



**CLARIFICATORY BULLETIN NO. 5**  
**29 October 2018**

**NEW MAJOR PLAYER (NMP) SELECTION PROCESS**

Pursuant to Section 7.2 of NTC Memorandum Circular (MC) NO. 09-09-2018 and Section 5.2 of the Instruction to Participants (ITP), this Clarificatory Bulletin is issued by the NMP Selection Committee (SC) *motu proprio*, and based on the questions officially received by the SC through the NMP email as of 22 October 2018, to further explain certain provisions of the MC, ITP, and the procedures involved during the NMP Selection Process.

Queries/Issues	Clarifications
1. Re: Audit of Population Coverage using fixed wireless and mobile networks.	<p>The fixed wireless access and mobile networks referred to in MC Sec. 13.5(b)(2) refers to terrestrial wireless access networks.</p> <p>Any transmission network including Satellite networks can be used to carry traffic to/from the fixed wireless and mobile access networks from/to the national networks.</p>
2. Re: Audit on the Minimum Average Broadband Speed	<p>The term “lowest comparable or equivalent offered service plan” under MC Section 13.5(c)(1) refers to the subscription packages offered by existing providers, including the dominant market players:</p> <ul style="list-style-type: none"> <li>a.) In terms of Price – NMP provides an equal or faster speed for the same price of existing providers; and</li> <li>b.) In terms of Speed – NMP charges an equal or lower price for the same speed offered by existing providers.</li> </ul>
<p>3. Re: Latest Audited Financial Statement</p> <p>Is the requirement for the latest AFS referring to a 2018 interim AFS or it is compliant to provide 2017 AFS if that is the latest AFS of the participant and the committed investors? What if the company follows the calendar year for its fiscal year and conducts a financial audit on an annual basis only and therefore cannot provide an interim AFS for 2018?</p> <p>We note that in the MC, only the AAFS for 2015, 2016 and 2017 are required to be submitted.</p>	<p>A 2018 interim AFS is only required if the Participant performed an infusion to comply with the ₱10-Billion paid capital requirement.</p> <p>If it follows the calendar year and cannot provide an interim AFS, or if a committed investor will present itself for the ₱10-Billion paid capital eligibility requirement, then the AAFS for 2015, 2016 and 2017 would suffice.</p> <p>Please also refer to Clarificatory / Amendatory Bulletin No. 1.</p>

<p>4. Re: SEC Equivalent Documents</p> <p>In some foreign countries, there is no equivalent government agency as the SEC to certify documents as true copies, or the equivalent government agency to the SEC does not certify documents as true copies. How do we then comply with the requirement to provide certified true copies? Is it enough that the document is certified/stamped as true copy and/or a proper English translation by the authorized entity, a representative of the company, or a local notary public.</p>	<p>Please see Clarificatory Bulletin No. 2, Item No. 14 and Clarificatory Bulletin 4, Item No. 18.</p>
<p>5. Re: GIS and AFS Equivalent Documents</p> <p>In the event that such certification cannot be obtained from the country's equivalent corporate regulator, or its Embassy or Consulate in the Philippines, can such certification to be issued by a representative of the company instead?</p>	<p>Please see Clarificatory Bulletin No. 2, Item No. 14, and Clarificatory Bulletin No. 4, Item No. 19.</p>
<p>6. Re: Authentication of Foreign Documents</p> <p>May we confirm that the documents to be submitted by the foreign investors as part of the First Submission Package are needed to be authenticated by the Philippine Consular office in the country of origin only after the NMP has been declared and confirmed?</p>	<p>Yes. Authentication or consularization of foreign executed documents will only be required during the process for issuance of the CPCN to the NMP.</p> <p>Please refer to Clarificatory Bulletin No. 4, Item No. 8.</p>
<p>7. Re: List of Universal and Commercial Banks</p> <p>Can the NTC provide an official list of all the universal and commercial banks in the Philippines?</p>	<p>Please refer to the identified universal and commercial banks by the <i>Bangko Sentral ng Pilipinas</i> in its website:  <a href="http://www.bsp.gov.ph/banking/directory.asp">http://www.bsp.gov.ph/banking/directory.asp</a></p>
<p>8. Re: Number of Representatives</p> <p>How many people will be allowed to be present per participant during the opening of the bid documents on November 07?</p>	<p>Due to space limitation, the Selection Committee encourages Participants to limit their representatives to not more than three (3) individuals during the Opening of Bids on 07 November 2018.</p>
<p>9. Re: Signature of Authorized Representative</p> <p>Is it correct that the Authorizations, Omnibus Sworn Statement, and Sworn Undertaking shall be signed by the representative collectively appointed by the participant and its investors in the Resolution executed by each of their authorized representatives?</p>	<p>It is permitted.</p> <p>However, please refer to Clarificatory Bulletin No. 4, Item No.11 regarding signatories to PCC Undertaking.</p>
<p>10. Re: Authorized Representatives</p> <p>Do the Participant and its committed investors need to submit a Power of Attorney and/or Secretary's</p>	<p>Yes.</p>

