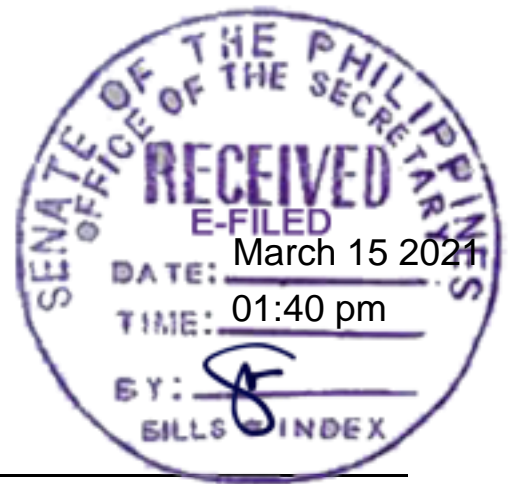


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE

S.B. No. 2103

Introduced by **SENATOR IMEE R. MARCOS**

AN ACT
PROTECTING INTERNET CONSUMERS AND PROMOTING NET NEUTRALITY
IN DATA TRANSMISSIONS, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

R.A. No. 10929 otherwise known as the "Free Internet in Public Places Act", declares that it is a state policy "to promote an environment for the development of structures that would ensure the availability and accessibility to reliable and secure internet access suitable to the needs and aspirations of the nation." The law further states that it was enacted to "promote knowledge-building among citizens and enable them to participate and compete in the evolving information and communication age." Additionally, RA No. 10844, the law that created the Department of Information and Communications Technology, recognizes it as a state policy "to ensure universal access to quality, affordable, reliable, and secure ICT services."

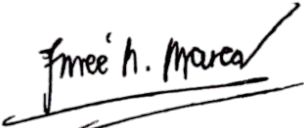
In this regard, current ISPs and telecommunications service providers are failing in their roles in the internet ecosystem. Available internet in the Philippines remains slow, unreliable, and expensive. According to Ookla's Speedtest Global Index, the Philippines ranks 110th out of 139 countries in terms of mobile data speed and ranks at the lower part of the global index in terms of average broadband. In the Digital Quality of Life Index 2020, the Philippines lands at the 82nd place, out of 85 spots, in terms of internet affordability. The situation has become so distressing that President Rodrigo Roa Duterte, in his fifth State of the Nation Address (SONA), found it necessary to warn telecommunication giants PLDT-Smart and Globe to improve their services, or face possible seizure of their assets by the government.

Further, some industry players have failed the Filipino internet consumer by failing to provide safe, neutral, and fair online information and services. Ideally, every citizen should have the same experience in accessing online information. However, Filipino internet consumers have different experiences when it comes to internet connectivity and content. Those who can afford fast and reliable internet have access to more accurate and varied data, while less privileged consumers that are forced to rely on “free” data or on platform-based access with restricted type of content through a “walled garden” system, are more exposed to fake news, spam, and false advertising. ISPs and private companies further limit the consumers’ choices by bundling their telecommunication products and services together, resulting in anti-competitive sales practices. It appears that internet experience is different depending on a person’s socio-economic status.

As it stands, the home-locked students, employees working from home, and proprietors of online businesses have no choice and are constrained to accept what ISPs have to offer. This is where the State has to step in. For the internet to maintain its crucial role in knowledge-building, ISPs and telecommunications providers must provide reliable and affordable internet; and more importantly, they have to remain as impartial conduits, and not paid “gatekeepers”. The internet should not be a place where ISPs can pick winners and losers by favoring some websites, apps and services over others, based on some private or economic interest.

This bill aims to enact measures to protect the internet end-user, by imposing obligations of transparency and reliability on ISPs, telecommunications providers, and the industry players. This bill also aims to espouse the principle of net neutrality, to ensure that the Internet remains a level playing field, where a tiny blog can reach readers just as well as the social media giants. It is the author’s hope that through the enacted measures, end-users will retain the power to enjoy all that the internet has to offer, whether it be the freedom to access information, to verify facts, or to innovate.

