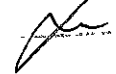


OFFICE

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

9 AUG 12 11C 20

SENATE

RECEIVED BY 

S.B. No. 3387

Introduced by **SENATOR JUAN PONCE ENRILE**

EXPLANATORY NOTE

The onslaught of advancements in information technology, especially in the area of storage, retrieval, and transmission of information to the public, has made people and communities aware of its vital importance in the life of society. Information frees people from ignorance, empowers them, and enables them to become participants in the molding of a society and a social order that is both responsive and responsible to its constituents. Among the key sectors in the information technology field is telecommunications: that sector which, through its infrastructure and facilities, allows the storage and transmission of information through wired and wireless telecommunications systems.

Our contemporary experience proves much of this claim. Since the liberalization of the telecommunications industry, major companies have invested in telecommunications to the point where people are able to communicate in a manner unforeseen in the pre-liberalization era. Now, the industry has so much potential for growth, and the competitiveness of the industry players also appeals to other interested parties to avail of what this growing market has to offer.

In this light, the Schutzengel Telecom, Inc., seeks to offer itself as one of the service providers in the telecommunication industry. It has the capacity and capability to provide storage and transmission systems, both wired and wireless, nationwide. This bill seeks to grant the company the franchise required for it to be able to operate and offer its services in the industry in particular, and our people in general, thus paving the way for more opportunities for access to information, choices in communication systems, and improved products and services through the fostering of healthy competition.

In view of the foregoing reasons, approval of this bill is earnestly sought.

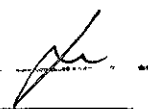

JUAN PONCE ENRILE
Senator

9 AUG 12 AM 10:20

SENATE

S.B. No. 3387

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Introduced by **SENATOR JUAN PONCE ENRILE**

AN ACT

GRANTING THE SCHUTZENDEL TELECOM, INC., A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES

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

1 **SECTION 1.** *Nature and Scope of Franchise.* - Subject to the provisions of the
2 Constitution and applicable laws, rules and regulations, there is hereby granted to
3 Schutzengel Telecom, Inc., hereunder referred to as the grantee, its successors or assigns,
4 a franchise to construct, install, establish, operate and maintain for commercial purposes
5 and in the public interest, throughout the Philippines and between the Philippines and
6 other countries and territories, wire and/or wireless telecommunications systems
7 including, but not limited to, mobile, cellular, paging, fiber optics, Multichannel
8 Multipoint Distribution System (MMDS), Local Multipoint Distribution System
9 (LMDS), satellite transmit and receive systems, switches and their value-added services
10 such as, but not limited to, transmission of voice, data, facsimile, control signs, audio and
11 video, information services bureau and all other telecommunications systems
12 technologies as are at present available or will hereafter be made available through
13 technological advances or innovations in the future; and/or construct, acquire, lease and
14 operate or manage transmitting and receiving stations, lines, cables or systems as in or are
15 convenient or essential to efficiently carry out the purpose of this franchise.

16
17 **SEC. 2.** *Manner of Operations or Facilities.* - The stations or facilities of the
18 grantee shall be constructed and operated in a manner as will, at most, result only in the
19 minimum interference on the wavelengths or frequencies of existing stations or other
20 stations which may be established by law, without in any way diminishing its own right
21 to use its selected wavelengths or frequencies and the quality of transmission or reception
22 thereon as should maximize rendition of the grantee's services and/or the availability
23 thereof.

1 **SEC. 3. Authority of the National Telecommunications Commission.** - The
2 grantee shall secure from the National Telecommunications Commission (NTC),
3 hereinafter referred to as the Commission, a certificate of public convenience and
4 necessity or the appropriate permits and licenses for the construction, installation and
5 operation of its telecommunications system/facilities. In issuing the certificate, the
6 Commission shall have the power to impose such conditions relative to the construction,
7 operation, maintenance or service level of the telecommunications system. The
8 Commission shall have the authority to regulate the construction and operation of its
9 telecommunications systems. The grantee shall not use any frequency in the radio
10 spectrum without having been authorized by the Commission. Such certificate shall
11 state the areas covered and date the grantee shall commence the service. The
12 Commission, however, shall not unreasonably withhold or delay the grant of any such
13 authority, permits or licenses.

