

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



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

3769

House Bill No. _____

EXPLANATORY NOTE


This bill seeks to grant to the National Telecommunications Commission (NTC) the power of jurisdiction and regulation over all foreign programs through the granting of Landing Rights to foreign programmers. In particular, the NTC shall regulate the manner, rates, terms and conditions by which foreign programs from foreign programmers are made available to cable TV operators for the benefit of the consuming public. Likewise the NTC shall be vested with the authority to resolve any and all disputes between the said foreign programmers and cable TV operators.

The 1987 Constitution stresses the right of the people to information and education which go hand in hand in attaining the progress and development of our economy and the preservation and enrichment of our culture. To ensure the enjoyment of the said rights and the attainment of the stated aims, ownership requirements have been imposed on relevant industries such as the 100% Filipino ownership requirement on entities engaged in the mass media industry.

However, due to the advancements in technology and the practices in the relevant industries, the Filipino ownership requirement on its own has not proven to be flexible nor broad enough to implement the mandate of the 1987 Constitution. The reality is that a substantial percentage of the mass media content disseminated throughout the country originates from foreign entities. This is markedly so with regards to the audio-visual content provided by foreign programmers to cable TV operators. As the cable TV industry is a mass media industry that has considerable effect and influence on the consuming public's mindset, perspective and even behavior, government intervention must be present. Such government intervention will also allow for the proper collection of the applicable taxes, thereby aiding in shoring up the government's finances.

There is a need therefore, to regulate the manner, rates, terms and conditions by which foreign programs from foreign programmers are made available to cable TV operators for the benefit of the consuming public. Such need shall be addressed by granting Landing Rights and vesting the NTC with the power of jurisdiction and regulation over all foreign programs as well as the authority to resolve any and all disputes between foreign programmers and cable TV operators, thereby ensuring non-discriminatory access to appropriate and desirable content under the framework of transparency and fair play, for the full attainment of the progress and development of our economy and the preservation and enrichment of our culture.

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


RUFUS B. RODRIGUEZ

EIGHTEENTH CONGRESS)
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HOUSE OF REPRESENTATIVES

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House Bill No. **3769**

AN ACT
REGULATING FOREIGN PROGRAMMING THROUGH THE GRANTING OF LANDING
RIGHTS, DESIGNATING THE NATIONAL TELECOMMUNICATIONS COMMISSION AS
THE APPROPRIATE REGULATORY BODY AND FOR OTHER PURPOSES

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

PART I. GENERAL PROVISIONS

Section 1. Title – This Act shall be known as the "Landing Rights Act".

Section 2. Declaration of Policy – It is the declared policy of the State to regulate the manner, rates, terms and conditions by which foreign programs from foreign programmers are made available to cable TV operators for the benefit of the consuming public.

It is thus the State's responsibility to guarantee the right to information and education of the consuming public, through granting of Landing Rights and vesting the National Telecommunications Commission with the power of jurisdiction and regulation over all foreign programs as well as the authority to resolve any and all disputes between foreign programmers and cable TV operators, thereby ensuring non-discriminatory access to appropriate and desirable content under the framework of transparency and fair play, for the full attainment of the progress and development of our economy and the preservation and enrichment of our culture.

Section 3. Construction and Interpretation - The provisions of this Act shall be liberally construed in order to carry out the declared policy of the State.

Section 4. Definition of Terms – for the purposes of this Act, the following terms shall refer to their respective definitions:

- a. **Cable TV Operator** – refers to a party duly authorized by the Commission to provide signals directly to the consuming public through the use of the appropriate technical facilities.
- b. **Commission** – refers to the National Telecommunications Commission or its successor agency as the appropriate regulatory body which shall implement the provisions of this Act.
- c. **Consuming Public** – refers to the consumers or end users of the signal such as the subscribers of the cable TV operators.
- d. **Foreign Channel** – refers to a particular foreign program assigned a name by the foreign programmer from whom it originates and a number by the cable TV operator which provides it directly to the consuming public.
- e. **Foreign Program** – refers to a signal transmitted or distributed into/in the territory of the Philippines which originate from a foreign programmer.
- f. **Foreign Programmer** – refers to any party from whom signals originate and which fall into any of the following categories:

1. is not 100% Filipino owned, or;

