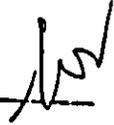


**SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)**

'16 JAN 19 P1:15

RECEIVED BY: 

SENATE

COMMITTEE REPORT NO. 356

Submitted by the Committee on Public Services on JAN 19 2016

RE : H. B. No. 5844

Recommending its approval with amendments.

Sponsor : Senator Osmeña III

MR. PRESIDENT:

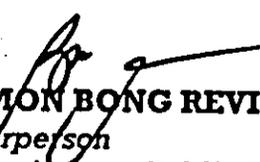
The Senate Committee on Public Services to which was referred H. B. No. 5844, introduced by Representatives Madrona, Teodoro, Salvacion, *et al.*, entitled:

**"AN ACT
GRANTING THE AVOCADO BROADBAND TELECOMS,
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 the attached H. B. No. 5844 be approved with amendments, to wit:

1. On page 9 line 2, after the conjunctive "in" and before the word "newspaper" delete the words "the official gazette or in a" and insert the words "AT LEAST TWO (2)", and
2. On the same page 9 and line 2, add the letter "S" to the word "newspaper".

Respectfully submitted:


RAMON BONG REVILLA JR.
Chairperson
Committee on Public Services


SERGIO R. OSMEÑA III
Acting Chairperson
Committee on Public Services

MEMBERS:

SONNY M. ANGARA


PIA S. CAYETANO


JINGGOY EJERCITO ESTRADA

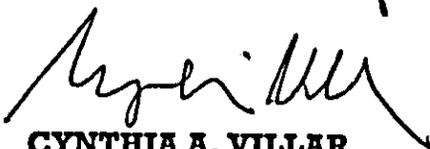

JOSEPH VICTOR G. EJERCITO

GREGORIO B. HONASAN II


TEOFISTO L. GUINGONA III

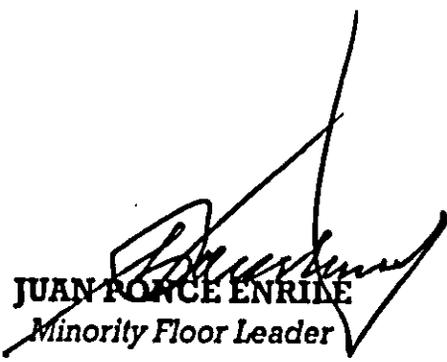

GRACE POE


ANTONIO F. TRILLANES IV


CYNTHIA A. VILLAR

EX-OFFICIO MEMBERS:

RALPH G. RECTO
President Pro-Tempore


JUAN PONCE ENRILE
Minority Floor Leader

ALAN PETER S. CAYETANO
Majority Floor Leader

FRANKLIN M. DRILON
Senate President
Pasay City

CONGRESS OF THE PHILIPPINES
SIXTEENTH CONGRESS
Third Regular Session

}

HOUSE OF REPRESENTATIVES

HL No. 5844

BY REPRESENTATIVES MADRONA, TEODORO, SALVACION, ROBES, CAMINERO,
UNABIA, DELLO (S.), ARNAIZ, TAMBUNTING AND DELA CRUZ

AN ACT GRANTING THE AVOCADO BROADBAND TELECOMS,
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 1987 Philippine Constitution and applicable laws, rules and
3 regulations, there is hereby granted to Avocado Broadband Telecoms, Inc.,
4 hereunder referred to as the grantee, its successors or assignees, a franchise to
5 construct, install, establish, operate, and maintain for commercial purposes and
6 in the public interest, in the Philippines and between the Philippines and other
7 countries and territories, wire and/or wireless telecommunications systems
8 including international and local exchange carrier (LEC), international and
9 domestic gateway facility, international and domestic submarine cable landing
10 stations, mobile cellular, copper, fiber optics, coaxial cable, satellite transmit
11 and receive systems, switches, and their value-added services such as the

1 transmission of voice, data, facsimile, control signs, audio and video,
2 information services and all other telecommunications systems technologies as
3 are at present available or will be made available through technological
4 advances or innovations in the future; and/or construct, acquire, lease and
5 operate, or manage transmitting and receiving stations, lines, cables, or systems
6 as are convenient or essential to efficiently carry out the purpose of this
7 franchise.

