

Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Nineteenth Congress

First Regular Session

House Bill No. 2382



INTRODUCED BY REPRESENTATIVE JURDIN JESUS M. ROMUALDO

EXPLANATORY NOTE

This is a refiled bill authored last Congress by Hon. Xavier Jesus D. Romualdo of the Lone District of Camiguin and this bill was transmitted to the Senate for appropriate action.

The explanatory note of the bill last Congress is adopted here to form part of the explanatory note for this measure to emphasize the significance of this proposed policy, to wit:

“The Public Telecommunications Policy Act of the Philippines (Republic Act No. 7925) was enacted in 1995, when only 0.77% of Filipinos had access to the Internet¹. Today, the Philippines has 67 million active users, which ranks 12th worldwide in terms of the total number of Internet users.² However, despite the impressive raw numbers, we rank near the bottom in both Internet speed and cost tables. Mobile Internet speed is ranked 100th worldwide, while fixed broadband is 83rd.³ In terms of cost, we are 85th.⁴

This contradiction illustrates why there is a need to modernize and rationalize our telecommunications law to be more attuned with the current, as well as future, landscape. The importance of the Internet in today’s global economy cannot be overstated. We need to keep our laws up-to-date in order to foster an environment that allows Filipinos to be globally competitive. To achieve this, it is proposed that we adopt the following principles: (1.) technology neutrality; (2) universal access; and (3) Open Internet. To operationalize these, there is a need to reclassify internet access services as distinct from value-added services (VAS), strengthen the National Telecommunications Commission (NTC), and expand consumer protection.

Technology Neutrality

Technology neutrality means that the same regulatory principles should apply regardless of the technology used. Laws should not be drafted in technological silos. Technological neutrality is particularly important in view of the speed of

¹ Individuals using the Internet(% of population), available at: <https://data.worldbank.org/Indicator?IT.NET.USER.ZS>

² PH now has 12th highest number of Internet users, available at: <http://newsbytes.ph/2018/06/10/ph-now-has-12th-highest-number-of-internet-users/>

³ Speedtest Global in The Philippines: June 2018, available at: <https://yugatech.com/news/speedtest-global-index-philippines/#sthash.WONMzBoy.dpbs#48qWovHbSk731D3.97>

⁴ Worldwide Broadband Price Comparison, available at: <https://www.cable.uk/broadband/deals/worldwide-price-comparison/>

technological innovation and development, and helps to insure that the law is able to accommodate future developments and does not quickly become dated. For this reason, the provisions of the proposed bill are purposely not over technical and are silent with respect to specific technologies (e.g. DSL, fiber, 4Gnetwork, etc.)

Universal Access

The Internet has become a pervasive and fundamental part of the daily lives of Filipinos. Its impact on both economic development and solving problems in areas such as health, education, basic financial services and agriculture is well documented. It continues to have the potential to propel societies, help business leaders develop innovative business models and assist governments in addressing critical policy concerns. Providing every Filipino with access to the Internet is therefore an important policy objective. Although our Internet penetration rate is above the global average, we still failed to crack the worldwide top 50 in Internet penetration rate.⁵ There remains plenty of room for improvement.

The Public Telecommunications Act made basic telephone service a universal service obligation by Telco's. Today, however, access to the Internet is arguably more important than basic landline services. The bill proposes that internet access service be made a universal service obligation as well, subject to fair and reasonable return on investment by Telco's. Consistent with the bill's technology neutrality approach, it is up to Telco's to determine what type of internet service (e.g. fixed or mobile) will be provided to subscribers in order to satisfy its service obligation.

Open Internet

Openness or neutrality is a very significant characteristic of Internet. It works on the principle that all web traffic should be treated on an equitable, non-discriminatory basis no matter its origin or the type of data transmitted. Basically, it allows for free and unrestricted access to online content. From an end-user's perspective, it means that anyone from anywhere can access any website and express themselves freely without hindrances of whatever kind. Under this principle, Telco's should not have the power to block certain websites or slow down internet speeds depending on how much content-providers pay for access to their networks.

The principle of openness has created a free and vast global business environment that makes it possible for Filipinos to thrive in the digital age. Ensuring an open internet facilitates innovation, stimulates employment and increases economic growth. Internet connectivity is being fully utilized by our booming technology startup scene,⁶ which enables small commercial ventures to grow and compete with international corporations located in developed nations through the accessibility to the free and open Internet. A discriminatory (non-open) Internet threatens to thwart small and micro businesses and increase the digital divide.⁷

The bill regulates the way that internet service providers (ISP) can deliver information to their customers by prohibiting certain activities that threaten openness, namely:

- (1) Blocking – ISPs cannot block legal content, applications, or services.

⁵ Top 50 Countries with the Highest Internet Penetration Rates, available at <https://www.internetworldstats.com/top25.htm>

⁶ The rising tech start-up scene in the Philippines, available at: <https://www.bworldonline.com/the-rising-tech-start-up-scene-in-the-philippines/>

⁷ The Importance of Net Neutrality in the Emerging and Developing World, available at: <http://old.gfem.or/node/8651>

(2) Throttling – ISPs cannot slow down or degrade internet service based on content, application, or service accessed by the users.

(3) Paid Prioritization – ISP cannot accept payment to give content, applications, or services more favorable access to users. Zero-rating, i.e., the practice of not charging customers for data use on specific websites and services by ISPs, will be allowed only if the ISP does not receive any consideration, monetary or otherwise, from the practice.

The main concern of openness is the delivery of and access to information through Internet. The bill seeks to restrict the ability of ISPs to block out competition by restricting certain pipelines within the Internet. It does not affect the ISP's ability to offer tiered pricing schemes depending on the plan availed of by the subscriber.

Reclassifying Internet Access Services

Under the current framework, internet access service is only considered as a value-added service (VAS), over which the NTC has minimal regulatory authority. Reclassifying internet services not only reflects realities of the time – there are now 67 million internet users compared to 3 million fixed-line telephone subscribers – but it is necessary to impose access obligations, ensure affordability and quality services, and provide basis for the regulator to impose administrative sanctions. The fact that there is basically a duopoly in the country's internet services further justify closer regulatory scrutiny of the internet service segment.

At the same time, true VAS need to be fully competitive. VAS, particularly software applications that utilize the Internet, are defined by abundance, not scarcity. To foster innovation, improve consumer choices, and support the country's thriving startup ecosystem, it is important that the market for VAS be openly competitive and free from unnecessary bureaucracy.

Strengthening the NTC

One of the main weaknesses of the NTC is its inability to impose meaningful sanctions to Telco's. Currently, NTC still has to rely on the old Public Service Act, enacted in 1936, when levying administrative fines. The law limits the amount of administrative fines to Php 200 per day of each violation. The bill brings the range of fines imposable by the NTC at par with other commissions, such as the PCC.

To improve transparency and accountability, NTC as a primary regulator must have the power to set minimum standards. This would provide an objective measure of an ISP's performance. The standards must reflect the current status of technology and adapt with advances in the industry.

Expanding Consumer Rights

It is important that users of telecommunications services be given the power to make informed choices and receive affordable and high quality services. The bill establishes norms and standards relating to consumer protection, institutionalizes complaints handling procedures, and prohibits certain unfair practices in the telecoms industry. The expanded consumer rights complement the new duties of service providers and expanded responsibilities of the NTC under this bill.”

The bill last Congress was filed on November 5, 2019 and when it was consolidated with similar bills certain terminologies have been updated and ISPs referred to the original bill is now referred to the refiled bill as “data transmission industry participant” to include all the players in the industry and the refiled bill also mandates NTC to maximize the utilization of radio spectrum resources in the transmission of data is emphasized to be made available for the use of all registered data transmission industry participants.

Industry data published and available at the datareportal.com last February 2022 mentioned interesting figures:

“As of January 2022, the population of the Philippines is reported at 111.8 million with 76.01 million internet users and internet penetration rate at 68.0 percent of the total population. Published data indicates that internet users in the Philippines could have expected internet connection at:

Median mobile internet connection speed via cellular networks: 18.68 Mbps while Median fixed internet connection speed is at 46.44 Mbps.

If social media users will be used as a benchmark of how many people are accessing their accounts and in need of internet, there were 92.05 million users reported in January 2022 or 82.4 percent of the total population while in 2021, it was around 88.95 million users. Among the social media platforms patronized by Philippine users are: Facebook with 83.85 million users from ages 13 and above, You Tube 56.5 million users, Messenger with 55.15 million users from ages 13 and above, Instagram with 18.65 million users from ages 13 and above, while Tiktok had 35.96 million users from ages 18 and above.

