation and maintenance of fixed (wired and wireless) networks, mobile networks, and national and international telecommunications services.
d. The NBV of telecommunications facilities shall be subjected to evaluation by the Selection Committee only if its inclusion is sufficiently significant to affect the determination of the winning participant.

4.3 Pre-Selection Conference. A pre-selection conference shall be conducted to clarify and explain the terms, qualifications, requirements, obligations and timelines, among other matters, to ensure equal access to information and transparency.

The Pre-Selection Conference shall be held on ______ 2018, ____ <AM/PM> Philippine Standard time (PST) at ________.

4.4 Observers. In addition to the representative of the Commission on Audit (COA) and members of the Oversight Committee, at least two (2) observers shall be invited to sit in the proceedings during the pre-selection conference, eligibility checking and examination of bids, evaluation and post-qualification.

4.5 Submission of Bids

a. Participants shall submit their respective bids in two (2) separate envelopes on ______ 2018 from 8:00AM to 2:00PM, Philippine Standard time (PST) to the Selection Committee address below. No envelope shall be accepted after the deadline.

NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Rd., East Triangle
Brgy. Diliman, Quezon City

b. The first envelope, properly sealed and marked as “FIRST ENVELOPE OF _____”, shall contain the following documents:
   (i) Letter of Intent;
   (ii) Company Profile;
(iii) Copy of Securities and Exchange Commission (SEC) Registration;
(iv) Copy of current Mayor’s Permit;
(v) Tax Clearance per E.O. 398 s. 2005, as finally reviewed and approved by the Bureau of Internal Revenue;
(vi) No bidder liabilities as certified by the NTC Regulations Branch;
(vii) Annual AFS for the last three (3) years (i.e. 2015, 2016, 2017), if applicable;
(viii) Lapsing Schedule of existing Telecommunications Facilities as of latest AFS for 2017, if any;
(ix) SEC clearance that proposed business combination arising from a consortium complies with the foreign ownership limits;
(x) Undertaking to amend its Articles of Incorporation prohibiting any business combination that will make the NMP a related party of the incumbent dominant telco players in the Philippine market having a minimum of forty percent (40%) market share each;
(xi) Omnibus Sworn Statement executed by the Participant, or its duly authorized representative, which shall contain the following acknowledgments and undertakings:

1. That the signatory is the duly authorized representative of the Participant and granted full powers and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing documents accompanied by the duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary’s Certificate, whichever is applicable;

2. That the Participant is a holder of a congressional franchise;

3. That the Participant is not a related party to any dominant telecommunications player with at least forty percent (40%) market share;

4. That the Participant shall automatically return the assigned radio frequencies without condition to the NTC should it be acquired or merged with any entity that is a related party to any of the dominant telecommunications players with at least forty percent (40%) market share;

5. That the Participant shall comply with all its obligations once awarded as the NMP;

6. Each of the documents submitted are true and correct copies of the original documents of the corporation with the congressional franchise; and

7. That the Participant did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or
otherwise, to any person or official, personnel or representative of
the government in relation to this selection process.

c. The second envelope properly sealed and marked as “SECOND ENVELOPE
OF ___” shall contain the following documents:

(i) Bid Form containing the Participant’s Committed investment for the
first five (5) years from the date of the award, i.e. FY1, FY2, FY3, FY4,
FY5;

(ii) Bid Bond callable upon demand issued by the Government Service
Insurance System of two percent (2%) of its first year’s committed
investment.

Immediately after the declaration by the Chairperson of the Selection Committee
of the closing of the submission of bids, the Selection Committee shall
immediately proceed to open the envelopes successively.

4.6 Opening of Bids and Preliminary Evaluation of Bids

a. The authorized representatives of the Participants shall be required to attend the
opening of the two envelopes, which shall be held after the closing of the
submission of bids.

b. The first envelope shall be opened and checked for completeness and
compliance. Only those submissions found complete and compliant shall be
entitled to proceed in the selection process while those found incomplete or
non-compliant shall be disqualified from further participation.

c. The second envelope of the remaining qualified Participants shall then be
opened and checked for completeness and compliance. Only those submissions
found complete and compliant shall be entitled to proceed while those found
incomplete or non-compliant duly marked “NON-COMPLIANT” and shall be
disqualified from further participation.

d. In case of a tie, the Participant with the highest bid based on the first two (2)
years shall be selected.

e. The Selection Committee shall immediately prepare an Abstract of Bids which
shall contain all bids that have been received, opened, evaluated and ranked.

f. The Selection Committee shall announce the Participant with the highest
calculated bid who shall undergo post-qualification to determine whether the
bidder complies with, and is responsive to, all the requirements and conditions.

