

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 8383



Introduced by **HON. JOY MYRA S. TAMBUNTING**

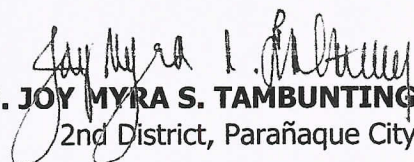
EXPLANATORY NOTE

Philippines is dubbed to be social media capital of the world in 2017 with around 76 million social media users spending more than four hours daily on social media platforms, particularly Facebook. Philippines, however, lags behind its Southeast Asian neighbors in terms of accessibility and speeds. The COVID-19 pandemic exemplified the country's inadequate capacity for heavier usage. Since the implementation of strict quarantine measures in Metro Manila and later on Luzon, there have been numerous complaints of slow internet speeds from users due to a sudden spike in internet usage due to work-from-home setups and online classes. As such, there is really the need to issues such as these which impede Filipinos from accessing this essential service.

The problem of slow internet speed in the Philippines can be traced back to a myriad of problems including the lack of competition in the sector and outdated laws. On top of this, Philippines' geographic characteristics as an archipelagic country, hinders the construction of ICT infrastructures which are very costly for one industry player to solely shoulder.

In this note, this proposed measure aims to bring in more competition in data transmission and telecommunications services by maintaining an open-access approach in the regulation of the industry. This would involve streamlining certain processes in the industry to attract qualified participants, mandating transparency and promoting open and fair competition, and promotion localized solutions than centralized ones to address the uneven access to internet in rural areas, among others. This measure also sets the performance standard of a minimum download speed for mobile broadband and fixed wireless/broadband access within one year from the effectivity of this measure.

On behalf of the people of Parañaque City's Second District, and for the common good of the Filipino people, the approval of the said measure is earnestly sought.


REP. JOY MYRA S. TAMBUNTING
2nd District, Parañaque City

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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:

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

SEC. 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.

SEC. 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 main line (or connection) including international connection that ties networks, delivers routes to exchange information among various subnetworks, 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 environments. 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 No.7925, otherwise known as the «Public Telecommunications Policy Act of the Philippines»;
- (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;
- (j) *Open access* refers to the system of allowing the use of data transmission and/ or distribution systems and associated facilities subject to fair, reasonable, and nondiscriminatory terms in a transparent market;
- (k) *Paid prioritization* refers to the management of a data transmission network to directly or indirectly favor some traffic over other traffic, through the use of techniques such as traffic shaping, prioritization, resource reservation, zero-rating, or other forms of preferential traffic management, either:
 - (1) In exchange for consideration (monetary or otherwise) from a third party, or
 - (2) To benefit an affiliated entity; and
- (l) *Voice over Internet Protocol (VoIP) service* refers to the provision of voice communication using Internet Protocol (IP) technology.

CHAPTER II

ORGANIZATION AND OPERATION OF THE DATA TRANSMISSION INDUSTRY

SEC. 4. Scope. – This Act applies to all persons who participate in the data transmission industry. For this purpose, any person or entity whose business deals substantially with the transmission of data, including VoIP service provider, internet service providers (ISPs), and data center service providers, shall be governed by the provisions of this Act. PTEs principally engaged in the provision of basic telephone services, such as international carrier, interexchange carrier, local

exchange operator, and mobile radio services provider, as these entities are defined in Republic Act No. 7925, which also provide data transmission services, shall likewise be subject to the provisions of this Act with respect to the data transmission services they provide and the interconnection to their networks that they extend to data transmission industry participants.

SEC. 5. Segments. – The data transmission industry shall be divided into four (4) segments: (a) International gateway/landing; (b) Core/Backbone network; (c) Middle mile; and (d) Last mile.

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

CHAPTER III REGULATION OF THE DATA TRANSMISSION INDUSTRY

SEC. 6. Open Access Approach to Regulation of the Data Transmission Industry. – The NTC shall ensure that the data transmission sector remains open and accessible to all qualified participants. Specifically, it shall;

- (a) Implement an efficient and speedy administrative process in the authorization and registration of data transmission sector participants;
- (b) Adopt a technology-neutral framework that allows data transmission industry participants to use any available technology to provide service;
- (c) Promote fair and open competition at all the multiple layers of the data transmission network, allowing a wide variety of physical networks and applications to interact in an open architecture;
- (d) Mandate transparency in pricing and the publication of pricing information to ensure fair trading within and between each data transmission segment so as to allow clear, comparative information on market prices and services;
- (e) Mandate interconnection so that data transmission industry participants can connect to each other at the various segments and interfaces, such that entities of any size may freely enter and exit the market, and dominance by any single player or group of players is avoided;
- (f) Promulgate policies that will encourage distributed local solutions rather than centralized ones, encouraging services that are closer to the user;
- (g) Publish the list of registered data transmission industry participants at least once a year; and
- (h) Promulgate rules defining and regulating entities with substantial market power.

