Classifying the Internet as a Public Utility: The Animation and Regulation of a Human Right

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I. INTRODUCTION

The medium through which the latest weather forecast, the fastest travel routes, and even the bridging of the gap between the rich and the poor[1] —

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the Internet — can do these and more. Unfortunately, the Philippines ranks 176th out of 202 countries in terms Internet speed,[2] fairing at 3.64 megabits per second (mbps)[3] compared to the worldwide average speed of 23.3 mbps.[4] Among 22 countries in Asia surveyed for Internet speed, the Philippines landed a dismal 21st, with Singapore leading at 122.43 mbps[5] — a speed almost 34 times faster. Not only is Internet in the Philippines slow, it is also very expensive. Filipinos spend $18.19 per mbps compared to the average global cost of $5.21 per mbps.[6] Locally, not only is Internet service almost eight times slower,[7] it is also four times more expensive than the average Internet service worldwide.

Market forces dictate the country's Internet speed and cost. The government, through rules and regulations promulgated by the National Telecommunications Commission (NTC), classifies Internet access as a Value Added Service (VAS),[8] the rates of which are deregulated.[9] Instead of a franchise,[10] a VAS provider must only submit an application for registration to the NTC[11] for its approval.[12] The only requirements needed are

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1. *See* Sam Gustin, Is Broadband Internet Access a Public Utility?, *available at* http://business.time.com/2013/01/09/is-broadband-internet-access-a-public-utility/ (last accessed Nov. 22, 2015) (citing SUSAN CRAWFORD, CAPTIVE AUDIENCE: THE TELECOM INDUSTRY AND MONOPOLY IN THE NEW GILDED AGE (2013)).
2. GMA News Online, LIST: Philippines ranks 21st out of 22 Asian countries in Internet download speed, *available at* http://www.gmanetwork.com/news/story/489762/scitech/technology/list-philippines-ranks-21st-of-22-asian-countries-in-internet-download-speed (last accessed Nov. 22, 2015). The news article reports the finding of Ookla Solutions, which is "engaged in the business of broadband connection testing." *Id. See generally* Ookla, About Ookla, *available at* http://www.ookla.com/about (last accessed Nov. 22, 2015).
3. GMA News Online, *supra* note 2.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. National Telecommunications Commission (NTC), Memorandum Circular No. 21-11-1998 [NTC Memo. Circ. No. 21-11-1998] (Nov. 16, 1998).
9. NTC, Memorandum Circular No. 02-05-2008 [NTC Memo. Circ. No. 02-05-2008], C (9) (May 30, 2008).
10. NTC, Memorandum Circular No. 08-09-1995 [NTC Memo. Circ. No. 08-09-1995], Value Added Services (VAS) (a) (Sep. 25, 1995).
11. *Id.* (d).

"documents showing, among others, system configuration, mode of operation, method of charging rates, [and a] lease agreement with the [Public Telecommunications Entity (PTE)]."[13]

Given this policy of deregulation, there is no regulation on the reasonableness of the prices charged by Internet Service Providers (ISPs) for their services. Furthermore, these services are not subject to any standards of quality.

The Government, with its inherent police power,[14] can work with various players in the information and communications sector to provide available, reliable, and affordable Internet service for the public — a service indispensable to the country's development and necessary for its competitiveness in a global economy.[15]

A. History of Public Utilities

Philippine law on public utilities traces its origins back to the early 1900s, which, in turn, finds its roots from public utility laws of the United States (U.S.).[16] Moreover, Philippine jurisprudence, at times, has resorted to American jurisprudence in determining what a public utility is in local jurisdiction.[17]

First defined in 1913, Philippine law[18] has declared public utilities to include

> every individual, co[-]partnership, association, corporation[,] or joint stock company, their lessees, trustees[,] or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage[,] or control within the Philippine Islands any steam railroad, street railway, traction

12. *Id.* (f).

13. *Id.* (d).

14. *See generally* Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 20 SCRA 849, 858 (1967) & Churchill v. Rafferty, 32 Phil. 580, 602-03 (1915).

