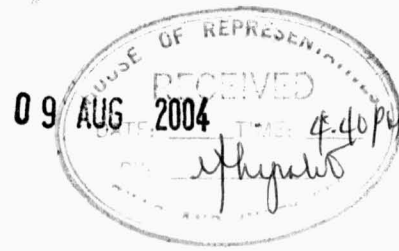


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



Thirteenth Congress

First Regular Session

HOUSE BILL NO. 2251

Introduced by **HONORABLE JACINTO V. PARAS**

EXPLANATORY NOTE

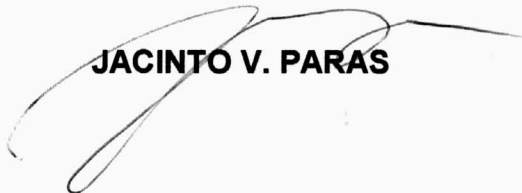
The state of technology in this digital age is such that the means to communicate information and ideas is much simplified. The advent of internet technology, cable television and other forms of telecommunications has opened the avenues for greater knowledge, education, faster and efficient business transacting and so much more.

Eventually, we may see in the future the possibility of using a single device for various kinds of activities, particularly those involving information, content and communications and entertainment.

This bill, therefore, aims to propose a policy on convergence of the various technologies and means of communications and a long term strategic national development plan for the Philippines communications program.

In summary, it proposes the national policies and objectives for the promotion of convergent technology, as well as specific policies on aspects which shall effect the implementation of the same. It also proposes the rights of users as well as institutional responsibilities to make the national convergence program viable. Finally it provides for penal provisions for violators.

This bill is long overdue. Thus, I urge the approval of this bill.


JACINTO V. PARAS

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HOUSE BILL NO. 2251

Introduce by **HONORABLE JACINTO V. PARAS**

**AN ACT TO PROMOTE THE EFFICIENT AND
EFFECTIVE DELIVERY OF CONVERGING
COMMUNICATIONS SERVICES**

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

ARTICLE 1. GENERAL PROVISIONS

Sec. 1. Short Title. - This act shall be known as the “ *Convergence Policy Act of the Philippines of 2004*.”

Sec. 2. Scope. - This Act shall apply to the provision of communications services and network services within the Philippines.

Sec. 3. Definitions. – For the purposes of this Act, the following terms shall be used:

- a. “ **broadcast service** “ refers to a mass media service provided through the transmission of commercial radio or television messages for reception of a broad audience in a geographic area;
- b. “ **Commission** “ refers to the National Telecommunications Commission or to any other body which may assume the regulatory and communications industry supervision functions currently carried out by the Commission;
- c. “ **communications** “ refers to any communication, whether between persons and persons, things and things, or persons and things in the form of sound, data, text, visual images, signals or any other form or any combination of those forms;
- d. “ **communications service** “ refers to a service for the delivery of communications to users by means of one or more network services and may include telecommunications services, subscribed television services, broadcasting services, internet services and other value added services;

- e. “ **communications service provider** “ refers to an entity which is authorized to provide communications services to the public;
- f. “ **content** “ refers to any sound , text, still picture, moving picture or other audio – visual representation, tactile representation or any other combination of these which is capable of being created, manipulated, stored, retrieved and transmitted electronically;
- g. “ **convergence**” refers to the progressive integration of segments of the information and content industries, including telecommunications, broadcasting, electronic commerce and data processing, into a single economic market based on distributed digital technology;
- h. “ **convergence master plan** “ refers to a long term strategic national development plan for the Philippines’ communications sector;
- i. “ **Department** “ refers to the Department of Transportation and Communication and any other Department of the Government of the Philippines which may assume functions currently carried out by the Department;
- j. “ **mass media service** “ refers to a type of communications service for the delivery of content which is intended to reach, or is capable of reaching, the mass general public;
- k. “ **mass media service provider** “ refers to an entity which is authorized to provide a mass media service;
- l. “ **network facilities** “ refers to any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services;
- m. “ **network service** “ refers to a service which utilizes network facilities and which provides a platform for the delivery of communications services;
- n. “ **network service provider** “ refers to an entity which is authorized to provide network services;
- o. “ **numbering and addressing system** “ refers to a national system for the control, administration and management of the numbering and addressing of network and communications services;
- p. “ **service provider** “ refers to an entity which is authorized to provide network services or communications services to the public;
- q. “ **subscribed television service** “ refers to a television service which is only available to consumers who subscribe for such service; and
- r. “ **telecommunications service** “ refers to a service that allows the user to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means; and
- s. “ **Universal Access Fund** “ refers to a fund established by the Department used for the purpose of ensuring the availability of a

minimum set of reliable and affordable communications services in both urban and rural communities.

ARTICLE II. NATIONAL POLICIES AND OBJECTIVES

Sec. 4. Purposes of this Act - In order to promote the national policy objectives outlined below, this Act provides the basis for :

- a) The management of an orderly transition from the existing arrangements of traditional communications industry structures to a more complex and globalised convergence environment;
- b) The development of an effective national framework that responds to the global opportunities and challenges of convergence, and also addresses the specific characteristics of the Philippine market;
- c) The establishment of transparent and stable regulatory and administrative processes that encourage fair and robust competition for the long term benefit of the consumers of communications services;
- d) The delegation of respective powers and functions of the Department and the Commission; and
- e) The Government's powers to develop specific implementation arrangements as the need arises.

Sec. 5. Declaration of National Policy Objectives. - The State recognizes the vital role convergence plays in the overall social and economic future of the Philippines. The services derived from convergence are essential to the development and global competitiveness of the Philippines and will be encouraged and administered in order to safeguard, enrich and strengthen the opportunities to its citizens.

Within this context, the following national policies shall be pursued:

- a. To ensure fair and equitable provision of a wide range of affordable and universally accessible services over a comprehensive and efficient national infrastructure using the best available and most appropriate technologies which are vital to nation building and development;
- b. The government shall encourage the provision of convergence services to provide opportunities and continuing enhancement to the quality of work and life;
- c. A high level of confidence from both business and residential consumers in the delivery of communication services shall be promoted by providing regulatory certainty and operational conditions necessary to encourage the continued local and international investment in, and development of, the Philippines communications sector;
- d. The participation of business enterprises particularly SMEs shall be encouraged by creating a platform for widespread use of

- e. advanced value – added applications (including e–commerce) and ensuring information accessibility, security, network reliability and integrity;
- f. Convergence shall be used to preserve and enhance the cultural representation and content resources that will facilitate and nurture the national identity of the Philippines;
- g. Local technological capabilities and international technology transfer within the sector will be encouraged by recognizing that the core assets for success into the future will be our people and their skills and knowledge; and
- h. A competition framework shall be established that is responsive to the technical and market realities of convergence, considers the fundamental characteristics and challenges of the communications industries of the Philippines and promotes and sustains the interests of the local sector and all its stakeholders.

ARTICLE III. SPECIFIC POLICIES

Sec. 6. Categories of Service Provider. – The convergence sector shall comprise network service providers and communications service providers.

Network service providers shall operate physical network facilities and related infrastructure and system and provide network services to other network service providers and to communications service providers.

Communications service providers shall use network services as a platform to deliver communications services to end users.

Mass media service providers are a distinct type of communications service provider which deliver mass media services to end users.

Sec. 7. Ownership and Management - Service providers, other than mass media service providers, shall be owned by citizens of the Philippines, corporations or associations, cooperatives, partnerships or joint ventures organized under the laws of the Philippines, at least 60% of whose aggregate common stock is owned by such citizens. The participation of foreign investors on the governing body of an entity providing network services shall be limited to their proportionate share in its capital.

Mass media service providers, in compliance with existing laws, shall be wholly (100 %) owned by citizens of the Philippines, corporations or associations, cooperatives, partnerships or joint ventures organized under the laws of the Philippines, unless otherwise amended through another law.

Sec. 8. Market Entry. – Entry of new service providers into the convergence sector is generally encouraged. However, such entry must be managed to ensure that the national policy objectives are effectively pursued.

The entry of new network service providers and new mass media service providers shall be regulated to manage risks to ensure:

- a. The orderly delivery of communications services to end users;

- b. the confidence of investors in the communications sector;
- c. the physical environment of the Philippines; and
- d. the cultural and social values of the citizens of the Philippines.

