

690

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 690



INTRODUCED BY REPRESENTATIVE JURDIN JESUS M. ROMUALDO

EXPLANATORY NOTE

This proposed measure establishes a national policy on subscribed television service. It has been almost four (4) decades since the cable/community antennae television was first introduced in the country. Today, it is a mammoth industry, serving majority of our municipalities and cities with an estimated total investment of more 8 Billion Pesos, employing thousands all over the country.

In the forty (40) years of its existence in the Philippines, subscribed television service has had its own share of challenges and obstacles. Operators have continually been hounded by confusing government policies, lack of access to funds, and inadequate government support and incentives to promote the industry.

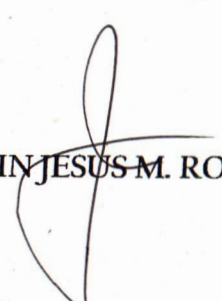
This bill seeks to address the needs of the industry by setting down procedures, standards and guidelines that would encourage the growth and development of subscribed television services. Among the salient points of the measure are:

- (a) Differentiation between Subscribed Television Network Services (STVNS) and Subscribed Television Communications Services (STVCS), in order to define the classification of services provided by the various STVS companies that comprise the industry;
- (b) Allowing 40% foreign equity for STVNS operators in order to promote the exponential growth of cable TV;
- (c) Providing specific rights to subscribed television service operators such as the right of easement, right lease excess capacity and right to advertise; and
- (d) Repeal of Executive Orders No. 205 and 436, which hinder the advancement of the industry.

This measure has been filed in the House of Representatives since the Tenth Congress. In fact, in the Tenth and Eleventh Congress, this measure was known as the Cable Television Bill. However, in order to keep up with the fast changing technologies, it has been deemed more appropriate to rename it cable television as subscribed television service.

The passage of this measure is long overdue. The industry needs this legislation for it to develop and expand. Investors are more likely to participate in an industry that has a definite set of regulations. With this premise, the immediate approval of this bill is earnestly sought.

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AN ACT
TO PROMOTE AND REGULATE THE SUBSCRIBED TELEVISION SERVICE IN THE
PHILIPPINES AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title.* This Act shall be known as the "Subscribed TV Act".

SEC. 2. *Scope and Application.* This Act shall apply to all subscribed television services (STVS) in the Philippines.

SEC. 3. *Declaration of Policy.* It shall be the policy of the State to:

- a) Recognize Subscribed Television System (STVS) as a service impressed with public interest and therefore subject to reasonable government regulation;
- b) Promote viable competition and prevent monopolistic behavior in the STVS industry in order to sustain its growth;
- c) Ensure equal access by Subscribed Television Communication Service (STVCS) providers to all programs;
- d) Establish and promote the highest standards for STVS and operations to maximize its value to its subscribers; and
- e) Encourage self-regulation in the STVS industry and professionalism in the delivery of its services through nationwide associations of its legitimate operators.

SEC. 4. *Definition of Terms.* As used in this Act:

- a) Subscribed Television Services (STVS) shall refer to and comprise of:
 1. Subscribed Television Communications Services (STVCS) – which shall refer to the transmission or delivery to subscribers of video and audio programming and/or other programming service, with or without subscriber interaction, through fiber optics, coaxial cable, satellite, and/or future technological means; and
 2. Subscribed Television Network Service (STVNS) – which shall refer to the process and facilities necessary for the generation, relay and reception of television and its associated control signals of any design by wire or wireless means such as but not limited to cable, direct-to-home and multi-distribution system television for the purpose of providing subscribed television service to multiple subscribers within defined geographical areas.

