


THIRTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
Second Regular Session }

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SENATE

P.S. RES. NO. 388

RECEIVED BY: 

Prepared by the Committee on Foreign Relations

RESOLUTION
CONCURRING IN THE ACCEPTANCE OF THE FOURTH PROTOCOL TO THE
GENERAL AGREEMENT ON TRADE IN SERVICES ON BASIC
TELECOMMUNICATIONS SERVICES

WHEREAS, the Fourth Protocol to the General Agreement on Trade in Services (Basic Telecommunications Services) was adopted in Geneva on April 15, 1997;

WHEREAS, the Fourth Protocol was formulated by the World Trade Organization's (WTO) Negotiating Group on Basic Telecommunications of which the Philippines was an active participant. The Fourth Protocol contains a schedule of specific commitments and list of exemptions concerning basic telecommunications relating to a WTO member, as well as elaborations of provisions affecting access to and use of public telecommunications transport network and services;

WHEREAS, the Philippines' schedule of commitments offers competition through commercial presence in various services on a facilities-basis for public use by means of all types of technologies, except cable television and satellite. These services include: voice telephone, data transmission, and cellular mobile telephone services in all market segments (local, long distance and international). Market access for new entrants in these services is to be determined in accordance with the public convenience criteria and necessity test. Foreign equity for new entrants is limited to forty percent (40%);

WHEREAS, Paragraph 3 of the Fourth Protocol provides that it shall enter into force on January 1, 1998: *Provided*, That it has been accepted by all Members concerned: *Provided, further*, That if by December 1, 1997 it has not been accepted by all Members concerned, those Members which have accepted it by that date may decide, prior to January 1, 1998, on its entry into force;

WHEREAS, out of the sixty-nine (69) members of the GATS, thirty-one (31) countries have accepted the Protocol and decided that the Protocol shall remain open for acceptance until January 31, 1998; and further decided that its entry into force shall now be moved from January 1, 1998 to a later date;

WHEREAS, in the hearing conducted by the Senate Committee on Foreign Relations on June 2, 2005, concerned government agencies, such as the Department of Trade and Industry (DTI), National Economic and Development Authority (NEDA) and the Commission on Information and Communications Technology (CICT) strongly supported for Senate concurrence on the Protocol;

WHEREAS, pursuant to Section 21, Article VII of the 1987 Philippine Constitution, "*No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate*";

NOW, THEREFORE, be it resolved that the Senate of the Philippines concur as it hereby concurs in the acceptance of the Fourth Protocol to the General Agreement on Trade in Services on Basic Telecommunications Services.

Adopted,


MIRIAM DEFENSOR SANTIAGO
Chairperson

WORLD TRADE
ORGANIZATION

S/L/20
30 April 1996
(96-1750)

Trade in Services

FOURTH PROTOCOL TO THE
GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization (hereinafter referred to as the "WTO") whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning basic telecommunications are annexed to this Protocol (hereinafter referred to as "Members concerned"),

Having carried out negotiations under the terms of the Ministerial Decision on Negotiations on Basic Telecommunications adopted at Marrakesh on 15 April 1994,

Having regard to the Annex on Negotiations on Basic Telecommunications,

Agree as follows:

1. Upon the entry into force of this Protocol, a Schedule of Specific Commitments and a List of Exemptions from Article II concerning basic telecommunications annexed to this Protocol relating to a Member shall, in accordance with the terms specified therein, supplement or modify the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.
2. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 30 November 1997.
3. The Protocol shall enter into force on 1 January 1998 provided it has been accepted by all Members concerned. If by 1 December 1997 the Protocol has not been accepted by all Members concerned, those Members which have accepted it by that date may decide, prior to 1 January 1998, on its entry into force.
4. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this [--- day of month] one thousand nine hundred and ninety-seven, in a single copy in the English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

FOR THE DIRECTOR-GENERAL
[Signature]
DIRECTOR-GENERAL
WORLD TRADE ORGANIZATION
GENEVA

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.¹

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

- (i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or
- (ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. *Definitions*

For the purposes of this Annex:

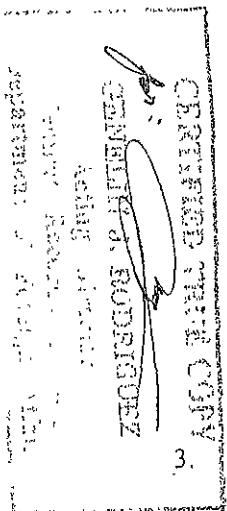
(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where

¹This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.



applicable, "affiliates" shall be as defined by each Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).²

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

- (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- (iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

²The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

SECRET
GENERAL SECRETARY
COMMUNICATIONS AND INFORMATION
DEPARTMENT
HONG KONG

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular the ability to make their networks or services available to the public generally;
- (ii) to protect the technical integrity of public telecommunications transport networks or services; or
- (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

- (i) restrictions on resale or shared use of such services;
- (ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- (iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7;
- (iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (vi) notification, registration and licensing.

