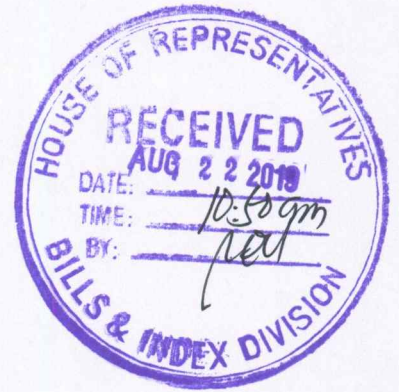


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 4109



Introduced by Hon. Francis Gerald Aguinaldo Abaya

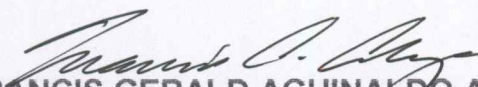
EXPLANATORY NOTE

We are currently living in an age where access and control of information is crucial – the instantaneous exchange of information has impacted various businesses, industries, and economies. The ease with which we can now transfer information has revolutionized the way we communicate, transact, and interact.

There are numerous levels and methods through which information or data is transferred from its origin to its endpoint. The lack of management or control over this data network would lead to inefficiencies that may cost the public time and money. It is no secret that our country suffers from slow internet speeds. We must do our best to improve the transmission of data.

This bill seeks to lay the foundation of a framework that shall regulate data transmission in order to achieve efficient transfer of data. Included in this measure is the strengthening of the National Telecommunications Commission's powers to encourage the improvement and enhancement of data networks and related industries, all for the good of the Filipino people.

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


FRANCIS GERALD AGUINALDO ABAYA
Representative, First District, Cavite

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
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Introduced by Hon. Francis Gerald Aguinaldo Abaya

**AN ACT PROMOTING OPEN ACCESS IN DATA TRANSMISSION, PROVIDING
ADDITIONAL POWERS TO THE NATIONAL TELECOMMUNICATIONS
COMMISSION**

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

CHAPTER I
INTRODUCTORY PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “*Open Access in
Data Transmission Act.*”

SECTION 2. *Declaration of Policy.* – It is the policy of the State to narrow the
digital divide in the country by encouraging the development of data transmission
infrastructure and removing any barrier to competition in data transmission services.
Moreover, the State shall implement measures to require data transmission service
providers to adhere to telecommunications standards suitable to the needs and
aspirations of the nation and ensure that internet users enjoy the best quality of data
transmission service. The State shall:

- a. promote the construction and development of reliable, affordable, open and
accessible data networks that transmit information at speed and quality
comparable to the best in the world;
- b. create an entrepreneurial ecosystem where persons who wish to engage in
the data transmission industry can compete openly and freely in the spirit of
fair competition and permission-less innovation;
- c. encourage investment in the digital infrastructure of the country;
- d. adopt and ensure open access in the regulation of the data transmission
sector;
- e. protect the public interest as it is affected by its ability to access data
networks;

- f. establish a strong and independent regulatory body and system to ensure and enhance fair competition in the data transmission sector; and
- g. protect and promote the internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition and the freedom to innovate without permission, and thereby encouraging the development of advanced telecommunications capabilities and the removal of barriers to infrastructure investment.

SECTION 3. *Definition of Terms.* – As used in this Act:

- a. *Basic Telephone Service* refers to the local exchange telephone service for residence and business establishments provided via the circuit switched telephone network;
- b. *Cellular Mobile Telephone Service (CMTS)* refers to the wide area mobile radio telephone system with its own switch, base stations and transmission facilities capable of providing high capacity mobile telecommunications by utilizing radio frequencies;
- c. *Content* refers to, among others, texts, images, audios, videos, and animations that are carried over the broadband/internet network;
- d. *Core/Backbone Network* refers to the mainline (or connection) including international connection that ties networks; delivers routes to exchange information among various sub-networks, connects regional distribution networks and, in some instances, provides connectivity to other peer networks;
- e. *Data Transmission* refers to the process of sending digital or digitized analog signal over a communication medium to one or more computing network/s, communication or electronic device/s. It enables the transfer and communication of devices in a point-to-point, point-to-multipoint and multipoint-to-multipoint environment. The term data transmission includes the provision of Voice Over Internet Protocol (VOIP) services but does not include the provision of Basic Telephone Services;
- f. *Data Transmission Industry Participant* refers to any person, firm, partnership or corporation, government or private, engaged in the provision of data transmission services to the public. This includes public telecommunications entities (PTEs) that offer data transmission services as defined under Republic Act 7925, otherwise known as the “Public Telecommunications Policy Act”;
- g. *International Gateway/Landing* refers to a segment of data transmission that consists of any facility that provides an interface to send and receive data traffic between one country’s domestic network facilities and those in another country;
- h. *Last Mile* refers to the segment of data transmission network that connects end-users;
- i. *Middle Mile* refers to the segment of data transmission network that links the last mile network to the core/backbone network;

