

1 Republic of the Philippines
2 **HOUSE OF REPRESENTATIVES**
3 Constitution Hills, Quezon City
4

5 **EIGHTEENTH CONGRESS**
6 First Regular Session
7

8 **HOUSE BILL NO. 5341**
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11



12 **Introduced by REP. JOHNNY T. PIMENTEL**
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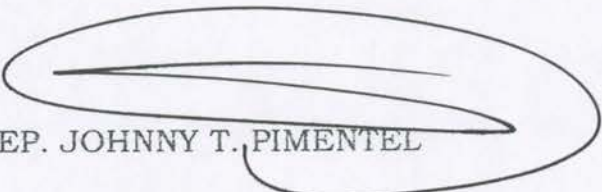
15 **EXPLANATORY NOTE**
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18 The latest ranking by the World Economic Forum shows the significant drop
19 of the Philippines' position. It indicates that the Philippines has fallen short
20 in creating an enabling environment that fosters wealth generation for the
21 economy. Among the factors attendant in this circumstance is the poor
22 competitiveness of the national information communication technology (ICT)
23 and its corresponding infrastructures.
24

25 Dearth access to the internet and the slow internet speed proves costly. Over
26 50 million Filipinos remain offline notwithstanding the past government
27 measures to allow ease of access to connectivity (i.e. Free Wifi Act). This
28 undermines the present world of digital and information age taking a toll to
29 our competitiveness allowing the much more competitive economies to take a
30 larger chunk in getting investors.
31

32 This Bill seeks to establish a forward-looking and future-ready digital policy
33 framework for the Philippines. We intend to create a space for different types
34 of service providers to build and operate data networks. We also seek to
35 impose a simplified registration and qualification process in order to attract
36 more players to invest in our national transmission infrastructure to foster a
37 faster and more cost-efficient information communication backbone.
38

39 The approval of this Bill is earnestly sought.
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42 
43
44 **REP. JOHNNY T. PIMENTEL**

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14 **AN ACT PROMOTING OPEN ACCESS IN DATA TRANSMISSION,**
15 **PROVIDING ADDITIONAL POWERS TO THE NATIONAL**
16 **TELECOMMUNICATIONS COMMISSION**

17 **CHAPTER I**
18 **INTRODUCTORY PROVISIONS**

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

21 **SEC. 2. Declaration of Policy.** – It is the policy of the state to narrow
22 the digital divide in the country by encouraging the development of data
23 transmission infrastructure and removing any barrier to competition in data
24 transmission services. Moreover, the State shall implement measures to
25 require data transmission service providers to adhere to telecommunications
26 standards suitable to the needs and aspirations of the nation and ensure that
27 internet users enjoy the best quality of data transmission service. The state
28 shall:

- 29 a. Promote the construction and development of reliable, affordable, open
30 and accessible data networks that transmit information at speed and
31 quality comparable to the best in the world;
- 32 b. Create an entrepreneurial ecosystem where persons who wish to engage
33 in the data transmission industry can compete openly and freely in the
34 spirit of fair competition and permission-less innovation;
- 35 c. Encourage investment in the digital infrastructure of 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 without permission, and thereby encouraging the development of advanced telecommunications capabilities and the removal of barriers to infrastructure investment; and
- h. Encourage infrastructure sharing and co-location in order to promote network investment, eliminate the uneconomic duplication of infrastructure facilities, and strengthen

