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Part A: Background Paper On the Philippine Telecommunications Sector:

A Developing Country Development Framework and its Problems

1. While the Private Sector has been operating and providing the telecommunication services for a long period of time, the Sector has been liberalized in the early 1990s with the granting of additional authority to operate the international gateway (9 operators), cellular mobile telephone system (5 operators), domestic inter-exchange operation (8 operators) and several basic telephone service operations per service area (2-4 operators in 12 service areas).

2. All the operators of the international gateway and cellular mobile telephone systems are required to roll out corresponding number of telephone lines in a given service area in order to increase the telephone density.

3. The Government still maintains a policy that certain public service elements has to be provided in the provisioning of basic telephone service which are generally offered to the public at a rate below cost. It is required that the operator of international gateway, cellular mobile telephone system and domestic inter-exchange facility must provide the cross-subsidy to the operation of the basic telephone service, which is incorporated in the new telecom law (1995).

4. Moreover, under the new Philippine Telecom law, certain alternative calling procedures such as call back, and re-sale of private leased lines are considered illegal.

5. Presently, the industry is facing some economic difficulties due to rapid decline of accounting rate and proliferation of alternative calling methods such as ISR, refiling, and VOIP which undermine the traditional settlement arrangement. While it is beneficial to the consumer in the short run, it will prejudice the expansion of the basic network in the long run.

6. It may be seen that a developing country, who is aggressively pursuing to expand the basic telephone network, will face additional difficulties in view of the rapid decline of the accounting rate and proliferation of new calling procedures, especially if the Government still maintains that certain public elements have to be extended in the provisioning of basic telephone services.

7. It is hoped that the developed country will recognize the difficulties being experienced by the developing country in coping with the rapidly changing operating environment and provide transitional flexibility in implementing the new regulation.

PART 2: RESPONSES TO TOPICS FOR DISCUSSION

Article 1 - Purpose and Scope of the Regulations

The Meeting may wish to discuss the following:

- *Whether references to telecommunications services and systems of transport are too narrow or too broad.*

  Looking back to the time frame when the existing ITR was developed, it may appear broad enough at that time but may be considered too narrow now considering the rapid development of technology and market in the past few years.

- *The extent to which such references encompass the Internet, Internet telephony and electronic commerce applications.*

  It may be noted that the title of the Conference itself "World Administrative Telegraph and Telephone Conference (Melbourne 1988) focuses basically on telegraph, telex and telephone since the applications of Internet as well as electronic commerce were just starting. At that time, it was facsimile that was starting to flourish and replacing telex.

- *Whether and how the reference to services offered to the "public" and the definition of that term excludes private telecommunications services and whether such services should continue to be excluded from the Regulations.*

  The current market and technological development may have changed the perspective of the definition to the point that the private telecommunication services are being used to offer alternate services to the "public". This is a good candidate to be included in the Regulations.

- *Whether there is a need to more precisely state the types of services that are included or excluded from the ITRs*

  To provide general flexibility and long term applications, it may be worthwhile to state a broad category of services that have to be included in the ITR.

- *The suitability of the rather ambiguous reference in 1.3 to facilitating the need for interconnection, given the importance that that issue has assumed over the past few years.*

  With the entry of new service providers brought about by the liberalization of the market, the need for interconnection especially for the new entrants has become more important. Perhaps, due to economic considerations, some alternative scheme has developed like transiting arrangement, refile, VOIP, use of international leased lines by private operators and ISR operators.

- *To what extent could or should considerations of national sovereignty permit Member States to not apply or enforce the provisions of the ITRs?*

  Having heard so many debates about the sovereignty issue during the past CV/CS conferences, it may be practical not to limit the right of the Member States since it may just create prolonged debates without much significant result.

- *What is the significance of the change made in referring to the ITRs as "complementing" instead of "supplementing" the Constitution and Convention of the ITU?*[1]

[1] In the French version of the ITRs, which is the official text, this term was not changed.

Perhaps it is more appropriate to use "complementing" since the ITR is the implementing mechanism of the CV/CS.

- *Should the ITRs be strengthened to have stronger legally-binding effect?*

The basic framework should be consistent with CV/CS but it should not take precedent over them. The Regulation being an implementing mechanism should be more specific.