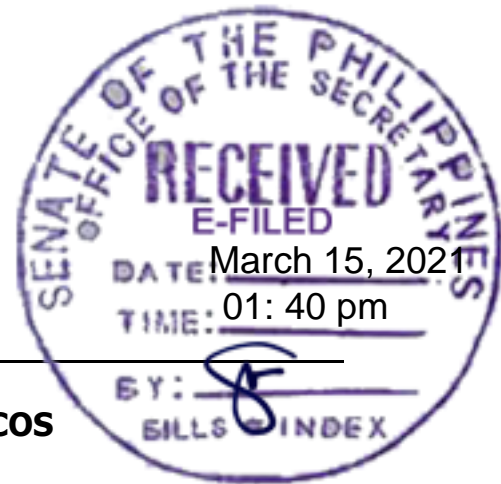
Given the abovementioned circumstances, the immediate passage of this bill is earnestly sought.


IMEE R. MARCOS

EIGHTEENTH CONGRESS OF THE)
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Second Regular Session)

SENATE

S.B. No. 2103



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**AN ACT
PROTECTING INTERNET CONSUMERS AND PROMOTING NET NEUTRALITY
IN DATA TRANSMISSIONS, AND FOR OTHER PURPOSES**

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 "*Internet Consumer*
2 *Protection and Net Neutrality Act of 2021.*"

3
4 Sec. 2. *Declaration of Policy.* – It is hereby declared a policy of the State:

5
6 (a) To safeguard equal and non-discriminatory treatment of data traffic in the
7 provision of internet access services;

8
9 (b) To ensure reliable, affordable, open, and transparent internet access services
10 at speeds, costs, and quality in alignment with modern global practices;

11
12 (c) To protect internet end-users from anti-competitive practices, false news,
13 spam, false advertising, and to guarantee the continued functioning of the
14 internet ecosystem as an engine of innovation;

15
16 (d) To protect the public interest as it is affected by the public's ability to access
17 data networks;

1 (e) To recognize and uphold the right of the internet end-user to be free to
2 access and distribute content, run applications, and use services of their choice;

3
4 (f) To promote a best effort internet system that is application-agnostic, and
5 without regard to content;

6
7 (g) To respect the principle of technology neutrality; and

8
9 (h) To protect and promote the internet as an open platform enabling access
10 to world knowledge, freedom of expression, end-user control, competition and
11 freedom to innovate without permission.

12
13 *Sec. 3. Definition of Terms.* –As used in this Act, the following terms shall mean:

14
15 a. "*Application-agnostic*" means not differentiating on the basis of source,
16 destination, internet content, application, service, or device, or class of internet
17 content, application, service, or device;

18
19 b. "*Basic Telephone Service*" refers to the local exchange telephone service for
20 residence and business establishments provided via the circuit switched
21 telephone network;

22
23 c. "*Content, applications or services*", refers to, among others, texts, images,
24 audios, videos, applications or services that are carried over the broadband or
25 internet network;

26
27 d. "*Data transmission*" refers to the process of sending digital or digitized analog
28 signal over a communication medium to one or more computing networks,
29 communication or electronic device. It enables the transfer and communication
30 of devices in a point-to-point, point-to-multipoint and multipoint-to-multipoint
31 environment. The term data transmission includes the provision of Voice over
32 Internet Protocol (VoIP) services but does not include the provision of Basic
33 Telephone Services;

34
35 e. "*Data transmission industry participant*" refers to any person, firm, partnership
36 or corporation, government or private, engaged in the provision of data
37 transmission services to the public, including Service Providers as defined under
38 RA 10172 also known as the Cybercrime Prevention Act. This also includes public

1 telecommunications entities (PTEs) as defined under Republic Act No. 7925,
2 otherwise known as the Public Telecommunications Policy Act of the Philippines,
3 that offer data transmission services;

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

11
12 j. "*Internet access service*" means electronic communications service that
13 provides access to the internet as a mass market service, with or without a fee,
14 and thereby connectivity to virtually all end points of the internet, irrespective of
15 the network technology and terminal equipment used;

16
17 k. "*Internet end-user*" means a legal entity or natural person using or requesting
18 an internet access service;

19
20 l. "*Mass market*" service means a service marketed, offered and sold
21 indiscriminately to the public, regardless of whether the actual contract is
22 customized or individually negotiated. "Mass market" service does not include
23 enterprise service offerings and B2B arrangements;

24
25 m. "*Voice over Internet Protocol (VoIP) Service*" refers to the provision of voice
26 communication using Internet Protocol (IP) technology; and

27
28 n. "*Zero-rating*" means exempting some internet traffic from an internet end-
29 user's data usage allowance.

30
31 Sec. 4. *Scope.* – This Act applies to all duly qualified persons who participate in
32 the data transmission industry subject to domestic regulations and existing laws. For
33 this purpose, any person or entity whose business deals substantially with the
34 transmission of data, including VoIP service provider, Internet Service Providers (ISPs),
35 and Data Center service providers, shall be governed by the provisions of this Act. PTEs
36 principally engaged in the provision of basic telephone services, such as international
37 carrier, inter-exchange carrier, local exchange operator, and mobile radio services
38 provider, as these entities are defined in Republic Act No. 7925, which also provide

1 data transmission services, shall likewise be subject to the provisions of this Act with
2 respect to the data transmission services they provide and the interconnection to their
3 networks that they extend to data transmission industry participants.
4

5 *Sec. 5. Role of the NTC.* – The NTC plays an essential role in ensuring that: (1)
6 internet end-users are able to effectively exercise their rights under this Act; (2) the
7 internet service providers comply with their obligations; and (3) open and neutral
8 internet access is safeguarded. To that end, the NTC shall:
9

10 a. Adopt a technology-neutral framework that allows Data Transmission Industry
11 Participants to use any available technology to provide service;
12

13 b. In coordination with the Philippine Competition Commission (PCC), promote
14 fair and open competition in all the segments of the data transmission network;
15

16 c. Mandate transparency in pricing and the publication of pricing information to
17 ensure fair trading within and between each data transmission segment so as to
18 allow clear, comparative information on market prices and services;
19

20 d. In coordination with the Department of Information and Communications
21 Technology (DICT), prescribe performance standards after public consultation
22 and hearings within six (6) months from the effectivity of this Act;
23

24 e. Upgrade performance standards imposed on the data transmission industry
25 regularly to ensure that performance standards shall, at a minimum, be at par
26 with service levels established in regional data network performance indices and
27 aligned with international best practices. Such standards shall take into account
28 speed, packet loss, jitter, and latency;
29

30 d. Regularly review performance standards at least once a year and publish new
31 performance standards at least thirty (30) days before they take effect. The
32 publication of the results of the performance measurements shall be done in an
33 open data format accessible to the general public;
34

35 e. Any person, or the NTC itself may, *motu proprio*, file a petition to penalize
36 any data transmission industry participant for failure to deliver service
37 according to the NTC's published performance standard and to require

1 rectification of such non-compliance; and

2
3 f. Measure the performance of the data industry participants, furnish a copy of
4 the raw data of the measurements to the DICT, and publish the results of its
5 measurements in its website.

6
7 *Sec. 6. Fair Competition.* – The PCC and the NTC shall ensure that the principles
8 and policies enshrined under Republic Act No. 10667 are strictly adhered to in the data
9 transmission industry. The PCC and NTC shall ensure that all industry players shall
10 observe fair, reasonable and non-discriminatory treatment in all their dealings. To this
11 end, the PCC and NTC shall:

12
13 a. foster and develop interagency cooperation mechanisms, including
14 information-sharing tools, that will guide them in the performance of their
15 respective mandates, and in the promotion of fair competition in the data
16 transmission industry;

17
18 b. coordinate to ensure that any application or acquisition that would result in
19 the control of 50% or more of the market share in any one segment of the
20 data transmission industry by a single player, the same shall be notified to
21 the PCC for them to conduct a review of the application or acquisition; and

22
23 c. the PCC shall conduct an annual competition audit of each segment of the
24 data transmission industry based on information provided by the NTC, and
25 shall submit its annual report to the NTC and DICT for a comprehensive
26 evaluation of the implementation this law, as well as the promotion of fair
27 competition in the data transmission industry.

28
29 *Sec. 7. Technological Neutrality.* – The NTC shall promulgate the necessary rules
30 and regulations to ensure that the provisions of this law apply, *mutatis mutandis*, to
31 future technologies in data transmission.

32
33 *Sec. 8. Prohibited Acts.* – The following acts shall be prohibited:

34
35 a. *Refusal to Plug and Play* - Any data transmission industry participant, insofar
36 as such person is so engaged, shall not refuse access to infrastructure to any
37 other data transmission industry participant, except for failure to pay open
38 market fees for the access to the service.

1
2 b. *Paid prioritization* - A data transmission industry participant shall not engage
3 in paid prioritization for monetary or other consideration except when allowed
4 by the NTC after such participant demonstrates that the practice would provide
5 significant public interest benefit and will not disadvantage content and
6 applications that are not prioritized nor harm the open nature of the Internet.

7
8 Zero-rating in application-agnostic ways shall not be a violation of this provision,
9 provided that no consideration, monetary or otherwise, is provided by any third
10 party in exchange for the service provider's decision whether to zero-rate
11 internet traffic.

12
13 c. *Throttling* - It shall be prohibited for a data transmission industry participant
14 to hinder or slow down services or applications or access to specific sites on the
15 internet except where (1) access to such sites, services or applications are
16 prohibited by law; (2) it is necessary to preserve the integrity and security of the
17 provider and the equipment of the end-user: *Provided that*, if the breach of
18 integrity or security is caused by the equipment of the end-user, the provider
19 has to notify the end-user first and provide the end-user sufficient time to rectify
20 the situation; or (3) it is necessary to block the transmission of unwanted
21 communications to an end-user, on the application or complaint of the end-user
22 or the data transmission industry participant, and upon lawful order of the court.

23
24 d. *Unlawful impairment* - means impairing or degrading any of the following:
25 (1) particular content, applications, or services; (2) particular classes of content,
26 applications, or services; (3) lawful internet traffic to particular non-harmful
27 devices; or (4) lawful internet traffic to particular classes of non-harmful devices.
28 The term includes, without limitation, differentiating, positively or negatively,
29 between any of the following: (1) particular content, applications, or services;
30 (2) particular classes of content, applications, or services; (3) lawful Internet
31 traffic to particular non-harmful devices; or (4) lawful internet traffic to particular
32 classes of non-harmful devices.

33
34 Impairment is not unlawful in instances where the data transmission industry
35 participant acts pursuant to (i) an order of a court of law or the NTC mandating
36 the differential treatment through blocking or promoting of specific content,
37 applications or services; and (ii) an obligation under the law such as RA 9775

1 also known as the Anti-Child Pornography Act of 2009 and the Cybercrime
2 Prevention Act.

3
4 e. *Failure to disclose* - Failure of the data transmission industry participant to
5 publicly disclose accurate information regarding the network management
6 practices, performance, and commercial terms of its broadband internet access
7 services sufficient for consumers to make informed choices regarding use of
8 those services and for content, application, service, and device providers to
9 develop, market, and maintain internet offerings.

10
11 f. *Refusal to give information* - It shall be prohibited for any data transmission
12 industry participant, including PTEs with regard to its network and facilities, to
13 refuse or fail to make available, on a timely basis, to suppliers of data
14 transmission services, technical information about its essential facilities or
15 network facilities and commercially relevant information that are necessary for
16 them to provide services.

17
18 g. *Anti-competitive cross-subsidization* - The NTC shall require separate books
19 of account between different data transmission segments in order to allow
20 identification of costs and revenues for each segment. Any violation of this
21 provision shall give rise to a presumption of anti-competitive cross-subsidization,
22 which shall then be referred to the PCC for proper determination and action, in
23 accordance with the provisions of Republic Act No. 10667.

24
25 Nothing herein shall prevent interconnecting networks from charging the
26 appropriate cost-based compensation for the use of interconnecting facilities.

27
28 *Sec. 9. Rights of Internet End-Users.* – The end-user of data transmission
29 services shall have the following basic rights:

- 30
31 a. To access and distribute information and content, use and provide applications
32 and services, and use terminal equipment of their choice, irrespective of the
33 internet end-user's or provider's location or the location, origin or destination of
34 the information, content, application or service, via their internet access service.

35
36 Agreements between providers of internet access services and internet end-
37 users on commercial and technical conditions and the characteristics of internet
38 access services such as price, data volumes or speed, and any commercial

1 practices conducted by providers of internet access services, shall not limit the
2 exercise of the rights of end-users laid down in the preceding paragraph;

- 3
- 4 b. Entitlement of data transmission service which is non-discriminatory, reliable,
5 and conforming with minimum standards as provided by the appropriate national
6 government agencies;
- 7
- 8 c. Not to be charged for or subject to any service or promotion prior to the internet
9 end-user's express agreement, to participate, join, use or subscribe to or avail
10 of a data transmission service or promotion thereof. Neither shall the internet
11 end-user be charged for the time during which the data transmission service
12 was interrupted through no fault of the user;
- 13
- 14 d. To be charged only according to the rates, terms, and conditions the internet-
15 end user has agreed to, and to be sent a notice at least thirty (30) days in
16 advance of any intended change that may affect the data transmission service
17 agreements. No service provider-initiated change may take affect without such
18 prior notice and unless allowed by applicable law, NTC rules and regulations;
- 19
- 20 e. To be given data transmission services within two (2) months from application
21 for data transmission service;
- 22
- 23 f. For subscribers of pre-paid services, to be provided with a free mechanism to
24 verify the remaining credit balance for the subscribed data transmission service;
- 25
- 26 g. Regular, timely and accurate billing, courteous and efficient service at business
27 offices and by data transmission service provider;
- 28
- 29 h. Timely correction of errors in billing and the immediate provision of rebates or
30 refunds by the data transmission service provider without the need for demand
31 by the user;
- 32
- 33 i. Thorough and prompt investigation of, and action upon complaints. Towards
34 this end, the data transmission service provider shall endeavor to allow
35 complaints to be received by any means convenient to the end-user, including
36 voice calls, post, short messaging service (SMS), multi-media messages (MMS)
37 and online communication, and shall keep a record of all complaints received
38 and the action taken to address the complaints; and

- 1
2 j. Subject to the filing of a formal request to the data transmission service, an
3 internet end-user may request the immediate termination of service without the
4 imposition of fees or penalties, and with the refund of any fees or charges
5 already paid, should an internet end-user not consistently comply with preceding
6 paragraphs, or any other minimum performance standards set by the NTC.
7

8 *Sec. 10. Obligations of Data Transmission Industry Participants.* – Data
9 transmission industry participants shall have the following obligations:
10

- 11 a. To treat all internet traffic equally, when providing internet access services,
12 without discrimination, restriction or interference, and irrespective of the
13 sender and receiver, the content accessed or distributed, the applications or
14 services used or provided, or the terminal equipment used;
15
16 b. To not impede the internet end-user’s right to access and distribute
17 information and content, use and provide applications and services and use
18 terminal equipment of their choice, regardless of the end-user’s or provider’s
19 location or the location, origin or destination of the information, content,
20 application or service, via their data transmission service;
21
22 c. Not to limit the rights of internet end-users as listed in items (a) and (b)
23 above through agreements on commercial and technical conditions and the
24 characteristics of data access services such as price, data volume or speed,
25 and any commercial practices conducted by providers of internet access
26 services;
27
28 d. Providers of internet access services shall ensure that any contract which
29 includes internet access services specifies at least the following:
30
31 i. information on how traffic management measures applied by that
32 provider could impact on the quality of the internet access services,
33 on the privacy of end-users and on the protection of their personal
34 data;
35
36 ii. a clear and comprehensible explanation as to how any volume
37 limitation, speed and other quality of service parameters may in

1 practice have an impact on internet access services, and in particular
2 on the use of content, applications and services;

3
4 iii. a clear and comprehensible explanation of how any services to which
5 the end-user subscribes might in practice have an impact on the
6 internet access services provided to that end-user;

7
8 iv. a clear and comprehensible explanation of the minimum, normally
9 available, maximum and advertised download and upload speed of
10 the internet access services in the case of fixed networks, or of the
11 estimated maximum and advertised download and upload speed of
12 the internet access services in the case of mobile networks, and how
13 significant deviations from the respective advertised download and
14 upload speeds could impact the exercise of the end-users' rights laid
15 down in Section 9; and

16
17 v. a clear and comprehensible explanation of the remedies available to
18 the internet end-user in the event of any continuous or regularly
19 recurring discrepancy between the actual performance of the internet
20 access service regarding speed or other quality of service parameters
21 and the performance indicated in accordance with points "i" to "iv" in
22 the preceding paragraphs.

