

Republic of the Philippines

Congress of the Philippines

Twelve Congress

Third Regular Session

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

[REPUBLIC ACT NO. 9321]

AN ACT GRANTING THE eTELCO, INC. A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAN 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 Franchise. – Subject to the provisions of the Constitutional and applicable laws, rules and regulations, there is hereby granted to eTELCO, Inc., hereunder referred to as the grantee, a franchise to construct, established, install, maintain for commercial purposes and in the public interest, throughout the Philippines and between the Philippines and other countries and territories, wire and/or wireless telecommunications systems and except for mobile and cellular, shall include but not be limited to paging, fiber optics, multichannel multipoint distribution systems (MMDS), local multipoint distribution systems (LMDS), satellite transmit and receive systems, switches and their value-added services such as, but not limited to, transmission of voice data facsimile, control signs, audio and video, information service bureau and all other value-added technologies as are presently 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 is or are convenient or essential to efficiency carry out the purpose of this franchise.

SEC. 2. Manner of Operation of Stations and 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 any way diminishing its own right to use its selected 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. – The grantee shall secure from the National Telecommunications Commission (NTC), hereunder referred to as the Commission, 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 Commission shall have the power to impose such conditions relative to the construction and operation, maintenance or service level of the telecommunications systems. The grantee shall not use any frequency in the radio spectrum without having been authorized by the Commission. Such certificate shall state the areas covered and date the grantees shall commence the service. The Commission, however, shall not unreasonably withhold or delay the grant of any such authority, permits or licenses.

SEC. 4. Ingress and Egress. – For the purpose of erecting and maintaining poles or other supports for said wires or other conductors for the other purpose of laying and maintaining underground wires, cables or other conductors, it shall be lawful for the grantee, with the prior approval of the Department of Public Works and Highways (DPWH), to make excavations or lay conduits in any of the public places, highways, streets, lanes, alleys, avenues, sidewalks or bridges of said provinces, cities, and/or municipalities: Provided, however, That a public place, highway, street, lane, alley, avenue, sidewalk or bridge disturbed, altered or changed by reason of the erection of poles or other supports or the undergo laying of wires, other conductors or conduits, shall be repaired and replaced in a workmanlike manner by said grantee, in accordance with the standard set by the DPWH. Should the grantee, after the ten (10) days notice from the said authority, fail, refuse or neglect to repair or replace any part of the public place, road, highway, street, lane, alley, avenue, sidewalk or bridge altered, changed or disturbed by said grantee, then the DPWH 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.

SEC. 5. Responsibility to the Public. – The grantee shall conform to the ethics of honest enterprise and shall not use its stations/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 basis or enhanced telephone service in any municipality in the Philippines where it has as approved certificate of public convenience and necessity for the establishment, operation and maintenance of a local exchange service, without discrimination to any applicant thereof, 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 Commission, the grantee shall not be obligated 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 Commission may extend the time within which the grantee shall furnish such service.

The grantee shall operate and maintain all of its stations, lines, cable systems and equipment for the transmission and reception of messages, signal pulses in a satisfactory

manner at all time, 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 of 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, weather flat rates or measured rates or variation thereof shall be subject to the approval of the Commission 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 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 authorized 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 they shall be 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 anytime after due process.

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

Commence operations within three (3) years from the approval of its operating permit or provisional authority by the NTC;

Operate continuously for two (2) years; and

Commence operation within three (3) years from the effectivity of this Act.

SEC. 9. Acceptance and Compliance. – Acceptance of this franchise shall be given in writing 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 issued in favor of the NTC, which shall determine the amount, to guarantee the compliance with and fulfillment of the conditions under which this franchise is granted. If, after five (5) years from the date of the approval of its permit by the Commission, the grantee shall have fulfilled the same, the bond shall be cancelled by the Commission. 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 system to any 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 Commission.

SEC. 12. Tax Provisions. The grantee shall be subject to the payment of all taxes, duties, fees, or charges and other impositions under the National Internal Revenue Code (NIRC) of 1997, as amended, and other applicable laws: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under an relevant law: Provided, further, That all the rights, privileges, benefits and exemptions accorded to existing and future telecommunication franchises shall likewise be extended to the grantee.

The grantee shall file the return with the city or province where its principals office located and pay the taxes due thereon to the Commissioner Of Internal Revenue or his duly authorized representatives in accordance with the NIRC and the return shall be subject to audit by the Bureau of Internal Revenue.

SEC. 13. Gross Receipts. – The grantee, shall keep a separate accounts of the gross receipts of the business transacted by it and shall furnish the Commission on Audit (COA) and 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. 14. Books of Accounts. – The books and accounts of the grantee shall always be open to the inspection of the Commissioner on Audit or his authorized representatives and 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. 15. Warranty in Favor of the National and Local Governments. – The grantees shall hold the National, Provincial, city and municipal government of the Philippines free from all the 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. 16. Nontransferability. – The grantee shall not lease, transfer, grant the usufruct of, sell nor assign this franchise of the rights and privilege aquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall the controlling interest of the grantee be transferred, whether as a whole or in a parts whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity.

SEC. 17. Dispersal of Ownership. – In accordance with the constitutional provision to encourage public participation in public utilities, the grantee shall offer at least thirty percentum (30%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law in any securities exchange in the Philippines within five (5) years from the commencement of its operation. The public offering shall comply with the rules and regulations of the securities and Exchange Commission. Noncompliance therewith shall render the franchise ipso facto revoked.

SEC. 18. Equality Clause. – Except for taxes, any advantage, favor, privilege, exemption or immunity granted under existing franchise, or may hereafter be granted, shall ipso facto become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchise concerning territory covered by the franchise, the life span of the franchise or the type of service authorized by the franchise.

SEC. 19. Separability Clause. – If any of the sections or provisions of this Act is held invalid, all of the other provisions not affected thereby shall remain valid.

SEC. 20. Repealability and Nonexclusivity Clause. – This franchise shall be subject to amendment, alternation 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. 21. Reportorial Requirement. – The grantee shall submit an annual report to the Congress of the Philippines on its compliance with the terms and conditions of the franchise and on its operations within sixty (60) days from the end of its year.

SEC. 22. Effectivity Clause. – This Act shall take effect fifteen (15) days from the date of its publication, upon the initiative of the Grantee, in at least two (2) newspapers of general circulation in the Philippines.

Approved,

(Sgd.) FRANKLIN M. DRILON
(Sgd.) JOSE DE VENECIA, JR.

President of the Senate
Speaker of the House of Representatives

This Act which originated in the House of the Representatives was finally passed by the House of Representative and the Senate on June 10, 2004.

(Sgd.) OSCAR G. YABES
(Sgd.) ROBERTO P. NAZARENO

Secretary of the Senate
Secretary General House of Representatives

Approved:

GLORIA MACAPAGAL-ARROYO

President of the Philippines

Lapsed into law on August 8, 2004 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.