

FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

OFFICE OF THE CLERK

9 OCT -7 1 2009

SENATE

COMMITTEE REPORT NO. 694

Submitted by the Committee on Public Services on **OCT 07 2009**

RE : H. B. No. 6815

Recommending its approval without amendment, taking into consideration S. B. No. 3387.

Sponsor : Senator Revilla

MR. PRESIDENT:

The Senate Committee on Public Services to which was referred **H. B. No. 6815**, introduced by Representatives Gonzales, II, Biron, Defensor, *et. al.*, entitled:

"AN ACT
GRANTING THE SCHUTZENGELE TELECOM, INC. A FRANCHISE
TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND
MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT
THE PHILIPPINES." and

taking into consideration **S. B. No. 3387**, introduced by Senators Enrile, Zubiri, Legarda, *et. al.* entitled:

"AN ACT
GRANTING THE SCHUTZENGELE TELECOM, INC. A FRANCHISE
TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND
MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT
THE PHILIPPINES."

has considered the same and has the honor to report it back to the Senate with the recommendation that **H. B. No. 6815** be approved without amendment.

Respectfully submitted:


RAMON BONG REVILLA, JR.
Chairman
Committee on Public Services

MEMBERS:

EDGARDO J. ANGARA

GREGORIO "Gringo" B. HONASAN

PANEILO "Ping" M. LACSON

RICHARD J. GORDON

MAR ROXAS

FRANCIS "Chiz" G. ESCUDERO


JOKER P. ARROYO

FRANCIS N. RANGILINAN

ALAN PETER "Compañero" S. CAYETANO

EX-OFFICIO MEMBERS:

JINGGOY P. EJERCITO ESTRADA
President Pro-Tempore



AQUILINO Q. PIMENTEL, JR.
Minority Floor Leader



JUAN MIGUEL F. ZUBIRI
Majority Floor Leader



JUAN PONCE ENRILE
Senate President
Pasay City



HOUSE OF REPRESENTATIVES

H. No. 6815

BY REPRESENTATIVES GONZALES (N.), BIRON, DEFENSOR (A.), APOSTOL,
ANTONINO-CUSTODIO, ANGARA, ROMULO, AGBAYANI, GUINGONA,
RODRIGUEZ AND DE GUZMAN, PER COMMITTEE REPORT NO. 2371

AN ACT GRANTING THE SCHUTZENGELEL TELECOM, INC. A
FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH,
OPERATE AND MAINTAIN TELECOMMUNICATIONS
SYSTEMS THROUGHOUT THE PHILIPPINES

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

1 SECTION 1. *Nature and Scope of Franchise.* – Subject to the
2 provisions of the Constitution and applicable laws, rules and regulations, there
3 is hereby granted to Schutzengel Telecom, Inc., hereunder referred to as the
4 grantee, its successors or assigns, a franchise to construct, install, establish,
5 operate and maintain for commercial purposes and in the public interest,
6 throughout the Philippines and between the Philippines and other countries and
7 territories, wire and/or wireless telecommunications systems, multi-media
8 systems, networks, stations, services including, but not limited to, fixed,
9 mobile, cellular, paging systems, digital trunk radio systems, fiber optics,
10 multi-channel multi-point distribution system (MMDS), local multi-point

1 distribution system (LMDS), terrestrial, submarine and satellite transmit and
2 receive systems, switches, gateway stations and their value-added or enhanced
3 services such as, but not limited to, transmission and reception of impressions,
4 pictures, music, voice, data, facsimile, control signs, audio and video,
5 information services bureau and all other telecommunications systems,
6 including information and communications technologies (ICT), as are at
7 present available or will be made available through technological advances,
8 evolution or innovations in the future; and/or to construct, install, acquire,
9 lease and operate, maintain or manage terrestrial, submarine or satellite
10 transmitting and receiving and/or landing stations, lines, microwave, optical
11 fiber cables or systems, whether digital or analogue, for local and international
12 services, as is, or are, convenient or essential to efficiently carry out the
13 purpose of this franchise.

14 SEC. 2. *Manner of Operation of Stations or Facilities.* – The stations
15 or facilities of the grantee shall be constructed and operated in a manner as will
16 at most result only in the minimum interference on the wavelengths or
17 frequencies of existing stations or other stations which may be established by
18 law, without in any way diminishing its own right to use its selected
19 wavelengths or frequencies and the quality of transmission or reception thereon
20 as should maximize rendition of the grantee's services and/or the availability
21 thereof.

22 SEC. 3. *Authority of the National Telecommunications Commission.* –
23 The grantee shall secure from the National Telecommunications Commission
24 (NTC), hereinafter referred to as the Commission, a certificate of public
25 convenience and necessity or the appropriate permits and licenses for the
26 construction, installation and operation of its telecommunications
27 systems/facilities. In issuing the certificate, the Commission shall have the
28 power to impose such conditions relative to the construction, operation,

1 maintenance or service level of the telecommunications system. The
2 Commission shall have the authority to regulate the construction and operation
3 of its telecommunications systems. The grantee shall not use any frequency in
4 the radio spectrum without having been authorized by the Commission. Such
5 certificate shall state the areas covered and the date the grantee shall
6 commence the service. The Commission, however, shall not unreasonably
7 withhold or delay the grant of any such authority, permits or licenses.

8 SEC. 4. *Eminent Domain.* – The grantee may acquire such private
9 property as is actually necessary for the realization of the purposes for which
10 this franchise is granted: *Provided*, That in case the owner refuses to sell or
11 allow the use thereof, the proper proceedings shall be instituted: *Provided*,
12 *further*, That just compensation is paid.

13 SEC. 5. *Ingress and Egress.* – For the purpose of erecting and
14 maintaining poles or other supports for said wires or other conductors for the
15 purpose of laying and maintaining underground wires, cables or other
16 conductors, it shall be lawful for the grantee, its successors or assigns, with the
17 prior approval of the Department of Public Works and Highways (DPWH), to
18 make excavations or lay conduits in any of the public places, highways, streets,
19 lanes, alleys, avenues, sidewalks or bridges of the said province, cities and/or
20 municipalities: *Provided, however*, That a public place, highway, street, lane,
21 alley, avenue, sidewalk or bridge disturbed, altered or changed by reason of
22 erection of poles or other supports, or the underground laying of wires, other
23 conductors or conduits, shall be repaired and replaced in workmanlike manner
24 by the said grantee, its successors or assigns, in accordance with the standards
25 set by the DPWH. Should the grantee, its successors or assigns, after the ten
26 (10)-day notice from the said authority, fail, refuse or neglect to repair or
27 replace any part of public place, road, highway, street, lane, alley, avenue,
28 sidewalk or bridge altered, changed or disturbed by the said grantee, its

1 successors or assigns, then the DPWH shall have the right to have the same
2 repaired and placed in good order and condition at double expense to be
3 charged against the grantee, its successors or assigns.

4 SEC. 6. *Responsibility to the Public.* – The grantee shall conform to the
5 ethics of honest enterprise and not use its stations/facilities for obscene or
6 indecent transmission or for dissemination of deliberately false information or
7 willful misrepresentation, or assist in subversive or treasonable acts.

8 The grantee shall provide basic or enhanced telephone service in any
9 municipality in the Philippines where it has an approved certificate of public
10 convenience and necessity for the establishment, operation and maintenance of
11 basic and/or enhanced local exchange service, without discrimination to any
12 applicant therefore, in the order of the date of their applications, up to the limit
13 of the capacity of its local telephone exchange, and should the demand for the
14 telephone service at any time increase beyond the capacity thereof, the grantee
15 shall increase the same to meet such demand: *Provided*, That in case the total
16 demand to be satisfied by the expansion is less than the smallest viable local
17 exchange available in the market as determined by the Commission, the
18 grantee shall not be obliged to furnish such service unless the applicant for
19 telephone service defrays the actual expenses for the installation of the
20 telecommunications apparatus necessary for such services and in such case, the
21 Commission may extend the time within which the grantee shall furnish such
22 service.