23
24 e. To conduct traffic management measures only in the following instances:

25
26 i. when necessary to preserve the integrity and security of the Data
27 Transmission Industry Participants' network, or of services provided
28 via that network; or

29
30 ii. when necessary to prevent impending network congestion, or to
31 mitigate effects of network congestion where such congestion occurs
32 only temporarily or in exceptional circumstances;

33
34 *Provided*, that in undertaking such measures service providers must
35 treat all categories of traffic equally; *provided further* that any traffic
36 management measure may entail processing of personal data only if
37 such processing is necessary and proportionate to achieve the
38 objectives set out in section. Such processing shall be carried out in

1 accordance with the Data Privacy Act of 2012, its implementing rules
2 and regulations, and the issuances of the National Privacy
3 Commission;

4
5 "*Temporary congestion*" should be understood as referring to specific
6 situations of short duration, where a sudden increase in the number
7 of users in addition to the regular users, or a sudden increase in
8 demand for specific content, applications or services, may overflow
9 the transmission capacity of some elements of the network and make
10 the rest of the network less reactive;

11
12 Reasonable traffic management measures applied by providers of
13 internet access services should be transparent, non-discriminatory
14 and proportionate, and should not be based on commercial
15 considerations; and

- 16
17 iii. when necessary to preserve the integrity and security of the terminal
18 equipment of internet end-users.

19
20 Sec. 11. *Administrative Penalties.* – The NTC shall require data transmission
21 industry participants and PTEs providing data transmission services to comply with the
22 prescribed performance standards and shall impose penalties for failure to comply with
23 such performance standards.

- 24
25 a. Any data transmission industry participant that engages in the prohibited acts
26 under Section 8 of this Act or fails to comply with the obligations under Section
27 10 of this Act shall suffer a minimum penalty of a fine of not less than Three
28 Hundred Thousand Pesos (P300,000.00) but not more than Five Million Pesos
29 (P5,000,000.00) for every day that the violation continues until the participant
30 fully complies: Provided, That, if the data transmission industry participant has
31 a gross annual income not exceeding Ten Million Pesos (P10,000,000.00), the
32 penalty that may be imposed shall be equivalent to one percent (1 %) to two
33 percent (2%) of its gross annual income. In cases of anti-competitive cross-
34 subsidization, which is prohibited under Section 8 (g) of this Act, the imposable
35 penalties are those provided for under Republic Act No. 10667. The NTC is
36 hereby authorized and empowered to impose such fine, after due notice and
37 hearing.

1 b. An entity who fails to substantially comply with the NTC's performance standards
2 for three (3) consecutive years shall, subject to due process, shall be prohibited
3 from rendering data transmission services.

4
5 c. A data transmission industry participant violating any provision of this Act shall
6 forfeit all certificates, licenses, authorizations, rights, and awards issued to it in
7 relation to its participation in the data transmission industry.

8
9 d. Any other violations of this Act shall be sanctioned with a fine of not less than
10 Fifty Thousand Pesos (P50,000.00) but not more than Two Million Pesos
11 (P2,000,000.00).

12
13 Sec. 12. *Adjustment for Inflation.* – The fines imposed under this Act shall be
14 adjusted by the NTC, year-on-year, considering the prevailing cost of money based on
15 the current consumer price index, and subject to publication of such adjustments.

16
17 Sec. 13. *Implementing Rules and Regulations.* – Within sixty (60) days from the
18 effectivity of this Act, the DICT, in coordination with the NTC and the PCC, shall
19 promulgate the necessary rules and regulations for the effective implementation of
20 this Act.

21
22 Sec. 14. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or
23 other issuances or parts thereof inconsistent with the provisions of this Act are hereby
24 repealed or modified accordingly.

25
26 Sec. 15. *Separability Clause.* – If any portion or provision of this Act is declared
27 unconstitutional, the remainder of this Act or any provision not affected thereby shall
28 remain in force and effect.

29
30 Sec. 16. *Effectivity.* – This Act shall take effect after fifteen (15) days following
31 the completion of its publication either in the Official Gazette or in a newspaper of
32 general circulation in the Philippines.

Approved,