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 broadband/internet network;
- d. Core/Backbone Network refers to the main line (or connection) including international connection that ties networks; delivers routes to exchange information among various sub-networks, connects regional distribution networks and, in some instances, provides connectivity to other peer networks;
- e. Data Transmission refers to the process of sending digital or digitized analog signal over a communication medium to one or more computing network/s, communication or electronic device/s. It enables the transfer and communication of devices in a point-to-point, point-to-multipoint and multipoint-to-multipoint environment. The term data transmission includes the provision of Voice Over Internet Protocol (VOIP) services but does not include the provision of Basic Telephone Services;
- f. Data Transmission Industry Participant refers to any person, firm, partnership or corporation, government or private, engaged in the provision of data transmission services to the public. This includes public telecommunications entities (PTEs) that offer data transmission services as defined under Republic Act 7925, otherwise known as the "Public Telecommunications Policy Act";
- g. *International Cable Landing Station* refers to a segment of data transmission that consists of any facility that terminates an international submarine cable, and which provides an interface to send

- 1 and receive data traffic between one country's domestic network
2 facilities and those in another country;
- 3 h. Open Access refers to the system of allowing the use of data
4 transmission and/or distribution systems and associated facilities
5 subject to fair, reasonable, and non-discriminatory terms in a
6 transparent market;
- 7 i. Paid Prioritization refers to the management of a data transmission
8 network to directly or indirectly favor some traffic over other traffic,
9 through the use of techniques such as, traffic shaping, prioritization,
10 resource reservation, zero-rating, or other forms of preferential traffic
11 management, either:
12 1. in exchange for consideration (monetary or otherwise) from a third
13 party, or
14 2. to benefit an affiliated entity;
- 15 j. Passive infrastructure shall collectively refer to telecommunications
16 towers, poles, cable entrances, ducts, utility corridors, and any other
17 non-electronic infrastructure and facilities, either existing or deployed
18 in the future, that may be used to support data transmission; and"
- 19 k. Voice Over Internet Protocol (VOIP) Service refers to the provision of
20 voice communication using Internet Protocol (IP) technology.

21 **CHAPTER II**
22 **ORGANIZATION AND OPERATION OF THE DATA TRANSMISSION**
23 **INDUSTRY**

24
25 **SEC. 4. Scope.** – This Act applies to all duly qualified persons who
26 participate in the data transmission industry subject to domestic regulations
27 and existing laws. For this purpose, any person or entity whose business deals
28 substantially with the transmission of data, including VoIP service provider,
29 Internet Service Providers (ISPs), and Data Center service providers, shall be
30 governed by the provisions of this Act. PTEs principally engaged in the
31 provision of basic telephone services, such as international carrier, inter-
32 exchange carrier, local exchange operator, and mobile radio services provider,
33 as these entities are defined in Republic Act No. 7925, which also provide data
34 transmission services, shall likewise be subject to the provisions of this Act
35 with respect to the data transmission services they provide and the
36 interconnection to their networks that they extend to data transmission
37 industry participants.

38
39 **SEC. 5. Segments.** – The data transmission industry shall be divided
40 into four segments: (a) International Gateway/Landing; (b) Core/Backbone
41 Network; (c) Middle Mile; and (d) Last Mile.

42
43 All four (4) segments shall be competitive and open. Data transmission
44 industry participants operating in any segment shall be allowed to use any
45 available technology, wired or wireless. Notwithstanding the provisions of this

1 act or any other law, the following registration and certification shall apply to
2 data transmission:

3
4 (A) All data transmission industry participants shall be required to register
5 with the national telecommunications commission (ntc). The ntc shall
6 promulgate a speedy and expeditious administrative process for registration
7 and shall, in coordination with the department of information and
8 communications technology (dict), develop a set of criteria for qualifying data
9 transmission industry participants that will encourage the widest possible
10 participation of as many industry players as possible who will offer data
11 transmission services to end users in different parts of the country. The
12 qualification requirements for data transmission industry participants shall
13 also take national security concerns into consideration, particularly for
14 facilities that interface directly with another country's domestic network;

15
16 (B) Data transmission industry participants in any of the four (4) segments
17 shall not be required to secure a franchise from Congress and a Certificate of
18 Public Convenience and Necessity (CPCN) or Provisional Authority (PA) from
19 the National Telecommunications Commission (NTC), to construct, install,
20 and operate networks and facilities for the data transmission services they
21 provide. Data transmission industry participants shall also not be required to
22 secure a congressional franchise and PA/CPCN before they could secure
23 permits, certificates or licenses necessary for deploying data transmission
24 networks, whether using wired or wireless technologies, including but not
25 limited to permits and licenses for the construction, installation,
26 establishment or operation of radio/base stations. Neither shall they be
27 required to secure a congressional franchise and CPCN or a PA for the data
28 transmission services they provide to the general public. Participants in the
29 data transmission industry shall, however, be required to register with the
30 NTC stating the segment they are participating in and provide the NTC with
31 their schedules of rates.

32
33 Nothing in this provision shall prevent the NTC from collecting supervisory
34 and regulatory fees (SRF) from public telecommunications entities who are
35 required to pay supervisory and regulatory fees under Commonwealth Act
36 146, even when the PTEs are registered as data transmission industry
37 participants with the NTC.

38 39 **CHAPTER III** 40 **REGULATION OF THE DATA TRANSMISSION INDUSTRY**

41
42 **SEC. 6. Open Access Approach to Regulation of the Data**
43 **Transmission Industry.** – The NTC shall adopt and ensure that the data
44 transmission industry remains open and accessible to all qualified
45 participants. Specifically, it shall:

- 46 a. Implement an efficient and speedy administrative process in the
47 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 all the 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 once a year;
- h. Promulgate, together with the Philippine Competition Commission (PCC), rules defining and regulating entities with substantial market power; and
- i. Publish a spectrum management framework to be developed together with the DICT and the PCC.

SEC. 7. Spectrum Allocation and Assignment. – The NTC shall maximize the allocation and assignment of finite radio spectrum resources used in the transmission of data by ensuring that spectrum is made available for the use of all registered data transmission industry participants. To this end:

- a. The procedure for radio spectrum allocation, re-allocation, assignment, re-assignment, re-classification, joint use or co-use, and recall shall be made transparent to the public. All applications, including letter-requests, allocation, re-allocation, assignment, re-assignment, re-classification, joint use or co-use, and recall shall be posted in the NTC's 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 allocation, re-allocation, assignment, re-assignment, re-classification, joint use or co-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 allocation, re-allocation, assignment, re-assignment, re-classification, joint use or co-use, and recall. The NTC shall not allocate, reallocate, assign, reassign, reclassify, allow joint use

1 or co-use, or recall any radio frequency band or bands without
2 conducting at least one (1) public hearing and allowing public comment
3 for a period of fifteen (15) days from the date of the public hearing, prior
4 to approval and/or disapproval of the same. This applies to all
5 spectrum, whether used for data transmission or not;

- 6 b. all radio spectrum, radio frequency allocation, re-allocation,
7 assignment, re-assignment, re-classification, joint use or co-use, and
8 recall decisions of the NTC shall be published in the NTC's website and
9 in a conspicuous place in the offices of the NTC for at least three (3)
10 consecutive months. The recall of frequency for purposes of free public
11 use shall be given priority.

12 The immediately preceding paragraphs (a) and (b) shall not apply to
13 applications for frequency assignments for fixed point-to-point radio
14 links, Wi-Fi and satellite networks;

- 15 c. The NTC shall ensure that the allocation, re-allocation, assignment, re-
16 assignment, re-classification, joint use or co-use, and recall of spectrum
17 does not result in the concentration of spectrum resources which
18 promote, establish, or perpetuate the significant market power of PTEs
19 or of only a limited number of participants. In instances where the
20 resulting assignment of spectrum for mobile and point-to-multipoint
21 networks will give an assignee or entities it controls, jointly or singly, or
22 under common control, either by virtue of that request or in
23 combination with other previous requests by that party or its affiliates,
24 fifteen percent (15%) or above of assignable spectrum in the same band,
25 the party requesting for an assignment of spectrum or a joint use of
26 spectrum shall be required to serve notice to the PCC and secure a no-
27 objection notice from the PCC. The PCC shall issue a no-objection notice
28 within thirty (30) working-days upon its receipt of pertinent information
29 necessary for the review and issuance of the notice: Provided, That PCC
30 may once extend such period for an additional fifteen (15) working-days
31 upon their notification of the NTC and the concerned party or parties to
32 a spectrum allocation, re-allocation, assignment, re-assignment, re-
33 classification, joint use or co-use, and recall. Any person or entity who
34 believes that any one or more of the NTC's decisions for the assignment
35 of radio spectrum, whether past or present, will promote the dominance
36 of any entity and hinder competition may file a complaint before the
37 PCC to determine the dominance of a data transmission industry
38 participant and act on anti-competitive conduct in accordance with its
39 mandate under Republic Act No. 10667, otherwise known as the
40 Philippine Competition Act;
- 41 d. The NTC shall promptly act on applications of data transmission
42 industry participants for permits to import equipment. Any application
43 for permit to import equipment that is not acted on by the NTC within
44 seven (7) days shall be deemed approved; and

1 e. If the NTC finds, on its own initiative or upon complaint, that any right,
2 license or radio spectrum assignment to any data transmission
3 industry participant or PTE is not being used, or is not being maximized
4 by the user thereof, or that the grantee has violated the provisions of
5 this Act, it may, *motu proprio* or upon petition by any person, subject to
6 due process, recall the radio spectrum assignment of the data
7 transmission industry participant or PTE. The NTC shall, where
8 required and appropriate, work with the data transmission industry
9 participant or PTE concerned to take appropriate measures to minimize
10 the impact of such recall on active users of services utilizing the recalled
11 spectrum. The foregoing notwithstanding, no frequency shall be
12 recalled within 18 months of the awarding of a provisional authority or
13 license or registration.

14 F. The NTC shall ensure that the allocation, re-allocation, assignment, re-
15 assignment, re-classification, joint use or co-use, and recall of spectrum
16 does not result in the concentration of spectrum resources which
17 promote, establish, or perpetuate the significant market power of PTEs
18 or of only a limited number of participants. In instances where the
19 resulting assignment of spectrum for mobile and point-to-multipoint
20 networks will give an assignee or entities it controls, jointly or singly, or
21 under common control, either by virtue of that request or in
22 combination with other previous requests by that party or its affiliates,
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24 the party requesting for an assignment of spectrum or a joint use of
25 spectrum shall be required to serve notice to the PCC and secure a no-
26 objection notice from the PCC. The PCC shall issue a no-objection notice
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28 necessary for the review and issuance of the notice: provided, that PCC
29 may once extend such period for an additional fifteen (15) working-days
30 upon their notification of the NTC and the concerned party or parties to
31 a spectrum allocation, re-allocation, assignment, re-assignment, re-
32 classification, joint use or co-use, and recall.

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

- 34
35 a. Mandate that, within one (1) year from the effectivity of this Act, all last
36 mile providers shall provide a minimum download speed of two
37 megabits per second (2 Mbps) or as mandated by the National
38 Broadband Plan, whichever is higher, for mobile broadband and for
39 fixed and fixed wireless/broadband access;
40 b. In coordination with the DICT, prescribe performance standards after
41 public consultation and hearings within six (6) months from the
42 effectivity of this Act;
43 c. Upgrade performance standards imposed on the data transmission
44 industry regularly to ensure that performance standards shall, at a
45 minimum, be at par with service levels established in regional data
46 network performance indices and aligned with international best

1 practices. Such standards shall take into account speed, packet loss,
2 jitter, and latency;

- 3 d. Regularly review performance standards at least once a year and
4 publish new performance standards at least thirty (30) days before they
5 take effect. The publication of the results of the performance
6 measurements shall be done in an open data format accessible to the
7 general public;
- 8 e. Any person, or the NTC itself may, *motu proprio*, file a petition to penalize
9 any data transmission industry participant for failure to deliver service
10 according to the NTC's published performance standard and to require
11 rectification of such non-compliance; and
- 12 f. Measure the performance of the data industry participants, furnish a
13 copy of the raw data of the measurements to the DICT, and publish the
14 results of its measurements in its website.

15
16 **SEC 9. Arms-length Transactions and Transparency.** – The NTC
17 shall:

- 18 a. publish and make available in print and online formats all aspects of
19 spectrum use information, including the National Radio Frequency
20 Allocation Table (NRFAT), indicating therein the purpose or use to
21 which each frequency band is allocated, and, for frequency bands
22 allocated for public use, the persons and/or entities to whom each
23 particular frequency is assigned. The NRFAT and updated radio
24 spectrum use information shall be made available on the NTC's website
25 and to any person who requests the same, upon written request; and
- 26 b. promulgate rules requiring all data transmission industry participants
27 to file an annual report and include therein a fair and accurate
28 statement regarding their market prices and their services. The annual
29 report shall include all costs and charges relevant to the data
30 transmission network segment where the participants operate. The
31 rates shall be made available online, in print, and in any other viable
32 venues to the public. Any person can file a complaint pertaining to these
33 rates within thirty (30) days of posting. Each player at each segment
34 shall submit a copy of their rates to the NTC and the PCC. The rates
35 shall be published, including a historical record, in a consolidated
36 manner. The data transmission industry participants are required to
37 keep a publicly accessible archive of their rates.

38
39 **SEC 10. Fair Competition.** – The PCC and the NTC shall ensure that
40 the principles and policies enshrined under Republic Act No. 10667, are
41 strictly adhered to in the data transmission industry. The PCC and NTC shall
42 ensure that all industry players shall observe fair, reasonable and non-
43 discriminatory treatment in all their dealings, and that barriers to entry are
44 eliminated to make the industry highly competitive. To this end, the PCC and
45 NTC shall foster and develop interagency cooperation mechanisms, including

1 information-sharing tools, that will guide them in the performance of their
2 respective mandates, and in the promotion of fair competition in the data
3 transmission industry.

4
5 **SEC 11. Technological Neutrality.** – The NTC shall promulgate the
6 necessary rules and regulations to ensure that the provisions of this law
7 apply, *mutatis mutandis*, to future technologies in data transmission.

8
9 **SEC. 12. Expedited Processing.** – In all instances where a participant
10 in the data transmission industry shall require a form, certificate, or request
11 from any government agency or local government unit (LGU), there should be
12 no more than two (2) public officers involved in processing the form,
13 certificate, or request.

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

22
23 Approval of any application for permits and other requirements imposed
24 by national government agencies and/or local government units that are
25 related to the deployment of data transmission networks shall strictly comply
26 with the provisions of Republic Act 11032 or the Ease of Doing Business Act.

27
28 Sec. 13. Infrastructure sharing and co-location. – the DICT and NTC
29 shall promulgate policies, rules, and regulations to ensure that a data
30 transmission network's passive infrastructure are made available through
31 existing and future data transmission networks or networks of public utilities,
32 such as, but not limited to, towers, poles, ducts, entrance cables, risers, and
33 utility corridors are:

- 34
35 (a) mandatory for open access and made available for co-location and co-
36 use by the owner of network facilities, equipment, and infrastructure
37 on an open, fair, and non-discriminatory basis to any access seeker's
38 network facilities, in any segment, subject to the technical feasibility
39 of the access seeker's request and the network facility and
40 infrastructure owner's standard published offer terms, conditions,
41 and rates: provided, that the provision of access to government-owned
42 and -operated facilities and support infrastructure to access seekers
43 for the purpose of offering data transmission services shall be
44 mandatory, unless special circumstances, such as but not limited to
45 national security concerns, exist;

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2 respective mandates, and in the promotion of fair competition in the data
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39 of the access seeker's request and the network facility and
40 infrastructure owner's standard published offer terms, conditions,
41 and rates: provided, that the provision of access to government-owned
42 and -operated facilities and support infrastructure to access seekers
43 for the purpose of offering data transmission services shall be
44 mandatory, unless special circumstances, such as but not limited to
45 national security concerns, exist;

- 1 (b) built not only in the city centers, but most especially in the remote,
2 unserved, and underserved areas in order to extend data transmission
3 services by both the existing and new players throughout the country;
4 (c) as far as possible, deployed together with roadworks, pipe-laying, and
5 other infrastructure development by both government and private
6 entities; and
7 (d) propagated in the most cost-efficient and timely manner through
8 various means, including, encouraging the operation of independent
9 entities that build and operate towers, dark fiber, and utility corridors,
10 among other passive infrastructure that help facilitate data
11 transmission network deployment.

12
13 The DICT and NTC shall promulgate policies, rules, and regulations to
14 ensure that buildings, condominiums, villages, towns, and subdivisions are
15 all built with facilities, such as cable entrances, ducts, and risers, that allow
16 non-discriminatory access to multiple data transmission industry players in
17 order for them to provide service.

18
19 The DICT and NTC shall also promulgate policies, rules, and guidelines
20 that will ensure a level-playing field and price non-discrimination among data
21 transmission industry participants and network facility and infrastructure
22 owners.

23
24 The DICT and NTC shall coordinate and issue a policy with other
25 relevant government agencies, as necessary, and private entities concerned to
26 implement this provision. For purposes of data transmission, the ntc shall, in
27 case of a dispute arising from an infrastructure-sharing arrangement, (1)
28 mediate between a data transmission industry participant and an
29 infrastructure owner, which includes a public telecommunications entity, a
30 data transmission industry participant, a public utility, or a public service
31 network provider, and (2) serve as the primary enforcer of this provision.

32
33 The DICT and NTC shall also ensure the disaster resiliency and ease of
34 recovery and restoration of passive infrastructure, such as towers, poles, and
35 utility corridors, from the effects of disasters by strictly enforcing compliance
36 with internationally accepted engineering standards and best practices, and
37 relevant engineering codes and codes of practice.

38 39 CHAPTER IV 40 PROHIBITED ACTS

41
42 **SEC. 14. *Prohibited Acts.*** – The following acts shall be prohibited:

- 43 a. Refusal to Plug and Play – Any data transmission industry participant,
44 insofar as such person is so engaged, shall not refuse access to
45 infrastructure to any other data transmission industry participant,
46 except for failure to pay open market fees for the access to the service;

- 1 b. Data transmission industry participant shall not impede the end-user's
2 right to access and distribute information and content, use and provide
3 applications and services and use terminal equipment of their choice,
4 regardless of the end-user's or provider's location or the location, origin
5 or destination of the information, content, application or service, via
6 their data transmission service;
- 7 c. Agreements between data transmission providers of data services and
8 end-users on commercial and technical conditions and the
9 characteristics of data access services such as price, data volume or
10 speed, and any commercial practices conducted by providers of internet
11 access services, shall not limit the exercise of the rights of end-users
12 laid down in the preceding paragraph;
- 13 d. Paid prioritization – A data transmission industry participant, shall not
14 engage in paid prioritization for monetary or other consideration except
15 when allowed by the NTC after such participant demonstrates that the
16 practice would provide significant public interest benefit and will not
17 disadvantage content and applications that are not prioritized nor harm
18 the open nature of the Internet;
- 19 e. Throttling – Data transmission industry participants shall treat all
20 traffic equally when providing data access services without
21 discrimination, restriction or interference, regardless of the sender and
22 receiver, the content accessed or distributed, the applications or
23 services used or provided, or the terminal equipment used;
- 24 f. It shall be prohibited for a data transmission industry participant to
25 hinder or slow down services or applications or access to specific sites
26 on the internet except where (a) access to such sites, services or
27 applications are prohibited by law; (b) it is necessary to preserve the
28 integrity and security of the provider and the equipment of the end-
29 user: Provided, That if the breach of integrity or security is caused by
30 the equipment of the end-user, the provider has to notify the end-user
31 first and provide the end-user sufficient time to rectify the situation; or
32 (c) it is necessary to block the transmission of unwanted
33 communications to an end-user, on the application or complaint of the
34 end-user or the data transmission industry participant, and upon
35 lawful order of the court;
- 36 g. Refusal to give information - It shall be prohibited for any data
37 transmission industry participant, including PTEs with regard to its
38 network and facilities, to refuse or fail to make available, on a timely
39 basis, to suppliers of data transmission services, technical information
40 about its essential facilities or network facilities and commercially
41 relevant information that are necessary for them to provide services;
42 and
- 43 h. Anti-competitive cross-subsidization - The NTC shall require separate
44 books of account between different data transmission segments in order

1 to allow identification of costs and revenues for each segment. Any
2 violation of this provision shall give rise to a presumption of anti-
3 competitive cross-subsidization, which shall then be referred to the PCC
4 for proper determination and action, in accordance with the provisions
5 of Republic Act No. 10667. Nothing herein shall prevent interconnecting
6 networks from charging the appropriate cost-based compensation for
7 the use of interconnect facilities.

8 9 **CHAPTER V** 10 **PENALTIES**

11 **SEC. 15. Administrative Penalties.** – The NTC shall require data
12 transmission industry participants and PTEs providing data transmission
13 services to comply with the prescribed performance standards and shall
14 impose penalties for failure to comply with such performance standards.

- 15
16 a. Any data transmission industry participant that engages in the
17 prohibited acts under Section 14 of this Act or fails to comply with the
18 obligations under Section 8 of this Act shall suffer a minimum penalty
19 of a fine of not less than Three Hundred Thousand Pesos (Php
20 300,000.00) but not more than Five Million Pesos (Php 5,000,000.00)
21 for every day that the violation continues until the participant fully
22 complies: Provided, That, if the data transmission industry participant
23 has a gross annual income not exceeding Ten Million Pesos (Php
24 10,000,000.00), the penalty that may be imposed shall be equivalent to
25 one percent (1%) to two percent (2%) of its gross annual income. In
26 cases of anti-competitive cross-subsidization, which is prohibited under
27 Section 14(e) of this Act, the imposable penalties are those provided for
28 under Republic Act No. 10667. The NTC is hereby authorized and
29 empowered to impose such fine, after due notice and hearing.
- 30 b. An entity who fails to substantially comply with the NTC's performance
31 standards for three (3) consecutive years shall, subject to due process,
32 be removed from the registry of registered data transmission industry
33 participants and shall be prohibited from rendering data transmission
34 services.
- 35 c. A data transmission industry participant violating any provision of this
36 Act shall forfeit all certificates, licenses, authorizations, rights, and
37 awards issued to it in relation to its participation in the data
38 transmission industry.
- 39 d. Any other violations of this Act shall be sanctioned with a fine of not
40 less than Fifty Thousand Pesos (P50,000.00) and but not more than
41 Two Million Pesos (P2,000,000.00).

42 **SEC. 16. Adjustment for Inflation.** – The fines imposed under this
43 Act shall be adjusted by the NTC, year-on-year, considering the prevailing cost
44

1 of money based on the current consumer price index, and subject to
2 publication of such adjustments.

3
4 **CHAPTER VI^{[L]_{SEP}}**
5 **RIGHTS OF DATA TRANSMISSION SERVICE USERS AND**
6 **RESPONSIBILITIES OF DATA TRANSMISSION SERVICE PROVIDERS**

7
8 **SEC. 17. *Rights of End-Users.*** — The user of data transmission
9 services shall have the following basic rights:

- 10 a. Entitlement of data transmission service which is non-discriminatory,
11 reliable, and conforming with minimum standards as provided by the
12 appropriate national government agencies;
13 b. To be given data transmission services within two (2) months from
14 application for service;
15 c. Regular, timely and accurate billing, courteous and efficient service at
16 business offices and by company personnel;
17 d. Timely correction of errors in billing and the immediate provision of
18 rebates or refunds by the data transmission service provider without
19 the need for demand by the user; and
20 e. Thorough and prompt investigation of, and action upon complaints. The
21 data transmission service provider shall endeavor to allow complaints
22 to be received by any means convenient to the end-user, including voice
23 calls, post, short messaging service (SMS), multi-media messages
24 (MMS) and online communication, and shall keep a record of all
25 complaints received and the action taken to address the complaints.
26 f. Subject to the filing of a formal request to the data service provider, a
27 user may request the immediate termination of service without the
28 imposition of fees or penalties, and with the refund of any fees or
29 charges already paid by the user, should a data service provider not
30 consistently comply with preceding paragraphs (a), (d), (e), or any other
31 minimum performance standards set by the NTC.

32
33 **CHAPTER VII^{[L]_{SEP}}**
34 **FINAL PROVISIONS**

35
36 **SEC. 18. *Joint Congressional Oversight Committee on Open Access***
37 ***in Data Transmission.*** - There is hereby created Joint Congressional
38 Oversight Committee on Open Access in Data Transmission (JCOCOADT)
39 which shall monitor and ensure the effective implementation of this Act. It
40 shall determine weaknesses and loopholes in the law, recommend the
41 necessary remedial legislation or administrative measures and perform such
42 other duties and functions as may be necessary to attain the objectives of this
43 Act.

44 The JCOCOADT shall be composed of five (5) members from the Senate
45 and five (5) members from the House of Representatives in addition to the

1 Chairperson of the Senate Committee on Science and Technology and the
2 Chairperson of the House of Representatives Committee on Information and
3 Communications Technology, who shall Chair the Oversight Committee in the
4 order specified herein: Provided, That, two (2) members of each chambers'
5 nominees shall come from the ranks of the minority party or bloc.

6 The Chairperson of the Senate Committee on Science and Technology
7 and the Chairperson of the House of Representatives Committee on
8 Information and Communications Technology shall act as co-Chairpersons of
9 the JCOCOACT. The ranking minority members nominated by both the
10 Senate and the House of Representatives shall act as Vice Co-Chairpersons.

11 The Secretariat of the JCOCOACT shall come from the existing
12 Secretariat personnel of the Senate Committee on Science and Technology
13 and the House of Representatives Committee on Information and
14 Communications Technology. The JCOCOACT shall have its own independent
15 counsel.

16 The JCOCOACT shall exist for the period not exceeding five (5) years
17 from the effectivity of this Act. Thereafter, its oversight functions shall be
18 exercised by the Senate Committee on Science and Technology and the House
19 of Representatives Committee on Information and Communications
20 Technology, acting separately.

21
22 **SEC. 19. Implementing Rules and Regulations.** — Within sixty (60)
23 days from the effectivity of this Act, the DICT, in coordination with the NTC
24 and the PCC, shall promulgate the necessary rules and regulations for the
25 effective implementation of this Act.

26
27 **SEC. 20. Separability Clause.** — Should any provision herein be
28 declared unconstitutional, the same shall not affect the validity of the other
29 provisions of this Act.

30
31 **SEC. 21. Repealing Clause.** — All laws, decrees, orders, rules, and
32 regulations or other issuances or parts inconsistent with the provisions of this
33 Act are hereby repealed or modified accordingly.

34
35 **SEC. 22. Effectivity.** — This Act shall take effect fifteen (15) days after
36 its publication in the Official Gazette or in at least two (2) national newspapers
37 of general circulation.

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Approved,