23 The grantee shall operate and maintain all its stations, lines, cables,
24 systems and equipment for the transmission and reception of messages, signals
25 and pulses in a satisfactory manner at all times and, as far as economical and
26 practicable, modify, improve or change such stations, lines, cables, systems
27 and equipment to keep abreast with the advances in science and technology.

1 SEC. 7. *Rates for Services.* – The charges and rates for
2 telecommunications services of the grantee, except the rates and charges on
3 those that may hereafter be declared or considered as nonregulated services,
4 whether flat rates or measured rates or variation thereof, shall be subject to the
5 approval of the Commission or its legal successor. The rates to be charged by
6 the grantee shall be unbundled, separable and distinct among the services
7 offered and shall be determined in such a manner that regulated services do not
8 subsidize the unregulated ones.

9 SEC. 8. *Right of Government.* – A special right is hereby granted to the
10 President of the Philippines in times of war, rebellion, public peril, calamity,
11 emergency, disaster or disturbance of peace and order, to temporarily take over
12 and operate the stations, transmitters, facilities or equipment of the grantee, to
13 temporarily suspend the operation of any station, transmitter, facility or
14 equipment in the interest of public safety, security and public welfare, or to
15 authorize the temporary use and operation thereof by any agency of the
16 government, upon due compensation to the grantee for the use of said stations,
17 transmitters, facilities or equipment during the period when they shall be so
18 operated.

19 The radio spectrum is a finite resource that is part of the national
20 patrimony and the use thereof is a privilege conferred upon the grantee by the
21 State and may be withdrawn anytime after due process.

22 SEC. 9. *Term of Franchise.* – This franchise shall be for a term of
23 twenty-five (25) years from the date of effectivity of this Act, unless sooner
24 revoked or cancelled. This franchise shall be deemed *ipso facto* revoked in the
25 event the grantee fails to comply with any of the following conditions:

26 (a) Commence operation within three (3) years from the approval of its
27 operating permit by the NTC;

28 (b) Operate continuously for two (2) years; and

1 (c) Commence operations within five (5) years from the effectivity of
2 this Act.

3 SEC. 10. *Acceptance and Compliance.* – Acceptance of this franchise
4 shall be given in writing within sixty (60) days from the effectivity of this Act.
5 Upon giving such acceptance, the grantee shall exercise the privileges granted
6 under this Act. Nonacceptance shall render the franchise void.

7 SEC. 11. *Bond.* – The grantee shall file a bond issued in favor of the
8 NTC, which shall determine the amount, to guarantee the compliance with and
9 fulfillment of the conditions under which this franchise is granted. If, after five
10 (5) years from the date of the approval of its permit by the Commission, the
11 grantee shall have fulfilled the same, the bond shall be cancelled by the
12 Commission. Otherwise, the bond shall be forfeited in favor of the government
13 and the franchise *ipso facto* revoked.

14 SEC. 12. *Right of Interconnection.* – The grantee is hereby authorized
15 to connect or demand connection of its telecommunications systems to any
16 other telecommunications systems installed, operated and maintained by any
17 other duly authorized person or entity in the Philippines for the purpose of
18 providing extended and improved telecommunications services to the public,
19 under such terms and conditions mutually agreed upon by the parties
20 concerned and the same shall be subject to the review and modification of the
21 Commission.

22 SEC. 13. *Gross Receipts.* – The grantee, its successors or assigns, shall
23 keep a separate account of the gross receipts of the business transacted by it
24 and shall furnish the Commission on Audit (COA) and the National Treasury a
25 copy of such account not later than the thirty-first (31st) day of January of each
26 year for the preceding twelve (12) months.

1 SEC. 14. *Books and Accounts.* – The books and accounts of the
2 grantee, its successors or assigns, shall always be open to the inspection of the
3 COA or its authorized representatives and it shall be the duty of the grantee to
4 submit to the COA two (2) copies of the quarterly reports on the gross receipts,
5 the net profits and the general condition of the business.

6 SEC. 15. *Warranty in Favor of the National and Local Governments.* –
7 The grantee shall hold the national, provincial, city and municipal governments
8 of the Philippines harmless from all claims, accounts, demands or actions
9 arising out of accidents or injuries, whether to property or to persons, caused
10 by the construction or operation of the stations, transmitters, facilities and
11 equipment of the grantee.

12 SEC. 16. *Sale, Lease, Transfer, Usufruct, etc.* – The grantee shall not
13 lease, transfer, grant the usufruct of, sell nor assign this franchise or the rights
14 and privileges acquired thereunder to any person, firm, company, corporation
15 or other commercial or legal entity, nor merge with any other corporation or
16 entity, nor shall the controlling interest of the grantee be transferred, whether
17 as a whole or in parts and whether simultaneously or contemporaneously, to
18 any such person, firm, company, corporation or entity without the prior
19 approval of the Congress of the Philippines: *Provided*, That the foregoing
20 limitation shall not apply to: (a) any transfer or issuance of shares of stock in
21 the implementation of requirement for the dispersal of the grantee's ownership
22 pursuant to Section 17 of this Act; (b) any transfer or issuance of shares to any
23 investor pursuant to or in connection with any increase in the grantee's
24 authorized capital stock which shall result in the dilution of the stockholdings
25 of the grantee's then existing stockholders; (c) any transfer or sale of shares of
26 stock to any local investor or investors; (d) any sale, transfer or assignment by
27 the stockholders of the grantee in favor of a holding company whose
28 stockholders are identical to the stockholders of the grantee; and (e) any

1 combination thereof where such transfer, sale or issuance is effected in order to
2 enable the grantee to raise the necessary capital or financing for the provision
3 of any services authorized by this Act and/or carry out the purposes for which
4 the grantee has been incorporated or organized. Any person or entity to which
5 this franchise is validly sold, transferred or assigned shall be subject to the
6 same conditions, terms, restrictions and limitations of this Act.

7 SEC. 17. *Dispersal of Ownership.* – In accordance with the
8 constitutional provision to encourage public participation in public utilities, the
9 grantee shall offer at least thirty *per centum* (30%) of its outstanding capital
10 stock or a higher percentage that may hereafter be provided by law in any
11 securities exchange in the Philippines within five (5) years from the
12 commencement of its operations. Noncompliance therewith shall render the
13 franchise *ipso facto* revoked.

14 SEC. 18. *Equality Clause.* – Any advantage, favor, privilege,
15 exemption or immunity granted under existing franchise for
16 telecommunications systems, or which may hereafter be granted, shall *ipso*
17 *facto* become part of this franchise and shall be accorded immediately and
18 unconditionally to the herein grantee: *Provided, however,* That the foregoing
19 shall neither apply to nor affect provisions of telecommunications franchises
20 concerning territory covered by the franchise, the life span of the franchise or
21 the type of service authorized by the franchise.

22 SEC. 19. *Reportorial Requirement.* – The grantee shall submit an
23 annual report to the Congress of the Philippines on its compliance with the
24 terms and conditions of the franchise and on its operations within sixty (60)
25 days from the end of every year.

26 SEC. 20. *Separability Clause.* – If any of the sections or provisions of
27 this Act is held invalid, all other provisions not affected thereby shall remain
28 valid.

1 SEC. 21. *Repealability and Nonexclusivity Clause.* – This franchise
2 shall be subject to amendment, alteration or repeal by the Congress of the
3 Philippines when the public interest so requires and shall not be interpreted as
4 an exclusive grant of the privileges herein provided for.

5 SEC. 22. *Effectivity Clause.* – This Act shall take effect fifteen (15)
6 days after its publication, upon the initiative of the grantee, in at least two (2)
7 newspapers of general circulation in the Philippines.

Approved,

○