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SENATE

S. BILL NO. 1391

Introduced by SENATOR RALPH G. RECTO

**AN ACT
STRENGTHENING THE MANDATE ON THE INTERCONNECTION BETWEEN
AND AMONG PUBLIC TELECOMMUNICATIONS ENTITIES, PROVIDING
PENALTIES FOR ITS VIOLATION AND FOR OTHER PURPOSES**

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

1 SECTION 1. *Declaration of Policy.* – Recognizing the vital role of
2 communications and information in nation-building and economic development,
3 the State in its desire to attain universal access, shall promote the rapid
4 expansion of telecommunications facilities, and ensure that every user of the
5 public telecommunications service shall have access to such facilities at a
6 mandated standard of service and at reasonable cost.

7 Pursuant thereto, every authorized public network operator shall
8 interconnect with other providers of telecommunications services in a speedy,
9 efficient, fair, transparent and nondiscriminatory manner.

10 Interconnection between or among public telecommunications companies
11 (PTCs) shall be mandatory and compulsory, and such interconnection shall
12 encompass other telecommunications services such as, but not limited to, value-
13 added services or radio paging, trunked radio, short messaging system, other
14 store and forward systems of facsimile or messaging (voice or data), packet
15 switching and circuit data switching (including conveyance of messages which
16 have been or are to be transmitted or received at such points of
17 interconnection), any information and services as the National

1 Telecommunications Commission (NTC) may determine to be un the interest of
2 the public.

3 SEC. 2. *Matters to be Covered by the Interconnection*
4 *Agreement.* – The interconnection arrangement between the public
5 telecommunications entities shall be nondiscriminatory and shall contain, but not
6 limited to, the following matters:

- 7 (a) scope of agreement;
- 8 (b) point(s) of interconnection and technical configuration;
- 9 (c) period of capacity (interconnection circuits);
- 10 (d) period to implement;
- 11 (e) technical, performance and quality standards and grade of service,
12 as well as measurement and monitoring thereof;
- 13 (f) measurement of calls, settlement and dispute resolution procedure;
- 14 (g) interconnection charge/ compensation scheme;
- 15 (h) maintenance procedure;
- 16 (i) fault reporting and clearing procedures;
- 17 (j) duration and renegotiation of agreement, and arbitration
18 arrangement as may be directed by the NTC; and
- 19 (k) arbitration agreement as may be directed by the NTC.

20 The NTC shall within ninety (90) days from the approval of this Act,
21 prepare a *pro forma* Interconnection Agreement, covering the above matters and
22 provide guidelines which shall be used as basis for public telecommunications
23 entities in arriving at an agreement to effect a timely, fair and efficient
24 interconnection.

25 The NTC shall also, within ninety (90) days from the approval of this Act,
26 prescribe revised technical and service performance standards for
27 interconnection and establish a performance monitoring system to ensure
28 compliance therewith.

1 The NTC shall, upon request of a carrier and within a period of thirty (30)
2 days:

3 (a) Decide a dispute relative to the implementation of the
4 interconnection agreement and of the amounts due from and payable by a party
5 thereunder. Any uncontested amount shall immediately be payable to the parties;
6 and

7 (b) In the absence of a carry-over clause, the NTC shall, in case of an
8 impasse between the interconnected carriers, determine and fix the terms and
9 conditions, of the renewal or extension of an interconnection agreement, to
10 include the compensation scheme thereof.

11 SEC. 3. *Interconnection Parameters.* – The following shall be
12 the minimum parameters:

13 (1) The parties shall jointly and equally provide and share the costs of
14 interconnection facilities necessary to interconnect the systems of both parties:
15 *Provided*, That in an interconnection between an Inter Exchange Carrier (IXC)
16 and a Local Exchange Carrier (LEC) with less than five thousand (5,000) total
17 system-wide line capacity and does not offer or provide any other telecom
18 services, except value-added service (VAS), the former shall shoulder the costs
19 of interconnection;

20 (2) The point(s) of interconnection (POI) shall be made at a technically
21 feasible point:

22 (3) The quantity of interconnection circuits shall be based on traffic
23 studies or interconnecting parties. In case of disagreement, the NTC shall, within
24 a period of thirty (30) days from the request of either party, decide on the quantity
25 of interconnection circuits;

26 (4) The underwriting of interconnection costs as may be determined by
27 the NTC; and

28 (5) The determination of interconnection charges by the NTC in
29 compliance with law.

