

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

04 JUN 30 P5:27

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S E N A T E

S. No. 433

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Introduced by Senator S. R. Osmeña III

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### EXPLANATORY NOTE

Global communications have evolved in a way that we have never imagined it to be. Geographical borders and distance have become irrelevant mainly due to the continuing development of our information and communication technology services. Technology has ceased to be a one-purpose medium; defying earlier inventions. The telephone communication-a solely voice communication until more or less 20 years ago- has been improved to enable data and video communication possible. The result: Internet technology.

But before everything else became possible, there is what we call a convergence of technologies where one or more different technologies come together to create a harmonious transmission of sound, video and data coursed through the information gateway that is the Internet and any other wireless means. It has become synonymous to a multi-tasking person, thereby increasing productivity that essentially boils down to good business.

However, previous laws passed particularly R.A. 7925 and E.O. 436 are now deemed to be insufficient to satisfy the need for increasing demand of these newly-established services.

This bill seeks to promote the establishment of more information and communication technology services companies in the country. Further, it also seeks to remove unnecessary regulatory prohibitions previously provided for in the law while anticipating constitutional limitations on foreign investments in certain industries.

In view of the foregoing, the early passage of this bill is earnestly sought.

*S. Osmeña III*  
SERGIO OSMEÑA III  
Senator

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**AN ACT**  
**TO ESTABLISH STRUCTURAL REFORMS IN THE INFORMATION AND**  
**COMMUNICATIONS SECTOR TO PROMOTE THE DEVELOPMENT,**  
**DELIVERY AND USE OF CONVERGENT SERVICES**

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

1           SECTION 1. **Short Title** – This Act shall be known as the “**Convergence**  
2 **Policy Act of 2004**”.

3           SEC. 2. **Scope and Limitations** – This Act shall apply to application  
4 services and network services as defined herein. It does not deal with the  
5 regulation of the content provided by such services.

6           SEC. 3. **Definitions** – For purposes of this Act, the following terms shall:

7           (a) **Convergence** – the integration of two or more communications  
8 services in one common network; technologies moving together  
9 towards a common point and elimination of differences between the  
10 provisioning of video, audio and data, using digital and other emerging  
11 technologies; the coming together of two or more disparate  
12 disciplines; the coming together of two or more disparate disciplines  
13 or technologies; the ability of different network platforms to carry any  
14 and all kinds of services, and the coming together of consumer

1 devices such as, but not limited to the telephone television and  
2 personal computer.

3 (b) Audio communication services – services provided through the  
4 transmission and reception of sound signals including voice.

5 (c) Data communication services – services provided through the  
6 transmission and reception of fixed images and or texts, including  
7 alphanumeric and special characters using wire or wireless means.

8 (d) Network – a physical infrastructure comprising of two or more sets of  
9 modes and links capable of connecting two or more defined points.

10 (e) Network Service – a service that provides connectivity between and  
11 among application service providers and end-users.

12 (f) Application Service – a service that provides audio, video, data, or  
13 any combination or enhancements thereof that are captured,  
14 processed, stored and communicated through electronic means.

15 (g) Closed-user group – a lawfully organized group of individuals having  
16 its own communication network within a limited contiguous  
17 geographical area such as a building, residential subdivision,  
18 industrial park, economic zone, commercial complex and unserved  
19 barangays.

20 **SEC. 4. Declaration of National Policies** – The development and  
21 delivery of application services converged through a single network shall be  
22 pursued in accordance with the following national policies;

23 a. To enhance the vital role of communications and information in nation-  
24 building and to the economic development and security of the  
25 Philippines;

26 b. To respond to technological advances that made possible the  
27 provisioning of applications communications services converged  
28 through a single network thus allowing a more efficient utilization of  
29 network facilities.

- 1 c. To promote the development and use of increased bandwidth,  
2 transmission capacity, and advanced communication networks.
- 3 d. To facilitate, contribute and expedite the goal of the government in  
4 achieving universal access and thus strengthen the economic,  
5 educational and cultural, social and political fabric of the Philippines.
- 6 e. To attract investments in the building of telecommunications  
7 infrastructures and in the provisioning of application services subject to  
8 laws on foreign ownership limitations; and
- 9 f. To provide applications services users the effective power to choose  
10 among convergent applications services providers.

11 **SEC. 5. Policy Objectives** – Pursuant to the above national policies, this  
12 Act is enacted to address certain legal and regulatory issues rising from the  
13 technological advances rendering possible the delivery of all kinds of applications  
14 services through a single network, including but not limited to, the ownership and  
15 management of application service providers and network service providers, the  
16 need for a legislative franchise and other governmental authorizations, consumer  
17 rights, fair competition, rights and obligations of service providers, and powers of  
18 concerned government agencies.

19 **SEC. 6. Ownership and Management** – Application Service Providers  
20 shall be subject to rules and restrictions on foreign ownership, control and  
21 operation as provided under the Constitution and existing laws. In any case  
22 where different rules and restrictions apply to the individual communications  
23 services converged, that which is most restrictive on foreign ownership, control  
24 and operation shall apply.

25 Network Service Providers shall be open to ownership, control and  
26 operation by citizens of the Philippines and by corporations or cooperatives  
27 organized under Philippine laws at least sixty percent (60%) of the capital of  
28 which is owned and controlled by citizens of the Philippines.

1           Persons or entities acting both as Applications Service Providers and  
2 Network Service Providers shall be subject to rules and restrictions on foreign  
3 ownership, control and operation as provided under the Constitution, this Act and  
4 other existing laws. In any case where different rules and restrictions apply to the  
5 individual Applications Services converged and to those provided under this Act  
6 in the case of Network Services, that which is most restrictive in foreign  
7 ownership, control and operation shall apply.

8           The participation of foreign nationals in the governing body of any  
9 Applications Service Provider and/or Network Service Provider shall be limited to  
10 their proportionate share in its capital.

11           **SEC. 7. Franchise and Other Government Authorizations** – All  
12 Network Service Providers that shall operate on a nation-wide or region-wide  
13 basis shall obtain a legislative franchise, while all other Network Service  
14 Providers shall obtain a local franchise only from the appropriate local  
15 government unit/s wherein they shall operate; Provided, that all Network Service  
16 Providers shall also secure all such certificates, permits, licenses and  
17 authorizations as may be required by the National Telecommunications  
18 Commission and other relevant agencies under such rules and regulations  
19 existing and/or to be issued by such agencies.

20           **SEC. 8. Lease of Facilities** – All network service providers may lease or  
21 sublease capacity to applications service providers other network access service  
22 providers.

23           **SEC. 9. Non-Discriminatory Service** – All network service providers  
24 shall provide their services to all application service providers and other network  
25 service providers in a non-discriminatory manner.

26           **SEC. 10. Rates and Tariffs** – Network services and applications services  
27 shall be individually priced. The aggregate price of two or more converged  
28 applications services shall be less than the sum of the individual prices of the

1 applications services availed of. Prices shall be based on the prevailing cost of  
2 providing the service/s.

3 An entity both network service and application service/s shall maintain a  
4 separate book of accounts for each service.

5 Any entity providing network service shall apply uniform rates to all  
6 applications service providers, including those affiliated with such entity, and to  
7 all other network service providers.

8 The Commission shall establish rates and tariffs, which are fair and  
9 reasonable and which provide for fair and just competition for regulated services.

10 The Commission shall exempt, pursuant to an application, any specific  
11 convergent applications service and network service from its rate or tariff  
12 regulations if the service has sufficient competition to ensure fair and reasonable  
13 rates or tariffs. The Commission shall, however, retain its residual powers to  
14 regulate rates or tariffs when ruinous competition results or when a monopoly or  
15 a cartel or combination in restraint of free competition exists and the rates or  
16 tariffs are distorted or unable to function freely and the public is adversely  
17 affected. In such cases, the Commission shall either establish a floor or ceiling  
18 on the rates or tariffs.

19 **SEC. 11. Equity of Treatment** – Any advantage, favor, privilege,  
20 exemption, or immunity granted under existing franchises, or may hereafter be  
21 granted, shall *ipso facto* become part of franchises covered under this Act and  
22 shall be accorded to the grantees of such franchises insofar as such neither  
23 apply to nor affect provisions of franchises concerning territory covered by the  
24 franchise, the life span of the franchise, or the type or service authorized by the  
25 franchise.