While mobile communications users reached 156.5 million connections with individuals and businesses having multiple accounts.⁸

With these early data from the first quarter of the year 2022, it is with more concern and urgency that we need to have a policy platform that will level the playing field and provide consumers better choices. Data transmission end-users deserve to have a reliable, effective, efficient, affordable and more choices in their data transmission requirements. Our local economy will continue to thrive if data transmission industry players will put up better services with very good reliable consistent signals not just in urbanized areas but expand to rural areas to attract more investors, create more employment and livelihood opportunities and generate revenues for the government.

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


JURDIN JESUS M. ROMUALDO

⁸ Digital 2022: The Philippines, 15 February 2022 by Simon Kemp and available at datareportal.com

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AN ACT
PROMOTING OPEN ACCESS IN DATA TRANSMISSION AND 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”.

SEC. 2. **Declaration of Policy.** – It is the policy of the State to narrow the digital divide in the country 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 investments in the digital infrastructure development in the country;
- (d) Adopt and ensure open access in the regulation of the data transmission industry;
- (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 industry;
- (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

- 1 without permission, and thereby encouraging the development of advanced
2 telecommunications capabilities and the removal of barriers to the infrastructure
3 investment;
- 4 (h) Encourage infrastructure sharing and co-location in order to promote network
5 investment, eliminate the uneconomic duplication of infrastructure facilities, and
6 strengthen competition; and
- 7 (i) Ensure efficient and transparent management of the radio frequency spectrum,
8 especially those utilized in the delivery of data transmission services.

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

- 10 (a) Basic telephone service refers to the local exchange telephone service for
11 residence and business establishments provided via the circuit switched telephone
12 network;
- 13 (b) Cellular Mobile Telephone Service (CMTS) refers to the wide area mobile radio
14 telephone system with its own switch, base stations and transmission facilities
15 capable of providing high capacity mobile telecommunications by utilizing radio
16 frequencies;
- 17 (c) Content refers to, among others, texts, images, audios, videos, and animations
18 that are carried over the broadband/internet network;
- 19 (d) Core or Backbone Network refers to the main line including international
20 connection, that ties networks, delivers routes to exchange information among
21 various subnetworks, connects regional distribution networks and, in some
22 instances, provides connectivity to other peer networks;
- 23 (e) Data transmission refers to the process of sending digital or digitized analog signal
24 over a communication medium to one or more computing networks,
25 communication or electronic devices. It enables the transfer and communication
26 of devices in a point-to-point, point-to-multipoint and multipoint-to-multipoint
27 environments. The term data transmission includes the provision of Voice over
28 Internet Protocol (VoIP) services but does not include the provision of basic
29 telephone services;
- 30 (f) Data transmission industry participant refers to any person, firm, partnership or
31 corporation, government or private, engaged in the provision of data transmission
32 services to the public. This includes public telecommunications entities (PTEs) that
33 offer data transmission services as defined under Republic Act No. 7925,
34 otherwise known as the “Public Telecommunications Policy Act of the Philippines”;
- 35 (g) International gateway or landing refers to a segment of data transmission that
36 consists of any facility that provides an interface to send and receive data traffic
37 between one country’s domestic network facilities and those in another country;
- 38 (h) Last mile refers to the segment of data transmission network that connects end
39 users;
- 40 (i) Middle mile refers to the segment of data transmission network that links the last
41 mile network to the core or backbone network;
- 42 (j) Open access refers to the system of allowing the use of data transmission or
43 distribution systems and associated facilities subject to fair, reasonable, and
44 nondiscriminatory terms in a transparent market;
- 45 (k) Paid prioritization refers to the management of a data transmission network to
46 directly or indirectly favor some traffic over other traffic, through the use of
47 techniques such as traffic shaping, prioritization, resource reservation, zero-rating,
48 or other forms of preferential traffic management, either in exchange for
49 consideration (monetary or otherwise) from a third party, or to benefit an affiliated
50 entity;
- 51 (l) Voice over Internet Protocol (VoIP) service refers to the provision of voice
52 communication using Internet Protocol (IP) technology; and

(m)Passive infrastructure collectively refer to telecommunication towers, poles, cable entrances, ducts, utility corridors, and any other non-electronic infrastructure and facilities, either existing or to be deployed in the future, that may be used to support data transmission.

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. 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 the Act. PTEs that are principally engaged in the provision of basic telephone services, such as an international carrier, interexchange carrier, local exchange operator, and mobile radio services provider, as defined in Republic Act No. 7925, and 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. Registration and Certification. – All segments of the data transmission network shall be competitive and open. Notwithstanding the provisions of this Act or any other law, the following registration and certification shall apply to data transmission:

(a) All data transmission industry participants shall be required to register with the National Telecommunications Commission (NTC). The NTC shall promulgate a speedy and expeditious administrative process for registration and shall, in coordination with the Department of Information and Communications Technology (DICT) for policy and standard-setting in the Information and Communications Technology (ICT) sector, and Philippine Competition Commission (PCC) for the promotion of market competition, develop a set of criteria for qualifying data transmission industry participants that will encourage the widest possible participation of as many industry players as possible who will offer data transmission services in all segments of the network and to end users in different parts of the country. The qualification requirements for data transmission industry participants shall also take national security concerns into consideration particularly for facilities that interface directly with another country's domestic network.

(b) Those who will operate an international cable landing station shall secure a legislative franchise. Those who will operate a nationwide backbone network shall secure a permit from the NTC and submit its proposed route or rollout plan, as well as the manner of construction of the backbone network, subject to the approval of the NTC.

All other industry participants shall not be required to secure a legislative franchise or a certificate of public convenience and necessity (CPCN) but must meet the criteria set by the NTC and the DICT in registering as industry participants in order to construct, operate, lease or own networks or facilities except if it owns and operates an international cable landing station: Provided, That an owner or operator of a cable landing station, not considered a public utility, shall no longer be required to secure a CPCN. All industry participants intending to be spectrum holders shall need to secure a permit from the NTC and shall be allocated such spectrum in accordance with the provisions under Section 7 of this Act.

c) Data transmission industry participants shall likewise be required to comply with national and global best practices and standards on cybersecurity and shall be subject to a network audit by the Cybersecurity Bureau of the DICT. Data transmission industry participants shall, after three (3) years of operation, be required to secure a cybersecurity certification from a third-party organization based on the prevailing International Organization for Standardization (ISO) standards on information security management.

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 in accordance with the principles and policies under the Philippine Competition Act and its implementing rules in all segments 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 a year;
- (h) Promulgate, together with the PCC, rules defining and regulating entities with substantial market power;
- (i) Publish a Spectrum Management Framework to be developed together with the DICT and the PCC; and
- (j) Collect the necessary Supervision and Regulation Fee (SRF) and Spectrum User Fee (SUF), and other relevant fees as provided by law.

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 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 shall apply 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 website and in a conspicuous place in the offices of the NTC for at least three (3) consecutive months. The recall of frequency for purpose of free public use shall be given priority.

The immediate 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, which will promote the dominance of any entity and hinder competition, may file a complaint before the 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 a 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 nay 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, work with the data transmission industry participant or PTE concerned to take appropriate measures to minimize the impact of such recall on active users of services utilizing the recalled spectrum. The foregoing notwithstanding, no frequency shall be recalled within eighteen (18) months of the awarding of a provisional authority or license or registration; and

- (f) The NTC shall ensure that the allocation, reallocation, assignment, reassignment, reclassification, joint use or co-use, and recall of spectrum does not result in the concentration of spectrum resources which promote, establish, or perpetuate the significant market power of PTEs or of only a limited number of participants. In instances where the resulting assignment of spectrum for mobile and point-to-multipoint networks will give an assignee or entities it controls, jointly or singly, or under common control, either by virtue of that request or in combination with other previous requests by that party or its affiliates, fifteen percent (15%) or above of assignable spectrum or a joint use of spectrum shall be required to serve notice to the PCC and secure a no-objection notice form the PCC. The PCC shall issue a non-objection notice within thirty (30) working days upon its receipt of pertinent information necessary for the review and issuance of the

1 notice: *Provided*, That the PCC may once extend such period for an
2 additional fifteen (15) working days upon their notification of the NTC and
3 the concerned party or parties to a spectrum allocation, reallocation,
4 assignment, reassignment, reclassification, joint use or co-use, and recall.

5
6 **SEC. 8. Setting Performance Standards.** – The NTC shall:

- 7 (a) Mandate that, within one (1) year from the effectivity of this Act, all last
8 mile providers shall provide a minimum download speed of 2 megabits
9 per second or as mandated by the National Broadband, whichever is
10 higher, for mobile broadband and for fixed wireless/broadband access;
11 (b) Prescribe performance standards after public consultation and hearings
12 within six (6) months from the effectivity of this Act;
13 (c) Regularly upgrade performance standards imposed on the data
14 transmission industry to ensure that performance standards shall, at a
15 minimum, be at par with service levels established in regional data
16 network performance indices and aligned with international best
17 practices. Such standards shall take into account speed, packet loss,
18 jitter and latency;
19 (d) Regularly review performance standards at least once a year and
20 publish new performance standards at least thirty (30) days before they
21 take effect. The publication of the results of the performance
22 measurements shall be done in an open data format and made
23 accessible to the general public;
24 (e) Any person, or the NTC itself, may, *motu proprio*, file a petition to penalize
25 any data transmission industry participant for failure to deliver service
26 according to the NTC's published performance standard and to require
27 rectification of such noncompliance; and
28 (f) Measure the performance of the data industry participants quarterly and
29 publish the results of its assessment in its website.

30 **SEC. 9. Arms-length Transactions and Transparency.** – The NTC shall:

- 31 (a) Publish and make available in print and online formats all aspects of
32 spectrum use information, including the National Radio Frequency
33 Allocation Table (NRFAT), indicating therein the purpose or use to which
34 each frequency band is allocated, and, for frequency bands allocated for
35 public use, the persons and/or entities to whom each particular
36 frequency is assigned. The NRFAT and updated radio spectrum use
37 information shall be made available on the NTC's website and to any
38 person who requests the same, upon written request; and
39 (b) Promulgate rules requiring all data transmission industry participants to
40 file an annual report and include therein a fair and accurate statement
41 regarding their market prices and their services. The annual report shall
42 include all costs and charges relevant to the data transmission network
43 segment where the participants operate. The rates shall be made
44 available online, in print and in any other viable venue to the public. Any
45 person can file a complaint pertaining to these rates within thirty (30)
46 days of posting. Each player at each segment shall submit a copy of
47 their rates to the NTC and the PCC. The rates shall be published,
48 including a historical record, in a consolidated manner. The data
49 transmission industry participants shall keep a publicly accessible
50 archive of their rates.
51

1 SEC. 10. **Fair Competition.** – The PCC and the NTC shall ensure that
2 the principles and policies enshrined under the Philippine Competition
3 Act are strictly adhered to in the data transmission industry. The PVV
4 and the NTC shall ensure that all industry players observe fair,
5 reasonable, and nondiscriminatory treatment in all their dealings, and
6 that barriers to entry are eliminated to make the industry highly
7 competitive. To this end, within thirty (30) days from the effectivity of this
8 Act, the PCC and the NTC shall enter into an agreement to foster and
9 develop interagency cooperation mechanisms, including information-
10 sharing tools that will guide them in the performance of their respective
11 mandates, and in the promotion of fair competition in the data
12 transmission industry.

13
14 SEC. 11. **Technological Neutrality.** – The NTC shall ensure that the
15 provisions of this Act apply, *mutatis mutandis*, to future technologies in
16 data transmission.

17
18 SEC. 12. **Infrastructure Sharing and Co-location.** – The DICT and the
19 NTC shall promulgate policies, rules, and regulations to ensure that
20 passive infrastructure, whether existing or built in the future, necessary
21 or capable of supporting data transmission networks or services are:

- 22 (a) made mandatory for open access and made available for co-
23 location and co-use by the owner of network facilities, equipment,
24 and infrastructure on an open, fair, and nondiscriminatory basis
25 to any access seeker's network facilities, in any segment, subject
26 to the technical feasibility of the access seeker's request and the
27 network facility and infrastructure owners' standard published
28 offer terms, conditions, and rates: *Provided*, That the provision of
29 access to government-owned and operated facilities and support
30 infrastructure to access seekers for the purpose of offering data
31 transmission services shall be mandatory, unless special
32 circumstances, such as but not limited to national security
33 concerns, exist;
- 34 (b) built not only in the city centers, but most especially in the remote,
35 unserved, and underserved areas in order to extend data
36 transmission services by both this existing and new players
37 throughout the country;
- 38 (c) as far as possible, deployed together with roadworks, pipe-laying,
39 and other infrastructure development by both government and
40 private entities; and
- 41 (d) proliferated in the most cost-efficient and timely manner through
42 various means, including, encouraging the operation of
43 independent entities that build and operate towers, dark fiber, and
44 utility corridors, among other passive infrastructure that help
45 facilitate data transmission network deployment.

46 The DICT shall coordinate and issue a policy with other relevant
47 government agencies upon consultation with stakeholders to implement this
48 provision. For purposes of data transmission, the NTC shall, in case of a
49 dispute arising from an infrastructure sharing agreement: (1) mediate
50 between a data transmission industry participant and an infrastructure
51 owner, and (2) serve as the primary enforcer of this provision.

1 The DICT and the NTC shall promulgate policies, rules, and regulations to
2 ensure that buildings, condominiums, villages, towns, and subdivisions are
3 all built with facilities, such as cable entrances, ducts, and risers, that allow
4 nondiscriminatory access to multiple data transmission industry players in
5 order for them to provide service. They shall also promulgate policies, rules,
6 and guidelines that will ensure a level-playing field and price
7 nondiscrimination among data transmission industry participants and
8 network facility and infrastructure owners.

9 The DICT and NTC, in coordination with relevant government agencies,
10 shall also ensure the disaster resiliency and ease of recovery and
11 restoration of passive infrastructure, such as towers, poles, and utility
12 corridors, from the effects of disasters by strictly enforcing compliance with
13 internationally-accepted engineering standards and best practices, and
14 relevant engineering codes and codes of practice.

15 The DICT and the NTC shall maintain an updated database of data
16 transmission infrastructure, including passive infrastructure used to support
17 data transmission. The database, to be updated annually, shall include the
18 exact location, ownership, technical specifications, and other relevant
19 information about the facility.

20
21 **CHAPTER IV**
22 **PROHIBITED ACTS**
23

24 **SEC. 13. Prohibited Act.** – The following are prohibited:

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

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

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

41 (b) Paid Prioritization. – A data transmission industry participant shall not
42 engage in paid prioritization for monetary or other consideration except
43 when allowed by the NTC after such participant demonstrates that the
44 practice will provide significant public interest benefit and will not
45 disadvantage content and applications that are not prioritized or harm the
46 open nature of the internet;

47 (c) Throttling – A data transmission industry participant shall treat all traffic
48 equally when providing data access services without discrimination,

1 restriction or interference regardless of the sender and receiver, the content
2 accessed or distributed, the applications or services used or provided, or
3 the terminal equipment used.

4 It shall be prohibited for a data transmission industry participant to hinder or
5 slow down services or applications or access to specific sites in the internet
6 except where (1) access to such sites, services or applications are
7 prohibited by law; (2) it is necessary to preserve the integrity and security
8 of the network and service of the provider or the equipment of the end user:
9 *Provided*, That if the breach of integrity or security is caused by the
10 equipment of the end user, the provider has to notify the end user first and
11 give the former sufficient time to rectify the situation; and (3) it is necessary
12 to block the transmission of unwanted communications such as spam and
13 child pornographic materials upon the complaint of the end user or the data
14 transmission industry participant;

15 (d) Refusal to Give Information. – It shall be prohibited for any data
16 transmission industry participant, including PTE's with regard to its network
17 and facilities, to refuse or fail to make available to suppliers of data
18 transmission services, on a timely basis, the technical information about its
19 essential facilities or network facilities and commercially relevant
20 information that are necessary for the efficient provision of their services;
21 and

22 (e) Anti-competitive Cross-subsidization. – The NTZC shall require
23 separate books of accounts between different data transmission segments
24 in order to allow identification of costs and revenues for each segment. Any
25 violation of this provision shall give rise to a presumption of anti-competitive
26 cross-subsidization, which shall then be referred to the Philippine
27 Competition Commission for proper determination and action, in
28 accordance with the provisions of Republic Act No. 106667. Nothing herein
29 shall prevent interconnecting networks from charging the appropriate cost-
30 based compensation for the use of interconnection facilities.

31 SEC. 14. **Administrative Penalties.** – The NTC shall require data
32 transmission industry participants and PTEs providing data transmission
33 services to comply with prescribed performance standards and shall impose
34 penalties for failure to comply with such performance standards.