15. James Manyika & Charles Roxburgh, The great transformer: The impact of internet on economic growth and prosperity (An Unpublished Paper by the McKinsey & Company Submitted to the Foreign Commonewealth Office International Cyber Conference) 1-6, *available at* http://www.mckinsey.com/insights/high_tech_telecoms_internet/the_great_transformer (last accessed Nov. 22, 2015).

16. TEODORICO C. MARTIN, COMMENTARIES AND JURISPRUDENCE ON THE PHILIPPINE COMMERCIAL LAWS 334 (1989 ed.).

17. *See* Luzon Stevedoring Co. Inc. v. Public Service Commission, 93 Phil. 735, 740 (1953).

18. An Act Creating a Board of Public Utility Commissioners and Prescribing Its Duties and Powers, and for Other Purposes, Act No. 2307, § 14 (1913).

> railway, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, telegraph system, plant, or equipment for public use, under privileges granted or hereafter to be granted[,] by the Government of the Philippine Islands or by any political subdivision thereof.[19]

United States v. Tan Piaco,[20] one of the first Philippine cases decided by the Supreme Court on public utilities, emphasized the term "public use" as, essentially, requiring "in general, a right[,] which the law compels the owner to give to the general public."[21]

Throughout the years, the Supreme Court has declared various services as public utilities:

(1) Decided in 1927, *Santos v. Public Service Commission*[22] declared a business, which supplies water to ships, as a public utility.[23]

(2) Decided in 1930, *Kock Wing v. Philippine Railway Co.*[24] declared railroads as public utilities.

(3) Decided in 1933, *Metropolitan Water District v. Public Service Commission*[25] declared the Metropolitan Water District as a public utility.

(4) Decided in 1956, *Standard Vacuum Oil Company v. Luzon Stevedoring Co., Inc.*[26] declared a private stevedoring company engaged in product transportation with a fleet of 140 tugboats is a public utility.

(5) Decided in 1964, *National Waterworks and Sewerage Authority v. NWSA Consolidated Unions, et al.*[27] declared the National Waterworks and Sewerage Authority as a public utility.

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19. *Id.*

20. *See* United States v. Tan Piaco, 40 Phil. 853, 856 (1920) [hereinafter *Tan Piaco*].

21. *Id.*

22. *See generally* Santos v. Public Service Commission, 50 Phil. 720 (1927).

23. *Id.* at 724.

24. *See generally* Kock Wing v. Philippine Railway Co., 54 Phil. 438, 447 (1930).

25. *See generally* Metropolitan Water District v. Public Service Commission, 58 Phil. 391, 399 (1933).

26. *See generally* Standard Vacuum Oil Company v. Luzon Stevedoring Co., Inc., 98 Phil. 817, 819 (1956).

27. *See generally* National Waterworks and Sewerage Authority v. NWSA Consolidated Unions, et al., G.R. No. L-18939, Aug. 31, 1964 (unreported).

(6) Decided in 1969, *Republic v. Phil. Long Distance Co.*[28] declared the Philippine Long Distance Telephone Company (PLDT) as a public utility.

(7) Decided in 1989, *National Power Corporation v. Vera*[29] declared the National Power Corporation as, a public utility.

(8) Decided in 2003, *Republic v. Manila Electric Company*[30] declared the Manila Electric Company (MERALCO) as a public utility.

As Philippine case law stands, the more-oft cited definition of a public utility is that it "is a business or service engaged in regularly supplying the public with some commodity or service of public consequence[,] such as electricity, gas, water, transportation, telephone[,] or telegraph service. The term implies public use and service."[31]

One particular service of public consequence pertains to communication and information providers.

No less than the Constitution provides that "[t]he State recognizes the vital role of communication and information in nation-building."[32] Moreover, it envisions a policy environment for "the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press."[33]

Legislation echoes this sentiment in Republic Act (R.A.) No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, which provides, in its declaration of policy, the significance of telecommunications to the "economic development, integrity[,] and security of the Philippines."[34] It endeavors that "such shall be developed and

28. *See generally* Republic v. Phil. Long Distance Telephone Co., 26 SCRA 620, 630 (1969).

