



## HOUSE OF REPRESENTATIVES

H. No. 4637

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BY REPRESENTATIVES UMALI, ALVAREZ (F.), BERTIZ, AGGABAO, MONTORO,  
DEL MAR, ROBES, NIETO AND MARCOLETA, PER COMMITTEE REPORT  
NO. 43

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AN ACT EXTENDING FOR TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO SMART COMMUNICATIONS, INC. (FORMERLY SMART INFORMATION TECHNOLOGIES, INC.), AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7294, ENTITLED "AN ACT GRANTING SMART INFORMATION TECHNOLOGIES, INC. (SMART) A FRANCHISE TO ESTABLISH, INSTALL, MAINTAIN, LEASE AND OPERATE INTEGRATED TELECOMMUNICATIONS/ COMPUTER/ELECTRONIC SERVICES, AND STATIONS THROUGHOUT THE PHILIPPINES FOR PUBLIC DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES"

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

1 SECTION 1. Section 1 of Republic Act No. 7294 is hereby amended to  
2 read as follows:

3 "SECTION 1. *Nature and Scope of Franchise.* – Subject to  
4 the provisions of the PHILIPPINE Constitution and applicable  
5 laws, rules and regulations, [there is hereby] THE FRANCHISE  
6 granted to the SMART COMMUNICATIONS, INC. ('SMART',  
7 FORMERLY Smart Information Technologies, Inc.), hereunder  
8 referred to as the grantee, its successors or assignees,

1 [a franchise] to CONSTRUCT, establish, install, maintain, lease,  
2 CO-USE, PURCHASE, [and] operate AND CARRY ON THE BUSINESS  
3 OF PROVIDING [integrated] telecommunications[/computer/],  
4 INCLUDING ELECTRONIC TELECOMMUNICATIONS OR electronic  
5 COMMUNICATIONS services[, and fixed and mobile stations]  
6 throughout the Philippines AND BETWEEN THE PHILIPPINES AND  
7 OTHER COUNTRIES AND TERRITORIES, INCLUDING OUTER SPACE,  
8 AS PUBLIC INTEREST MAY WARRANT, for public domestic and  
9 international telecommunications IS HEREBY EXTENDED FOR  
10 TWENTY-FIVE (25) YEARS FROM THE EFFECTIVITY OF THIS ACT.  
11 [and] FOR THIS PURPOSE, THE GRANTEE IS HEREBY GRANTED  
12 THE RIGHT to CONSTRUCT, ESTABLISH, install, MAINTAIN, LEASE,  
13 CO-USE, PURCHASE AND OPERATE THE corresponding transmitting  
14 and receiving stations, SATELLITES, LINES, SYSTEMS, NETWORKS,  
15 INTERNATIONAL GATEWAYS, LOCAL EXCHANGES, AND  
16 PLATFORMS [at such places in the Philippines] as it may consider  
17 necessary, [and] convenient, OR REASONABLE.

18 "IN THIS ACT, THE TERM 'TELECOMMUNICATIONS' SHALL  
19 INCLUDE 'ELECTRONIC COMMUNICATIONS'. IN ADDITION, THE  
20 FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH  
21 HEREIN:

22 "ELECTRONIC COMMUNICATIONS NETWORK" SHALL  
23 MEAN: (A) A TRANSMISSION SYSTEM FOR CONVEYANCE, BY USE  
24 OF ELECTRICAL, MAGNETIC OR ELECTRO-MAGNETIC ENERGY,  
25 OF SIGNALS OF ANY DESCRIPTION; AND (B) ANY OF THE  
26 FOLLOWING AS ARE USED, BY THE PERSON PROVIDING THE  
27 SYSTEM AND IN ASSOCIATION WITH IT, FOR CONVEYANCE OF THE

1 SIGNALS: (1) APPARATUS COMPRISED IN THE SYSTEM;  
2 (2) APPARATUS USED FOR THE SWITCHING AND ROUTING OF THE  
3 SIGNALS; AND (3) SOFTWARE AND STORED DATA.

