

H. No. 5844

Republic of the Philippines
Congress of the Philippines
Metro Manila
Sixteenth Congress
Third Regular Session

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Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand fifteen.

[REPUBLIC ACT NO. **10895**]

AN ACT GRANTING THE AVOCADO BROADBAND TELECOMS, INC. A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES

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

SECTION 1. *Nature and Scope of Franchise.* — Subject to the provisions of the 1987 Philippine Constitution and applicable laws, rules and regulations, there is hereby granted to Avocado Broadband Telecoms, Inc., hereunder referred to as the grantee, its successors or assignees, a franchise to construct, install, establish, operate, and maintain for commercial purposes and in the public interest, in the Philippines and between the Philippines and other countries and territories, wire and/or wireless telecommunications systems including international and local exchange carrier (LEC), international and domestic gateway facility, international and domestic submarine cable landing stations, mobile cellular, copper, fiber optics, coaxial cable, satellite transmit and receive systems, switches, and their value-added

services such as the transmission of voice, data, facsimile, control signs, audio and video, information services and all other telecommunications systems technologies as are at present available or will be made available through technological advances or innovations in the future; and/or construct, acquire, lease and operate, or manage transmitting and receiving stations, lines, cables, or systems as are convenient or essential to efficiently carry out the purpose of this franchise.

SEC. 2. Manner of Operation of Stations or Facilities. – The stations or facilities of the grantee shall be constructed and operated in a manner as will, at most, result only in the minimum interference on the wavelengths or frequencies of existing stations or other stations which may be established by law, without in any way diminishing its own privilege to use its assigned wavelengths or frequencies and the quality of transmission or reception thereon as should maximize rendition of the grantee's services and/or the availability thereof.

SEC. 3. Authority of the National Telecommunications Commission (NTC). – The grantee shall secure from the NTC a Certificate of Public Convenience and Necessity or the appropriate permits and licenses for the construction, installation, and operation of its telecommunications systems/facilities. In issuing the certificate, the NTC shall have the power to impose such conditions relative to the construction, operation, maintenance, or service level of the telecommunications systems. The NTC shall have the authority to regulate the construction and operation of its telecommunications systems. The grantee shall not use any frequency in the radio spectrum without authorization from the NTC. Such certificate shall state the areas covered and the date the grantee shall commence the service. The NTC, however, shall not unreasonably withhold or delay the grant of such authority, permit, or license.

SEC. 4. Excavation and Restoration Works. – For the purpose of erecting and maintaining poles or other supports for said wires or other conductors for the purpose of laying and maintaining underground wires, cables, or other conductors, it shall be lawful for the grantee, its successors or assignees, with the prior approval of the Department of Public Works and Highways (DPWH) or the local government unit (LGU) concerned,

as may be appropriate, to make excavations or lay conduits in any of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges of the province, cities and/or municipalities: *Provided, however,* That a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered or changed by reason of erection of poles or other supports or the underground laying of wires, other conductors or conduits shall be repaired and replaced in workmanlike manner by the said grantee, its successors or assignees, in accordance with the standards set by the DPWH or the LGU concerned. Should the grantee, its successors or assignees, after the ten (10)-day notice from the said authority, fail, refuse, or neglect to repair or replace any part of public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered or changed by the said grantee, its successors or assignees, then the DPWH or the LGU concerned shall have the right to have the same repaired and placed in good order and condition at double expense to be charged against the grantee, its successors or assignees.

SEC. 5. Responsibility to the Public. – The grantee shall conform to the ethics of honest enterprise and not use its stations or facilities for obscene or indecent transmission or for dissemination of deliberately false information or willful misrepresentation, or assist in subversive or treasonable acts.

The grantee shall provide basic or enhanced telephone service in any city and/or municipality in the Philippines where it has an approved Certificate of Public Convenience and Necessity for the establishment, operation, and maintenance of a local exchange service, without discrimination to any applicant therefor, in the order of the date of their applications, up to the limit of the capacity of its local telephone exchange and, should the demand for the telephone service at any time increase beyond the capacity thereof, the grantee shall increase the same to meet such demand: *Provided,* That in case the total demand to be satisfied by the expansion is less than the smallest viable local exchange available in the market as determined by the NTC, the grantee shall not be obliged to furnish such service unless the applicant for telephone service defrays the actual expenses for the installation of the telecommunications apparatus necessary for such services and in such case, the NTC may extend the time within which the grantee shall furnish the service.

The grantee shall operate and maintain all its stations, lines, cables, systems, and equipment for the transmission and reception of messages, signals, and pulses in a satisfactory manner at all times, and as far as economical and practicable, modify, improve, or change such stations, lines, cables, systems, and equipment to keep abreast with the advances in science and technology.

SEC. 6. *Rates for Services.* – The charges and rates for telecommunications services of the grantee, except the rates and charges on those that may hereafter be declared or considered as nonregulated services, whether flat rates or measured rates or variation thereof, shall be subject to the approval of the NTC or its legal successor. The rates to be charged by the grantee shall be unbundled, separable, and distinct among the services offered and shall be determined in such a manner that regulated services do not subsidize the unregulated ones.

SEC. 7. *Right of Government.* – A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order: to temporarily take over and operate the stations, transmitters, facilities, or equipment of the grantee; to temporarily suspend the operation of any station, transmitter, facility, or equipment in the interest of public safety, security, and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of said stations, transmitters, facilities, or equipment during the period when these shall be so operated.

The radio spectrum is a finite resource that is part of the national patrimony and the use thereof is a privilege conferred upon the grantee by the State and may be withdrawn any time after due process.

SEC. 8. *Term of Franchise.* – This franchise shall be in effect for a period of twenty-five (25) years from the date of the effectivity of this Act, unless sooner cancelled. This franchise shall be deemed *ipso facto* revoked in the event the grantee fails to comply with any of the following conditions:

(a) Commence operations within one (1) year from the approval of its operating permit by the NTC;

(b) Commence operations within three (3) years from the effectivity of this Act; and

(c) Operate continuously for two (2) years.

SEC. 9. *Acceptance and Compliance.* – Acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee shall exercise the privileges granted under this Act. Nonacceptance shall render the franchise void.

SEC. 10. *Bond.* – The grantee shall file a bond with the NTC in the amount that it shall determine to guarantee compliance with and fulfillment of the conditions under which this franchise is granted. If, after three (3) years from the date of the approval of its permit by the NTC, the grantee shall have fulfilled the conditions, the bond shall be cancelled by the NTC. Otherwise, the bond shall be forfeited in favor of the government and the franchise *ipso facto* revoked.

SEC. 11. *Right of Interconnection.* – The grantee is hereby authorized to connect or demand connection of its telecommunications systems to other telecommunications systems installed, operated, and maintained by any other duly authorized person or entity in the Philippines for the purpose of providing extended and improved telecommunications services to the public, under such terms and conditions mutually agreed upon by the parties concerned and the same shall be subject to the review and modification of the NTC.

SEC. 12. *Gross Receipts.* – The grantee, its successors or assignees, shall keep a separate account of the gross receipts of the business transacted by it and shall furnish the Commission on Audit (COA) and the National Treasury a copy of such account not later than the thirty-first (31st) day of January of each year for the preceding twelve (12) months.

SEC. 13. *Books and Accounts.* - The books and accounts of the grantee, its successors or assignees, shall always be open to the inspection of the COA and its duly authorized representatives. It shall be the duty of the grantee to submit to the COA two (2) copies of the quarterly reports on the gross receipts, the net profits, and the general condition of the business.

SEC. 14. *Warranty in Favor of the National and Local Governments.* - The grantee shall hold the national, provincial, city, and municipal governments of the Philippines free from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations, transmitters, facilities, and equipment of the grantee.

SEC. 15. *Sale, Lease, Transfer, Usufruct, or Assignment of Franchise.* - The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall transfer the controlling interest of the grantee, whether as a whole or in parts, and whether simultaneously or contemporaneously, to any such person, firm, company, corporation, or entity without the prior approval of the Congress of the Philippines: *Provided*, That Congress shall be informed of any sale, lease, transfer, grant of usufruct, or assignment of franchise or the rights and privileges acquired thereunder, or of the merger, or transfer of the controlling interest of the grantee, within sixty (60) days after the completion of said transaction: *Provided, further*, That failure to report to Congress such change of ownership shall render the franchise *ipso facto* revoked: *Provided, finally*, That any person or entity to which this franchise is sold, transferred, or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act.

SEC. 16. *Dispersal of Ownership.* - In accordance with the constitutional provision to encourage public participation in public utilities, the grantee shall offer to Filipino citizens at least thirty percent (30%) or a higher percentage that may hereafter be provided by law of its outstanding capital stock in any securities exchange in the Philippines within five (5) years from the

commencement of its operations: *Provided*, That in cases where public offer of shares is not applicable, establishment of cooperatives operating public utilities must be implemented. Noncompliance therewith shall render the franchise *ipso facto* revoked.

SEC. 17. *Reportorial Requirement.* - The grantee shall submit an annual report to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, on its compliance with the terms and conditions of the franchise and on its operations on or before April 30 of every year during the term of its franchise. The reportorial compliance certificate issued by Congress shall be required before any application for permit or certificate is accepted by the NTC.

SEC. 18. *Penalty Clause.* - Failure of the grantee to submit the requisite annual report to Congress shall be penalized with a fine of five hundred pesos (P500.00) per working day of noncompliance. The fine shall be collected by the NTC from the delinquent franchise grantee separate from the reportorial penalties imposed by the NTC.

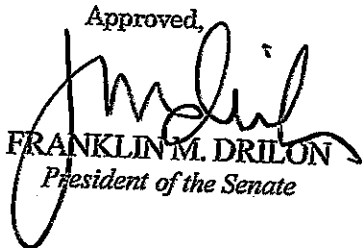
SEC. 19. *Equality Clause.* - Any advantage, favor, privilege, exemption, or immunity granted under other existing franchises, or which may hereafter be granted, upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided*, That the foregoing shall neither apply to nor affect the provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

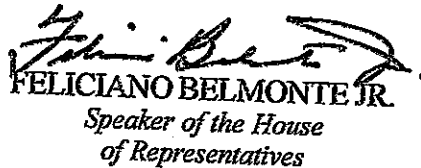
SEC. 20. *Separability Clause.* - If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SEC. 21. *Repealability and Nonexclusivity Clause.* - This franchise shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 22. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

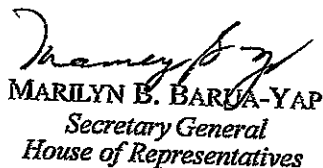
Approved,


FRANKLIN M. DRILON
President of the Senate


FELICIANO BELMONTE JR.
Speaker of the House of Representatives

This Act which originated in the House of Representatives was passed by the House of Representatives on October 9, 2015, amended by the Senate on February 1, 2016, and which amendment was concurred in by the House of Representatives on May 23, 2016.


OSCAR G. YABES
Secretary of the Senate


MARILYN B. BARUA-YAP
Secretary General House of Representatives

Approved:

BENIGNO S. AQUINO III
President of the Philippines

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Lapsed into law on JUL 21 2016
Without the signature of the President,
in accordance with Article VI, Section
27 (1) of the Constitution.