

AFFIDAVIT

I, **JOSE DE VENECIA III**, Filipino, of legal age, with address at 1329 Palm Avenue, Dasmariñas Village, Makati City, subscribing under oath, depose and state:

1. I am the majority shareholder of Amsterdam Holdings Inc. (AHI), a corporation organized and existing under Philippine law. AHI is one of the interested proponents of the government's national broadband network (NBN) project, an endeavor intended to inter-connect all government offices throughout the Philippines.

2. I am executing this affidavit to refute the blanket and general denials made by Commission on Elections (COMELEC) Chairman Benjamin S. Abalos, Sr. in recent weeks, wherein he claims to have absolutely no knowledge of the NBN deal entered into between the government and Zhong Xing Telecommunications Equipment Limited.

3. On 14 September 2006, AHI, supported by Huawei, the largest telecommunications equipment supplier in China and the second largest telecommunications equipment supplier in the world, expressed its interest in undertaking the NBN project. AHI's proposal was dubbed the "Orion Network."

4. Sometime in September 2006, Zhong Xing Telecommunications Equipment (ZTE), a company established under Chinese law, submitted to Commission on Information and Communications Technology (CICT), an operating arm of the Department of Transportation and Communications (DOTC), an alleged unsolicited proposal, under R.A. No. 6957, as amended by R.A. No. 7718, for the NBN, which was, upon completion, to be turned over to respondent DOTC for operations and maintenance.

5. On 17 October 2006, Secretary Romulo Neri of the National Economic Development Authority (NEDA), through a letter of said date, conveyed his support for AHI's proposal for the NBN. Secretary Neri said that the same proposal is:

* * *consistent with the government's strategy of accelerating the development of a network of digital infrastructure to interconnect the entire country to achieve universal access of ICT services. It is also supportive of the government's priority [of] developing the country's digital infrastructure through partnership with the private sector.

A copy of Secretary Neri's letter is attached as Annex A.

6. On 21 November 2006, President Gloria Macapagal-Arroyo, in a meeting regarding the Cyber Corridor, with the NEDA Cabinet group in attendance, laid down the following conditions for a government broadband network: (a) the same should be undertaken via Build-Operate-and-Transfer (BOT) scheme (or any of its variations); (b) the same should be paid for by private funding, and not through government funds; (c) there should be no government subsidy or outlay for the project; (d) a "pay as you use" instead of a "take or pay" scheme; and (e) that the result of the undertaking is a reduction in government telecommunications expenses.

7. With due consideration to these parameters laid down by the President herself, AHI submitted to the DOTC, on 5 December 2006, an unsolicited proposal to undertake the NBN project.

8. Sometime after AHI's unsolicited proposal was submitted to the DOTC, Chairman Abalos took steps to contact me, through my father, House of Representatives Speaker Jose de Venecia, Jr. The first time that Chairman Abalos asked to meet with me, I was out of the country. I had no idea, at that time, why Chairman Abalos would want to meet with me.

9. When I returned from my trip, I found out from Speaker de Venecia that Chairman Abalos was still insisting on a meeting with me. The speaker invited Chairman Abalos and myself to breakfast at the speaker's home. Given the request of the speaker, I agreed to meet him. At the breakfast Chairman Abalos expressed his desire to cooperate with AHI in building the NBN network. His proposal was to cover the lower class municipalities (4th, 5th, and 6th class), and augment the Orion Network of AHI. Chairman suggested that I meet with him and his staff at the Wack Wack Golf and Country Club, around breakfast time. In attendance at the meeting were Messrs. Ruben Reyes, Leo San Miguel, Jimmy Paz, and General Edgar Dula Torre.

10. I soon found out that Chairman Abalos wanted to talk about the NBN project. During that meeting, it became apparent that Chairman Abalos was backing ZTE's effort to undertake the NBN project. Chairman Abalos told me: "Joey, I want to do something when I retire, I want to pursue something in the telecommunications industry."

11. Apparently, Chairman Abalos had found out about AHI's recently submitted unsolicited proposal. He offered me Ten Million United States Dollars (US\$10,000,000.00), in exchange for AHI's backing off and withdrawing completely from the NBN project, saying that I should let him be, as the project would be, in his words, his "last hurrah."

12. I politely declined his offer, because the proposal was beyond my control, considering that I had other partners, both local and foreign, in the said endeavor. I offered him a stake in AHI, for him to be a Director or its Chairman, but he did not agree to the same. During the said meeting, Chairman Abalos did not push further his offer to me, and let me be, but that was not the last meeting that we had.

13. Subsequently, Chairman Abalos invited me to his office at the COMELEC. In those several occasions where Chairman Abalos invited me to meetings, I could not help but defer to his seniority and importance in the government even if I did not want to. In the meeting at his office, I found in attendance, DOTC Assistant Secretary Lorenzo Formoso III. I was introduced to Assistant Secretary Formoso by Chairman Abalos, with the latter stating, "you see, Joey is here, as my partner."

14. Chairman Abalos' introducing me as "his partner" is not entirely without basis. As I, on several occasions, flatly (but respectfully) refused his offer of \$10,000,000.00 to pull-out AHI's unsolicited proposal, he had broached the idea of a partnership between AHI and ZTE instead. I did not expressly agree to the said suggestion, but kept an open mind, considering that Broadband Philippines, a company which I helped build, had previous relations with ZTE, the latter having been a supplier of various telecommunications-related equipment for Broadband Philippines. However, while I did not expressly agree, neither did I refuse his suggestion outright because of his stature in the upcoming mid-term elections, which may have been the reason why Chairman Abalos considered me to be his "partner."

15. Chairman Abalos would consistently request for meetings during the latter half of December 2006, so that he could convince me to either back off from the deal, or be his "partner." All told, we had about five or six meetings during said period.

16. Sometime in late December 2006, Chairman Abalos asked me to join him in a meeting with ZTE officials in Shenzhen, China. He said that he wanted to introduce me to ZTE and its top management. I initially begged off, and explained that it is not necessary for me to go to Shenzhen, as I already had previous dealings with ZTE, as former chairman of Broadband Philippines.

17. Chairman Abalos, was, however, very insistent, and asked me to go to China to meet ZTE's chairman Ho, even only for one day. Again, in deference to Chairman Abalos, I agreed to go to China, but on a separate flight, and at my own expense.

18. On 27 December 2006, a meeting was held at the Kempinski Hotel, which I knew to be a favorite hangout of ZTE officials. Prior to the meeting, Chairman Abalos showed me ZTE's draft proposal for the NBN project, to be undertaken at the cost

of Two Hundred Sixty-two Million United States Dollars (US\$262,000,000.00). I noticed that the proposal only covered about thirty percent (30%) of the country.

19. I sent this proposal to the technical personnel of AHI and to the technical country representative of ZTE in Manila, via facsimile, for evaluation, so that I could approximate the actual value of the ZTE proposal, and would be prepared for the meeting with them. AHI's and ZTE's evaluation was that the value of ZTE's rough proposal for which Chairman Abalos was lobbying (the "Abalos proposal") was only about One Hundred Thirty Million United States Dollars (US\$130,000,000.00). I did not entirely discount the possibility of using ZTE, instead of Huawei, as AHI's supplier-partner. I asked to have ZTE evaluate our own proposal, and their people came up with a costing of Two Hundred Forty Million United States Dollars (US\$240,000,000.00) for the broadband facilities and equipment, which would cover about eighty percent (80%) of the country, as opposed to the original "Abalos" proposal which was to cover only thirty percent (30%) of the country, and which cost only \$130 million but was overpriced to \$262 million. I informed Chairman Abalos of the apparent overprice. I was shocked at this enormous overprice and informed Chairman Abalos that this simply cannot be. I told him you cannot expect to book an asset at \$262 million when its actual value is only half of that.