SEC. 7. Spectrum Allocation, Recall, and Reallocation. – The NTC shall maximize the allocation and assignment of finite radio spectrum resources used in the transmission of data by ensuring that the spectrum is made available for the use of all registered data transmission industry participants. To this end;

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

The immediately preceding paragraphs (a) and (b) herein shall not apply to applications for frequency assignments for fixed point-to-point radio links, Wi-Fi, and satellite networks;

- (c) The NTC shall avoid the concentration of spectrum resources in the hands of a few players and shall not assign, or allow joint use of radio spectrum in a manner that establishes, promotes or perpetuates the dominance of PTEs. Any entity who believes that any one or more of the NTC's decisions for the assignment of radio spectrum, whether past or present, will promote the dominance of any entity and hinder competition may file a complaint before the Philippine Competition Commission (PCC) to determine the dominance of a data transmission industry participant and deal with anti-competitive conduct in accordance with its mandate under Republic Act No.10667, otherwise known as the "Philippine Competition Act";
- (d) The NTC shall promptly act on applications of data transmission industry participants for permits to import equipment. Any application for permit to import equipment that is not acted on by the NTC within seven (7) days shall be deemed approved;
- (e) If the NTC finds, on its own initiative or upon complaint, that any right, license or radio spectrum assignment to any data transmission industry participant or PTE is not being used, or is not being maximized by the user thereof, or that the grantee has violated the provisions of this Act, it may, *motu proprio* or upon petition by any person, subject to due process, recall the radio spectrum assignment of the data transmission industry participant or PTE. The NTC shall, where required and appropriate, make provisions for substitute frequency to address the needs of active users of the spectrum recalled from the data transmission industry participant or PTE; and
- (f) For applications for frequency assignments for mobile and point-to-multipoint networks that will involve the assignment of at least fifteen percent (15%) of the total frequencies in a particular frequency band, e.g., 2100MHz (3G), 1800MHz, 800MHz, 700MHz etc., a

technical working group (TWG) shall be created to be composed of representatives from the Department of Information and Communications Technology (DICT), NTC, PCC and consumer groups, to study and recommend to the NTC whether to approve, approve with modification, or deny the application. The TWG shall submit its recommendation not later than thirty (30) days from the date of application.

SEC. 8. Setting Performance Standards. – The NTC shall:

- (a) Mandate that, within one (1) year from the effectivity of this Act, all last mile providers shall provide a minimum download speed of 2 Mbps or as mandated by the National Broadband, whichever is higher, for mobile 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 noncompliance; and
- (f) Measure the performance of the data industry participants and publish the results of its measurements in its website.

SEC. 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.

SEC. 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.

SEC. 11. Restriction on the Issuance of Temporary Restraining Order or Writ of Preliminary Injunction. – No temporary restraining order or writ of preliminary injunction shall be issued by a Regional Trial Court against any order, decision, rule or regulation promulgated by the NTC unless there is prima facie evidence that the said order, decision, rule or regulation was promulgated with evident bad faith or grave abuse of authority: Provided, That whenever such temporary restraining order or writ of preliminary injunction is issued, the court that issued the same shall, within ten (10) days from such issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for the same.

CHAPTER IV PROHIBITED ACTS

SEC. 12. Prohibited Acts. – The following acts are prohibited:

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

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

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

- (b) **Paid Prioritization.** – A data transmission industry participant shall not engage in paid prioritization for monetary or other consideration except when allowed by the NTC after such participant demonstrates that the practice will provide significant public interest benefit and will not disadvantage content and applications that are not prioritized or harm the open nature of the internet;
- (c) **Throttling.** – Providers of data transmission services shall treat all traffic equally when providing data access services without discrimination, restriction or interference, regardless of the sender and receiver; the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

It shall be prohibited for a data transmission industry participant to hinder or slow down services or applications or access to specific sites in the internet except where (1) access to such sites, services or applications are prohibited by law; (2) it is necessary to preserve the integrity and security of the network and service of the provider or the equipment of

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

- (d) Refusal to Give Information. – It shall be prohibited for any data transmission industry participant, including PTEs with regard to its network and facilities, to refuse or fail to make available, on a timely basis, to suppliers of data transmission services the technical information about its essential facilities or network facilities and commercially relevant information that are necessary for them to provide services; and
- (e) Anti-competitive Cross-subsidization. – The NTC shall require separate books of accounts between different data transmission segments in order to allow identification of costs and revenues for each segment. Nothing herein shall prevent interconnecting networks from charging the appropriate cost-based compensation for the use of interconnection facilities.

