

EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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Senate
Office of the Secretary

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SENATE

S. No. 911

RECEIVED BY: _____

Introduced by **SENATOR RAMON BONG REVILLA, JR.**

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

EXPLANATORY NOTE

The Philippines has improved exponentially in terms of telecommunication infrastructure brought about by the rapid technological evolution for the past few years. This technological evolution has been felt in almost all facets of life. The mobile phone has taken over the world, becoming an all in one device that we almost cannot live without in today's world. The internet has been a bridge for nations to connect and communicate across the globe, almost no corner is considered far nowadays through the wonders of technology.

A major factor in telecommunications is the transmission of data. As the Philippines struggles with the limitations of its infrastructure and resources, it is necessary to permit open access, which allows every option that will aid the improvement of data transmission in our country. This measure seeks to establish a regulatory framework that would encourage competition, mandate interconnection of networks, and promote infrastructure sharing.


This measure likewise aims to increase the powers of the National Telecommunications Commission, granting it authority to promote a conducive environment for data networks and associated industries to thrive and innovate which would redound to the benefit of Filipinos through increased information access.

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


RAMON BONG REVILLA, JR.

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

1 Section 1. *Title.* - This Act shall be known as the "Open Access in Data
2 *Transmission Act of 2019*".

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
6 transmit information at speeds, and with quality comparable to the best in the
7 world and alignment with modern global practices;

8 (c) To create an entrepreneurial ecosystem where persons who wish to engage
9 in the data transmission industry compete openly and freely in the spirit of fair
10 competition 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
14 data infrastructure, namely:

15 (i) Adoption of a technology-neutral framework that encourages innovative,
16 low-cost delivery users;

17 (ii) Fair and open competition at all multiple layers of the data transmission
18 network, allowing a wide variety of physical networks and application to
19 interact in an open architecture;

(iii) Transparency to ensure fair trading within and between layers that allows clear, comparative information on market prices and services;

(iv) The creation of circumstances where everyone can connect to everyone else at the various layers and interfaces, such that entities of any size may freely enter and exit the market, and dominance by any single player or group of players is avoided;

(v) Devolved and distributed local solutions rather than centralized ones encouraging services that are closer to the user.

(g) To establish a strong and independent regulatory body and system to ensure fair competition and enhance the competitive operation of the data transmission sector; and

(h) To protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, and thereby encouraging the development of advanced telecommunications capabilities and the removal of barriers to infrastructure investment.

Sec. 3. *Definition of Terms.* - As used in this Act, the following terms shall mean:

a) *Core/Backbone network* - the main line (or connection) that ties networks; delivers routes to exchange information among various sub-networks, connects regional distribution and, in some instances, provides connectivity to other peer networks.

(b) *Data transmission* - the process of sending digital or analog data over a communication medium to one or more computing network/s, communication or electronic device/s. It enables the transfer and communication of devices in a point-to-point, point-to-multipoint, and multipoint-to-multi-point environment.

(c) *International gateway/landing* - segment of data transmission that consists of any facility that provided an interface to send and receive data traffic between one country's domestic network facilities and those in another country.

(d) *Last mile* - segment of data transmission from the network to the end-users

(e) *Middle mile* - segment of data transmission that carries data from the back-haul network to the nearest aggregation point, then from the aggregation point to the nearest point of presence (PoP).

(f) *National Telecommunications Commission (NTC)* - the entity defined and created by the Public Telecommunications Policy Act (Republic Act No. 7925, as amended).

1 (g) *Open Access* - the system of allowing data transmission participant the use of data
2 transmission and/or distribution system, and associated facilities subject to fair,
3 reasonable and non-discriminatory terms in a transparent market.

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

10 **CHAPTER II**

11 **DEFINITION, ORGANIZATION AND OPERATION OF THE DATA** 12 **TRANSMISSION INDUSTRY**

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

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

20 All four segments, involving businesses affected with public interest, shall be
21 competitive and open. Any law to the contrary notwithstanding, participants in any of
22 the four segments shall not be required to secure any other license, approval,
23 franchise, or certificate other than those expressly provided for in this Act.

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

29 **CHAPTER III**

30 **REGULATION OF THE DATA TRANSMISSION INDUSTRY**

31 Sec. 6. *Additional Powers and Functions of the NTC*. - The NTC shall have the
32 additional powers and functions:
33

1 (a) Resource Allocations. - The NTC shall, upon due consultation on how to
2 maximize their return for the allocation of finite resources used in the transmission of
3 data, promulgate such rules and regulations by which it may obtain maximum value
4 for every technological wave under its management.

5 (b) Setting Performance Standards. - The NTC shall set and measure reporting
6 and performance standards shall take into account speed, packet loss, jitter, and
7 latency. The NTC shall regularly polish the results of these measurements in an open
8 data format accessible to the general public.

9 (c) Recovery of Resources. - If the NTC finds, on its own initiative or upon
10 complaint, that any right, license, or franchise granted to any data transmission
11 industry participant is not being used in accordance with the covenants it requires of
12 the person developing that resource, and upon due hearing it may revoke the license
13 without the need of compensation, franchise, or right, and set the same for acquisition
14 by any qualified party, at auction.

15 *Sec. 7. Prohibited Acts. -*

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

20 *Sec. 8. Arms-length Transactions and Transparency. -* The NTC shall
21 promulgate rules requiring all data transmission industry participants to include in their
22 annual report a fair and accurate statement regarding their market prices and their
23 services.

24 *Sec. 9. Fair competition. -* (a) The Philippine Competition Commission (PCC)
25 and the NTC shall ensure that for those providing services at any given layer, there
26 are at least two significant providers; and (b) when there are less than four (4)
27 significant providers of any particular service, the PCC and the OFC should scrutinize
28 any act made by the remaining providers for anti-competitive behaviour under the
29 Philippine Competition Act.

30
31 **CHAPTER VI**
32 **PENALTIES**

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

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

CHAPTER VII

FINAL PROVISIONS

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

Sec. 13. *Expedited Processing.* - In all instances where a participant in the data transmission industry shall require a form, certificate, or request, there should be no more than two (2) public officers involved in processing the form, certificate, or request.

Sec. 14. *Implementing Rules and Regulations.* - Within sixty (60) days from the effectivity of this Act, gthe NTC shall promulgate the necessary rules and regulations for the effective implementation of this Act.

Sec. 15. *Separability Clause.* - Should any provision herein be declared unconstitutional, the same shall not affect the validity of the other provision of this Act.

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

Sec. 17. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in any two (2) newspapers of general circulation in the Philippines

Approved,