

SENATE

S. NO. 331

Introduced by Senator Antonio "Sonny" F. Trillanes IV

Explanatory Note

Prior to 1986, the policy of the government on telecommunications was integrated. However, in 1987, the government saw the wisdom of allowing the entry of competition in the industry, although regulated. Other carriers, aside from the Philippine Long Distance Telephone Company (PLDT) were authorized to provide national and international long distance services. Two cellular mobile telephone service operators, three radio paging service operators and five domestic satellite service operators were likewise authorized to operate.

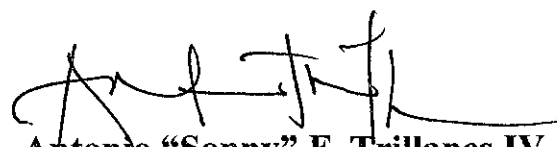
With the entry of new players in the telecommunications field, government issued Executive Order No. 59 mandating the compulsory interconnection of all public telecommunications networks in order to ensure universally accessible telecommunications facilities and services.

The deregulation policy of the government resulted in the rapid expansion of the telecommunications networks. From less than one million lines, the number of installed telephone lines increased to more than six million. Subscribed capacity increased from one million to three million. And the number of cellular mobile phone subscribers increased from one hundred thousand to more than ten million.

However, with the entry of more competition, numerous disputes arose dealing with commercial terms, quality of service and the number of additional interconnect trunks, among others.

This bill proposes to address interconnection problems and concerns to ensure expeditious interconnection between and among parties.

In view of the foregoing, early approval of the bill is earnestly requested.


Antonio "Sonny" F. Trillanes IV
Senator

0-7 2
0 14 20 1 26

SENATE

S. NO. 331

777 *fb*

Introduced by Senator Antonio "Sonny" F. Trillanes IV

AN ACT
STRENGTHENING THE MANDATE ON THE INTERCONNECTION BETWEEN AND
AMONG PUBLIC TELECOMMUNICATIONS ENTITIES, PROVIDING PENALTIES
FOR ITS VIOLATION AND FOR OTHER PURPOSES

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

1 **SECTION 1. Declaration of Policy.** - Recognizing the vital role of communications and
2 information in nation-building and economic development, the State in its desire to attain
3 universal access, shall promote the rapid expansion of telecommunications services in all areas
4 of the Philippines, maximize the use of all available telecommunications service and grant access
5 to such facilities at a mandated standard of service and at a reasonable cost.

6 Pursuant thereto, every authorized public network operator shall interconnect with other
7 providers of telecommunications services in a speedy, efficient, fair, transparent and
8 nondiscriminatory manner.

9 Interconnection between or among public telecommunications companies (PTCs) shall be
10 mandatory and compulsory, and shall encompass other telecommunications services such as, but
11 not limited to, value-added services or radio paging, trunked radio, short messaging system,
12 other store and forward systems of facsimile or messaging (voice or data), packet switching and
13 circuit data switching (including conveyance of messages which have been or are to be
14 transmitted or received at such points of interconnection), and any other information and services
15 as the National Telecommunications Commission (NTC) may determine to be in the interest of
16 the public.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SEC. 2. Matters to be Covered by the Interconnection Agreement. - The interconnection

arrangement between the public telecommunications entities shall be nondiscriminatory and shall contain, but not limited to, the following matters:

- (a) scope of agreement;
- (b) point(s) of interconnection and technical configuration;
- (c) provision of capacity (interconnection circuits);
- (d) period of implementation;
- (e) technical, performance and quality standards and grade of service, as well as measurement and monitoring thereof;
- (f) measurement of calls, settlement and dispute resolution procedure;
- (g) interconnection charge/compensation scheme;
- (h) maintenance procedure;
- (i) fault reporting and clearing procedures;
- (j) duration and re-negotiation of agreement; and
- (k) arbitration agreement as may be directed by the NTC.

The NTC shall within ninety (90) days from the approval of this Act, prepare a *pro forma* Interconnection Agreement, covering the above matters and provide guidelines which shall be used as basis for public telecommunications entities in arriving at an agreement to effect a timely, fair and efficient interconnection.

The NTC shall also, within ninety (90) days from the approval of this Act, prescribe revised technical and service performance standards for interconnection and establish a performance monitoring system to ensure compliance therewith;

The NTC shall, upon request of a carrier and within a period of thirty (30) days:

1 (a) Decide a dispute relative to the implementation of the interconnection agreement
2 and of the amounts due from and payable by a party thereunder. Any uncontested amount shall
3 immediately be payable to the parties; and

4 (b) In the absence of a carry-over clause, the NTC shall, in case of an impasse
5 between the interconnected carriers, determine and fix the terms and conditions, of the renewal
6 or extension of an interconnection agreement, to include the compensation scheme thereof.

7

8 **SEC. 3. Interconnection Parameters.** - The following shall be the minimum parameters:

9 (1) The parties shall jointly and equally provide and share the costs of interconnection
10 facilities necessary to interconnect the systems of both parties: *Provided*, That in an
11 interconnection between an Inter Exchange Carrier (IXC) and a Local Exchange Carrier (LEC)
12 with less than five thousand (5,000) total system-wide line capacity and does not offer or provide
13 any other telecom services, except value-added service (VAS), the former shall shoulder the
14 costs of interconnection;

15 (2) The point(s) of interconnection (POI) shall be made at a technically feasible point;

16 (3) The quantity of interconnection circuits shall be based on traffic studies or
17 interconnecting parties. In case of disagreement, the NTC shall, within a period of thirty (30)
18 days from the request of either party, decide on the quantity of interconnection circuits;

19 (4) The underwriting of interconnection costs as may be determined by the NTC; and

20 (5) The determination of interconnection charges by the NTC in compliance with law

21

22 **SEC. 4. Interconnection Procedure.** - The following shall be strictly observed to ensure
23 interconnection between or among the parties:

24 (a) Parties shall negotiate and enter into an interconnection agreement within a non-
25 extendible period of sixty days (60) commencing from notice to NTC of the initiation of
26 negotiation for interconnection. During the sixty- day (60) period, upon the request of any of the

1 parties negotiating for interconnection, the NTC shall intervene and take an active role to
2 facilitate and expedite interconnection. The NTC may, in the interest of the State, *mutuo proprio*
3 intervene in the negotiation or direct parties, as may be appropriate, to submit to compulsory
4 arbitration at party cost after the lapse of thirty (30) days from the start of negotiations. The
5 arbitration shall be terminated and decided upon within a period of thirty (30) days;

6 (b) Despite absence of notice to it by any party to a proposed interconnection, the NTC in
7 the exercise of police power, may initiate on its own, the interconnection of two or more
8 telecommunications carriers if the public interest will be served thereby: *Provided*, That such
9 interconnection must be arrived at within sixty (60) days from the commencement of NTC's
10 action; and

11 (c) Should the parties fail to enter into an interconnection agreement after the lapse of the
12 sixty-day (60) period, the NTC shall, within thirty (30) days, determine and fix the equitable
13 terms and conditions for interconnection and draw up the Interconnection Agreement and direct
14 the parties, under pain of sanctions prescribed hereunder, to strictly comply therewith.

15

16 **SEC. 5. Prohibited Acts or Omissions.** - The following shall be considered prohibited
17 acts or omissions:

18 (a) Refusal or neglect of any public telecommunications entity to interconnect, after
19 having been so directed by written order of the NTC within the period fixed, and, under such
20 terms and conditions as expressly set forth;

21 (b) Willful disruption or termination of interconnection by any public
22 telecommunications entity, except for any of the reasons stated in Section 4 hereof, or for any
23 other lawful cause;

24 (c) Refusal or neglect of any public telecommunications entity, after having been
25 required by written order of the NTC, to re-establish/resume interconnection within a period of
26 five (5) days from receipt of the NTC order; and

1 (d) Refusal or neglect of any public telecommunications entity, after having been
2 required by written order of the NTC, to comply with any of the technical and service
3 performance standards set by the NTC or with any of the terms and conditions of the
4 interconnection agreement entered into by the parties, within a period of five (5) days from
5 receipt of the NTC order.

6

7 **SEC. 6. *Grounds for the Disruption or Termination of Interconnection.*** - The
8 following shall be the grounds for the disruption or termination of interconnection:

9 (a) Notwithstanding receipt of a written notice or demand to cure or remedy a breach to
10 pay an undisputed amount due, and/or to desist or cease from committing such activities or
11 violations of interconnection, as the case may be, within a period of thirty (30) days from receipt
12 of such notice or demand, a public telecommunications entity may, upon prior hearing and
13 approval by the NTC, terminate, or disrupt any interconnection with the other public
14 telecommunications entity:

15 (i) is not duly licensed, or has lost its certificate, license or authorization by
16 revocation, cancellation or suspension of its right to operate as a public telecommunications
17 entity; or

18 (ii) has committed material breach of the terms and conditions of the
19 interconnection agreement between the parties; or

20 (iii) is in default of any amount due and payable under the Interconnection
21 Agreement subject further to Section 6; or

22 (iv) is using or allowing the use of interconnection facilities for uncompensated
23 toll bypass through the use of schemes such as, but not limited to, callback, unauthorized
24 audiotex, international simple resale (ISR), and other analogous services or any alternative
25 calling procedures (ACP) which are prohibited in the Philippines; or

26 (v) has violated the rules and regulations of the NTC.

1 The NTC shall, within thirty (30) days, resolve any of the above issues.

2 (b) Where it is necessary for a public telecommunications entity to maintain, repair,
3 upgrade or expand any of its interconnection facilities or network: *Provided*, That prior written
4 notice of the planned maintenance, repair, upgrade or expansion activity is served on the NTC,
5 and other public telecommunications entities that may be affected thereby. Fifteen (15) days prior
6 to any expansion or upgrade, the NTC shall be notified and notice to the public shall be effected
7 by publication.

8 (c) By reason of *force majeure*, being the proximate and only cause of failure to maintain
9 the existing interconnection relationship between the parties, such as any of the following
10 circumstances:

11 (i) earthquake, lightning or other natural disaster or calamity;

12 (ii) act of public enemy in war, whether international or civil; and

13 (iii) order or act of competent public authority for reason of national security.

14

15 **SEC. 7. Reconnection Procedure.** - The following shall be strictly observed to ensure
16 interconnection at all times, between or among parties:

17 (a) The NTC shall, within five (5) days from receipt of notice from a public
18 telecommunications entity whose services were arbitrarily disrupted or terminated by another
19 public telecommunications entity, order the parties to reestablish/resume interconnection services
20 within five (5) days from receipt of said order:

21 (b) During the five-day (5) period, in the public interest and in the exercise of police
22 power, the NTC may at any time, intervene at any stage of the negotiation and take an active role
23 therein to ensure, facilitate and expedite resumption of interconnection;

24 (c) The NTC shall, in the exercise of police power and in the interest of public welfare,
25 despite the absence of notice from any telecommunications entity whose services were disrupted

1 or terminated by another telecommunications entity, order the parties to reestablish/resume
2 interconnection within a period of five (5) days from receipt of said order; and

3 (d) Within five (5) days after issuing the order adverted to in the preceding paragraphs
4 directing the reestablishment/resumption of the interconnection, the NTC shall commence an
5 investigation to find out the cause of the disruption or termination and, within a period of thirty
6 (30) days, issue its resolution imposing appropriate penalties and fines on the erring party.

7
8 **SEC.8. Criminal Penalties.** - (1) The President or Chief Executive Officer and the Board
9 of Directors of the public telecommunications entity who fail to comply with the written order of
10 the NTC directing the interconnection or reconnection shall be liable for imprisonment of not
11 less than one (1) year but not more than two (2) years.

12 (2) The President or Chief Executive Officer and the Board of Directors of a public
13 telecommunications entity who shall illegally disrupt or, terminate its existing interconnection
14 with another public telecommunications entity, as may be determined by the Commission after
15 due notice and hearing, shall be liable for imprisonment of not less than six (6) months but not
16 more than one (1) year.

17
18 **SEC. 9. Administrative Penalties.** -

19 (1) The following fines shall be imposed by the NTC on any public telecommunications
20 entity and its President or Chief Executive Officer for willful and deliberate failure to
21 interconnect or reestablish/resume interconnection within the period stated in the order of the
22 NTC:

23 (a) From one (1) to ten (10) days after the lapse of the period to comply as stated in the
24 NTC order, a fine of Five hundred thousand pesos (P 500,000.00) per day shall be imposed;

1 (b) From eleven (11) to twenty (20) days after the lapse of the period to comply as stated
2 in the NTC order, a fine of Two million five hundred thousand pesos (P2,500,000.00) per day
3 shall be imposed; and

4 (c) From the twenty-first day onward after the lapse of the period to comply as stated in
5 the NTC order, a fine of Five million pesos (P5,000,000.00) per day shall be imposed.

6 (2) The following administrative penalties shall be imposed by the NTC after a
7 determination that a public telecommunications entity has willfully, deliberately and
8 unjustifiably disrupted or terminated its interconnection with another public telecommunications
9 entity:

10 (a) A fine of not less than Five million pesos (P5,000,000.00) but not exceeding Fifteen
11 million pesos (P15,000,000.00); and

12 (b) Disqualification of the Chief Executive Officer of the erring public
13 telecommunications entity from being employed thereat and in any other entity under the
14 supervision or regulation of the NTC.

15 (3) Administrative Penalties for Failure to Comply with Interconnection
16 Technical/Service Performance Standards - The following fines shall be imposed by the NTC on
17 any public telecommunications entity for deliberate and willful failure to comply with an order
18 of the NTC requiring compliance with any interconnection such as the technical service
19 performance, standard prescribed by the NTC and/or those agreed upon under the parties'
20 interconnection agreement:

21 (a) From one (1) to ten (10) days after the lapse of the period to comply as stated in the
22 NTC order, a fine of Two hundred thousand pesos (P200,000.00) per day shall be imposed;

23 (b) From eleven (11) to twenty (20) days after the lapse of the period to comply as stated
24 in the NTC order, a fine of Five hundred thousand pesos (P500,000.00) per day shall be
25 imposed; and

1 (c) From the twenty-first day after lapse of the period to comply as stated in the NTC
2 order, a fine of One million pesos (P1,000,000.00) per day shall be imposed.

3 (4) Compensation Payable to Aggrieved Public Telecommunications Entity - The erring
4 public telecommunications entity shall also pay the aggrieved public telecommunications entity
5 compensation in the amount of not less than One million pesos (P 1,000,000.00) but not
6 exceeding Ten million pesos (P 10,000,000.00) to be determined upon application with the
7 appropriate court to cover losses and damages incurred by the latter for the unjustified disruption
8 or termination of the interconnection.

9 (5) Collection of Fine or Payment of Compensation - The amount of the fine imposed by
10 the NTC shall be paid by the erring public telecommunications entity to the NTC within fifteen
11 (15) days from receipt of the NTC order. In case the erring public telecommunications entity
12 moves for a reconsideration of the order imposing such fine or brings the matter on appeal to the
13 Court of Appeals or the Supreme Court, the payment of the fine shall be a condition for the
14 perfection of the motion or appeal but the payment shall be deposited in escrow with the NTC
15 until the final adjudication of the case.

16

17 **SEC. 10. *Prohibition Against the Issuance of Restraining Orders and injunctions***
18 ***Against NTC Decision and/or Orders.*** - The decision of the NTC on interconnection and on
19 matters pertaining to Section 8 and 9 of this Act shall be immediately executory. No court, other
20 than the Court of Appeals and the Supreme Court of the Philippines, shall have jurisdiction to
21 issue a temporary restraining order, preliminary injunction, or preliminary mandatory injunction
22 against the implementation of interconnection of networks pursuant to the provision of this Act.

23

24 **SEC. 11. *Implementing Rules and Regulation.*** - Within ninety (90) days from the
25 effectivity of this Act, the NTC shall promulgate rules and regulations for the effective and

1 proper implementation of this Act. The NTC shall be the administrator of this Act and for this
2 purpose, shall establish a performance monitoring system.

3

4 **SEC. 12. *Separability Clause.*** - Any provision of this Act which shall be declared
5 unconstitutional shall not render any other provision of this Act invalid.

6

7 **SEC. 13. *Repealing Clause.*** - Any provision of law, executive order, rule and regulation
8 or circular inconsistent with the provisions of this Act is hereby modified or repealed
9 accordingly.

10

11 **SEC. 14. *Effectivity.*** - This Act shall take effect upon approval.

Approved,