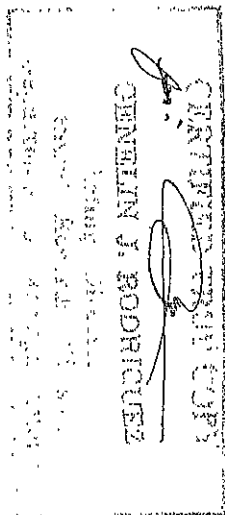
(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. Technical Cooperation

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services



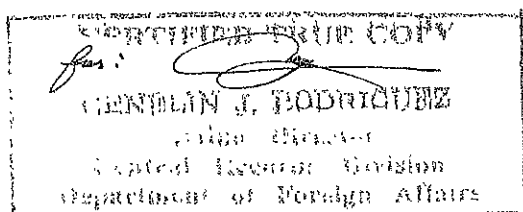
and developments in telecommunications and information technology¹² to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union ~~and the International Organization for Standardization.~~

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

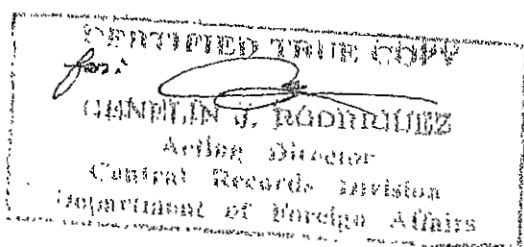


ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

- (a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,
- (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.



WORLD TRADE
ORGANIZATION

GATS/SC/70/Suppl.2
11 April 1997

(97-1386)

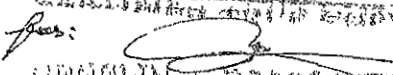
THE PHILIPPINES

Schedule of Specific Commitments

Supplement 2

(This is authentic in English only)

This text supplements the entries relating to the Telecommunication services section contained on page 11 of document GATS/SC/70.

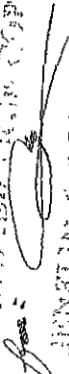

BENJAMIN J. RODRIGUEZ
Acting Director
Central Records Division
Department of Foreign Affairs

ORIGINAL COPY
 GENELIN J. RODRIGUEZ
 ASSISTANT SECRETARY
 DEPARTMENT OF FOREIGN AFFAIRS

PHILIPPINES - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
The following services (a-g) are offered only on a facilities basis, for public use, using either wired or wireless technology except cable television (CATV) and satellite.			
a. Voice telephone services	(1) Unbound	(1) None	
- Local services	(2) Unbound	(2) None	
- Toll services Domestic International	(3) Entry is subject to the following requirements and conditions:	(3)	
b. Telegraph Services	(i) Franchise from Congress of the Philippines	(i) The number of non-Filipino citizens in the Board of Directors of an entity shall be proportionate to the aggregate share of foreign capital of that entity.	
c. Telex Services	(ii) Certificate of Public Convenience and Necessity (CPCN) from the National Telecommunications Commission	(ii) All executives and managers must be citizens of the Philippines.	
d. Packet-switched data transmission services			
e. Circuit-switched data transmission services			
f. Facsimile services	(iii) Foreign equity is permitted up to 40%		
g. Others	(iv) Resale of private leased lines is not allowed		
- Cellular Mobile Telephone Service	(v) Call back, dial back and other similar schemes which result in the same operation are not authorized.		
	(vi) Subject to the availability and		


 JUANLIN J. RODRIGUEZ
 Director
 Office of the Director
 Council of Economic Advisors
 Department of Service Affairs

Sector or Sub-sector	1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
	Limitations on Market Access efficient utilization of radio frequencies. (4) Unbound	Limitations on National Treatment	Additional Commitments	

COMMUNICATION SERVICES

The commitments in communication services are in accordance with the General Agreement on Trade in Services and its Annex on Telecommunications. In support of market access commitments undertaken, the following principles will form the basis for the regulatory framework in basic telecommunications.

1. **Competitive safeguard**
 Appropriate measures shall be maintained for the purpose of preventing suppliers from engaging in or continuing anti-competitive practices.
2. **Interconnection**
 In order to achieve viable, efficient, reliable and universal telecommunications services, a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services shall be provided.
 Interconnection shall be at any technically feasible point in the network, under non-discriminatory terms and conditions, in a timely fashion, and on terms and conditions that are fair, transparent and reasonable.
 A service supplier requesting interconnection with another supplier will have recourse after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.
3. **Universal Service**
 Universal service obligations, as may be defined by the appropriate Authority, shall be administered in a transparent, non-discriminatory and competitively neutral manner.
 Authorized international gateway and mobile cellular telephone service providers are required by law to install a set number of local exchange lines in designated areas.
4. **Public availability of licensing criteria**

TELECOMUNICATIONS AUTHORITY OF COSTA RICA
 JENELIN A. RODRIGUEZ
 Director General
 Department of Foreign Affairs
 Modes of supply: (a) Gross-border supply

Sector or Sub-sector	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons	Additional Commitments
Where a license is required, the following shall be made publicly available: (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a license; (b) the terms and conditions of individual licenses The reasons for the denial of a license will be made known to the applicant upon request.	Limitations on Market Access Limitations shall be made publicly available:	Limitations on National Treatment		
5. Independent regulators The regulatory body is separate from, and not accountable to, any supplier of a basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants. The regulation of telecommunication suppliers shall rely principally on an administrative process that is stable, transparent and fair, giving due emphasis to technical, legal, economic and financial considerations, and with due regard to the observance of due process at all times. A national consultative forum shall be maintained to allow interaction among the telecommunications industries, user groups, and academic and research institutions on important issues in the field of communications.				
6. Allocation and use of scarce resources Any procedures for the allocation and use of scarce resources which are frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.				

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