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The International Comparative Legal Guide to:

Telecoms, Media and Internet Laws and Regulations 2014

7th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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General Chapters:

1	**An Overview of the EU Regulatory Framework** - Dr. Christoph Enaux & Blanca Escribano, Olswang LLP	1
2	**To Share or Not to Share? Differences in Regulatory Approaches and Industry Attitudes Towards Mobile Network Sharing in the United States and Europe** - Robert E. Stup, Jr. & Cathal Flynn, Squire Sanders	10

Country Question and Answer Chapters:

3	**Australia**	King & Wood Mallesons: Renae Lattey & Neil Carabine	17
4	**Austria**	Dr. Norbert Wiesinger, Law Offices: Dr. Norbert Wiesinger	26
5	**Bosnia & Herzegovina**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Matija Vojnović & Miljan Mimić	32
6	**Brazil**	Melchior, Micheletti & Amendoeira Advogados: Silvia Regina Barbuy Melchior	39
7	**Canada**	Davies Ward Phillips & Vineberg LLP: George Addy & Elisa Kearney	49
8	**China**	King & Wood Mallesons: Rui Wang	56
9	**Colombia**	Esguerra Barrera Arriaga S.A.: Natalia Barrera Silva	64
10	**Denmark**	Kromann Reumert: Torben Waage & Julie Bak-Larsen	70
11	**Finland**	Attorneys at law Borenius Ltd: Jukka Airaksinen & Henriikka Piekkala	77
12	**France**	Alain Bensoussan Avocats Selas: Frédéric Forster & Edouard Lemoalle	84
13	**Germany**	Heuking Kühn Lüer Wojtek: Dr. Dirk Stolz & Gerhard Deiters	93
14	**Ireland**	Matheson: Helen Kelly & Nina Cummins	101
15	**Italy**	Cugia Cuomo & Associati: Fabrizio Cugia di Sant'Orsola & Silvia Giampaolo	108
16	**Japan**	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	118
17	**Lithuania**	Balčiūnas ir Grajauskas: Tomas Ivanauskas & Dominykas Užkurnys	126
18	**Macedonia**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Andrea Radonjanin	135
19	**Mexico**	Langlet, Carpio & Asociados: Enrique Ochoa de G. Argüelles & Esteban Cardoso González	141
20	**Montenegro**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Slaven Moravčević & Jelena Bezarević Pajić	148
21	**Netherlands**	NautaDutilh N.V.: Piet Sippens Groenewegen & Paul M. Waszink	155
22	**New Zealand**	Wigley & Company: Michael Wigley	163
23	**Nigeria**	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Ogheneochuko	169
24	**Philippines**	SyCip Salazar Hernandez & Gatmaitan Law Offices: Rose Marie M. King-Dominguez & Ruben P. Acebedo II	176
25	**Poland**	Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors: Andrzej Abramczuk & Mariusz Busiło	183
26	**Portugal**	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	190
27	**Russia**	Hogan Lovells (CIS): Natalia Gulyaeva & Julia Gurieva	198
28	**Serbia**	Moravčević Vojnović i Partneri in cooperation with Schoenherr: Matija Vojnović & Luka Lopičić	205

Continued Overleaf

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29	**Singapore**	Webb Henderson LLP: Anisha Travis & Jessica Gurevich	212
30	**Switzerland**	Sébastien Fanti: Sébastien Fanti	220
31	**Taiwan**	Shay & Partners: Arthur Shay & David Yeh	227
32	**Tanzania**	Mkono & Co Advocates: Nimrod Mkono & Kamanga Wilbert Kapinga	234
33	**Thailand**	Tilleke & Gibbins: David Duncan & Kasma Visitkitjakarn	241
34	**Ukraine**	Vasil Kisil & Partners: Anna Babych & Oksana Krasnokutska	249
35	**United Kingdom**	Olswang LLP: Purvi Parekh & John Enser	257
36	**USA**	Wilkinson Barker Knauer, LLP: Bryan N. Tramont & Natalie G. Roisman	266
37	**Venezuela**	DLA Interjuris Abogados, S.C.: Manuel I Pulido Azpurua & Anadaniella Sucre de Pró-Rízquez	274

