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NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. B. NO. 1611

Introduced by **SENATOR JOEL VILLANUEVA**

**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. In fact, the quality of Internet in the country is the second most expensive in the ASEAN region, 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 More than half of Philippine households (or 825) also remain to have no internet connection according to the National ICT Household Survey conducted by the Department of Information and Communications Technology.

The poor state of Internet connectivity has significantly affected the growth and global competitiveness of the Philippines' digital firms. According to World Bank's June 2022 Philippine Economic Update, the number of digital firms in the country that use ICT for back-end systems for better productivity trail that of Vietnam, Malaysia, and Cambodia. Poor internet also exacerbated the learning loss experienced by Filipino learners during the pandemic.²

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.

¹ Based on comparative 2016 and 2021 A4AI Affordability Report.

² October 1, 2021. Int'l study notes worst 'learning loss' among poorest PH kids. Inquirer. Retrieved from <https://globalnation.inquirer.net/199341/intl-study-notes-worst-learning-loss-among-poorest-ph-kids> (date last accessed: December 5, 2022).

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in the digital age, it is high time to adopt a framework that will pull the country out of the analog era and away from outdated policy and regulations. Under these outdated rules, Filipinos have little to no access to the variety of Internet technologies and services available today.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

In this with this, this bill provides for an “open access” framework to improve competition and encourage a diversity of technologies and business models for Internet access and services. Open 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 population living in the rural areas.

As the world moves 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.

Thus, the immediate passage of this bill is earnestly sought.


JOEL VILLANUEVA 

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>

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AN ACT
PROMOTING OPEN ACCESS IN INTERNET SERVICES AND FOR
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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 1. 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 permissionless 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;

- 1 (b) **Cellular Mobile Telephone Service (CMTS)** refers to the wide area mobile radio
2 telephone system with its own switch, base stations and transmission facilities
3 capable of providing high capacity mobile telecommunications by utilizing radio
4 frequencies;
5
- 6 (c) **Content** refers to, among others, texts, images, audios, videos, and animations that
7 are carried over the Internet network;
8
- 9 (d) **International gateway or cable landing station** refers to a segment of the Internet
10 network that consists of any facility that provides an interface to send and receive
11 Internet traffic between one country's domestic network facilities and those in
12 another country;
13
- 14 (e) **Internet** is a global network connecting computers and electronic devices that
15 allows people to access and share information and communicate from anywhere
16 with an Internet service;
17
- 18 (f) **Internet access** refers to the ability of individuals, households, and organizations to
19 connect to the Internet using any connection method or technology;
20
- 21 (g) **Internet network** refers to any and all types of facilities, equipment, or infrastructure
22 for the construction, propagation, administration, operation, and/or maintenance of
23 a network for Internet connectivity using any technologies, devices, and equipment,
24 as well as their accessions and accessories. The Internet network is composed of
25 various interconnected segments, which are interconnected in order to provide
26 Internet service to the end user;
27
- 28 (h) **Internet service** refers to a service that provides a means for accessing or using
29 the Internet over any connection method or technology. Internet service can refer to
30 the provision of: (1) Internet network service or (2) Internet access service;
31
- 32 (i) **Internet service provider (ISP)** refers to any person, firm, partnership or
33 corporation, government or private, engaged in the provision of Internet services.
34 An ISP can provide an Internet network service and/or Internet access service;
35
- 36 (j) **Passive infrastructure** collectively refers to towers, poles, cable entrances, ducts,
37 dark fiber, utility corridors, and any other non-electronic infrastructure and facilities,
38 either existing or to be deployed in the future, that may be used to support Internet
39 services. Passive infrastructure is a component of the Internet network; and
40
- 41 (k) **Peering** refers to a process where Internet networks connect directly and exchange
42 traffic between their users, mostly on a settlement-free basis where neither ISP pays
43 for the exchange. Peering can be done through an Internet exchange point (IXP).
44

CHAPTER II

Organization and Operation of the Internet Service Industry

1 implementing the said policies, maintaining the registry of ISPs, and handling the
2 complaints for violations of this Act.