20. In the meeting with ZTE officials, in attendance were, ZTE Vice-President Yu Yong, ZTE Director Fan Yang, and some other company officers. On the other side of the table were Chairman Abalos, myself, Ruben Reyes, Leo San Miguel, General Dula Torre, and Jimmy Paz.

21. In said meeting, I was again introduced by Chairman Abalos as his partner. Chairman Abalos demanded from the ZTE officials the money promised him, because he claimed that "the President and the Speaker" were waiting for it. I am certain that throughout my meetings with Chairman Abalos that my President and the Speaker, my father absolutely had no inkling about the details and absurdities in this project. I thus asked to talk to Chairman Abalos in private, and I told him it was highly inappropriate and wrong to mention the names of my President and the Speaker. I told him that my President and the Speaker are well-respected in China, and that his words to the ZTE officials were simply unacceptable, and asked him not to drag my president and my father into this.

22. We returned to the meeting, and Chairman Abalos insisted on getting the money promised him. ZTE officials, however, stated that they would release the money only after the "loan documents" were finalized. At this point, when ZTE officials refused to hand over the money Chairman Abalos was asking for, he started banging his fists on the table and started shouting at the ZTE officials, who refused to budge. He bragged about his position as the "most powerful man in the Philippines" starting January

15 (2007), being the Chair of the government electoral body, in view of the coming May 14 elections. In particular, Director Fan Yang countered with a question, "What about the money we already advanced, Mr. Chairman?" to which Chairman Abalos could offer no response.

23. After Director Fan Yang of ZTE asked the question, the meeting abruptly ended, as we received word that Chairman Ho of ZTE was already waiting for us at the Ocean Pearl Restaurant for dinner. In said dinner, no business matters were discussed, and only light conversation was maintained on leisurely topics, such as golf.

24. Sometime early January 2007, I was again invited by Chairman Abalos to meet ZTE officials at the Diamond Hotel. Chairman Abalos then insisted that the contract for the project be signed in front of Chinese Premier Wen Jiabao, who was then visiting the Philippines.

25. ZTE, in the meantime, requested for a meeting with me and AHI personnel to negotiate for acceptable contractual terms – as I could not bear the brazen overpricing under the "Abalos proposal." ZTE officials agreed that AHI's design and specifications for nearly 80% coverage of the country were fair, at the price of Two Hundred Forty Million United States Dollars. I informed Chairman Abalos via text message that it appeared that a compromise deal might be in the offing, in view of ZTE's assessment.

26. Sometime in early February 2007, I was again requested by Chairman Abalos to meet him at Wack Wack country club. I went there, accompanied by Mr. Richard Pratte, one of AHI's technical resource personnel. In that meeting, DOTC Assistant Secretary Elmer Soneja was present, and again, Chairman Abalos represented to him that "you see, Asec Soneja, Joey and I are partners now." While AHI had not withdrawn its original unsolicited proposal, which was purportedly being evaluated by DOTC at that time, I did not disagree to the statement, in view of the looming compromise deal between ZTE and AHI.

27. A few days later, however, Chairman Abalos called me up and started screaming shouting invectives at me. He said, "*Salbahe kang bata ka. Putang ina mo, kung alam lang ng tatay mo ang ginagawa mo, putang ina mo.*" I was bewildered where all of this was coming from, until in the middle of his ranting, he said that "I tapped your telephone." I responded, "Isn't that illegal?" He said, "*gusto mo ng transcript?*" and I said I certainly would like to have a copy. Apparently, he got angry because he found out from my phone calls that I had mentioned to several AHI personnel, as well as AHI's partners, that we were having difficulty with the NBN contract because he (Chairman Abalos) wanted a \$130 million dollar kickback from the project. While this was extant

from Chairman Abalos' foul language while we talked, I never received a copy of the alleged transcript of the conversation which Chairman Abalos said he would send.

