


SENATE

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S. No. 793

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INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
PROVIDING FOR THE ALLOCATION AND MANAGEMENT OF THE RADIO
FREQUENCY SPECTRUM**

EXPLANATORY NOTE

The radio frequency spectrum is critical to modern telecommunications. The State apportions spectrum to telecommunications entities, enabling them to provide services to the public, such as mobile telephony and access to the internet: services that form the backbone of our social media networks, ride-sharing services, and online commerce platforms.

The radio frequency spectrum is composed of naturally occurring, electromagnetic radiating energy. This natural resource, unlike oil, gas, and minerals, is non-depletable but finite. Because spectrum is a limited resource, its use is considered a privilege which may be withdrawn by the State at any time in the interest of public welfare.

The Philippines itself has experienced substantial growth in the demand for mobile data communications, with roughly 67 million internet users consuming an estimated 150,000 terabytes of data annually.

However, in OpenSignal's latest *State of LTE Report*, using data parsed from over 50 billion measurements worldwide, taken between October 1 to December 29, the Philippines ranked 75th out of 88 countries in terms of 4G availability (at 63.73% consistent accessibility) and 85th in terms of 4G speed (at an average speed of 9.49 Mbps).

Secretary Eliseo Rio, Jr. of the Department of Information and Communications

Technology (DICT) has stated that one of the reasons the country has lagged behind the rest of the world has been a lack of competition in the telecommunications sector, which is currently dominated by the duopoly of Globe Telecom, Inc. and Smart Communications, Inc. This lack of competition has been exacerbated by the scarcity of available spectrum for allocation to new players looking to break the duopoly.

This scarcity limits competition from new entrants and increases the cost of using spectrum to business and consumers. Similarly, the lack of unassigned usable spectrum stifles and delays the introduction and development of new technology.

National Telecommunications Commission (NTC) Memorandum Circular No. 3-3-96 provides that, where demand for specific frequencies exceeds availability, allocation shall be through open tenders. Despite this, spectrum has not been allocated in this manner. Instead the Commission has chosen to assign frequencies through administrative "beauty contests" to various telecommunications entities.

The great irony is that, where spectrum has been assigned and allocated in this way, lucrative secondary markets have commonly arisen, resulting in licenses and permits being warehoused and sold to other parties. This has often led to the anti-competitive concentration of spectrum resources in the hands of a few industry players, as is the current situation in the Philippines.

Consequently, economists and other commentators have long questioned the wisdom of granting valuable spectrum rights to commercial entities for a fraction of their actual economic value.

In other jurisdictions, auctions of portions of the radio spectrum have led to substantial windfalls for the public: in Thailand, the auction of the 900 MHz license earned the government 4.2 billion USD; in India, auctions held in March 2015 earned 13 billion USD; in the United Kingdom, auctions held in 2000 for the frequencies necessary to support the 3G mobile telephony standard earned 36.9 billion EUR; and, in Canada, an auction held in 2008 raised 4.25 billion USD.

Assignments of spectrum in the Philippines have also been open-ended: subsisting until annulled, revoked, or suspended by the Commission or by the expiration or termination of the assignee's corporate existence. This has led to a regulatory regime

where mergers and acquisitions have resulted in the hoarding of critical frequencies, specifically those required for mobile telephony and data.

This accentuates the need for a better framework to manage this critical resource by, among others, establishing a system to regularly reallocate or re-farm portions of the spectrum through competitive bidding. It is respectfully submitted that this will not only generate additional revenue for the government, it will also, by promoting competition and more efficient use of a scarce public resource, lead to better telecommunications services for the public.

Hence, the immediate passage of this measure is earnestly sought.

Risa Hontiveros
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Senator



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**AN ACT
PROVIDING FOR THE ALLOCATION AND MANAGEMENT OF THE RADIO
FREQUENCY SPECTRUM**

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

1 Sec. 1. *Short Title.* – This Act shall be known as the "Philippine Spectrum
2 Management Act."

3 Sec. 2. *Declaration of Policy.* – The radio frequency spectrum is a scarce public
4 resource that shall be administered in the public interest and in accordance with
5 international agreements and conventions to which the Philippines is a party. The
6 government shall allocate the radio frequency spectrum to service providers capable
7 of efficiently and effectively using it to meet public demand for telecommunications
8 services. The use of any portion of the radio frequency spectrum is a privilege
9 conferred by the State which may, after due process, be withdrawn at any time.

10 Sec. 3. *Objectives.* – The objectives of this Act are, as follows:
11 a) Encourage the development and rapid deployment of new technology;
12 b) Ensure better service by preventing excessive concentration and
13 consolidation of spectrum licenses;
14 c) Recover a greater portion of the economic value of the radio frequency
15 spectrum for the public; and
16 d) Promote more efficient use of spectrum.

17 Sec. 4. *Spectrum Management Plan.* – The Commissioner of the National
18 Telecommunications Commission (NTC) and the Secretary of the Department of
19 Information & Communications Technology (DICT) shall meet at least annually to

1 develop a spectrum management plan for the Philippines with respect to the
2 following issues, among others:

- 3 a) Public revenue generated from the radio frequency spectrum;
- 4 b) Future spectrum requirements for public and private use;
- 5 c) Spectrum allocation measures necessary to accommodate those uses;
- 6 and
- 7 d) Measures necessary to promote the efficient use of spectrum.

8 *Sec. 5. Definition of Terms.* – As used in this Act, the following terms are
9 defined as follows:

- 10 a) "Allocation" refers to an entry in the National Radio Frequency
11 Allocation Table of a given frequency band for the purpose of its use
12 by one or more telecommunication services;
- 13 b) "Assignment" refer to an authorization given to a Licensee to use
14 specific frequencies or channels;
- 15 c) "Block" refers to a portion of the radio frequency spectrum allocated
16 to a Licensee pursuant to this Act.
- 17 d) "License" refers to a license to be granted pursuant to this Act to
18 establish or use a wireless telegraphy station or install or use wireless
19 telegraphy apparatus in the Philippines at frequencies comprising a
20 portion or several portions of the radio frequency spectrum;
- 21 e) "Licensee" refers to a natural or juridical person issued a License to
22 pursuant to this Act; and
- 23 f) "Material Interest" refers to any interest, whether direct or indirect, in
24 any share which carries, or any shares which together carry, more
25 than twenty-five per cent (25%) of the votes entitled to be cast at a
26 general meeting of a Licensee; or any share or shares in the case
27 where the consent of the holder of that share or those shares is
28 required for the conduct of any business of a Licensee; or the right to
29 appoint or remove a majority of Licensee's board of directors or
30 trustees.

31 *Sec. 6. Scope.* – Only the portions of the radio frequency spectrum designated
32 by the International Telecommunications Union (ITU) as purposed for
33 telecommunications, telemetry, navigation, public safety, and broadcast may be
34 licensed pursuant to this Act. The National Telecommunications Commission (NTC)
35 shall ensure that a portion of the radio frequency spectrum is allocated for unlicensed

1 public use, such as those needed for consumer electronics, citizens' band radio,
2 national defense, and VHF and UHF ham radio.

3 *Sec. 7. Allocation of the Radio Frequency Spectrum.* – Insofar as consistent
4 with national priorities and demand for radio frequency spectrum, the allocation of
5 the radio frequency spectrum shall be in accordance with the International Table of
6 Radio Frequency Allocation issued by the International Telecommunications Union
7 (ITU). The NTC shall have the authority to allocate, assign, reallocate, or reassign
8 portions of the radio frequency spectrum to achieve the objectives of this Act,
9 including the express authority to revoke or annul any such allocations or
10 assignments, and impose terms and conditions for the use thereof.

11 The NTC shall divide the usable radio frequency spectrum into a sufficient
12 number of Blocks in each spectrum band for the purposes of ensuring
13 adequate competition in the telecommunications industry as well as
14 preventing harmful interference. The NTC shall also reserve a sufficient
15 number of Blocks for non-commercial use by the government and members of
16 the public.

17 If primary use of a Block to be allocated involves, or is likely to involve, the
18 receipt of compensation from subscribers to receive or transmit
19 communications signals using allocated frequencies, the NTC shall carry out
20 the allocation to qualified public telecommunications entities through auction
21 or competitive bidding. As provided in the implementing rules and regulations
22 issued pursuant to this Act, portions of the radio frequency spectrum may be
23 allocated on a territorial basis.

24 *Sec. 8. Auctions.* – The NTC and DICT shall establish a competitive bidding
25 methodology for the allocation of Blocks pursuant to this Act. This methodology shall
26 include safeguards to protect the public interest as well as measures to promote the
27 stated objectives of this Act. Thus, the NCT and DICT shall:

- 28 a) Consider alternative payment schedules and methods of calculation,
29 including lump sums or guaranteed installment payments, with or
30 without royalty payments, or other schedules or methods that
31 promote the objectives of this Act, and combinations of such
32 schedules and methods;
- 33 b) Include performance requirements, such as appropriate deadlines and
34 penalties for performance failures, to ensure prompt delivery of
35 services to the public, prevent stockpiling or warehousing of

1 spectrum, and promote investment in and rapid deployment of new
2 technologies and services;

3 c) Prescribe methods for allocation and assignment that promote an
4 equitable distribution of licenses and services among geographic
5 areas, economic opportunity for a wide variety of applicants, including
6 small businesses, and businesses owned by members of minority
7 groups and women, and investment in and rapid deployment of new
8 technologies and services; and

9 d) Require such transfer disclosures and anti-trafficking restrictions and
10 payment schedules as may be necessary to prevent unjust
11 enrichment as a result of the methods employed to issue licenses.

12 *Sec. 9. Validity of Licenses for the Use of the Radio Frequency Spectrum. –*

13 Unless sooner withdrawn, revoked, or voluntarily surrendered in accordance with
14 current rules and regulations, all existing licenses for the utilization of the radio
15 frequency spectrum shall be deemed revoked three (3) years from the effectivity of
16 this Act. Licenses issued pursuant to this Act shall be valid for five years (5), unless a
17 shorter period is provided in the implementing rules and regulations thereof.

18 *Sec. 10. Prohibition on Sale, Lease, Transfer, Usufruct and Assignment. – A*

19 licensee shall not lease, transfer, grant the usufruct of, sell nor assign a License
20 issued pursuant to this Act, or the rights and privileges acquired thereunder, to any
21 person, firm, company, corporation, or other commercial or legal entity.

22 *Sec. 11. Mergers and Acquisitions. – A Licensee shall not merge with any*

23 person, firm, company, corporation or entity, nor shall a Material Interest in a
24 Licensee be transferred, whether as a whole or in parts, and whether simultaneously
25 or contemporaneously, to any such person, firm, company, corporation or entity,
26 without the prior approval of the NTC and the Philippine Competition Commission
27 (PCC).

28 *Sec. 12. Qualifications. – Licensees shall possess the following qualifications:*

- 29 a) Filipino citizenship;
30 b) Holder of a Congressional franchise;
31 c) The technical and financial capacity to utilize allocated spectrum to
32 provide services to the public;
33 d) The Licensee, or any other person, firm, company, corporation or
34 entity which holds a Material Interest in the Licensee, or in which the
35 Licensee holds a Material Interest, must not have been allocated an

1 aggregate amount of spectrum greater than the spectrum cap
2 provided for in this Act;

3 e) Not otherwise disqualified by law or existing regulations.

4 Sec. 13. *Spectrum Cap.* – No entity or group of entities sharing a Material
5 Interest in each other, may hold more than 25% of the licensed radio frequency
6 spectrum in any given band.

7 Sec. 14. *Obligations of a Licensee.* – Every Licensee shall be bound by the
8 following obligations:

9 a) Observe the spectrum cap;

10 b) Utilize allocated spectrum to provide telecommunications services to
11 the public;

12 c) Comply with this Act, its implementing rules and regulations, and all
13 other applicable administrative issuances;

14 d) Payment of lawful fees, charges and taxes due the national
15 government in connection with Licenses issued pursuant to this Act;
16 and

17 e) Obtain prior approval from the NTC and PCC prior to any merger,
18 acquisition, or transfer of Material Interest in a Licensee

19 Sec. 15. *Revocation of Licenses and Return of Assigned Frequencies.* A License
20 shall be revoked by the National Telecommunications Commission and reallocated in
21 the following circumstances:

22 a) Violation by a Licensee of its obligations hereunder;

23 b) Loss of corporate personality or cessation of business;

24 c) Expiration of a License's validity period; and

25 d) Failure to pay lawful fees, charges and taxes due the national
26 government in connection with Licenses issued pursuant to this Act

27 Sec. 16. *Preparation and Publication of National Radio Frequency Allocation*
28 *Table.* – The NTC shall prepare a National Radio Frequency Allocation Table (NRFAT)
29 containing a list of all spectrum holders and the portion of the radio frequency
30 spectrum assigned to them. An updated NRFAT must be published annually, posted
31 on the NTC's website, and otherwise made available to the public.

32 Sec. 17. *Implementing Rules and Regulations (IRR).* – The Secretary of
33 Information and Communications Technology, upon the recommendation of the NTC
34 and PCC, shall issue the Implementing Rules and Regulations for the effective
35 implementation of this Act, within sixty (60) days from the approval thereof.

1 Sec. 18. *Separability Clause.* – If any provision of this Act is declared
2 unconstitutional or invalid by a court of competent jurisdiction, the remaining
3 provisions not affected thereby shall continue to be in full force and effect.

4 Sec. 19. *Repealing Clause.* – Section 3 of Republic Act 3846 insofar as it
5 provides for the allocation of the radio frequency spectrum, as well as all other laws,
6 decrees, executive orders, department or memorandum orders and other
7 administrative issuances or parts thereof which are inconsistent with the provisions of
8 this Act, are hereby modified, superseded or repealed accordingly.

9 Sec 20. *Effectivity.* – This Act shall take effect fifteen (15) days after
10 publication in the *Official Gazette* or in at least two (2) newspapers of general
11 circulation.

Approved,