3
4 **SEC. 7. DICT's Mandate for the Development of the Internet Service Industry.**

5 – The DICT shall:

- 6
7 (a) Be responsible for policy and standard-setting that will promote the development
8 and propagation of Internet services, especially in the underserved and unserved
9 areas;
- 10
11 (b) Coordinate with, and require the NTC to provide an efficient and speedy
12 administrative process in the registration of ISPs, consistent with the provisions of
13 Republic Act No. 9485 or the Anti-Red Tape Act of 2007, as amended by Republic
14 Act No. 11032 or the Ease of Doing Business and Efficient Government Service
15 Delivery Act of 2018. It shall also require NTC to publish an updated database of
16 registered ISPs annually, which shall include the exact location, ownership,
17 technical specifications, and other relevant information about the ISP's facility. This
18 database may be made available to interested parties via a Freedom of Information
19 request;
- 20
21 (c) Develop a set of criteria for qualifying ISPs that will encourage the widest possible
22 participation of as many industry players as possible who will build, operate, and
23 offer Internet services in all segments of the network and to end users in different
24 parts of the country;
- 25
26 (d) Require the NTC to publish on its website an updated list of resources that can
27 support the development of Internet networks and the National Radio Frequency
28 Allocation Table (NRFAT) with the frequency assignments;
- 29
30 (e) Adopt a technology-neutral framework that allows ISPs to use any technology for
31 providing Internet service;
- 32
33 (f) Mandate transparency in pricing and the publication of pricing information of ISPs
34 to ensure fair trading within and between each Internet network segment to allow
35 clear, comparative information on market prices and services;
- 36
37 (g) Promote peering so that ISPs can connect to each other at the various segments
38 and interfaces, preferably through a carrier-neutral Internet exchange point (IXP);
- 39
40 (h) Promulgate policies that will encourage distributed local solutions rather than
41 centralized ones, encouraging services that are closer to the user;
- 42
43 (i) Promulgate, together with the Philippine Competition Commission (PCC), rules
44 promoting fair and open competition and defining and regulating entities with
45 substantial market power. The PCC and the DICT shall ensure that the principles
46 and policies enshrined under Republic Act No. 10667, otherwise known as the

1 Philippine Competition Act, are strictly adhered to in the Internet services industry.
2 The PCC and the NTC shall ensure that all industry players observe fair, reasonable,
3 and nondiscriminatory treatment in all their dealings, and that barriers to entry are
4 eliminated to make the industry highly competitive. To this end, within thirty (30)
5 days from the effectivity of this Act, the PCC and the DICT shall enter into an
6 agreement to foster and develop interagency cooperation mechanisms, including
7 information-sharing tools, that guide them in the performance of their respective
8 mandates, and in the promotion of fair competition in the Internet service industry;
9 and

- 10
11 (j) Promulgate, together with the Anti-Red Tape Authority (ARTA) and other relevant
12 government agencies, rules, policies, and regulations that mandate the streamlining
13 and fast-tracking of the approval process by national government agencies, local
14 government units, homeowners' associations, and premises and estate
15 management, such as building administrators and estate managers for permits,
16 registrations, forms, certificates, requests or other requirements for the installation
17 and deployment of Internet networks, including passive infrastructure for various
18 types of networks, in accordance with the provisions of Republic Act No, 11032 also
19 known as the Ease of Doing Business Act, or its amendments or future iterations.
20

21 **SEC. 8. Setting Performance Standards.** – Within six (6) months from the
22 effectivity of this Act, the DICT in coordination with the NTC, shall prescribe performance
23 standards for ISPs, after public consultation and hearings. It shall review and at least once
24 a year and as necessary upgrade performance standards imposed on the Internet service
25 industry to ensure that performance standards, at a minimum, be at par with service levels
26 established in regional Internet service performance indices and aligned with international
27 best practices. Such standards shall take into account service availability, speed, packet
28 loss, jitter, and latency.
29

30 **SEC. 9. Infrastructure Sharing, Right of Way, and Co-location.** – Within one
31 hundred eighty (180) days from the effectivity of this Act, the DICT, in coordination with
32 the NTC, ARTA, the Department of Public Works and Highways (DPWH), and other
33 relevant government agencies, and after consultation with stakeholders shall promulgate
34 the necessary rules and regulations to ensure that passive infrastructure, whether existing
35 or built in the future, necessary or capable of supporting Internet networks or services
36 are:
37