28. In the meantime, notwithstanding negotiations between ZTE and AHI, neither company withdrew its original proposal from the DOTC. Based on a number of correspondences, the DOTC was still in the process of evaluating the same.

(a) On 26 February 2007, DOTC Assistant Secretary Soneja, in his capacity as Chairman of the Bids and Awards for Information and Communications Technology (BAC-ICT), asked the proponents of the NBN project to submit the final version of their respective proposals no later than 27 February 2007, in view of President Arroyo's directive for the DOTC to submit its recommendation for the implementation of the NBN, on 01 March 2007.

A copy of the letter of Assistant Secretary Soneja is attached as **Annex B**.

(b) On the same day, ZTE, responding to Assistant Secretary Soneja's directive, submitted to the DOTC the same proposal it had submitted to the CICT, but with the reservation that the same would be subject to revisions. On the other hand, AHI replied to Assistant Secretary Soneja's letter by stating that it is deeming its earlier submission as final.

Copies of AHI's and ZTE's respective responses to Assistant Secretary Soneja's directive are attached as **Annex C** and **D**.

(c) On 28 February 2007, DOTC's Technical Working Group (TWG) for ICT projects completed its evaluation of AHI and ZTE's proposals for the NBN, as well as for the Department of Education's Cyber Education Project. The evaluation did not endorse any particular proponent.

A copy of the evaluation is attached as **Annex E**.

(d) On 6 March 2007, in BAC Resolution No. ICT 07-0002, the BAC-ICT adopted the recommendations of the TWG and resolved to forward the same to NEDA for appropriate action.

A copy of the Resolution is attached as **Annex F**.

29. Sometime in mid-March 2007, I visited my father at his residence, where I found DOTC Secretary Leandro Mendoza. Secretary Mendoza was there, requesting that my father support and endorse his (Secretary Mendoza's) son, who was running for an elective position in Batangas.

30. Taking the opportunity, I went forward and informed Secretary Mendoza of AHI's pending unsolicited proposal with the DOTC for the NBN project. Secretary Mendoza responded by saying, "your project, Joey, is a big problem as Chairman Abalos is so angry at you and wants the NBN project for himself." We discussed the developments in the project, and the end result was that Secretary Mendoza insisted that Chairman Abalos and I thresh out our dispute, and offered to broker a reconciliation meeting between the two of us.

31. Secretary Mendoza thus arranged the "reconciliation" meeting, which was again held in Wack Wack. In attendance were Secretary Mendoza, Chairman Abalos, Ruben Reyes, Jimmy Paz, Leo San Miguel, and General Dula Torre. Chairman Abalos said that he "has forgiven me for what I did," but continued to push me into backing out of the NBN project.

32. The "reconciliation" meeting was inconclusive, insofar as the NBN project was concerned. I could not back off on behalf of AHI, and besides, I knew that AHI's proposal was far superior to the original Abalos-ZTE proposal, and that the same would be more advantageous to the government, as AHI's proposal entailed absolutely no outlay from the government, compared to the Abalos-ZTE version, which would have the government incur indebtedness from the Chinese government.

33. On 21 April 2007, through Official News Release (Release No. 5) issued by the Presidential News Desk/Office of the Press Secretary, the government announced the signing of five (5) key economic agreements between the Philippines and China, including a Three Hundred Twenty-nine Million Five Hundred Thousand United States Dollar (US\$329,500,000.00) --supply contract for the NBN between the DOTC and ZTE, with DOTC Secretary Mendoza and ZTE Vice President Yu Yong as signatories.

34. On 20 June 2007, Assistant Secretary Formoso, in a conference on Philippine Infrastructure Development sponsored by the Economic Policy Reform and Advocacy at the Ateneo Professional Schools in Rockwell, Makati, disclosed that the signed copies of the NBN contract were "stolen" but that the same had been reconstituted.

35. On 1 August 2007, Iloilo Vice-governor Rolex Suplico filed a petition before the Supreme Court to compel the DOTC to furnish the general public with copies of the NBN supply contract, and to annul the said supply contract for having been entered into in violation of the Constitution, and laws on public bidding.

A copy of Vice-governor Suplico's petition is attached as Annex G.

36. On 2 August 2007, AHI, through separate letters addressed to the DOTC and the CICT, made a formal request for access to documents relating to the NBN contract. These requests, to date, remain unacted upon.

Copies of these letters are attached as Annex H and I.

37. Vice Governor Suplico's petition brought a lot of media attention to the NBN deal, and resulted in several Cabinet secretaries and government officials issuing conflicting statements on the matter.

(a) On 6 August 2007, Presidential Legal Adviser Sergio Apostol announced that the NBN project was a "no go" since the agreements with regard thereto have not been reconstituted.

(b) On 7 August 2007, Department of Trade and Industry Secretary Peter Favila declared that all that was signed in China on 21 April 2007 with regard to the NBN project was a "memorandum of agreement."

(c) On the same day, the government admitted that all five (5) contracts signed in China, and not just the NBN supply contract, were stolen.

(d) On 9 August 2007, Secretary Mendoza and Assistant Secretary Formoso confirmed that a supply contract with regard to the NBN project had in fact been entered into by and between the Philippine government and ZTE in April 2007, contrary to the declarations of Apostol and Favila.

(e) On 25 August 2007, a loan agreement to finance several projects was signed by Department of Finance Secretary Gary Teves, and Secretaries Favila and Mendoza, for the Philippines, and Commerce Minister Bo Xilai, for China. On 28 August 2007, Secretary Favila denied that a portion of the loan, amounting One Billion Eight Hundred Million Dollars, was earmarked for the NBN.

38. On 28 August 2007, Congressman Carlos Padilla of Nueva Vizcaya filed a complaint for violation of the Anti-Graft and Corrupt Practices Act against Secretary Mendoza, Assistant Secretaries Formoso and Soneja, as well as ZTE officials, before the office of the Ombudsman, for their involvement in the anomalous ZTE NBN contract.

A copy of the Complaint filed by Congressman Padilla is attached as Annex J.

39. Throughout the statements made by various high-ranking cabinet officials, the participation of Chairman Abalos was never mentioned, as if he was never a player in the negotiations. However, in a privilege speech by Congressman Carlos

Padilla, on 28 August 2007, a congressional inquiry was proposed into the NBN ZTE deal, and at the same time, Cong. Padilla implicated Chairman Abalos in the controversy.

40. Chairman Abalos promptly denied the allegations against him. However, as my affidavit will show, the entire NBN deal, culminating in the execution of the supply contract by and between the Philippine Government, represented by Secretary Mendoza, and ZTE, represented by its Vice President Yu Yong, was the result of Chairman Abalos orchestration, with the objective of profiting from the transaction so that he could have funds to spend during his retirement.

41. Meantime, on 10 September 2007, AHI filed a petition before the Supreme Court, praying for a writ of *mandamus* to compel the DOTC to release in its favor all relevant documents relating to the NBN project, including the supposed supply contract executed between the government and ZTE.

A copy of said petition is attached as Annex K.

42. Chairman Abalos, to date, continues with his blanket denial and has threatened to sue me for defamation. However, I abide by what I have narrated in this affidavit, and voluntarily execute the same under oath.

43. I execute this affidavit to attest to the truth of the foregoing statements, and for whatever legal purpose it may serve.

Makati City, 10 September 2007.

JOSE DE VENECIA III

SUBSCRIBED AND SWORN TO before me, a Notary Public for and in Makati City, this ^{SEP 10 2007} 10 day of September 2007, affiant being personally known to me and exhibiting his Philippine Passport No. VVC45246, valid until April 3, 2012.