SEC. 13. Administrative Penalties. – The NTC shall require data transmission industry participants and PTEs providing data transmission services to comply with prescribed performance standards and shall impose penalties for failure to comply with such performance standards.

- (a) Any data transmission industry participant who fails to comply with the minimum service standards set by the NTC shall be imposed a minimum penalty of a fine of not less than three hundred thousand pesos (P300,000.00) but not more than five million pesos (P5,000,000.00) per day for every day during which such default or violation continues until the participant fully complies: Provided, That if the data transmission industry participant has a gross annual income not exceeding ten million pesos (P10,000,000.00), the penalty that may be imposed shall be equivalent to one percent (1%) to two percent (2%) of its gross annual income. The NTC is hereby authorized and empowered to impose such fine, after due notice and hearing.
- (b) An entity who fails to substantially comply with the NTC's performance standards for three (3) consecutive years shall, subject to due process, be removed from the registry of registered data transmission industry participants and shall be prohibited from rendering data transmission services.
- (c) Any data transmission industry participant who engages in the prohibited acts under Section 12 of this Act or fails to comply with the obligations under Section 8 of this Act shall suffer a minimum penalty of a fine of not less than three hundred thousand pesos (P300,000.00) but not more than five million pesos (P5,000,000.00) for every day that the violation continues until the participant fully complies: Provided, That if the data transmission industry participant has a gross annual income not exceeding ten million pesos (P10,000,000.00), the penalty that may be imposed shall be equivalent to one percent (1%) to two percent (2%) of its gross annual income.
- (d) A data transmission industry participant violating any provision of this Act shall forfeit all certificates, licenses, authorizations, rights, and awards issued to it in relation to its participation in the data transmission industry.
- (e) Any other violations not specifically penalized under the relevant provisions of this Act shall be penalized by a fine of not less than fifty thousand pesos (P50,000.00) and not more than two million pesos (P2,000,000.00).

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

CHAPTER V RIGHTS OF DATA TRANSMISSION SERVICE USERS AND RESPONSIBILITIES OF DATA TRANSMISSION SERVICE PROVIDERS

SEC. 15. Rights of End Users. – The user of data transmission services shall have the following basic rights:

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

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

CHAPTER VI FINAL PROVISIONS

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

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

SEC. 17. Implementing Rules and Regulations. – Within sixty (60) days from the effectivity of this Act, the NTC shall promulgate the necessary rules and regulations for the effective implementation of this Act.

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

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

The JCOCOADT shall be composed of five (5) members from the Senate and five (5) members from the House of Representatives in addition to the Chairperson of the Senate Committee on Science and Technology and the Chairperson of the House of Representatives Committee on Information and Communications Technology, who shall Chair the Oversight Committee in the order specified herein: Provided, That two (2) members of each chambers' nominees shall come from the ranks of the minority party /bloc.

The Chairperson of the Senate Committee on Science and Technology and the Chairperson of the House of Representatives Committee on Information and Communications Technology shall act as co-Chairpersons of the JCOCOADT. The ranking minority members nominated by both the Senate and the House of Representatives shall act as co-Vice Chairpersons. The Secretariat of the JCOCOADT shall come from the existing Secretariat personnel of the Committee on Science and Technology of the Senate and the Committee on Information and Communications Technology of the House of Representatives. The JCOCOADT shall have its own independent counsel.

The JCOCOADT shall exist for a period not exceeding five (5) years from the effectivity of this Act. Thereafter, its oversight functions shall be exercised by the Senate Committee on Science and Technology and the House of Representatives Committee on Information and Communications Technology, acting separately.

SEC. 19. Separability Clause. – Should any provision herein be declared unconstitutional, the other provisions not affected shall remain in full force and effect.

SEC. 20. Repealing Clause. - All laws, decrees, orders, rules and regulations or other issuances or parts inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 21. Effectivity. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any newspaper of general circulation.

Approved,