

SENATE

Senate Bill No. 605

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

It is often observed that the law lags behind sweeping social and technological developments of the time which significantly redefine our ways of living. In such circumstances, the law has to keep abreast with these changes in order to maintain its preservative and regulatory function in society. This dynamism is much more pronounced in the case of recent scientific breakthroughs. The advent of cable television technology is a classic example. Cable television operations is fact becoming a major business enterprise.

Currently, the industry has an estimated work force of more than 700,000 employees and contributes to the national coffers about P600 million in taxes annually. There are about 327 local entrepreneurs operating in the industry (*Philippine Cable Television Association, 1995*).

However, the large amount of capital outlay needed to expand the industry's operations and the strength of commercial mass media stifles its growth potentials. Aggravating the woes of local investors in the industry is the state of Philippine law governing it. It is widely perceived that the Government is in a state of confusion in regulating the industry.

Under Executive Order No. 205 signed in 1987, the cable television industry is classified as a form of commercial mass media, hence the application of the prohibition on foreign equity participation in the industry as enunciated in Article XVI, Section 11 (1) of the 1987 Constitution. On the other hand, Republic Act No. 7925 enacted in 1995 seems to include cable television systems in its definition of telecommunications without any categorical mention of it.

Be that as it may, the records of the 1986 Constitutional Commission clearly shows that the framers of the Constitution considered telecommunications as a public utility. Therefore, foreign equity participation in the cable television industry may be allowed.

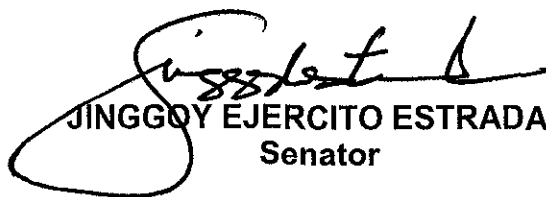
However, the ambiguity of the language of EU No. 7925 with respect to the nature of the cable television industry and the inadequacy of the provisions of E.O. 205 in addressing the concerns of the industry necessitate remedial legislation. In the context of the fact that the cable television industry is impressed with public interest, this bill aims to provide the cable television industry the impetus it needs to develop by laying down the legal basis for the entry of needed capital, albeit foreign-owned.

To ensure the dominance of local equity, the bill provides incentives and support mechanisms that will promote competition in the field and allow a better-leveled comparative growth of the different players in the enterprise. The proposed

legislation also seeks to rationalize government regulation of the industry be clearly delineating the powers of the government agency mandated by law under E.O. No. 205 and RA No. 7925 and through the formulation of provisions specific and categorical to the industry.

Most importantly, this bill aims to bring the Philippine cable television industry at par with global trends and standards through technology transfer. It is hoped that these novel innovations in the law will ultimately redound to the benefit of the industry's subscribers, of which a growing majority are the common Filipino masses.

In the light of the above premises, the immediate passage of this bill is earnestly urged.



JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
PROMOTING AND REGULATING THE OPERATION OF CABLE TELEVISION
IN THE PHILIPPINES, 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 "**Cable Television Act of 2010**".

SEC. 2. Declaration of Policy. - It shall be the policy of the State to:

a) To recognize that the delivery of cable television services to subscribers is impressed with public interest and subject to minimal and reasonable government regulation.

b) As public interest requires, to allow viable competition in the cable television industry in order to achieve and sustain its growth, to ensure the industry's responsiveness to the needs and interests of its subscribers and of the general public, and discourage and prohibit monopolies in the industry.

c) To establish and promote the highest standards for cable television operation and services to maximize the informative, educational and entertainment or recreational value of cable television technology to the public, and

d) To encourage self-regulation in the cable television industry and professionalism in the delivery of its services through nationwide associations of legitimate cable television service operators.