b) Certificate of Authority – shall refer to a grant consistent with the STVS policies and objectives to a qualified applicant, after due notice and hearing, of a final authority to own, operate and maintain a STVS by the Commission;

c) Commission – shall refer to the National Telecommunications Commission;

d) Franchise – shall refer to a privilege conferred by Congress upon subscribed television operator/entity, authorizing said operator/entity to engage in the operations of a subscribed television service;

e) Franchise Grantee – shall refer to a person or any group of persons, natural or juridical, associations or entities granted a legislative franchise to operate a STVNS;

f) Provisional Authority – shall refer to a conditional authority granted by the Commission, for a period of eighteen (18) months, to a qualified applicant, after due notice and hearing, to operate and maintain a STVS, pending the grant of a Certificate of Authority; and

g) Service Area – shall refer to the area of operation of one or more STVCS operator/s. It may refer to city, municipality, region or the entire country.

h) Subscribed Television Operator/Entity – shall refer to any person or group of persons, natural or juridical, engaged in the operation of subscribed television network service and is actually providing subscribed television service to the subscribers.

SEC. 5. *Ownership and Control.* – Ownership, control and supervision of Subscribed Television Communications Service (STVCS) in the Philippines shall be limited to Filipino citizens, or to corporations, cooperatives or associations wholly owned and managed by such citizens.

Ownership, control and supervision of Subscribed Television Network Service (STVNS) shall be open to all citizens of the Philippines, or associations, cooperatives, partnerships, joint ventures, or corporations organized under Philippine laws with at least sixty per centum (60%) of whose capital is owned by Filipinos: Provided, That the participation of foreign investors in the governing body of such entity shall be limited to their proportionate share in the capital thereof and all executive and management officers of such subscribed television entities must be citizens of the Philippines.

SEC. 6. *Supervision and Regulation.* – The supervision and regulation of the operations of STVS in the Philippines shall be vested in the National Telecommunications Commission. In particular, the Commission shall:

a) Provide guidelines for the authorization, licensing, construction or installation, operation and maintenance of a STVS in the Philippines;

b) Issue, suspend and revoke Certificates of Authority or Provisional Authority, licenses, permits and other authorization in the exercise of its regulatory and supervisory powers under this Act;

c) Hear, investigate and decide all questions, controversies or disputes arising out of or in connection with the operations of STVS in the country;

d) Determine the necessity of granting additional subscribed television operators within a service area covered by existing operators;

e) Issue subpoenas and require the production of books, papers, records and other documents as may be necessary in the resolution of any matter under its consideration;

f) Prosecute violations of the provisions of this Act, rules and regulations, orders and other issuances promulgated by the Commission in the implementation of this Act, and impose penalties and other sanctions on such violation; and

g) Perform such other functions as the Commission deems necessary in the implementation of this Act.

SEC. 7. *Legislative Franchise.* – Any person, association or corporation who shall install and operate or render STVNS on a nationwide basis shall be required to obtain and secure a franchise from the Congress of the Philippines and a Certificate of Authority from the Commission: Provided, That municipal or provincial STVNS operators shall be required to obtain and secure the necessary local government permit from the appropriate local government authority, as well as a Certificate of Authority from the Commission.

A STVNS shall be deemed to be operated on a nationwide basis if the network is intended to be installed and operated to service at least three (3) regions or at least three (3) provinces in separate regions as its service area.

SEC. 8. *Authority to Operate.* – Any person, association or corporation who shall install and operate or render STVCS within a municipality, city or province shall be required to obtain a Certificate of Authority from the Commission.

A Certificate of Authority to operate a STVS shall be issued in favor of an applicant legally, technically and financially capable of providing subscribed television service for a period of five (5) years from the date of its issuance and subject to such other terms and conditions the Commission may reasonably impose. However, the Commission may issue a Provisional Authority to operate a STVS pending the grant of a Certificate of Authority to operate as long as the subscribed television service operator shall comply with existing policies and regulations of the Commission.

SEC. 9. *Non-exclusivity.* – The Congress of the Philippines may award one or more legislative franchises within the same service area. To encourage a healthy competitive environment, Congress shall give a franchise grantee a period of four (4) years from the grant of a franchise to secure subscribers within the subject service area before granting another franchise to other interested subscribed television operators within the same service area.