- 1 j. *Open Access* refers to the system of allowing the use of data transmission
2 and/or distribution systems and associated facilities subject to fair,
3 reasonable, and non-discriminatory terms in a transparent market;
4 k. *Paid Prioritization* refers to the management of a data transmission network
5 to directly or indirectly favor some traffic over other traffic, through the use
6 of techniques such as, traffic shaping, prioritization, resource reservation,
7 zero-rating, or other forms of preferential traffic management, either:
8 (1) in exchange for consideration (monetary or otherwise) from a third party,
9 or
10 (2) to benefit an affiliated entity; and
11 l. *Voice Over Internet Protocol (VOIP) Service* refers to the provision of voice
12 communication using Internet Protocol (IP) technology-

13 CHAPTER II

14 ORGANIZATION AND OPERATION OF THE DATA TRANSMISSION INDUSTRY

15 **SECTION 4. Scope.** –This Act applies to all persons who participate in the data
16 transmission industry. For this purpose, any person or entity whose business deals
17 substantially with the transmission of data, including Voice-Over-IP (VOIP) service
18 provider, Internet Service Providers (ISP), and Data Center service providers, shall be
19 governed by the provisions of this Act. PTEs principally engaged in the provision of
20 basic telephone services, such as international carrier, inter-exchange carrier, local
21 exchange operator, and mobile radio services provider, as these entities are defined
22 in RA 7925, which also provide data transmission services, shall likewise be subject
23 to the provisions of this Act with respect to the data transmission services they provide
24 and interconnection to their networks that they extend to data transmission industry
25 participants.

26
27 **SECTION 5. Segments.** – The data transmission industry shall be divided into
28 four (4) segments: (a) International Gateway/ Landing, (b) Core Backbone Network,
29 (c) Middle Mile, and (d) Last Mile.

30 All four (4) segments shall be competitive and open. Any law to the contrary
31 notwithstanding, data transmission industry participants in any of the four (4) segments
32 shall not be required to secure a franchise from Congress or a Certificate of Public
33 Convenience and Necessity (CPCN) or Provisional Authority (PA) from the National
34 Telecommunications Commission (NTC), to construct, install, and operate networks
35 and facilities for the data transmission services they provide. Neither shall they be
36 required to secure a CPCN or PA for the data transmission services they provide to
37 the general public. Participants in the data transmission industry shall, however, be
38 required to register with the NTC stating the segment they are participating in and
39 provide the NTC with their schedules of rates.

40 CHAPTER III

41 REGULATION OF THE DATA TRANSMISSION INDUSTRY

1 **SECTION 6. Open Access Approach to Regulation of the Data**
2 **Transmission Industry.** – The NTC shall ensure that the data transmission sector
3 remains open and accessible to all qualified participants. Specifically, it shall:

- 4 a. implement an efficient and speedy administrative process in the authorization
5 and registration of data transmission sector participants;
- 6 b. adopt a technology-neutral framework that allows data transmission industry
7 participants to use any available technology to provide service;
- 8 c. promote fair and open competition at all the multiple layers of the data
9 transmission network, allowing a wide variety of physical networks and
10 applications to interact in an open architecture;
- 11 d. mandate transparency in pricing and the publication of pricing information to
12 ensure fair trading within and between each data transmission segment so as
13 to allow clear, comparative information on market prices and services;
- 14 e. mandate interconnection so that data transmission industry participants can
15 connect to each other at the various segments and interfaces, such that entities
16 of any size may freely enter and exit the market, and dominance by any single
17 player or group of players is avoided;
- 18 f. promulgate policies that will encourage distributed local solutions rather than
19 centralized ones, encouraging services that are closer to the user;
- 20 g. publish the list of registered data transmission industry participants at least
21 once a year; and
- 22 h. promulgate rules defining and regulating entities with substantial market power.

