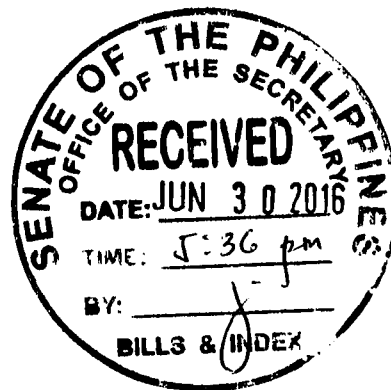


SEVENTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



SENATE
S.B. No. 171

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

AN ACT
PROMOTING OPEN ACCESS IN DATA TRANSMISSION, PROVIDING ADDITIONAL POWERS
TO THE NATIONAL TELECOMMUNICATIONS COMMISSION, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

We live in the information age where instantaneous access to reliable data can save you money, get you your dream concert tickets, save lives in times of calamity, and even spark a political revolution witnessed all around the world.

Technology has refashioned our world, empowering us with information at our fingertips.


What many of us don't see are the multiple levels and layers that data zips through to move from one point to another, from one user to the next.

If this complex data network is not designed and managed properly, it may cost users' time and money. And for a nation with a pressing problem with slow and expensive Internet services, it is imperative that we explore all avenues to improve data transmission.

This measure sets the regulatory framework to promote effective data transmission, taking into account the ever-changing nature of technology.

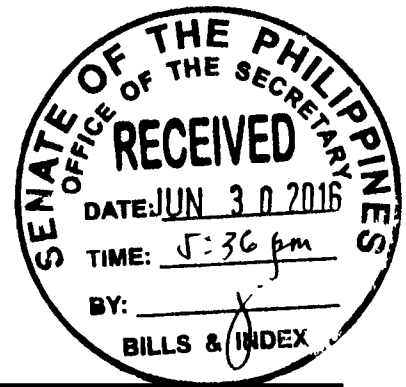
This bill will bolster the powers of the National Telecommunications Commission to create a healthy environment for the development and growth of data networks and their associated industries to improve access to information for every Filipino.

In view of the foregoing, the passage of this bill is earnestly sought.


Senator Paolo Benigno "Bam" A. Aquino IV

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

CHAPTER I
TITLE AND DECLARATION OF POLICY

1 **SECTION 1. Title.** – This Act shall be known as the “*Open Access in Data Transmission*
2 *Act of 2016.*”

3 **SEC. 2. Declaration of Policy.** – It is hereby declared the policy of the State:

- 4 a. To ensure and accelerate the narrowing of the digital divide in the country;
5 b. To ensure that reliable, affordable, open, and accessible data networks transmit
6 information at speeds, and with quality comparable to the best in the world
7 and alignment with modern global practices;
8 c. To create an entrepreneurial ecosystem where persons who wish to engage in
9 the data transmission industry compete openly and freely in the spirit of fair
10 competition and permission-less innovation;
11 d. To encourage investment in the digital infrastructure of the country;
12 e. To protect the public interest as it is affected by its ability to access data
13 networks;
14 f. To adopt the core values of the Open Access approach to building the country’s
15 data infrastructure, namely:
16 i. Adoption of a technology-neutral framework that encourages innovative,
17 low-cost delivery to users;
18 ii. Fair and open competition at all the multiple layers of the data
19 transmission network, allowing a wide variety of physical networks and
20 applications to interact in an open architecture;
21 iii. Transparency to ensure fair trading within and between layers that
22 allows clear, comparative information on market prices and services;
23 iv. The creation of circumstances where everyone can connect to everyone

1 else at the various layers and interfaces, such that entities of any size
2 may freely enter and exit the market, and dominance by any single player
3 or group of players is avoided;

4 v. Devolved and distributed local solutions rather than centralized ones,
5 encouraging services that are closer to the user.

6 g. To establish a strong and independent regulatory body and system to ensure
7 fair competition and enhance the competitive operation of the data
8 transmission sector; and

9 h. To protect and promote the Internet as an open platform enabling consumer
10 choice, freedom of expression, end-user control, competition, and the freedom
11 to innovate without permission, and thereby encouraging the development of
12 advanced telecommunications capabilities and the removal of barriers to
13 infrastructure investment.

14 **SEC. 3. *Definition of Terms.*** – As used in this Act, the following terms shall mean:

15 a. *Core/Backbone network* – the main line (or connection) that ties networks;
16 delivers routes to exchange information among various sub-networks,
17 connects regional distribution networks and, in some instances, provides
18 connectivity to other peer networks.