14
15 **SEC. 4. Ingress and Egress.** - For the purpose of erecting and maintaining poles
16 or other supports for said wires or other conductors for the purpose of laying and
17 maintaining underground wires, cables or other conductors, it shall be lawful for the
18 grantee, its successors or assigns, with the prior approval of the Department of Public
19 Works and Highways (DPWH), to make excavations or lay conduits in any of the public
20 places, highways, streets, lanes, alleys, avenues, sidewalks or bridges of said provinces,
21 cities and/or municipalities: Provided, however, That a public place, highway, street,
22 lane alley, avenue sidewalk or bridge distributed, altered or changed by reason of erection
23 of places or other supports or the underground laying of wires, other conductors or
24 conduits, shall be repaired and replaced in workmanlike manner by said grantee, its
25 successors or assigns, in accordance with the standards set by the DPWH. Should the
26 grantee, its successors or assigns, after ten (10) days notice from the said authority, fail,
27 refuse or neglect to repair or replace any part of public place, road, highway, street, lane,
28 alley, avenue, sidewalk or bridge altered, changed or disturbed by the said grantee, its
29 successors or assigns, the DPWH shall have the right to have the same repaired and
30 placed, its successors or assigns.

31
32 **SEC. 5. Responsibility to the Public.** - The grantee shall conform to the ethics
33 of honest enterprise and not use its stations/facilities for obscene or indecent transmission
34 or for the dissemination of deliberately false information or willful misrepresentation, or
35 assist in subversive or treasonable acts. The grantee shall provide basic or enhanced
36 telephone service in any municipality in the Philippines where it has an approved
37 certificate of public convenience and necessity for the establishment, operation and
38 maintenance of basic and/or enhanced local exchange service, without discrimination to

1 any applicant therefore, in the order of the date of their applications, up to the limit of the
2 capacity of its local telephone exchange, and should the demand for the telephone service
3 at any time increase beyond the capacity thereof, the grantee shall increase the same to
4 meet such demand: Provided, That in case the total demand to be satisfied by the
5 expansion is less than the smallest viable local exchange available in the market as
6 determined by the Commission, the grantee shall not be obliged to furnish such service
7 unless the applicant for telephone service defrays the actual expenses for the installation
8 of the telecommunications apparatus necessary for such services and, in such case, the
9 Commission may extend the time within which the grantee shall furnish such service.

10
11 The grantee shall operate and maintain all its stations, lines, cables, systems and
12 equipment for the transmission and reception of messages, signals and pulses in a
13 satisfactory manner at all times and, as far as economical and practicable, modify,
14 improve or change such stations, lines, cables, systems and equipment to keep abreast
15 with the advances in science and technology.

16
17 **SEC. 6. *Rate for Services.*** - The charges and rates for telecommunications
18 services of the grantees, except the rates and charges on those that may hereafter be
19 declared or considered as non-regulated services, whether flat rates or measured rates or
20 variation thereof, shall be subject to the approval of the Commission or its legal
21 successor. The rates to be charged by the grantee shall be unbundled, separable and
22 distinct among the services offered and shall be determined in such a manner that
23 regulated services do not subsidize the unregulated ones.

24
25 **SEC. 7. *Right of the Government.*** - A special right is hereby granted to the
26 President of the Philippines, in times of war, rebellion, public peril, calamity, emergency,
27 disaster or disturbance of peace and order, to temporarily take over and operate the
28 stations, transmitters, facilities or equipment of the grantee, to temporarily suspend the
29 operation of any station, transmitter, facility or equipment in the interest of public safety,
30 security and public welfare, or to authorize the temporary use and operation thereof by
31 any agency of the government, upon due compensation to the grantee, for the use of said
32 stations, transmitters, facilities or equipment during the period when they shall be so
33 operated.

34
35 The radio spectrum is a finite resource that is part of the national patrimony and
36 the use thereof is a privilege conferred upon the grantee by the State and may be
37 withdrawn anytime after due process.

1 **SEC. 8. *Term of Franchise.*** - The franchise shall be for a term of twenty-five
2 (25) years from the date of effectivity of this Act, renewable for another twenty-five
3 years or for such number of years as may hereafter be allowed by Congress, unless
4 sooner revoked or cancelled. This franchise shall be deemed ipso facto revoked in the
5 event the grantee fails to comply with any of the following conditions:

- 6
- 7 a) Commence operations within three (3) years from the approval of its
8 operating permit by the NTC;
 - 9 b) Operate continuously for two (2) years; and
 - 10 c) Commence operations within five (5) years from the effectivity of this
11 Act.
- 12

13 **SEC. 9. *Acceptance and Compliance.*** - Acceptance of this franchise shall be
14 given in writing within sixty (60) days from the effectivity of this Act. Upon giving such
15 acceptance, the grantee shall exercise the privileges granted under this Act. Non-
16 acceptance shall render the franchise void.

