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NINETEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES
First Regular Session

S E N A T E

Senate Bill No. 1383

Introduced by **Senator JUAN MIGUEL F. ZUBIRI**

AN ACT
PROMOTING OPEN ACCESS IN INTERNET SERVICES AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Despite continued improvements, Internet in the Philippines continues to be slower, more expensive, and less accessible compared to peers in the region and around the world.

Philippine Internet is second-most expensive among members of the Association of South East Asian Nations (ASEAN) and has continued to slide down the rankings of the Alliance for Affordable Internet's (A4AI) Affordability Drivers Index, even as Internet services in neighboring countries have gotten cheaper.[1] As a result of the poor and low-quality access to Internet among many, especially in the countryside Filipinos are the slowest adopter of e-commerce in Southeast Asia.[2]

The poor state of Internet connectivity has also negatively affected the growth and global competitiveness of the Philippines' digital firms: World Bank's June 2022 Philippine Economic Update reports that the number of digital firms in the country that use ICT for back-end systems for better productivity trail those of Vietnam, Malaysia, and Cambodia.

These problems with Philippine Internet are rooted in the poor state of the country's Internet infrastructure – a product of a market where barriers to entry remain high and inefficiencies in network rollout continue to stunt the development of the digital infrastructure.

With the COVID-19 pandemic thrusting socio-economic life in the digital age, it is high time to adopt a framework that will pull the country out of the analog era and away from outdated policy and regulations. Under these outdated rules, Filipinos have little to no access to the variety of Internet technologies and services available today. A change in the legal framework is necessary to empower different types of Internet service providers, and address what the World Bank has described as "market failures in the provision of digital infrastructure."[3]

The legal framework proposed in this bill will improve competition and encourage a diversity of technologies and business models for Internet access and services. Open

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[1] Based on comparative 2016 and 2021 A4AI Affordability Report, https://a4ai.org/affordability-report/report/2021/ and https://a4ai.org/affordability-report/report/2015/
[2] Based on Google's e-Conomy SEA 2021 report, file:///D:/Files/Downloads/__qs_documents_12741_economy_sea_2021_report.pdf
[3] From the World Bank's Philippine Digital Economy Report 2020, https://documents1.worldbank.org/curated/en/796871601650398190/pdf/Philippines-Digital-Economy-Report-2020-A-Better-Normal-Under-COVID-19-Digitalizing-the-Philippine-Economy-Now.pdf

access will simplify the entry of industry players and empower even small service providers to build and operate their own networks, complementing existing infrastructure of network providers to reach almost half of the 58 million people living in the rural areas, or 29 million.

This bill proposes to:

- Provide for an expedited administrative process for the qualification and registration of Internet network and service providers;
- Encourage infrastructure sharing and efficient deployment of Internet infrastructure;
- Promote the rights of end users and provide protections and recourse to consumers; and
- Clarify responsibilities and powers of the Department of Information and Communications Technology (DICT) and National Telecommunications Commission (NTC), and empower them to fulfill the objectives of this bill.

As the world continues inexorably toward a digital future, this bill is an essential step for bringing all Filipinos online, and transforming the country into a truly connected, globally competitive economy.

In light of these, the swift passage of this bill is earnestly sought.

JUAN MIGUEL F. ZUBIRI

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

CHAPTER I
Introductory Provisions

Section I. *Short Title.* - This Act shall be known as the "Open Access in Internet Services 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 digital infrastructure, particularly the Internet, as the foundation of the country's digital transformation. It shall promote the construction and development of reliable, affordable, secure, open and accessible Internet networks, especially in the unserved and underserved areas. Moreover, the State shall remove barriers to competition in the provision of Internet services and create an entrepreneurial ecosystem where persons who wish to engage in the Internet service industry can compete openly and freely in the spirit of fair competition and permission-less innovation. The State shall promulgate policies that require Internet networks to adhere to globally competitive standards for speed and quality.

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 Internet network;
(d) *International gateway* or *cable landing station* refers to a segment of the Internet network that consists of any facility that provides an interface to send and receive Internet traffic between one country's domestic network facilities and those in another country;
(e) *Internet* is a global network connecting computers and electronic devices that allows people to access and share information and communicate from anywhere with an Internet service;

(f) *Internet access* refers to the ability of individuals, households, and organizations to connect to the Internet using any connection method or technology;

(g) *Internet network* refers to any and all types of facilities, equipment, or infrastructure for the construction, propagation, administration, operation, and/or maintenance of a network for Internet connectivity using any technologies, devices, and equipment, as well as their accessions and accessories. The Internet network is composed of various interconnected segments, which are interconnected in order to provide Internet service to the end user;

(h) *Internet service* refers to a service that provides a means for accessing or using the Internet over any connection method or technology. Internet service can refer to the provision of: (1) Internet network service or (2) Internet access service.