1 SEC. 4. *Interconnection Procedure.* – The following shall be
2 strictly observed to

3 ensure interconnection between or among the parties:

4 (a) Parties shall negotiate and enter into an interconnection agreement
5 within a non-extendible period of sixty (60) days commencing from notice to NTC
6 of the initiation of negotiation for interconnection. During the sixty (60) day period,
7 upon the request of any of the parties negotiating for interconnection, the NTC
8 shall intervene and take an active role to facilitate and expedite interconnection.
9 The NTC may, in the interest of the State, *motu proprio* intervene in the
10 negotiation or direct parties, as may be appropriate, to submit to compulsory
11 arbitration at party cost after the lapse of thirty (30) days from the start of
12 negotiations. The arbitration shall be terminated and decided upon within a
13 period of thirty (30) days;

14 (b) Despite absence of notice to it by any party to a proposed
15 interconnection, the NTC in the exercise of police power, may initiate on its own,
16 the interconnection of two or more telecommunications carriers if the public
17 interest will be served thereby: *Provided*, That such interconnection must be
18 arrived at within a sixty (60) day period from the commencement of NTC's action;
19 and

20 (c) Should the parties fail to enter into an interconnection agreement
21 after the lapse of the sixty (60) days, determine and fix the equitable terms and
22 conditions for interconnection and draw up to the Interconnection Agreement and
23 direct the parties, under pain of sanctions prescribed hereunder, to strictly
24 comply therewith.

25 SEC.5. *Prohibited Acts or Omissions.* – The following shall be
26 considered prohibited acts or omissions:

27 (a) Refusal or neglect of any public telecommunications entity to
28 interconnect, after having been so directed by written order of the NTC within the
29 period fixed, and, under such terms and conditions as expressly set forth;

1 (b) Willful disruption or termination of interconnection by any public
2 telecommunications entity, except for any of the reasons stated in Section 4
3 hereof, or for any other lawful cause;

4 (c) Refusal or neglect of any public telecommunications entity, after
5 having been required by written order of the NTC, to re-establish/resume
6 interconnection within a period of five (5) days from the receipt of the NTC order;
7 and

8 (d) Refusal or neglect of any public telecommunications entity, after
9 having been required by written order of the NTC, to comply with any of the
10 technical and service performance standards set by the NTC or with any of the
11 terms and conditions of the interconnection agreement entered into by the
12 parties, within a period of five (5) days from the receipt of the NTC order.

13 SEC. 6. *Grounds for the Disruption or Termination of*
14 *Interconnection.*- The following shall be the grounds for the disruption or
15 termination of interconnection:

16 (a) Notwithstanding a receipt of a written notice or demand to cure or
17 remedy a breach to pay an undisputed amount due, and/or desist or cease from
18 committing such activities or violations of interconnection, as the case may be,
19 within a period of thirty (30) days from receipt, of such notice or demand, a public
20 telecommunications entity may, upon prior hearing and approval by the NTC,
21 terminate, or disrupt any interconnection when the other public
22 telecommunications entity:

23 (i) is not duly licensed, or has lost its certificate, license, or
24 authorization by revocation, cancellation or suspension of its right to operate as a
25 public telecommunications entity; or

26 (ii) has committed material breach of the terms and conditions of the
27 *interconnection agreement between the parties*; or

28 (iii) is in default of any amount due and payable under the
29 Interconnection Agreement subject further to Section 6; or

1 (iv) is using or allowing the use of interconnection facilities for
2 uncompensated toll bypass through the use of schemes such as, but not limited
3 to, callback, unauthorized audiotex, international simple resale (ISR), and other
4 analogous services or any alternative calling procedures (ACP) which are
5 prohibited in the Philippines; or

6 (v) has violated the rules and regulations of the NTC.