<p>Certificate for the appointment of their authorized representatives as part of the bid documents?</p> <p>If yes, can a foreign committed investor submit a Power of Attorney (instead of Secretary's Certificate), and does the Power of Attorney have to be notarized and authenticated by the Philippine Consular office in the country of origin?</p>	<p>Yes, it must be notarized but authentication or consularization of foreign executed documents will only be required during the process for issuance of the CPCN to the NMP.</p>
<p>11. Re: Omnibus Sworn Statement, Par. 1</p> <p>Is the Resolution being referred to one that is executed by each of the authorized representatives of the participant and its committed investors?</p>	<p>Yes.</p>
<p>12. Re: Sworn Undertaking</p> <p>Is this executed by the sole authorized representative of the participant and its committed investors as designated in the resolution? If yes, do we need to attach a Secretary's Certificate or Resolution showing the authority of the authorized representatives?</p> <p>Is this executed by just one representative of the Participant and all the committed investors?</p>	<p>Yes. A Secretary's Certificate or Resolution indicating the authority of the authorized representative/s is required to be attached.</p> <p>Yes, it is allowed subject to authorization by the Principals.</p>
<p>13. Re: Summary Sheet</p> <p>Is there a prescribed form for the Summary Sheet described in ITP Sec. 8.3(g)(3)?</p>	<p>None. Please see Clarificatory Bulletin No. 4, Item 31 and Clarificatory Bulletin No. 3, Item No. I (C) (3).</p>
<p>14. Re: Bidding Agreement under MC Sec. 1.10 (b) and ITP Sec. 4.1 (b)</p> <p>Please confirm our understanding that the commitment to increase the authorized capital stock required under MC Sec.1.10(b)(1) pertains to the commitment to satisfy the ₱10 Billion minimum paid up requirement in Sec. 10.b of MC 09-09-2018</p> <p>Please confirm our understanding that "<i>details of number, amount and schedule of payments of parties to the Bidding Agreement</i>" required under MC Sec.1.10(b)(2) pertain to details of how the parties to the Bidding Agreement plan to satisfy the Php10 Billion minimum paid up requirement in Sec. 10.1(b) of MC 09-09-2018 and that it is not required for the Bidding Agreement to contain or provide the NMP's funding strategy (i.e., whether funded by equity or debt) for its Capital and Operational Expenditure within the Commitment Period.</p>	<p>MC Sec.1.10(b)(1) pertains to the requirement to increase its capital to such amounts that will ensure the attainment of the CLoS and in accordance with its Bidding Agreement.</p> <p>Note that the ₱10-Billion is a financial qualification requirement under the MC.</p> <p>The "<i>details of number, amount and schedule of payments of parties to the Bidding Agreement</i>" shall necessarily contain such details to ensure the attainment of the CLoS for the entire Commitment Period.</p> <p>Please see Clarificatory Bulletin 2, Item No. 4</p>