19 b. *Data transmission* – the process of sending digital or analog data over a
20 communication medium to one or more computing network/s, communication
21 or electronic device/s. It enables the transfer and communication of devices in
22 a point-to-point, point-to-multipoint, and multipoint-to-multipoint
23 environment.

24 c. *International gateway / landing* – segment of data transmission that consists of
25 any facility that provides an interface to send and receive data traffic between
26 one country's domestic network facilities and those in another country.

27 d. *Last mile* – segment of data transmission from the network to the end-
28 users

29 e. *Middle mile* – segment of data transmission that carries data from the
30 backhaul network to the nearest aggregation point, then from the aggregation
31 point to the nearest point of presence (PoP).

32 f. *National Telecommunications Commission (NTC)* – the entity defined and
33 created pursuant to the Public Telecommunications Policy Act (Republic Act
34 No. 7926, as amended).

35 g. *Open Access* – the system of allowing any data transmission participant the use
36 of data transmission and/or distributions system, and associated facilities
37 subject to fair, reasonable and non-discriminatory terms in a transparent
38 market.

39 h. *Paid prioritization* – the management of a data transmission participant to
40 directly or indirectly favor some traffic over other traffic, including through use
41 of techniques such as traffic shaping, prioritization, resource reservation, zero-
42 rating, or other forms of preferential traffic management, either: (1) in
43 exchange for consideration (monetary or otherwise) from a third party, or (2)
44 to benefit an affiliated entity.

1
2 **CHAPTER II**

3 **DEFINITION, ORGANIZATION AND OPERATION OF THE DATA TRANSMISSION INDUSTRY**

4 **SEC. 4. Scope.** – This applies to all persons wishing to participate in the data
5 transmission industry. For this purpose, any person or entity whose business deals
6 substantially with the transmission of data shall be governed by the provisions of this Act.

7 **SEC. 5. Segments.** – The data transmission industry shall be divided into four
8 segments: (a) International Gateway / Landing, (b) Core/Backbone Network, (c) Middle
9 Mile, and (d) Last Mile.

10 All four segments, involving businesses affected with public interest, shall be
11 competitive and open. Any law to the contrary notwithstanding, participants in any of the
12 four segments shall not be considered as public utilities. A person who wishes to be a
13 participant in any of the four segments shall not be required to secure any other license,
14 approval, franchise, or certificate other than those expressly provided for in this Act.

15 A participant in any of the four segments shall, before it operates, secure from the
16 NTC a Certificate of Compliance certifying that it has completed all that is required of it
17 under this Act, and that it has obtained all the necessary business permits and health,
18 safety, and environmental clearances from the appropriate government agencies under
19 existing laws.

20 **CHAPTER III**

21 **REGULATION OF THE DATA TRANSMISSION INDUSTRY**

22 **SEC. 6. Additional Powers and Functions of the NTC.** – The NTC shall have the
23 additional powers and functions:

24 a. **Resource Allocations.** – The NTC shall, upon due consultation on how to
25 maximize the return for the allocation of finite resources used in the
26 transmission of data, promulgate such rules and regulations by which it may
27 obtain such maximum value for every technological wave under its
28 management.

29 b. **Setting Performance Standards.** – The NTC shall set and measure reporting and
30 performance standards for participants in the data transmission industry. Such
31 standards shall take into account speed, packet loss, jitter, and latency. The
32 NTC shall regularly publish the results of these measurements in an open data
33 format accessible to the general public.

34 c. **Recovery of Resources.** – If the NTC finds, on its own initiative or upon
35 complaint, that any right, license, or franchise granted to any data transmission
36 industry participant is not being used in accordance with the covenants it
37 requires of the person developing that resource, and upon due hearing, it may
38 revoke the license without the need of compensation, franchise, or right, and
set the same for acquisition by any qualified party, at auction.

1 **SEC. 7. Prohibited Acts. –**

- 2 a. **Plug and Play. –** Any person engaged in the data transmission industry, insofar
3 as such person is so engaged, shall not refuse access to infrastructure to any
4 person also engaged in the data transmission industry, except for failure to pay
5 open market fees for the access to the service.

6 Data transmission providers shall not impede the end-user's right to access and
7 distribute information and content, use and provide applications and services
8 and use terminal equipment of their choice, regardless of the end-user's or
9 provider's location or the location, origin or destination of the information,
10 content, application or service, via their data transmission service.

