

MEMORANDUM CIRCULAR

No. _____

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

WHEREAS, Section 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 Republic Act. (RA) No. 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, RA 7925, otherwise known as the "Public Telecommunications Policy Act" likewise recognizes the vital role of telecommunications to national development and security, and under Section 5 thereof declares that the "National Telecommunications Commission (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, the World Bank (2009) has estimated that a 10% increase in broadband penetration would yield a 1.21% and 1.38% increase in GDP growth on average for high-income and low/middle-income countries respectively;

WHEREAS, based on the 2017 annual report submitted by the telecommunications companies, there are two (2) dominant telecommunications players in the Philippine Telecommunications Services market with a minimum of forty percent (40%) market share each;

WHEREAS, President Rodrigo R. Duterte directed the NTC and the DICT to ensure the entry of a new major player in the telecommunications industry that will provide the best possible services at reasonably accessible prices;

NOW, THEREFORE, pursuant to Republic Act No. 7925 (Public Telecommunications Policy Act), Act No. 3846 (Radio Control Law, as amended), Executive Order No. 546, series of 1979, and in faithful compliance with DICT Memorandum Order No. 001, series of 2018, as amended, and Administrative Order No. 11 (AO 11) dated 06 April 2018, the following rules to govern and facilitate the

selection of a New Major Player (NMP) in the public telecommunications market are hereby promulgated:

SECTION 1. DEFINITION OF TERMS

As used in this Joint Memorandum Circular, the following terms shall be defined as:

1.1 **“Annual Capital and Operational Expenditure”** means the capital and operational expenditures of the Participant directly related to the installation, operation and maintenance of fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband, calculated in accordance with applicable accounting standards associated with the provision of Nationwide Population Coverage and Minimum Average Broadband Speed by the Participant.

1.2 **“Certificate of Public Convenience and Necessity”** refers to the authority granted by the NTC to a qualified applicant to own, install, operate and maintain fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband. This is equivalent to a telecommunications license in foreign jurisdictions.

1.3 **“Congressional Franchise”** refers to a subsisting telecommunications franchise issued by the Congress of the Republic of the Philippines to own, install, operate and maintain fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband at the time of the bid.

1.4 **“Dominant Telecommunications Player”** refers to a Congressional Franchise holder with a Market Share of at least a minimum of forty percent (40%).

1.5 **“Independent Auditor (IA)”** shall mean an independent auditor with the requisite professional qualifications and at least ten (10) years of experience in the telecommunications industry and appointed in accordance with the procedure in Section 7 of this MC. The IA shall test, validate and confirm the annual commitments of the NMP during the Commitment Period observing internationally accepted standards including from the ITU in the performance of their required functions.

1.6 **“Market Share”** refers to the number of telecommunications services subscribers fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband, divided by the total number of telecommunications services subscribers. The term is limited to the Philippine telecommunications market.

1.7 **“Minimum Average Broadband Speed”** is to be measured in Megabits per second (Mbps) and means the committed minimum national average broadband speed applicable to both fixed and mobile broadband services which is available at least eighty percent (80%) of the time.

1.8 **“National Population Coverage”** means the service coverage of the Participant's network committed to be established in terms of specified barangays and its corresponding populations stated as a percentage of national population of the

Philippines excluding any coverage provided by dominant telecommunications players under a national roaming agreement or similar. The population per barangay shall be based on the August 2015 Official Census conducted by the Philippine Statistics Authority, the details of which are contained in the Philippine Statistics Geographic Code Table as of June 2018.

1.9 **“Oversight Committee”** refers to the committee composed of representatives from the Department of Information and Communications Technology (DICT), Department of Finance (DOF), Office of the Executive Secretary; and National Security Adviser, as established by AO 11.

1.10 **“Participant”** refers to:

- a) A domestic corporation with a Congressional Franchise; or
- b) A Congressional Franchise holder covered by a binding Bidding Agreement or a similar agreement entered into by committed investors seeking to become part of the NMP. The Bidding Agreement shall contain the following minimum required provisions:
 - i. The Congressional Franchise holder shall increase its authorized capital stock to the levels required to comply with the terms, conditions, and obligations imposed on the NMP, in the event that it is selected as the NMP;
 - ii. The details of the number, amount and schedule of payments of parties to the Bidding Agreement in the event that the Congressional Franchise holder is selected as the NMP; and
 - iii. The parties to the Bidding Agreement acknowledge and recognize that the Congressional Franchise holder shall be the sole entity to be declared as the NMP and the recipient of the CPCN and related permits and licenses and bear the obligations arising thereto.

1.11 **“Participant's Outstanding Liabilities”** refers to a Participant's uncontested obligations to the NTC as of 30 September 2018, i.e., Supervision and Regulation Fees (SRF), Spectrum User Fees (SUF), including penalties, surcharges and interests.

1.12 **“Related Party”** as defined under SEC Memorandum Circular No. 19 series of 2016 dated 22 November 2016, 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."

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

In addition to those provided for in Sec. 1.10, every Participant shall possess the following qualifications:

2.1 Legal Qualifications

Holder of a Congressional Franchise that is not a Related Party to any Dominant Telecommunications Player and has no Participant’s Outstanding Liabilities.

2.2 Financial Capability

- a. In case of a Participant under Sec. 1.10(a), has a paid capital of at least Ten Billion Pesos, Philippine currency (₱10.0B) as indicated in its latest audited financial statements; or
- b. In case of a Participant under Sec. 1.10(b), the aggregate paid capital of its members should at least be Ten Billion Pesos, Philippine Currency (₱10.0B) as indicated in their respective latest audited financial statements.

2.3 Technical Capability

The Participant under Sec. 1.10(a) or one of its members under Sec. 1.10(b) shall have experience in the provisioning, delivery and operations of telecommunications services for the last ten (10) years on a national scale.

SEC. 3. FREQUENCY ASSIGNMENTS

3.1 Covered Radio Frequencies: The primary radio frequencies covered by this Memorandum Circular, which NTC shall assign to the NMP, are the following:

FREQUENCY BAND	FREQUENCY RANGE
700 MHz	738.0 – 748.0 MHz
	793.0 – 803.0 MHz
2100 MHz	1955.0 – 1970.0 MHz
	2145.0 – 2160.0 MHz
2000 MHz	2010.0 – 2025.0 MHz
2.5 GHz	2535.0 – 2555.0 MHz
3.3 GHz	3300.0 – 3400.0 MHz
3.5 GHz	3480.0 – 3520.0 MHz

In preparing and submitting the Selection Documents under the terms of this Joint Memorandum Circular, a Participant shall make its commitments and provide for the terms and conditions of its bid based on being assigned the above-listed Covered Radio Frequencies in the event it is selected as the NMP.

3.2 Contingent Radio Frequencies: In the event that there is a dissolution of the permanent injunction issued by the Court of Appeals in “*Bayan Telecommunications, Inc. vs. National Telecommunications Commission in CA-G.R. SP No.105373*”, the NTC shall, within a reasonable period of time, also assign the following radio frequencies to the NMP:

FREQUENCY BAND	FREQUENCY RANGE
2100 MHz	1970.0 – 1980.0 MHz
	2160.0 – 2170.0 MHz

Nothing in this Joint Memorandum Circular shall be construed as granting to a Participant the right to expect that the terms of its commitments shall anticipate the eventual assignment of the Contingent Radio Frequencies, or for the NMP to expect that the terms of its commitments and obligations to be bound by an assignment by NTC of such Contingent Radio Frequencies free and clean of all claims that have been interposed by various parties in several pending cases involving the Contingent Radio Frequencies.

- 3.3 **Special Conditions on the Granted Radio Frequencies:** The assignment of the Radio Frequencies to the NMP shall be made subject to compliance with its commitments during the “Commitment Period” as defined in Sec. 4.2.

SEC. 4. SELECTION PROCESS

- 4.1 **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 from the NTC and up to four (4) members.

The NTC shall also create a Technical Working Group (TWG) and a Selection Committee Secretariat that shall respectively provide technical and legal, and administrative, support to the Selection Committee.

- 4.2 **Selection Criteria.** The Selection Criteria shall be composed of the following: (a) National Population Coverage (40 percent weightage), (b) Minimum Average Broadband Speed (20 percent weightage), and (c) annual capital and operational expenditure (40 percent weightage), computed annually over a five (5) year period referred to as “Commitment Period”.

The annual cumulative score for the Commitment Period shall be computed as follows:

- a. The minimum and maximum population coverage for each year shall be:

Year	Minimum	Maximum
1	10%	50%
2	20%	60%
3	30%	70%
4	40%	80%
5	50%	90%

Bids lower than the minimum population coverage for each year of the Commitment Period shall not be accepted.

For every whole one percent (1%) of National Population Coverage (NPC) over the minimum NPC up to a maximum NPC for each year, a Participant will receive one (1) point per annum;

- b. For every whole 2.0 Mbps of Minimum Average Broadband Speed over 5.0 Mbps up to a maximum Minimum Average Speed of 45 Mbps, a Participant will receive one (1) point per annum. Bids of less than 5Mbps minimum average broadband speed shall not be accepted; and
- c. For every ₱2.25B of capital and operational expenditure over ₱40.00B up to a maximum capital and operational expenditure of ₱130.00B, a Participant will receive one (1) point per annum. Bids of less than an aggregate of ₱40B at the end of the commitment period shall not be accepted.
- d. A Participant’s annual point score shall be multiplied by the corresponding weightages in the table below reflecting the Government’s policy priority of encouraging rapid network roll-out and the difficulty of deploying the NMP’s networks and facilities in the shortest possible time.

Year	Weightages
1 st	100%
2 nd	140%
3 rd	130%
4 th	70%
5 th	60%

4.3 **Selection Documents.** The Selection Committee shall prepare the Selection Documents, which shall include, among others, a checklist of Submission requirements as provided in Sec. 4.7(c) and (d), relevant forms, and the electronic spreadsheet template.

The Selection Documents may be purchased by prospective Participants from the NTC for One Million Pesos, Philippine currency (₱1.0M).

4.4 **Pre-Selection Information Session.** Only prospective Participants that purchased the Selection Documents shall be allowed to attend the Pre-Selection Information Session, which shall be on a date set by the Selection Committee.

The Pre-Selection Information Session shall be conducted by the Selection Committee to outline the terms, qualifications, requirements, selection process and obligations to ensure equal access to information and transparency.

Prior to the date of the Pre-Selection Information Session, prospective Participants must submit any questions they have in writing.

4.5 **Subsequent Request for Clarification.** Up to fourteen (14) calendar days before

the date set for the submission of the Selection Documents, prospective Participants may submit electronically matters for clarification to the Selection Committee. The Selection Committee shall reply in a timely manner with such written responses being confidentialized and furnished to all the Participants.

4.6 Observers and Video Coverage. In addition to the representative of the Commission on Audit (COA) and members of the Oversight Committee the proceedings during the Pre-Selection Information Session and selection process shall be video-recorded.