<p>15. Re: Contingent Radio Frequencies</p> <p>We request that NTC categorically undertake in the ITP and MC that the entire 10MHz band that will be released as part of the Bayan Telecommunications case shall be allocated to the new entrant and that no spectrum cap shall be introduced. However, it would be prudent that when a re-distribution of the lower bands occur, that the distribution in the 2.100MHz band is also performed. It is clearly unreasonable to withhold spectrum from the new entrant on the basis that this will provide him with the marginally larger 2.100MHz holding than the incumbents when there are no such provisions pertaining to the 900MHz and 1800MHz bands.</p>	<p>In the event that there is a final and executory decision or resolution by the Courts in favor of the government, the NTC shall, within a reasonable period of time, also assign the relevant radio frequencies to the NMP.</p> <p>The Selection Committee cannot comment about frequencies outside those expressly mentioned in Section 3 of the MC.</p>
<p>16. Re: Nomination of Subsidiary, Affiliate, or related-company</p> <p>Please reconsider authorizing a party to the Bidding Agreement to nominate its subsidiary, affiliate or related company as the entity which will fulfill the Technical Capability requirement, without requiring such nominated entity to be a committed investor. This practice has been adopted in the biddings for the PPP projects of the National Government or GOCCs since most investors normally use holding companies to participate in bids and the establish separate special purpose project companies to undertake specific projects. These project companies are usually highly regulated and have contractual and regulatory restrictions in investing in other business ventures, which is why it is usually the parent holding company that undertake investment in business ventures whether in the same or in another jurisdiction.</p> <p>For example, in the BCDA's ongoing bidding to manage, operate and maintain the existing and the new passenger terminal for the Clark International Airport, the required O&amp;M Experience may be satisfied by a Consortium Member or its affiliate.</p>	<p>SC maintains its position as contained in Clarificatory/Amendatory Bulletin No.1, Items No. 9 &amp; 10</p>
<p>17. Re: Technical Capability</p> <p>The MC set specific specifications pertaining to the operational experience of an applicant at minimum 10 years on a national scale.</p> <p>We suggest that the member fulfilling the Technical Capability requirement should have minimum 10 year operational experience on International Scale, rather as now on a National Scale. That should allow the new entrant to demonstrate ability to successfully undertake projects outside to its home country.</p>	<p>NTC MC No. 09-09-2018 is final.</p>

<p><b>18. Re: Certification of Technical Capability</b></p> <p>Please clarify that the Certification is required only from the entity nominated to fulfill the technical capability requirement (e.g., a committed investor or its affiliate.)</p> <p>Please confirm if it is acceptable to:</p> <p>i) Submit a license issued in favor of the entity nominated to fulfill the Technical Capability requirements under the TOR/ITP in the event that the said regulatory agency does not issue the required certification; and</p> <p>ii) A certification from an officer or director of the nominated entity that it has the necessary experience for the provisioning, delivery and operations of the telecommunications services for the last ten (10) years; or</p> <p>iii) Alternative to items (i) and (ii) above, such other equivalent documentation that would evidence that the nominated entity has at least 10 years' experience in the telecommunications industry at a national level in its home country.</p>	<p>Yes. The Certification is required only from the entity nominated to fulfill the technical capability requirement.</p> <p>Please refer to Clarificatory Bulletin 4, Item 16.</p> <p>Please refer to Clarificatory Bulletin 4, Item 16.</p> <p>Please refer to Clarificatory Bulletin 4, Item 16.</p>
<p><b>19. Re: National Scale</b></p> <p>Please define what are the minimum constraints for a "particular region" of a country will suffice for purposes of fulfilling the "national scale" requirement, e.g. we assume that provision of service to an area equivalent in size to one of the Philippines' administrative regions would not suffice.</p>	<p>The "particular region" requirement for purposes of fulfilling the "National Scale" requirement would solely depend on whether such foreign country geographically divided its country in terms of telecommunications regions and granted such license to that effect.</p> <p>Thus, if the foreign country only issues licenses nationwide, then "national scale" would mean nationwide operations.</p>
<p><b>20. Re: Submission of 2018 Audited Financial Statements</b></p> <p>Please clarify that the MC's requirement for the submission of the audited financial statements past 3 years (i.e. 2015, 2016 and 2017) prevails over the inconsistent requirement of the ITP and its Annex 6, which require in addition the submission of 2018 audited financial statements.</p>	<p>There is no inconsistency between the ITP and Annex 6.</p> <p>Please see Clarificatory/Amendatory Bulletin No. 1, Item No. 4.</p> <p>A 2018 interim AFS is only required if the Participant performed an infusion to comply with the ₱10-Billion paid capital requirement.</p> <p>If it follows the calendar year and cannot provide an interim AFS, or if a committed investor will present itself for the ₱10-Billion paid capital eligibility requirement, then the AAFS for 2015, 2016 and 2017 would suffice.</p>