11 Agreements between data transmission providers of data services and end-
12 users on commercial and technical conditions and the characteristics of data
13 access services such as price, data volume or speed, and any commercial
14 practices conducted by providers of internet access services, shall not limit the
15 exercise of the rights of end-users laid down before.

- 16 b. **Paid prioritization. –** A person engaged in the data transmission industry,
17 insofar as such person is so engaged, shall not engage in paid prioritization for
18 monetary or other consideration; provided, that the NTC may waive the ban on
19 paid prioritization only if the participant demonstrates that the practice would
20 provide some significant public interest benefit and would not disadvantage
21 content and applications that are not prioritized otherwise harm the open
22 nature of the Internet.

- 23 c. **Throttling. –** Providers of data transmission services shall treat all traffic
24 equally when providing data access services without discrimination, restriction
25 or interference, regardless of the sender and receiver, the content accessed or
26 distributed, the applications or services used or provided, or the terminal
27 equipment used.

28 The hindrance or slowing down of services or applications on the Internet by
29 ISPs and network owners is prohibited. Deviation from this rule is only allowed:
30 (a) to reduce congestion, while treating similar traffic equally; (b) to preserve
31 the integrity and security of the network and service of the provider or the
32 equipment of the end-user - If the breach of integrity or security is caused by
33 the equipment of the end-user, the provider has to notify the end-user first
34 and give them sufficient time to rectify the situation; (c) to block the
35 transmission of unwanted communications (e.g. spam) to an end-user, only if
36 the end-user has given consent beforehand; or (d) to comply with the law or a
37 warrant.

- 38 d. **Vertical Ownership. –** The direct or indirect ownership of any participant of: (1)
39 any business engaged with any sector in the data transmission industry, except

1 the last mile/retail sector; and (2) any business engaged in the last mile/retail
2 sector shall be considered unlawful. It shall also be considered unlawful for any
3 data transmission participant to own any interest, directly or indirectly, in any
4 business that generates revenue from content being transmitted or
5 applications being served over the data network.

6 **SEC. 8. *Arms-length Transactions and Transparency.*** – The NTC shall promulgate
7 rules requiring all data transmission industry participants to include in their annual report a
8 fair and accurate statement regarding their market prices and their services.

9 **SEC. 9. *Fair competition.*** – (a) The Philippine Competition Commission (PCC) and
10 the NTC shall ensure that for those providing services at any given layer, there are at least
11 two significant providers; and (b) when there are less than four significant providers of any
12 particular service, the PCC and the OFC should scrutinize any act made by the remaining
13 providers for anti-competitive behavior under the Philippine Competition Act.

14 **CHAPTER VI**
15 **PENALTIES**

16 **SEC. 10. *Administrative Penalties.*** – A data transmission industry participant
17 violating any provision of this Act shall forfeit all certificates, licenses, rights, and awards
18 issued to it that enables its participation in the data transmission industry.

19 **SEC. 11. *Adjustment for Inflation.*** – The fines mentioned herein shall be adjusted,
20 year-on-year, according to the prevailing Consumer Price Index.

21 **CHAPTER VII**
22 **FINAL PROVISIONS**

23 **SEC. 12. *Technological Neutrality.*** – The NTC shall promulgate the necessary rules
24 and regulations to ensure that the provisions of this law apply, mutatis mutandis, to ensure
25 that the provisions herein apply to future technologies in data transmission.

26 **SEC. 13. *Expedited Processing.*** – In all instances where a participant in the data
27 transmission industry shall require a form, certificate, or request, there should be no more
28 than two public officers involved in processing the form, certificate, or request.

29 **SEC. 14. *Implementing Rules and Regulations.*** – Within sixty (60) days from the
30 effectivity of this Act, the NTC shall promulgate the necessary rules and regulations for the
31 effective implementation of this Act.

32 **SEC. 15. *Separability Clause.*** – Should any provision herein be declared
33 unconstitutional, the same shall not affect the validity of the other provisions of this Act.

34 **SEC. 16. *Repealing Clause.*** – All laws, decrees, orders, rules, and regulations or
35 other issuances or parts inconsistent with the provisions of this Act are hereby repealed or
36 modified accordingly.

1 **SEC. 18. Effectivity.** — This Act shall take effect fifteen (15) days after its publication
2 in the Official Gazette or in any two (2) newspapers of general circulation in the Philippines.

3 *Approved,*