- 38 (a) capable of open access and available for co-location and co-use on an open, fair,
39 and non-discriminatory basis to any access seeker's network facilities, in any
40 segment, subject to the technical feasibility of the access seeker's request and the
41 network facility and infrastructure owner's standard published offer terms,
42 conditions, and rates;
43
44 (b) built not only in the city centers, but most especially in the remote, unserved, and
45 underserved areas in order for both existing and new players to extend Internet
46 services throughout the country;

- 1
2 (c) as far as possible, deployed together with roadworks, pipe-laying, and other
3 infrastructure development by both government and private entities; and
4
5 (d) proliferated in the most cost-efficient and timely manner through various means,
6 including, encouraging the operation of independent entities that build and operate
7 towers, dark fiber, and utility corridors, among other passive infrastructure that help
8 facilitate Internet network deployment.
9

10 For purposes of Internet services, the NTC shall, in case of a dispute arising from
11 an infrastructure-sharing agreement: (1) mediate between an ISP and an infrastructure
12 owner, and (2) serve as the primary enforcer of this provision.
13

14 The DICT, in coordination with the PCC, shall ensure a level-playing field and price
15 nondiscrimination among ISPs and network facility and infrastructure owners.
16

17 The DICT, in coordination with the NTC, the Department of Housing and Urban
18 Development (DHSUD) and other relevant agencies, shall promulgate the relevant rules
19 and regulations to ensure that buildings, condominiums, villages, towns, and subdivisions
20 are built with facilities, such as cable entrances, ducts, and risers, that allow non-
21 discriminatory access to multiple Internet service industry players to facilitate the
22 provision of services.
23

24 The DICT, in coordination with the NTC and relevant government agencies, shall
25 also ensure the disaster resiliency and ease of recovery and restoration of passive
26 infrastructure, such as towers, poles, and utility corridors, from the effects of disasters by
27 strictly enforcing compliance with internationally-accepted engineering standards and
28 best practices, and relevant engineering and/or building codes and codes of practice.
29

30 **CHAPTER IV**
31 **Prohibited Acts**
32

33 **SEC. 10. Prohibited Acts.** – The following acts shall be prohibited:
34

- 35 (a) *Refusal to Plug and Play.* Any ISP shall not refuse access to infrastructure to any
36 other ISP, except for failure to pay open market fees for the access to the service.
37 ISPs shall not impede the end-user's right to access and distribute information and
38 content, use and provide applications and services and use terminal equipment of
39 their choice, regardless of the end user's or provider's location or the location, origin
40 or destination of the information, content, application or service via their Internet
41 service. For the avoidance of doubt, agreements between ISPs and end users on
42 commercial and technical conditions and the characteristics of Internet access
43 services such as price, data volume or speed, and any commercial practices
44 conducted by Internet access service providers shall not limit the exercise of the
45 rights of end users as provided under this Act.
46

1 (b) *Throttling.* An ISP shall treat all traffic equally when providing Internet access
2 services without discrimination, restriction or interference, regardless of the sender
3 and receiver, the content accessed or distributed, the applications or services used
4 or provided, or the terminal equipment used.
5

6 For this purpose, it shall be prohibited for an ISP to hinder or slow down services or
7 applications or access to specific sites in the Internet, except where (1) access to
8 such sites, services or applications are prohibited by law; (2) it is necessary to
9 preserve the integrity and security of the network and service of the provider or the
10 equipment of the end user: *Provided*, That if the breach of integrity or security is
11 caused by the equipment of the end user, the provider has to notify the end user
12 first and give the former sufficient time to rectify the situation; and (3) it is necessary
13 to block the transmission of unwanted communications such as spam and child
14 pornographic materials upon the complaint of the end user or the ISP;
15

16 (c) *Refusal to Give Information.* It shall be prohibited for any ISP, including PTEs with
17 regard to its network and facilities, to refuse or fail to make available on a timely
18 basis, to the other ISPs who interconnect with or get bandwidth from them, the
19 technical information about their essential facilities or network facilities and
20 commercially relevant information that are necessary for the efficient provision of
21 services; and
22

