

## VOICE ON THE NET

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The Philippine Internet Services Organization appreciates the invitation of the Philippine Internet Commerce Society to talk about Voice on the Internet and the implications of possible government regulations or limitations on the use of this technology. As we are all aware, the government, through the NTC, has issued a draft memorandum circular in mid-January proposing that VoIP services should only be the domain of incumbent telecommunication players. PISO welcomes this draft memorandum for it explicitly states what the ISPs suspect has been the government position in the last five or so years.

To start with, let me give a brief background of what VoIP is and what it is not. Voice over IP is a generic term for sending voice data from one point to another using the Internet protocol. As with any Internet data packet it is medium-independent so it can be sent and received via a dialup, broadband or even wireless connection. As a generic term, VoIP covers all the standard and proprietary protocols to transmit, route and receive Voice or even Video data. Many Internet users use it everyday to talk in real-time using a WebCam for Videoconferencing or FreeTel and Dialpad for Internet telephony. What is important to note is that VoIP applications require the user, at a minimum, to use a device that is essentially a small computer that supports the Internet Protocol and the VoIP application.

VoIP does not necessarily mean using an ordinary phone to make a phone call to somebody in another country, though this is possible and is being utilized by most, if not all, carriers in some segments of their infrastructure today. Most VoIP applications require an end-to-end IP connection and do not involve the Public Switched Telephone Network or PSTN at all. These new and innovative products and services, while unheard of a decade ago, was only made possible because of the liberalizing (or more appropriately, *liberating*) environment provided by the Internet. The result is cost effective, if not free, communication services.

We realize that VoIP poses a new challenge to both the government and incumbent players mainly, of course, about revenue concerns. In the United States for example, the Minnesota Public Utilities has tried to regulate a VoIP company called Vonage arguing that its VoIP service is a telecommunication service and not a data or information service and therefore should be taxed. Vonage, one of the first pure VoIP companies filed a request for injunction against the regulation with the State's Court. In October of 2003, the State Court, citing a "congressional intent" to "leave Internet and information services unregulated", granted the request for injunction. In effect, it agreed with the position of Vonage.

There are a couple of key points to be observed in this decision: [i] the first one is the acknowledgement that Internet telephony is not a telecommunication service but an "information service" and [ii] two, that the Internet is and should be, in the public interest, best left to itself and remain unregulated.

Similarly, in the Philippine context, Congress, by enacting RA7925 or the Public Telecommunications Policy Act of the Philippines, has also acknowledged the important role of Value-Added Service Providers as entities who “enhance” traditional telecommunication services<sup>1</sup>. As VoIP utilizes and runs *on top of*, as opposed to *independent of*, a telecommunication company’s infrastructure, it is, by definition, an “enhanced” service and therefore a value-added service. Limiting or not allowing companies to engage in commerce or provide enhanced services on top of existing telecommunication infrastructure will be inconsistent with the provisions of RA 7925. First, VAS providers can not set up its own physical network and are required to use the existing infrastructure of incumbent players. Now, with the sweeping statements in the draft circular, it is further proposed that VAS providers will only be allowed to provide *selected* value-added-services.

The main issue therefore, for Value-Added Service providers is not so much as the inability to provide end-to-end telephony services in the way telecommunication providers do but on the infringement on the rights and changing the definition of value-added service providers. It is the attempt to regulate a supposedly unregulated industry. The casual mention of an entity called “Voice Service Provider” in the draft circular is particularly disconcerting. RA 7925 does not mention anything about a “Voice Service Provider”. Therefore, the NTC, with all due respect, does not have the power nor the legal bases to enact rules that create a category of providers not provided for under RA 7925, and subject such providers to its regulatory powers. To do so would be an ultra vires administrative act, and hence void. The Commission’s regulatory powers are founded on RA 7925 and, therefore, can not go beyond what RA 7925 provides.

Without doubt, our country benefited from the liberalization of the telecommunication industry. New providers, better services and more competitive rates are all the results of liberalization. A policy founded on healthy competition works. On the other hand, regulation-- in particular regulating Internet-related technology -- will only be inimical and detrimental to the growth not only of the Internet in the country, which according to some reports have leveled off in the last couple of years, but also of increased economic activity brought about by the creation of new companies and jobs. Imposing limitations on the use of Internet technology puts up artificial barriers to entry for new players and goes against the spirit and objectives of RA 7925. In particular, imposing sweeping limitations on the commercial application of VoIP, yes, even those that may not even be initiated nor terminated through a public switched network—which was the main issue in the past-- will not only be a policy step backwards but will also offer a grave disservice to the Filipino people not to mention a violation of RA 7925.

In ending, please allow me to quote the definition of a value-added service provider as provided under RA 7925:

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<sup>1</sup> h) *Value-added service provider (VAS)* - 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. (source: RA 7925 <<http://www.ntc.gov.ph/laws/ra7925-print.html>>)

*“Value-added service provider (VAS) - 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.”*

It is very clear from RA 7925 that the Internet and its ancillary services such as VoIP fall outside the scope of the services ordinarily provided by the carriers. Rather, as stated above, Internet and VoIP services are value-added services that VAS Providers may properly provide to consumers under the law. RA 7925 is pro-competition. It is pro-innovation. It has been the catalyst for the growth of the mobile, Internet, Call Center, and now Business Process Outsourcing (or BPO) industries.

Poor countries like ours stand to gain the most from each new technology the supposedly unregulated Internet brings. Sad to say, the inverse is also true. The Filipino people stand to lose the most if meaningful and economically-viable aspects of the services are only available to, or reserved for, a select group of companies.

Thank you and good evening.