

**EXPLANATORY MEMORANDUM
and
MEMORANDUM CIRCULAR
for
VOICE OVER INTERNET PROTOCOL (VoIP)**

On 29 March 2005, the National Telecommunications Commission (the Commission, for brevity) issued a memorandum (hereafter referred to as the 29 March 2005 memorandum) and a draft memorandum circular on Voice over Internet Protocol (VoIP, for brevity) and invited comments thereon from the public. In order to provide an opportunity for the further explication of the comments submitted for its consideration, and as part of the administrative process leading to the formulation of a regulatory framework on the said subject, the Commission conducted a public hearing on May 3, 2005. Expectedly, the Commission received varied comments on the proposed regulatory treatment of VoIP, particularly on the proposed classification of VoIP as a value-added service (VAS, for brevity). Most of the questions raised in the comments submitted to the Commission have already been properly threshed out in the 29 March 2005 memorandum and need no further elaboration. The Commission, however, finds it appropriate to issue the following memorandum to further explain the necessity of providing a categorical definition of VAS.

Republic Act No. 7925, otherwise known as the Public Telecommunications Act of the Philippines, defines a “VAS provider” as “an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.” As previously stated in the 29 March 2005 memorandum, while the statute gives a categorical definition of a VAS provider, it does not explicitly define what VAS is or what types of services are to be included therein.

NTC Memorandum Circular No. 8-9-95 (MC No. 8-9-95, for brevity), or the Implementing Rules and Regulations of Republic Act No. 7925, is similarly unavailing. Section 420 thereof states as follows –

“VALUE ADDED SERVICES (VAS)

“(a) A non-PTE VAS provider shall not be required to secure a franchise from Congress.

“(b) A non-PTE VAS provider can utilize its own equipment capable only of routing, storing and forwarding messages in whatever format for the purpose of providing enhanced or augmented telecommunications services. It shall not put up its own network. It shall use the transmission network, toll or local distribution, of the authorized PTES.

“(c) The provision of VAS shall not in any way affect the cross subsidy to the local exchange network by the international and national toll services and CMTS service.

“(d) Entities intending to provide value added services only shall submit to the commission application for registration for approval. The application form shall include documents showing, among others, system configuration, mode of operation, method of charging rates, lease agreement with the PTE, etc.

“(e) The application for registration shall be acted upon by the Commission through an administrative process within thirty (30) days from date of application.

“(f) PTEs intending to provide value added services are required to secure prior approval by the Commission through an administrative process.

“(g) VAS providers shall comply strictly with the service performance and other standards prescribed commission.”

MC No. 8-9-95 does, however, define what enhanced services are, namely, “a service which adds a feature or value not ordinarily provided by a public telecommunications entity such as format, media conversion, encryption, enhanced security features, computer processing, and the like.”¹

¹ Section 001 (15) of MC No. 8-9-95

While the definition of VAS and the type of service that may be classified as such may be inferred from the aforementioned provisions of MC No. 8-9-95, the same are, according to the Supreme Court in the case of *Globe Telecom, Inc. vs. National Telecommunications Commission*,² “still too sweeping.” In the said case, the High Court likewise ruled, among others, that –

“The NTC should not be necessarily faulted for such indistinct formulation since it could not have known in 1995 what possible VAS would be available in the future. The definition laid down in the Implementing Rules may validly serve as a guide for the NTC to determine what emergent offerings would fall under VAS.

“Still, owing to the general nature of the definition laid down in the Implementing Rules, **the expectation arises that the NTC would promulgate further issuances defining whether or not a specific feature newly available in the market is a VAS.** Such expectation is especially demanded if the NTC is to penalize PTEs who fail to obtain prior approval in accordance with Section 11 of the PTA. To our knowledge, the NTC has yet to come out with an administrative rule or regulation listing which of the offerings in the market today fall under VAS or ‘enhanced services.’”

The abovequoted ruling of the Supreme Court recognizes the fact that the Legislature unequivocally intended the Commission to promulgate either a definition of VAS or an enumeration of the types of services which are to be included therein. Furthermore, it bears pointing out that the decision does not rule out the possibility of the formulation of a comprehensive definition of VAS; it merely lays down the expectation that the Commission should promulgate further issuances defining whether or not a specific feature newly available in the market is a VAS in view of the general nature of the definitions laid down in MC No. 8-9-95. Thus, to avoid further confusion, the Commission deemed it appropriate to promulgate a categorical definition of VAS.

It is important to stress that prior to the promulgation of the draft rules on VoIP, there had yet been no categorical definition of VAS promulgated by the Commission. Fortunately, however, the efforts of the Commission to provide regulatory clarity on the legal nature of VoIP, and particularly, the studied determination reached by the Commission that

² 435 SCRA 110

VoIP should properly be classified as a VAS, provided a timely and appropriate opportunity to finally establish such a categorical definition. Indeed, the Commission found that an unequivocal definition of the term “Value-Added Services” in the draft rules for VoIP is inevitable and necessary, and that, therefore, the adoption of such a definition is, in fact, already being debated in, and subjected to the same administrative process that the draft rules on VoIP are presently undergoing.

With the definition of a VAS provider under RA 7925 serving as a guidepost, therefore; and considering that the services ordinarily offered by public telecommunications entities at the time RA 7925 was enacted into law were limited to voice services offered through circuit switched networks; and finally, in the context of the arguments and points raised by the Commission in its explanatory memorandum on VoIP dated March 29, 2005, the Commission hereby defines VAS as “enhanced services beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers through circuit switched networks.”

This definition, the Commission believes, is not only consistent with the language and spirit of RA 7925. It will also foster innovation and promote competition and efficiency to the benefit of both providers and the consuming public alike.

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