7 The NTC shall, within thirty (30) days, resolve any of the above issues.

8 (b) Where it is necessary for a public telecommunications entity to
9 maintain, repair, upgrade or expand any of its interconnection facilities or
10 network: *Provided*, That prior written notice of the planned maintenance, repair,
11 upgrade or expansion activity is served on the NTC, and other public
12 telecommunications entities that may be affected thereby. Fifteen (15) days prior
13 to any expansion or upgrades, the NTC shall be notified and notice to the public
14 shall be affected by publication.

15 (c) By reason of *force majeure*, being the proximate and only cause of
16 failure to maintain the existing interconnection relationship between the parties,
17 such as any of the following circumstances:

- 18 (i) earthquake, lightning or other natural disaster or calamity;
- 19 (ii) act of public enemy in war, whether international or civil; and
- 20 (iii) order or act of competent public authority for reason of national
21 security.

22 SEC.7. *Reconnection Procedure.* - The following shall be strictly
23 observed to ensure interconnection at all times, between or among parties:

24 (a) The NTC shall, within five (5) days from receipt of notice from a
25 public telecommunications entity whose services were arbitrarily disrupted or
26 terminated by another public telecommunications entity, order the parties to
27 reestablish/resume interconnection services within five (5) days from receipt of
28 said order;

1 (b) During the five (5) day period, in the public interest and in the
2 exercise of police power, the NTC may at any time, intervene at any stage of the
3 negotiation and take an active role therein to ensure, facilitate and expedite
4 resumption of interconnection;

5 (c) The NTC shall, in the exercise of police power and in the interest of
6 public welfare, despite the absence of notice from any telecommunications entity
7 whose services were disrupted or terminated by another telecommunications
8 entity, order the parties to reestablish/resume interconnection within a period of
9 five (5) days from receipt of said order; and

10 (d) Within five (5) days after issuing the order adverted to in the
11 preceding paragraphs directing the reestablishment/resumption of the
12 interconnection, the NTC shall commence an investigation to find out the cause
13 of the disruption or termination and, within a period of thirty (30) days, issue its
14 resolution imposing appropriate penalties and fines on the erring party.

15 SEC. 8. *Criminal Penalties.* - (1) The president or Chief Executive
16 Officer and the Board of Directors of the public telecommunications entity who
17 fail to comply with the written order of the NTC directing the interconnection or
18 reconnection shall be liable for imprisonment of not less than one (1) year but not
19 more than two (2) years.

20 (2) The President or Chief Executive Officer and the Board of Directors
21 of a public telecommunications entity who shall illegally disrupt or, terminate its
22 existing interconnection with another public telecommunications entity, as may
23 be determined by the Commission after due notice and hearing, shall be liable for
24 imprisonment of not less than six (6) months but not more than one (1) yer.

25 SEC. 9. *Administrative Penalties.* -

26 (1) The following fines shall be imposed by the NTC on any public
27 telecommunications entity and its President or Chief Executive Officer for willful
28 and deliberate failure to interconnect or reestablish/resume interconnection within
29 the period stated in the order of the NTC:

1 (a) From one (1) to ten (10) days after the lapse of the period to
2 comply as stated in the NTC order, a fine of Five hundred thousand pesos
3 (P500,000.00) per day shall be imposed;

4 (b) From eleven (11) to twenty (20) days after the lapse of the period to
5 comply as stated in the NTC order, a fine of Two million five hundred thousand
6 pesos (P2,500,000.00) per day shall be imposed.