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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in the Philippines, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

(a) The telecommunications sector is a mature fixed line and mobile phone market characterised by universal access and a relatively robust infrastructure. According to the World Bank's 2012 Information and Communications for Development report, 99% of the population was covered by mobile-cellular networks in 2010. Its SMS volume and usage levels are among the highest in the world. Business Monitor International reports mobile penetration rate reaching 100% and further growth opportunities as established operators move towards next-generation technologies.

Based on reports from the Business Processing Association of the Philippines, the Philippines became a top business process outsourcing destination partly because of a stable telecommunications infrastructure. Frost & Sullivan's Asia Pacific Enterprise Telephony Market reports continued growth in the Philippine enterprise telephony business. The Philippine Long Distance Telephone Company ("PLDT") with affiliates Smart Communications, Inc., Digitel Mobile Philippines, Inc., and Digital Telecommunications Philippines, Inc., and competitor Globe Telecom, Inc., have the widest networks and market shares. Liberalised in the early to mid-1990s, the legal regime is pro-competition and pro-access in tenor. Only partial foreign ownership of telecommunications enterprises is allowed by the Philippine Constitution.

(b) The audio-visual media distribution sector refers to broadcast over radio, TV and cable networks. They are the primary sources of public information and entertainment for most residents. ABS-CBN Broadcasting Corporation, GMA Network, Inc., Manila Broadcasting Company, Sky Cable, Inc. and Global Destiny Cable, Inc. lead the field. These traditional media enterprises are free to compete, but are wholly reserved to Philippine nationals.

(c) The internet infrastructure sector of mostly broadband network service providers reflects the greater demand for personal access over business solutions. The sector promises the most potential for growth as providers have yet to expand their coverage beyond a few cities and still struggle with prescribed performance standards. PLDT, Smart Bro, Inc., Globe Telecoms, Inc., Sky Cable, Inc. and Wi-tribe Telecoms, Inc. stand out for leveraging on their networks and technologies. The sector is liberalised, but only partial foreign ownership is allowed.

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the Philippines.

(a) Republic Act No. 7925 – The Public Telecommunications Policy Act of the Philippines (the "Telecoms Act").

(b) Presidential Decree No. 576-A – Regulating the Ownership and Operation of Radio and Television Stations and for Other Purposes, and Executive Order No. 205 – Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for other purposes.

(c) Republic Act No. 7925 and Republic Act No. 10175 – Cybercrime Prevention Act.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the Philippines.

(a) National Telecommunications Commission ("NTC"), the Information and Communications Technology Office, and the Department of Trade and Industry ("DTI").

(b) NTC, Movie and Television Review and Classification Board ("MTRCB"), Optical Media Board ("OMB"), National Council for Children's Television, and the Kapisanan ng mga Brodkaster ng Pilipinas ("KBP").

(c) Same as (a) above.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the Philippines?

(a) Only citizens of the Philippines or corporations or associations organised under the laws of the Philippines, at least 60% of the capital of which is owned by such citizens, may engage in public telecommunications.

(b) Only Philippine nationals or 100% Filpino-owned corporations may engage in radio, television and cable TV broadcasting.

(c) Same as (a) above.

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2 Telecoms

General

2.1 Is the Philippines a member of the World Trade Organisation? Has the Philippines made commitments under the GATS regarding telecommunications and has the Philippines adopted and implemented the telecoms reference paper?

The Philippines is a WTO member. It has made commitments under the GATS regarding telecommunications with limitations on market access and nationality treatment based on nationality restrictions on public utilities and compliance with statutory licences. It has substantially adopted the principles in the telecoms reference paper in a supplement to its schedule of specific commitments. These principles are part of present administrative regulations.