29. *See generally* National Power Corporation v. Vera, 170 SCRA 721, 725 (1989).

30. *See generally* Republic v. Manila Electric Company, 401 SCRA 130, 131-34 (2003).

31. National Power Corporation v. Court of Appeals, 279 SCRA 506, 523 (1997) (citing 64 AM. JUR. 2D *Public Utilities*, § 1) [hereinafter *National Power Corporation*].

32. PHIL. CONST. art. II, § 24.

33. PHIL. CONST. art. XVI, § 10.

34. An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunication Services, [Public Telecommunications Policy Act of the Philippines], Republic Act No. 7925, § 4 (1995).

administered [ ] to safeguard, enrich[,] and strengthen the economic, cultural, social[,] and political fabric of the Philippines."[35] The law's primary policy aims "to develop and maintain a viable, efficient, reliable[,] and universal telecommunication infrastructure using the best available and affordable technologies, as a vital tool to nation[-]building and development."[36]

Services providing communication and information services were, therefore, granted authority to operate for the public good. These services include satellite communications, telephone systems, and cable antenna television systems.

For satellite communications, R.A. No. 5514 granted the Philippine Communications Satellite Corporation (PHILCOMSAT) a franchise[37] for the performance of its public utility services.[38] This franchise enabled PHILCOMSAT "to establish, construct, maintain[,] and operate in the Philippines, at such places as the grantee may select, station[,] or stations[,] and associated equipment and facilities for international satellite communications."[39]

For telephone systems, PLDT is "a public utility corporation [granted with] a legislative franchise to install, maintain, and operate telephone systems throughout the Philippines."[40]

Finally, for cable television, Executive Order (E.O.) No. 205 empowers the NTC "to grant certificates of authority for the operation of cable

35. *Id.*

36. *Id.* § 4, ¶ a.

37. Philippine Communications Satellite Corporation v. Alcuaz, 180 SCRA 218, 222 (1989).

38. *Id.* at 221 (citing An Act Granting Philippine Communications Satellite Corporation a Franchise to Establish and Operate Ground Satellite Terminal Station or Stations for Telecommunication with Satellite Facilities and Delivery to Common Carriers, Republic Act No. 5514, § 1 (1969)).

39. *Id.* at 222.

40. Bureau of Telecommunications v. Public Service Commission, 29 SCRA 751, 752 (1969).

antenna television system[s]."[41] E.O. No. 436 also vests the NTC "with the *sole* power of regulation and supervision over the cable television industry."[42]

Now, however, a new platform has emerged as a medium for both communication and information — the Internet.

B. Internet in the Philippines

1. The Beginnings of Internet in the Philippines

The Philippines was first connected to the Internet on 29 March 1994.[43] The momentous technological event entailed the various cooperative efforts of different groups for it to take place.

Two years before such milestone, Dr. William T. Torres, dubbed as the "Father of Philippine Internet,"[44] was the managing director of the National Computer Center, "a government agency promoting computerization in the country."[45] Dr. Torres, then, met with the head of the National Science Foundation, the network to which the U.S. academic, non-profit Internet belonged.[46] He "was convinced that a full-time Internet connection was necessary."[47]

Dr. Torres proposed Internet connectivity to both the MERALCO and the Philippine National Bank; however, both declined.[48] The Department of Science and Technology (DOST) eventually approved Dr. Torres' proposal and granted it ₱12 million to implement the project — ultimately "a direct, live connection to the Internet."[49] The DOST signed with Computer Systems Network Cooperation (ComNet), "a networking equipment vendor,"[50] for the implementation of the network connecting several

41. GMA Network, Inc. v. ABS-CBN Broadcasting Corporation, 470 SCRA 727, 734 (2005) (citing Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines and for Other Purposes, Executive Order No. 205, § 2 (1987)).

42. *Id.* at 735 (citing Office of the President, Prescribing Policy Guidelines to Govern the Operations of Cable Television in the Philippines, Executive Order No. 436 [E.O. No. 436] (Sep. 9, 1997)) (emphasis supplied).

43. *See* JANETTE TORAL, ET AL., THE PHILIPPINE INTERNET REVIEW: 10 YEARS OF THE INTERNET IN THE PHILIPPINES 26 (2004).

44. *Id.* at 25.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. TORAL, ET AL., *supra* note 43, at 25.

50. *Id.*

universities and organizations.[51] The chairperson of ComNet designed the PH network (PHnet) and persuaded PLDT to deliver the facilities needed to connect the country to the Internet for the first time — an event meant to coincide with an e-mail conference in the University of San Carlos in Cebu.[52]

Indeed, on 29 March 1994, the country's first Internet link with a permanent transmission control protocol/Internet protocol (TCP/IP) connection was activated.[53] This milestone was brought about due to the efforts of two individuals. Mr. Benjie Tan activated the router "[located] at the PLDT premises in Makati City,"[54] while Mr. Richie Lozada took charge of the one in Cebu.[55] In this same year, the 64 kilobits per second (kbps) originally used was upgraded to "larger capacity links, until the point where PHnet [bought] the service from BayanTel's Internet service instead. This [was also] when the institutional members of PHnet shifted their uplinks to commercial ISPs."[56]

2. Current Forms and Providers

Internet in the Philippines currently comes in three forms: cable, digital subscriber line (DSL), and fiber.

First, cable television companies offering cable modem broadband services provide cable Internet.[57] Popular cable ISPs in the Philippines include Sky Cable Corporation (Sky Cable)[58] and Destiny Cable, Inc.[59]

Second, telephone companies offer DSL Internet in the form of broadband Internet service "over existing copper telephone wire lines."[60] In

51. *Id.*

52. *Id.* at 26.

53. *Id.*

54. *Id.*

55. TORAL, ET AL., *supra* note 43, at 26.

56. *Id.*

57. *See generally* Lennard G. Kruger & Angele A. Gilroy, Broadband Internet Access and the Digital Divide: Federal Assistance Programs (An Unpublished Report Prepared for Members and Committees of Congress by the Congressional Research Service) 1, *available at* http://www.fas.org/sgp/crs/misc/RL30719.pdf (last accessed Nov. 22, 2015).

58. *See* Sky Cable Corporation, SKY broadband, *available at* http://www.mysky.com.ph/cavite/products/skybroadband (last accessed Nov. 22, 2015).

59. *See* Destiny Cable, Get Great Value with Destiny's Cable And Broadband Internet Bundle Option, *available at* http://www.destinycable.com.ph/get-great-value-with-destinys-cable-and-broadband-internet-bundle-option/ (last accessed Nov. 22, 2015).

the Philippines, ISPs providing DSL Internet services include PLDT,[61] Globe Telecom Inc. (Globe),[62] and Bayan Telecommunications, Inc. (BayanTel).[63]

Lastly, fiber Internet, operated through the use of thin fiber optics,[64] is "capable of transmitting data at the speed of light,"[65] is only offered by Smart Communications, Inc. (Smart),[66] PLDT,[67] and Globe.[68]

These different forms of Internet services are accessed by consumers, generally, through three different kinds of devices: (a) desktop computers at a usage rate of approximately 61%; (b) portable computers — such as laptop and tablet computers — at a usage rate of approximately 28%; and (c) mobile phones, at a usage rate of approximately three percent.[69]

II. THE INTERNET — CONNECTING PEOPLE, PLACES, AND THINGS

60. Kruger & Gilroy, *supra* note 57, at 1.

61. *See* PLDT, PLDT Home DSL Menu, *available at* http://pldthome.com/dsl (last accessed Nov. 22, 2015).

62. *See* Globe, Tattoo Home Broadband, *available at* http://tattoo.globe.com.ph/products/home-broadband-plans (last accessed Nov. 22, 2015).

63. *See* Bayan Telecommunications, bayanDSL + Landline, *available at* https://www.bayan.com.ph/main_residential_bundles.php (last accessed Nov. 22, 2015).

64. Smart Communications, Inc., Imagine More, *available at* http://smart.com.ph/pages/imaginemore (last accessed Nov. 22, 2015).