4 "ELECTRONIC COMMUNICATIONS SERVICE" SHALL MEAN  
5 A SERVICE CONSISTING IN, OR HAVING AS ITS PRINCIPAL  
6 FEATURE, THE CONVEYANCE BY MEANS OF AN ELECTRONIC  
7 COMMUNICATIONS NETWORK OF SIGNALS. IT INCLUDES WIRED,  
8 WIRELESS, FIXED, CELLULAR, AND/OR MOBILE, OR  
9 INTEGRATED TELECOMMUNICATIONS/COMPUTER/ELECTRONIC  
10 SERVICES, INCLUDING VALUE-ADDED SERVICES, OR  
11 TECHNOLOGIES RELATED TO SUCH SERVICE WHICH ARE AT  
12 PRESENT AVAILABLE OR MADE AVAILABLE THROUGH  
13 TECHNICAL ADVANCES OR INNOVATIONS IN THE FUTURE, AND  
14 FIXED AND MOBILE STATIONS."

15 SEC. 2. Section 7 of Republic Act No. 7294 is hereby amended to read  
16 as follows:

17 "SEC. 7. *Term of Franchise.* - [This] THE franchise shall  
18 be EXTENDED AND IN EFFECT for a [term] PERIOD of twenty-five  
19 (25) years from the date of THE approval of this Act, unless sooner  
20 revoked or cancelled. In the event the grantee fails to operate  
21 continuously for two (2) years, this franchise shall be deemed *ipso*  
22 *facto* revoked."

23 SEC. 3. Section 8 of Republic Act No. 7294 is hereby amended to read  
24 as follows:

25 "SEC. 8. *Acceptance and Compliance.* - Acceptance of this  
26 franchise shall be given in writing TO THE CONGRESS OF THE  
27 PHILIPPINES, THROUGH THE COMMITTEE ON LEGISLATIVE  
28 FRANCHISES OF THE HOUSE OF REPRESENTATIVES AND THE

1 COMMITTEE ON PUBLIC SERVICES OF THE SENATE, within sixty  
2 (60) days [after approval] FROM THE EFFECTIVITY of this Act.  
3 [The grantee shall operate telecommunications systems for which  
4 this franchise is granted within two (2) years from the date of its  
5 acceptance in writing of this franchise.] UPON GIVING THE  
6 ACCEPTANCE, THE GRANTEE SHALL EXERCISE THE PRIVILEGES  
7 GRANTED UNDER THIS ACT. Refusal or failure to accept the  
8 franchise [or to operate] within the prescribed period shall render  
9 the franchise void.”

10 SEC. 4. Section 9 of Republic Act. No. 7294 is hereby amended to read  
11 as follows:

12 “SEC. 9. *Tax Provisions.* – The grantee, its successors or  
13 assignees, shall be liable to pay the same taxes on their real estate,  
14 buildings and personal property, exclusive of this franchise, as  
15 other persons or corporations which are now or hereafter may be  
16 required by law to pay[.], EXCEPT RADIO TELECOMMUNICATIONS  
17 AND ELECTRONIC COMMUNICATIONS EQUIPMENT, MACHINERY  
18 AND SPARE PARTS NEEDED IN CONNECTION WITH THE BUSINESS  
19 OF THE GRANTEE WHICH SHALL BE EXEMPT FROM CUSTOMS  
20 DUTIES, TARIFFS AND OTHER TAXES, AS WELL AS THOSE  
21 DECLARED EXEMPT IN THIS SECTION. In addition thereto, the  
22 grantee, its successors or assignees, shall pay a [franchise tax  
23 equivalent to three percent (3%) of] VALUE-ADDED TAX ON all  
24 gross receipts of the business transacted under this franchise by the  
25 grantee, its successors or assignees, IN THE PHILIPPINES, [and the  
26 said percentage shall be] in lieu of ANY AND all taxes [on this  
27 franchise or earnings thereof:] OF ANY KIND, NATURE OR

1 DESCRIPTION LEVIED, ESTABLISHED OR COLLECTED BY AN  
2 AUTHORITY WHATSOEVER INCLUDING, BUT NOT LIMITED TO,  
3 CITY, MUNICIPAL, PROVINCIAL OR NATIONAL, FROM WHICH THE  
4 GRANTEE IS HEREBY EXPRESSLY EXEMPTED EFFECTIVE FROM  
5 THE DATE OF THE APPROVAL OF THIS ACT: *Provided*, That the  
6 grantee, its successors or assignees, shall continue to be liable for  
7 income taxes payable under Title II of the National Internal  
8 Revenue Code pursuant to Section 2 of Executive Order No. 72  
9 unless the latter enactment is amended or repealed, in which case  
10 the amendment or repeal shall be applicable thereto.

11 "The grantee shall file the return with and pay the tax due  
12 thereon to the Commissioner of Internal Revenue or his duly  
13 authorized representative in accordance with the National Internal  
14 Revenue Code and the return shall be subject to audit by the  
15 Bureau of Internal Revenue."

16 SEC. 5. Section 11 of Republic Act No. 7294 is hereby amended to  
17 read as follows:

18 "SEC. 11. *Sale, Lease, Transfer, Usufruct, [etc.] OR*  
19 *ASSIGNMENT OF FRANCHISE.* - The grantee shall not SELL, lease,  
20 transfer, grant the usufruct of, [sell] Nor assign the franchise herein  
21 granted or the rights and privileges acquired thereunder to any  
22 person, firm, company, corporation or OTHER COMMERCIAL OR  
23 LEGAL entity, nor merge with any corporation or entity,  
24 [without the prior approval of the Congress of the Philippines.  
25 Neither] NOR shall TRANSFER the controlling interest [in] OF the  
26 grantee, [be transferred,] whether as a whole or in parts, and

1 whether simultaneously or contemporaneously, to any [such]  
2 person, firm, company, corporation or entity without the prior  
3 approval of the Congress of the Philippines[.]: *PROVIDED, THAT*  
4 *THE FOREGOING LIMITATIONS SHALL NOT APPLY: (A) WHEN*  
5 *TRANSFER IS DONE THROUGH A STOCK EXCHANGE; (B) FOR*  
6 *PURPOSES OF QUALIFYING PERSONS FOR ELECTION TO THE*  
7 *BOARD; (C) WHEN TRANSFER IS TO A CORPORATION THAT IS*  
8 *CONTROLLED BY THE SAME STOCKHOLDERS CONTROLLING THE*  
9 *GRANTEE; (D) TO ANY TRANSFER OR ISSUANCE OF SHARES OF*  
10 *STOCK IN THE IMPLEMENTATION OF THE REQUIREMENT FOR THE*  
11 *DISPERSAL OF THE GRANTEE'S OWNERSHIP CONSISTENT WITH*  
12 *SECTION 13 OF REPUBLIC ACT No. 7294; (E) TO ANY TRANSFER*  
13 *OR SALE OF SHARES TO A FOREIGN INVESTOR OR INVESTORS;*  
14 *(F) TO ANY ISSUANCE OF SHARES TO ANY FOREIGN OR LOCAL*  
15 *INVESTORS, PURSUANT TO OR IN CONNECTION WITH ANY*  
16 *INCREASE IN THE GRANTEE'S AUTHORIZED CAPITAL STOCK,*  
17 *WHICH SHALL RESULT IN THE DILUTION OF THE STOCKHOLDINGS*  
18 *OF THE GRANTEE'S THEN EXISTING STOCKHOLDERS; (G) TO ANY*  
19 *TRANSFER TO ANOTHER CORPORATION WHICH IS A GRANTEE OF*  
20 *ANOTHER CONGRESSIONAL FRANCHISE FOR PROVISION*  
21 *OF TELECOMMUNICATIONS SERVICES; AND (H) TO ANY*  
22 *COMBINATION THEREOF WHERE SUCH TRANSFER, SALE OR*  
23 *ISSUANCE IS EFFECTED IN ORDER TO ENABLE THE GRANTEE TO*  
24 *RAISE THE NECESSARY CAPITAL OR FINANCING FOR THE*  
25 *PROVISION OF ANY OF THE SERVICES AUTHORIZED BY THIS ACT*  
26 *AND/OR TO CARRY OUT ANY OF THE PURPOSES FOR WHICH THE*  
27 *GRANTEE HAS BEEN INCORPORATED OR ORGANIZED: *PROVIDED,**  
28 **FURTHER, THAT ANY TRANSFER, SALE, OR ISSUANCE IS IN**  
29 *ACCORDANCE WITH ANY APPLICABLE CONSTITUTIONAL*  
30 *LIMITATION: *PROVIDED, FURTHERMORE, THAT CONGRESS**

1 SHALL BE INFORMED OF ANY SALE, LEASE, TRANSFER, GRANT OF  
2 USUFRUCT, OR ASSIGNMENT OF FRANCHISE OR THE RIGHTS  
3 AND PRIVILEGES ACQUIRED THEREUNDER, OR OF THE MERGER,  
4 OR TRANSFER OF THE CONTROLLING INTEREST OF THE  
5 GRANTEE, WITHIN SIXTY (60) DAYS AFTER THE COMPLETION OF  
6 THE TRANSACTION: *PROVIDED, MOREOVER, THAT FAILURE TO*  
7 *REPORT TO CONGRESS THE CHANGE OF OWNERSHIP SHALL*  
8 *RENDER THE FRANCHISE IPSO FACTO REVOKED: PROVIDED,*  
9 *FINALLY, THAT [A]Any person or entity to which the franchise*  
10 *herein granted is validly sold, transferred or assigned shall be*  
11 *subject to the same conditions, terms, restrictions, and limitations*  
12 *of this Act."*

13 SEC. 6. Section 13 of Republic Act No. 7294 is hereby amended to  
14 read as follows:

15 "SEC. 13. *Listing of Shares.* - The grantee shall list,  
16 subject to the requirements of the Securities and Exchange  
17 Commission and the stock exchange concerned, and make a public  
18 offering through the stock exchange [of the shares representing at  
19 least thirty *per centum* (30%) of its authorized capital stock] in any  
20 securities exchange in the Philippines within two (2) years from  
21 the effectivity of this Act, UNLESS THE GRANTEE IS WHOLLY  
22 OWNED BY A PUBLICLY LISTED COMPANY."

23 SEC. 7. A new section is hereby inserted after Section 15 of Republic  
24 Act No. 7294, to read as follows:

25 "SEC. 16. *EQUALITY CLAUSE.* - IF ANY FRANCHISE FOR  
26 TELECOMMUNICATIONS SERVICES AWARDED OR GRANTED BY  
27 THE CONGRESS OF THE PHILIPPINES, OR ANY AMENDMENT OR

1 REVISION TO ANY FRANCHISE FOR TELECOMMUNICATIONS  
2 SERVICES, SUBSEQUENT TO THE APPROVAL OF THIS ACT,  
3 PROVIDE TERMS, PRIVILEGES, EXEMPTIONS, EXCEPTIONS, OR  
4 CONDITIONS THAT ARE MORE FAVORABLE AND BENEFICIAL  
5 THAN THOSE CONTAINED IN OR OTHERWISE GRANTED UNDER  
6 THIS ACT, THEN THE SAME TERMS, PRIVILEGES, EXEMPTIONS,  
7 EXCEPTIONS, OR CONDITIONS SHALL, *IPSO FACTO*, ACCRUE TO  
8 THE HEREIN GRANTEE AND BE DEEMED PART OF THIS ACT.”

9 SEC. 8. The present Section 16 of Republic Act No. 7294 is hereby  
10 renumbered as Section 17.

11 SEC. 9. A new Section 18 is hereby inserted to read as follows:

12 “SEC. 18. *PENALTY CLAUSE.* – FAILURE OF THE  
13 GRANTEE TO SUBMIT THE REQUISITE ANNUAL REPORT TO  
14 CONGRESS SHALL BE PENALIZED BY A FINE IN THE AMOUNT OF  
15 FIVE HUNDRED PESOS (P500.00) PER WORKING DAY OF  
16 NONCOMPLIANCE. THE FINE SHALL BE COLLECTED BY THE NTC  
17 FROM THE DELINQUENT FRANCHISE GRANTEE SEPARATE FROM  
18 THE REPORTORIAL PENALTIES IMPOSED BY THE NTC.”

19 SEC. 10. *Applicability Clause.* – All other provisions of Republic Act  
20 No. 7294 which are not inconsistent with the provisions of this Act and remain  
21 unrepealed shall continue to be in full force and effect.

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

Approved,