2.2 How is the provision of telecoms (or electronic communications) networks or services regulated?

The provision of telecommunications to the public for compensation is governed by laws on public utilities and triggers franchise and licensing requirements. It is also subject to a nationality restriction, and is not exclusive in character. Also, prior government approval is required for specific transactions, such as the sale or lease of franchises. Telecommunications regulations and their enforcement put a premium on public interest and convenience.

The Telecoms Act provides specific obligations on universal access, interconnection, healthy competition, public ownership of telecommunications enterprises, efficient allocation of spectrum, and protection of end-user rights. The law imposes less regulation, however, on value-added or enhanced services beyond those ordinarily provided by public telecommunications entities ("PTEs").

2.3 Who are the regulatory and competition law authorities in the Philippines? How are their roles differentiated? Are they independent from the government?

The NTC is the government body that principally regulates the telecommunications industry. It checks on anti-competitive behaviour of PTEs by enforcing fair pricing and reasonable interconnection.

The Department of Justice ("DOJ") Office for Competition is the Competition Authority charged with the responsibility to supervise competition in markets, enforce competition laws to protect consumers, investigate and prosecute violators to prevent combinations that restrain trade.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Decisions of the NTC issued in the exercise of its quasi-judicial powers may be brought to the Court of Appeals for review either through a petition for review or a petition for *certiorari*. The former may be taken based on questions of law, facts or mixed questions of law and facts, while the latter may be taken based on a claim of grave abuse of discretion on the part of the regulator whose decision is being challenged.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in the Philippines?

The Philippines uses only individual authorisations to licence service providers and services.

A PTE must have a franchise granted by the Philippine Congress, as well as licences applied for with, and issued by, the NTC. The principal licence issued by the NTC is a certificate of public convenience and necessity or CPCN for each type of telecommunications network or service applied for. In addition to a CPCN, wireless service providers must request a frequency assignment from NTC.

Value-added service ("VAS") providers, on the other hand, only need to secure a certificate of registration from the NTC.

2.6 Please summarise the main requirements of the Philippines's general authorisation.

The Philippines does not issue general authorisations.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

(a) Franchise – issued by the Philippine Congress, this is the principal authority to construct, establish, operate and maintain communications systems and networks. The term of the franchise is typically set for a period of 25 years, unless sooner revoked on grounds such as the breach of franchise. The grantee cannot lease, transfer, or otherwise dispose of the franchise or related rights without Congress' approval.

(b) CPCN – issued by NTC for the authority to construct, install, establish, operate and maintain a specific telecommunications network. It is coterminous with the franchise, unless sooner revoked for violations of its terms and conditions. A grantee cannot lease, transfer or otherwise dispose of its CPCN without NTC's approval.

(c) Frequency assignment – issued by the NTC for the authority to use specific frequencies. It is coterminous with the CPCN, unless sooner revoked for non-use or failure to pay for their use. It is not transferrable.

(d) Certificate of Registration for Value-Added Service – issued by NTC for the authority to offer VAS to the public for compensation. Voice over Internet Protocol service ("VOIP") is classified as VAS. The term is five years except for VOIP, which is one year.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

There are no laws specifically governing rights of way for installation of telecommunications infrastructure. Under general laws on easement of right of way, a person may demand a right of way after paying the proper indemnity for the damage caused to the landowner, when it is indispensable to carry materials through the estate of another, or when his property is surrounded by estates of others without an adequate outlet to a public highway.

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Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

The Telecoms Act mandates a fair and reasonable interconnection of facilities of authorised public network operators and other providers of telecommunications services through appropriate modalities of interconnection and at a reasonable and fair level of charges. Under implementing NTC regulations, telecoms entities are required to negotiate and execute interconnection agreements. To further promote interconnection, the NTC also requires telecoms entities to publish reference access offers as default offers to access seekers.

2.10 How are interconnection or access disputes resolved?

Where public interest warrants, the NTC may intervene in a negotiation to mediate a dispute between the negotiating parties. The regulator may also intervene, upon the complaint of an interested party or on its own initiative, in case of a refusal by a telecoms entity to negotiate for interconnection. In such a case, the NTC may direct physical interconnection of the relevant networks, under the terms and conditions it may deem proper.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

The NTC requires all PTEs to publish their Reference Access Offers ("RAO") upon approval by NTC. A RAO is a statement of the conditions, prices, and terms a PTE proposes to provide access to its network, facilities systems, or customer base to another PTE or VAS provider.

PTEs are required to submit a RAO for each of the following access services, as applicable: fixed or mobile network origination/transit/termination services; fixed or mobile internet access call origination/transit/termination services; retail narrowband and broadband services (for VAS provider connection); and mobile data origination/termination services.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Generally, interconnecting carriers negotiate interconnection and access charges, and then the agreement is submitted to the NTC. The NTC may regulate interconnection rates when necessary (e.g. in case of anti-competitive pricing, public demand for lower retail prices).

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

(a) Accounting separation – a telecoms entity with more than one category of telecoms service must maintain a separate book of account for each category.

(b) Functional separation – there is no law or regulation directing functional separation.

(c) Legal separation – the Telecoms Act states that no single franchise shall authorise an entity to engage in both 'telecommunications and broadcasting, either through the airwaves or by cable'. In effect, the same legal entity shall not be able to operate both a telecommunications enterprise and a broadcast/cable network.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

All public telecommunications entities are obliged to provide, or charge for, interconnection or access to network elements on an unbundled basis so that the access seeker need not pay for network elements, components, equipment, or facilities that it does not need for the service it provides, or to allow it to use or combine such elements to provide a telecoms service.

An access provider may provide, on such commercial terms and conditions that are just, reasonable and non-discriminatory, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request by an access seeker. Unless otherwise agreed upon by the parties, access to unbundled network elements shall be linked through "meet point" interconnection arrangements. An access provider may deny access to unbundled network elements if the requested method of access is not technically feasible.

Non-compliance with the foregoing rules is punishable with administrative sanctions.

There are no similar obligations for cable TV operators.

2.15 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Rules on interconnection and access apply no differently to IP-based networks. Thus, in cases where the VAS provider and network provider refuse to negotiate for the interconnection of their networks, the NTC may, upon the complaint of any interested party or upon its own initiative, intervene and assume jurisdiction over the matter and immediately direct physical interconnection of the networks of the parties under such terms and conditions it may deem proper under the circumstances.

There are no existing or proposed regulations for next-generation access (FTTH/FTTC), incentives to build fibre access networks, nor requirements to share ducts, poles or similar passive infrastructure.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

There are no retail price controls imposed on telecommunications services.

Generally, retail prices are regulated by the NTC. PTEs need to submit tariff structures to the NTC for approval. For deregulated services, however, only a notice to the NTC is required. Regulations require telecoms entities to comply with certain general pricing principles. Pricing cannot be so low as to be predatory and may not exceed the ceiling of the initial tariff schedule without the NTC's approval. Fixed telephone services must be provided in accordance with certain tariff structures, and should state charge options and options for the supply of consumer access service.

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2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Providing electronic communications services may be considered as VAS. VAS providers are regulated differently from basic PTEs. Unlike PTEs, VAS providers without their own networks are only required to register with and submit periodic reports to NTC. VOIP is classified, and is generally regulated, as a VAS provider.

The provision of electronic communications services may also be subject to data privacy regulations. The Electronic Commerce Act requires an online service provider to keep personal information obtained, collected or stored in the course of electronic commerce or transactions confidential. Also, the Data Privacy Act protects personal information by requiring 'personal information controllers' and 'processors' to observe principles of transparency, legitimate purpose and proportionality, and to prevent accidental or unlawful destruction, alteration and disclosure, and any other unlawful processing. The NTC's Consumer Protection Guidelines also recognises a consumer's right to data privacy. The Cybercrime Prevention Act penalises the following categories of 'cybercrimes': offences against confidentiality, integrity and availability of computer data and systems (e.g. illegal interception); computer-related offences (e.g. fraud, identity theft); and content-related offences (e.g. cybersex). Service providers may be required to block or restrict access to computer data. This law, however, has been suspended indefinitely by the Supreme Court due to questionable provisions that appear to infringe to the rights to free expression online and due process of law.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

The NTC allocates numbers for subscribers and sets codes for areas, network access, and emergencies according to a numbering plan. It approves the assignment and use of network destination codes.

2.19 Are there any special rules which govern the use of telephone numbers?

Public telecommunications entities are prohibited from using numbering codes in their operations, other than those used and assigned by the NTC, without prior consultation and approval by the NTC.

2.20 Are there any obligations requiring number portability?

There are not any. There is neither law nor regulation on number portability.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The NTC regulates the allocation, assignment, and use of spectrum.

3.2 How is the use of radio spectrum authorised in the Philippines? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

To optimise the use of the radio spectrum, regulations require radio frequencies (RF) to be assigned to those who will use it efficiently and effectively to meet public demand for telecommunications services. The NTC allocates frequencies for specific services; thereafter, it assigns them to authorised service providers on a first-come, first-served basis unless demand for specific frequencies exceeds availability. In the latter case, open tenders are required to be held to ensure wider access. The NTC has modified this general procedure in the case of 3G frequencies by introducing a ranking system.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Subject to NTC approval, spectrum use may be shared without securing new licences.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The use of frequencies is subject to a spectrum user fee that is computed for each radio station according to a schedule of rates that vary according to the service provided and the location of the radio station.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

The spectrum licences remain with the licensee. However, the NTC has once required the dominant mobile operator to surrender a spectrum licence to promote competition.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

No. The radio spectrum is a public resource and a spectrum licence is deemed a personal grant of privilege that may not be traded or sub-licensed to another.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications?

Interception of communications, under Philippine law, is generally viewed as a violation of a citizen's constitutional right to privacy of communication and correspondence. It is illegal unless authorised by a lawful court order, or when public safety or order require otherwise. Data or any evidence obtained in violation of this right is inadmissible for any purpose or in any proceeding.

The Cybercrime Prevention Act prohibits interception by technical means without right to any non-public transmission. The Anti-Wiretapping Law allows court-authorised police recording of

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communications or spoken word in cases involving crimes against national security, public order and kidnapping. The Human Security Law allows court-authorised police surveillance of telecommunications messages to or from suspected terrorists. Operators are expected not to unjustifiably refuse such types of interceptions. Both laws require the recordings to be deposited with the authorising court. Unless its interception is duly authorised, the operator may suffer the penalties of imprisonment, fines and pecuniary damages while the data becomes inadmissible as evidence in any investigation or hearing. The Anti-Child Pornography Act requires ISPs and internet hosts to notify the police authorities when a violation is being committed using its server or facility, and preserve evidence of such violation. However, the law does not authorise an ISP to monitor any user, subscriber or customer, or the content of its communication.

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities? Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Service providers are not required to maintain call-interception capabilities.

4.3 How does the state intercept communications for a particular individual?

Law enforcement authorities, with due cause, are authorised to collect or record traffic data in real-time. The collection of non-traffic data requires a court warrant.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state?

There are no rules governing the use of encryption.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

NTC regulations require telecommunications entities to retain call traffic data on the origin, destination, date, time and duration of communications, and to retain data within the following periods: two months for non-metered services with fixed monthly charges; four months for other telecommunications services; or until excused by NTC for records requested in connection with pending complaints.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in the Philippines?

Philippine laws generally regulate the broadcasting and cable TV sectors separately from telecommunications. However, except for content, the licensing and permitting regulations for both broadcasting, cable TV and telecommunications enterprises are administered by the NTC. Content is regulated by the MTRCB and the OMB. The KBP is the broadcasters' self-regulatory body that enforces programme standards for television and radio.

Only Philippine nationals or corporations, partnerships or associations wholly owned by Philippine nationals may engage in broadcasting or cable TV operations.