17

18 **SEC. 10. *Bond.*** - The grantee shall file a bond issued in favor of the NTC,
19 which shall determine the amount, to guarantee the compliance with and fulfillment of
20 the conditions under which this franchise is granted. If, after five (5) years from the date
21 of approval of its permit by the Commission, the grantee shall have fulfilled the same, the
22 bond shall be cancelled by the Commission. Otherwise, the bond shall be forfeited in
23 favor of the government and the franchise ipso facto revoked.

24

25 **SEC. 11. *Right of Interconnection.*** - The grantee is hereby authorized to connect
26 or demand connection of its telecommunications systems to any other
27 telecommunications systems installed, operated and maintained by any other duly
28 authorized person or entity in the Philippines for the purpose of providing extended and
29 improved telecommunications services to the public under such terms and conditions
30 mutually agreed upon by the parties concerned, and the same shall be subject to the
31 review and modification of the Commission.

32

33 **SEC. 12. *Gross Receipts.*** - The grantee, its successors or assigns, shall keep a
34 separate account of the gross receipts of the business transacted by it and shall furnish the
35 Commission on Audit (COA) and the National Treasury a copy of such account not later
36 than the thirty-first (31st) day of January of each year for the preceding twelve (12)
37 months.

38

1 **SEC. 13. *Books and Accounts.*** - The books and accounts of the grantee its
2 successors or assigns, shall always be open to the inspection of the COA or authorized
3 representatives and it shall be the duty of the grantee to submit to the COA two (2) copies
4 of the quarterly reports on the gross receipts, the net profits and the general condition of
5 the business.

6
7 **SEC. 14. *Warranty in Favor of National and Local Government.*** - The grantee
8 shall hold the national, provincial, city and municipal governments of the Philippines
9 harmless from all claims, accounts, demands or actions arising out of accidents or
10 injuries, whether to property or to persons, caused by the construction or operation of the
11 stations, transmitters, facilities and equipment of the grantee.

12
13 **SEC. 15. *Non-transferability of Franchise.*** - The grantee shall not lease,
14 transfer, grant the usufruct of, sell nor assign this franchise or the rights and privileges
15 acquired thereunder to any person, firm, company, corporation or other commercial or
16 legal entity, nor merge with any other corporation or entity, nor shall the controlling
17 interest of the grantee be transferred, whether as a whole or in parts and whether
18 simultaneously or contemporaneously, to any such person, firm, company, corporation or
19 entity without the prior approval of the Congress of the Philippines. Any person or
20 entity to which this franchise is validly sold, transferred or assigned shall be subject to the
21 same conditions, terms, restrictions and limitations of this Act.

22
23 **SEC. 16. *Dispersal of Ownership.*** - In accordance with the constitutional
24 provision to encourage public participation in public utilities, the grantee shall offer at
25 least thirty per centum (30%) of its outstanding capital stock or a higher percentage that
26 may hereafter be provided by law in any securities exchange in the Philippines within
27 five (5) years from the commencement of its operations. Non-compliance therewith
28 shall render the franchise ipso facto revoked.

29
30 **SEC. 17. *Equality Clause.*** - Any advantage, favor, privilege, exemption or
31 immunity granted under existing franchise for telecommunications system, or which may
32 hereafter be granted, shall ipso facto become part of this franchise and shall be accorded
33 immediately and unconditionally to the herein grantee: Provided, however, That the
34 foregoing shall neither apply to nor affect provisions of telecommunications franchise
35 concerning territory covered by the franchise, the life span of the franchise or the type of
36 service authorized by the franchise.

37

1 **SEC. 18. *Reportorial Requirements.*** - The grantee shall submit an annual report
2 to the Congress of the Philippines on its compliance with the terms and conditions of the
3 franchise and on its operations within sixty (60) days from the end of every year.

4
5 **SEC. 19. *Separability Clause.*** - If any of the sections or provisions of this Act is
6 held invalid, all the other provisions not affected thereby shall remain valid.

7
8 **SEC. 20. *Repealing and Non-exclusivity Clause.*** - This franchise shall be subject
9 to amendment, alteration or repeal by the Congress of the Philippines when the public
10 interest so requires and shall not be interpreted as an exclusive grant of the privileges
11 herein provided for.

12
13 **SEC. 21. *Effectivity Clause.*** - This Act shall take effect fifteen (15) days from
14 the date of its publication, upon the initiative of the grantee, in at least two (2)
15 newspapers of general circulation in the Philippines.

16
17 *Approved,*