Notwithstanding, the Commission may grant to an interested applicant-operator the authorization to operate a STVS before the expiration of the four-year period given to a prior STVS operator within the same franchise area upon determination by the Commission that:

- a) The prior subscribed television operator/entity has not substantially complied with the terms and conditions of his authorization;
- b) The STVCS being provided by the prior subscribed television operator/entity to its subscriber is sub-standard, inefficient and/or inadequate;
- c) The prior subscribed television operator/entity has unreasonably and unjustifiably refused or failed to comply with the terms and conditions of the authorization or the orders, issuances or regulations promulgated by the Commission; and/or
- d) The area is highly urbanized and is capable of sustaining more than two (2) STVCS.

SEC.10. *Rights of Subscribed Television Operators/Entities.* – To maximize the use of available facilities and promote development of the subscribed television industry, all subscribed television operators/entities shall have the following rights:

- a) Right of Easement – Duly authorized subscribed television operators shall have the right of easement over right-of-way granted to existing public utilities and dedicated to compatible uses; Provided, That the subscribed television operator shall ensure that:
 - 1. The owner of the property subject to easement is justly compensated for the servitude and damages caused by the installation, operation or removal of its subscribed television facilities;
 - 2. The function, appearance and safety of the property subject to easement and the convenience and safety of other users and the general public are not adversely affected; and

3. The expenses of installation, operation or removal of such facilities are borne by the subscribed television operator exercising the right of easement;

Provided, further, That the rate of annual fees to be paid by the subscribed television operator in compensation to the owner of the property subject to easement shall be fixed by the Commission.

b) *Right to Lease Excess Capacity* – Duly authorized subscribed television operators/entities may, with the approval of the Commission, lease or sub-lease the excess capacity of its STVNS, but may not utilize such excess capacity, or in any manner engage, in broadcast or telecommunications without securing the appropriate legislative franchise from the Congress of the Philippines and authority from the Commission.

SEC. 11. *Use of Public Utility Facilities And/Or Poles.* – Subscribed television operators may use existing public utility facilities and/or poles dedicated to compatible uses: Provided, That, public utility operators/entities shall ensure that the rates for the use of its facilities and/or poles shall be made transparent to the public through publication of rates which must be based on the use of such facilities and/or poles by the subscribed television operator/entity as fixed by the Commission in coordination with the National Electrification Administration (NEA).

SEC. 12. *Value-added Services.* – Subscribed television operators may offer, provide and operate other STVNS-related value-added services: Provided, That the prior approval of the Commission is acquired.

SEC. 13. *Advertisements.* – Subscribed television may include advertisements and other similar paid segments for which the operator may charge and collect reasonable fees: Provided, That such paid segments shall not exceed ten (10) minutes per hour of programs: Provided, further, That said advertisements and similar paid segments shall be exhibited or shown at the start and/or end of the program. Provided finally, That no foreign program provider or distributor shall be allowed to solicit and sell commercial positions and advertising time in their programming for products and services directed solely at and within the Philippines and insert such advertisements in the regional satellite feed of such foreign programmers and distributors to be received by the subscribed television operator.

SEC. 14. *Carriage of Commercial Television Signal.* – Broadcast operators of commercial television networks, as owners of the program may choose whether or not to be carried by the STVCS operators within the Grade A & B contour. If the broadcast operator chooses to be carried, the carriage must be free of charge. If the broadcast operator chooses not to be carried, the STVCS operator must obtain re-transmission consent for the use of broadcast signals of the broadcast station.

Discriminatory policies shall not be allowed. The broadcast operator must charge the same rate to all STVCS operators who avail carriage of the program.

SEC. 15. *Deregulation of Service Rates.* – The deregulation of service rates of STVCS shall be maintained and respected by the national and local government units to encourage growth in the industry and foster the availability of quality programs.

The Commission shall, however, retain its residual powers to regulate service rates to protect the interest of the public when ruinous competition results or when a monopoly or a cartel or combination thereof, in restraint of free competition exists and the service rates are distorted or unable to function freely and the subscribers are adversely affected. In such cases, the Commission shall establish either a floor or ceiling on the service rates.

SEC. 16. *Responsibility to the Public.* – The subscribed television operator/entity shall have the following responsibilities:

- a) Provide adequate public service time to relay government information on certain national issues and in case of national emergencies and calamities;
- b) Conform to the ethics of honest enterprise and not use its stations for the exhibition, distribution or transmission of materials in violation of existing laws, executive orders, rules and regulations of the Movie and Television Review and Classification Board, Optical Media Board, Intellectual Property Office, Department of Trade and Industry, Securities and Exchange Commission and other related government agencies; and
- c) Provide prior notification to its subscribers concerning the change or deletion of programs, or the transfer of programs to another channel except in instances of technical non-viability.

SEC. 17. *Prohibited Acts.* – The following acts are hereby declared unlawful:

- a) Engaging in any commercial television broadcast, telecommunications activity, or STVCS unless duly approved/authorized for the purpose;
- b) Engaging in any electronic commercial transactions through the STVNS unless duly approved/authorized for the purpose;
- c) Receiving and distributing/transmitting satellite program signals, or cinematographic works or other programs, without the written authorization of the concerned satellite programmer or copyright owner;
- d) Intercepting or receiving, or assisting in intercepting or receiving, any service offered over a STVS by tapping or making or causing to be made, any unauthorized connection, to existing subscribed television facilities through the recording, reproduction, distribution, exportation or sale, of intercepted or received subscribed television service signals;
- e) Using or receiving any direct or indirect benefit from any STVS through any of the prohibited acts enumerated in the preceding paragraphs;
- f) Using without proper authorization, any receiver-decoder or equivalent circumvention devices or methods that allow for unauthorized decoding of encoded satellite program signals;
- g) Damaging, destroying or removing, willfully or maliciously, STVS facilities and accessories of authorized subscribed television operators which would result into system disruption or network degradation; and
- h) Refusing without reasonable grounds, by program producers, to make available certain programs to subscribed television operators.

SEC. 18. *Incentives.* – Subscribed television operators may avail of the benefits granted to radio and television broadcasting stations under Presidential Decree No. 1362 and Executive Order No. 226 arising from the importation of subscribed television equipment and accessories.

SEC. 19. *Penalties.* – Any person, including directors and officers of a corporation, who knowingly and willfully violates any provision of this Act or commits any of the prohibited acts in the preceding section or any provision of this Act shall be punished:

- a) on the first offense, by a fine of not less than Fifty thousand pesos (P 50,000.00) but not more than Three hundred thousand pesos (P 300,000.00) or imprisonment or not less than one (1) year but not more than three (3) years or both, and suspension of the franchise and authority to operate for a period of not less than two (2) years but not more than five (5) years;
- b) on the second offense, by a fine of not less than Three hundred thousand pesos (P 300,000.00) but not more than One million pesos (P 1,000,000.00) or imprisonment of not less than three (3) years but not more than five (5) years or both, and permanent ineligibility to receive a franchise and authority to operate.

Any person, natural or juridical, aggrieved by any violation of the preceding sections may bring a civil, criminal or administrative action in a court or body of competent jurisdiction.

SEC. 20. *Implementing Rules and Regulations.* – For the implementation of this Act, the Commission shall, in consultation with the Movie and Television Review and Classification

Board, Videogram Regulatory Board, Intellectual Property Office, and Regional Cable Television Cooperatives, promulgate the implementing rules and regulations to govern the operations of the subscribed television industry within six (6) months after the effectivity of this Act.

SEC. 21. *Reportorial Requirements.* - A duly authorized subscribed television operator/entity shall submit an annual report on its operations to the Commission.

SEC. 22. *Separability Clause.* - If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of other provisions thereof.

SEC. 23. *Repealing Clause.* - Executive Order No. 205, Executive Order No. 436 and all other laws, decrees, regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 24. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of national circulation.

Approved,