26 **SEC. 12. Rights of Users** – Users' right shall be recognized including the  
27 following:

- 28 a. Right to change from one convergent applications service provider or  
29 network service provider to another.

- 1 b. Right to provide accessory facilities to their customer premises  
2 equipment (CPE) in addition to the facilities provided by the service  
3 provider under this Act, to enable him to access competitive  
4 convergent communication services.
- 5 c. Right to form closed-user groups and to connect their networks with  
6 any duly authorized network service providers operating therein as  
7 subscribers thereto.
- 8 d. Right to non-discriminatory, reliable, and efficient services conforming  
9 to the minimum standards prescribed by the Commission.
- 10 e. Right to choose and pay only for the service(s) availed of.
- 11 f. Right to regular, timely, and accurate billing and courteous and efficient  
12 service.
- 13 g. Right to thorough and fair investigation and prompt resolution by the  
14 Commission of any service-related complaint.

15 **SEC. 13. Rights of Service Providers** – Service Providers shall have the  
16 following rights:

- 17 a. Right to prompt resolution by the Commission of any petition for  
18 service rates adjustments.
- 19 b. Right to demand from its users the connection of only type-approved  
20 CPEs by the NTC or duly recognized NTC accreditation bodies.
- 21 c. Right to prompt interconnection in a non-discriminatory manner at just  
22 and reasonable rates and conditions, and prompt resolution of any  
23 disputes pertaining thereto.

24 **SEC. 14. Department of Transportation and Communications (DOTC)**

25 – The Department, in addition to its existing powers, functions and  
26 responsibilities, and in coordination with other concerned agencies, shall,  
27 pursuant to this Act:

- 28 a. Ensure that the policies and objective of this Act are fully adhered to;

1 b. Recommend incentives to convergent applications services providers  
2 and network service providers in unserved areas, educational  
3 institutions, libraries, social-service agencies, tourist destinations such  
4 as national parks, and under served rural areas.

5 c. Promote the development and transfer of technologies that allow  
6 convergence of applications services.

7 **SEC. 15. National Telecommunications Commission (NTC) – The**  
8 Commission in addition to its existing powers, functions and responsibilities,  
9 shall, pursuant to this Act:

10 a. Ensure that all entities provide services in a non-discriminatory  
11 manner.

12 b. Ensure the interconnection and inter-operability of all networks.

13 c. Formulate and implement a numbering or addressing system to  
14 facilitate access to communication services.

15 d. Formulate and implement rules to prevent unfair competition and trade  
16 practices.

17 e. Formulate and implement rules and regulations and procedures to act  
18 upon application for exemption from regulation of rates and tariffs.

19 f. Require the submission by the network service providers and  
20 application service providers of periodic reports of finances and  
21 operations.

22 g. Prescribe and collect fees and charges to cover reasonable costs and  
23 expenses for the regulation and supervision of network service  
24 providers and application service providers.

25 h. Formulate and implement rules and regulations and procedures to  
26 protect the rights of the service providers and users.

27 i. Formulate and implement rules, regulations, and procedures for the  
28 prompt issuance of authorizations, certificates, licenses and permits for  
29 the provision of services under this Act.

1 j. Promulgate the schedule of fines and penalties to be issued for  
2 violations of any provision of this Act.

3 SEC. 16. **Sanctions** – Failure to comply with any provision of this Act  
4 shall be dealt with in accordance with the schedule of fines and penalties to be  
5 promulgated and issued by the NTC.

6 SEC. 17. **Separability Clause** – Any portion or provisions of this Act that  
7 may be declared unconstitutional or invalid shall not have the effect of nullifying  
8 other portions or provision hereof as long as such remaining portions or  
9 provisions can still subsist and be given effect in their entirety.

10 SEC. 18. **Repealing Clause** – All laws, ordinances, rules, regulations and  
11 other issuances or parts thereof, which are inconsistent with this Act are hereby  
12 repealed or modified. Nothing in this Act shall be construed as to exempt an  
13 entity from a provision of any law relevant to any of services converged in its  
14 business by reason solely of the fact that such service is not being offered as a  
15 separate service but as service converged with another.

16 SEC. 19. **Effectivity Clause** – This Act shall take effect fifteen (15) days  
17 from the date of its publication in the Official Gazette or in at least two (2)  
18 newspapers of general circulation.

19 Approved,