(i) *Internet service provider (ISP)* refers to any person, firm, partnership or corporation, government or private, engaged in the provision of Internet services. An ISP can provide an Internet network service and/or Internet access service;

(j) *Passive infrastructure* collectively refers to towers, poles, cable entrances, ducts, dark fiber, 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 Internet services. Passive infrastructure is a component of the Internet network; and

(k) *Peering* refers to a process where Internet networks connect directly and exchange traffic between their users, mostly on a settlement-free basis where neither ISP pays for the exchange. Peering can be done through an Internet exchange point (IXP).

CHAPTER II
Organization and Operation of the Internet Service Industry

Sec. 4. *Scope.* — This Act applies to any person or entity who participates in the Internet service industry. Any person or entity whose business deals with the provision of Internet network and Internet access services, shall be governed by the provisions of this Act. Public telecommunications entities (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 or cellular mobile telephone service (CMTS) provider, as defined in the Public Telecommunications Policy Act of the Philippines or Republic Act No. 7925, and which also provide Internet services, shall likewise be subject to the provisions of this Act with respect to the Internet services they provide and the interconnection to their networks that they extend to the participants of the Internet service industry.

Sec. 5. *Registration and Certification.* — All segments of the Internet network shall be competitive and open. Notwithstanding the provisions of this Act or any other law, the following registration and certification shall apply to the Internet service industry:

(a) All Internet service providers (ISP) shall be required to register with the National Telecommunications Commission (NTC).

(b) ISPs who wish to offer Internet network services shall apply and submit their network plans to the NTC who shall decide, using an administrative process, not more than sixty (60) days from the receipt of the application.

(c) Those who will operate an international cable landing station shall secure a legislative franchise.

(d) Unless they will operate an international cable landing station, ISPs shall not be required to secure a legislative franchise, Provisional Authority, or a Certificate of Public Convenience and Necessity or CPCN from the NTC in order to build, install, operate, and render Internet network and Internet access services. However, if they operate an international cable landing station, then they need to comply with the requirements of this Act.

(e) ISPs shall be required to comply with globally accepted minimum information security standards, as prescribed by the Department of Information and Communications Technology (DICT).

CHAPTER III
Regulation of the Internet Service Industry

SEC. 6. *Open Access Approach to the Regulation of the Internet Service Industry.* — The DICT shall be principally responsible for promulgating policies that shall be the basis for the regulation of the Internet service industry. The NTC shall be charged with implementing the policies of the DICT, maintaining the registry of ISPs, and handling complaints for violations of this Act.

SEC 7. DICT's Mandate for the Development of the Internet Service Industry – The DICT shall:

(a) Be responsible for policy and standard-setting that will promote the development and propagation of Internet services, especially in the underserved and unserved areas;

(b) Require the NTC to provide for an efficient and speedy administrative process in the registration of ISPs and to publish an updated database of registered ISPs annually, which shall include the exact location, ownership, technical specifications, and other relevant information about the ISP's facility. This database may be made available to interested parties via a Freedom of Information request;

(c) Develop a set of criteria for qualifying ISPs that will encourage the widest possible participation of as many industry players as possible who will build, operate, and offer Internet services in all segments of the network and to end users in different parts of the country;

(d) Require the NTC to publish on its website an updated list of resources that can support the development of Internet networks, the National Radio Frequency Allocation Table (NRFAT) with the frequency assignments.

(e) Adopt a technology-neutral framework that allows ISPs to use any technology, whether existing today or available in the future, for providing Internet service;

(f) Mandate transparency in pricing and the publication of pricing information of ISPs to ensure fair trading within and between each Internet network segment so as to allow clear, comparative information on market prices and services;

(g) Promote peering so that ISPs can connect to each other at the various segments and interfaces, preferably through a carrier-neutral Internet exchange point (IXP);

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

(i) Promulgate, together with the Philippine Competition Commission (PCC), rules promoting fair and open competition and defining and regulating entities with substantial market power. The PCC and the DICT shall ensure that the principles and policies enshrined under the Philippine Competition Act are strictly adhered to in the Internet services industry. The PCC and the NTC shall ensure that all industry players observe fair, reasonable, and nondiscriminatory treatment in all their dealings, and that barriers to entry are eliminated to make the industry highly competitive. To this end, within thirty (30) days from the effectivity of this Act, the PCC and the DICT shall enter into an agreement to foster and develop interagency cooperation mechanisms, including information-sharing tools, that guide them in the performance of their respective mandates, and in the promotion of fair competition in the Internet service industry.

(j) Promulgate, together with the Anti-Red Tape Authority (ARTA) and other relevant government agencies, rules, policies, and regulations that mandate the streamlining and fast-tracking of the approval process by national government agencies, local government units, homeowners' associations, and premises and estate management, such as building administrators and estate managers for permits, registrations, forms, certificates,

requests or other requirements for the installation and deployment of Internet networks, including passive infrastructure for various types of networks, in accordance with the provisions of Republic Act No, 11032 also known as the Ease of Doing Business Act, or its amendments or future iterations.

Sec. 8. *Setting Performance Standards.* - The DICT, in coordination with the NTC, shall prescribe performance standards for ISPs, after public consultation and hearings within six (6) months from the effectivity of this Act. It shall review and at least once a year and as necessary upgrade performance standards imposed on the Internet service industry to ensure that performance standards, at a minimum, be at par with service levels established in regional Internet service performance indices and aligned with international best practices. Such standards shall take into account service availability, speed, packet loss, jitter, and latency.