4.7 Submission of Selection Documents

- a. The Selection Committee shall set the date for the submission by the Participants of the Selection Documents which shall be conducted in accordance with paragraph (c) below at the venue provided for in the Invitation to Participate.
- b. No Selection Documents shall be accepted after the deadline.
- c. **First Submission.** The first submission shall be properly sealed and marked as “**FIRST SUBMISSION OF _____**”, and shall contain the following documents (original and ten (10) copies):
 - (i) Letter of Intent;
 - (ii) Company Profile;
 - (iii) Copy of Participant’s Congressional Franchise;
 - (iv) Securities and Exchange Commission (SEC) Certificate of Registration, Articles of Incorporation and By-Laws, and latest General Information Sheet (GIS), or equivalent documents in the case of foreign investors who are parties to the Bidding Agreement under Sec. 1.10(b);
 - (v) Certificate of No Outstanding Liabilities as certified by the NTC Regulation Branch;
 - (vi) Certified True Copy of the Annual Audited Financial Statements for the last three (3) years, e.g. 2015, 2016, 2017 as submitted to the SEC, or equivalent documents in the case of foreign investors who are parties to the Bidding Agreement under Sec. 1.10(b);
 - (vii) Omnibus Sworn Statement which shall contain the following acknowledgments:
 1. That the representative signing on behalf of the Participant is duly authorized to do, execute and perform any and all acts necessary to participate, submit the Selection Documents, and to sign and execute the ensuing documents, and accompanied by the notarized Special Power of Attorney, Board Resolution, or Secretary’s Certificate, whichever is applicable;
 2. That the Participant is a holder in good standing of its Congressional Franchise;

3. That the Participant is not a Related Party to any Dominant Telecommunications Player;
 4. That each of the documents submitted are true and correct copies of the original documents of the Participant;
 5. 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;
 6. That the Participant has experience in the provisioning, delivery and operations of telecommunications services for the last five (5) years;
 7. That the Participant has done its due diligence on the laws, rules and regulations, prevailing market environments, regulatory process and timelines of the relevant government agencies relating to the telecommunications industry;
- (viii) Sworn Undertaking that the Participant shall undertake the following in the event it is selected as the NMP:
1. Amend its Articles of Incorporation that will prohibit it from merging or combining with, or becoming a Related Party to, any Dominant Telecommunications Player.
 2. That the Participant undertakes to be bound by this process and Court action shall be resorted to only after this process have been completed;
 3. That the Participant shall voluntarily return to the NTC the assigned Radio Frequencies without condition, should it become a Related Party to any Dominant Telecommunications Player even after the Commitment Period;
 4. That the Participant shall strictly comply with all its obligations and undertakings in the event it is selected as NMP;
 5. That the Commitments and undertakings contained in its submitted Selection Documents shall be valid and binding for one hundred eighty (180) days from the date of submission;
- (ix) Bid Security callable upon demand with a face value of five hundred million, Philippine currency (₱500.0M) issued by the Government Service Insurance System (GSIS) and valid for one hundred eighty (180) calendar days from the deadline date for the submission of Selection Documents.

The Bid Security shall be forfeited by the Participant in favor of the government under any of the following grounds:

1. Submission of Selection Documents by the Participant containing false information or falsified documents;

2. Refusal by the Participant to accept its confirmation as a provisional or selected NMP, or refuses to do any or all acts necessary under the submitted Selection Documents;
 3. Withdrawal of Selection Documents by the Participant during the 180-day binding period under paragraph (viii);
 4. Failure to comply with its undertakings as provided in Sec. 4.7(c)(viii);
 5. The Participant as the Selected NMP refuses or fails to comply with its obligations under Sec. 6; and
 6. The Participant attempts to unduly influence the outcome of the selection process in his favor.
- (x) For the Participant under Sec. 1.10(b), it shall also submit a Certified True Copy of the Bidding Agreement, as well as submit on behalf of the members of the Bidding Agreement the requirements under paragraphs (ii), (iv), and (vi) above.
- d. **Second Submission.** Concurrently with the First Submission, Participants shall submit in a separate envelope properly sealed and marked as “**SECOND SUBMISSION OF _____**”, containing the following documents (original and 10 copies) and items:
- (i) Form A is the filled-in electronic template of the specific barangays to be covered and the year of coverage, which shall also be stored in a suitable USB flash drive tagged as “Form A of _____”.
 - (ii) Form B is the Participant’s Annual Bids and Weight, on the selection criteria which shall be signed by the authorized representative of the Participant.

