

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

House Bill No. **5600**



Introduced by **Representative Giorgidi B. Aggabao**

EXPLANATORY NOTE

This bill seeks to extend the franchise granted to Smart Technologies, Inc., now popularly known as Smart Communications, Inc. or simply "Smart" pursuant to Republic Act No. 7294 to establish, install, maintain, lease and operate integrated telecommunications/computer/electronic services and stations throughout the Philippines for public domestic and international telecommunications, which is expiring in 2017.

Smart was granted authority to operate a mobile cellular service in 1993 and has since then, been actively operating as a telecommunications provider in the country for both the domestic and the international public. Smart, has since it began its commercial operations, grown as one of the country's leading telecommunications providers. It is operating cell sites, cellular/ mobile broadband base stations, and fixed wireless broadband-enabled base stations, covering 1,634 cities and municipalities in the country.

In recognition of Smart's commitment and leadership as a telecommunications provider in the social, cultural and economic facets of our society, and its efforts to keep pace with technological and the capital requirements of its operations, the immediate renewal of its franchise is recommended to ensure the uninterrupted and improved delivery of its services to the Filipino people.


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AN ACT

RENEWING THE FRANCHISE GRANTED TO SMART INFORMATION TECHNOLOGIES, INC. (SMART) UNDER REPUBLIC ACT NO. 7294 OTHERWISE KNOWN AS "AN ACT GRANTING SMART INFORMATION TECHNOLOGIES, INC. A FRANCHISE TO ESTABLISH, INSTALL, MAINTAIN, LEASE AND OPERATE INTEGRATED TELECOMMUNICATIONS/ COMPUTER/ELECTRONIC SERVICES AND STATIONS THROUGHOUT THE PHILIPPINES FOR PUBLIC DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES", FOR TWENTY-FIVE (25) YEARS FROM THE EFFECTIVITY OF THIS ACT

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

SECTION 1. Nature and Scope of Franchise. - Subject to the provisions of the 1987 Philippine Constitution and applicable laws, rules and regulations, the franchise granted to Smart Communications, Inc. ("SMART") hereunder referred to as the grantee, its successors or assigns a franchise to construct, establish, install, maintain, lease, co-use, purchase, operate, and to carry on the business of providing telecommunications, including electronic telecommunication or Electronic Communication Services throughout the Philippines and between the Philippines and other countries and territories, including outer space, as public interest may warrant, for public domestic and international telecommunications, is hereby renewed for another twenty-five (25) years from the effectivity of this Act. For this purpose, the grantee is hereby granted the right to construct, establish, install, maintain, lease, co-use, purchase, and operate the corresponding transmitting and receiving stations, satellites, lines, systems, networks, international gateways, local exchanges, and platforms as it may consider necessary and convenient, or reasonable. In this Act, the term "telecommunications" includes

"Electronic Communications." Electronic Communications Service" means a service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals. It includes, but is not limited to, wired, wireless, fixed, cellular, and/or mobile, or integrated telecommunications/computer/electronic services, including value added services, or technologies related to such services which are at present available or made available through technical advances or innovations in the future, and fixed and mobile stations.

In addition, the following terms shall have the meanings set forth herein:

- a. "Electronic Communications Network" means –
 - (a.1) A transmission system for conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
 - (a.2) Such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals: (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals; and (iii) software and stored data; "

SEC.2. Manner of Operation of Stations or Facilities. — The telecommunications stations, satellites, lines, systems, networks, international gateways, local exchanges and platforms installed by virtue of this franchise for the provision of the telecommunications systems or the installation, operation and maintenance of the telecommunications stations, satellites, lines, systems, networks, international gateways, local exchanges and platforms under this franchise shall be constructed and operated in a manner as will at most result only in the minimum interference on the wavelengths or frequencies of the existing stations or other stations which may be established in accordance with law of other telecommunications service grantees, without in any manner diminishing its own right to use its selected wavelengths or frequencies and the quality of transmission or reception thereon as should maximize rendition of the grantees' services and/or the availability thereof.

SEC.3. Prior Approval of the National Telecommunications Commission. — The grantee shall secure from the National Telecommunications Commission the appropriate permits, licenses and certificates for its stations and shall not use any frequency in the radio spectrum without having been authorized by the Commission.

SEC.4. Responsibility to the Public. — The grantee shall conform to the ethics of honest enterprise and shall not use its stations for obscene or indecent transmissions, or for the dissemination of deliberately false information or willful misrepresentation, or assist in subversive or treasonable acts.

SEC.5. Rates for Services. — The subscription charges and rates for services that the grantee shall offer to the public shall be subject to the approval of the National Telecommunications Commission or its legal successors.

SEC. 6. Rights of Government. — The President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, may take over and operate the stations, transmitter systems, facilities and equipment of the grantee, temporarily suspend the operation of any station in the interest of public safety, security and public welfare, or authorize the temporary use and operation thereof by any agency of the Government, upon due compensation to the grantee, for the use of said stations, transmitter systems, facilities and equipment during the period when they shall be so operated.

SEC.7. Term of Franchise. — The franchise shall be for a term of twenty-five (25) years from the date of approval of this Act, unless sooner revoked or cancelled. In the event the grantee fails to operate continuously for two (2) years, this franchise shall be deemed *ipso facto* revoked.

SEC. 8. Acceptance and Compliance. — Acceptance of this franchise shall be given in writing sixty (60) days after approval of this Act. The grantee shall operate telecommunications systems for which this franchise is granted within (2) years from the date of its acceptance in writing of this franchise. Refusal or failure to accept the franchise or to operate within the prescribed period shall render the franchise void.

SEC. 9. Tax Provisions. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns, in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority whatsoever, including but not limited to city, municipal, provincial or national, from which the grantee is hereby expressly exempted effective from the date of the approval of this Act; provided, that the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Sec. 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.

SEC. 10. Warranty in Favor of National and Local Governments. — The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations, systems, facilities and equipment of the grantee.

SEC. 11. Sale, Lease, Transfer, Usufruct, etc. — The grantee shall not lease, transfer, grant the usufruct of, sell or assign the franchise herein granted or the rights and privileges acquired thereunder to any person, firm, company, corporation or entity, nor merge with any

corporation or entity without the prior approval of the Congress of the Philippines. Neither shall the controlling interest in the grantee be transferred, whether as a whole or in part and whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines.

SEC. 12. Ingress and Egress. — For the purpose of installing, operating and maintaining its telecommunication lines, it shall be lawful for the grantee to make excavations or lay conduits in any of the public places, highways, streets, lanes, sidewalks, bridges or infrastructure in any provinces and municipalities: provided, however, that any public place, highway, street lane, sidewalk, bridge or infrastructure disturbed, altered, or changed thereby shall be repaired and placed in a workmanlike manner by the grantee to the satisfaction of the Department of Public Works and Highways or the local engineering office, as the case may be, and/or in accordance with existing laws or rules on excavations and reconstitution of such public civil works.

SEC. 13. Eminent Domain. — The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: Provided, that in case the owner refuses to sell or allow the use thereof, the proper proceedings shall be instituted: provided, further, that just compensation is paid.

SEC. 14. Interconnection — The grantee is authorized to connect or demand interconnection of its telecommunications systems to any other telecommunications systems installed, maintained and operated by any other duly authorized person or entity in the Philippines for the purpose of providing telecommunications services to the public under such terms and conditions mutually agreed upon by the parties: provided, that the terms and conditions of such interconnection shall be subject to the review of the National Telecommunications Commission. Provided further, that if the parties fail to agree the rules provided by the National Telecommunications Commission for settling such disputes shall govern.

SEC. 15. Public Offer of Shares. — In accordance with the constitutional provision to encourage participation in public utilities the grantee shall offer at least thirty per centum (30%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law in any securities exchange in the Philippines within two (2) years from the effectivity of this Act.

SEC. 16. Public Telecommunications Policy Act. — The grantee shall comply with and be subject to the provisions of Republic Act No. 7925, the Public Telecommunications Policy Act of the Philippines.

SEC. 17. Equality Clause. — If any franchise for telecommunications services is awarded or granted by the Congress of the Philippines, or any amendment or revision to any franchise for telecommunications services, subsequent to the approval of this Act, with terms, privileges, exemptions, exceptions, and conditions that are more favorable and beneficial than those contained in or otherwise granted under this Act, then the same terms, privileges, exemptions, exceptions, or conditions shall, ipso facto, accrue to the herein grantee and be deemed part of this Act.

SEC. 18. Repealability and Non-exclusivity Clauses. — The franchise herein granted shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the

public interest so requires and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 19. **Separability Clause.** — If any of the sections or provisions of this Act is held invalid, all the other provisions not affected thereby shall remain valid.

SEC. 20. **Reportorial Requirement.** — The grantee shall submit an annual report to the Congress of the Philippines on its compliance with the terms and conditions of the franchise and on its operations within sixty (60) days from the end of every year.

SEC. 21. **Effectivity Clause.** — This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation in the Philippines.

Approved,