SEC. 3. Definition of Terms. -As used in this Act

a) **Cable Television System** - refer to any and all processes and facilities for the purpose of providing service within defined service areas and to multiple subscribers multiple-channel community antennae or cable television and delivering programs of broadcast television stations and/or other program providers.

b) **Cable Television Operator** - refers to any person granted a Provisional Authority or a Certificate of Authority as provided in this Act, and is actually providing cable television service to its subscribers.

c) **Cable Television Service** - includes services rendered by a cable television operator for a fee, such as:

i) One or two-way transmission to subscribers of video programs and other audio-visual programs; and

ii) Subscriber interaction or selection of video programs and other audiovisual services but excludes:

a) Re-transmission of television signals of one or more television broadcast stations; and

b) A cable television facility that serves fewer than fifty (50) at any given time.

d) **Commission** - refers to the National Telecommunications Commission.

SEC. 4. Ownership and Control - The ownership, control and operation of cable television systems in the Philippines which are considered as content providers, such as those that produce their own content or programs or originate their own opinions, shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations wholly-owned and managed by such citizens.

However, the ownership, control and operation of cable television systems which are merely network providers, such as those who neither produce their own content or programs nor originate their own opinions but only own the cable television network or infrastructure, shall be open to all citizens of the Philippines, corporations, cooperatives, associations, joint ventures organized under Philippine laws at least sixty percent (60%) of the capital of which is owned and controlled by citizens of the Philippines.

SEC. 5. Regulation and Supervision of the Cable Television Industry. – The regulation and supervision of the cable television industry in the Philippines is hereby vested in the National Telecommunications Commission.

SEC. 6. Powers and Duties of the Commission. - The Commission shall have the following powers and duties.

a) To issue, suspend and revoke Certificates of Authority or Provisional Authority, licenses, permits and other authorization in the exercise of its regulatory and supervisory powers under this Act.

b) To promulgate, upon approval of the Secretary of Transportation and Communication, rules and regulations to implement the provisions of this Act;

c) To hear, investigate and decide all questions, controversies or disputes arising out of or in connection with the operation of cable television systems in the country and impose penalties and other sanctions on violations of the provisions of this Act and its implementing rules and regulations;

d) To issue subpoenas, require the production of books, papers, records and other documents as may be necessary in the resolution of any matter under its consideration; and

e) To prosecute violations of the provisions of this Act, rules and regulations, orders and other issuance promulgated by the Commission in the implementation of this Act.

SEC. 7. Legislative Franchise and Certificate of Authority. - Any person, Association or corporation who shall install and moderate a cable television system, or render cable television service for a fee on a nation-wide or region-wide basis, shall be required to obtain and secure a franchise from the Congress of the Philippines and a Certificate of Authority from the Commission: *Provided*, That municipal or provincial cable television systems operators shall be required to obtain and secured the necessary local government permit or franchise from the appropriate local government authority as well as a Certificate of Authority from the Commission.

A cable television system shall be considered to be operated on a nation-wide basis if the system is intended to be installed and operated to service at least three (3) regions, or at least three (3) provinces in separate regions. It shall be considered to be operated on a region-wide basis if the system is intended to be installed and operated to serve in at least three (3) provinces in the region.

Any person, association or corporation who shall install and operate a cable television system, or render cable television service for a fee within a municipality, city or province shall be required to obtain a Certificate of Authority from the Commission.

A Certificate of Authority to operate a cable television system shall be issued in favor of an applicant legally, technically and financially capable of providing cable television service for a period of fifteen (15) years from the date of its issuance and subject to such other terms and conditions the Commission may reasonably impose.

Pending the grant or issuance of the Certificate of Authority, the Commission may issue a Provisional Authority to operate a cable television system, likewise subject to the terms and conditions the Commission may reasonably impose, which shall ripen into a Certificate of Authority two (2) years from the date of issuance, unless earlier revoked by the Commission for valid cause.

SEC. 8. Non-Exclusivity. - The Commission may grant to an applicant-operator the authorization to operate a cable television system within the same franchise area covered by a Certificate of Authority or by a Provisional Authority issued to another operator two (2) years earlier, upon determination by the Commission that:

a) The prior cable television operator has not substantially complied with the terms and conditions of his authorization;

b) The cable television service currently provided by the operator to its subscriber is sub-standard, inefficient and/or inadequate; and/or

c) The prior cable television operator has unreasonably and unjustifiably refused or failed to comply with the terms and conditions of its authorization or the orders, issuance or regulations promulgated by the Commission.

SEC. 9. Revocation of Authorization. - The Commission shall, *motu proprio* or on complaint of an interested party, upon notice and after due hearing, revoke the authority granted to a cable television operator, if the Commission determines that said cable television operator:

a) Has not commenced the commercial operation of its cable television system as provided for in its authorization after two (2) years from the date of issuance of the authorization;

b) Has ceased the commercial operation of its cable television system;

c) Provides its subscribers services below the standards prescribed by law;

d) Has engaged in business practices detrimental to healthy competition within the industry; and

e) Has unreasonably and unjustifiably refused or failed to comply with the terms and conditions of its authorization or the orders, issuance or regulations promulgated by the Commission

SEC. 10. Right of Easement - Duly authorized cable television operators shall have the right-of-way granted to existing public utilities and dedicated to compatible uses: *Provided, That* the cable television operator shall ensure that:

a) The owner of the property subject of the easement is justly compensated for the servitude and damages caused by the installation, operation or removal of its cable television facilities.

b) The function, appearance and safety of the property subject to the easement and the convenience and safety of other users and the general public are not adversely affected, and

c) The expenses of installation, operation or removal of such facilities are borne by the cable television operator exercising the right of easement: *Provided, further, That* the rate of annual fees to be paid by the cable television operator in compensation to the owner of the property subject of the easement shall be fixed by the Commission.

SEC. 11. Lease of Excess Capacity. - A cable television operator may, with the approval of the Commission, lease or sub-lease the excess capacity of its cable television system, but may not utilize such excess capacity in, or in any manner engage, in broadcast or telecommunications or other non-cable television services without securing the appropriate legislative franchise and authority from the Commission.

SEC. 12. Advertisements. - Cable television service may include and carry public announcements, notices and advertisements and other similar segment, not exceeding five (5) minutes per hour of program, in addition to insertions by foreign programmers.

SEC. 13. Carriage of Commercial Television Signal. - A cable television operator may carry on its cable television system the signals of commercial televisions stations free of charges.

SEC. 14. Payment of Taxes. - A cable television operator shall be subject to the payment of taxes under the National Revenue Code, as amended.

SEC. 15. Prohibited Acts. - The following acts are hereby declared unlawful:

a) No cable television operator shall engage in any television broadcast or telecommunication activity unless duly licensed for the purpose.

b) No cable television operator shall receive and distribute encoded or un-encoded satellite program signals without the written authorization of the concerned satellite programmer;

c) No person shall intercept or receive, or assist in intercepting or receiving, any service offered over a cable television system by tapping, making or causing to be made any unauthorized connection to existing cable television facilities, with drop, feeder and truck lines, or by the recording, manufacture, distribution, importation or sale of intercepted or received cable television signals; and

d) No person shall knowingly use or receive any direct or indirect benefit from any cable television service through any of the prohibited acts enumerated in the preceding paragraphs.

SEC. 16. Penalties. - Any person, including directors and officers of corporations, who knowingly and willfully violates any provision of this Act or commits any of the prohibited acts in the preceding section shall be punished by a fine not less than fifty thousand pesos (P50,000.00) but not more than three hundred thousand pesos (P300,000.00) or an imprisonment term of not less than one (1) year but not more than three (3) years, or both.

SEC. 17. Repealing Cause. - Pertinent provisions of Executive Order No. 205 and all other laws, decrees, regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC 18. Effectivity. - This Act shall take effect immediately upon approval.

Approved,