

Republic of the Philippines
HOUSE OF REPRESENTATIVES
CONGRESS OF THE PHILIPPINES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 2930



Introduced by Honorable REYNALDO V. UMALI

EXPLANATORY NOTE

This bill seeks to amend and extend the twenty-five (25) years franchise granted to Smart Communications, Inc. (SMART, formerly Smart Information Technologies, Inc.) which will expire in 2017 pursuant to Republic Act No. 7294. Smart Communications, Inc. shall be granted authority to construct, establish, install, maintain, lease, co-use, purchase and operate and carry on the business of providing integrated telecommunications/computer/electronic services and stations throughout the Philippines for public domestic and international telecommunications.

In 1992, Smart was granted authority to operate a mobile cellular service and since then, it has been actively operating as a telecommunications provider in the country for both domestic and international public. Since it began its commercial operations, Smart has grown as one of the country's leading telecommunication providers. It is operating cell sites, cellular/mobile broadband base stations, and fixed wireless broadband-enabled base stations, covering 1,634 cities and municipalities in the country.

In recognition of Smart's commitment and leadership as a telecommunication provider in the social, cultural and economic facets of our society, and its efforts to keep pace with technological and capital requirements of its operations, the immediate renewal of its franchise is recommended to ensure the uninterrupted and improved delivery of its services to the Filipino people.

In view thereof, the passage of this measure is earnestly sought.



REYNALDO V. UMALI

Representative
Second District, Province of Oriental Mindoro

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AN ACT AMENDING AND EXTENDING FOR TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO SMART COMMUNICATIONS, INC. (FORMERLY SMART INFORMATION TECHNOLOGIES, INC.) UNDER REPUBLIC ACT NO. 7294, ENTITLED "AN ACT GRANTING SMART INFORMATION TECHNOLOGIES, INC. (SMART) A FRANCHISE TO ESTABLISH, INSTALL, MAINTAIN, LEASE AND OPERATE INTEGRATED TELECOMMUNICATIONS/COMPUTER/ELECTRONIC SERVICES AND STATIONS THROUGHOUT THE PHILIPPINES FOR PUBLIC DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES"

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

SECTION 1. Section 1 of Republic Act No. 7294 is hereby amended to read as follows:

"SECTION 1. *Nature and Scope of Franchise.* - Subject to the provisions of the Philippine Constitution and applicable laws, rules, and regulations, the franchise granted to the Smart Communications Inc., hereunder referred to as the grantee, its successors or assignees, to construct, establish, install, maintain, lease, co-use, purchase, operate and carry on the business of providing telecommunications, including electronic communications or electronic communications services throughout the Philippines and between the Philippines and other country and territories, including other space, as public interest may warrant, for public domestic and international telecommunications is hereby extended for twenty-five (25) years from the effectivity of this Act. For this purpose, the grantee is hereby granted the right to construct, establish, install, maintain, lease, co-use, purchase and operate the corresponding transmitting and receiving stations, satellites, lines, systems, networks, international gateways, local exchanges, and platforms as it may consider necessary, convenient, or reasonable.

In this Act, the term "Telecommunications" shall include "Electric Communications". In addition, the following terms shall have the meaning set forth herein:

ELECTRONIC COMMUNICATIONS NETWORK shall mean (A) A transmission system for conveyance, by use of electrical, magnetic or electro-magnetic energy, of signals of any description; and, (B) Any of the following as

are used, by the person providing the system and in association with it, for conveyance of the signals: (1) Apparatus comprised in the system; (2) Apparatus used for the switching and routing of the signals; and, (3) Software and stored data;

ELECTRONIC COMMUNICATIONS SERVICE shall mean a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network or signals. It includes wired, wireless, fixed, cellular, and/or mobile, or integrated telecommunications/computer/electronic services, including value-added services, or technologies related to such service which are at present available or made available through technical advances or innovations in the future, and fixed and mobile stations."

SECTION 2. Section 7 of Republic Act No. 7294 is hereby amended to read as follows:

"SEC. 7. *Term of Franchise.* - This franchise shall be extended and in effect for a period of twenty-five (25) years from the date of the effectivity of this Act, unless sooner revoked or cancelled. In the event the grantee fails to operate continuously for two (2) years, this franchise shall be deemed *ipso facto* revoked."

SECTION 3. Section 8 of Republic Act No. 7294 is hereby amended to read as follows:

"SEC. 8. *Acceptance and Compliance.* - Acceptance of this franchise shall be given in writing to Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving the acceptance, the grantee shall exercise the privileges granted under this Act. Refusal or failure to accept the franchise within the prescribed period shall render the franchise void."

SECTION 4. Section 9 of Republic Act No. 7294 is hereby amended to read as follows:

"SEC. 9 *Tax Provisions.* - The grantee, its successor or assignees, shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay, except radio telecommunications and electronic communications equipment, machinery and spare parts needed in connection with the business of the grantee which shall be exempt from customs duties, tariffs and other taxes, as well as those declared exempt in this section. In addition thereto, the grantee, its successors or assignees shall pay a value-added tax on all gross receipts of the business transacted under this franchise by the grantee, its successors or assignees in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority whatsoever, including but not limited to, city, municipal, provincial or national, from which the grantee is hereby expressly exempted effective from the date of the approval of this Act: *Provided*, that the grantee, its successors or assignees shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

Nothing herein shall be construed as repealing any specific tax exemption, incentive or privilege granted under any relevant law: *Provided*, that all rights, privileges, benefits and exemptions relating to customs duties, tariffs, and other taxes accorded to existing and future telecommunications shall likewise be extended to the grantee.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue."

SECTION 5. Section 11 of Republic Act No. 7294 is hereby amended to read as follows:

"SEC 11. *Sale, Lease, Transfer, Usufruct or Assignment of Franchise* – The grantee shall not lease, transfer, grant the usufruct of, sell nor assign the franchise herein granted or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any corporation or entity, nor shall transfer the controlling interest of the grantee, whether as a whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines: *Provided*, that the foregoing limitations shall not apply: (A) when transfer is done through a Stock Exchange; (B) for purposes of qualifying persons for election to the Board: (C) when transfer to a corporation that is controlled by the same stockholders controlling the grantee: (D) to any transfer or issuances of shares of stock in the implementation of the requirement for the dispersal of the grantees ownership consistent with Section 13 of Republic Act No. 7294: (E) to any transfer of sale of shares to a foreign investor or investors; (F) to any issuance of shares to any foreign or local investors, pursuant to or in connection with any increase in the grantee's authorized capital stock, which shall result in the dilution of the stockholdings of the grantee's then existing stockholders; (G) to any transfer to another corporation which is a grantee of another congressional franchise for provision of telecommunication services; and (H) to any combination thereof where such transfer, sale or issuance is effected in order to enable the grantee to raise any of the services authorized by this Act and/or to carry out any of the purposes for which the grantee has been incorporated or organized; *Provided, Further*, that any transfer, sale or issuance is in accordance with any applicable constitutional limitations: *Provided, Furthermore*, that Congress shall be informed of any sale, lease, transfer, grant of usufruct, or assignment of franchise or the rights or privileges acquired thereunder, or the merger, or transfer of the controlling interest of the grantee, within sixty (60) days after the completion of the transaction: *Provided, Moreover*, that failure to report to Congress the change of ownership shall render the franchise *Ipsso Facto* revoked: *Provided, Finally*, that Any person or entity to which the franchise herein granted is validly sold, transferred or assigned shall be subject to the same conditions, terms, restrictions and limitations of this Act."

SECTION 6. A new section is hereby inserted after Section 15 of Republic Act No. 7294, to read as follows:

"SEC. 16. *Equality Clause.* - If any franchise for telecommunications services is awarded or granted by the Congress Of the Philippines, or any amendment or revision to any franchise for telecommunications services, subsequent to the approval of this Act, with terms, privileges, exemptions,

exceptions and conditions that are more favorable and beneficial than those contained in or otherwise granted under this Act, then the same terms, privileges, exemptions, exceptions, or continuous shall *Ipso Facto*, accrue to the herein grantee and be deemed part of this Act."

SECTION 7. The present Section 16 of Republic Act No. 7294 is hereby renumbered as Section 17.

SECTION 8. A new Section 18 is hereby inserted to read as follows:

"SEC. 18. *Penalty Clause.* - Failure of the grantee to submit the requisite annual report to Congress shall be penalized by a fine in the amount of Five Hundred Pesos (P500.00) per working day of noncompliance. The fine shall be collected by the National Telecommunications Commission (NTC) from the delinquent franchise grantee separate from the reportorial penalties imposed by the NTC."

SECTION 9. *Applicability Clause.* - All other provisions of Republic Act No. 7294 which are not inconsistent with the provisions of this Act and remain unrepealed shall continue to be in full force and effect.

SECTION 10. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved.