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SENATE

S.B. No. 30

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Introduced by Senator Ramon Bong Revilla, Jr.

Recent studies have found the breakthroughs in the speed, communications capability and storage capacity of information devices have far-reaching and unforeseen effects on families, communities, institutions and democratic processes of a nation. A major obstacle to the general advancement in technology of a developing country is the formulation and creation of optimal preconditions for a successful management and administrative structure through which the people will gain and at the same be cosseted from the new technology.

Section 10, Article XIV of the 1987 Constitution provides that, "Science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services. It shall support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life."

In consonant to this constitutional mandate and due to the fast development of new technologies, it has become essential for the government to provide a regulatory environment.

This bill therefore seeks to reorganize the National Telecommunications Commission (NTC) and give the NTC powers and functions for the agency to deal with the improvements in information and communications technology.

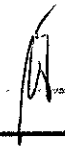
Immediate passage of this bill is highly needed.


RAMON BONG REVILLA, JR.
Senator

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AN ACT
REORGANIZING THE NATIONAL TELECOMMUNICATIONS COMMISSION,
DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR,
AND FOR OTHER PURPOSES

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

SECTION 1. Title. - This Act shall be known as the "National Telecommunications Commission Reorganization Act of 2010."

SECTION 2. Declaration of Policy. - The State shall promote the development of high quality information and communications infrastructures and services as vital tools for economic development, nation building and global competitiveness. Towards this end, it is hereby a declared policy of the State to develop a regulatory environment for a viable, adequate, efficient, and universal information and communications sector using the best available and affordable technologies; foster a competitive business environment, and fair and efficient market conduct among industry players; ensure universal access to reliable and affordable services; and protect the interests and welfare of both of the industry players and the consuming public.

SECTION 3. Definition of Terms. - For purposes of this Act, the following terms are hereby defined:

- (a) "*Authorization*" refers to any certificate, permit, license, accreditation, registration, recognition or similar permission granted to a person or entity to lawfully engage in the activities falling under the jurisdiction of the Commission;
- (b) "*Certificate of Public Convenience and/or Certificate of Authority*" (CPCICA) and "*Certificate of Public Convenience and Necessity*" (CCPCN) - both refer to a certificate issued by the Commission in the provision of services that fall within the jurisdiction of the Commission;
- (c) "*CICT*" refers to the Commission on the Information and Communications Technology created under Executive Order No. 269, series of 2004, or its successor agency;
- (d) "*Commission*" refers to the National Telecommunications Commission;
- (e) "*Frequency*" refers to the number of cycles per unit time, usually expressed in Hertz;

- (f) "*Information and Communication Technology*", herein referred to as "ICT", refers to the totality of electronic means to collect, store, process and present information to end-users in support of their activities. It consists, among others, of computer systems, office systems and consumer electronics, as well as networked information infrastructure, the components of which include the telephone system, the internet, fax machines, computers, and other similar devices;
- (g) "*Interconnection*" refers to the linkage by any means of transmission such as by wire, radio, satellite, microwave channel of networks and services of two or more existing services providers with one another;
- (h) "*Legislative Franchise*" refers to the franchise issued by Congress authorizing the entity to engage in a certain type of telecommunications, broadcast, cable TV, multimedia and other information and communications infrastructures and services;
- (i) "*Radio Spectrum*" shall cover radio frequencies from 9 KHz or higher that can be used for broadcast services; and,
- (j) "*Universal Access*" shall refer to the provision of affordable, accessible, and efficient information and communications infrastructures and services to the widest array of consumers possible.

SECTION 4. *Reorganization of the Commission.* - The Commission is hereby reorganized to strengthen its existing organizational structure and capabilities to meet the rapid developments of emerging technologies in the fields of information, communications, broadcast, cable TV and other multi-media infrastructure and services.

The Commission shall be attached to the CICT for policy and program coordination, and shall be under the administrative supervision of the same. The Commission shall independently exercise its powers and functions and no other agency shall influence or effect a review or modification of its decisions as a quasi-judicial body. Provided, however, that the decisions of the Commission as a quasi-judicial entity shall be appealed only to the Court of Appeals and the Supreme Court, as provided for by law.

SECTION 5. *Jurisdiction.* - The Commission shall have jurisdiction over all persons and entities engaged in the operation and/or provision of information and communications, telecommunications, broadcast, cable TV and other multi-media infrastructures and services. Pursuant thereto, the Commission shall exercise supervisory and regulatory powers over such persons and entities, including program, content and application providers in such infrastructures and services, radio stations and radio training schools, maritime point of service activation, networks or system services, franchise, equipment and other properties, and/or any person using the radio spectrum and other limited resources in communications and information e.g. numbering systems, domain name systems and other related concerns.: Provided, that telecommunication stations owned and operated by the Armed Forces of the Philippines (AFP) shall be subject to the jurisdiction of the Committee only to the extent that the AFP shall first secure authorization from the Commission to use frequencies relative to the operation of such stations.

SECTION 6. *Powers and Functions.* - In addition to the powers already provided for by existing laws, not inconsistent with this Act, the Commission shall have the following powers and functions:

- (a) Establish standards, specifications, measures, guidelines, rules and regulations that will govern the operations of service providers in the areas of information and communications technology, broadcast, cable TV, and other multi-media infrastructures/services;
- (b) Issue CPCs/CAs and/or CPCNs to qualified ICT companies, radio and televisions broadcast networks, cable TV operators and other multi-media service providers;
- (c) Recommend policies for the promotion of ICT, broadcast media or other technologies, as well as any other related fields thereto;
- (d) Administer and implement the Public Telecommunications Policy Act, as amended, and other relevant laws that the Commission is mandated to enforce, including those pursuant to international treaties, conventions and/or agreements which the Philippine government has entered or will enter into;
- (e) Adopt an administrative process to facilitate the entry of qualified service providers, taking into consideration the competition policies of the government thus enabling the public to gain access to information and communication services and, at the same time, enabling service providers to generate sufficient returns to promote and sustain industry growth
- (f) Formulate plans and implement programs to provide better access to ICT, broadcast and other similar services in un-served and/or underserved areas at affordable rates
- (g) Provide rules, regulations, guidelines, measures and specifications in accordance with acceptable standards to ensure quality, safety, liability, security, compatibility and interoperability of ICT companies, radio and television broadcast networks, and other multi-media systems and facilities in conformity with national standards and specifications and those set by international radio and telecommunications bodies which the Philippines is a party of;
- (h) Formulate and implement regulatory policies for the establishment, operation and maintenance of ICT facilities of new and converged services;
- (i) Prescribe rules, regulations, guidelines, measures and specifications for the following:
 - The setting and imposition of appropriate fees and charges over persons and entities within its jurisdiction, such as:
 1. Spectrum user fees for all assignees except those assigned to military and public safety services;
 2. Permits, certificates, registration and license fees;
 3. Supervision and regulations fees; and,
 4. Other administrative fees and charges fines and sanctions;
 - Determination and prescription of fair and reasonable charges or rates pertinent to the operation of public utility facilities and services, after conducting public hearings or hearings on applications, except when these rates and tariffs are deregulated or established by international bodies or associations where the Philippines is a participating member of, or by bodies recognized by the Philippine government as the proper arbiter of such rates and tariffs.

Subject to the provisions of R.A. No. 7925 and such other laws as may be promulgated, except where deregulation has been authorized, rates and other charges of public services shall be submitted to the Commission for its approval and the Commission shall, after public hearing, render a decision, ruling or order on said rates by:

- 1) Approving the proposed rate and charges or any part thereof with our without alterations;
- 2) Rejecting the proposed rates and charges or any part thereof without prejudice to the submission of a new proposal for new schedules of rates and charges; or,
- 3) In the interest of the public, prescribe rates after due notice and public hearing for the use of facilities/networks and services offered other than those proposed by the service providers:

Provided, that the Commission shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the Commission;

- The accreditation and registration of radio and telecommunications equipment dealers, suppliers, manufacturers, repair shops, and the purchase, sale, lease, rental, possession and type approval/acceptance of radio and telecommunications equipment;
 - The fostering of fair and efficient market conduct through, but not limited to the protection of information, communication, radio, broadcast, cable TV and other multi-media facilities, systems of networks and services entities from unfair practices or other barriers;
 - The implementation of a responsive and more effective use of information and communications facilities and services taking into consideration existing and emerging technologies; and,
 - The protection of consumers against inadequate satisfactory service, any illegal activity and/or the misuse or abuse of any entity's monopolistic or quasi-monopolistic powers and anti-competitive practices through, but not limited to, the conduct of investigations of complaints and the exaction of compliance from the providers to conform with service standards.
- (j) Establish, prescribe and regulate areas of operation of public services/utilities, their equipment and other properties in accordance with their legislative franchise and their certificates, licenses, registration, accreditation and other authorizations;
- (k) Require, consistent with due process, any public service to provide access to and the use of its facilities and services, including the interconnection with or the attachment to its facilities or equipment, on such terms and conditions and the payment of compensation, as the Commission may determine and approve;
- (l) Allocate, sub-allocate and reallocate radio frequencies, and adopt frequency, plans and standards based on the International Telecommunications Union regulations to promote growth and development of the sector;
- (m) Assign radio frequencies, grant permits and licenses for the use of the radio spectrum or such other limited resources to authorized person or entity essential for the

efficient operation of any facility, station, networks and services: Provided, that any application under this subsection shall be acted upon by the Commission within ninety (90) days from the time of filing thereof;

- (n) Maintain a complete, and ensure the safety and integrity of, records of issued certificates, licenses, permits, registers, allocated and assigned frequencies and such other authorizations or activities of the Commission essential to ,planning, monitoring and enforcement of the powers of the Commission;
- (o) Ensure and monitor the compliance by persons and entities of their franchises, certificates, permits, accreditations, registrations, certifications, licenses and other existing laws, rules and regulations, technical programs and performance standards, or terms and 'conditions of their authorizations;
- (p) Impose fines and penalties on persons and entities that operate without authorization or violate the terms and conditions of any authorization issued by the Commission; Provided, that the fine may be in an amount as may be deemed appropriate by the Commission but shall not exceed Fifty Million Pesos (P50,000,000.00);
- (q) Upon the issuance of proper notice and the conduct of public hearings, suspend, cancel or revoke any authorization of service providers who violate the rules and regulations set by the Commission: Provided, that, when national security, public safety, welfare or interest so requires, the Commission may order immediate suspension of operations, and subsequently hold a hearing within five (5) days from the promulgation of the order of suspension;
- (r) Monitor and enforce rules and regulations including the investigation of all persons or entities under the jurisdiction of the Commission: Provided, that in the exercise of its police powers and in accordance with due process, the Commission may confiscate equipment and/or effect closure of any office, station or sub-station whose operations are found to be in violation of existing laws, rules and regulations or its franchises: Provided, further, that, in case of closure, the Commission may take remedial action to allow for temporary operations by a qualified service provider in the interest of public service;
- (s) Regulate radio training schools, the conduct of qualifying examinations and issue certification for qualified radio technicians and operators in accordance with laws, international conventions and treaties, or regulation where the Philippines is a signatory;
- (t) Establish and administer appropriate human resource programs, including the establishment of training centers to enhance human resources capacity building initiatives;
- (u) Direct, authorize or order another grantee of a certification or authorization to temporarily operate the business of a grantee whose certificate has been suspended" cancelled or revoked for cause: Provided, that the certificate of a grantee who unjustifiably discontinues or abandons his service for whatever reason for a period longer than thirty (30) days, causing irreparable damage or serious inconvenience to the public shall be suspended: Provided, further, the Commission may take appropriate action to address such situation and, in accordance with due process, may approve or award new applications for certification or authorization: Provided, furthermore, that, in case of mere suspension, and the grantee has effected remedial measures within six (6) months from the suspension, the Commission may reverse its decision to suspend and thereafter reinstate its prior authorization to allow said grantee to operate the business again: Provided, furthermore, that if the period of six

- (6) months has lapsed and no remedial measures have been effected, the certificate or authorization shall be permanently revoked: Provided, finally, that a grantee whose certificate has been revoked may re-apply but shall be treated as a new applicant;
- (v) Mandate a fair and reasonable interconnection of systems, stations, networks, facilities and/or services of authorized network operators and other providers through appropriate modalities of inter-connection that provides a reasonable and fair level of charges, so as to provide the most extensive access, availability and affordability to the public, and ensure that no single player interest controls access to facilities and services;
 - (w) Directly intervene, enjoin speedy settlement through alternative dispute resolution mechanisms and impose judgment on on-going and protracted disputes involving interconnection among service providers, including the final approval of any interconnection agreements;
 - (x) Promulgate rules and procedures for the conduct of its proceedings and in arriving at decisions or orders;
 - (y) Summarily punish for contempt by a fine not exceeding five thousand pesos (P5,000.00) or by imprisonment not exceeding thirty (30) days or both, any person guilty of misconduct in the presence of the Commission at seriously interrupting any hearing or session or any proceeding before it, including cases in which a person willfully fails or refuses, without just cause, to comply with summons, subpoena ad testificandum, subpoena duces tecum, injunctions, decisions or orders, rules and regulations legally issued or promulgated by the Commission, or being present at a hearing, session or investigation, refuses to be sworn as a witness or to answer questions when lawfully required to do so, or to furnish information required by the Commission. The police agencies of the place where the hearing or investigation is conducted shall, upon the request of the Commission, assist in enforcing the provisions of this section;
 - (z) Require any public service or utility to produce before the Commission any and all records, data, statistics and documents deemed proper or necessary in the exercise of its powers and functions, and cite for contempt, direct or indirect, any person who fails or refuses to comply with any lawful order of the Commission;
 - (aa) Enlist the aid and support of any and all enforcement agencies of the Government, as well as the private sector in the implementation of its powers and functions under this Act;
 - (bb) Motu proprio inspect, or through duly authorized representatives, the operations, premises, books of accounts and records of any person or entity at any reasonable time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the Commission;
 - (cc) Approve the application for relevant authorization or certification by all the operators of information and communications, radio, broadcast, cable TV and other multi-media facilities, stations, systems or networks and services including radio schools after the submission of the following:
 - (i) The amount, terms and conditions of each proposed issue, sale or other disposition of its capital stocks if the issuance, sale or disposition would result in:

- 1) A sale to any other public service or any corporation, domestic or foreign which vest in such one person or entity, more than forty percent (40%) of its subscribed capital stock; or,
 - 2) A sale or transfer to any alien which results to a reduction to less than sixty percent (60%) of the capital stock belonging to Philippine citizens.
- (ii) The terms and conditions of each proposed contract or agreement for the interconnection of systems, facilities, networks and services;
 - (iii) Any contract or arrangement entered into between operators and program/content providers which tends or aims to exclude, inhibit and frustrate the ability to offer diverse programs for a wider variety of choices and diversity of programming to the subscribing public; and,
 - (iv) Any contract, agreement, reports as may be prescribed by the Commission from time to time;
- (dd) Require public service time through broadcasting stations, including cable TV, operators, to assist the government on public information and education;
- (ee) Perform such other powers and functions as may be prescribed by law, as well as those that which may be implied from or are incidental to the carrying out of the powers granted to the Commission; and,
- (ff) Issue orders, rules and regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Act.

SECTION 7. *Composition.* - The Commission shall be a collegial body of three (3) Commissioners, composed of a Chairperson and two (2), Commissioners, all of whom shall be appointed by the President of the Philippines upon the recommendation of the Chairman of the CICT.

- (a) *Tenure of Commissioners.* The Commissioners shall have a fixed term of five (5) years with an option to be reappointed for another term of five (5) years: Provided, that for the first set of appointees, the Chairperson shall hold office for five (5) years, one (1) Commissioner shall serve for three (3) years, and the other Commissioner for one (1) year: Provided, further, That any appointment to any future vacancy shall only be for the unexpired term of the predecessor: Provided, finally, that in no case shall any Commissioner serve for more than two (2) terms in the Commission.

The Commissioner shall enjoy security of tenure and shall neither be suspended nor removed except for just cause in accordance with the law.

- (b) *Remuneration of Commissioners.* The Commissioners shall be entitled to the same salary, allowance and benefits, including retirement, as those of the Justices of the Court of Appeals, except for the Chairperson who shall have the rank of the Presiding Justice of the Court of Appeals.
- (c) *Qualifications of Commissioners.* The Commissioners must be residents and citizens of the Philippines, at least 35 years of age, of good moral character, of known probity and unquestionable integrity, with recognized competence in the field of information and communications technology, and, with at least five (5) years of actual and distinguished experience in their respective fields of expertise: Provided, that one of the

Commissioners shall preferably be a member of the Philippine Bar, another a licensed electronics and communications engineer (ECE), and the third an economist or a graduate of any relevant profession.

- (d) *Powers of the Commissioners.* All powers vested upon the Commission shall be vested on the Commissioners sitting as collegial body. Hearings may be conducted by any of the Commissioners, individually or jointly, or by Hearing Officers duly authorized or delegated to hear such cases. A majority vote shall be required to reach a decision, ruling or order of the Commission.

Notwithstanding the foregoing provision, the Chairperson may provisionally approve or decide on immediate cases involving the fixing of rates or charges: Provided that a hearing will be scheduled within thirty (30) days from the grant thereof.

The Chairperson shall also be the Chief Executive Officer of the Commission and shall provide the general executive direction and supervision of the operations and activities of the Commission, its bodies, boards, offices, and personnel.

SECTION 8. *Regional Offices.* -The Commission shall be authorized to establish, operate, and maintain Regional Offices as the need arises. The regional office shall be headed by a Regional Director, who shall be appointed by the President of the Philippines upon the recommendation of the CICT.

Such regional offices shall function as line organization which shall be responsible for the following:

- (a) implementation of laws, policies, projects, plans, rules and regulations of the Commission;
- (b) supervision and inspection of the operation of radio, television, cable TV and telecommunications networks, station, systems, facilities and services;
- (c) Regulation and control of communications, CABLE TV and broadcast services;
- (d) Conduct of hearings on consumers' complaints and administrative cases;
- (e) Issuance of permits, licenses and certificates; including the conduct of examination and licensing of qualified operations; and,
- (f) Such other functions as may be assigned to them.

SECTION 9. *Fiscal autonomy.* - The Commission shall enjoy fiscal autonomy. Its appropriations may not be reduced below the amount appropriated for the previous year and after approval, shall be automatically and regularly released. The Commission may re-align allocations to supplement any insufficient or inadequate appropriation as may be necessary to effectively discharge its duties.

Thirty percent (30%) or the total supervisory and regulatory fees (SRF) collected by the Commission under Section 6(i) of this Act shall constitute receipts automatically appropriated for a period of five (5) years from the effectivity of this Act, to be used by the Commission to augment its resources to fund its operations and activities pursuant to its mandate.

Provided, that all moneys appropriated and earned by the Commission shall be utilized solely for its operations and shall be subject to DBM budget rules and regulations.

SECTION 10. *Compensation and Emoluments of Personnel.* - All positions of the Commission requiring technical proficiency and expertise shall be governed by compensation comparable to the private sector and position classification systems and qualification standards approved by the Commission, in consultation with the Civil Service Commission (CSC) and the Department of Budget and Management (DBM) based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be subject to periodic review by the Commission, the CSC and the DBM no more than once every two (2) years without prejudice to merit reviews or increases based on productivity and efficiency.'

The compensation and other emoluments for personnel with high level of expertise and proficiency shall be exempted from the coverage of R.A. No. 6758, otherwise known as the "Salary Standardization Act." For this purpose, the schedule of compensation of personnel with high level of expertise and proficiency as determined by the Commission, in consultation with the CSC and the DBM, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: Provided, That in no case shall the rate be upgraded more than once a year.

SECTION 11. *Enhancement of Technical Competence.* - The Commission shall establish a rigorous training program, to include the setting up of training center, for its personnel to enhance the technical and regulatory competence of the Commission in the monitoring and enforcement of laws, orders, rules and regulations of the Commission, and the compliance thereof.

SECTION 12. *Annual Report.* - The Commission shall submit an annual report to both Houses of Congress not later than April 30 of each year, to include specific goals, objectives, accomplishments, plans and priorities of the Commission for the next five (5) years, as well as recommendations for legislative action to enable the Commission to achieve its objectives; and such other data as may be required from time to time.

SECTION 13. *Funding.* - In addition to the sums to be appropriated for the Commission under the General Appropriations Act for the Fiscal Year following the approval of this Act, any savings in the appropriation of the Commission and fees collected by the Commission for the current fiscal year may also be used to implement the provisions of this Act. Thereafter, the amount needed for such purpose shall be included in the subsequent annual General Appropriations Acts, or through special appropriations.

SECTION 14. *Transitory Provisions.*

- (a) Within ninety (90) days after the approval of this Act, the Commission shall draw the new structure and staffing pattern necessary to carry out the powers and functions of the newly organized Commission, in consultation with the CSC and the DBM, to be submitted to the CICT Secretary for approval.
- (b) The current Commissioners and existing personnel shall continue to hold office until approval of the staffing pattern and new appointments are issued.

- (c) Any personnel, whose positions are not included in the new position structure and the duly approved staffing pattern shall be deemed separated from the service, The officials and employees who are or wish to be separated as a result of the implementation of this Act shall be entitled to one and a half month separation pay for every year of service: Provided, that they have rendered continuous service in the Commission for at least ten (10) years: Provided, further, that for officials and employees with the Commission for the last five (5) years, they shall be entitled to three (3) months separation pay for every year of service and all other benefits accruing to them under the laws of general application enforced at the time of their separation.
- (d) All regular or permanent employees who shall be affected by this Act shall not suffer any loss of seniority or rank or decrease in emoluments.

SECTION 15. *Repealing Clause.* - All laws, decrees, executive orders, rules and regulations and other issuances or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 16. *Separability Clause.* - If any of the provisions of this Act shall be declared unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

SECTION 17. *Effectivity Clause.* - This Act shall take effect immediately upon its approval.

Approved.