

SEVENTEENTH CONGRESS
OF THE REPUBLIC OF THE PHILIPPINES
First Regular Session

HOUSE OF REPRESENTATIVES

House Bill No. **2871**

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Introduced by Representative Victor A. Yap

EXPLANATORY NOTE

Due to increased competition and consumer choice, the Philippines has a much improved telecommunications infrastructure that has also been developed by rapid technological change. Landlines have been overtaken by mobile phones, and postpaid telephone accounts by prepaid. Digital fiber connects the Philippines inexpensively to the far corners of the globe. Voice over Internet Protocol (VoIP) telephone service via computers has brought the cost of communicating on the Internet almost to zero.

Data transmission is a key factor in telecommunications, now more than ever, as the Philippines struggles with the limitations of infrastructure, it is necessary to ensure open access allowing every option to improve data transmission to be explored. This measure seeks to establish a regulatory framework to develop efficient and effective data transmission in the long term.

The bill likewise increases the powers of the National Telecommunications Commission allowing it to promote a conducive environment for data networks and associated industries to thrive and innovate in thus redounding to the benefit of Filipinos through increased information access. We acknowledge that Sen. Paolo Benigno "Bam" Aquino filed this proposed measure in the Senate.

In view of the foregoing, the swift passage of this bill is ardently sought.



VICTOR A. YAP
Representative, 2nd District of Tarlac

HOUSE OF REPRESENTATIVES

House Bill No. 2871

Introduced by Representative Victor A. Yap

AN ACT

PROMOTING OPEN ACCESS IN DATA TRANSMISSION, PROVIDING
ADDITIONAL POWERS TO THE NATIONAL TELECOMMUNICATIONS
COMMISSION, AND FOR OTHER PURPOSES

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

CHAPTER I

TITLE AND DECLARATION OF POLICY

1 **SECTION 1.***Title.* – This Act shall be known as the “*Open Access in Data Transmission*
2 *Act of 2016*”.

3 **SEC. 2.** *Declaration of Policy.* – It is hereby declared the policy of the State:

- 4 a. To ensure and accelerate the narrowing of the digital divide in the country;
- 5 b. To ensure that reliable, affordable, open, and accessible data networks transmit
6 information at speeds, and with quality comparable to the best in the world and
7 alignment with modern global practices;
- 8 c. To create an entrepreneurial ecosystem where persons who wish to engage in the
9 data transmission industry compete openly and freely in the spirit of fair competition
10 and permission-less innovation;
- 11 d. To encourage investment in the digital infrastructure of the country;
- 12 e. To protect the public interest as it is affected by its ability to access data networks;
- 13 f. To adopt the core values of the Open Access approach to building the country’s data
14 infrastructure, namely:
- 15 i. Adoption of a technology-neutral framework that encourages innovative, low-
16 cost delivery to users;
- 17 ii. Fair and open competition at all the multiple layers of the data transmission
18 network, allowing a wide variety of physical networks and applications to

- 1 interact in an open architecture;
- 2 iii. Transparency to ensure fair trading within and between layers that allows
- 3 clear, comparative information on market prices and services;
- 4 iv. The creation of circumstances where everyone can connect to everyone else
- 5 at the various layers and interfaces, such that entities of any size may freely
- 6 enter and exit the market, and dominance by any single player or group of
- 7 players is avoided;
- 8 v. Devolved and distributed local solutions rather than centralized ones,
- 9 encouraging services that are closer to the user.
- 10 g. To establish a strong and independent regulatory body and system to ensure fair
- 11 competition and enhance the competitive operation of the data transmission sector;
- 12 and
- 13 h. To protect and promote the Internet as an open platform enabling consumer choice,
- 14 freedom of expression, end-user control, competition, and the freedom to innovate
- 15 without permission, and thereby encouraging the development of advanced
- 16 telecommunications capabilities and the removal of barriers to infrastructure
- 17 investment.