65. *Id.*

66. *Id.*

67. *See* PLDT, Power Plus Plans, *available at* http://pldthome.com/fibr (last accessed Nov 22, 2015).

68. *See* Globe, Tattoo Platinum Home Broadband, *available at* http://tattoo.globe.com.ph/product/tattoo-platinum-home-broadband (last accessed Nov. 22, 2015). However, as of publication time, more ISPs have begun offering fiber internet services in the Philippines. *See* MoneyMax.ph, How About Fiber Internet in the Philippines?, *available at* http://www.moneymax.ph/blog/how-about-fiber-internet-in-the-philippines/ (last accessed Nov. 22, 2015).

69. Nielsen, The Digital Media Habits and Attitudes of Southeast Asian Consumers (A Study Published by Nielsen Media) 9, *available at* http://www.nielsen.com/us/en/reports/2011/south-east-asian-digital-consumer-habits.html (last accessed Nov. 22, 2015).

A. Importance of the Internet

With the historical and contextual background, it is imperative to ask — why engage in discourse about the Internet? The answer does not lie very far.

Now is the Information Age, the most recent revolution in mankind, following that of the Agricultural and Industrial Ages.[70] This Age is "powered by 'knowledge[,]' and its storage, transmission, and manipulation in vast quantities [is] made possible by new technologies in [various] sectors."[71] Now deemed as an economic resource, knowledge is essential for "business enterprises ... individuals, governments[,] and institutions of all kinds."[72]

Unfortunately, the Philippines has only a fixed broadband penetration rate of 2.2% compared with the worldwide average of 9.1%; thus, resulting in a rank of 110th of 183 countries.[73] There is also only a mobile Internet penetration of 3.8% compared with the worldwide average of 22.1%, resulting in a rank of 111th of 170 countries.[74]

Moreover, only one-third of the country uses the Internet, compared with, for instance, Singapore, where two-thirds of its population has Internet access.[75] The, table below, showing the incidence of using the Internet in Southeast Asia, reveals how the Philippines fares in comparison to its neighbors[76] —

Country	Past 12 months	Past 4 weeks
Singapore	67%	67%
Vietnam	56%	55%
Malaysia	38%	38%
Philippines	33%	30%
Thailand	31%	31%
Indonesia	21%	19%

70. NIRAJ K. GUPTA, THE BUSINESS OF TELECOMMUNICATION: NETWORKING IN THE NEW MILLENIUM 37 (2000 ed.).

71. *Id.*

72. *Id.*

73. Broadband Commission for Digital Development, The State of Broadband 2013: Universalizing Broadband (A Report by the Broadband Comission) 93, *available at* http://www.broadbandcommission.org/documents/bb-annualreport 2013.pdf (last accessed Nov. 22, 2015).

74. *Id.* at 95.

75. *See* Nielsen, *supra* note 69, at 3.

76. *Id.*

However, in terms of whole numbers, around 7.5 million Filipinos constitute the online audience as of March 2013 compared with only six million in March 2012 — showing a growth rate of 25%, the highest among its geographical neighbors.[77] Below is the online audience in Southeast Asia[78] —

Country	Online Audience in March 2012 (in millions)	Online Audience in March 2013 (in millions)	Growth Rate
Vietnam	14	16	14.3%
Indonesia	12	14	16.7%
Malaysia	12	12	0%
Thailand	9	10	11.1%
Philippines	6	7.5	25%
Singapore	3	3	0%

In terms of the percentage of individuals using the Internet, the Philippines ranks 100th of 192 countries worldwide, with an average of 36.2% — comparably higher than the worldwide average of 35.7%.[79] Among developing countries, it ranks 54th of 144 with the percentage of individuals using the Internet at 36.2% — again, comparably higher than the average for developing countries, at 27.5%.[80]

As evidenced by the numbers above, there is a lack of access to the Internet for a majority of Filipinos. However, there is a promising growth rate and a relatively high usage compared to the global average. Thus, there is impetus for the development of Internet technology in a country beginning to use it as its primary medium of communication and information exchange.