7 (c) From the twenty-first day onward after the lapse of the period to
8 comply as stated in the NTC order, a fine Five million pesos (P5,000,000.00) per
9 day shall be imposed.

10 (2) The following administrative penalties shall be imposed by the NTC
11 after a determination that a public telecommunications entity has willfully,
12 deliberately and unjustifiably disrupted or terminated its interconnection with
13 another public telecommunications entity:

14 (a) A fine of not less than Five million pesos (P5,000,000.00) but not
15 exceeding Fifteen million pesos (P15,000,000.00); and

16 (b) Disqualification of the Chief Executive Officer of the violating public
17 telecommunications entity from being employed thereat and in any other entity
18 under the supervision or regulation of the NTC.

19 (3) Administrative Penalties for failure to Comply with Interconnection
20 Technical, Service Performance Standards – The following fines shall be
21 imposed by the NTC on any public telecommunication entity for deliberate and
22 willful failure to comply with an order of the NTC requiring compliance with any
23 interconnection such as the technical, service performance, standard prescribed
24 by the NTC and/or those agreed upon under the parties' interconnection
25 agreement:

26 (a) From one (1) to ten (10) days after the lapse of the period to
27 comply as stated in the NTC order, a fine of Two hundred thousand pesos
28 (P200,000.00) per day shall be imposed;

1 (b) From eleven (11) to twenty (20) days after the lapse of the period to
2 comply as stated in the NTC order, a fine of Five hundred thousand pesos
3 (P500,000.00) per day shall be imposed; and

4 (c) From the twenty-first day after the lapse of the period to comply as
5 stated in the NTC order, a fine of One million pesos (P1,000,000.00) per day
6 shall be imposed.

7 (4) Compensation Payable to Aggrieved Public Telecommunication
8 Entity – The erring public telecommunications entity shall also pay the aggrieved
9 public telecommunications entity compensation in the amount of not less than
10 One million pesos (P1,000,000.00) but not exceeding Ten million pesos
11 (P10,000,000.00) to be determined upon application with the appropriate court to
12 cover losses and damages incurred by the latter for reason of the unjustified
13 disruption or termination, of the interconnection.

14 (5) Collection of Fine or Payment of Compensation – The amount of
15 the fine imposed by the NTC shall be paid by the erring public
16 telecommunications entity to the NTC within fifteen (15) days from receipt of the
17 NTC order. In case the erring public telecommunications entity moves for a
18 reconsideration of the order imposing such fine or brings the matter on appeal to
19 the Court of Appeals or the Supreme Court, the payment of the fine shall be a
20 condition for the perfection of the motion or appeal but the payment shall be
21 deposited in escrow with the NTC until the final adjudication of the case.

22 SEC. 10. *Prohibition Against the Issuance of Restraining Orders and*
23 *Injunctions Against NTC Decisions and/or Orders.* – The decision of the NTC on
24 interconnection and on matters pertaining to Sections 8 and 9 of this Act shall be
25 immediately executory. No court, other than the Court of Appeals and the
26 Supreme Court of the Philippines, shall have jurisdiction to issue a temporary
27 restraining order, preliminary injunction, or preliminary mandatory injunction
28 against the implementation of interconnection of networks pursuant to the
29 provision of this Act.

1 SEC. 11. *Implementing Rules and Regulations.* – Within ninety (90)
2 days from the effectivity of this Act, the NTC shall promulgate rules and
3 regulations for the effective and proper implementation of this Act. The NTC shall
4 be the administrator of this Act and for this purpose, shall establish a
5 performance monitoring system.

6 SEC. 12. *Separability Clause.* – Any provision of this Act which shall
7 be declared unconstitutional shall not render any other provision of this Act
8 invalid.

9 SEC. 13. *Repealing Clause.* - Any provision of law, executive
10 order, rule or regulation or circular inconsistent with the provisions of this Act is
11 hereby modified or repealed accordingly.

12 SEC. 14. *Effectivity.* - This Act shall take effect upon approval.

13 Approved,