18 **SEC. 3. *Definition of Terms.*** – As used in this Act, the following terms shall mean:

- 19 a. *Core/Backbone network* – the main line (or connection) that ties networks; delivers
- 20 routes to exchange information among various sub-networks, connects regional
- 21 distribution networks and, in some instances, provides connectivity to other peer
- 22 networks.
- 23 b. *Data transmission* – the process of sending digital or analog data over a
- 24 communication medium to one or more computing network/s, communication or
- 25 electronic device/s. It enables the transfer and communication of devices in a point-
- 26 to-point, point-to-multipoint, and multipoint-to-multipoint environment.
- 27 c. *International gateway / landing* –segment of data transmission that consists of any
- 28 facility that provides an interface to send and receive data traffic between one
- 29 country's domestic network facilities and those in another country.
- 30 d. *Last mile* – segment of data transmission from the network to the end-users
- 31 e. *Middle mile* – segment of data transmission that carries data from the backhaul
- 32 network to the nearest aggregation point, then from the aggregation point to the
- 33 nearest point of presence (PoP).
- 34 f. *National Telecommunications Commission (NTC)* –the entity defined and created
- 35 pursuant to the Public Telecommunications Policy Act (Republic Act No. 7925, as
- 36 amended).
- 37 g. *Open Access* – the system of allowing any data transmission participant the use of

1 data transmission and/or distributions system, and associated facilities subject to
2 fair, reasonable and non-discriminatory terms in a transparent market.

- 3 h. *Paid prioritization* – the management of a data transmission participant to directly
4 or indirectly favor some traffic over other traffic, including through use of
5 techniques such as traffic shaping, prioritization, resource reservation, zero-rating,
6 or other forms of preferential traffic management, either: (1) in exchange for
7 consideration (monetary or otherwise) from a third party, or (2) to benefit an
8 affiliated entity.

9 CHAPTER II

10 DEFINITION, ORGANIZATION AND OPERATION OF THE DATA TRANSMISSION 11 INDUSTRY

12 **SEC. 4. *Scope.*** – This applies to all persons wishing to participate in the data
13 transmission industry. For this purpose, any person or entity whose business deals substantially
14 with the transmission of data shall be governed by the provisions of this Act.

15 **SEC. 5. *Segments.*** – The data transmission industry shall be divided into four
16 segments: (a) International Gateway/Landing, (b) Core/Backbone Network, (c) Middle Mile,
17 and (d) Last Mile.

18 All four segments, involving businesses affected with public interest, shall be competitive
19 and open. Any law to the contrary notwithstanding, participants in any of the four segments shall
20 not be considered as public utilities. A person who wishes to be a participant in any of the four
21 segments shall not be required to secure any other license, approval, franchise, or certificate
22 other than those expressly provided for in this Act.

23 A participant in any of the four segments shall, before it operates, secure from the NTC a
24 Certificate of Compliance certifying that it has completed all that is required of it under this Act,
25 and that it has obtained all the necessary business permits and health, safety, and environmental
26 clearances from the appropriate government agencies under existing laws.

27 CHAPTER III

28 REGULATION OF THE DATA TRANSMISSION INDUSTRY

29 **SEC. 6. *Additional Powers and Functions of the NTC.*** – The NTC shall have the
30 additional powers and functions:

- 1 a. Resource Allocations. – The NTC shall, upon due consultation on how to maximize
2 the return for the allocation of finite resources used in the transmission of data,
3 promulgate such rules and regulations by which it may obtain such maximum value
4 for every technological wave under its management.
- 5 b. Setting Performance Standards. – The NTC shall set and measure reporting and
6 performance standards for participants in the data transmission industry. Such
7 standards shall take into account speed, packet loss, jitter, and latency. The NTC
8 shall regularly publish the results of these measurements in an open data format
9 accessible to the general public.
- 10 c. Recovery of Resources. – If the NTC finds, on its own initiative or upon complaint,
11 that any right, license, or franchise granted to any data transmission industry
12 participant is not being used in accordance with the covenants it requires of the
13 person developing that resource, and upon due hearing, it may revoke the license
14 without the need of compensation, franchise, or right, and set the same for
15 acquisition by any qualified party, at auction.

16 **SEC. 7. *Prohibited Acts.* –**

- 17 a. Plug and Play. – Any person engaged in the data transmission industry, insofar as
18 such person is so engaged, shall not refuse access to infrastructure to any person
19 also engaged in the data transmission industry, except for failure to pay open
20 market fees for the access to the service.

21 Data transmission providers shall not impede the end-user's right to access and
22 distribute information and content, use and provide applications and services and
23 use terminal equipment of their choice, regardless of the end-user's or provider's
24 location or the location, origin or destination of the information, content,
25 application or service, via their data transmission service.

26 Agreements between data transmission providers of data services and end-users on
27 commercial and technical conditions and the characteristics of data access services
28 such as price, data volume or speed, and any commercial practices conducted by
29 providers of internet access services, shall not limit the exercise of the rights of end-
30 users laid down before.

- 31 b. Paid prioritization. – A person engaged in the data transmission industry, insofar as
32 such person is so engaged, shall not engage in paid prioritization for monetary or
33 other consideration: Provided, That the NTC may waive the ban on paid
34 prioritization only if the participant demonstrates that the practice would provide

1 some significant public interest benefit and would not disadvantage content and
2 applications that are not prioritized otherwise harm the open nature of the Internet.

- 3 c. Throttling. – Providers of data transmission services shall treat all traffic equally
4 when providing data access services without discrimination, restriction or
5 interference, regardless of the sender and receiver, the content accessed or
6 distributed, the applications or services used or provided, or the terminal equipment
7 used.

8
9 The hindrance or slowing down of services or applications on the Internet by ISPs
10 and network owners is prohibited. Deviation from this rule is only allowed: (a) to
11 reduce congestion, while treating similar traffic equally; (b) to preserve the integrity
12 and security of the network and service of the provider or the equipment of the end-
13 user - If the breach of integrity or security is caused by the equipment of the end-
14 user, the provider has to notify the end-user first and give them sufficient time to
15 rectify the situation; (c) to block the transmission of unwanted communications
16 (e.g. spam) to an end-user, only if the end-user has given consent beforehand; or (d)
17 to comply with the law or a warrant.

- 18 d. Vertical Ownership. – The direct or indirect ownership of any participant of: (1)
19 any business engaged with any sector in the data transmission industry, except the
20 last mile/retail sector; and (2) any business engaged in the last mile/retail sector
21 shall be considered unlawful. It shall also be considered unlawful for any data
22 transmission participant to own any interest, directly or indirectly, in any business
23 that generates revenue from content being transmitted or applications being served
24 over the data network.

25 **SEC. 8. *Arms-length Transactions and Transparency.*** – The NTC shall promulgate
26 rules requiring all data transmission industry participants to include in their annual report a fair
27 and accurate statement regarding their market prices and their services.

28 **SEC. 9. *Fair competition.*** – (a) The Philippine Competition Commission (PCC) and
29 the NTC shall ensure that for those providing services at any given layer, there are at least two
30 significant providers; and (b) when there are less than four significant providers of any particular
31 service, the PCC and the OFC should scrutinize any act made by the remaining providers for
32 anti-competitive behavior under the Philippine Competition Act.

1 **CHAPTER VI**

2 **PENALTIES**

3 **SEC. 10. *Administrative Penalties.*** – A data transmission industry participant violating
4 any provision of this Act shall forfeit all certificates, licenses, rights, and awards issued to it that
5 enables its participation in the data transmission industry.

6 **SEC. 11. *Adjustment for Inflation.*** – The fines mentioned herein shall be adjusted, year-
7 on-year, according to the prevailing Consumer Price Index.

8 **CHAPTER VII**

9 **FINAL PROVISIONS**

10 **SEC. 12. *Technological Neutrality.*** – The NTC shall promulgate the necessary rules and
11 regulations to ensure that the provisions of this law apply, mutatis mutandis, to ensure that the
12 provisions herein apply to future technologies in data transmission.

13 **SEC. 13. *Expedited Processing.*** – In all instances where a participant in the data
14 transmission industry shall require a form, certificate, or request, there should be no more than
15 two public officers involved in processing the form, certificate, or request.

16 **SEC. 14. *Implementing Rules and Regulations.*** — Within sixty (60) days from the
17 effectivity of this Act, the NTC shall promulgate the necessary rules and regulations for the
18 effective implementation of this Act.

19 **SEC. 15. *Separability Clause.*** — Should any provision herein be declared
20 unconstitutional, the same shall not affect the validity of the other provisions of this Act.

21 **SEC. 16. *Repealing Clause.*** — All laws, decrees, orders, rules, and regulations or other
22 issuances or parts inconsistent with the provisions of this Act are hereby repealed or modified
23 accordingly.

24 **SEC. 18. *Effectivity.*** — This Act shall take effect fifteen (15) days after its publication in
25 the Official Gazette or in any two (2) newspapers of general circulation in the Philippines.

26 *Approved,*