Sec. 9. Franchise and other Authorization Requirements. - Any network service provider or mass media service provider shall first obtain a legislative franchise, certificate of public convenience and necessity, and other governmental authorizations as may be required by existing laws.

Any network service provider, who does not have the appropriate franchise and who because of its network coverage is required to secure such a franchise, shall obtain such requirement within three (3) years after the effectivity of this Act. Meanwhile, such network service provider shall be allowed provisionally to offer network services.

No legislative franchise shall be required by an entity to supply communications services, provided that the entity does not own or operate a network and provided however, that the entity shall be required to obtain from the Commission the necessary license, authority or registration to engage in the provision of communications services as defined in this Act. The Commission shall identify the requirements for different communications services, as may be necessary, and adopt an administrative process to facilitate greater entry of qualified communications services providers.

Any entity that wishes to conduct a multiple business of providing any combination of network services and communications services shall comply with the franchise and authorization requirements as defined in this Act.

In granting authority to an entity to engage in the provision of services under this Act, the Commission shall require the entity to prepare and industry development plan which sets out a service provider's commitments to undertake a range of specific activities that contribute to the fulfillment of the national policy objectives, the development of the Philippines' communications sector and the economy as a whole.

The Commission shall publish a set of guidelines outlining the Government's requirements and expectations for industry development. These guidelines will set out the relevant policy objectives, identify certain priority areas for industry development and will specify the required format and basic content of the industry development plans.

Sec. 10. Lease of Facilities. - Network service providers shall be allowed to provide network services to communications service providers and other network service providers. Network service providers shall have the right to acquire network services from other network service providers.

Communications service providers shall not be allowed to provide network services acquired from network service provider, unless the requirements set forth in Section 9 and other provisions in this Act are satisfied.

Network service providers are obliged to provide network services if duly requested by authorized communications service providers and other network service providers unless: (i) the request for service is on non – commercial terms and conditions; (ii) the provisions of service is likely to cause material damage to network facilities; or, (iii) the network service provider has grounds to believe that the provision of service would be in breach of the law.

Where a providing network service provider and an acquiring network service provider or communications service provider cannot agree terms and conditions for the supply of network services, either party may submit the matter to the Commission for resolution. The Commission shall intervene to resolve the matter only if it is satisfied that the parties have had a reasonable opportunity to negotiate on the terms and conditions of access and such negotiations have failed.

Sec. 11. Equality of Treatment – Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of franchises covered under this Act and shall be accorded immediately and unconditionally to the grantees of such franchises *Provided, however*, that the foregoing shall neither apply to nor affect provisions of franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

Sec. 12. Competition Practice – Service providers shall not engage in market conduct or trade practices that are detrimental to competition.

Service providers shall not discriminate between entities / persons who acquire network or communications services of a particular kind in relation to the charges for the service, timing of the service delivery, the terms and conditions on which the service is supplied and the performance conditions / quality of the service.

Sec. 13. Universal Access Fund - The Department shall establish a Universal Access Fund.

Service providers will be required to make contributions to the Universal Access Fund on an equitable basis.

The Department shall appoint an independent manager of the Universal Access Fund to ensure that the contributions will be used exclusively in accordance with the purpose of the fund. The Department will ensure that the books of account and other records of the Universal Access Fund are independently audited each year in accordance with the purpose of the fund and generally accepted accounting principles and that a report of the audit is made publicly available.

Sec. 14. Rates and Tariffs. – The Commission shall establish rates and tariffs, for network and communications services which are fair and reasonable and which provide for fair and just competition.

Each network service and each communications service shall be separately tariffed to enable the transparent provision and charging of service. An entity providing both network and communications services shall maintain separate books of account for each of these services.

Network services and communications services shall be provided and tariffed on unbundled basis to enable service providers and end users acquiring such services to receive, and to be charged only those services which they require.

The Commission shall exempt, pursuant to an application or petition, any specific network and communications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates and tariffs. The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel

or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

Sec. 15. Content Standards – Mass media service providers shall not supply content which is indecent, obscene, false, excessively violent, defamatory offensive or in contravention of other laws of the Philippines.

ARTICLE IV. RIGHTS OF USERS

Sec. 16. Rights of End Users. – Notwithstanding rights provided generally under this Act or other applicable laws, users of communications services shall be afforded the following rights:

- a. Right to change from one communications service provider to another;
- b. Right to non- discriminatory, reliable and efficient communications services conforming to the minimum standards prescribed by the Commission;
- c. Right to choose and pay only for the communications service (s) required;
- d. Right to regular, timely, unbundled and separate service charges, accurate billing, and efficient service;
- e. Right to thorough and fair investigation, and prompt resolution by the Commission of any valid service related complaint; and
- f. Right to privacy in the use of communications services.

ARTICLE V. INSTITUTIONAL RESPONSIBILITIES

Sec. 17. Department – The Department, in addition to its existing powers, functions and responsibilities, and in coordination with other concerned agencies, shall, pursuant to this Act:

- a. Ensure that the national policies and objectives as set out in this Act are actively pursued;
- b. Develop operational and administrative arrangements to support the establishment of a Universal Access Fund;
- c. Develop and oversee the implementation of the convergence master plan in coordination with other government departments or agencies and the private sector;
- d. Recommend the grant of incentives to service providers in unserved areas, educational institutions such as schools and libraries, social – service agencies, tourist destinations such as national parks, and underserved rural areas;
- e. Promote the development and transfer of technologies that allow efficient deployment of communications services; and
- f. Supervise the internal restructuring of the Commission to The Department shall require the Commission to submit for its approval proposals to ensure that the Commission is restructured to reflect the objectives of this Act.

Sec. 18. Commission – The Commission, in addition to its existing powers, functions and responsibilities, shall, pursuant to this Act:

- a. Formulate and implement internal restructuring to be able to implement rules and regulations regarding this Act;
- b. Ensure that all entities provide services in a non – discriminatory manner;
- c. Implement the convergence master plan;
- d. Ensure the interconnection and inter – operability of all networks;
- e. Adopt a numbering and addressing system to facilitate efficient access to communications services;
- f. Formulate and implement rules to prevent unfair competition and trade practices, and to control unfair cross – subsidy;
- g. Formulate and implement rules for ensuring that the content supplied by mass media service providers meets acceptable community standards;
- h. Formulate and implement rules and regulations and procedures to act upon application for exemption from regulation of rates and tariffs;
- i. Require the submission by service providers of periodic reports of finances, operations and industry development;
- j. Formulate and implement rules and regulations and procedures to protect the rights of the users;
- k. Formulate and implement rules, regulations, and procedures for the prompt issuance of authorizations, certificates, licenses and permits required of the service providers; and
- l. Enforce the promulgated fines and penalties for violations of any provision of this Act.

ARTICLE VI – PENAL PROVISION

Sec. 19. – Sanctions – Failure to comply with any provision of this Act shall be dealt with in accordance with due process of law and following the schedule of fines and penalties promulgated by the Commission.

ARTICLE VII – FINAL PROVISIONS

Sec. 20. Policy Implementation - The Commission, in consultation with the concerned agencies and sectors, shall formulate and adopt, not later than sixty days from the effectivity of this Act, the necessary implementing rules and regulations for the implementation of this Act, and shall prescribe appropriate penalties and sanctions therefore.

Sec. 21. *Transitory Provisions* – Upon the effectivity of this Act, all existing and authorized providers of network and communications services shall be given three (3) years to comply with the requirements of this Act.

Existing legislative franchises of telecommunications, broadcast, Cable TV, satellite TV and other communications service entities shall be considered as franchises for the provision of network services.

Existing franchises of broadcast, Cable TV and satellite TV services entities shall be considered as franchises for the provisions of mass media services.

Sec 22. *Separability Clause* - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions or provisions can still be given effect in their entirety.

Sec. 23. *Repealing Clause* – All laws, ordinances, rules, regulations and other issuances or parts thereof, which are inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 24. *Effectivity Clause* – This act shall take effect fifteen (15) days from the date of its publication in the Official Gazette or in at least two (2) major newspapers of general circulation, provided further that at least three (3) certified copies thereof shall have been filed with the University of the Philippines Law Center.

Approved.