



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

'16 FEB -2 P5 :01

RECEIVED BY: *J*

SENATE

COMMITTEE REPORT NO. 470

Submitted by the Committee on Public Services on FEB 02 2016

RE : H. B. No. 5942

Recommending its approval without amendment.

Sponsor : Senator Osmeña III

MR. PRESIDENT:

The Senate Committee on Public Services to which was referred H. B. No. 5942, introduced by Representatives Aggabao, Violago and *et.al.*, entitled:

"AN ACT AMENDING AND EXTENDING FOR TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO SMART COMMUNICATIONS, INC. (FORMERLY SMART INFORMATION TECHNOLOGIES, INC.) UNDER REPUBLIC ACT NO. 7294, ENTITLED AN ACT GRANTING SMART INFORMATION TECHNOLOGIES, INC. (SMART) A FRANCHISE TO ESTABLISH, INSTALL, MAINTAIN, LEASE AND OPERATE INTEGRATED TELECOMMUNICATIONS/COMPUTER /ELECTRONIC SERVICES, AND STATIONS THROUGHOUT THE PHILIPPINES FOR PUBLIC DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES."

has considered the same and has the honor to report it back to the Senate with the recommendation that the attached H. B. No. 5942 be approved without amendment.

Respectfully submitted:

RAMON BONG REVILLA JR.
Chairperson
Committee on Public Services

Sergio R. Osmeña III
SERGIO R. OSMEÑA III
Acting Chairperson
Committee on Public Services

MEMBERS:


SONNY ANGARA


PIA S. CAYETANO

JINGGOY EJERCITO ESTRADA


JOSEPH VICTOR G. EJERCITO

GREGORIO B. HONASAN II


TEOFISTO L. GUINGONA III


GRACE POE

ANTONIO "SONNY" 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



HOUSE OF REPRESENTATIVES

II. No. 5942

**BY REPRESENTATIVES AGUABAO, VIOLAGO AND TEODORO, PER COMMITTEE
REPORT NO. 803**

AN ACT AMENDING AND EXTENDING FOR TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO SMART COMMUNICATIONS, INC. (FORMERLY SMART INFORMATION TECHNOLOGIES, INC.) UNDER REPUBLIC ACT NO. 7294, ENTITLED "AN ACT GRANTING SMART INFORMATION TECHNOLOGIES, INC. (SMART) A FRANCHISE TO ESTABLISH, INSTALL, MAINTAIN, LEASE AND OPERATE INTEGRATED TELECOMMUNICATIONS/COMPUTER/ELECTRONIC SERVICES, AND STATIONS THROUGHOUT THE PHILIPPINES FOR PUBLIC DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES"

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

1 **SECTION 1.** Section 1 of Republic Act No. 7294 is hereby amended to
2 read as follows:

3 **"SECTION 1. *Nature and Scope of Franchise.*** – Subject to
4 the provisions of the PHILIPPINE Constitution and applicable
5 laws, rules and regulations, [there is hereby] **THE FRANCHISE**
6 **granted to the SMART COMMUNICATIONS, INC. ('SMART',**
7 **FORMERLY Smart Information Technologies, Inc.), hereunder**

1 referred to as the grantee, its successors or assignees,
2 [a franchise] to CONSTRUCT, establish, install, maintain, lease,
3 CO-USE, PURCHASE, [and] operate AND CARRY ON THE
4 BUSINESS OF PROVIDING [integrated] telecommunications
5 [/computer/], INCLUDING ELECTRONIC TELECOMMUNICATIONS
6 OR electronic COMMUNICATIONS services[, and fixed and
7 mobile stations] throughout the Philippines AND BETWEEN THE
8 PHILIPPINES AND OTHER COUNTRIES AND TERRITORIES,
9 INCLUDING OUTER SPACE, AS PUBLIC INTEREST MAY
10 WARRANT, for public domestic and international
11 telecommunications [and to install] IS HEREBY EXTENDED FOR
12 TWENTY-FIVE (25) YEARS FROM THE EFFECTIVITY OF THIS
13 ACT. FOR THIS PURPOSE, THE GRANTEE IS HEREBY GRANTED
14 THE RIGHT TO CONSTRUCT, ESTABLISH, INSTALL, MAINTAIN,
15 LEASE, CO-USE, PURCHASE AND OPERATE THE corresponding
16 transmitting and receiving stations, SATELLITES, LINES,
17 SYSTEMS, NETWORKS, INTERNATIONAL GATEWAYS, LOCAL
18 EXCHANGES, AND PLATFORMS [at such places in the
19 Philippines] as it may consider necessary, [and] convenient, OR
20 REASONABLE.

21 IN THIS ACT, THE TERM "TELECOMMUNICATIONS" SHALL
22 INCLUDE "ELECTRONIC COMMUNICATIONS". IN ADDITION,
23 THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET
24 FORTH HEREIN:

25 *ELECTRONIC COMMUNICATIONS NETWORK* SHALL MEAN
26 (A) A TRANSMISSION SYSTEM FOR CONVEYANCE, BY USE OF
27 ELECTRICAL, MAGNETIC OR ELECTRO-MAGNETIC ENERGY,

1 OF SIGNALS OF ANY DESCRIPTION; AND, (B) ANY OF THE
2 FOLLOWING AS ARE USED, BY THE PERSON PROVIDING THE
3 SYSTEM AND IN ASSOCIATION WITH IT, FOR CONVEYANCE OF
4 THE SIGNALS: (1) APPARATUS COMPRISED IN THE SYSTEM;
5 (2) APPARATUS USED FOR THE SWITCHING AND ROUTING OF
6 THE SIGNALS; AND, (3) SOFTWARE AND STORED DATA;

7 *ELECTRONIC COMMUNICATIONS SERVICE SHALL MEAN A*
8 *SERVICE CONSISTING IN, OR HAVING AS ITS PRINCIPAL*
9 *FEATURE, THE CONVEYANCE BY MEANS OF AN ELECTRONIC*
10 *COMMUNICATIONS NETWORK OF SIGNALS. IT INCLUDES*
11 *WIRED, WIRELESS, FIXED, CELLULAR, AND/OR MOBILE,*
12 *OR INTEGRATED TELECOMMUNICATIONS/COMPUTER/*
13 *ELECTRONIC SERVICES, INCLUDING VALUE-ADDED*
14 *SERVICES, OR TECHNOLOGIES RELATED TO SUCH SERVICE*
15 *WHICH ARE AT PRESENT AVAILABLE OR MADE AVAILABLE*
16 *THROUGH TECHNICAL ADVANCES OR INNOVATIONS IN THE*
17 *FUTURE, AND FIXED AND MOBILE STATIONS."*

18 . : . SEC. 2. Section 7 of Republic Act No. 7294 is hereby amended to read
19 as follows:

20 "SEC. 7. *Term of Franchise.* - This franchise shall be
21 EXTENDED AND IN EFFECT for a [term] PERIOD of twenty-five
22 (25) years from the date of [approval] THE EFFECTIVITY of this
23 Act, unless sooner revoked or cancelled. In the event the grantee
24 fails to operate continuously for two (2) years, this franchise
25 shall be deemed *ipso facto* revoked."

26 SEC. 3. Section 8 of Republic Act No. 7294 is hereby amended to read
27 as follows:

1 **"SEC. 8. *Acceptance and Compliance.* –** Acceptance of
2 this franchise shall be given in writing TO THE CONGRESS OF
3 THE PHILIPPINES, THROUGH THE COMMITTEE ON
4 LEGISLATIVE FRANCHISES OF THE HOUSE OF
5 REPRESENTATIVES AND THE COMMITTEE ON PUBLIC
6 SERVICES OF THE SENATE, within sixty (60) days
7 [after approval] FROM THE EFFECTIVITY of this Act. [The
8 grantee shall operate telecommunications systems for which this
9 franchise is granted within two (2) years from the date of its
10 acceptance in writing of this franchise.] UPON GIVING THE
11 ACCEPTANCE, THE GRANTEE SHALL EXERCISE THE
12 PRIVILEGES GRANTED UNDER THIS ACT. Refusal or failure to
13 accept the franchise [or to operate] within the prescribed period
14 shall render the franchise void."

15 **SEC. 4.** Section 9 of Republic Act No. 7294 is hereby amended to read
16 as follows:

17 **"SEC. 9. *Tax Provisions.* –** The grantee, its successors or
18 assignees, shall be liable to pay the same taxes on their real
19 estate, buildings and personal property, exclusive of this
20 franchise, as other persons or corporations which are now or
21 hereafter may be required by law to pay[.], EXCEPT RADIO,
22 TELECOMMUNICATIONS, AND ELECTRONIC COMMUNICATIONS
23 EQUIPMENT, MACHINERY AND SPARE PARTS NEEDED IN
24 CONNECTION WITH THE BUSINESS OF THE GRANTEE WHICH
25 SHALL BE EXEMPT FROM CUSTOMS DUTIES, TARIFFS AND
26 OTHER TAXES, AS WELL AS THOSE DECLARED EXEMPT IN THIS
27 SECTION. In addition thereto, the grantee, its successors or
28 assignees shall pay a [franchise tax equivalent to three percent

1 (3%) of] VALUE-ADDED TAX ON all gross receipts of the business
2 transacted under this franchise by the grantee, its successors or
3 assignees IN THE PHILIPPINES, [and the said percentage shall
4 be] in lieu of ANY AND all taxes [on this franchise or earnings
5 thereof.] OF ANY KIND, NATURE OR DESCRIPTION LEVIED,
6 ESTABLISHED OR COLLECTED BY AN AUTHORITY
7 WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CITY,
8 MUNICIPAL, PROVINCIAL, OR NATIONAL, FROM WHICH THE
9 GRANTEE IS HEREBY EXPRESSLY EXEMPTED EFFECTIVE FROM
10 THE DATE OF THE APPROVAL OF THIS ACT: *Provided*, That the
11 grantee, its successors or assignees shall continue to be liable for
12 income taxes payable under Title II of the National Internal
13 Revenue Code pursuant to Section 2 of Executive Order No. 72
14 unless the latter enactment is amended or repealed, in which case
15 the amendment or repeal shall be applicable thereto.

16 NOTHING HEREIN SHALL BE CONSTRUED AS REPEALING
17 ANY SPECIFIC TAX EXEMPTION, INCENTIVE OR PRIVILEGE
18 GRANTED UNDER ANY RELEVANT LAW: *PROVIDED*, THAT ALL
19 RIGHTS, PRIVILEGES, BENEFITS AND EXEMPTIONS RELATING
20 TO CUSTOMS DUTIES, TARIFFS, AND OTHER TAXES ACCORDED
21 TO EXISTING AND FUTURE TELECOMMUNICATIONS SHALL
22 LIKEWISE BE EXTENDED TO THE GRANTEE.

23 The grantee shall file the return with and pay the tax due
24 thereon to the Commissioner of Internal Revenue or his duly
25 authorized representative in accordance with the National
26 Internal Revenue Code and the return shall be subject to audit by
27 the Bureau of Internal Revenue."

28 SEC. 5. Section 11 of Republic Act No. 7294 is hereby amended to read
29 as follows:

1 ***SEC. 11. Sale, Lease, Transfer, Usufruct, [etc.] OR**
2 **ASSIGNMENT OF FRANCHISE** - The grantee shall not lease,
3 transfer, grant the usufruct of, sell Nor assign the franchise
4 herein granted or the rights and privileges acquired thereunder to
5 any person, firm, company, corporation or **OTHER COMMERCIAL**
6 **OR LEGAL** entity, nor merge with any corporation or entity,
7 [without the prior approval of the Congress of the Philippines.
8 Neither] **NOR** shall **TRANSFER** the controlling interest [in] **OF** the
9 grantee [be transferred], whether as a whole or in part, and
10 whether simultaneously or contemporaneously, to any [such]
11 person, firm, company, corporation or entity without the prior
12 approval of the Congress of the Philippines.]: **PROVIDED,**
13 **THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY: (A)**
14 **WHEN TRANSFER IS DONE THROUGH A STOCK EXCHANGE; (B)**
15 **FOR PURPOSES OF QUALIFYING PERSONS FOR ELECTION TO**
16 **THE BOARD; (C) WHEN TRANSFER IS TO A CORPORATION THAT**
17 **IS CONTROLLED BY THE SAME STOCKHOLDERS CONTROLLING**
18 **THE GRANTEE; (D) TO ANY TRANSFER OR ISSUANCE OF SHARES**
19 **OF STOCK IN THE IMPLEMENTATION OF THE REQUIREMENT**
20 **FOR THE DISPERSAL OF THE GRANTEE'S OWNERSHIP**
21 **CONSISTENT WITH SECTION 13 OF REPUBLIC ACT NO. 7294;**
22 **(E) TO ANY TRANSFER OR SALE OF SHARES TO A FOREIGN**
23 **INVESTOR OR INVESTORS; (F) TO ANY ISSUANCE OF SHARES TO**
24 **ANY FOREIGN OR LOCAL INVESTORS, PURSUANT TO OR IN**
25 **CONNECTION WITH ANY INCREASE IN THE GRANTEE'S**
26 **AUTHORIZED CAPITAL STOCK, WHICH SHALL RESULT IN THE**
27 **DILUTION OF THE STOCKHOLDINGS OF THE GRANTEE'S THEN**
28 **EXISTING STOCKHOLDERS; (G) TO ANY TRANSFER TO**

1 ANOTHER CORPORATION WHICH IS A GRANTEE OF ANOTHER
2 CONGRESSIONAL FRANCHISE FOR PROVISION OF
3 TELECOMMUNICATIONS SERVICES; AND (II) TO ANY
4 COMBINATION THEREOF WHERE SUCH TRANSFER, SALE OR
5 ISSUANCE IS EFFECTED IN ORDER TO ENABLE THE GRANTEE TO
6 RAISE THE NECESSARY CAPITAL OR FINANCING FOR THE
7 PROVISION OF ANY OF THE SERVICES AUTHORIZED BY THIS
8 ACT AND/OR TO CARRY OUT ANY OF THE PURPOSES FOR
9 WHICH THE GRANTEE HAS BEEN INCORPORATED OR
10 ORGANIZED: *PROVIDED, FURTHER,* THAT ANY TRANSFER,
11 SALE, OR ISSUANCE IS IN ACCORDANCE WITH ANY APPLICABLE
12 CONSTITUTIONAL LIMITATION: *PROVIDED, FURTHERMORE,*
13 THAT CONGRESS SHALL BE INFORMED OF ANY SALE, LEASE,
14 TRANSFER, GRANT OF USUFRUCT, OR ASSIGNMENT OF
15 FRANCHISE OR THE RIGHTS OR PRIVILEGES ACQUIRED
16 THEREUNDER, OR THE MERGER, OR TRANSFER OF THE
17 CONTROLLING INTEREST OF THE GRANTEE, WITHIN SIXTY
18 DAYS AFTER THE COMPLETION OF THE TRANSACTION:
19 *PROVIDED, MOREOVER,* THAT FAILURE TO REPORT TO
20 CONGRESS THE CHANGE OF OWNERSHIP SHALL RENDER THE
21 FRANCHISE *IPSO FACTO* REVOKED: *PROVIDED, FINALLY,* THAT
22 [A]any person or entity to which the franchise herein granted is
23 validly sold, transferred or assigned shall be subject to the same
24 conditions, terms, restrictions and limitations of this Act.”

25 SEC. 6. A new section is hereby inserted after Section 15 of Republic
26 Act No. 7294, to read as follows:

27 “SEC. 16. *EQUALITY CLAUSE.* – IF ANY FRANCHISE FOR
28 TELECOMMUNICATIONS SERVICES IS AWARDED OR GRANTED
29 BY THE CONGRESS OF THE PHILIPPINES, OR ANY AMENDMENT
30 OR REVISION TO ANY FRANCHISE FOR TELECOMMUNICATIONS

1 SERVICES, SUBSEQUENT TO THE APPROVAL OF THIS ACT, WITH
2 TERMS, PRIVILEGES, EXEMPTIONS, EXCEPTIONS AND
3 CONDITIONS THAT ARE MORE FAVORABLE AND BENEFICIAL
4 THAN THOSE CONTAINED IN OR OTHERWISE GRANTED UNDER
5 THIS ACT, THEN THE SAME TERMS, PRIVILEGES, EXEMPTIONS,
6 EXCEPTIONS, OR CONDITIONS SHALL, *IPSO FACTO*, ACCRUE
7 TO THE HEREIN GRANTEE AND BE DEEMED PART OF THIS
8 ACT."

9 SEC. 7. The present Section 16 of Republic Act No. 7294 is hereby
10 renumbered as Section 17.

11 SEC. 8. A new Section 18 is hereby inserted to read as follows:

12 "SEC. 18. *PENALTY CLAUSE.* - FAILURE OF THE GRANTEE
13 TO SUBMIT THE REQUISITE ANNUAL REPORT TO CONGRESS
14 SHALL BE PENALIZED BY A FINE IN THE AMOUNT OF FIVE
15 HUNDRED PESOS (P500.00) PER WORKING DAY OF
16 NONCOMPLIANCE. THE FINE SHALL BE COLLECTED BY THE
17 NATIONAL TELECOMMUNICATIONS COMMISSION (NTC)
18 FROM THE DELINQUENT FRANCHISE GRANTEE SEPARATE
19 FROM THE REPORTORIAL PENALTIES IMPOSED BY THE NTC."

20 SEC. 9. *Applicability Clause.* - All other provisions of Republic Act
21 No. 7294 which are not inconsistent with the provisions of this Act and remain
22 unrepealed shall continue to be in full force and effect.

23 SEC. 10. *Effectivity.* - This Act shall take effect fifteen (15) days after
24 its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,