

RLA BILL NO. 21

Republic of the Philippines
Autonomous Region in Muslim Mindanao
REGIONAL LEGISLATIVE ASSEMBLY
Cotabato City

FIFTH LEGISLATIVE ASSEMBLY
(First Regular Session)

[MUSLIM MINDANAO AUTONOMY ACT NO. 202]

Begun and held in Cotabato City, on Monday, the twenty-fourth day of October, two thousand five.

AN ACT GRANTING 3G COMMUNICATIONS INTERNATIONAL INC, IN PARTNERSHIP WITH BENTLEYTEL INTERNATIONAL A FRANCHISE TO ESTABLISH, CONSTRUCT, INSTALL, WORK, MAINTAIN, UPGRADE MANAGE AND OPERATE NETWORKS TO PROVIDE LOCAL AND INTERNATIONAL TELECOMMUNICATION AND BROADCAST SERVICES INTO AND ORIGINATING FROM THE AUTONOMOUS REGION IN MUSLIM MINDANAO.

Be it enacted by the Regional Legislative Assembly in session assembled.

Section 1. Nature and Scope of Franchise. - Subject to the provisions of the Constitution, Republic Act No. 9054 and other applicable laws, rules and regulations, there is hereby granted to 3G Communications Inc., in partnership with BentleyTel International Inc., hereunder referred to as the Grantee, their successors or assigns, a franchise to establish, construct, install, work, maintain, upgrade manage and operate networks to provide local and international telecommunication services into and originating from the Autonomous Region in Muslim Mindanao, with fixed and mobile services, in accordance with the primary purpose of the corporation, in the Autonomous Region in Muslim Mindanao as its base.

Sec. 2. Manner of Operations of Facilities. – The Grantee shall secure the appropriate permits and licenses from the Secretary of the Department of Telecommunications (DOTC).

The stations or facilities of the Grantee shall be constructed and operated and the wavelengths selected in a manner as will result at most only in the minimum interference on the wavelengths or frequencies of the existing stations or other stations of the telecommunications services which are established similarly in accordance with the law and without in any way diminishing its own right to use its selected wavelengths or frequencies and the quality of transmission and reception expected of the Grantee's services to provide.

The grantee whose capital is wholly owned or at least sixty per centum is owned by Filipino citizens/s or such higher percentage is authorized to negotiate and arrange a direct access to the telecommunication services provided by any satellite systems, telecommunications satellites and/or transponders or leased by the grantee as may be allowed by law.

The Grantee shall however establish and maintain its head office in any strategic place in the Autonomous Region in Muslim Mindanao.

Subject to the existing laws, rules and regulations, the Grantee shall have the right to direct access to international submarine cables on an ownership and /or indefeasible right of use based on the terms and conditions as may be laid down by the management of the respective cables from time to time.

The Grantee shall have the right to take equity in any international satellite organization including, but not limited to, Intelsat, Inmarsat, and Measat from time to time as may be deemed appropriate by the Grantee.

The Grantee shall have the right to become a member of the International Telecommunications Union (ITU) with the classification of reorganized private operating agency or RPOA.

The Grantee shall have the right to negotiate for any capacity from any incumbent operator on negotiated carrier-to-carrier rates.

In the event that the DOTC Secretary fails, refuses, or denies the rights and entitlements of the Grantee under the law or existing applicable rules and regulations, the Grantee may inform the Regional Governor in writing of such failure, refusal or denial for appropriate action within fourteen (14) days from receipt thereof and may require the signatory to remedy such complaints of the Grantee in the most expeditious manner.

Sec 3. Authorization to Connect Other Systems and to Provide Services by Means of the Grantee's Networks.