As with telecommunications, television and radio broadcasting is considered a public utility. There is a statutory limit on the number of broadcast stations and channels a single entity may own, operate, or manage. Further, every radio station or television channel must allocate at least two hours a day for public service programmes.

On the other hand, the right to operate a cable TV system may not exceed a period of 15 years and may not infringe on broadcast markets. Moreover, a cable TV system operating in a community that is within the particular field intensity surrounding an authorised TV broadcast station or stations can carry the TV signals of these stations. In addition, an access channel should be provided for the use of certain entities (such as the national government and socio-civic organisations) for free, as a public service feature of the television cable system.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

Yes. They are generally subject to different forms of regulation - linear content by broadcast or cable TV rules, and non-linear content by telecommunications rules. The current framework has yet to address the regulatory challenges of convergence and its effects on regulatory obligations between competing platforms and overlapping content.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Key licences for a broadcasting entity would be a congressional franchise and a certificate of public convenience (CPC) from the NTC. CATV service providers, on the other hand, need only obtain a certificate of authority (CA) from the NTC.

Grantees of a radio and TV broadcasting franchise are obliged not to require any previous censorship of any speech, play or other matter to be broadcast from its stations: provided that the grantee during any broadcast may cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition or the language used therein or the theme thereof is indecent or immoral.

The CPC and CA both require compliance with the roll-out plan for broadcast stations or cable TV facilities approved by the NTC, the payment of supervision and regulatory fee, and the submission of annual reports of operations.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Licences may be assigned and changes in control allowed, subject to the approval of the NTC and/or the Philippine Congress.

6 Internet Infrastructure

6.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Conveyance of voice or content over the internet as a service, and other electronic communications services not ordinarily provided

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by PTEs such as internet access, are all similarly regulated as VAS. As such, they are not generally subject to the licensing and regulatory obligations imposed on basic telecommunications services.

The NTC is still conducting public consultations on draft regulations for internet access between networks.

6.2 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

There is no case law setting a legal precedent on the liability of service providers for content carried over their networks.

The Philippine E-Commerce Law (Republic Act No. 8792), however, allows a defence of merely providing access against any imputation of liability from the making, publication, dissemination or distribution of material, including possible infringement of any right subsisting in or in relation to such material, under these conditions:

i. the service provider does not have actual knowledge, or is not aware of the facts or circumstances from which it is apparent, that the making, publication, dissemination or distribution of such material is unlawful or infringes any rights subsisting in or in relation to such material;

ii. the service provider does not knowingly receive a financial benefit directly attributable to the unlawful or infringing activity; and

iii. the service provider does not directly commit any infringement or other unlawful act and does not induce or cause another person or party to commit any infringement or other unlawful act and/or does not benefit financially from the infringing activity or unlawful act of another person or party.

6.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

There is no law or regulation that specifically imposes an express obligation on telecommunications operators or internet service providers to assist the content owner whose right may be infringed.

6.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

Yes. There are no regulations on net neutrality or data discrimination.

6.5 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

Yes. The DOJ may issue an order to restrict or block access to computer data found to violate the Cybercrime Prevention Act. ISPs are also prohibited under the Anti-Child Pornography Act from knowingly transmitting any form of child pornography and are obliged to install available technology, programmes or software to ensure that access to or transmittal of any form of child pornography will be blocked or filtered. There is also an NTC directive for internet service providers to block access to websites identified by police authorities in their efforts to counter terrorism.

6.6 How are 'voice over IP' services regulated?

VOIP service is regulated as a value-added service. Thus, only Philippine national corporations where the foreign ownership does not exceed 40% of the corporation's capital stock can operate as a VOIP service provider. It only requires registration with NTC, but registration requirements are more onerous: proof of paid-up capital of at least PHP 10 million; interconnection/reseller agreements; and a performance bond.

A VOIP provider's interconnection with network providers are governed by NTC's interconnection regulations. Where the VOIP provider is a local exchange, inter-exchange or overseas operator, NTC requires separate books of accounts for VOIP and prohibits both cross-subsidies from utility operations and discrimination in rates or access to facilities.

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