

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



Senate
Office of the Secretary

'15 JUN 30 P5 :05

SENATE
S.B. No. 2851

RECEIVED BY: _____

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

**AN ACT GRANTING THE AVOCADO BROADBAND TELECOMS INC. A FRANCHISE TO
CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN TELECOMMUNICATIONS
SYSTEMS THROUGHOUT THE PHILIPPINES**

EXPLANATORY NOTE

We live in the information age where telecommunications, and information and communications technology (ICT) have successfully been embedded in our global economy.

Research by the McKinsey Global Institute has revealed the growing impact of the Internet on global growth. Among developed countries in the study, the Internet accounted for 21% of the GDP growth with most of the economic value created in more traditional industries outside the technology sector.

Unfortunately, our country has a long way to go before truly taking advantage of telecommunications and ICT technology.

In last year's Net Index by Internet broadband testing company Ookla, broadband speed in the Philippines ranked 158th out of 190 countries – the worst in Southeast Asia.

Furthermore, our country ranked 7th highest in the region when it comes to the price of Internet services.


Hence, there is an urgent need to improve the telecommunications and ICT services in the Philippines to benefit the millions of entrepreneurs and consumers in the country.

As such, this bill seeks to grant Avocado Broadband Telecoms, Inc. support as a new player in providing telecommunications services, granting them a franchise to construct, install, establish, operate, and maintain telecommunications systems in the Philippines.

It is imperative that we provide the highest quality service and most inexpensive access to Internet to our Filipino people. Internet, the great equalizer, would help in the generation of online jobs to our fellow Filipinos and provide a cheap platform for engagements and transactions for customers to our micro, small and medium enterprises (MSMEs).

The entry of another player in the telecoms industry is in line with the recently ratified Philippine Competition Act, that aims to expand competition and ultimately benefit and protect the welfare of our consumers.

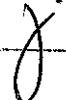
In view of the foregoing, the approval of this bill is earnestly sought.

A handwritten signature in black ink that reads "Bam Aquino". The signature is written in a cursive, flowing style.

Senator Paolo Benigno "Bam" A. Aquino IV

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*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 provisions of the 1987
2 Philippine Constitution and applicable laws, rules and regulations, there is hereby granted to
3 Avocado Broadband Telecoms Inc., hereunder referred to as the grantee, its successors or
4 assignees, a franchise to construct, install, establish, operate, and maintain for commercial
5 purposes and in the public interest, in the Philippines and between the Philippines and
6 other countries and territories, wire and/or wireless telecommunications systems including
7 international and local exchange carrier (LEC), international and domestic gateway facility,
8 international and domestic submarine cable landing stations, mobile cellular, copper, fiber
9 optics, coaxial cable, satellite transmit and receive systems, switches, and their value-added
10 services such as the transmission of voice, data, facsimile, control signs, audio and video,
11 information services, and all other telecommunications systems technologies are at present
12 available or will be made available through technological advances or innovations in the future;
13 and/or construct, acquire, lease and operate, or manage transmitting and receiving stations,
14 lines, cables, or systems as are convenient or essential to efficiently carry out the purpose of
15 this franchise.

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

22 **SECTION 3. *Authority of the National Telecommunications Commission (NTC).*** – The
23 grantee shall secure from the NTC a Certificate of Public Convenience and Necessity or the
24 appropriate permits and licenses for the construction, installation, and operation of its
25 telecommunications systems / facilities. In issuing the certificate, the NTC shall have the power
26 to impose such conditions relative to the construction, operation, maintenance, or service level
27 of the telecommunications system. The NTC shall have the authority to regulate the
28 construction and operation of its telecommunications systems. The grantee shall not use any

1 frequency in the radio spectrum without authorization from the NTC. Such certificate shall state
2 the areas covered and the date the grantee shall commence the service. The NTC, however,
3 shall not unreasonably withhold or delay the grant of such authority, permit or license.

4 **SECTION 4. *Excavation and Restoration Works.*** – For the purpose of erecting and
5 maintaining poles or other supports for said wires or other conductors and for the purpose of
6 laying and maintaining underground wires, cables, or other conductors, it shall be lawful for the
7 grantee, its successors or assignees, with the prior approval of the Department of Public Works
8 and Highways (DPWH) or the local government unit (LGU) concerned, as may be appropriate, to
9 make excavations or lay conduits in any of the public places, roads, highways, streets, lanes,
10 alleys, avenues, sidewalks, or bridges of the province, cities and/or municipalities; *Provided,*
11 *however,* That a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge
12 disturbed, altered or changed by reason of erection of poles or other supports or the
13 underground laying of wires, other conductors or conduits, shall be repaired and replaced in
14 workman-like manner by said grantee, its successors or assignees, in accordance with the
15 standards set by DPWH or the LGU concerned. Should the grantee, its successors or
16 assignees, after the ten (10) day notice from the said authority, fail, refuse, or neglect to repair
17 or replace any part of public place, road, highway, street, lane, alley, avenue, sidewalk or bridge
18 altered, changed or disturbed by the said grantee, its successors or assignees, then the DPWH
19 or the LGU concerned shall have the right to have the same repaired and placed in good order
20 and condition at double expense to be charged against the grantee, its successors or
21 assignees.

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

26 The grantee shall provide basic or enhanced telephone service in any city and/or
27 municipality in the Philippines where it has an approved Certificate of Public Convenience and
28 Necessity for the establishment, operation, and maintenance of a local exchange service,
29 without discrimination to any applicant therefor, in the order of the date of their applications,
30 up to the limit of the capacity of its local telephone exchange and, should the demand for the
31 telephone service at any time increase beyond the capacity thereof, the grantee shall
32 increase the same to meet such demand; *Provided,* That in case the total demand to be
33 satisfied by the expansion is less than the smallest viable local exchange available in the market
34 as determined by the NTC, the grantee shall not be obliged to furnish such service unless the
35 applicant for telephone service defrays the actual expenses for the installation of the
36 telecommunications apparatus necessary for such services and in such case, the NTC may
37 extend the time within which the grantee shall furnish the service.

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

43 **SECTION 6. *Rates for Services.*** — The charges and rates for telecommunication services
44 of the grantee, except the rates and charges on those that may hereafter be declared or
45 considered as non-regulated services, whether flat rates or measured rates or variation thereof,
46 shall be subject to the approval of the NTC or its legal successor. The rates to be charged by the

1 grantee shall be unbundled, separable, and distinct among the services offered and shall be
2 determined in such a manner that regulated services do not subsidize the unregulated ones.

3 **SECTION 7. Right of Government.** — A special right is hereby reserved to the President of
4 the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or
5 disturbance of peace and order: to temporarily take over and operate the stations,
6 transmitters, facilities or equipment of the grantee; to temporarily suspend the operation of
7 any station, transmitter, facility, or equipment in the interest of public safety, security, and
8 public welfare; or to authorize the temporary use and operation thereof by any agency of
9 the government, upon due compensation to the grantee for the use of said stations,
10 transmitters, facilities, or equipment during the period when these shall be so operated.

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

14 **SECTION 8. Term of Franchise.** — This franchise shall be in effect for a period of twenty-
15 five (25) years from the date of the effectivity of this Act, unless sooner cancelled. This
16 franchise shall be deemed *ipso facto* revoked in the event the grantee fails to comply with any
17 of the following conditions:

- 18 a) Commence operations within one (1) year from the approval of its operating
19 permit by the NTC;
20 b) Commence operations within three (3) years from the effectivity of this Act; and
21 c) Operate continuously for two (2) years.

22 **SECTION 9. Acceptance and Compliance.** — Acceptance of this franchise shall be given
23 in writing to the Congress of the Philippines, through the Committee on Legislative Franchises
24 of the House of Representatives and the Committee on Public Services of the Senate, within
25 sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee shall
26 exercise the privileges granted under this Act. Non-acceptance shall render the franchise void.

27 **SECTION 10. Bond.** — The grantee shall file a bond with the NTC in the amount that it
28 shall determine to guarantee compliance with and fulfillment of the conditions under which
29 this franchise is granted. If after three (3) years from the date of the approval of its permit by
30 the NTC, the grantee shall have fulfilled the conditions, the bond shall be cancelled by the NTC.
31 Otherwise, the bond shall be forfeited in favor of the government and the franchise *ipso facto*
32 revoked.

33 **SECTION 11. Right of Interconnection.** — The grantee is hereby authorized to connect
34 or demand connection of its telecommunications systems to other telecommunications
35 systems installed, operated, and maintained by any other duly authorized person or entity in
36 the Philippines for the purpose of providing extended and improved telecommunications
37 services to the public, under such terms and conditions mutually agreed upon by the parties
38 concerned and the same shall be subject to the review and modification of the NTC.

39 **SECTION 12. Gross Receipts.** — The grantee, its successors or assignees shall keep a
40 separate account of the gross receipts of the business transacted by it and shall furnish the
41 Commission on Audit (COA) and the National Treasury a copy of such account not later than
42 the thirty-first (31st) day of January of each year for the preceding twelve (12) months.

1 **SECTION 13. Books and Accounts.** —The books and accounts of the grantee, its
2 successor or assignees, shall always be open to the inspection of the Commission on Audit
3 (COA) and its duly authorized representative. It shall be the duty of the grantee to submit to
4 the COA two (2) copies of the quarterly reports on the gross receipts, the net profits, and the
5 general condition of the business.

6 **SECTION 14. Warranty in Favor of the National and Local Governments.** —The grantee
7 shall hold the national, provincial, city, and municipal governments of the Philippines free
8 from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to
9 property or to persons, caused by the construction or operation of the stations, transmitters,
10 facilities, and equipment of the grantee.

11 **SECTION 15. Sale, Lease, Transfer, Usufruct, or Assignment of Franchise.** —The grantee
12 shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and
13 privileges acquired there under to any person, firm, company, corporation or other commercial
14 or legal entity, nor merge with any other corporation or entity, nor shall transfer the controlling
15 interest of the grantee, whether as a whole or in parts, and whether simultaneously or
16 contemporaneously, to any such person, firm, company, corporation, or entity without the
17 prior approval of the Congress of the Philippines; *Provided*, That Congress shall be informed of
18 any sale, lease, transfer, grant of usufruct, or assignment of franchise or the rights or
19 privileges acquire thereunder, or of the merger, or transfer of controlling interest of the
20 grantee, within sixty (60) days after the completion of said transaction: *Provided, further*, That
21 failure to report to Congress such change of ownership shall render the franchise *ipso facto*
22 revoked; *Provided, finally*, That any person or entity to which this franchise is sold, transferred,
23 or assigned, shall be subject to the same conditions, terms, restrictions, and limitations of this
24 Act.

25 **SECTION 16. Dispersal of Ownership.** —In accordance with the constitutional provision
26 to encourage public participation in public utilities, the grantee shall offer to Filipino citizens at
27 least thirty percent (30%) or a higher percentage that may hereafter be provided by law of its
28 outstanding capital stock in any securities exchange in the Philippines within five (5) years from
29 the commencement of its operations; *Provided*, That in cases where public offer of shares is not
30 applicable, the establishment of cooperatives operating public utilities must be implemented.
31 Noncompliance therewith shall render the franchise *ipso facto* revoked.

32 **SECTION 17. Reportorial Requirement.** — The grantee shall submit an annual report to
33 the Congress of the Philippines, through the Committee on Legislative Franchises of the House
34 of Representatives and the Committee on Public Services of the Senate, on its compliance with
35 the terms and conditions of the franchise and on its operations on or before April 30 of every
36 year during the term of its franchise. The reportorial compliance certificate issued by Congress
37 shall be required before any application for permit or certificate is accepted by the NTC.

38 **SECTION 18. Penalty Clause.** — Failure of the grantee to submit the requisite annual
39 report to Congress shall be penalized with a fine of Five hundred pesos (P500.00) per working
40 day of noncompliance. The fine shall be collected by the NTC from the delinquent franchise
41 grantee separate from the reportorial penalties imposed by the NTC.

42 **SECTION 19. Equality Clause.** — Any advantage, favor, privilege, exemption, or
43 immunity granted under other existing franchises, or which may hereafter be granted, upon
44 prior review and approval of Congress, shall become part of this franchise and shall be accorded
45 immediately and unconditionally to the herein grantee; *Provided*, That the foregoing shall
46 neither apply to nor affect provisions of telecommunications franchises concerning territory

1 covered by the franchise, the life span of the franchise, or the type of service authorized by the
2 franchise.

3 **SECTION 20. *Separability Clause.*** — If any of the sections or provisions of this Act is held
4 invalid, all other provisions not affected thereby shall remain valid.

5 **SECTION 21. *Repealability and Non-exclusivity Clause.*** — This franchise shall be subject
6 to amendment, alteration, or repeal by the Congress of the Philippines when the public interest
7 so requires and shall not be interpreted as an exclusive grant of the privilege herein provided
8 for.

9 Approved,