By virtue of the authority of the Secretary of the DOTC the franchise is hereby authorized to connect the Grantee's networks but not limited to the following:

- a) Any public telecommunication system in the Republic of the Philippines, mobile or otherwise;
- b) Any private telecommunication system in the Republic of the Philippines mobile or otherwise;
- c) Any telecommunication system situated on a vehicle, submersible, hovercraft, aircraft or offshore installation;
- d) Telecommunication apparatus and equipment of every description including broadband, VoIP and Internet, which is comprised in the Grantee's networks; and
- e) Any broadcast media, cable TV, internet platforms, bundled services whether fixed wire, satellite or wireless.

The Grantee shall allow any person or persons, or organization to connect peripheral equipment or apparatus to the Grantee's network to transmit and receive messages within or among its premises or organized network: Provided, That such person or persons or organization have earlier entered into an agreement with the Grantee on stipulations, terms and conditions, relevant charges and equipment specification for such a connection.

The Grantee shall have the right to : (1) lease from the incumbent operators; and (2) lease to the incumbent operators, access capacity and dark fiber at negotiated carrier-to-carrier rates as may be determined and approved by the DOTC Regional Secretary from time to time.

Sec. 4. Security- Subject to the applicable ARMM laws and national policies, the Grantee's network shall be protected from the following:

- a) Willful obstruction or intervention; and
- b) Deliberate and undue interruption, interception or listening in any messages transmitted, conveyed or received in the Grantee's network.

Sec. 5. Identification and repair of faults. Upon notification or discovery of any faults, it is the duty of the Grantee to undertake prompt and immediate action of the following:

- a) Repair of the faults in the network; and
- b) Grantee shall bear reasonable rights to identify and repair wherever such faults of the networks are located within its licensed areas.

Sec. 6. Exemption and Limitations on Obligations. Unless the franchise otherwise requires, the Grantee's obligations shall take effect and commence after the approval of this franchise. But in no case the Grantee shall be obliged to do anything that, in its reasonable opinion, is not commercially or otherwise practical.

The Grantee shall not be held responsible any failure to comply with any obligations should the malfunctions or failure of the network be caused by topographical, force majeure or man-made obstacles, act of any local or national authority, legal constraints, or impediments emergency, riot or war, or anything beyond the control of the Grantee.

The obligations of the Grantee to provide telecommunications services shall not apply to the following:

- a) Where provision of the service requested should expose any person engaged in its provision to undue risk to health or safety;
- b) Where the Grantee is unable to obtain (either because it has not been developed or for some other reason beyond the Grantee's control) anything necessary to provide a service of the quality or standard required by the person who requests the service. In the event of dispute, the decision of the DOTC Secretary as to whether anything is necessary shall be final.

- c) Where the person to whom the Grantee would otherwise be under an obligation to provide any service requires a service of place in which the apparatus necessary to provide that service in that area has not been installed, or the installation of such apparatus has not been completed, as the case may be, or such apparatus has not been adapted or modified to make it capable to provide the service of the kind requested, or the trained manpower necessary to provide the service is not available in that area;
- d) Where the person to whom the Grantee would otherwise be under an obligation to provide services requested at a) place in area which the demand or the prospective demand for the service is not sufficient, having regard to the revenue likely to be earned for the provision of the service in that area to meet the costs reasonably to be incurred by the Grantee in providing the service there, including:
 - i) the cost of the apparatus necessary for the provision of the service there;
 - ii) the cost of installing, maintaining and operating such apparatus the purpose of providing the service;
 - iii) the cost of the trained manpower necessary to provide the service; and
- e) Where, in the opinion of the DOTC Regional Secretary, it is not reasonably practicable in all circumstances for the Grantee to provide the service requested at the time or place demanded.

Sec. 7. Rates of Service. - The Grantee shall fix just and reasonable rates for its telecommunications services, subject to the regulations and approval of the DOTC Regional Secretary.

Sec. 8. Terms of Franchise. - This franchise shall be for a term of twenty-five (25) years from the date of the approval of this Act. This franchise may be allowed to operate and maintain the networks for the period of ten (10) years from the date of the approval of this Act on an exclusive basis to provide reasonable time for the Grantee to recover its initial investments.

