

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

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SENATE

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S.B. No. 1742

Introduced by Senator **Ana Theresia "Risa" Hontiveros-Baraquel**

AN ACT
**PROVIDING FOR THE ALLOCATION AND MANAGEMENT OF THE RADIO
FREQUENCY SPECTRUM**

EXPLANATORY NOTE

The radio frequency spectrum is critical to modern telecommunications. The State apportions spectrum to telecommunications entities, enabling them to provide services to the public, such as mobile telephony and access to the internet: services that form the backbone of our social media networks, ride-sharing services, and online commerce platforms.

The radio frequency spectrum is composed of naturally occurring, electromagnetic radiating energy. This natural resource, unlike oil, gas, and minerals, is non-depletable but finite. Because spectrum is a limited resource, its use is considered a privilege which may be withdrawn by the State at any time in the interest of public welfare.

The Philippines itself has experienced substantial growth in the demand for mobile data communications, with roughly 67 million internet users consuming an estimated 150,000 terabytes of data annually.

However, in OpenSignal's latest *State of LTE Report*, using data parsed from over 50 billion measurements worldwide, taken between October 1 to December 29, the Philippines ranked 75th out of 88 countries in terms of 4G availability (at 63.73% consistent accessibility) and 85th in terms of 4G speed (at an average speed of 9.49 Mbps).

Secretary Eliseo Rio, Jr. of the Department of Information and Communications Technology (DICT) has stated that one of the reasons the country has lagged behind the rest of the world has been a lack of competition in the telecommunications sector, which is currently dominated by the duopoly of Globe Telecom, Inc. and Smart Communications, Inc. This lack of competition has been exacerbated by the scarcity of available spectrum for allocation to new players looking to break the duopoly.

This scarcity limits competition from new entrants and increases the cost of using spectrum to business and consumers. Similarly, the lack of unassigned usable spectrum stifles and delays the introduction and development of new technology.

National Telecommunications Commission (NTC) Memorandum Circular No. 3-3-96 provides that, where demand for specific frequencies exceeds availability, allocation shall be through open tenders. Despite this, spectrum has not been allocated

in this manner. Instead the Commission has chosen to assign frequencies through administrative "beauty contests" to various telecommunications entities.

The great irony is that, where spectrum has been assigned and allocated in this way, lucrative secondary markets have commonly arisen, resulting in licenses and permits being warehoused and sold to other parties. This has often led to the anti-competitive concentration of spectrum resources in the hands of a few industry players, as is the current situation in the Philippines.

Consequently, economists and other commentators have long questioned the wisdom of granting valuable spectrum rights to commercial entities for a fraction of their actual economic value.

In other jurisdictions, auctions of portions of the radio spectrum have led to substantial windfalls for the public: in Thailand, the auction of the 900 MHz license earned the government 4.2 billion USD; in India, auctions held in March 2015 earned 13 billion USD; in the United Kingdom, auctions held in 2000 for the frequencies necessary to support the 3G mobile telephony standard earned 36.9 billion EUR; and, in Canada, an auction held in 2008 raised 4.25 billion USD.

Assignments of spectrum in the Philippines have also been open-ended: subsisting until annulled, revoked, or suspended by the Commission or by the expiration or termination of the assignee's corporate existence. This has led to a regulatory regime where mergers and acquisitions have resulted in the hoarding of critical frequencies, specifically those required for mobile telephony and data.

This accentuates the need for a better framework to manage this critical resource by, among others, establishing a system to regularly reallocate or re-farm portions of the spectrum through competitive bidding. It is respectfully submitted that this will not only generate additional revenue for the government, it will also, by promoting competition and more efficient use of a scarce public resource, lead to better telecommunications services for the public.

Hence, the immediate passage of this measure is earnestly sought.

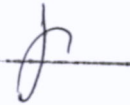

ANA THERESIA "RISA" HONTIVEROS-
BARAQUEL

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INTRODUCED BY SENATOR ANA THERESIA "RISA" HONTIVEROS
BARAQUEL

AN ACT
PROVIDING FOR THE ALLOCATION AND MANAGEMENT OF THE
RADIO FREQUENCY SPECTRUM

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 "Philippine Spectrum
2 Management Act."

3 **SECTION 2. Declaration of Policy.** The radio frequency spectrum is a scarce public
4 resource that shall be administered in the public interest and in accordance with international
5 agreements and conventions to which the Philippines is a party. The government shall
6 allocate the radio frequency spectrum to service providers capable of efficiently and
7 effectively using it to meet public demand for telecommunications services. The use of any
8 portion of the radio frequency spectrum is a privilege conferred by the State which may,
9 after due process, be withdrawn at any time.

10 **SECTION 3. Objectives.** The objectives of this Act are, as follows:

- 11 (a) Encourage the development and rapid deployment of new technology;
12 (b) Ensure better service by preventing excessive concentration and
13 consolidation of spectrum licenses;
14 (c) Recover a greater portion of the economic value of the radio frequency
15 spectrum for the public; and
16 (d) Promote more efficient use of spectrum.

17 **SECTION 4. Spectrum Management Plan.** The Commissioner of the National
18 Telecommunications Commission (NTC) and the Secretary of the Department of
19 Information & Communications Technology (DICT) shall meet at least annually to develop
20 a spectrum management plan for the Philippines with respect to the following issues, among
21 others:

- 22 (a) Public revenue generated from the radio frequency spectrum;
23 (b) Future spectrum requirements for public and private use;
24 (c) Spectrum allocation measures necessary to accommodate those uses; and
25 (d) Measures necessary to promote the efficient use of spectrum.

1 **SECTION 5. *Definition of Terms.*** As used in this Act, the following terms are defined
2 as follows:

3 (a) “Allocation” refers to an entry in the National Radio Frequency Allocation
4 Table of a given frequency band for the purpose of its use by one or more
5 telecommunication services;

6 (b) “Assignment” refer to an authorization given to a Licensee to use specific
7 frequencies or channels;

8 (c) “Block” refers to a portion of the radio frequency spectrum allocated to a
9 Licensee pursuant to this Act.

10 (d) “License” refers to a license to be granted pursuant to this Act to establish
11 or use a wireless telegraphy station or install or use wireless telegraphy apparatus in
12 the Philippines at frequencies comprising a portion or several portions of the radio
13 frequency spectrum;

14 (e) “Licensee” refers to a natural or juridical person issued a License to
15 pursuant to this Act; and

16 (f) “Material Interest” refers to any interest, whether direct or indirect, in any
17 share which carries, or any shares which together carry, more than twenty-five per
18 cent (25%) of the votes entitled to be cast at a general meeting of a Licensee; or any
19 share or shares in the case where the consent of the holder of that share or those
20 shares is required for the conduct of any business of a Licensee; or the right to
21 appoint or remove a majority of Licensee’s board of directors or trustees.

22 **SECTION 6. *Scope.*** Only the portions of the radio frequency spectrum designated by
23 the International Telecommunications Union (ITU) as purposed for telecommunications,
24 telemetry, navigation, public safety, and broadcast may be licensed pursuant to this Act. The
25 National Telecommunications Commission (NTC) shall ensure that a portion of the radio
26 frequency spectrum is allocated for unlicensed public use, such as those needed for
27 consumer electronics, citizens’ band radio, national defense, and VHF and UHF ham radio.

28 **SECTION 7. *Allocation of the Radio Frequency Spectrum.*** Insofar as consistent with
29 national priorities and demand for radio frequency spectrum, the allocation of the radio
30 frequency spectrum shall be in accordance with the International Table of Radio Frequency
31 Allocation issued by the International Telecommunications Union (ITU). The NTC shall
32 have the authority to allocate, assign, reallocate, or reassign portions of the radio frequency
33 spectrum to achieve the objectives of this Act, including the express authority to revoke or
34 annul any such allocations or assignments, and impose terms and conditions for the use
35 thereof.

36 The NTC shall divide the usable radio frequency spectrum into a sufficient number
37 of Blocks in each spectrum band for the purposes of ensuring adequate competition in the
38 telecommunications industry as well as preventing harmful interference. The NTC shall also
39 reserve a sufficient number of Blocks for non-commercial use by the government and
40 members of the public.

41 If primary use of a Block to be allocated involves, or is likely to involve, the receipt of
42 compensation from subscribers to receive or transmit communications signals using
43 allocated frequencies, the NTC shall carry out the allocation to qualified public

1 telecommunications entities through auction or competitive bidding. As provided in the
2 implementing rules and regulations issued pursuant to this Act, portions of the radio
3 frequency spectrum may be allocated on a territorial basis.

4 **SECTION 8. *Auctions.*** The NTC and DICT shall establish a competitive bidding
5 methodology for the allocation of Blocks pursuant to this Act. This methodology shall
6 include safeguards to protect the public interest as well as measures to promote the stated
7 objectives of this Act. Thus, the NCT and DICT shall:

8 (a) Consider alternative payment schedules and methods of calculation,
9 including lump sums or guaranteed installment payments, with or without royalty
10 payments, or other schedules or methods that promote the objectives of this Act, and
11 combinations of such schedules and methods;

12 (b) Include performance requirements, such as appropriate deadlines and
13 penalties for performance failures, to ensure prompt delivery of services to the public,
14 prevent stockpiling or warehousing of spectrum, and promote investment in and
15 rapid deployment of new technologies and services;

16 (c) Prescribe methods for allocation and assignment that promote an equitable
17 distribution of licenses and services among geographic areas, economic opportunity
18 for a wide variety of applicants, including small businesses, and businesses owned by
19 members of minority groups and women, and investment in and rapid deployment of
20 new technologies and services; and

21 (d) Require such transfer disclosures and anti-trafficking restrictions and
22 payment schedules as may be necessary to prevent unjust enrichment as a result of
23 the methods employed to issue licenses.

