RULES ON THE ACCELERATED ROLL-OUT OF COMMON TOWERS IN THE PHILIPPINES

WHEREAS, Section 2 of RA 10844 otherwise known as the “Department of Information and Communications Technology (DICT) Act of 2015” declares it to be the rules of the State “[T]o ensure the provision of strategic, reliable, cost-efficient and citizen-centric information and communications technology (ICT) infrastructure, systems and resources as instruments of good governance and global competitiveness” and “To ensure the availability and accessibility of ICT services in areas not adequately served by the private sector.”

WHEREAS, the DICT is mandated under Republic Act 10844 to be the primary rules, planning, coordinating, implementing, and administrative entity of the Executive Branch of the Government of the Philippines that will develop and promote the national ICT development agenda;

WHEREAS, the DICT has the power and function to formulate, recommend, and implement national policies, plans, programs, and guidelines, that will promote the use of ICT with due consideration to the advantages of convergence and emerging technologies;

WHEREAS, during the 15 April 2019 National Task Force to End Conflict Local Communist Armed Conflict (NTF-ELCAC) meeting, the President approved the government initiative on the building of common towers in government owned properties for the purpose of improving the telecommunication services in all parts of the country to promote peace and order, better livelihood opportunities thru telecommunications and better access to basic government online services with the end view of eradicating poverty, the root cause of insurgency in the country;

WHEREAS, it is vital to the interest of the nation that common towers be available to as many industry participants as possible, and built not only in the city centers but also in the remote, unserved and underserved areas, in order to propagate the provision of telecommunications and broadband service by both the existing players and new players that the government is encouraging to enter the Philippine market;

WHEREAS, the DICT, in the interest of the public, and in order to encourage investment in, and the build out of, common towers, particularly in the unserved and underserved areas, while nonetheless avoiding wasteful duplication of network resources and multiplicity of permits, now needs to prescribe rules for the accelerated roll-out of common towers in the Philippines;

WHEREAS, in the interest of the public, which shall ultimately benefit in the improved telecommunication service in the country, the DICT, in accordance with law, shall give to MNOs and ITCs access to DICT-owned properties or DICT-managed and operated ICT infrastructure facilities, for the accelerated and efficient roll out of common towers and in relation to the implementation of the National Broadband Plan (NBP) and Free Internet Access in Public Places Act;
NOW THEREFORE, as a matter of national interest for the benefit of the public, to improve ICT services, and to enhance competition in the telecommunications and ICT industries, the DICT hereby promulgates the following rules on the accelerated common tower roll-out in the country:

SECTION 1. Definition of Terms

1.1 For purposes of these Rules, the following terms and phrases shall have the assigned meaning unless the context otherwise requires:

(a) “Access” means making available one’s Telecommunications Towers, Sites and Facilities to another, under defined conditions, on a non-exclusive basis, for the purpose of providing telecommunications services and/or value added services or any other ICT services;

(b) “Access Provider” refers to a Telecommunications Tower and Facilities Owner who shares a Telecommunications Tower, Site or Facilities to an Access Seeker;

(c) “Access Seeker” refers to a duly licensed and/or registered telecommunications or value-added service or ICT services provider looking to use or gain access to another telecommunications, value-added or ICT services provider’s Telecommunications Tower and Facilities;

(d) “Facilities” mean (a) facilities associated to telecom towers, including but not limited to the main power supply or power back-up through on-site generators and/or uninterrupted power supply and/or battery; (b) Cable Entrances and Ducts;

(e) “Government Sites” shall mean government properties owned by the DICT, including real estate with existing DICT owned towers & other sites owned by all this government with which DICT has agreements to put up common towers;

(f) “Government Support” shall mean the support granted by the DICT to ITCs in securing its required permits, site acquisition and other documentary and administrative requirements to build and operate common towers;

(g) “Information and Communications Technology or ICT” means the totality of electronic means to access, create, collect, store, process, receive, transmit, present and disseminate information;

(h) “ICT Services Provider” means those engaged in providing services primarily intended to fulfill or enable the function of information processing and communication by electronic means;

(i) “Independent Tower Company (ITC)” shall mean a Common Tower Provider which is not a related party, as defined by the Securities and Exchange Commission, to any of the incumbent MNOs;

(j) “MNO” means a Mobile Network Operator also known as a wireless service provider, wireless carrier, cellular company, or mobile network carrier, is a provider of wireless communications services that owns or controls all the elements necessary to sell and deliver
services to an end user including radio spectrum allocation, wireless network infrastructure, back haul infrastructure, billing, customer care, provisioning computer systems and marketing and repair organizations;

(k) "MOU" shall mean the Memorandum of Understanding signed by Common Tower Providers with the DICT;

(l) "NTC" shall mean the National Telecommunication Commission;

(m) "Related Party" refers to a 1.) company's parent entity, 2.) company's subsidiaries, 3.) company's affiliates, 4.) Any party [including their subsidiaries, affiliates, and special purpose entities] that either the company exerts direct or indirect control over or exerts direct or indirect control over the company;

(n) "Public Telecommunications Entities" or "PTEs" shall have the same meaning as that stated in RA 7925, the Public Telecommunications Rules Act of the Philippines;

(o) "Tower" means all types of towers including but not limited to: (i) a three-legged or four-legged tower structure used for telecommunications, power, transmission service or of similar nature or (ii) poles, or (iii) telecom masts, or (iv) a similar infrastructure or civil works;

(p) "Tower Sharing" means the joint use of Telecom Towers and Facilities by two or more persons;

(q) "Tower Company" means the Independent Tower Companies registered by the Department of Information and Communications Technology.

SECTION 2 - Objectives

2.1 The objectives of these rules are:

(a) To conduct a speedy roll-out of common towers in the Philippines whereby ITCs can build common towers in specified areas jointly identified by the DICT and MNOs;

(b) To build/convert at least two thousand five hundred (2,500) common towers in DICT owned properties, hard-to-access areas as identified by the MNOs and common towers in other government agencies’ properties;

(c) To test and pilot the Common Tower Initiative of the Government in the Philippine Telecommunication Industry and to acquaint ITCs in the Philippine Telecommunications Market;

(d) To be the basis of a more comprehensive Rules and Guidelines governing Passive Telecommunications Infrastructure Sharing;

(e) To optimize the operators' capital expenditures in terms of supporting infrastructure and to free more funds for investment in core network equipment and to promote the development of service innovation through the creation of new value-added services and in so far as the 2,500 sites identified by the DICT and MNOs are concerned.
The provisions of these Rules shall at all times be construed in such a manner as will fulfill the foregoing objectives.

**SECTION 3 – Site Identification and Tower Sharing**

3.1 The DICT shall identify DICT owned properties and existing towers under its control, attached herewith as Annex “A”. Further, attached herewith as Annex “B” shall be the identified sites of the MNOs. The list of properties owned by other government agencies with which DICT has agreements to collocate common towers is attached herewith as Annex “C”. Said annexes may be accessed on the DICT website.

3.2 In order to support the mandate for accelerated tower roll-out, the DICT, thru the National Telecommunications Commission and by way of a Department Order, shall streamline, consistent with the law, the issuance of licenses for the deployment of any telecommunications radio or equipment in towers that are not built by the Independent Common Tower Companies.

3.3 Voluntary sharing of towers owned by the Incumbent MNOs – the DICT encourage the sharing of all passive telecommunications infrastructure, including the towers built by the incumbent MNOs. As such, the voluntary sharing of existing towers by MNOs shall be encouraged. An MNO which shall voluntarily offer to share its existing towers shall be incentivized by allowing the latter to build passive infrastructure in government properties, under such terms as may be allowed by law. In this regard, each existing tower to be voluntarily shared by an MNO shall entitle such MNO to select an available government property where it would place a common tower built by them or by its selected ITC.