In the event, however, that the Grantee fails to operate continuously for two (2) years, the franchise shall be deemed *ipso facto* cancelled or revoked.

Sec. 9. Sale, Lease, Transfer, Assignment, Usufruct. - The Grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise and the right and privileges, as well as the rights acquired hereunder, to any person, firm, company or corporation or legal entity, nor shall the controlling interest in the Grantee be transferred to any such private person, firm, company, corporation or entity without the prior approval of the Regional Assembly or its legal successor.

Sec. 10. Right of Government.- In case of war, insurrection, domestic trouble, public calamity or national emergency, the national government, through the Regional Autonomous Government, upon the order of the President, shall have the right to take over and operate the network, paying for the use thereof and/or any damages.

Sec. 11. Public Equity Participation. – Consistent with the constitutional mandate and in compliance with the Republic Act No. 9054, the Grantee shall make public offering of at least sixty (60%) percent of the common stocks within a period of five (5) years from the date of the approval of this Act. But no person or entity other than BentleyTel shall however be allowed to own more than five percent (5%) of the stock offerings.

Sec. 12. Warranty in Favor of Local and Regional Governments.- The Grantee shall hold the Regional Autonomous and Local Governments in Muslim Mindanao harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or persons, caused by operation of the franchise in the use of the network's equipment which shall be solely under the responsibility of the Grantee.

Sec. 13. Tax Provisions.- The Grantee shall pay to the Regional Autonomous Government through the Regional Treasury during the lifetime of the franchise, a franchise fee of Five Percent (5%) of the gross revenues derived by the Grantee from its telecommunications services. Payment of the franchise fee shall be made by direct bank transfer as instructed by the Regional Secretary using banking information to be provided in writing. Such franchise fee payments shall be made on a quarterly basis the first payment occurring not more than 90 days from the commencement of commercial traffic on the Grantee's network.

Sec. 14. If the life of the franchise is shortened, the Grantee is entitled to such refund of its expenses for the implementation of the network and infrastructure the Grantee has installed pursuant to the granting of this franchise.

Sec. 15. Income Tax. - The Grantee shall likewise be subject to income tax to be paid to the Regional Autonomous Government including its real property tax as authorized by the Organic Act for those acquired or earned from activities other than its telecommunications services. The Grantee shall be eligible for registration with the BOI and may avail of such incentives thereof.

Sec. 16. Subsidized Connectivity. – The Grantee shall also offer subsidized connectivity for ARMM schools, hospitals and government offices. Such subsidized network costs can be deducted from the quarterly franchise tax, including but not limited to, Internet connectivity and international direct calling broadband. The roll out of the subsidized connectivity is subject to step by step approval of the Regional Secretary.

Sec. 17. Legislative Amendments.- This franchise is subject to amendments or repeal by the Regional Assembly or its legal successor when the public interest so requires.

Sec. 18. If for any reason 3G Communications International Inc, becomes insolvent, declares bankruptcy, or is judged by BentleyTel to be unable to provide its share of the network under the franchise, BentleyTel will inform the Regional Governor in writing and immediately form another Philippine registered entity and assume all responsibility to continue to fund and complete the roll-out of the network and its obligations under the franchise for the benefit of ARMM.

Sec. 19. Separability Clause.- If any section or provision of this franchise is held or declared unconstitutional or invalid by a competent court in a final judgment, the other sections or provisions thereof shall continue to be enforced as if the section or provision so voided had never been incorporated in this Act.

Sec. 20. – Repealing Clause. - All regional laws or orders , or parts thereof which are inconsistent herewith are hereby repealed or modified accordingly.

Sec.21. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation in the Autonomous Region .

APPROVED.

(SGD) PAISALIN P. TAGO
Speaker

This Act was passed by the Regional Assembly on August 28, 2006.

(SGD) DATU MAMA M. AMPATUAN
Secretary-General

APPROVED:

(SGD) DATU ZALDY PUTI UY AMPATUAN
Regional Governor
Date: _____