

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

HOUSE BILL No. 7546



Introduced by: **REP. EMI CALIXTO-RUBIANO**

EXPLANATORY NOTE

The State, under Article II, Section 24 of the 1987 Constitution, has long recognized the importance of information and communication technology in nation-building. It further declared the need to create an information-friendly environment which supports and ensures the availability, diversity and affordability of ICT products and services, and the primary responsibility of the private sector in contributing investments and services in telecommunications and information technology.

Given the sorry state of telecommunication industry in the Philippines now where a virtual duopoly exists resulting to exorbitant charges and deplorable quality of service, it is clear that there is a need for a better alternative for the public to consider. Thus, in order to address this issue it is imperative for the government to welcome and encourage new players to directly invest in telecommunications. Truly, the more quality players in the industry, the more beneficial it is going to be for our country and the people.

This measure seeks to grant Philand Communications Network Corporation a franchise to construct, install, establish, operate and maintain telecommunication system throughout the Philippines which may include, among others, fiber optics, multi-channel multi-point distribution systems (MMDS), local multi-point distribution system (LMDS), satellite transmit and received systems, switches and their value-added services, such as but not limited to transmission of voice, data, facsimile, control signs, audio and video, information service bureau and all other value-added technologies as are presently available or will be available or will be made available through technological advances or innovations in the future. The bill shall likewise allow the applicant to construct, acquire, lease and operate or manage transmitting and receiving stations, lines, cables or systems as is or are convenient or essential to efficiently carry out the purpose of this franchise.

The applicant intends to assist the government in the improvement and revitalization of the telecommunications industry, through its topnotch management and human resource, and by providing the best technology available at reasonable rates.

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


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AN ACT
GRANTING THE PHILAND COMMUNICATIONS NETWORK CORPORATION 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:

SECTION 1. Nature and Scope of Franchise. - Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Philand Communications Network Corporation, hereunder referred to as the grantee, its successors or assignees, a franchise to construct, install, establish, operate, and maintain for commercial purposes and in the public interest, in the Philippines and between the Philippines and other countries and territories, wire and/or wireless telecommunications systems including international and local exchange carrier (LEC), international and domestic gateway facility, international and domestic submarine cable landing stations, mobile cellular, copper, fiber optics, coaxial cable, satellite transmit and receive systems, switches, and their value-added services such as the transmission of voice, data, facsimile, control signs, audio and video, information services and all other telecommunications systems technologies as are at present available or will be made available through technological advances or innovations in the future; and/or construct, acquire, lease and operate, or manage transmitting and receiving stations, lines, cables, or systems as are convenient or essential to efficiently

carry out the purpose of this franchise. Mega Services, Basic Services and/or Value Added Service, Internet Service Provider.

SEC. 2. *Manner of Operation of Stations or Facilities.* – The stations or facilities of the grantee shall be constructed and operated in a manner as will, at most, result only in the minimum interference on the wavelengths or frequencies of existing stations or other stations which may be established by law, without in any way diminishing its own privilege to use its assigned wavelengths or frequencies and the quality of transmission or reception thereon as should maximize rendition of the grantee's services and/or the availability thereof.

SEC. 3. *Authority of the Department of Information and Communications Technology (DICT).* – The grantee shall secure from the DICT a Certificate of Public Convenience and Necessity or the appropriate permits and licenses for the construction, installation, and operation of its telecommunications systems/facilities. In issuing the certificate, the DICT shall have the power to impose such conditions relative to the construction, operation, maintenance, or service level of the telecommunications systems. The DICT shall have the authority to regulate the construction and operation of its telecommunications systems. The grantee shall not use any frequency in the radio spectrum without authorization from the DICT. Such certificate shall state the areas covered and the date the grantee shall commence the service. The DICT, however, shall not unreasonably withhold or delay the grant of such authority, permit, or license.