3.4 ITCs may also build towers even without binding contact with an MNO. Such ITC intending to build/retrofit a common tower in a DICT or government controlled property may be granted government support on the condition that it shall secure binding contracts with any MNO within six (6) months from completion of the common tower. Failure to secure such binding contract, the ITC must disassemble the tower or sell the same to another ITC which has secured a binding contract with an MNO within one (1) month from the expiration of the six month period discussed in this section.

3.5 ITCs which build common towers in DICT and other government owned properties shall have ownership of such towers and all facilities built on said properties which the ITC can have access to for a period of fifteen (15) years which may extended for another fifteen (15) years.

Further, MNOs may voluntarily offer, transfer or convey its existing tower resources to an allied company that will take charge in making possible the sharing of said tower resources to other MNOs and other interested entities.
SECTION 4 – Procedure for the Accelerated Roll-out of Common Towers

Step 1 - The identified 2,500 sites, attached herewith, will be sent to the Independent Tower Companies (ITCs) which have signed an MOU with the DICT and the MNOs. The ITCs and MNOs will then conduct a study and survey of these sites to initiate commercial agreements between the two of them.

Step 2 - After its survey and study, the MNOs will communicate to the DICT its intent to establish a network in any of the sites from the 2,500 identified locations;

After its survey and study, the ITCs will then communicate to the MNOS their business offers/proposal in terms of leasing agreements, rentals, roll-out speed etc. for each site that was sent out to them. Such proposals by the ITC will exclude the acquisition cost for DICT owned properties. Further, ITC can add to this list of sites to accelerate the roll-out of Common Towers, by conducting its own site acquisition search rings to determine coverage and capacity gaps of respective MNOs. It would offer their sites to the concerned MNOs, and if they get a contract, this will be brought to DICT.

MNOs are likewise encouraged to add sites to the 2,500 identified locations attached herewith where they would want common towers to be installed and get solicited or unsolicited Request for Proposal (RFP) from any interested ITC.

Step 3 - The ITCs which have successfully secured a binding contract from any MNO which will rent from the former in a given site shall then proceed to the DICT for the signing of a Memorandum of Agreement whereby DICT shall grant government support to such ITC;

Step 4 - The DICT will then make available its controlled properties for the speedy roll-out of common towers. The DICT shall not collect any monetary lease from the ITC which will build towers on its sites. However, the DICT may receive compensation in kind as consideration for the use of its properties.

SECTION 5 – Qualifications of ITCs for the Signing of a MOA

5.1 Qualifications - In order to promote the objectives of these rules, the DICT shall sign a MOA with Independent Tower Companies (“ITCs”) or ITCs with joint venture or partnership or consortium, with the following qualifications:

(a) An ITC must be a duly incorporated and validly existing domestic corporation registered with the Securities and Exchange Commission;

(b) An ITC either by itself or through its shareholders or consortium partners who hold at least 20% equity in the company or consortium shall have at least five (5) years of experience of constructing and/or owning and/or operating and/or maintaining towers or has constructed or owned, or operated a minimum of one thousand (1,000) towers within or outside the Philippines. The ITC must also have the relevant Technical Experience to undertake the construction, ownership and management of telecommunications towers;
(c) Shall be independent and shall not be a related party of the MNOs in order to promote non-discriminatory access and uniformity and transparency in tower leasing arrangements;

The following requirements shall be required for the MOA signing with the DICT:

1. Valid business permits:
   - Securities and Exchange Commission registration certificate;
   - Bureau of Internal Revenue (BIR) registration;
   - Mayor’s Permit
2. Memorandum of Understanding with the DICT;
3. Certification from respective clients or government concerned that the ITC has either at least five (5) years of experience of having constructed, owned or managed towers or has at least constructed, owned or operated/managed one thousand (1,000) towers.
4. Corporate Certification that MNOs or their shareholders, subsidiaries, affiliates, or parent or associated companies, as well as their employees’ retirement funds or cooperatives, or through domestic or foreign partners do not directly or indirectly own any equity, whether in whole or in part in the ITC.

5.2 Preference - In the event that more than one ITCs shall have secured a contract from an MNO in a specific site from the 2,500 locations, preference shall be given in the following order:

1. The ITC which has the best business offer in given site;
2. The ITC which has managed/owned/operated/ the greater number of towers;
3. Those which has the greater number of experience in terms of years;

In case of a tie, the ITC first signing a MOA with the DICT shall be given preference.

**SECTION 6 – Additional Obligations of Independent ITCs**

The DICT hereby requires the ITCs to –

(a) Lease its Telecom Towers, including its associate maintenance services, to all access seekers for a specified lease term to be mutually agreed between the ITC and the Telecom Operator. The terms of lease shall be transparent, equal and non-discriminatory to all access seekers.

(b) Comply with technical specifications to be required by the DICT. The Telecom Towers of the ITC must have the capacity to accommodate at least two (2) tenants. Ideally, it should accommodate three (3) or more.

(c) Use model Lease Contracts that shall be uniform and available to all access seekers. The ITCs shall also publish and make available to the DICT their standard
lease rates for the areas selected among the 2,500 location, which the DICT shall publish on an annual basis.

Telecom Towers built after the issuance of the Rules shall be subject to the following terms:

a) No new Telecom Tower shall be built/constructed within a proximity radius of one hundred fifty (150) meters from an existing/planned telecom common tower in an urban area, except in high-density areas like Makati, Ortigas and BGC or one thousand (1,000) meters of an existing/planned telecom common tower in a rural area;

b) When presently existing towers built by MNOs and those to be built by the ITC can no longer accommodate additional equipment and there is demand for additional capacity;

c) New technologies, such as 5G, requires Telecom structures to be within a proximity radius of less than one hundred fifty (150) meters or one thousand (1,000) meters of each other;

d) The proximity rule shall not be applied to special telecom structures such as street lamps, electric poles, small cell sites, cell sites on wheels and camouflaged towers.

SECTION 7 – Mediation by the DICT

7.1 All negotiations for infrastructure sharing shall be done between the contracting private parties and in good faith, The Access Provider shall not –

(a) Obstruct or delay negotiations in resolving disputes;

(b) Refuse to provide information relevant to an agreement including information necessary to identify the facility needed e.g. drawings, maps etc.;

(c) Refuse to designate a proper representative to speed up negotiations;

(d) Over-charge the access seeker, or conversely, impose rates that are discriminatory to either make it extremely onerous for one access seeker to gain access or which favor one access seeker over another.

An Access Seeker may bring a formal request for mediation to the DICT in order to mediate any dispute in an infrastructure sharing request.

7.2 Either party to an access or sharing agreement may, in the event of any difference or dispute between the Access Seeker and the Access Provider which cannot be resolved amicably within fifteen (15) days from the time such dispute arises, bring a written request for mediation to the DICT shall resolve the matter within seven (7) days. Where the DICT issues an order to resolve the matter, such order shall be binding on both parties.
SECTION 8 – Regulation and Monitoring

The DICT shall monitor the compliance by the ITC and the MNOs of the approved roll-out plan for the 2,500 identified locations. The DICT may, with due process, rescind the MOA for the following reasons:

(a) Failure to comply with their roll-out plan;
(b) Any violation by the licensed ITC of the DICT’s rules and regulations, or these Rules.

SECTION 9 – Review of the Rules

The DICT shall review these rules during the implementation of the accelerated roll-out in order to determine if it has been effective, if it should be continued or discontinued, or if there are any changes or improvements to be made thereon. Specifically:

(a) The DICT may authorize new ITCs, whether independent or not, after the roll out of at least 500 common towers;
(b) The DICT may also cancel the MOA with ITCs if they have not fulfilled their obligations under the MOA.

SECTION 10 – Repealing Clause

Any memorandum circulars, rules, orders, guidelines or any parts thereof that are inconsistent with these Rules are hereby deemed superseded and/or amended accordingly.

SECTION 11 - Effectivity

These Rules shall become effective 15 days from its publication in a newspaper of general circulation.

ELISEO M. RIO, JR.
Acting Secretary

THESE RULES AND ITS ANNEXES ARE AVAILABLE ON THE DICT WEBSITE
https://dict.gov.ph/