

THIRTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

'04 JUN 30 P11:05

RECEIVED BY: Aulu

SENATE  
S.B. No. 1042

---

**Introduced by Senator Jinggoy Ejercito Estrada**

---

**EXPLANATORY NOTE**

The telecommunications and information services industries of the Philippines stand at a critical juncture today. The liberalization policies undertaken in the recent past have brought noticeable gains in access and improved service to consumers.

At the same time, key developments in information technology, such as computerization and the digitalization of broadband services have rendered traditional service differentiation obsolete. Networks are now able to carry simultaneously voice, video, and data. The convergence of these technologies services, which is the objective of this bill, now enables an optimization of networks with resultant reductions in costs and new and increased service offerings.

The current legislative and regulatory scheme prevents the full realization of the benefits currently available. R.A. 7925, drafted over five years ago and E.O. 436 "no longer adequately address the regulatory status of cable television, Internet and other multi-media services that have now emerged as major industries.

It is readily accepted that our information services industries would greatly benefit from regulatory clarity and predictability, increased foreign investment and the availability of new services to address identifiable social and economic goals, such as increasing universal access and educational television delivered via satellite to remote areas.

The bill also supports the national goal of establishing a world-class Philippine Information Infrastructure interconnected to the Asia Pacific Information Infrastructure and the Global Information. Infrastructure by promoting the development, delivery and use of convergent communication technologies and services.

The proposed legislation removes unnecessary regulatory prohibitions, is pro-investment, while respecting Constitutional limitations on foreign investments in certain industries.

There is a consensus across the affected industry sectors that this bill should be enacted. In light of the above explanation, we urge the early passage of this bill.

  
JINGGOY EJERCITO ESTRADA  
Senator

THIRTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

'04 JUN 30 P11:05

RECEIVED BY:         

SENATE  
S.B. No. 1042

---

Introduced by Senator Jinggoy Ejercito Estrada

---

**AN ACT  
TO ESTABLISH STRUCTURAL REFORMS IN THE INFORMATION  
AND COMMUNICATIONS SECTOR TO PROMOTE THE DEVELOPMENT,  
DELIVERY AND USE OF CONVERGENT SERVICES**

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

SECTION 1. **Short Title** - This Act shall be known as the "Convergence Policy Act of the Philippines" of 2004.

SECTION 2. **Scope and Limitations** - This Act shall apply to application services and network services as defined herein. It does not deal with the regulation of the content provided by such services.

SECTION 3. **Definitions** - For purposes of this Act, the following terms shall:

- (a) **Convergence** - the integration of two or more communications services in one common network; technologies moving together towards a common point and elimination of differences between the provisioning of video, audio and data, using digital and other emerging technologies; the coming together of two or more disparate disciplines or technologies; the ability of different network platforms to carry any and all kinds of services, and the coming together of consumer devices such as, but not limited to the telephone, television and personal computer.
- (b) **Audio communication services** - services provided through the transmission and reception of sound signals including voice.
- (c) **Data communication services** - services provided through the

transmission and reception of fixed images and or texts, including alphanumeric and special characters using wire or wireless means.

- (d) **Network** - a physical infrastructure comprising of two or more sets of modes and links capable of connecting two or more defined points.
- (e) **Network Service** - a service that provides connectivity between and among application service providers and end-users.
- (f) **Application Service** - a service that provides audio, video, data, or any combination or enhancements thereof that are captured, processed, stored and communicated through electronic means.
- (g) **Closed-user group** - a lawfully organized group of individuals having its own communication network within a limited contiguous geographical area such as a building, residential subdivision, industrial park, economic zone, commercial complex and unserved barangays.

**SECTION 4. Declaration of National Policies** - The development and delivery of application services converged through a single network shall be pursued in accordance with the following national policies:

- a. To enhance the vital role of communications and information in nation-building and to the economic development and security of the Philippines;
- b. To respond to technological advances that made possible the provisioning of applications communications services converged through a single network thus allowing a more efficient utilization of network facilities.
- c. To promote the development and use of increased bandwidth, transmission capacity, and advanced communication networks.
- d. To facilitate, contribute and expedite the goal of the government in achieving universal access and thus strengthen the economic, educational and cultural, social and political fabric of the Philippines.
- e. To attract investments in the building of telecommunications infrastructures and In the provisioning of application services subject to laws on foreign ownership limitations; and
- f. To provide applications services users the effective power to choose among convergent applications services providers.

**SECTION 5. Policy Objectives** - Pursuant to the above national policies, this Act is enacted to address certain legal and regulatory issues arising from the technological advances rendering possible the delivery of all kinds of applications services through a single network, including but not limited to, the ownership and management of application service providers and network service providers, the need

for a legislative franchise and other governmental authorizations, consumer rights, fair competition, rights and obligations of service providers, and powers of concerned government agencies.

**SECTION 6. *Ownership and Management*** - Application Service Providers shall be subject to rules and restrictions on foreign ownership, control and operation as provided under the Constitution and existing laws. In any case where different rules and restrictions apply to the individual communications services converged, that which is most restrictive on foreign ownership, control and operation shall apply.

Network Service Providers shall be open to ownership, control and operation by citizens of the Philippines and by corporations or cooperatives organized under Philippine laws at least sixty percent (60%) of the capital of which is owned and controlled by citizens of the Philippines.

Persons or entities acting both as Applications Service Providers and Network Service Providers shall be subject to rules and restrictions on foreign ownership, control and operation as provided under the Constitution, this Act and other existing laws. In any case where different rules and restrictions apply to the individual Applications Services converged and to those provided under this Act in the case of Network Services, that which is most restrictive on foreign ownership, control and operation shall apply.

The participation of foreign nationals in the governing body of any Applications Service Provider and/or Network Service Provider shall be limited to their proportionate share in its capital.

**SECTION 7. *Franchise and Other Government Authorizations*** – All Network Service Providers that shall operate on a nation-wide or region wide basis shall obtain a legislative franchise, while all other Network Service Providers shall obtain a local franchise only from the appropriate local government units wherein they shall operate; Provided, that all Network Service Providers shall also secure all such certificates, permits, licenses and authorizations as may be required by the National Telecommunications Commission and other relevant agencies under such rules and regulations existing and/or to be issued by such agencies.

**SECTION 8. *Lease of Facilities*** - All network service providers may lease or sublease capacity to applications service providers other network access service

providers.

SECTION 9. **Non-Discriminatory Service** - All network service providers shall provide their services to all application service providers and other network service providers in a non-discriminatory manner.

SECTION 10. **Rates and Tariffs** - Network services and applications services shall be individually priced. The aggregate price of two or more converged applications services shall be less than the sum of the individual prices of the applications services availed of. Prices shall be based on the prevailing cost of providing the service/s.

An entity providing both network service and application service/s shall maintain a separate book of accounts for each service.

Any entity providing network service shall apply uniform rates to all applications service providers, including those affiliated with such entity, and to all other network service providers.

The Commission shall establish rates and tariffs, which are fair and reasonable and which provide for fair and just competition for regulated services.

The Commission shall exempt, pursuant to an application, any specific convergent applications service and network service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs. The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

SECTION 11. **Equity of Treatment** - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of franchises covered under this Act and shall be accorded to the grantees of such franchises insofar as such are relevant and applicable: Provided, however, that the foregoing shall neither apply to nor affect provisions of franchises concerning territory covered by the franchise, the life span of the franchise, or the type or service authorized by the franchise.

SECTION 12. **Rights of User** - Users' rights shall be recognized including the following:

- a. Right to change from one convergent applications service provider or network service provider to another.
- b. Right to provide accessory facilities to their customer premises equipment (CPE) in addition to the facilities provided by the service provider under this Act, to enable him to access competitive convergent communication services.
- c. Right to form closed-user groups and to connect their networks with any duly authorized network service providers operating therein as subscribers thereto.
- d. Right to non-discriminatory, reliable, and efficient services conforming to the minimum standards prescribed by the Commission.
- e. Right to choose and pay only for the service(s) availed of.
- f. Right to regular, timely, and accurate billing and courteous and efficient service.
- g. Right to thorough and fair investigation and prompt resolution by the Commission of any service-related complaint.

SECTION 13. **Rights of Service Providers** - Service Providers shall have the following rights:

- a. Right to prompt resolution by the Commission of any petition for service rates adjustments.
- b. Right to demand from its users the connection of only type approved CPEs by the NTC or duly recognized NTC accreditation bodies.
- c. Right to prompt interconnection in a non-discriminatory manner at just and reasonable rates and conditions, and prompt resolution of any disputes pertaining thereto.

SECTION 14. **Department of Transportation and Communications (DOTC)** - The Department, in addition to its existing powers, functions and responsibilities, and in coordination with other concerned agencies, shall pursuant to this Act:

- a. Ensure that the policies and objectives of this Act are fully adhered to;
- b. Recommend incentives to convergent applications services providers and network service providers in unserved areas, educational institutions, libraries, social-service agencies, tourist destinations such as national parks, and under served rural areas.
- c. Promote the development and transfer of technologies that allow

convergence of applications services.

SECTION 15. **National Telecommunications Commission (NTC)** – The Commission in addition to its existing powers, functions and responsibilities, shall, pursuant to this Act:

- a. Ensure that all entities provide services in a non-discriminatory manner.
- b. Ensure the interconnection and inter-operability of all networks.
- c. Formulate and implement a numbering or addressing system to facilitate access to communication services.
- d. Formulate and implement rules to prevent unfair competition and trade practices.
- e. Formulate and implement rules and regulations and procedures to act upon application for exemption from regulation of rates and tariffs.
- f. Require the submission by the network service providers and application service providers of periodic reports of finances and operations.
- g. Prescribe and collect fees and charges to cover reasonable costs and expenses for the regulation and supervision of network service providers and application service providers.
- h. Formulate and implement rules and regulations and procedures to protect the rights of the service providers and users.
- i. Formulate and implement rules, regulations, and procedures for the prompt issuance of authorizations, certificates, licenses and permits for the provision of services under this Act.
- J. Promulgate the schedule of fines and penalties to be issued for violations of any provision of this Act.

SECTION 16. **Sanctions** - Failure to comply with any provision of this Act shall be dealt with in accordance with the schedule of fines and penalties to be promulgated and issued by the NTC.

SECTION 17. **Separability Clause** - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provision hereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SECTION 18. **Repealing Clause** - All laws, ordinances, rules, regulations and other issuances or parts thereof, which are inconsistent with this Act are hereby repealed or modified. Nothing in this Act shall be construed as to exempt an entity from

a provision of any law relevant to any of services converged in its business by reason solely of the fact that such service is not being offered as a separate service but as service converged with another.

SECTION 19. **Effectivity** - This Act shall take effect fifteen (15) days from the date of its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,