

To: Hon. Arthur C. Yap

Committee Chairman, Committee on Economic Affairs

From: Estrellita Juliano-Tamano

National Chair, Federation of International Cable TV and Telecommunications
Association of the Philippines (FICTAP)

Re: Initial Comments on the draft substitute bill to HBs 4389, 4468, 4501, 4787 and 4996 entitled “AN ACT PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE “PUBLIC SERVICE ACT,” AS AMENDED”

Date: May 9, 2017

Greetings!

The undersigned is the National Chairperson of FICTAP, which is composed of several hundred medium, small and micro cable TV operators and telecommunications and Value-Added-Services (VAS) providers scattered throughout the country. FICTAP was formed to protect the interests of the operators / providers and the subscribing public, as well as to ensure the continued growth of the cable TV and information and communications technology industries.

This submission pertains to the request to provide inputs on the draft substitute bill to HBs 4389, 4468, 4501, 4787 and 4996 entitled “AN ACT PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE “PUBLIC SERVICE ACT,” AS AMENDED”. Having gone over the text of the draft substitute bill, we would like to note these items:

I. Commissioning of a Comprehensive Baseline Survey

II. Increasing Penalties for Violations

III. Empowering a Proactive Philippine Competition Commission (PCC)

Discussion

I. Commissioning of a Comprehensive Baseline Survey

Section 12 of the draft substitute bill provides:

“Sec. 12. Comprehensive Baseline Survey. – The PCC shall commission the University of the Philippines Law Center (UPLC) or such other institutions to conduct a comprehensive baseline survey of the regulatory governance and regulatory substance of public services within six (6) months from the effectivity of this Act.”

At the outset, the FICTAP expresses its willingness to participate in such an endeavor and to provide insights on the experience of the private sector. The Federation likewise suggests that in

addition to the focus on “regulatory governance and regulatory substance”, the survey may also look into the economic effects of the latter.

FICTAP believes that by establishing the economic effect (in Pesos) to the Philippine economy brought about by the current “regulatory governance and regulatory substance” of public utilities, our esteemed legislators and stakeholders would be given the opportunity to conduct a cost-benefit analysis and may arrive at the appropriate policies and decisions. This is similar to how the studies on the economic impact of traffic, specifically, the daily cost of heavy traffic to the Philippine economy (estimated at 2.4 Billion Pesos a day by a joint study released by JICA and NEDA last September 2014) has allowed the government to justify multi-billion infrastructure programs and likewise has allowed would be investors the proper insight into the Philippine economy. Thus, the Federation hopes that the survey would be conducted and that it would eventually lead us to the appropriate policies and decisions.

II. Increasing Penalties for Violations

Section 12 of the draft substitute bill provides:

***"Sec. 6. Penalties for Violations.** – Section 21 of Commonwealth Act No. 146, as amended, is hereby further amended to read as follows:*

“Section 21. Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the [Commission] ADMINISTRATIVE AGENCY shall be subject to DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine OF UP TO FIVE MILLION PESOS, DIVESTMENT, OR ALL OR ANY COMBINATION THEREOF [of not exceeding two hundred pesos] per day for every day during which such default or violation continues; and the [Commission] ADMINISTRATIVE AGENCY is hereby authorized and empowered to impose such fine, after due notice and hearing. THE FINE OF UP TO FIVE MILLION PESOS SHALL BE INCREASED EVERY FIVE (5) YEARS UPON CERTIFICATION BY NEDA ON THE COMPUTATION OF THE COST OF MONEY BASED ON THE CUMULATIVE 360-DAY TREASURY BILL RATE.

The PENALTIES AND fines so imposed shall be paid to the Government of the Philippines through the [Commission] ADMINISTRATIVE AGENCY, and failure to pay the PENALTY OR fine in any case within the same specified in the order or decision of the [Commission] ADMINISTRATIVE AGENCY shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies.”

The aforementioned section provides that “a fine of up to Five Million Pesos” may be imposed. While FICTAP agrees that the fine meted by Commonwealth Act No. 146 should be increased, not all public utilities or persons performing public service have the scale and resources to shoulder

and survive a Five Million Peso fine – the smaller firms would probably go bankrupt in case they are meted with such a fine, leaving only the bigger players or monopolies.

Worst case scenario, the small ones close shop and the big one(s) strengthen their hold and thus dictate their industry. The problem is compounded by the fact that there is no explicit statement pertaining to the criteria or basis to determine the exact figure of the fine to be imposed. In the latter issue, given no explicit criteria or basis, it is possible that firms which committed similar violations may be meted different penalties, which is unfair.

As such, the Federation prays that a distinction be made so as to provide an equitable penalty against firms of varying sizes / industries, to be determined in a manner that is fair and that is not arbitrary. Perhaps a penalty based on a percentage (or a range of percentages) of a firm's revenue, the industry type, and the severity of the violation, should be considered as that would take into account the scale, resources, cash flow and acts or omissions of the erring public utility or person performing a public service.

III. Empowering a Proactive Philippine Competition Commission (PCC)

Sections 1, 3, and 12 of the draft substitute bill expressly refers to the Philippine Competition Commission (PCC), providing that studies and surveys are to be conducted by the PCC or another party commissioned by it, with the aim of coming up with the appropriate recommendations. FICTAP fully supports empowering a proactive Philippine Competition Commission.

However, recent events have shown that certain firms may resist the inquiries / actions of the PCC, and that Temporary Restraining Orders (TROs) and even “gag orders” may be used against the PCC by the said certain firms. FICTAP believes that such scenarios may easily frustrate and render ineffective the PCC and allow unfair competition to go unchecked.

Therefore, FICTAP strongly suggests to the esteemed law makers that certain provisions or policies be integrated into the draft substitute bill to further empower the PCC such that it can exercise its mandate and functions freely. Such provisions or policies can be supported by the considerable public interest on public utilities and the fact that the latter's franchises and authorities are not rights but mere privileges which may be amended or revoked by the government.

Concluding Statement

To conclude, the Federation expresses its gratitude in being given the opportunity to participate in this endeavor and likewise commits to continue to provide its inputs and technical expertise to assist in the same. Hoping that you find our initial comments helpful.

Yours Truly,

***original signed**

Estrellita Juliano-Tamano

National Chair, FICTAP