



HOUSE OF REPRESENTATIVES

H. No. 6557

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ROA-PUNO, PRIMICIAS-AGABAS, ATIENZA, GARBIN, DE VERA,
BRAVO (A.), CAMPOS AND ABAYON, PER COMMITTEE REPORT
No. 423

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:*

1 CHAPTER I

2 INTRODUCTORY PROVISIONS

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

5 SEC. 2. *Declaration of Policy.* – It is the policy of the State to
6 narrow the digital divide in the country by encouraging the
7 development of data transmission infrastructure and removing any
8 barrier to competition in data transmission services. Moreover, the
9 State shall implement measures to require data transmission

1 service providers to adhere to telecommunications standards
2 suitable to the needs and aspirations of the nation and ensure that
3 internet users enjoy the best quality of data transmission service.

4 The State shall:

5 (a) Promote the construction and development of reliable,
6 affordable, open and accessible data networks that transmit
7 information at speed and quality comparable to the best in the
8 world;

9 (b) Create an entrepreneurial ecosystem where persons who
10 wish to engage in the data transmission industry can compete
11 openly and freely in the spirit of fair competition and permission-
12 less innovation;

13 (c) Encourage investment in the digital infrastructure of the
14 country;

15 (d) Adopt and ensure open access in the regulation of the data
16 transmission sector;

17 (e) Protect the public interest as it is affected by its ability to
18 access data networks;

19 (f) Establish a strong and independent regulatory body and
20 system to ensure and enhance fair competition in the data
21 transmission sector; and

22 (g) Protect and promote the internet as an open platform
23 enabling consumer choice, freedom of expression, end-user control,
24 competition and the freedom to innovate without permission,
25 and thereby encouraging the development of advanced
26 telecommunications capabilities and the removal of barriers to
27 infrastructure investment.

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

2 (a) *Basic telephone service* refers to the local exchange
3 telephone service for residence and business establishments
4 provided via the circuit switched telephone network;

5 (b) *Cellular Mobile Telephone Service (CMTS)* refers to the
6 wide area mobile radio telephone system with its own switch, base
7 stations and transmission facilities capable of providing high
8 capacity mobile telecommunications by utilizing radio frequencies;

9 (c) *Content* refers to, among others, texts, images, audios,
10 videos, and animations that are carried over the broadband/internet
11 network;

12 (d) *Core/Backbone network* refers to the main line (or
13 connection) including international connection that ties networks,
14 delivers routes to exchange information among various
15 subnetworks, connects regional distribution networks and, in
16 some instances, provides connectivity to other peer networks;

17 (e) *Data transmission* refers to the process of sending digital
18 or digitized analog signal over a communication medium to one or
19 more computing network/s, communication or electronic device/s. It
20 enables the transfer and communication of devices in a
21 point-to-point, point-to-multipoint and multipoint-to-multipoint
22 environments. The term data transmission includes the provision of
23 Voice over Internet Protocol (VoIP) services but does not include the
24 provision of basic telephone services;

25 (f) *Data transmission industry participant* refers to any
26 person, firm, partnership or corporation, government or private,
27 engaged in the provision of data transmission services to the

1 public. This includes public telecommunications entities (PTEs)
2 that offer data transmission services as defined under Republic Act
3 No. 7925, otherwise known as the "Public Telecommunications
4 Policy Act of the Philippines";

5 (g) *International gateway/landing* refers to a segment of data
6 transmission that consists of any facility that provides an interface
7 to send and receive data traffic between one country's domestic
8 network facilities and those in another country;

9 (h) *Last mile* refers to the segment of data transmission
10 network that connects end users;

11 (i) *Middle mile* refers to the segment of data transmission
12 network that links the last mile network to the core/backbone
13 network;

14 (j) *Open access* refers to the system of allowing the use of
15 data transmission and/or distribution systems and associated
16 facilities subject to fair, reasonable, and nondiscriminatory terms in
17 a transparent market;

18 (k) *Paid prioritization* refers to the management of a data
19 transmission network to directly or indirectly favor some traffic over
20 other traffic, through the use of techniques such as traffic shaping,
21 prioritization, resource reservation, zero-rating, or other forms of
22 preferential traffic management, either:

23 (1) In exchange for consideration (monetary or otherwise)
24 from a third party, or

25 (2) To benefit an affiliated entity; and

1 (l) *Voice over Internet Protocol (VoIP) service* refers to the
2 provision of voice communication using Internet Protocol (IP)
3 technology.

