

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL No. 5844



Introduced by **REP. ELEANDRO JESUS F. MADRONA**

EXPLANATORY NOTE

The rise and development of telecommunications and information and communications technology (ICT) in the past years proved to be beneficial in opening up countless opportunities for the nation's entrepreneurs and investors and in improving governance in general. ICT has grown to become a vital sector in the modern economy, providing for increased interconnectivity and ease of access in obtaining information, leading to an empowered and productive national citizenry. Indeed, ICT has a positive impact on the social and economic development of our country.

The ICT industry has the potential of providing for an avenue to which innovation and creativity can freely grow. The introduction of a greater number of telecommunications utilities will lead to a competitive ICT market that has the potential of producing better and more efficient services that will be made available to the nation's consumers.

That being said, Avocado Broadband Telecoms Inc. seeks to enter the industry as provider of telecommunication services. Financially capable and technologically knowledgeable in the provision of these services, it seeks to build an international gateway facility (IGF) for cable operators to drive costs down and ultimately benefit the consuming public.

This bill seeks to grant Avocado Broadband Telecoms, Inc. a franchise to construct, install, establish, operate, and maintain for commercial purposes and in the public interest telecommunications systems in the Philippines. The entry of Avocado Broadband Telecoms, Inc. in the telecommunications industry will afford the public with better choices and opportunities in the access to information through healthy competition.

In view of the foregoing, approval of this measure is earnestly sought.

A handwritten signature in black ink, appearing to be "E. Jesus F. Madrona", written in a cursive style.

REP. ELEANDRO JESUS F. MADRONA
Lone District-Romblon

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AN ACT
GRANTING THE AVOCADO BROADBAND TELECOMS INC. A FRANCHISE TO
CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN
TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES

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

1 SECTION 1. *Nature and Scope of Franchise.* - Subject to the provisions of the
2 1987 Philippine Constitution and applicable laws, rules and regulations, there is
3 hereby granted to Avocado Broadband Telecoms, Inc., hereunder referred to as the
4 grantee, its successors or assignees, a franchise to construct, install, establish,
5 operate, and maintain for commercial purposes and in the public interest, in the
6 Philippines and between the Philippines and other countries and territories, wire
7 and/or wireless telecommunications systems including international and local
8 exchange carrier (LEC), international and domestic gateway facility, international and
9 domestic submarine cable landing stations, mobile cellular, copper, fiber optics,
10 coaxial cable, satellite transmit and receive systems, switches, and their value-added
11 services such as the transmission of voice, data, facsimile, control signs, audio and
12 video, information services and all other telecommunications systems technologies
13 as are at present available or will be made available through technological advances
14 or innovations in the future; and/or construct, acquire, lease and operate, or manage
15 transmitting and receiving stations, lines, cables, or systems as are convenient or
16 essential to efficiently carry out the purpose of this franchise.

17
18 SEC. 2. *Manner of Operation of Stations or Facilities.* - The stations or
19 facilities of the grantee shall be constructed and operated in a manner as will, at

1 most, result only in the minimum interference on the wavelengths or frequencies of
2 existing stations or other stations which may be established by law, without in any
3 way diminishing its own privilege to use its assigned wavelengths or frequencies
4 and the quality of transmission or reception thereon as should maximize rendition of
5 the grantee's services and/or the availability thereof.

6 SEC.3. *Authority of the National Telecommunications Commission (NTC).* –
7 The grantee shall secure from the NTC a Certificate of Public Convenience and
8 Necessity or the appropriate permits and licenses for the construction, installation,
9 and operation of its telecommunications systems/facilities. In issuing the certificate,
10 the NTC shall have the power to impose such conditions relative to the construction,
11 operation, maintenance, or service level of the telecommunications system. The
12 NTC shall have the authority to regulate the construction and operation of its
13 telecommunications systems. The grantee shall not use any frequency in the radio
14 spectrum without authorization from the NTC. Such certificate shall state the areas
15 covered and the date the grantee shall commence the service. The NTC, however,
16 shall not unreasonably withhold or delay the grant of such authority, permit, or
17 license.

18 SEC. 4. *Excavation and Restoration Works.* . – For the purpose of erecting
19 and maintaining poles or other supports for said wires or other conductors for the
20 purpose of laying and maintaining underground wires, cables, or other conductors, it
21 shall be lawful for the grantee, its successors or assignees, with the prior approval of
22 the Department of Public Works and Highways (DPWH) or the local government unit
23 (LGU) concerned, as may be appropriate, to make excavations or lay conduits in any
24 of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or
25 bridges of the province, cities and/or municipalities: *Provided, however,* That a public
26 place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed,
27 altered or changed by reason of erection of poles or other supports or the
28 underground laying of wires, other conductors or conduits, shall be repaired and
29 replaced in workmanlike manner by said grantee, its successors or assignees, in
30 accordance with the standards set by DPWH or the LGU concerned. Should the
31 grantee, its successors or assignees, after the ten (10) day notice from the said

1 authority, fail, refuse, or neglect to repair or replace any part of public place, road,
2 highway, street, lane, alley, avenue, sidewalk, or bridge altered, changed or
3 disturbed by the said grantee, its successors or assignees, then the DPWH or the
4 LGU concerned shall have the right to have the same repaired and placed in good
5 order and condition at double expense to be charged against the grantee, its
6 successors or assignees.