- *In light of changes recently made to the Radio Regulations, can or should certain ITU-T Recommendations be incorporated by reference in the ITRs and thereby given binding effect? Should the language used to refer to compliance with ITU-T Recommendations be strengthened?*

There is a strong possibility that certain ITU-T Recommendations can be incorporated in the ITR as well as strengthening of the language to facilitate compliance.

- *Should provision be made in the Regulations for a mechanism to resolve disputes?*

Yes. This will provide parties involved in the dispute a mechanism or procedure in resolving the dispute in an expeditious manner.

- *Is the focus in 1.5 on mutual agreement between administrations* consistent with the World Trade Organization (WTO) principles set forth in the 4th Protocol, including that of MFN?*

The agreement in the WTO changes the complexion and coverage and would therefore require a review of the ITR to reflect the new working framework.

- *What is the practicality of licensing and authorization for transiting arrangements?*

Before deciding on the practicality of licensing transiting arrangements, a more comprehensive review of the global arrangements should be undertaken.

- *What are the appropriate jurisdictional links for an administration to impose a licensing requirement or obligation under the ITRs or to impose national laws or regulations?*

In the absence of national laws or regulations, the requirement or obligaiton under the ITR can be adopted.

- *Is the spirit of the ITRs consistent with recent decisions taken on national and regional approaches to licensing?*

Yes.

- *Is there a need for the ITRs to formally establish a cooperation mechanism or obligation in cases where a Member State is effected by services emanating from and under the responsibility of another Member State?*

Yes. This should cover both parties.

- *What would be the appropriate reference to the Radio Regulations in a new version of the ITRs?*

The latest Radio Regulations that enter into force

- *Would there be a need to make an arrangement for references to the ITRs pending any needed amendments to the Radio Regulations?*

Yes.

- *Should either the Radio Regulations or the ITRs have precedence over the other and, if so, which one*

should have precedence?

The latest Regulation that enter into force

Article 2 - Definitions

- *Is the definition of "telecommunication" (2.1), which is similar to that in the Constitution, sufficiently broad to encompass new telecommunications technologies, including the Internet? How does it apply to value-added services?*

  Yes, it is broad enough to cover new telecommunication technologies including the Internet. Similarly, it will apply to value-added services since it uses the public network.

- *Does the definition of international telecommunication service (2.2) extend to Internet transmission?* Yes. *Does the reference to capacities offered between countries adequately reflect the situation where a foreign operator is licensed and operates in a domestic territory?* Not anymore. *Do the terms telecommunications "offices or stations" reflect the current environment?* Not anymore.

- *With respect to the definitions of "Government", "Service" and "Privilege" telecommunications, are these special categories still needed and should provisions pertaining to such services be contained in a treaty instrument? Alternatively, would they more properly fit in the Convention of the ITU?*

  In the meantime, the definitions of "Government", "Service" and "Privilege" are still relevant to most members.

- *Does the definition of "international route" adequately reflect the use of packet-switched technology or the increasing use of bypass, refile and other transiting arrangements through third countries?*

  The definition of "international route" does not fully reflect the current situation.

- *What steps should be taken to reconcile the various definitions of OA and ROA in the regulatory instruments of the ITU? Should the ITRs apply to all operators?*

  Commonality of elements, functions and scope should be listed to cover all operators.

- *Is the definition of the term "Instruction" consistent with current practice in the standardization sector?*

  Yes.

Article 3: International Network

- *What value is added in Article 3 that is not present, for instance in the CS/CV?*

  Very little. This can be improved to include more details

- *Could Para 3.3 be revised to make it more acceptable, for instance, be deleting the phrase which reads "and provided that there is no direct route between the terminal administrations* concerned"?*

  It may not be necessary to delete the phrase since it reflects the present practice.

- *Would it be useful to introduce other elements, for instance limiting the potential for cartelistic behaviour among operators or providers of international infrastructure? Should elements of competition policy be introduced?*

  This is one of the hot issues for discussion in view of changing market structure under a competitive regime. This should be aligned with the WTO framework.

- *Should the ITR provisions be harmonised with those of the GATS, for instance in terms of access to, and use of, public telecommunications transport networks and services on reasonable and non-*

discriminatory terms (GATS Telecommunications Annex)?

It may be worth an effort to harmonize the provisions of ITR and GATS since a large number of Members are party to both agreements.

- *Would it be possible, or desirable, to integrate these provisions of the ITRs into the CS/CV*?

  It can be noted that the ITRs are expected to complement the CV/CS and so its more a timing problem. Perhaps it will be better to have an update of ITR after the amendment of CV/CS.

Article 4: International Telecommunication Service

- *What value is added in Article 4 that is not present, for instance in the CS/CV?*

  Very little. It is a matter of form.

- *Is the text relating to type approval (4.3a) really necessary in an international treaty? After all, as stated in the opening phrase, this is really a matter for national law and, as a growing number of countries have abolished the requirement for type approval, could the text not be dropped?*

  The matter of type approval is becoming important in the operation of global satellite systems, e.g. Iridium. Similarly, the merger and alliance of big international service operators will bring about provisioning and service offering with global coverage. In the APEC, type approval is under consideration in the Mutual Recognition Agreement (MRA) which is supporting WTO/GATS initiatives.

- *Could the text on universal service (4.1) and universal access (4.3c) be expressed more elegantly, perhaps as part of the Constitution and Convention?*

  Certainly the language can be improved but initially incorporated in the ITR.

- *Could the requirement on operators to make IPLs available (4.3b) and to interwork (4.3d) be expressed as a Resolution or Recommendation? Alternatively, could it be integrated into the Constitution and Convention?*

  We would prefer that this item be retained in the main body of ITR in view of the problem that we are presently encountering.

- *What is the real intention of 4.3d? Is it interworking of services or of operators? Could the word "interconnection" be substituted for "interworking"?*

  Perhaps, it is interworking of services. Interconnection is more relevant to connecting physical facilities.

- *Is it necessary to retain the repetitive mentions of conforming with CCITT (now ITU-T) Recommendations? Could this not just be mentioned once? Is it worth, for the sake of completeness referring to ITU Recommendations as a whole (i.e., ITU-D, ITU-R and ITU-T)?*

  Yes. Text can be simplified.

Article 5 - Safety of Life and Priority of Telecommunications

- *Can the essential elements of Article 5 be added to Article 40 of the Constitution? Is there a need for a separate article on this subject in the ITRs?*

  Perhaps it is a matter of form and to show the importance of these items in the ITR.

- *Is there a need for any substantive changes to these provisions?*

  No need.

Article 6: Charging and accounting

- *This article sets rules applicable to administrations* only. In the new market environment of greater competition, where private operating agencies (ISP for example) provide more and more international telecommunication services, is it fair and meaningful to regulate administrations* only? Alternatively, do we regulate only "operators" which have an international settlement obligation or do we need to set a rule to all "operators" ?*

  The Regulatory body of the Member State usually regulates the collection charge of the operators. For the Accounting Rate, we need to regulate the operators since they have international settlement obligations.

- *Do we need to enforce Article 6.1.1 so that administrations* follow cost trends more closely when they establish the collection charge or is it up to the sovereign right of each country to regulate how its operators establish the collection charge?*

  This Article 6.1.1 should be recommendatory in nature and should allow each counttry to exercise its sovereign right.

- *Is paragraph 6.2 an obstacle for free competition ?*

  No. Moreover we may need to consider the MFN provisions of WTO/GATS.

- *Is it because Article 6 is written in too flexible and vague a manner that there are still high and discriminatory accounting rates ?*

  Recent studies of ITU covering selected developing countries will show that the cost of providing the service is really high.

- *Is Nº1.4 of Appendix 1 (which protects the interest of the destination country) contrary to the current needs of Member States or does it reflect those needs?*

  It really protects the interest of the destination country.

- *Do we need to modify the procedure for establishment of accounts in order to avoid disputes between administrations* and to reflect new technologies?*

  Perhaps it can be simplified to facilitate early settlement of accounts since the present system is too detailed.