4 CHAPTER II

5 ORGANIZATION AND OPERATION OF THE DATA 6 TRANSMISSION INDUSTRY

7
8 SEC. 4. *Scope.* – This Act applies to all persons who
9 participate in the data transmission industry. For this purpose, any
10 person or entity whose business deals substantially with the
11 transmission of data, including VoIP service provider, internet
12 service providers (ISPs), and data center service providers, shall be
13 governed by the provisions of this Act. PTEs principally engaged in
14 the provision of basic telephone services, such as international
15 carrier, interexchange carrier, local exchange operator, and mobile
16 radio services provider, as these entities are defined in Republic Act
17 No. 7925, which also provide data transmission services, shall
18 likewise be subject to the provisions of this Act with respect to the
19 data transmission services they provide and the interconnection to
20 their networks that they extend to data transmission industry
21 participants.

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

25 All four (4) segments shall be competitive and open. Any law
26 to the contrary notwithstanding, data transmission industry
27 participants in any of the four (4) segments shall not be required to
28 secure a franchise from Congress or a Certificate of Public
29 Convenience and Necessity (CPCN) or Provisional Authority (PA)

1 from the National Telecommunications Commission (NTC), to
2 construct, install, and operate networks and facilities for the data
3 transmission services they provide. Neither shall they be required
4 to secure a CPCN or a PA for the data transmission services they
5 provide to the general public. Participants in the data transmission
6 industry shall, however, be required to register with the NTC
7 stating the segment they are participating in and provide the NTC
8 with their schedules of rates.

9 CHAPTER III

10 REGULATION OF THE DATA TRANSMISSION INDUSTRY

11 SEC. 6. *Open Access Approach to Regulation of the Data*
12 *Transmission Industry.* - The NTC shall ensure that the data
13 transmission sector remains open and accessible to all qualified
14 participants. Specifically, it shall:

15 (a) Implement an efficient and speedy administrative process
16 in the authorization and registration of data transmission sector
17 participants;

18 (b) Adopt a technology-neutral framework that allows data
19 transmission industry participants to use any available technology
20 to provide service;

21 (c) Promote fair and open competition at all the multiple
22 layers of the data transmission network, allowing a wide variety of
23 physical networks and applications to interact in an open
24 architecture;

25 (d) Mandate transparency in pricing and the publication of
26 pricing information to ensure fair trading within and between each

1 data transmission segment so as to allow clear, comparative
2 information on market prices and services;

3 (e) Mandate interconnection so that data transmission
4 industry participants can connect to each other at the various
5 segments and interfaces, such that entities of any size may freely
6 enter and exit the market, and dominance by any single player or
7 group of players is avoided;

8 (f) Promulgate policies that will encourage distributed local
9 solutions rather than centralized ones, encouraging services that
10 are closer to the user;

11 (g) Publish the list of registered data transmission industry
12 participants at least once a year; and

13 (h) Promulgate rules defining and regulating entities with
14 substantial market power.

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

20 (a) The procedure for radio spectrum assignment, joint use
21 and recall shall be made transparent to the public. All applications,
22 including letter requests, spectrum assignment, joint use, recall,
23 and reallocation shall be posted in the NTC's website and in a
24 conspicuous place in the offices of the NTC for at least three (3)
25 consecutive months. The notice shall specifically indicate the names
26 of the applicants for spectrum assignment, joint use and recall,
27 including where the NTC itself is the proponent of any such action,

1 the affected spectrum, and the applicant's or NTC's reasons for the
2 proposed spectrum assignment, joint use and recall. The NTC shall
3 not assign, recall or allow co-use or joint use of any radio frequency
4 band or bands without conducting at least one (1) public hearing
5 and allowing public comment for a period of fifteen (15) days from
6 the date of the public hearing, prior to approval and/or disapproval
7 of the same. This applies to all spectrum, whether used for data
8 transmission or not;

9 (b) All radio spectrums, radio frequency assignments, recalls,
10 and joint use decisions of the NTC shall be published in the NTC's
11 website and in a conspicuous place in the offices of the NTC for at
12 least three (3) consecutive months. The recall of frequency for
13 purposes of free public use shall be given priority.