35 (a) Any data transmission industry participant who fails to comply
36 with the minimum service standards set by the NTC shall be imposed a
37 minimum penalty of a fine of not less than One hundred thousand pesos (P\
38 100,000.00) but not more than Five million pesos (P\5,000,000.00) per day
39 for every day during which such default or violation continues, until the
40 participant fully complies: *Provided*, That if the data transmission industry
41 participant has a gross annual income not exceeding Ten million pesos, the
42 penalty that may be imposed shall be equivalent to one percent (1%) to two
43 percent (2%) of its gross annual income. The NTC is hereby authorized and
44 empowered to impose such fine, after due notice and hearing.

45 (b) An entity who fails to substantially comply with the NTC's
46 performance standards for three (3) consecutive years shall, subject to due
47 process, be removed from the registry of registered data transmission
48 industry participants and shall be prohibited from rendering data
49 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 performance standards set by the NTC shall suffer a minimum penalty of a fine of not less than Three hundred thousand pesos (P\300,000.00) 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 (P\10,000,000.00), the penalty that may be imposed shall be equivalent to one percent (1%) to two (2) percent of its gross annual income. In cases of anti-competitive cross-subsidization, the imposable penalties are those provided under Republic Act No. 10667.

(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 (P\50,000.00) and not more than Two million pesos (P\2,000,000.00).

SEC. 15. **Adjustment for Inflation.** – The fines imposed under this Act shall be adjusted by the NTC, 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. 16. **Rights of End Users.** – The user of data transmission services shall have the following basic rights:

(a) To be entitled to data transmission services which is nondiscriminatory, reliable and conforming with minimum standards set by the NTC;

(b) To be rendered 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 services (SMS), multi-media 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

1 paragraphs (a), (d), and (e) of this section or any other minimum
2 performance standards set by the NTC.

3
4 **CHAPTER VI**
5 **FINAL PROVISIONS**
6

7 **SEC. 17. *Expedited Processing.*** – In all instances where a participant in
8 the data transmission industry shall require a form, certificate, or request
9 from any government agency or local government unit (LGU), there should
10 be no more than two (2) public officers involved in processing the form,
11 certificate, or request.

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

19 **SEC. 18. *Implementing Rules and Regulations.*** – Within sixty (60) days
20 from the effectivity of this Act, the NTC shall promulgate the necessary rules
21 and regulations for its effective implementation.

22 **SEC. 19. *Joint Congressional Oversight Committee on Open Access***
23 ***in Data Transmission.*** – There shall be created a Joint Congressional
24 Oversight Committee on Open Access in Data Transmission
25 (JCOCOADT) which shall monitor and ensure the effective
26 implementation of this act. It shall determine weaknesses and loopholes in
27 the law, recommend the necessary remedial legislation or administrative
28 measures and perform such other duties and functions as may be
29 necessary to attain the objectives of this Act.

30 The JCOCOADT shall be composed of five (5) members from the Senate
31 and five (5) members from the House of Representatives, in addition to the
32 Chairperson of the Senate Committee on Science and Technology and the
33 Chairperson of the Committee on Information and Communication
34 Technology: Provided, That two (2) members of each chamber's nominees
35 shall come from the ranks of the minority party/bloc.

36 The Chairperson of the Senate Committee on Science and Technology and
37 the Chairperson of the House of Representatives Committee on Information
38 and Communications Technology shall act as Co-Chairpersons of the
39 JCOCOADT. The ranking minority members nominated by both the Senate
40 and the House of Representatives shall act as Co-Vice Chairpersons. The
41 Secretariat of the JCOCOADT shall come from the existing Secretariat
42 personnel of the Committee on Science and Technology of the Senate and
43 the Committee on Information and Communications Technology of the
44 House of Representatives. The JCOCOADT shall have its own independent
45 counsel.

46 The JCOCOADT shall exist for a period not exceeding five (5) years from
47 the effectivity of this Act. Thereafter, its oversight functions shall be
48 exercised by the Senate Committee on Science and Technology and the

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

3 SEC. 20. **Separability Clause.** – Should any provision herein be declared
4 unconstitutional, the other provisions not affected shall remain in full force
5 and effect.

6 SEC. 21.**Repealing Clause.** – All laws, decrees, orders, rules and
7 regulations or other issuances or parts inconsistent with the provisions of
8 this Act are hereby repealed, amended, or modified accordingly.

9
10 SEC 22. **Effectivity.** – This Act shall take effect fifteen (15) days after its
11 publication in the Official Gazette or in a newspaper of general circulation.

12 Approved.
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