24 **SECTION 9. *Validity of Licenses for the Use of the Radio Frequency Spectrum.*** Unless
25 sooner withdrawn, revoked, or voluntarily surrendered in accordance with current rules and
26 regulations, all existing licenses for the utilization of the radio frequency spectrum shall be
27 deemed revoked three (3) years from the effectivity of this Act. Licenses issued pursuant to
28 this Act shall be valid for five years (5), unless a shorter period is provided in the
29 implementing rules and regulations thereof.

30 **SECTION 10. *Prohibition on Sale, Lease, Transfer, Usufruct and Assignment.*** A licensee
31 shall not lease, transfer, grant the usufruct of, sell nor assign a License issued pursuant to this
32 Act, or the rights and privileges acquired thereunder, to any person, firm, company,
33 corporation, or other commercial or legal entity.

34 **SECTION 11. *Mergers and Acquisitions.*** A Licensee shall not merge with any person,
35 firm, company, corporation or entity, nor shall a Material Interest in a Licensee be
36 transferred, whether as a whole or in parts, and whether simultaneously or
37 contemporaneously, to any such person, firm, company, corporation or entity, without the
38 prior approval of the NTC and the Philippine Competition Commission (PCC).

39 **SECTION 12. *Qualifications.*** Licensees shall possess the following qualifications:

40 (a) Filipino citizenship;

41 (b) Holder of a Congressional franchise.

1 (c) The technical and financial capacity to utilize allocated spectrum to provide
2 services to the public;

3 (d) The Licensee, or any other person, firm, company, corporation or entity
4 which holds a Material Interest in the Licensee, or in which the Licensee holds a
5 Material Interest, must not have been allocated an aggregate amount of spectrum
6 greater than the spectrum cap provided for in this Act;

7 (e) Not otherwise disqualified by law or existing regulations.

8 **SECTION 13. *Spectrum Cap.*** No entity or group of entities sharing a Material Interest
9 in each other, may hold more than 25% of the licensed radio frequency spectrum in any
10 given band.

11 **SECTION 14. *Obligations of a Licensee.*** Every Licensee shall be bound by the
12 following obligations:

13 (a) Observe the spectrum cap;

14 (b) Utilize allocated spectrum to provide telecommunications services to the
15 public;

16 (c) Comply with this Act, its implementing rules and regulations, and all other
17 applicable administrative issuances;

18 (d) Payment of lawful fees, charges and taxes due the national government in
19 connection with Licenses issued pursuant to this Act; and

20 (e) Obtain prior approval from the NTC and PCC prior to any merger,
21 acquisition, or transfer of Material Interest in a Licensee.

22 **SECTION 15. *Revocation of Licenses and Return of Assigned Frequencies.*** A License shall
23 be revoked by the National Telecommunications Commission and reallocated in the
24 following circumstances:

25 (a) Violation by a Licensee of its obligations hereunder;

26 (b) Loss of corporate personality or cessation of business;

27 (c) Expiration of a License's validity period; and

28 (d) Failure to pay lawful fees, charges and taxes due the national government in
29 connection with Licenses issued pursuant to this Act.

30 **SECTION 16. *Preparation and Publication of National Radio Frequency Allocation Table.***
31 The NTC shall prepare a National Radio Frequency Allocation Table (NRFAT) containing a
32 list of all spectrum holders and the portion of the radio frequency spectrum assigned to
33 them. An updated NRFAT must be published annually, posted on the NTC's website, and
34 otherwise made available to the public.

35 **SECTION 17. *Implementing Rules and Regulations (IRR).*** – The Secretary of Information
36 and Communications Technology, upon the recommendation of the NTC and PCC, shall
37 issue the Implementing Rules and Regulations for the effective implementation of this Act,
38 within sixty (60) days from the approval thereof.

39 **SECTION 18. *Separability Clause.*** – If any provision of this Act is declared
40 unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions not
41 affected thereby shall continue to be in full force and effect.

1 **SECTION 19.** *Repealing Clause.* – Section 3 of Republic Act 3846 insofar as it
2 provides for the allocation of the radio frequency spectrum, as well as all other laws, decrees,
3 executive orders, department or memorandum orders and other administrative issuances or
4 parts thereof which are inconsistent with the provisions of this Act, are hereby modified,
5 superseded or repealed accordingly.

6 **SECTION 20.** *Effectivity.* – This Act shall take effect fifteen (15) days after
7 publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,