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

17 (c) The NTC shall avoid the concentration of spectrum
18 resources in the hands of a few players and shall not assign, or
19 allow joint use of radio spectrum in a manner that establishes,
20 promotes or perpetuates the dominance of PTEs. Any entity who
21 believes that any one or more of the NTC's decisions for the
22 assignment of radio spectrum, whether past or present, will
23 promote the dominance of any entity and hinder competition may
24 file a complaint before the Philippine Competition Commission
25 (PCC) to determine the dominance of a data transmission industry
26 participant and deal with anti-competitive conduct in accordance

1 with its mandate under Republic Act No. 10667, otherwise known
2 as the "Philippine Competition Act";

3 (d) The NTC shall promptly act on applications of data
4 transmission industry participants for permits to import equipment.
5 Any application for permit to import equipment that is not acted on
6 by the NTC within seven (7) days shall be deemed approved;

7 (e) If the NTC finds, on its own initiative or upon complaint,
8 that any right, license or radio spectrum assignment to any data
9 transmission industry participant or PTE is not being used, or is not
10 being maximized by the user thereof, or that the grantee has
11 violated the provisions of this Act, it may, *motu proprio* or upon
12 petition by any person, subject to due process, recall the radio
13 spectrum assignment of the data transmission industry participant
14 or PTE. The NTC shall, where required and appropriate, make
15 provisions for substitute frequency to address the needs of active
16 users of the spectrum recalled from the data transmission industry
17 participant or PTE; and

18 (f) For applications for frequency assignments for mobile and
19 point-to-multipoint networks that will involve the assignment of at
20 least fifteen percent (15%) of the total frequencies in a particular
21 frequency band, e.g., 2100MHz (3G), 1800MHz, 800MHz, 700MHz
22 etc., a technical working group (TWG) shall be created to be
23 composed of representatives from the Department of Information
24 and Communications Technology (DICT), NTC, PCC and consumer
25 groups, to study and recommend to the NTC whether to approve,
26 approve with modification, or deny the application. The TWG shall

1 submit its recommendation not later than thirty (30) days from the
2 date of application.

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

4 (a) Mandate that, within one (1) year from the effectivity of
5 this Act, all last mile providers shall provide a minimum download
6 speed of 2 Mbps or as mandated by the National Broadband,
7 whichever is higher, for mobile broadband and for fixed
8 wireless/broadband access;

9 (b) Prescribe performance standards after public consultation
10 and hearings within six (6) months from the effectivity of this Act;

11 (c) Upgrade performance standards imposed on the data
12 transmission industry regularly to ensure that performance
13 standards shall, at a minimum, be at par with service levels
14 established in regional data network performance indices and
15 aligned with international best practices. Such standards shall take
16 into account speed, packet loss, jitter, and latency;

17 (d) Regularly review performance standards at least once a
18 year and shall publish new performance standards at least thirty
19 (30) days before they take effect. The publication of the results of
20 the performance measurements shall be done in an open data
21 format accessible to the general public;

22 (e) Any person, or the NTC itself, may, *motu proprio*, file a
23 petition to penalize any data transmission industry participant for
24 failure to deliver service according to the NTC's published
25 performance standard and to require rectification of such
26 noncompliance; and

1 (f) Measure the performance of the data industry
2 participants and publish the results of its measurements in its
3 website.

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

6 (a) Publish and make available in print and online formats all
7 aspects of spectrum use information, including the National Radio
8 Frequency Allocation Table (NRFAT), indicating therein the
9 purpose or use to which each frequency band is allocated, and, for
10 frequency bands allocated for public use, the persons and/or entities
11 to whom each particular frequency is assigned. The NRFAT and
12 updated radio spectrum use information shall be made available on
13 the NTC's website and to any person who requests the same, upon
14 written request; and

15 (b) Promulgate rules requiring all data transmission industry
16 participants to file an annual report and include therein a fair and
17 accurate statement regarding their market prices and their
18 services. The annual report shall include all costs and charges
19 relevant to the data transmission network segment where the
20 participants operate. The rates shall be made available online, in
21 print, and in any other viable venue to the public. Any person can
22 file a complaint pertaining to these rates within thirty (30) days of
23 posting. Each player at each segment shall submit a copy of their
24 rates to the NTC and the PCC. The rates shall be published,
25 including a historical record, in a consolidated manner. The data
26 transmission industry participants are required to keep a publicly
27 accessible archive of their rates.

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

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

16 CHAPTER IV

17 PROHIBITED ACTS

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

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

24 Data transmission providers shall not impede the end user's
 25 right to access and distribute information and content, use and
 26 provide applications and services and use terminal equipment of
 27 their choice, regardless of the end user's or provider's location or the

1 location, origin or destination of the information, content,
2 application or service via their data transmission service.