8 **SEC. 2. Manner of Operation of Stations or Facilities.** - The stations
9 or facilities of the grantee shall be constructed and operated in a manner as
10 will, at most, result only in the minimum interference on the wavelengths or
11 frequencies of existing stations or other stations which may be established by
12 law, without in any way diminishing its own privilege to use its assigned
13 wavelengths or frequencies and the quality of transmission or reception thereon
14 as should maximize rendition of the grantee's services and/or the availability
15 thereof.

16 **SEC. 3. Authority of the National Telecommunications Commission**
17 **(NTC).** - The grantee shall secure from the NTC a Certificate of
18 Public Convenience and Necessity or the appropriate permits and licenses
19 for the construction, installation, and operation of its telecommunications
20 systems/facilities. In issuing the certificate, the NTC shall have the power to
21 impose such conditions relative to the construction, operation, maintenance, or
22 service level of the telecommunications systems. The NTC shall have the
23 authority to regulate the construction and operation of its telecommunications
24 systems. The grantee shall not use any frequency in the radio spectrum without
25 authorization from the NTC. Such certificate shall state the areas covered and
26 the date the grantee shall commence the service. The NTC, however, shall not
27 unreasonably withhold or delay the grant of such authority, permit, or license.

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

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

26 The grantee shall provide basic or enhanced telephone service in any
27 city and/or municipality in the Philippines where it has an approved Certificate
28 of Public Convenience and Necessity for the establishment, operation, and

1 maintenance of a local exchange service, without discrimination to any
2 applicant therefor, in the order of the date of their applications, up to the limit
3 of the capacity of its local telephone exchange and, should the demand for the
4 telephone service at any time increase beyond the capacity thereof, the grantee
5 shall increase the same to meet such demand: *Provided*, That in case the total
6 demand to be satisfied by the expansion is less than the smallest viable local
7 exchange available in the market as determined by the NTC, the grantee shall
8 not be obliged to furnish such service unless the applicant for telephone service
9 defrays the actual expenses for the installation of the telecommunications
10 apparatus necessary for such services and in such case, the NTC may extend
11 the time within which the grantee shall furnish the service.

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

18 *SEC. 6. Rates for Services.* — The charges and rates for
19 telecommunications services of the grantee, except the rates and charges on
20 those that may hereafter be declared or considered as nonregulated services,
21 whether flat rates or measured rates or variation thereof, shall be subject to the
22 approval of the NTC or its legal successor. The rates to be charged by the
23 grantee shall be unbundled, separable, and distinct among the services offered
24 and shall be determined in such a manner that regulated services do not
25 subsidize the unregulated ones.

26 *SEC. 7. Right of Government.* — A special right is hereby reserved to
27 the President of the Philippines, in times of war, rebellion, public peril,
28 calamity, emergency, disaster, or disturbance of peace and order: to

1 temporarily take over and operate the stations, transmitters, facilities, or
2 equipment of the grantee; to temporarily suspend the operation of any station,
3 transmitter, facility, or equipment in the interest of public safety, security, and
4 public welfare; or to authorize the temporary use and operation thereof by any
5 agency of the government, upon due compensation to the grantee, for the use
6 of said stations, transmitters, facilities, or equipment during the period when
7 these shall be so operated.

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

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

15 (a) Commence operations within one (1) year from the approval of its
16 operating permit by the NTC;

17 (b) Commence operations within three (3) years from the effectivity of
18 this Act; and

19 (c) Operate continuously for two (2) years.

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

1 **SEC. 10. Bond.** - The grantee shall file a bond with the NTC in the
2 amount that it shall determine to guarantee compliance with and fulfillment of
3 the conditions under which this franchise is granted. If, after three (3) years
4 from the date of the approval of its permit by the NTC, the grantee shall have
5 fulfilled the conditions, the bond shall be cancelled by the NTC. Otherwise,
6 the bond shall be forfeited in favor of the government and the franchise *ipso*
7 *facto* revoked.

8 **SEC. 11. Right of Interconnection.** - The grantee is hereby authorized
9 to connect or demand connection of its telecommunications systems to other
10 telecommunications systems installed, operated, and maintained by any other
11 duly authorized person or entity in the Philippines for the purpose of providing
12 extended and improved telecommunications services to the public, under such
13 terms and conditions mutually agreed upon by the parties concerned and the
14 same shall be subject to the review and modification of the NTC.

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

20 **SEC. 13. Books and Accounts.** - The books and accounts of the
21 grantee, its successor or assignees, shall always be open to the inspection of the
22 COA and its duly authorized representatives. It shall be the duty of the grantee
23 to submit to the COA two (2) copies of the quarterly reports on the gross
24 receipts, the net profits, and the general condition of the business.

25 **SEC. 14. Warranty in Favor of the National and Local Governments.**
26 - The grantee shall hold the national, provincial, city, and municipal
27 governments of the Philippines free from all claims, accounts, demands, or
28 actions arising out of accidents or injuries, whether to property or to persons,

1 caused by the construction or operation of the stations, transmitters, facilities,
2 and equipment of the grantee.

3 **SEC. 15. Sale, Lease, Transfer, Usufruct, or Assignment of Franchise.**

4 - The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign
5 this franchise or the rights and privileges acquired thereunder to any person,
6 firm, company, corporation or other commercial or legal entity, nor merge with
7 any other corporation or entity, nor shall transfer the controlling interest of the
8 grantee, whether as a whole or in parts, and whether simultaneously or
9 contemporaneously, to any such person, firm, company, corporation, or entity
10 without the prior approval of the Congress of the Philippines: *Provided*, That
11 Congress shall be informed of any sale, lease, transfer, grant of usufruct, or
12 assignment of franchise or the rights and privileges acquired thereunder, or of
13 the merger, or transfer of controlling interest of the grantee, within sixty (60)
14 days after the completion of the said transaction: *Provided further*, That
15 failure to report to Congress such change of ownership shall render the
16 franchise *ipso facto* revoked: *Provided finally*, That any person or entity to
17 which this franchise is sold, transferred, or assigned shall be subject to the
18 same conditions, terms, restrictions, and limitations of this Act.

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

1 **SEC. 17. Reportorial Requirement.** - The grantee shall submit an
2 annual report to the Congress of the Philippines, through the Committee on
3 Legislative Franchises of the House of Representatives and the Committee on
4 Public Services of the Senate, on its compliance with the terms and conditions
5 of the franchise and on its operations on or before April 30 of every year
6 during the term of its franchise. The reportorial compliance certificate issued
7 by Congress shall be required before any application for permit or certificate is
8 accepted by the NTC.

9 **SEC. 18. Penalty Clause.** - Failure of the grantee to submit the
10 requisite annual report to Congress shall be penalized with a fine of five
11 hundred pesos (P500.00) per working day of noncompliance. The fine shall be
12 collected by the NTC from the delinquent franchise grantee separate from the
13 reportorial penalties imposed by the NTC.

14 **SEC. 19. Equality Clause.** - Any advantage, favor, privilege,
15 exemption, or immunity granted under other existing franchises, or which may
16 hereafter be granted, upon prior review and approval of Congress, shall
17 become part of this franchise and shall be accorded immediately and
18 unconditionally to the herein grantee: *Provided*, That the foregoing shall
19 neither apply to nor affect the 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. 20. Separability Clause.** - If any of the sections or provisions of
23 this Act is held invalid, all other provisions not affected thereby shall remain
24 valid.

25 **SEC. 21. Repealability and Nonexclusivity Clause.** - This franchise
26 shall be subject to amendment, alteration, or repeal by the Congress of the
27 Philippines when the public interest so requires and shall not be interpreted as
28 an exclusive grant of the privileges herein provided for.

1 **SEC. 22. Effectivity.** - This Act shall take effect fifteen (15) days after
2 its publication in the *Official Gazette* or in a newspaper of general circulation.
 Approved,