- *In spite of the rules and procedures in the Convention and in the ITRs, there is an increase of unilateral actions to stop the payment of balance of accounts because some administrations* do not agree on the accounting rate negotiation. Shall the revision of ITRs prevent such unilateral actions ?*

  Yes. This is one of the more important issues/items.

- *In the competitive environment, should administrations* continue to provide service and privilege telecommunications without concluding bilateral agreements?*

  At the moment, it is still relevant to provide service and privilege telecommunications.

Article 7 - Suspension of Services

- *Is there a need to indicate more clearly the basis upon which a Member State can assert jurisdiction to suspend a telecommunication service?*

  Yes.

- *Is there a need to define those circumstances or reasons for which a Member State can suspend international telecommunications services?*

  Yes.

- *Can the additional elements in Article 7 be added to the existing article in the Constitution or, alternatively, is it necessary that these added elements be included in a treaty instrument?*

  In the meantime, the additional elements should be part of Article 7.

Article 8: Dissemination of Information

- *Is this article really necessary given the more complete instructions given in the Convention?*

  Yes.

- *Is it desirable to have a list of specific indicators to be published?*[2] *If so, should this form part of a resolution or recommendation rather than being part of the main text?*

  Yes and perhaps it should form part of a Resolution.

Article 9: Special Arrangements

- *Could (should) the text of the special arrangements be changed in any way? For instance, to accommodate either the views of those who wish to see a more liberal interpretation of the ITRs or those who wish to see the rights of countries who have not chosen the route of competition to be protected?*

  Yes, but hopefully it should not be used by the emerging non-traditional operators, e.g. ISR, VOIP and VAS , as an avenue to exploit the market. Special arrangements ahould be more specific.

- *Could (should) the text of Article 9 be integrated with Article 42 of the CS?*

  Would prefer that the text of Article 9 be retained and expanded to be more specific.

- *Does this Article cover the provision of new or future value added services such as E-mail, Voice over Internet etc…? If yes, are the conditions quoted in b) and in 9.2 sufficient to regulate these new services at the international level?*

  No. It may be better to create a new Article to cover new or future value added services so that it can be regulated in the international level.

- *Is the clause on avoiding harm to the networks of third countries redundant?*

  No.

- *Could the word "specialised" in the phrase "specialised international telecommunication needs" be dropped? It seems unnecessarily restrictive.*

  No, since the purpose is to emphasize the special arrangement.

- *Is it necessary to align the text of "special arrangements" with the WTO trade principle of MFN? For instance, by making it clear that the special arrangements are between administrations* rather than between Members*

  Yes, it may be worthwhile to study whether it is needed to re-align the text with WTO trade principles.

- *Should there be any system for informing third countries when a special arrangement has been concluded? For instance, when agreements to liberalise international simple resale (ISR) between countries are negotiated, could this information be broadcast, for instance via the Operational Bulletin?*

  Perhaps the ITU Secretariat can consider this requirement.

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[2] For information, statistical issues are currently discussed at the World Telecommunication Indicators Meeting, organised by the ITU-D. The most recent meeting was held on 29-31 March 1999.

Article 10 - Final Provisions

- *What is the effect of the newly-adopted Article 32B of the Convention on the reservation process under the ITRs and should it be incorporated in any revision of the ITRs?*

  Yes, it should be incorporated in the ITR.

- *Would a revision of the ITRs require a provision on reservations, or is Article 32B of the Convention sufficient?*

  Yes, would prefer to have a provision on reservations in the ITR.

- *Should the additional obligation on reservations contained in 10.3 of the ITRs be added to the Convention as a proposed amendment?*

  Yes, may be considered in future amendment.

- *In light of Article 54, is there a need for a provision in the ITRs on implementation and approval by Member States?*

  Yes.

- *Alternatively, should the Regulations simply reference the relevant provisions of the Constitution?*

Appendix 3 - Service and Privilege Telecommunications

- *Should service telecommunications be provided free of charge?*

  Yes.

- *Is there a need to address this issue in a treaty instrument, such as the ITRs?*

  No need. It can be included in the Rules of Procedure of the Union.

- *Alternately, could the entire issue of service and government telecommunications be dealt with in the Rules of Procedure of the Union?*