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

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

16 (c) Throttling. – Providers of data transmission services shall
17 treat all traffic equally when providing data access services without
18 discrimination, restriction or interference, regardless of the sender
19 and receiver, the content accessed or distributed, the applications or
20 services used or provided, or the terminal equipment used.

21 It shall be prohibited for a data transmission industry
22 participant to hinder or slow down services or applications or access
23 to specific sites in the internet except where (1) access to such sites,
24 services or applications are prohibited by law; (2) it is necessary to
25 preserve the integrity and security of the network and service of the
26 provider or the equipment of the end user: *Provided*, That if the
27 breach of integrity or security is caused by the equipment of the end

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

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

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

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

25 (a) Any data transmission industry participant who fails to
26 comply with the minimum service standards set by the NTC shall
27 be imposed a minimum penalty of a fine of not less than three

1 hundred thousand pesos (P300,000.00) but not more than five
2 million pesos (P5,000,000.00) per day for every day during which
3 such default or violation continues until the participant fully
4 complies: *Provided*, That if the data transmission industry
5 participant has a gross annual income not exceeding ten million
6 pesos (P10,000,000.00), the penalty that may be imposed shall be
7 equivalent to one percent (1%) to two percent (2%) of its gross
8 annual income. The NTC is hereby authorized and empowered to
9 impose such fine, after due notice and hearing.

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

15 (c) Any data transmission industry participant who engages
16 in the prohibited acts under Section 12 of this Act or fails to comply
17 with the obligations under Section 8 of this Act shall suffer a
18 minimum penalty of a fine of not less than three hundred thousand
19 pesos (P300,000.00) but not more than five million pesos
20 (P5,000,000.00) for every day that the violation continues until the
21 participant fully complies: *Provided*, That if the data transmission
22 industry participant has a gross annual income not exceeding ten
23 million pesos (P10,000,000.00), the penalty that may be imposed
24 shall be equivalent to one percent (1%) to two percent (2%) of its
25 gross annual income.

26 (d) A data transmission industry participant violating any
27 provision of this Act shall forfeit all certificates, licenses,

1 authorizations, rights, and awards issued to it in relation to its
2 participation in the data transmission industry.

3 (e) Any other violations not specifically penalized under the
4 relevant provisions of this Act shall be penalized by a fine of not less
5 than fifty thousand pesos (P50,000.00) and not more than two
6 million pesos (P2,000,000.00).

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

11 CHAPTER V

12 RIGHTS OF DATA TRANSMISSION SERVICE USERS AND 13 RESPONSIBILITIES OF DATA TRANSMISSION SERVICE PROVIDERS

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

16 (a) Entitlement of data transmission service which is
17 nondiscriminatory, reliable, and conforming with minimum
18 standards set by the NTC;

19 (b) To be given data transmission services within two (2)
20 months from application for service;

21 (c) Regular, timely and accurate billing, courteous and
22 efficient service at business offices and by company personnel;

23 (d) Timely correction of errors in billing and the immediate
24 provision of rebates or refunds by the data transmission service
25 provider without the need for demand by the user; and

26 (e) Thorough and prompt investigation of, and action upon
27 complaints. The data transmission service provider shall endeavor
28 to allow complaints to be received by any means convenient to the

1 end user, including voice calls, post, short messaging service (SMS),
2 multimedia messages (MMS) and online communication, and shall
3 keep a record of all complaints received and the action taken to
4 address the complaints.

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

11 CHAPTER VI

12 FINAL PROVISIONS

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

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

26 SEC. 17. *Implementing Rules and Regulations.* – Within
27 sixty (60) days from the effectivity of this Act, the NTC shall

1 promulgate the necessary rules and regulations for the effective
2 implementation of this Act.

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

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

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

22 The Chairperson of the Senate Committee on Science and
23 Technology and the Chairperson of the House of Representatives
24 Committee on Information and Communications Technology shall
25 act as co-Chairpersons of the JCOCOADT. The ranking minority
26 members nominated by both the Senate and the House of
27 Representatives shall act as co-Vice Chairpersons. The Secretariat

1 of the JCOCOADT shall come from the existing Secretariat
2 personnel of the Committee on Science and Technology of the
3 Senate and the Committee on Information and Communications
4 Technology of the House of Representatives. The JCOCOADT shall
5 have its own independent counsel.

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

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

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

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

Approved,

O

1 from the National Telecommunications Commission (NTC), to
2 construct, install, and operate networks and facilities for the data
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