23 (d) *Anti-competitive Cross-subsidization.* ISPs shall maintain separate books of
24 accounts between different Internet network segments to allow identification of costs
25 and revenues for each segment. Any violation of this provision shall give rise to a
26 presumption of anti-competitive cross-subsidization, which shall then be referred to
27 the PCC for proper determination and action, in accordance with the provisions of
28 the Philippine Competition Act. For the avoidance of doubt, nothing herein shall
29 prevent interconnecting networks from charging the appropriate cost-based
30 compensation for the use of interconnection facilities.
31

32 **SEC. 11. Administrative Penalties.** – Any person who fails to comply with the
33 provisions of this Act shall be imposed a penalty of at least fine of at least One hundred
34 thousand pesos (P100,000.00) for each day of default or violation, until full compliance
35 with the provisions of this Act; *Provided*, that the maximum penalty under this provision
36 shall not exceed Five million pesos (P5,000,000.00) for a single violation; *Provided*
37 *further*, That if the ISP has a gross annual income of not more than Ten million pesos
38 (P10,000,000.00), the penalty that may be imposed shall be equivalent to one percent
39 (1%) to two percent (2%) of its gross annual income.
40

41 The NTC is hereby authorized and empowered to impose such fine, after due notice
42 and hearing.
43

44 **SEC. 12. Adjustment for Inflation.** – The fines imposed under this Act shall be
45 adjusted by the NTC, year-on-year, considering the prevailing cost of money based on
46 the current consumer price index, and subject to publication of such adjustments.

1
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3 **CHAPTER V**
4 **Rights of Internet Service Users and Responsibilities of Internet Service**
5 **Providers**

6 **SEC. 13. *Rights of End Users.*** – Users of Internet services shall have the
7 following basic rights:

- 8
9 (a) To be entitled to Internet services which is non-discriminatory, reliable, and
10 conforming with minimum standards set by the DICT and enforced by the NTC;
11
12 (b) To be rendered Internet services within two (2) months from application for service;
13
14 (c) Regular, timely and accurate billing, courteous and efficient service at business
15 offices and online platforms, and by company personnel and contractors;
16
17 (d) Timely correction of errors in billing and prepaid load credits and the immediate
18 provision of rebates or refunds by the ISP without the need for demand by the user;
19 and
20
21 (e) Thorough and prompt investigation of, and action upon complaints. The ISP shall
22 endeavor to allow complaints to be received by any means convenient to the end
23 user, including voice calls, post, short messaging service (SMS), Instant messaging
24 apps, and online communication, and shall keep a record of all complaints received
25 and the action taken to address the complaints.
26

27 Subject to the filing of a formal request to the ISP, a user may request the immediate
28 termination of service without the imposition of fees or penalties, and with the refund of
29 any fee or charge already paid by the user, should a data service provider not consistently
30 comply with paragraphs (a), (d), and (e) of this Section or any other minimum performance
31 standards set by the DICT as enforced by the NTC.
32

33 ISPs shall also act on all consumer complaints regarding service interruption or
34 other similar problems within one (1) day from the date the complaint; *Provided,* That if
35 the concerned entity unreasonably fails to act within this period, except when the cause
36 of such delay or failure is due to fortuitous events or causes beyond the control of the
37 concerned entity, such concerned ISP shall reduce or refund, as the case may be, the
38 corresponding bill of the consumer at an amount equivalent to the amount of the prepaid
39 service or prescribed monthly bill divided by the number of days covered by the prepaid
40 service or prescribed monthly bill and multiplied by the number of days the interruption
41 occurred. The ISPs shall submit a quarterly report to the NTC detailing the service
42 interruptions that occurred during the covered period, the complaints lodged before it and
43 the actions taken on each complaint. Any dispute as to the propriety of the refund or
44 deduction or penalty imposed in accordance with this Section shall be resolved by the
45 NTC, upon appropriate complaint and subject to compliance with the due process of law.
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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 and upon consultation with relevant stakeholders, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 15. *Separability Clause.* – Should any provision herein be declared unconstitutional or invalid, 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 two (2) newspapers of general circulation.

Approved.