<p>21. Re: Form of Participation Security</p> <p>We suggest including an irrevocable Bank Guarantee issued by one of the major national or international banks as an acceptable form of Participation Security. Such irrevocable Bank Guarantee would be a more practical form of security than initial international remittance of cash, and in the case of an unsuccessful candidate, we would propose that the Bank Guarantee is released when the successful bidder has been granted the CPCN.</p> <p>Kindly confirm that the in case of a foreign bank with a universal or commercial banking license in the Philippines issues the irrevocable letter of credit, such letter of credit does not need to be confirmed nor authenticated by another universal or commercial bank in the Philippines. For further clarity, please confirm that any of the universal or commercial banks, duly licensed by the <i>Bangko Sentral ng Pilipinas</i> as appearing in its website - (<a href="http://www.bsp.gov.ph/banking/directory.asp">http://www.bsp.gov.ph/banking/directory.asp</a>) may issue the letter of credit, without need of further confirmation or authentication.</p>	<p>No. NTC MC 09-09-2018 is final.</p> <p>Yes.</p> <p>Please refer to Clarificatory Bulletin No. 4, Item No. 33.</p>
<p>22. Re: Participation Security</p> <p>Please confirm our understanding that any of the committed investors or member of the bidding consortium can procure and post the Participation Security (i.e. that it is not mandatory for the Congressional Franchise Holder itself to post the Participation Security in favor of the NTC).</p>	<p>Yes. Please refer to Clarificatory Bulletin No. 4, Item No. 9.</p>
<p>23. Re: Congressional Franchise Extension</p> <p>If congressional approval is not obtained within 90-day requirement post bid as a result of delay in the approval process, despite successfully lodging an application with Congress as soon as the declaration of the NMP was made, what is the effect on the following:</p> <p>a.) The requirement to infuse the ₱10 billion paid in capital into franchise holder, considering that there remains a risk that Congress will not approve the change in control of the franchise holder until such approval has been actually granted, and that the grant of the CPCN therefore the commencement of the operations of the third telecom is conditioned on the approval of the Congress?</p> <p>b.) If the Congress has not yet approved the change of control of the Congressional Franchise holder, how can the consortium members infuse the P10 billion capital into the franchise holder if the infusion by</p>	<p>Please refer to Clarificatory / Amendatory Bulletin No. 1, Item No. 20.</p> <p>However, note that congressional approval shall be required under circumstances provided in their respective congressional franchise of the participant (e.g. <i>Sale, Lease, Transfer, Usufruct, or Assignment of Franchise. – The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor shall transfer the controlling interest of the grantee, whether as a whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company, corporation, or entity without the prior approval of the Congress of the Philippines and compliance with the legal requirements stipulated in other statutes: Provided, That any person or entity to which this franchise is validly sold, transferred, or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act.</i>)</p>