4.8 Submission, Opening and Preliminary Evaluation of Selection Documents.

On the scheduled date and time, and the designated venue as officially set by the Selection Committee, the authorized representatives of the Participants shall submit their Selection Documents, and the opening of duly submitted Selection Documents shall proceed as follows:

- a. Upon the expiration of the appointed time for the submission of the Selection Documents, the Selection Committee shall formally announce the closing of the submission period, and formally announce opening of the First Submissions in the order of receipt.
- b. The First Submissions shall be opened and vetted for completeness and compliance. Only those First Submissions found complete and compliant with the requirements under Sec. 4.7(c) shall be qualified to proceed in the selection process. The First Submissions found incomplete or non-compliant shall be marked “NON-COMPLIANT” and the concerned Participant(s) shall be disqualified from further participation.

- c. The Second Submissions of the remaining qualified Participants shall then be opened and vetted for completeness and compliance. Only those Second Submissions found complete and compliant with the requirement under Sec. 4.7(d) shall be entitled to proceed with the selection process. The Second Submissions found to be incomplete or non-compliant shall be marked “NON-COMPLIANT” and the concerned Participant(s) shall be disqualified from further participation.
- d. The Selection Committee shall immediately prepare a tabulation of the ranking of qualified Second Submissions, and make the results known to the representatives of the Participants;
- e. The Selection Committee shall announce the Participant with the highest points, who shall then be the provisional NMP, subject to Document Verification Phase as provided under Sec. 4.9.
- f. Where two (2) or more Participants tie for the highest points, the Participant with the highest points in the first two (2) years of the Commitment Period shall be the provisional NMP. In case there is still a tie, the Participant with the highest points in the first three (3) years of the Commitment Period shall be the provisional NMP; and successively until only one (1) Participant remains as being the provisional NMP.
- g. The provisional NMP as announced by the Selection Committee shall then undergo the Document Verification Phase.

4.9 Document Verification Phase

- a. The Selection Committee shall verify, validate and ascertain all the submitted Selection Documents of the provisional NMP within a period of seven (7) days from the announcement of the provisional NMP.
- b. If after the completion of the verification phase it is confirmed that the provisional NMP’s submitted Selection Documents are valid, the Selection Committee shall then declare the provisional NMP as the NMP.
- c. If the provisional NMP fails Document Verification Phase, the Selection Committee shall immediately announce the provisional NMP in writing of its disqualification and the grounds therefore.
- d. Upon the disqualification of the provisional NMP, the Selection Committee shall announce the Participant with the second highest points as the new provisional NMP, who shall then undergo the Document Verification process; and so on as the case may be, until the NMP is determined and declared.

4.10 Confirmation of the NMP

- a. The Selection Committee shall submit its Resolution declaring the NMP to the NTC *En Banc* for its final confirmation.
- b. The NTC *En Banc* shall review the Selection Committee’s Resolution and if it agrees with the recommendation shall declare the selected NMP and issues

the appropriate documentation subject to the compliance of obligations under Sec. 6.

4.11 Motions for Reconsideration and Petition

- a. Any Participant may move, in writing, for reconsideration of the Selection Committee's decisions at any stage of the process within three (3) calendar days of such decision. The Selection Committee shall decide the issue within three (3) calendar days from receipt of the motion.
 - b. A denial of the motion for reconsideration may be appealed by filing a verified petition with the NTC within three (3) calendar days upon receipt of the denial of the motion for reconsideration, accompanied by a non-refundable filing fee paid in cash or Cashier's cheque payable to the National Telecommunications Commission in the sum of Ten Million Pesos, Philippine currency (₱10.0M).
 - c. The verified petition shall be resolved by the NTC *En Banc* within three (3) calendar days strictly based on records of the Selection Committee.
- 4.12 Nothing in this Joint Memorandum Circular prevents the NTC from exercising its right to terminate the selection process at any time as it may deem appropriate or necessary, or to reject any and all submissions, or to declare a failure in the selection process, and in all such instances the NTC shall not be liable for any claims, whether administrative, civil or criminal in character.