4.7 Post-Qualification

a. The post-qualification shall verify, validate and ascertain all statements made
and documents submitted by the Participant with the highest calculated bid.

b. If the Participant passes all the criteria for post qualification, it shall be
declared the NMP.

c. If the Participant with the highest calculated bid fails post-qualification, it shall
be notified of its disqualification and the grounds for it. The second highest
calculated bid shall be post-qualified in the same manner above, and so on as the case may be, until an NMP is determined and declared.

4.8 Award of the New Major Player

a. The Selection Committee shall declare the Participant with the highest bid who passed post-qualification as the highest calculated and responsive bid.

b. NTC’s Deputy Commissioners shall individually review the Selection Committee’s declaration and submit their recommendations to the NTC En Banc.

c. The NTC En Banc shall proceed to award the highest calculated and responsive bidder as the NMP.

d. All selection process documents shall be transmitted to NTC En Banc for its appropriate action. Whenever necessary, the NTC shall, in accordance to existing rules and regulations, issue a Provisional Authority (PA) or Certificate of Public Convenience and Necessity (CPCN) or the appropriate licenses/authorizations to the NMP.

4.9 Failure of Bidding. The following shall constitute a failure of bidding:

a. No envelope is received;

b. All Participants are declared ineligible;

c. All bids failed post-qualification; or

d. The Participant with the highest and/or next highest calculated and responsive bid refuses, without justifiable cause, to accept the award of NMP, and no award is made.

4.10 Motions for Reconsideration

a. The Selection Committee’s resolutions and decisions at any stage of the process may be questioned by any Participant by submitting a Motion for Reconsideration within three (3) calendar days from written or verbal notice of such decision. The Selection Committee shall decide within seven (7) calendar days from its receipt of the motion.

b. A denial of the Motion for Reconsideration by the Selection Committee may be disputed by filing a verified position paper with the NTC En Banc, accompanied by the payment of a non-refundable protest fee paid in cash in the sum of 0.1% of the Participant’s bid in Philippine currency.

c. The verified position paper shall be resolved within seven (7) calendar days strictly based on records of the Selection Committee.

d. The Participants undertake to be bound by this process and Court action shall be resorted to only after this process have been completed.

SECTION 5. OBLIGATIONS OF THE NMP

5.1 Business Combination. If the NMP is a consortium, it shall enter into a valid and appropriate business combination within ____ days from the date of the award;

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5.2 **Performance Bond.** The NMP shall post a performance bond equivalent to $\frac{1}{2}$ of 1% or 0.005 of the amount of the committed investment for the first five (5) years. The performance bond shall be pro-rated based on the amount of the committed investment per year.

The Performance Bond shall be forfeited in favor of the government if the selected entity fails to invest the amount specified in the yearly program of committed investment in support of its bid. The forfeiture shall be on a yearly basis.

5.3 **Debt-to-Equity Ratio.** To comply with the 70:30 debt-to-equity ratio, the NMP shall increase its paid equity accordingly in the first two (2) years within sixty (60) days from date of award.

5.4 **Deposit of Committed Investment.** The NMP shall deposit a minimum of 30% of the committed investment for the first year with a government financial institution specified by the Department of Finance (DOF) within thirty (30) days from the award. Thereafter, the NMP shall deposit a minimum of 30% of the succeeding year’s committed investment within the same period from the anniversary date until the fifth year. The remaining balance for the applicable year of the committed investment shall likewise be supported by a bank guarantee.

The NMP shall be permitted to draw from the deposit for payments through letters of credit mechanisms for capital expenditures in relation to telecommunications facilities.

Any unused deposit and bank guarantees at the end of the fifth year shall be immediately payable to the national government.

5.5 **Spectrum User Fees (SUF).** Pursuant to the existing rules and regulations, the NMP shall timely pay the required annual SUF to the NTC.

5.6 **Roll-Out.** The NMP shall submit its roll-out plan within fifteen (15) days from date of the award and shall include compliance with the following:

a. Start commercial operations not later than twelve (12) months from the date of award;

b. Cover at least 80% of the provincial capital cities and towns and 80% of the chartered cities within five (5) years from the date of award;

c. Strictly comply with the prescribed service performance standards and;

d. Ensure that its networks and facilities will not have any national security issue and shall abide with the National Cybersecurity Plan.

**SECTION 6. SANCTIONS**

6.1 **Automatic Recall of the Assigned Radio Frequencies.** Failure of the NMP to comply with any of the provisions of this Joint Memorandum Circular shall result in the automatic recall of the assigned radio frequencies.
6.2 **Failure to Comply with Debt-to-Equity Ratio.** Failure of the NMP to comply with Debt-to-Equity ratio shall result in the recall of the award, and the Participant that submitted the second highest bid shall be undergo post-qualification.

**SECTION 7. SEPARABILITY CLAUSE**

If any section or part of this Circular is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force and effect.

**SECTION 8. FINAL PROVISIONS**

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

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

Quezon City, Philippines.

Done this ___ day of _____________, 2018.

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**Department of Information and Communication Technology**

**Department of Finance**

**National Telecommunications Commission**

**National Security Council**

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