SEC. 4. *Excavation and Restoration Works.* – For the purpose of erecting and maintaining poles or other supports for said wires or other conductors for the purpose of laying and maintaining underground wires, cables, or other conductors, it shall be lawful for the grantee, its successors or assignees, with the prior approval of the Department of Public Works and Highways (DPWH) or the local government unit (LGU) concerned, as may be appropriate, to make excavations or lay conduits in any of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges of the province, cities and/or municipalities: *Provided, however,* That a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered or changed by reason of erection of poles or other supports or the underground laying

of wires, other conductors or conduits, shall be repaired and replaced in workmanlike manner by said grantee, its successors or assignees, in accordance with the standards set by DPWH or the LGU concerned. Should the grantee, its successors or assignees, after the ten (10) day notice from the said authority, fail, refuse, or neglect to repair or replace any part of public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge altered, changed or disturbed by the said grantee, its successors or assignees, then the DPWH or the LGU concerned shall have the right to have the same repaired and placed in good order and condition at double expense to be charged against the grantee, its successors or assignees.

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

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

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

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

SEC. 7. *Right of Government.* – A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order: to temporarily take over and operate the stations, transmitters, facilities or equipment of the grantee; to temporarily suspend the operation of any station, transmitter, facility, or equipment in the interest of public safety, security, and public welfare; or to 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, transmitters, facilities, or equipment during the period when these shall be so operated.

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

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

- (a) Commence operations within one (1) year from the approval of its operating permit by the National Telecommunications Commission;
 - (b) Commence operations within three (3) years from the effectivity of this Act;
- and

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

Renewal of the franchise shall be filed three years prior to the expiration date of the term of its franchise.

SEC. 9. *Acceptance and Compliance.* – upon payment of the cash bond to the DITC, acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee shall exercise the privileges granted under this Act. Non acceptance shall render the franchise void.

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

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

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

SEC. 13. *Books and Accounts.* – The books and accounts of the grantee, its successor or assignees, shall always be open to the inspection of the Commission on Audit (COA) and its duly-authorized representatives. It shall be the duty of the grantee to submit to the COA two (2) copies of the quarterly reports on the gross receipts, the net profits, and the general condition of the business.

SEC. 14. *Warranty in Favor of the National and Local Governments.* – The grantee shall hold the national, provincial, city, and municipal governments of the Philippines free 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, transmitters, facilities, and equipment of the grantee.

SEC. 15. *Sale, Lease, Transfer, Usufruct, or Assignment of Franchise.* – The grantee shall not lease, transfer, grant the usufruct of, sell nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall the controlling interest of the grantee be transferred, whether as a whole or in parts and whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines: *Provided*, That the foregoing limitation shall not apply to: (a) any transfer or issuance of shares of stock in the implementation of the requirement for the dispersal of the grantee's ownership pursuant to Section 16 of this Act; (b) any transfer or issuance of shares to any investor pursuant to or in connection with any increase in the grantee's authorized capital stock which shall result in the dilution of the stockholdings of the grantee's then existing stockholders; (c) any transfer or sale of shares of stock to any local investor or investors; and (d) any combination thereof where such transfer, sale or issuance is effected in order to enable the grantee to raise the necessary capital or financing for the provision of any services authorized by this Act and/or carry out the purposes for which the grantee has been incorporated or organized. Any person or entity to which this franchise is validly sold, transferred or assigned shall be subject to the same conditions, terms, restrictions and limitations of this Act.

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

SEC. 17. *Equality Clause.* - Any advantage, favor, privilege, exemption or immunity granted under existing franchise for telecommunications systems, or which may hereafter be granted, shall *ipso facto* become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided, however,* That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise or the type of service authorized by the franchise.

SEC. 18. *Reportorial Requirement.* - The grantee shall submit an annual report to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, certified true copy as filed in the SEC and the BIR on its compliance with the terms and conditions of the franchise and on its operations on or before April 30 of every year during the term of its franchise. The reportorial compliance certificate issued by Congress shall be required before any application for permit or certificate is accepted by the DITC.

SEC. 19. *Penalty Clause.* - Failure of the grantee to submit the requisite annual report to Congress shall be penalized with a fine of five hundred pesos (P500.00) per working day of noncompliance. The fine shall be collected by the DICT from the delinquent franchise grantee separate from the reportorial penalties imposed by the DICT.

SEC. 20. *Equality Clause.* - Any advantage, favor, privilege, exemption, or immunity granted under other existing franchises, or which may hereafter be granted,

upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided*, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

SEC. 21. *Separability Clause*. – If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SEC. 22. *Repealability and Non-exclusivity Clause*. – This franchise 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 privilege herein provided for.

SEC. 23. *Effectivity*. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,