2. is incorporated outside of the territory or laws of the Philippines, or;
 3. maintains its headquarters outside of the territory of the Philippines, or;
 4. maintains its primary transmission facilities outside of the Philippines, or;
 5. is a combination of any of the above categories.
- g. **Free-to-Air Signal** – refers to a signal which is transmitted or distributed into/in the territory of the Philippines which may be freely received and provided for consumption.
 - h. **Illegal Foreign Programmer** – refers to a foreign programmer without a Landing Right or one with a Landing Right which has been suspended, revoked or which has expired and has not been renewed.
 - i. **Landing Right** – refers to the right to transmit in/into the territory of the Philippines a particular foreign program/foreign channel, granted to the foreign programmer from whom it originates after the said foreign programmer's proper application is duly filed with and approved by the Commission.
 - j. **Signal** – refers to electromagnetic waves used for the transmission of content such as audio or audio-visual media and/or other data and information.

Section 5. The Commission – The National Telecommunications Commission is hereby designated as the appropriate regulatory body which shall implement the provisions of this Act. In particular the Commission shall be vested with the jurisdiction over and regulation of all foreign programs, including the power to grant, renew and revoke Landing Rights, as well as the authority to resolve any and all disputes between foreign programmers and cable TV operators to ensure non-discriminatory access to appropriate and desirable content under the framework of transparency and fair play.

Likewise, the Commission shall also be granted other powers and functions necessary to carry out the provisions of this Act, including the formulation of the appropriate Implementing Rules and Regulations to be issued no later than six months from the effectivity of this Act.

PART II. PROCEDURES FOR COMPLIANCE

Section 6. Requisites for the Grant of an Original Landing Right – An original Landing Right shall only be granted to a foreign programmer which has paid the mandated application fee, proven its possession of the specified requirements and submitted a duly executed application. The application shall be filed in the form and manner prescribed by the Commission, serve as a legal manifestation of the foreign programmer that it possesses all the requirements as specified by the Commission and shall contain among other things the following:

- a. **The particulars of the foreign programmer** – which shall include the name, address, incorporation details and papers of the foreign programmer as well as the names, addresses, nationalities and positions of its primary officers and, where applicable, the name and address of its local representative for the purposes of notices and legal processes;
- b. **An undertaking whereby the foreign programmer submits to the applicable laws of the Philippines and the jurisdiction of the Commission** – which shall bind the foreign programmer to comply with the laws of the Philippines, including the applicable tax laws, and the jurisdiction and regulation of the Commission to grant, renew and revoke Landing Rights as well as its authority to resolve any and all disputes between foreign programmers and cable TV operators;
- c. **Respective technical and financial profiles of the foreign programmer** – which shall allow the Commission to determine whether or not the foreign programmer has the capability to provide a continuous, wide-ranging and high-quality signal for the whole duration of the effectivity of its Landing Right;
- d. **Duly certified copies of contracts with cable TV operators** – which shall allow the Commission to monitor and prevent the circumvention of the said contracts and the provisions of this Act, and;

- e. **Proposed uniform rates to be offered** – which shall be adjusted, finalized and approved by the Commission on the basis of the data and information submitted by the foreign programmer and the cable TV operators and considerations of reasonableness, transparency and fair play.

Section 7. Proof of Payment of Taxes – As an annual requirement for the enjoyment of the Landing Right to be granted, the foreign programmer concerned shall be required to submit proof of payment of any and all applicable taxes in the form and manner prescribed by the Commission.

Section 8. Procedure for the Grant of an Original Landing Right – The procedure for the grant of an original Landing Right shall be initiated with the filing by a foreign programmer of a duly executed application and the payment of the mandated fee. Upon such initiation, the Commission shall proceed to determine the completeness and sufficiency of the application form, mandated fee and the other requirements.

The Commission may schedule hearings and/or the submission of proofs to substantiate the claims of the applicant foreign programmer, as it deems necessary, and shall notify the said applicant of any and all flaws and problems in its application. Thereafter, the Commission shall issue a written order granting or not granting the application, with the factual and legal antecedents, within six months of the filing of the same. An original Landing Right thus granted shall have an effectivity period of five years.