7
8 SEC. 5. *Responsibility to the Public.* - The grantee shall conform to the ethics
9 of honest enterprise and not use its stations/facilities for obscene or indecent
10 transmission or for dissemination of deliberately false information or willful
11 misrepresentation, or assist in subversive or treasonable acts.

12
13 The grantee shall provide basic or enhanced telephone service in any city
14 and/or municipality in the Philippines where it has an approved Certificate of Public
15 Convenience and Necessity for the establishment, operation, and maintenance of a
16 local exchange service, without discrimination to any applicant therefor, in the order
17 of the date of their applications, up to the limit of the capacity of its local telephone
18 exchange and, should the demand for the telephone service at any time increase
19 beyond the capacity thereof, the grantee shall increase the same to meet such
20 demand: *Provided*, That in case the total demand to be satisfied by the expansion is
21 less than the smallest viable local exchange available in the market as determined
22 by the NTC, the grantee shall not be obliged to furnish such service unless the
23 applicant for telephone service defrays the actual expenses for the installation of the
24 telecommunications apparatus necessary for such services and in such case, the
25 NTC may extend the time within which the grantee shall furnish the service.

26
27 The grantee shall operate and maintain all its stations, lines, cables, systems,
28 and equipment for the transmission and reception of messages, signals, and pulses
29 in a satisfactory manner at all times, and as far as economical and practicable,
30 modify, improve, or change such stations, lines, cables, systems, and equipment to
31 keep abreast with the advances in science and technology.

1 SEC. 6. *Rates for Services.* – The charges and rates for telecommunications
2 services of the grantee, except the rates and charges on those that may hereafter be
3 declared or considered as nonregulated services, whether flat rates or measured
4 rates or variation thereof, shall be subject to the approval of the NTC or its legal
5 successor. The rates to be charged by the grantee shall be unbundled, separable,
6 and distinct among the services offered and shall be determined in such a manner
7 that regulated services do not subsidize the unregulated ones.

8 SEC. 7. *Right of Government.* – A special right is hereby reserved to the
9 President of the Philippines, in times of war, rebellion, public peril, calamity,
10 emergency, disaster, or disturbance of peace and order: to temporarily take over and
11 operate the stations, transmitters, facilities or equipment of the grantee; to
12 temporarily suspend the operation of any station, transmitter, facility, or equipment in
13 the interest of public safety, security, and public welfare; or to authorize the
14 temporary use and operation thereof by any agency of the government, upon due
15 compensation to the grantee for the use of said stations, transmitters, facilities, or
16 equipment during the period when these shall be so operated.

17
18 The radio spectrum is a finite resource that is part of the national patrimony
19 and the use thereof is a privilege conferred upon the grantee by the State and may
20 be withdrawn anytime after due process.

21 SEC. 8. *Term of Franchise.* – This franchise shall be in effect for a period of
22 twenty-five (25) years from the date of the effectivity of this Act, unless sooner
23 cancelled. This franchise shall be deemed *ipso facto* revoked in the event the
24 grantee fails to comply with any of the following conditions:

25
26 (a) Commence operations within one (1) year from the approval of its operating
27 permit by the National Telecommunications Commission;

28 (b) Commence operations within three (3) years from the effectivity of this Act;
29 and
30

1 (c) Operate continuously for two (2) years.

2
3 SEC. 9. *Acceptance and Compliance.* – Acceptance of this franchise shall be
4 given in writing to the Congress of the Philippines, through the Committee on
5 Legislative Franchises of the House of Representatives and the Committee on Public
6 Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon
7 giving such acceptance, the grantee shall exercise the privileges granted under this
8 Act. Nonacceptance shall render the franchise void.

9 SEC. 10. *Bond.* - The grantee shall file a bond with the NTC in the amount that it
10 shall determine to guarantee compliance with and fulfillment of the conditions under
11 which this franchise is granted. If after three (3) years from the date of the approval
12 of its permit by the NTC, the grantee shall have fulfilled the conditions, the bond shall
13 be cancelled by the NTC. Otherwise, the bond shall be forfeited in favor of the
14 government and the franchise *ipso facto* revoked.

15
16 SEC. 11. *Right of Interconnection.* – The grantee is hereby authorized to
17 connect or demand connection of its telecommunications systems to other
18 telecommunications systems installed, operated, and maintained by any other duly
19 authorized person or entity in the Philippines for the purpose of providing extended
20 and improved telecommunications services to the public, under such terms and
21 conditions mutually agreed upon by the parties concerned and the same shall be
22 subject to the review and modification of the NTC.

23
24 SEC. 12. *Gross Receipts.* - The grantee, its successors or assignees, shall
25 keep a separate account of the gross receipts of the business transacted by it and
26 shall furnish the Commission on Audit (COA) and the National Treasury a copy of
27 such account not later than the thirty-first (31st) day of January of each year for the
28 preceding twelve (12) months.

29 SEC. 13. *Books and Accounts.* – The books and accounts of the grantee, its
30 successor or assignees, shall always be open to the inspection of the Commission
31 on Audit (COA) and its duly-authorized representatives. It shall be the duty of the

1 grantee to submit to the COA two (2) copies of the quarterly reports on the gross
2 receipts, the net profits, and the general condition of the business.

3 SEC. 14. *Warranty in Favor of the National and Local Governments.* – The
4 grantee shall hold the national, provincial, city, and municipal governments of the
5 Philippines free from all claims, accounts, demands, or actions arising out of
6 accidents or injuries, whether to property or to persons, caused by the construction
7 or operation of the stations, transmitters, facilities, and equipment of the grantee.

8
9 SEC. 15. *Sale, Lease, Transfer, Usufruct, or Assignment of Franchise.* - The
10 grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise
11 or the rights and privileges acquired thereunder to any person, firm, company,
12 corporation or other commercial or legal entity, nor merge with any other corporation
13 or entity, nor shall transfer the controlling interest of the grantee, whether as a whole
14 or in parts, and whether simultaneously or contemporaneously, to any such person,
15 firm, company, corporation, or entity without the prior approval of the Congress of the
16 Philippines: *Provided*, That Congress shall be informed of any sale, lease, transfer,
17 grant of usufruct, or assignment of franchise or the rights or privileges acquired
18 thereunder, or of the merger, or transfer of controlling interest of the grantee, within
19 sixty (60) days after the completion of said transaction: *Provided, further*, That failure
20 to report to Congress such change of ownership shall render the franchise *ipso facto*
21 revoked: *Provided, finally*, That any person or entity to which this franchise is sold,
22 transferred, or assigned, shall be subject to the same conditions, terms, restrictions,
23 and limitations of this Act.

24
25 SEC. 16. *Dispersal of Ownership.* - In accordance with the constitutional
26 provision to encourage public participation in public utilities, the grantee shall offer to
27 Filipino citizens at least thirty per cent (30%) or a higher percentage that may
28 hereafter be provided by law of its outstanding capital stock in any securities
29 exchange in the Philippines within five (5) years from the commencement of its
30 operations: *Provided*, That in cases where public offer of shares is not applicable,
31 establishment of cooperatives operating public utilities must be implemented.
32 Noncompliance therewith shall render the franchise *ipso facto* revoked.

1
2 SEC. 17. *Reportorial Requirement.* – The grantee shall submit an annual
3 report to the Congress of the Philippines, through the Committee on Legislative
4 Franchises of the House of Representatives and the Committee on Public Services
5 of the Senate, on its compliance with the terms and conditions of the franchise and
6 on its operations on or before April 30 of every year during the term of its franchise.
7 The reportorial compliance certificate issued by Congress shall be required before
8 any application for permit or certificate is accepted by the NTC.

9
10 SEC. 18. *Penalty Clause.* – Failure of the grantee to submit the requisite
11 annual report to Congress shall be penalized with a fine of Five hundred pesos
12 (P500.00) per working day of noncompliance. The fine shall be collected by the NTC
13 from the delinquent franchise grantee separate from the reportorial penalties
14 imposed by the NTC.

15
16 SEC. 19. *Equality Clause.* - Any advantage, favor, privilege, exemption, or
17 immunity granted under other existing franchises, or which may hereafter be
18 granted, upon prior review and approval of Congress, shall become part of this
19 franchise and shall be accorded immediately and unconditionally to the herein
20 grantee: *Provided,* That the foregoing shall neither apply to nor affect provisions of
21 telecommunications franchises concerning territory covered by the franchise, the life
22 span of the franchise, or the type of service authorized by the franchise.

23
24 SEC. 20. *Separability Clause.* – If any of the sections or provisions of this Act
25 is held invalid, all other provisions not affected thereby shall remain valid.

26
27 SEC. 21. *Repealability and Non-exclusivity Clause.* – This franchise shall be
28 subject to amendment, alteration, or repeal by the Congress of the Philippines when
29 the public interest so requires and shall not be interpreted as an exclusive grant of
30 the privilege herein provided for.

31
32 SEC. 22 *Effectivity.* – This Act shall take effect fifteen (15) days after its
33 publication in the Official Gazette or in a newspaper of general circulation.

Approved,