23
24 **SECTION 7. Spectrum Allocation, Recall, and Re-allocation.**–The NTC
25 shall maximize the allocation and assignment of finite radio spectrum resources used
26 in the transmission of data by ensuring that the spectrum is made available for the use
27 of all registered data transmission industry participants. To this end:

- 28 a. the procedure for radio spectrum assignment, joint use and recall shall be
29 made transparent to the public. All applications, including letter-requests,
30 spectrum assignment, joint use, recall, and re-allocation shall be posted in
31 the NTC's website and in a conspicuous place in the offices of the NTC for
32 at least three (3) consecutive months. The notice shall specifically indicate
33 the names of the applicants for spectrum assignment, joint use and recall,
34 including where the NTC itself is the proponent of any such action, the
35 affected spectrum, and the applicant's or NTC's reasons for the proposed
36 spectrum assignment, joint use and recall. The NTC shall not assign, recall
37 or allow co-use or joint use of any radio frequency band or bands without
38 conducting at least one (1) public hearing and allowing public comment for
39 a period of fifteen (15) days from the date of the public hearing, prior to
40 approval and/or disapproval of the same. This applies to all spectrum,
41 whether used for data transmission or not;
- 42 b. all radio spectrums, radio frequency assignments, recalls, and joint use
43 decisions of the NTC shall be published in the NTC's website and in a

1 conspicuous place in the offices of the NTC for at least three (3) consecutive
2 months. The recall of frequency for purposes of free public use shall be
3 given priority.

4 The immediately preceding paragraphs "a" and "b" herein shall not apply to
5 applications for frequency assignments for fixed point-to-point radio links,
6 wifi, and satellite networks.

- 7 c. the NTC shall avoid the concentration of spectrum resources in the hands
8 of a few players and shall not assign, or allow joint use of radio spectrum in
9 a manner that establishes, promotes or perpetuates the dominance of
10 PTEs. Any entity who believes that any one or more of the NTC's decisions
11 for the assignment of radio spectrum, whether past or present, will promote
12 the dominance of any entity and hinder competition may file a complaint
13 before the Philippine Competition Commission (PCC) to determine the
14 dominance of a data transmission industry participant and deal with anti-
15 competitive conduct in accordance with its mandate under Republic Act
16 No.10667, otherwise known as the Philippine Competition Act of 2015;
- 17 d. the NTC shall promptly act on applications of data transmission industry
18 participants for permits to import equipment. Any application for permit to
19 import equipment that is not acted on by the NTC within seven (7) days shall
20 be deemed approved;
- 21 e. if the NTC finds, on its own initiative or upon complaint, that any right, license
22 or radio spectrum assignment to any data transmission industry participant
23 or PTE is not being used, or is not being maximized by the user thereof, or
24 that the grantee has violated the provisions of this Act, it may, *motu proprio*
25 or upon petition by any person, subject to due process, recall the radio
26 spectrum assignment of the data transmission industry participant or PTE.
27 The NTC shall, where required and appropriate, make provisions for
28 substitute frequency to address the needs of active users of the spectrum
29 recalled from the data transmission industry participant or PTE; and
- 30 f. for applications for frequency assignments for mobile and point-to-multipoint
31 networks that will involve the assignment of at least 15% of the total
32 frequencies in a particular frequency band, e.g., 2100MHz (3G), 1800MHz,
33 800MHz, 700MHz etc., a technical working group (TWG) shall be created
34 to be composed of representatives from the Department of Information and
35 Communications Technology (DICT), NTC, PCC and consumer groups, to
36 study and recommend to the NTC whether to approve, approve with
37 modification, or deny the application. The TWG shall submit its
38 recommendation not later than thirty (30) days from date of application.

39
40 **SECTION 8. Setting Performance Standards.** – The NTC shall:

- 41 a. mandate that, within one (1) year from the effectivity of this Act, all last mile
42 providers shall provide a minimum download speed of 2Mbps or as
43 mandated by the National Broadband, whichever is higher, for mobile
44 broadband and for fixed wireless/broadband access;

- b. prescribe performance standards after public consultation and hearings within six (6) months from the effectivity of this Act;
- c. upgrade performance standards imposed on the data transmission industry regularly to ensure that performance standards shall, at a minimum, be at par with service levels established in regional data network performance indices and aligned with international best practices. Such standards shall take into account speed, packet loss, jitter, and latency;
- d. regularly review performance standards at least once a year and shall publish new performance standards at least thirty (30) days before they take effect. The publication of the results of the performance measurements shall be done in an open data format accessible to the general public;
- e. any person, or the NTC itself may, *motu proprio*, file a petition to penalize any data transmission industry participant for failure to deliver service according to the NTC's published performance standard and to require rectification of such non-compliance; and
- f. measure the performance of the data industry participants and publish the results of its measurements in its website.

SECTION 9 *Arms-length Transactions and Transparency* - The NTC shall:

- a. publish and make available in print and online formats all aspects of spectrum use information, including the National Radio Frequency Allocation Table (NRFAT), indicating therein the purpose or use to which each frequency band is allocated, and, for frequency bands allocated for public use, the persons and/or entities to whom each particular frequency is assigned. The NRFAT and updated radio spectrum use information shall be made available on the NTC's website and to any person who requests the same, upon written request; and
- b. promulgate rules requiring all data transmission industry participants to file an annual report and include therein a fair and accurate statement regarding their market prices and their services. The annual report shall include all costs and charges relevant to the data transmission network segment where the participants operate. The rates shall be made available online, in print, and in any other viable venue to the public. Any person can file a complaint pertaining to these rates within thirty (30) days of posting. Each player at each segment shall submit a copy of their rates to the NTC and the PCC. The rates shall be published, including a historical record, in a consolidated manner. The data transmission industry participants are required to keep a publicly accessible archive of their rates.

SECTION 10. *Fair Competition.* – The NTC and the PCC shall ensure that for those providing services at any given segment, there are at least two (2) providers.

SECTION 11. *Restriction on the Issuance of Temporary Restraining Order or Writ of Preliminary Injunction.* – No temporary restraining order or writ of

1 preliminary injunction shall be issued by a Regional Trial Court against any order,
2 decision, rules or regulations promulgated by the NTC unless there is a *prima facie*
3 evidence that the said order, decision, rules or regulations were promulgated with
4 evident bad faith or grave abuse of authority. *Provided*, That whenever such temporary
5 restraining order or preliminary injunction is issued, the court that issued the same
6 shall, within ten (10) days from such issuance, submit a report to the Supreme Court
7 setting forth in detail the grounds or reasons for the same.

8 CHAPTER IV 9 PROHIBITED ACTS

10 SECTION 12. *Prohibited Acts.* – The following acts are prohibited:

- 11 a. *Refusal to Plug and Play.* – Any data transmission industry participant,
12 insofar as such person is so engaged, shall not refuse access to
13 infrastructure to any other data transmission industry participant, except for
14 failure to pay open market fees for the access to the service.

15 Data transmission providers shall not impede the end-user's right to access
16 and distribute information and content, use and provide applications and
17 services and use terminal equipment of their choice, regardless of the end-
18 user's or provider's location or the location, origin or destination of the
19 information, content, application or service, via their data transmission
20 service.

21 Agreements between data transmission providers of data services and end-
22 users on commercial and technical conditions and the characteristics of
23 data access services such as price, data volume or speed, and any
24 commercial practices conducted by providers of internet access services,
25 shall not limit the exercise of the rights of end-users laid down in the
26 preceding paragraph.

- 27 b. *Paid prioritization.* – A data transmission industry participant shall not
28 engage in paid prioritization for monetary or other consideration except
29 when allowed by the NTC after such participant demonstrates that the
30 practice will provide significant public interest benefit and will not
31 disadvantage content and applications that are not prioritized or harm the
32 open nature of the internet.

- 33 c. *Throttling.* – Providers of data transmission services shall treat all traffic
34 equally when providing data access services without discrimination,
35 restriction or interference, regardless of the sender and receiver, the
36 content accessed or distributed, the applications or services used or
37 provided, or the terminal equipment used.

38 It shall be prohibited for a data transmission industry participant to hinder
39 or slow down services or applications or access to specific sites in the
40 internet except where (a) access to such sites, services or applications are
41 prohibited by law; (b) it is necessary to preserve the integrity and security
42 of the network and service of the provider or the equipment of the end-user:

1 *Provided*, That if the breach of integrity or security is caused by the
2 equipment of the end-user, the provider has to notify the end-user first and
3 give the former sufficient time to rectify the situation; (c) it is necessary to
4 block the transmission of unwanted communications (e.g., spam, child
5 pornographic materials) to an end-user, on application or complaint of the
6 end-user or the data transmission industry participant.

7 d. *Refusal to give information.* - It shall be prohibited for any data transmission
8 industry participant, including PTEs with regard to its network and facilities,
9 to refuse or fail to make available, on a timely basis, to suppliers of data
10 transmission services, technical information about its essential facilities or
11 network facilities and commercially relevant information that are necessary
12 for them to provide services.

13 e. *Anti-competitive cross-subsidization.* -The NTC shall require separate books
14 of accounts between different data transmission segments in order to allow
15 identification of costs and revenues for each segment. Nothing herein shall
16 prevent interconnecting networks from charging the appropriate cost-based
17 compensation for the use of interconnection facilities.

18
19 **SECTION 13. Administrative Penalties.** – The NTC shall require data
20 transmission industry participants and PTEs providing data transmission services to
21 comply with prescribed performance standards and shall impose penalties for failure
22 to comply with such performance standards.

23 a. Any data transmission industry participant who fails to comply with the
24 minimum service standards set by the NTC shall be imposed a minimum
25 penalty of a fine of not less than Three hundred thousand pesos (Php
26 300,000.00) but not more than Five million pesos (Php 5,000,000.00) per
27 day for every day during which such default or violation continues until the
28 participant fully complies: *Provided*, That, if the data transmission industry
29 participant has a gross annual income not exceeding Ten million pesos (Php
30 10,000,000.00), the penalty that may be imposed shall be equivalent to one
31 percent (1%) to two percent (2%) of its gross annual income. The NTC is
32 hereby authorized and empowered to impose such fine, after due notice and
33 hearing.

34 b. An entity who fails to substantially comply with the NTC's performance
35 standards for three (3) consecutive years shall, subject to due process, be
36 removed from the registry of registered data transmission industry
37 participants and shall be prohibited from rendering data transmission
38 services.

39 c. Any data transmission industry participant who engages in the prohibited
40 acts under Section 12 of this Act or fails to comply with the obligations under
41 Section 8 of this Act shall suffer a minimum penalty of a fine of not less than
42 Three hundred thousand pesos (Php 300,000.00) but not more than Five
43 million pesos (Php 5,000,000.00) for every day that the violation continues
44 until the participant fully complies: *Provided*, That, if the data transmission

1 industry participant has a gross annual income not exceeding Ten million
2 pesos (Php 10,000,000.00), the penalty that may be imposed shall be
3 equivalent to one percent (1%) to two percent (2%) of its gross annual
4 income.

- 5 d. A data transmission industry participant violating any provision of this Act
6 shall forfeit all certificates, licenses, authorizations, rights, and awards
7 issued to it in relation to its participation in the data transmission industry.
8 e. Any other violations not specifically penalized under the relevant provisions
9 of this Act shall be penalized by a fine of not less than Fifty thousand pesos
10 (P50,000.00) and not more than Two million pesos (P2,000,000.00).
11

12 **SECTION 14. *Adjustment for Inflation.*** – The fines imposed under this Act
13 shall be adjusted, year-on-year, considering the prevailing cost of money based on the
14 current consumer price index, and subject to publication of such adjustments.

15 **CHAPTER V**
16 **RIGHTS OF DATA TRANSMISSION SERVICE USERS AND**
17 **RESPONSIBILITIES OF DATA TRANSMISSION SERVICE PROVIDERS**

18 **SECTION 15. *Rights of End-Users.*** — The user of data transmission services
19 shall have the following basic rights:

- 20 a. Entitlement of data transmission service which is non-discriminatory,
21 reliable, and conforming with minimum standards set by the NTC;
22 b. To be given data transmission services within two (2) months from
23 application for service;
24 c. Regular, timely and accurate billing, courteous and efficient service at
25 business offices and by company personnel;
26 d. Timely correction of errors in billing and the immediate provision of rebates
27 or refunds by the data transmission service provider without the need for
28 demand by the user; and
29 e. Thorough and prompt investigation of, and action upon complaints. The
30 data transmission service provider shall endeavor to allow complaints to be
31 received by any means convenient to the end-user, including voice calls,
32 post, short messaging service (SMS), multi-media messages (MMS) and
33 online communication, and shall keep a record of all complaints received
34 and the action taken to address the complaints.

35 Subject to the filing of a formal request to the data service provider, a user may
36 request the immediate termination of service without the imposition of fees or
37 penalties, and with the refund of any fee or charge already paid by the user, should a
38 data service provider not consistently comply with preceding paragraphs (a), (d), (e),
39 or any other minimum performance standards set by the NTC.

40 **CHAPTER VI**
41 **FINAL PROVISIONS**

1 **SECTION 16. Expedited Processing.** – In all instances where a participant in
2 the data transmission industry shall require a form, certificate, or request from any
3 government agency or local government unit (LGU), there should be no more than two
4 (2) public officers involved in processing the form, certificate, or request.

5 Processing fees and certifications required for the deployment of any segment
6 of data transmission networks shall be limited to those identified by the DICT. The
7 DICT shall coordinate with the concerned national government agencies and LGUs,
8 and conduct the necessary consultations with civil society organizations and other
9 stakeholder groups, for the development of the implementing rules and policies to
10 minimize the administrative burden of permitting and certification processes.

11
12 **SECTION 17. Implementing Rules and Regulations.** — Within sixty (60) days
13 from the effectivity of this Act, the NTC shall promulgate the necessary rules and
14 regulations for the effective implementation of this Act.

15 The NTC shall ensure that the provisions of this law apply, *mutatis mutandis*,
16 to future technologies in data transmission.

17
18 **SECTION 18. Joint Congressional Oversight Committee on Open Access in**
19 **Data Transmission.** - There is hereby created a Joint Congressional Oversight
20 Committee on Open Access in Data Transmission (JCOCOADT) which shall monitor
21 and ensure the effective implementation of this Act. It shall determine weaknesses and
22 loopholes in the law, recommend the necessary remedial legislation or administrative
23 measures and perform such other duties and functions as may be necessary to attain
24 the objectives of this Act.

25 The JCOCOADT shall be composed of five (5) members from the Senate and
26 five (5) members from the House of Representatives in addition to the Chairperson of
27 the Senate Committee on Science and Technology and the Chairperson of the House
28 of Representatives' Committee on Information and Communications Technology, who
29 shall Chair the Oversight Committee in the order specified herein: *Provided, That*, two
30 members of each chambers' nominees shall come from the ranks of the minority
31 party/bloc.

32 The Chairperson of the Senate Committee on Science and Technology and the
33 Chairperson of the House of Representatives Committee on Information and
34 Communications Technology shall act as co-Chairpersons of the JCOCOADT. The
35 ranking minority members nominated by both the Senate and the House of
36 Representatives shall act as co-Vice Chairpersons. The Secretariat of the JCOCOADT
37 shall come from the existing Secretariat personnel of the Committee on Science and
38 Technology of the Senate and the Committee on Information and Communications
39 Technology of the House of Representatives concerned. The JCOCOADT shall have
40 its own independent counsel.

41 The Joint Congressional Oversight Committee on Open Access in Data
42 Transmission shall exist for a period not exceeding five (5) years from the effectivity
43 of this Act. Thereafter, its oversight functions shall be exercised by the Senate

1 Committee on Science and Technology and the House of Representatives Committee
2 on Information and Communications Technology, acting separately.
3

4 **SECTION 19. *Separability Clause.*** — Should any provision herein be declared
5 unconstitutional, the other provisions not affected shall remain in full force and effect.
6

7 **SECTION 20. *Repealing Clause.*** — All laws, decrees, orders, rules, and
8 regulations or other issuances or parts inconsistent with the provisions of this Act are
9 hereby repealed, amended or modified accordingly.
10

11 **SECTION 21. *Effectivity.*** — This Act shall take effect fifteen (15) days after its
12 publication in the Official Gazette or in any newspaper of general circulation.
13

14 *Approved,*
15