Section 9. Requisites and Procedure for the Renewal of a Landing Right – The requisites and procedure for the renewal of a Landing Right shall be analogous to those for the grant of an original Landing Right, except for the following:

- a. That the requisites should be completed and submitted at least six months before the expiration of the pre-existing Landing Right;
- b. That the foreign programmer shall also submit proof of payment of any and all applicable taxes paid during the last three years;
- c. That the fee for the renewal of the pre-existing Landing Right shall be an amount equivalent to eighty percent (80%) of the fee charged for the grant of the original Landing Right;
- d. That the new Landing Right shall only be effective for a period of three years, and;
- e. That in case a foreign programmer's Landing Right was not renewed or was revoked, the former would have to follow the requisites and procedure for the grant of an original Landing right.

Section 10. Exclusivity of a Landing Right – A Landing Right granted under the provisions of this Act is exclusive to a particular foreign program or foreign channel originating from a foreign programmer. It may not be sold, leased out or otherwise reassigned to a different foreign program or foreign channel, whether such originate from the same or a different foreign programmer.

Section 11. Time Period for Compliance – Foreign programmers have one year from the effectivity of this Act to comply with the procedures and requirements for the grant of Landing Rights.

PART III. EFFECTS AND REMEDIES IN CASE OF NONCOMPLIANCE

Section 12. Effects of Failure to Comply – Failure to comply with the provisions of this Act shall produce the following effects:

- a. **As to the status of the foreign programmer** – the foreign programmer at fault shall be deemed to be an illegal foreign programmer and as such its rights and privileges shall be immediately suspended;
- b. **As to the status of the foreign programmer's contract with a cable TV operator** – the contract with a cable TV operator of a foreign programmer at fault shall be

- deemed to be immediately terminated;
- c. **As to the status of the foreign programs originating from the foreign programmer** – the foreign programs originating from the foreign programmer at fault shall immediately be deemed to be free-to-air signals, and;
 - d. **As to the application of other fines and penalties** – the foreign programmer at fault shall also be liable for other fines and penalties as provided in the following sections.

Section 13. Grounds for the Revocation of Landing Rights – The following shall be the grounds for the revocation of Landing Rights:

- a. **Continued or repeated violations** – violations of this Act which last for more than three months as well as three violations of this Act within the span of one year are grounds for the revocation of landing rights;
- b. **Ignoring the commission's jurisdiction and/or authority** – refusal or failure to pay the applicable fees or fines as well as the refusal or failure to follow the orders of the Commission are grounds for the revocation of landing rights;
- c. **Employing schemes and machinations for circumvention** – the employment of schemes and machinations for the circumvention of the provisions of this Act, such as the direct delivery of a foreign program to the consuming public by the foreign programmer with or without a Landing Right, shall be a ground for the revocation of landing rights.

Section 14. Applicable Fines and Other Penalties – A party which fails to comply with or violates any provision of this Act shall be liable to pay a fine which shall not be less than five thousand Pesos (P5,000.00) but in no case shall be more than one hundred thousand Pesos (P100,000.00) depending on the severity of the act or omission involved.

Provided, that in the case of a foreign programmer which either ignores the Commission's jurisdiction and/or authority or employs schemes and machinations for circumvention, the applicable fine shall not be less than one hundred thousand Pesos (P100,000.00) but in no case shall be more than five hundred thousand Pesos (P500,000.00), accordingly.

Provided further, that in the case of a party which willfully aids a foreign programmer either in ignoring the Commission's jurisdiction and/or authority or in employing schemes and machinations for circumvention, the applicable fine shall not be less than ten thousand Pesos (P10,000.00) but in no case shall be more than two hundred thousand Pesos (P200,000.00), accordingly.

Section 15. Remedies in Case of Failure to Comply or of a Dispute – The party which incurs an injury as a result of the failure to comply or violation of the provisions of this Act, shall within 30 days of the discovery of the supposed failure or violation, file a formal request for investigation with the Commission in the form and manner prescribed by the latter.

In case of a dispute between foreign programmers and cable TV operators, either of the parties may file a formal request for investigation with the Commission also in the form and manner prescribed by the latter.

PART IV. FINAL PROVISIONS

Section 16. Appropriations - The amount necessary for the implementation of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

Section 17. Transitory Provision – Any revocation, modification or novation of pre-existing valid contracts as well as any new contracts and acts made after the effectivity of this Act shall be subject to the provisions of this new body of laws.

Section 18. Separability Clause - If any provision of this Act is held invalid, all other provisions not affected thereby shall remain valid.

Section 19. Repealing Clause - All laws, Presidential Decrees, Executive Orders, rules and regulations or any other issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

Section 20. Effectivity - This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved,