

Unofficial Translation

Notification of the National Telecommunications Commission

Re: Criteria and Procedures for Providing Local Loop Unbundling

B.E. 2553 (2010)

Whereas it is expedient to regulate the operations of telecommunication business which provides Local Loop Unbundling in order to extend and expand the services, promote new entrants in telecommunication, and enhance free and fair telecommunication for maximum benefits of the telecommunication service users;

Pursuant to Section 20 in conjunction with Section 50, Section 51 (7) (8) (13) and (14) of the Act on the Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunication Services, B.E. 2543 (2000), which contains certain provisions regarding the restriction of the rights and freedom of an individual as permitted to be done under the law by Article 29, in conjunction with Article 35, Article 36, Article 43, Article 45, Article 46, Article 47, Article 61 and Article 64 of the Constitution of the Kingdom of Thailand, together with Section 19, Section 21 and Section 25 paragraph 2, paragraph 4 and paragraph 5 of the Telecommunications Business Act, B.E. 2544 (2001), which contains certain provisions regarding the restriction of the rights and freedom of an individual as permitted to be done under the law by Article 29, in conjunction with Article 35, Article 36, Article 41, Article 43 and Article 45 of the Constitution of the Kingdom of Thailand, together with Clause 4 (5) and Clause 19 of Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection, B.E. 2549 (2006), the National Telecommunications Commission hereby issues the Notification as follows:

Clause 1 This Notification shall come into force as from the day following the date of its publication in the Government Gazette.

Clause 2 Any other notifications, rules and orders having been prescribed in, or contrary to, or inconsistent with, this Notification shall be superseded by this Notification.

The criteria and procedures under this Notification shall apply *mutatis mutandis* to the licensees who own outside plant network.

Clause 3 In this Notification,

Unofficial Translation

“Local loop” means wireline network that connects between local exchange and end users;

“Local Loop” means wireline network that connects between service users and core network for users’ access to telecommunication services;

“Bit stream access” means transmission services over a local loop for the provision of internet services;

“Line sharing” means leased line on local loop for the provision of internet services;

“Full unbundling services” means leasing of line for data transmission on local loop for the provision of internet services and fixed telephone services;

“Local Loop Unbundling area” means an area designated by the National Telecommunications Commission for the provision of local loop unbundling services pursuant to this Notification;

“Alternative telecommunication operator” means any licensee who obtains the right to use local loop unbundling from the operator with significant market power or operator who owns fixed-line telephone network for the provision of local loop unbundling services in the designated area. The alternative telecommunication operator shall not be a subsidiary or affiliated company of the provider of local loop unbundling;

“Operator with significant market power” means the licensee designated by the Commission as operator with significant market power in the telecommunication market pursuant to the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Identifying Operators with Significant Market Power in Telecommunications Business, B.E. 2552 (2009);

“Local Loop Unbundling Committee” means a committee appointed by the National Telecommunications Commission to take charge of regulating and supervising local loop unbundling pursuant to this Notification;

“Licensee” means licensee who has been granted a license to operate telecommunication business under the telecommunication business law, including the operators who have been granted authorization, concession or contract by TOT Public Company Limited or CAT Telecommunications Public Company Limited prior to the date on which the Telecommunications Business Act, B.E. 2544 (2001) comes into force;

“Commission” means the National Telecommunications Commission;

“Secretary-General” means the Secretary-General of the National Telecommunications Commission.

Unofficial Translation

CHAPTER 1

Local Loop Unbundling Committee

Clause 4 There shall be a Committee for the Supervision of local loop unbundling to undertake or perform the duties in the supervision of local loop unbundling, consisting of member of the National Telecommunications Commission who is appointed by the Commission as Chairman, and Chairman of the Rights-of-Way Committee, Chairman of the Telecommunications Development for Public Benefit Fund, a member of the Rights-of-Way Committee appointed by the Committee, and the manager of the Telecommunications Development for Public Benefit Fund as members of this Committee.

Secretary of the Rights-of-Way Committee shall be the secretary, and the assistant secretary of the Rights-of-Way Committee shall be the assistant secretary of this Committee.

Clause 5 The Committee for the Supervision of local loop unbundling shall have duty and responsibility to prepare and submit proposals on the supervision of the local loop unbundling for the Commission's consideration as follows:

- (1) Criteria for selecting suitable areas for the provision of local loop unbundling;
- (2) Designating suitable areas for the provision of unbundled network services;
- (3) Service charge rates for local loop unbundling;
- (4) Criteria, procedures and methods for negotiating local loop unbundling contracts, and designating local loop unbundling access points;
- (5) Criteria for providing support to alternative telecommunication operators;
- (6) Three-year plan, targets and operational framework for the provision of local loop unbundling;
- (7) Any other proposals as assigned by the Commission.

Clause 6 The consideration of the Committee pursuant to Clause 5 shall take into account the appropriate levels of technology and returns on investment of the telecommunication business operators, or for public interest protection, and also the promotion of competition or market entry of other licensees.

Unofficial Translation

Clause 7 The meeting of the Committee for the Supervision of local loop unbundling shall require the attendance of at least one half of the entire members of the Committee in order to constitute a quorum.

In the case where the Chairman of the Committee is unable to attend the meeting or to execute his duty, the attending members shall elect one of them to chair the meeting.

A resolution of the meeting shall be passed by a majority of the vote cast. Each member shall have one vote. In the event of a tie, the Chairman shall have the final vote cast.

The Chairman or the members of the Committee who have beneficial interests in any agenda items under consideration shall be prohibited from attending the meeting on such agenda items and casting votes thereon.

CHAPTER 2

Provision of local loop unbundling

Clause 8 Operators with significant market power or licensees who operate Type Two or Type Three telecommunication business as designated by the Commission shall arrange for the provision of local loop unbundling and have the following duties:

(1) Provide Reference Unbundling Offer (RUO) that enables other licensees to negotiate and enter into contracts for the provision of local loop unbundling;

(2) Seek alternative telecommunication operators to negotiate and enter into contracts for the provision of local loop unbundling after a six-month period has lapsed and no interested party has negotiated and entered into contracts under (1);

(3) Prepare and submit a report to the Secretary-General on a yearly basis as required by the Committee for the Supervision of local loop unbundling;

(4) Perform any other duties pursuant to this Notification.

The provision of local loop unbundling under paragraph one shall not be discriminatory among all licensees or alternative telecommunication operators, and shall comply with the criteria, conditions and procedures prescribed by the Commission in this Notification or as required by the Committee for the Supervision of local loop unbundling.

Clause 9 Local Loop Unbundling under this Notification shall at least consist of the following three types:

(1) Bit stream access

Unofficial Translation

(2) Line sharing

(3) Full unbundling

Rights and duties of the granting licensees and the requesting licensees of the use of local loop unbundling shall be in accordance with the criteria, conditions and procedures prescribed by the Commission in this Notification.

Part 1

Rights and Duties of Granting Licensees and Requesting Licensees

Of the Use of Bit Stream Access

Clause 10 Licensees who grant bit stream access shall have the duty to procure or supply equipment or facilities necessary for the provision of internet services so that the licensees who request the use of bit stream access are able to provide efficient internet services. This shall be subject to the conditions and procedures specified in the contracts and conditions for the local loop unbundling, and shall not be contrary to, or inconsistent with, the criteria, conditions and procedures prescribed by the Commission.

Clause 11 Granting licensees of bit stream access shall not take any action which may prevent the services of the requesting licensees from regular functioning, or cause interference or interruption to the telecommunications business or activity.

Clause 12 Granting licensees of bit stream access shall provide the services in compliance with the standards and quality specified in the contracts and conditions on the supply of bit stream access, and such services shall not be inferior to those provided to their own service users.

Clause 13 Requesting licensees of the use of bit stream access shall have the rights, duties and liability to their service users directly according to the laws and the contracts, and shall not deny executing the duties and liability, or not pass on the duties and liability to the granting licensees of bit stream access.

Service users suffering from telecommunication services provided by the requesting licensees of the use of bit stream access shall have the rights to claim for compensation either from the requesting licensees under paragraph one, or from the

Unofficial Translation

granting licensees of bit stream access, if it is proven that the damage has stemmed from the supply of services by the granting licensees.

Clause 14 Requesting licensees of the use of bit stream access shall have the duty to provide telecommunication services in accordance with the service standards and quality as advertised or confirmed.

If any requesting licensees of the use of bit stream access have referred to, guaranteed or advertised confirming the standards and quality of telecommunication services of the granting licensees of bit stream access, it shall be deemed that they have advertised and guaranteed the service standards and quality of the supply of telecommunication services as defined under paragraph one.

Part 2

Rights and Duties of Granting Licensees and Requesting Licensees

Of the Use of Line Sharing

Clause 15 Licensees who grant line sharing shall have the duty to allow the requesting licensees of line sharing to have an access to, and install the equipment or facilities necessary for the provision of internet services so that they are able to provide their services efficiently. This shall be in accordance with the conditions and procedures specified in the contracts and conditions for the provision of local loop unbundling, and shall not be contrary to, or inconsistent with, the criteria, conditions and procedures prescribed by the Commission.

Clause 16 Should the requesting licensees of line sharing wish to use a location or an area for the installation of necessary equipment for their provision of services, the licensees who own the local loop unbundling shall be informed clearly by the requesting licensees of the request and the details thereof in writing.

Granting licensees of line sharing shall, without delay, provide the requested location or area for the installation of necessary equipment for the provision of services as requested by the requesting licensees who have clearly informed the request and the details thereof, and shall offer reasonable, non-discriminatory, transparent conditions and compensation for the services or service charges on a cost-based basis.

Unofficial Translation

In the event where the granting licensees of line sharing are unable to provide the requested location or area as requested by the requesting licensees due to technical reasons or space constraints, they shall, without delay, provide other area as mutually agreed upon or seek other measures for the installation of the equipment and the continuation of the services, and shall not place undue burden on the requesting licensees of line sharing.

Clause 17 Granting licensees of line sharing shall be responsible for any defects in the local loop unbundling, and handle the repair thereof to effect normal working conditions.

Clause 18 Requesting licensees of line sharing shall have the duty to procure or make available equipment or facilities necessary for the provision of internet services in accordance with the conditions and procedures specified in the contracts and conditions for the provision of local loop unbundling, and not in contradiction to, or in conflict with, the criteria, conditions and procedures prescribed by the Commission.

Clause 19 Requesting licensees of line sharing shall allow and provide cooperation to the granting licensees of line sharing in the inspection of the unbundled network and the premises used, which may be undertaken from time to time by the granting licensees of line sharing. In this respect, during the course of the said inspection, the granting licensees shall not act in any manner that may cause damage to the property of the requesting licensees.

Clause 20 During the time of the request for the use of line sharing, if the granting licensees wish to repair the local loop unbundling being used by the requesting licensees, the requesting licensees shall allow the granting licensees to do so. In the event where the repair takes an unduly long period of time to the extent that the requesting licensees are unable to use the local loop unbundling, the requesting licensees shall have the right to terminate the local loop unbundling contracts.

Clause 21 Requesting licensees of line sharing shall be responsible for any damage caused by the use of the local loop unbundling provided that the said damage is owing to their mistake.

The requesting licensees shall not be responsible for the damage according to paragraph one if it is evident that the damage has come from normal depreciation.

Unofficial Translation

Part 3

Rights and Duties of Granting Licensees and Requesting Licensees Of the Use of Full Unbundling

Clause 22 Licensees who grant the use of full unbundling shall not take any action which may prevent the services of the licensees who request the use of full unbundling from regular functioning, or cause interference or interruption to the telecommunications business or activity.

Clause 23 Requesting licensees of full unbundling shall have the rights, duties and liability to their service users directly according to the laws and the contracts, and shall not deny executing the duties and liability, or not pass on the duties and liability to the granting licensees of full unbundling.

Service users suffering from telecommunication services provided by the requesting licensees of full unbundling shall have the rights to claim for compensation either from the requesting licensees of full unbundling under paragraph one, or from the granting licensees of full unbundling, if it is proven that the damage has stemmed from the supply of services by the granting licensees of full unbundling.

Clause 24 Requesting licensees of full unbundling shall have the duty to provide telecommunication services in accordance with the service standards and quality as advertised or confirmed.

If any requesting licensees of full unbundling have referred to, guaranteed or advertised confirming the standards and quality of telecommunication services of the granting licensees of full unbundling, it shall be deemed that they have advertised and guaranteed the service standards and quality of the supply of telecommunication services as defined under paragraph one.

Clause 25 Requesting licensees of full unbundling shall be responsible for the expenses and maintenance of the equipment and property requested for services starting from the full unbundling access point to the end user point.

Unofficial Translation

Clause 26 Requesting licensees of full unbundling shall apply technical standards for internet services and fixed-line telephone services to the end users in compliance with the standards, criteria and conditions prescribed by the Commission.

CHAPTER 3

Price of Local Loop Unbundling

Clause 27 Price of local loop unbundling for the provision of local loop unbundling of bit stream access and line sharing under this Notification shall be calculated on a retail minus basis with reference marketing cost of 30 percent of service charge or as the Committee for the Supervision of local loop unbundling may otherwise specify or deem appropriate for promoting fair competition or equitable access to telecommunications networks.

Price of local loop unbundling for the provision of local loop unbundling of full unbundling and other network services shall be set by the Committee for the Supervision of Local Loop Unbundling or as it may deem necessary for promoting fair competition or ladder of investment or equitable access to telecommunications networks. For this purpose, risk sharing or risk premium principles may be applied.

CHAPTER 4

Regulatory and Penal Provisions

Clause 28 The Secretary-General shall submit status and analysis report on the provision of local loop unbundling to the Commission by January of each year.

Clause 29 For the matters not prescribed in this Notification, the licensees who provide and the licensees who request the use of local loop unbundling shall perform in compliance with the relevant Notifications of the Commission insofar as they are not contrary to, or inconsistent with, the provisions of this Notification.

Clause 30 In case of any dispute between the licensees owning local loop unbundling and the requesting licensees of local loop unbundling in relation to the request for the use of local loop unbundling, the contract parties shall have the right to request a ruling by the Rights-of-Way Committee under the Notification of the Commission Re:

Unofficial Translation

Criteria and Procedures for Exercising Rights-of-way in Erecting Poles, Laying Ducts or Cables, and Installing any Accessories for Providing Telecommunications Services by filing a petition in writing together with details of the facts and related evidences thereof to the Committee within 30 (thirty) days from the date on which the dispute over the request for the use of unbundled network services has taken place.

In making a ruling, the Commission may assign the Rights-of-Way Committee pursuant to the Notification of the Commission Re: Criteria and Procedures for Exercising Rights-of-way in Erecting Poles, Laying Ducts or Cables, and Installing Any Accessories for Providing Telecommunications Services to propose recommendations to support the consideration of the Commission.

Clause 31 To support and promote investment and development of telecommunication business, and to enable new licensees to compete efficiently, equitably and fairly, the Commission may exempt new licensees from the application of the criteria, conditions, or procedures, whether in whole or in part, of this Notification for a specified period of time.

The Commission may set any other specific conditions and limitations to be applicable temporarily to new licensees who are granted exemption by virtue of this Notification.

Clause 32 In the event where operators with significant market power or licensees operating Type Two or Type Three telecommunication business as designated by the Commission are required to seek alternative telecommunication operators for the use of the network services under this Notification, but the licensees have been unable to find alternative telecommunication operators to use the network services, or have restricted the local loop unbundling, or have taken discriminatory acts against other licensees in using the network, the Secretary-General shall order such licensees to refrain from the violating acts, or to make rectification, or to act correctly or properly within a specified period of time in accordance with the provisions of Chapter 9 regarding administrative enforcement of the Telecommunications Business Act, B.E. 2544 (2001).

Clause 33 For the matters not prescribed in this Notification, the provisions of the Administrative Procedure Act, B.E. 2539 (1996) and relevant regulations or notifications shall apply *mutatis mutandis* insofar as they are not contrary to, or inconsistent with, the provisions of this Notification.

Unofficial Translation

Transitional Provisions

Clause 34 Licensees who provide local loop unbundling, or licensees who request the use of local loop unbundling for the provision of their services to the users prior to the effective date of this Notification, and intend to continue operating the same type of telecommunication business, shall inform the Commission in writing within thirty days as from the effective date of this Notification. In this regard, they shall be able to continue the operations of such telecommunication business until otherwise ordered by the Commission.

The licensees who have completed the procedures according to paragraph one shall have the right to operate the telecommunication business under the existing scope of services for the remaining term of the respective licenses. In this case, the Commission may prescribe certain conditions for the licensees to fulfill.

Announced on the 20th day of August B.E. 2553 (2010)

Professor Prasit Prapinmongkolkarn

Chairman of the National Telecommunications Commission

This English version is prepared by International Organizations Bureau with the sole purpose of facilitating the comprehension of foreign participants in the telecommunication rules and regulations and shall not in any event be construed or interpreted as having effect in substitution for or supplementary to the Thai version thereof.

Please note that the translation has not been subjected to an official review by the Office of the National Telecommunications Commission. The Office of NTC, accordingly, cannot undertake any responsibility for its accuracy, nor be held liable for any loss or damages arising out of or in connection with its use.