SEC. 5. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN) AND TERM

- 5.1 The NTC shall issue to the selected NMP a CPCN with a term of fifteen (15) years or until the expiry of the NMP's Congressional Franchise, whichever is shorter. The CPCN shall be issued upon completion of the following:
- a. Philippine Competition Commission (PCC) approval of the Bidding Agreement implementation, if applicable;
 - b. Compliance by NMP of Paid-Up Capital of at least Ten Billion Pesos, Philippine Currency (₱10.0B); or implementation of the relevant provisions of the Bidding Agreement, if applicable to a Participant which has been selected as NMP, accompanied by an SEC clearance that the terms of the Bidding Agreement comply with the relevant rules on the limitation of foreign equity ownership;
 - c. Congressional approval of sale or transfer of capital stock vesting controlling equity interests in another person or entity as may be provided for in the Congressional Franchise;
 - d. Submission of Performance Security; and
 - e. Business Plan, focused on the Commitment Period, shall contain the following items:

- i. Annual capital and operational expenditure budgets. Separately indicate Capex and Opex directly related to telecommunications as defined in Sec. 1.1;
 - ii. Sources of funding and financing to support the Commitments;
 - iii. Projected cash flow;
 - iv. Planned technology deployment;
 - v. Marketing plans and programs;
 - vi. Indicative tariff rates;
 - vii. Identification of the key risks and mitigation strategies; and
 - viii. Identification of existing agreements with existing ICT players, if any.
- 5.2 The CPCN shall be issued embodying the “Commitments” that must be complied with during the “Commitment Period”.
- 5.3 The NMP may apply for the renewal of its CPCN within a reasonable time before the expiration of the period as provided in Sec. 5.1 hereof, subject to the regular renewal process for CPCNs and compliance with the conditions and obligations as contained in the CPCN.

SEC. 6. OBLIGATIONS OF THE NMP

- 6.1 **Bidding Agreement.** If the NMP is covered by a binding Bidding Agreement, it shall implement the terms of the Bidding Agreement within sixty (60) days from the date of the declaration of the NMP and shall be complied with prior to the issuance of the CPCN to the Congressional Franchise holder.
- 6.2 **Performance Security.** The NMP shall post a performance security with the NTC equivalent to either ten percent (10%) as cash bond or thirty percent (30%) as surety bond of the Annual Budgeted Capital and Operational Expenditure Commitment as contained in the Business Plan, to cover the entire Commitment Period. If it is in the form of a performance security, the same shall be renewed on an annual basis until the fifth year of the Commitment Period.
- The Performance Security shall be forfeited in favor of the government if the NMP fails to comply with its Commitments in any year within the Commitment Period.
- 6.3 **Roll-Out Plan.** Within ninety (90) days from the receipt of the notice of declaration as the selected NMP, or such other period agreed upon with the NTC, the NMP shall submit to NTC its Roll-Out Plan containing among others the following:
- a. Indication of the start of commercial operations;
 - b. Detailed schedules that are consistent with its Commitments within the Commitment Period; and

- c. Detailed description that shows that NMP's networks and facilities will not compromise national security and shall abide with the National Cybersecurity Plan.
- 6.4 **Quarterly Reports.** The NMP shall submit a quarterly report to the NTC on its delivery on its Commitments and its progress in pursuing its Roll-Out Plan. In such report, the NMP shall include its total number of fixed and mobile subscribers, whether pre-paid or post-paid, and other items as may be required by the NTC.
- 6.5 **Spectrum User Fees (SUF).** Pursuant to the existing rules and regulations, the NMP shall timely pay the required annual SUF to the NTC.

SEC. 7. ANNUAL AUDIT OF COMMITTED LEVEL OF SERVICE

- 7.1 Within one hundred eighty (180) days after the selection of the NMP, the NTC shall furnish the NMP with a list of IAs.
- 7.3 The NMP shall evaluate, select and nominate the IA from the list within thirty (30) days from receipt of the list and notify NTC of its selection.
- 7.4 The NTC shall, unless it has any objections, promptly confirm the appointment of the IA.
- 7.5 The NMP shall pay for the services of the IA in accordance with its commitments under this MC. Such payment shall form part of the NMP's Operational Expense commitments.
- 7.6 The IA shall perform the tests and measurements annually for five (5) years (Commitment Period) in accordance with internationally accepted auditing standards.
- 7.7 The IA shall observe the following:

7.7.1 Commencement and Period to Conduct Tests

The IA shall conduct tests and measurements starting on Day 1 after the end of each year of the Commitment Period. All tests and measurements shall be completed not later than fifteen (15) days from Day 1.