Sec. 9. *Infrastructure Sharing, Right of Way, and Co-location.* — The DICT, in coordination with the NTC, ARTA, the Department of Public Works and Highways (DPWH), and other relevant government agencies, and after consultation with stakeholders, shall within one hundred eighty (180) days from the effectivity of this Act, promulgate policies, rules, and regulations to ensure that passive infrastructure, whether existing or built in the future, necessary or capable of supporting Internet networks or services are:

(a) made mandatory for open access and made available for co-location and co-use by the owner of network facilities, equipment, and infrastructure on an open, fair, and nondiscriminatory basis to any access seeker's network facilities, in any segment, subject to the technical feasibility of the access seeker's request and the network facility and infrastructure owner's standard published offer terms, conditions, and rates.

(b) built not only in the city centers, but most especially in the remote, unserved, and underserved areas in order for both existing and new players to extend Internet services throughout the country;

(c) as far as possible, deployed together with roadworks, pipe-laying, and other infrastructure development by both government and private entities; and

(d) proliferated in the most cost-efficient and timely manner through various means, including, encouraging the operation of independent entities that build and operate towers, dark fiber, and utility corridors, among other passive infrastructure that help facilitate Internet network deployment.

For purposes of Internet services, the NTC shall, in case of a dispute arising from an infrastructure-sharing agreement: (1) mediate between an ISP and an infrastructure owner, and (2) serve as the primary enforcer of this provision.

The DICT, in coordination with the PCC, shall ensure a level-playing field and price nondiscrimination among ISPs and network facility and infrastructure owners.

The DICT, in coordination with the NTC, shall promulgate policies, rules, and regulations to ensure that buildings, condominiums, villages, towns, and subdivisions are all built with facilities, such as cable entrances, ducts, and risers, that allow nondiscriminatory access to multiple Internet service industry players in order for them to provide service.

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

CHAPTER IV
Prohibited Acts

Sec. 10. *Prohibited Acts.* — The following acts are prohibited:

(a) Refusal to Plug and Play. - Any ISP, insofar as such person is so engaged, shall not refuse access to infrastructure to any other ISP, except for failure to pay open market fees for the access to the service. ISPs 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 Internet service.

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

(b) Throttling. —An ISP shall treat all traffic equally when providing Internet 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 an ISP 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; and (3) it is necessary to block the transmission of unwanted communications such as spam and child pornographic materials upon the complaint of the end user or the ISP;

(c) Refusal to Give Information. — It shall be prohibited for any ISP, including PTEs with regard to its network and facilities, to refuse or fail to make available on a timely basis, to the other ISPs who interconnect with or get bandwidth from them, the technical information about their essential facilities or network facilities and commercially relevant information that are necessary for the efficient provision of services; and

(d) Anti-competitive Cross-subsidization. – ISPs shall maintain separate books of accounts between different Internet network segments in order to allow identification of costs and revenues for each segment. Any violation of this provision shall give rise to a presumption of anti-competitive cross-subsidization, which shall then be referred to the PCC for proper determination and action, in accordance with the provisions of Republic Act No. 10667 also known as the Philippine Competition Act. Nothing herein shall prevent interconnecting networks from charging the appropriate cost-based compensation for the use of interconnection facilities.

Sec. 11. *Administrative Penalties.* – Any person who fails to comply with the provisions of this Act shall be imposed a minimum penalty of a fine of not less than One hundred thousand pesos (P100,000.00) for every day during which such default or violation continues, until the participant fully complies: Provided, that the maximum penalty under this provision shall not exceed Five million pesos (P5,000,000.00) for a single violation; and provided further, That if the ISP 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.

Sec. 12. *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 the publication of such adjustments.

CHAPTER V
Rights of Internet Service Users and Responsibilities of Internet Service Providers

Sec. 13. *Rights of End Users.* – The user of Internet services shall have the following basic rights:

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

(b) To be rendered Internet services within two (2) months from application for service;

(c) Regular, timely and accurate billing, courteous and efficient service at business offices and online platforms, and by company personnel and contractors;

(d) Timely correction of errors in billing and prepaid load credits and the immediate provision of rebates or refunds by the ISP without the need for demand by the user; and

(e) Thorough and prompt investigation of, and action upon complaints. The ISP shall endeavor to allow complaints to be received by any means convenient to the end user, including voice calls, post, short messaging service (SMS), Instant messaging apps, 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 ISP, 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 paragraphs (a), (d), and (e) of this section or any other minimum performance standards set by the DICT and enforced by the NTC.

CHAPTER VI
Final Provisions

Sec. 14. *Implementing Rules and Regulations.* — Within sixty (60) days from the effectivity of this Act, the DICT, in coordination with the NTC, shall promulgate the necessary rules and regulations for its effective implementation.

Sec. 15. *Separability Clause.* – Should any provision herein be declared unconstitutional, the other provisions not affected shall remain in full force and effect.

Sec. 16. *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. 17. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved.