

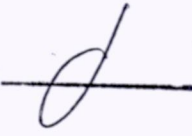


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

'17 JAN 19 P1:25

SENATE

S. No. 1302

RECEIVED BY: 

Introduced by SENATOR JUAN MIGUEL F. ZUBIRI

AN ACT

EXTENDING FOR TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO SMART COMMUNICATIONS, INC. (FORMERLY SMART INFORMATION TECHNOLOGIES, INC.) AMENDING FOR THE PURPOSE 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"

EXPLANATORY NOTE

This bill seeks to extend the franchise granted to Smart Technologies, Inc. now popularly known as Smart Communications, Inc. or simply "Smart" pursuant to Republic Act No. 7294 to establish, install, maintain, lease and operate integrated telecommunications/computer/electronic services and stations throughout the Philippines for public domestic and international telecommunications. The existing franchise of Smart is expiring in 2017.

Smart was granted authority to operate a mobile cellular service in 1993 and has since been actively operating as a telecommunications provider in the country for both the domestic and the international public. Smart, since it began its commercial operations, has grown to be one of the country's leading telecommunications providers. It is operating cell sites, cellular/mobile broadband base stations, and fixed wireless broadband-enabled base stations, covering 1,634 cities and municipalities in the country.

In recognition of Smart's commitment and leadership as a telecommunications provider in the social, cultural and economic facets of our society, and its efforts to keep pace with technological and the capital requirements of its operations, the immediate renewal of its franchise is recommended to ensure the uninterrupted, reliable and improved delivery of its vital services to the Filipino people.

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

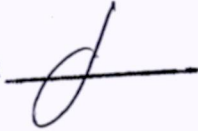


JUAN MIGUEL F. ZUBIRI

Senator

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

1 **SECTION 1.** Section 1 of Republic Act No. 7294 is hereby amended to read as
2 follows:
3

4 "SECTION 1. *Nature and scope of Franchise* – Subject to the
5 provisions of the **PHILIPPINE** Constitution and applicable laws, rules and
6 regulations, [there is hereby] **THE FRANCHISE** granted to the **SMART**
7 **COMMUNICATIONS, INC.** ("SMART", **FORMERLY** Smart Information
8 Technologies, Inc.) hereunder referred to as the grantee, its successors or
9 assignees, [a franchise] to **CONSTRUCT**, establish, install, maintain, lease,
10 **CO-USE, PURCHASE**, [and] operate **AND CARRY ON THE BUSINESS**
11 **OF PROVIDING** [integrated] telecommunications [/computer/],
12 **INCLUDING ELECTRONIC TELECOMMUNICATIONS OR** electronic
13 **COMMUNICATIONS** services [and fixed and mobile stations] throughout
14 the Philippines **AND BETWEEN THE PHILIPPINES AND OTHER**
15 **COUNTRIES AND TERRITORIES INCLUDING OUTER SPACE, AS**
16 **PUBLIC INTEREST MAY WARRANT**, for public domestic and
17 international telecommunications **IS HEREBY EXTENDED FOR TWENTY**
18 **FIVE (25) YEARS FROM THE EFFECTIVITY OF THIS ACT** [and]. **FOR**
19 **THIS PURPOSE, THE GRANTEE IS HEREBY GRANTED THE RIGHT** to
20 **CONSTRUCT, ESTABLISH, MAINTAIN**, install, **LEASE, CO-USE,**
21 **PURCHASE AND OPERATE** THE corresponding transmitting and
22 receiving stations, **SATELLITES, LINES, SYSTEMS, NETWORKS,**
23 **INTERNATIONAL GATEWAYS, LOCAL EXCHANGES, AND**
24 **PLATFORMS** [at such places in the Philippines] as it may consider
25 necessary, [and] convenient, **OR REASONABLE.**
26

1 IN THIS ACT, THE TERM "TELECOMMUNICATIONS" SHALL
2 INCLUDE "ELECTRONIC COMMUNICATIONS". IN ADDITION, THE
3 FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH
4 HEREIN."
5

6 "ELECTRONIC COMMUNICATIONS NETWORK" SHALL MEAN
7 (A) A TRANSMISSION SYSTEM FOR CONVEYANCE, BY USE OF
8 ELECTRICAL, MAGNETIC OR ELECTRO-MAGNETIC ENERGY, OF
9 SIGNALS OF ANY DESCRIPTION; AND, (B) ANY OF THE
10 FOLLOWING AS ARE USED, BY THE PERSON PROVIDING THE
11 SYSTEM AND IN ASSOCIATION WITH IT, FOR CONVEYANCE OF
12 THE SIGNALS: (1) APPARATUS COMPROMISED IN THE SYSTEM;
13 (2) APPARATUS USED FOR THE SWITCHING AND ROUTING OF THE
14 SIGNALS; AND, (3) SOFTWARE AND STORED DATA;
15

16 "ELECTRONIC COMMUNICATIONS SERVICE" SHALL MEAN A
17 SERVICE CONSISTING IN, OR HAVING AS ITS PRINCIPAL
18 FEATURE, THE CONVEYANCE BY MEANS OF AN ELECTRONIC
19 COMMUNICATIONS NETWORK OF SIGNALS. IT INCLUDES WIRED,
20 WIRELESS, FIXED, CELLULAR AND/OR MOBILE, ON INTEGRATED
21 TELECOMMUNICATIONS/ COMPUTER/ ELECTRONIC SERVICES,
22 INCLUDING VALUE-ADDED SERVICES OR TECHNOLOGIES
23 RELATED TO SUCH SERVICE WHICH ARE AT PRESENT AVAILABLE
24 OR MADE AVAILABLE THROUGH TECHNICAL ADVANCES OR
25 INNOVATIONS IN THE FUTURE, AND FIXED AND MOBILE
26 STATIONS."
27

28 **SEC. 2.** Section 7 of Republic Act No. 7294 is hereby amended to read as follows:
29

30 "SEC. 7. *Term of Franchise.* – The franchise shall be **EXTENDED**
31 **AND IN EFFECT** for a [term] **PERIOD** of twenty-five (25) years from the
32 date of **THE** approval of this Act, unless sooner revoked or cancelled. In the
33 event the grantee fails to operate continuously for two (2) years, this
34 franchise shall be deemed *ipso facto* revoked."
35

36 **SEC. 3.** Section 8 of Republic Act No. 7294 is hereby amended to read as follows:
37

38 "SEC. 8. *Acceptance and Compliance.* – Acceptance of this franchise
39 shall be given in writing **TO THE CONGRESS OF THE PHILIPPINES,**
40 **THROUGH THE COMMITTEE ON LEGISLATIVE FRANCHISES OF THE**
41 **HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON PUBLIC**
42 **SERVICES OF THE SENATE, WITHIN** sixty (60) days [after approval]
43 **FROM THE EFFECTIVITY** of this Act. [The grantee shall operate
44 telecommunications systems for which this franchise is granted within two
45 (2) years from the date of its acceptance in writing of this franchise].
46 **UPON GIVING THE ACCEPTANCE, THE GRANTEE SHALL EXERCISE**
47 **THE PRIVILEGES GRANTED UNDER THIS ACT.** Refusal or failure to
48 accept the franchise [or to operate] within the prescribed period shall
49 render the franchise void."
50

51 **SEC. 4.** Section 9 of Republic Act No. 7294 is hereby amended to read as follows:
52

53 "SEC. 9. *Tax Provisions.* – The grantee, its successors or assignees
54 shall be liable to pay the same taxes on their real estate, buildings and

1 personal property, exclusive of this franchise, as other persons or
2 corporations which are now or hereafter may be required by law to pay [.]
3 **EXCEPT RADIO TELECOMMUNICATIONS AND ELECTRONIC**
4 **COMMUNICATIONS EQUIPMENT, MACHINERY AND SPARE PARTS**
5 **NEEDED IN CONNECTION WITH THE BUSINESS OF THE GRANTEE**
6 **WHICH SHALL BE EXEMPT FROM CUSTOM DUTIES, TARIFFS AND**
7 **OTHER TAXES, AS WELL AS THOSE DECLARED EXEMPT IN THIS**
8 **SECTION.** In addition thereto, the grantee, its successors or assignees
9 shall pay a **VALUE ADDED TAX** [franchise tax equivalent to three percent
10 (3%) of] **ON** all gross receipts of the business transacted under this
11 franchise by the grantee, its successors or assignees **IN THE**
12 **PHILIPPINES**, [and the said percentage shall be] in lieu of **ANY AND** all
13 taxes [on this franchise or earnings thereof] **OF ANY KIND, NATURE OR**
14 **DESCRIPTION LEVIED, ESTABLISHED OR COLLECTED BY AN**
15 **AUTHORITY WHATSOEVER, INCLUDING BUT NOT LIMITED TO**
16 **CITY, MUNICIPAL, PROVINCIAL OR NATIONAL, FROM WHICH THE**
17 **GRANTEE IS HEREBY EXPRESSLY EXEMPTED EFFECTIVE FROM**
18 **THE DATE OF THE APPROVAL OF THIS ACT:** *Provided*, That the
19 grantee, its successors or assignees shall continue to be liable for income
20 taxes payable under Title II of the National Internal Revenue Code pursuant
21 to Section 2 of Executive Order No. 72 unless the latter enactment is
22 amended or repealed, in which case the amendment or repeal shall be
23 applicable [thereto].
24

25 The grantee shall file the return with and pay the tax due thereon to
26 the Commissioner of Internal Revenue or his duly authorized representative
27 in accordance with the National Internal Revenue Code and the return shall
28 be subject to audit by the Bureau of Internal Revenue.
29

30 **SEC. 5.** Section 11 of Republic Act No. 7294 is hereby amended to read as follows:
31

32 "SEC. 11. *Sale, Lease, Transfer, Usufruct [etc.] OR ASSIGNMENT*
33 **OF FRANCHISE.** – The grantee shall not **SELL**, lease, transfer, grant the
34 usufruct of [sell] **Nor** assign the franchise herein granted or the rights and
35 privileges acquired thereunder to any person, firm, company, corporation
36 or **OTHER COMMERCIAL OR LEGAL** entity, nor merge with any
37 corporation or entity, [without the prior approval of the Congress of the
38 Philippines. Neither] **NOR** shall **TRANSFER** the controlling interest [in] **OF**
39 the grantee [be transferred], whether as a whole or in part, and whether
40 simultaneously or contemporaneously, to any [such] person, firm,
41 company, corporation or entity without the prior approval of the Congress
42 of the Philippines: **PROVIDED, THAT THE FOREGOING LIMITATIONS**
43 **SHALL NOT APPLY: (A) WHEN TRANSFER IS DONE THROUGH A**
44 **STOCK EXCHANGE; (B) FOR PURPOSES OF QUALIFYING PERSONS**
45 **FOR ELECTION TO THE BOARD; (C) WHEN TRANSFER IS TO A**
46 **CORPORATION THAT IS CONTROLLED BY THE SAME**
47 **STOCKHOLDERS CONTROLLING THE GRANTEE; (D) TO ANY**
48 **TRANSFER OR ISSUANCE OF SHARES OF STOCK IN THE**
49 **IMPLEMENTATION OF THE REQUIREMENT FOR THE DISPERSAL**
50 **OF THE GRANTEE'S OWNERSHIP CONSISTENT WITH SECTION 13**
51 **OF REPUBLIC ACT 7294; (E) TO ANY TRANSFER OR SALE OF**
52 **SHARES TO A FOREIGN INVESTOR OR INVESTORS; (F) TO ANY**
53 **ISSUANCE OF SHARES TO ANY FOREIGN OR LOCAL INVESTORS,**
54 **PURSUANT TO OR IN CONNECTION WITH ANY INCREASE IN THE**

1 GRANTEE'S AUTHORIZED CAPITAL STOCK, WHICH SHALL RESULT
2 IN THE DILUTION OF THE STOCKHOLDINGS OF THE GRANTEE'S
3 THEN EXISTING STOCKHOLDERS; (G) TO ANY TRANSFER TO
4 ANOTHER CORPORATION WHICH IS A GRANTEE OF ANOTHER
5 CONGRESSIONAL FRANCHISE FOR PROVISION OF
6 TELECOMMUNICATIONS SERVICES; AND (H) TO ANY
7 COMBINATION THEREOF WHERE SUCH TRANSFER, SALE OR
8 ISSUANCE IS EFFECTED IN ORDER TO ENABLE THE GRANTEE TO
9 RAISE THE NECESSARY CAPITAL OR FINANCING FOR THE
10 PROVISION OF ANY OF THE SERVICES AUTHORIZED BY THIS ACT
11 AND/OR TO CARRY OUT ANY OF THE PURPOSES FOR WHICH THE
12 GRANTEE HAS BEEN INCORPORATED OR ORGANIZED. *PROVIDED*
13 *FURTHER*, THAT ANY TRANSFER, SALE, OR ISSUANCE IS IN
14 ACCORDANCE WITH ANY APPLICABLE CONSTITUTIONAL
15 LIMITATION.
16

17 *PROVIDED, FURTHERMORE*, THAT CONGRESS SHALL BE
18 INFORMED OF ANY SALE, LEASE, TRANSFER, GRANT OF
19 USUFRUCT, OR ASSIGNMENT OF FRANCHISE OR THE RIGHTS OR
20 PRIVILEGES ACQUIRED THEREUNDER, OR THE MERGER, OR
21 TRANSFER OF THE CONTROLLING INTEREST OF THE GRANTEE,
22 WITHIN SIXTY (60) DAYS AFTER THE COMPLETION OF THE
23 TRANSACTION:
24

25 *PROVIDED, FINALLY, THAT* [A]any person or entity to which the
26 franchise herein is granted validly sold, transferred or assigned shall be
27 subject to the same conditions, terms, restrictions, and limitations of this
28 Act.
29

30 **SEC. 6.** Section 13 of Republic Act No. 7294 is hereby amended to read as follows:
31

32 "SEC. 13. *Listing of Shares.* – The grantee shall list, subject to the
33 requirements of the Securities and Exchange Commission and the stock
34 exchange concerned, and make a public offering through the stock
35 exchange [of the shares representing at least thirty per centum (30%) of
36 its authorized capital stock] in any securities exchange in the Philippines
37 within two (2) years from the effectivity of this Act, **UNLESS THE**
38 **GRANTEE IS WHOLLY OWNED BY A PUBLICLY LISTED COMPANY.**"
39

40 **SEC. 7.** A new section is hereby inserted after Section 15 of Republic Act No. 7294,
41 to read as follows:
42

43 "**SEC. 16. EQUALITY CLAUSE** – IF ANY FRANCHISE FOR
44 TELECOMMUNICATIONS SERVICES AWARDED OR GRANTED BY
45 THE CONGRESS OF THE PHILIPPINES, OR ANY AMENDMENT OR
46 REVISION TO ANY FRANCHISE FOR TELECOMMUNICATIONS
47 SERVICES, SUBSEQUENT TO THE APPROVAL OF THIS ACT,
48 PROVIDE TERMS, PRIVILEGES, EXEMPTIONS, EXCEPTIONS AND
49 CONDITIONS THAT ARE MORE FAVORABLE AND BENEFICIAL
50 THAN THOSE CONTAINED IN OR OTHERWISE GRANTED UNDER
51 THIS ACT, THEN THE SAME TERMS, PRIVILEGES, EXEMPTIONS,
52 EXCEPTIONS, OR CONDITIONS SHALL, IPSO FACTO, ACCRUE TO
53 THE HEREIN GRANTEE AND BE DEEMED PART OF THIS ACT."
54

1 **SEC. 8.** The present Section 16 of Republic Act No. 7294 is hereby renumbered
2 as Section 17.

3 **SEC. 9.** A new Section 18 is hereby inserted to read as follows:
4

5 **"SEC. 18. PENALTY CLAUSE – FAILURE OF THE GRANTEE TO**
6 **SUBMIT THE REQUISITE ANNUAL REPORT TO CONGRESS SHALL**
7 **BE PENALIZED BY A FINE IN THE AMOUNT OF FIVE HUNDRED**
8 **PESOS (P500.00) PER WORKING DAY OF NONCOMPLIANCE. THE**
9 **FINE SHALL BE COLLECTED BY THE NATIONAL**
10 **TELECOMMUNICATIONS COMMISSION (NTC) FROM THE**
11 **DELINQUENT FRANCHISE GRANTEE SEPARATE FROM THE**
12 **REPORTORIAL PENALTIES IMPOSED BY THE NTC."**
13

14 **SEC. 10. Applicability Clause** – All other provisions of Republic Act No. 7294 which
15 are not inconsistent with the provisions of this Act and remain un-repealed shall
16 continue to be in full force and effect.
17

18 **SEC. 11. Effectivity** - This Act shall take effect fifteen (15) days after its publication
19 in the Official Gazette or in a newspaper of general circulation.
20

21 Approved.