7.7.2 Coverage

7.7.2.1 For fixed networks (fiber to the home [FTTH], twisted pair and coaxial cable), population coverage shall be determined based on the areas where FTTH, twisted pair and coaxial cable are installed.

7.7.2.2 For fixed networks using wireless access and mobile networks, the coverage area shall be determined based on the areas where the

field strength is at least 60 dBuV/m in urban areas, 39 dBuV/m in suburban areas, and 34 dBuV/m in rural areas unless otherwise determined by the IA.

7.7.2.3 The total population of a barangay is considered covered if at least 80% of the population have access to the fixed, fixed wireless and mobile networks.

7.7.3 Minimum Average Speed

7.7.3.1 The minimum average speed shall be measured using the lowest comparable or equivalent offered service plan, the IA shall subscribe to said Plan and perform the tests and measurements using the Broadband Speed Test Agent/Software/Application and test procedures prescribed by the Commission.

7.7.3.2 There shall be an appropriate number of tests and measurement samples as determined by the IA completed within thirty (30) days from start of Day 1.

7.7.3.3 The tests and measurements shall be conducted anytime from 0000HRS to 2400HRS, any day and anywhere within the areas covered by the commitment.

7.8 Within fifteen (15) business days after the completion of the tests and measurements, the IA shall submit its official report to the Commission stating, among others, the population covered and the minimum average speed delivered.

7.9 Dispute Resolution

7.9.1 In the event of a disagreement or dispute with respect to the final audit findings by the IA, such disagreement or dispute shall immediately be referred to the Dispute Resolution Board.

7.9.2 The Dispute Resolution Board shall promptly resolve such disagreement or dispute not later than ten (10) calendar days from the date of submission, unless mutually extended by the parties.

7.9.3 The Dispute Resolution Board shall be composed of:

- (1) A representative to be chosen by the NTC;
- (2) A representative to be chosen by the NMP; and
- (3) A third representative chosen by the first two representatives.

7.9.4 The decision of the Dispute Resolution Board on any disagreement or dispute submitted to it for resolution shall be final. No disagreement or dispute may be referred for resolution beyond thirty (30) days from receipt of the final audit by the IA.

SEC. 8. SANCTIONS FOR BREACH OF COMMITMENTS

Failure of the NMP to comply with any of its commitments shall be considered a breach. The NMP shall be allowed a period of six (6) months to remedy such breach. Upon failure of the NMP to remedy the breach within the period allowed, the NTC shall:

- a. Forfeit the Performance Security;
- b. Consider the breach to be a breach of the Special Conditions in the CPCN, impose applicable penalty and bring a *quo warranto* proceeding; and
- c. Consider the breach to be a breach of the Special Conditions attached to the Radio Frequencies, and thereby proceed to the process of recalling the Radio Frequencies assigned to the NMP.

SEC. 9. 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.

SEC. 10. FINAL PROVISIONS

- 10.1 The processes covering the selection of the NMP under this Joint Memorandum Circular constitutes a priority infrastructure project of the government and thereby shall be exempt from being subjected to any temporary restraining order, preliminary injunction or preliminary mandatory injunction pursuant to Republic Act No. 8975.
- 10.2 Construction and Interpretation of this MC. Provisions and procedures specified in this MC shall be liberally construed in favor of achieving the intended purpose of this selection process.
- 10.3 Any circular, order, memoranda or parts thereof inconsistent herewith are deemed repealed or amended accordingly.
- 10.4 This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation and three (3) certified true copies furnished the University of the Philippines Law Center.

Quezon City, Philippines.

Done this ___ day of _____, 2018.

NATIONAL TELECOMMUNICATIONS COMMISSION