A study shows that Filipinos spend a total average time of 21.5 hours a week on the Internet compared with broadcast television at 13.3 hours.[81]

77. ComScore, Southeast Asia Digital Future in Focus 2013: Key Insights and Digital Trends from Southeast Asia (A Slideshare Presentation on Digital Insights and Trends in Southeast Asia) slide 10, *available at* http://www.comscore.com/Insights/Presentations-and-Whitepapers/2013/2013-Southeast-Asia-Digital-Future-in-Focus (last accessed Nov. 22, 2015).

78. *Id.*

79. Broadband Commission for Digital Development, *supra* note 73, at 100-01.

80. *Id.* at 99.

81. Nielsen, *supra* note 69, at 10.

Filipinos listen to the radio for 6.3 hours per week while they spend 3.6 hours reading a newspaper in print form.[82]

The same study also shows that 90% of respondents from the Philippines use the Internet for sending e-mail; 83% for private and public messaging on social networking sites; 81% for wall posts, status updates, and group messages on social networking sites; 79% for reading the news; and 78% for using instant messaging services, at least once a week.[83]

The same study paid notice to the revolution of social media in the country as it transformed the way customers "connect with brands, connect with other consumers to discuss brands, and read other consumers' opinions and experiences related to brands."[84] Social media gave opportunities for "more customer touch points, more methods of content and communication distribution, and more information about customers and their preferences."[85]

Moreover, in a developing country, such as the Philippines, the Internet can pave the way for "more efficient [government services], productive businesses, globally competitive knowledge workers[,] and empowered rural communities."[86]

Senator Ralph G. Recto, recognizing the Internet's importance in increasing productivity and answering the demands for connectivity in a more globalized economy,[87] attempted to pass more progressive laws that deal with the Internet.[88] Senator Recto noted that providing free Internet access in public places allows more efficiency for businesses.[89] Further, it helps various sectors access pertinent information — the labor force regarding employment opportunities; the student population on announcements and other kinds of information; and motorists for traffic reports and alternative routes.[90] Moreover, the Internet provides updated

82. *Id.*

83. *Id.* at 12.

84. *Id.* at 2.

85. *Id.*

86. Emmanuel C. Lallana & Cheryll Ruth R. Soriano, Towards Universal Internet Access in the Philippines (A Paper Written for IdeaCorp and Intel Technology Philippines, Inc.) 1, *available at* https://www.academia.edu/1129644/Towards_Universal_Internet_Access_in_the_Philippines (last accessed Nov. 22, 2015).

87. Ernie Reyes, BILIS KONEK: Recto wants 10 Mbps minimum Internet speed, *available at* http://www.interaksyon.com/article/87796/bilis-konek-recto-wants-10mbps-minimum-internet-speed (last accessed Nov. 22, 2015).

88. *Id.*

89. *Id.*

90. *Id.*

information on weather reports, prices of basic goods, and news on government services.[91]

As to Philippine governance, the Internet can make processes more efficient and transparent, and can help bring information and services to constituents faster.[92]

As to improving the country's commercial sector, the Internet has "extraordinary stability, resiliency, and ever-increasing utility"[93] to demand the global market to spend through e-commerce.[94] Moreover, conventional businesses, even if only small or medium in scale, are able to increase their productivity and global presence by taking advantage of online advertisements and transactions — activities previously limited only to major players.[95] In particular, e-commerce can reduce various kinds of expenses, such as expenses paid for support personnel, infrastructure, paper collateral, and logistics and distribution.[96] In turn, it also helps increase revenue by providing new market segments — in the form of either new products or new buyers — faster time to market, and improved customer satisfaction.[97]

Banking in the country has also become more convenient partly because of the Internet as online connectivity has provided an avenue for real-time services, [98] including account inquiry, fund transfer, account history, statement retrieval, and bills payment.[99]

The Internet also helps develop smaller sectors in the country, such as "teachers, agricultural extension workers, [non-government organizations], community groups, and churches [by empowering them in] their development roles."[100] Specifically, agriculture extension workers can be provided with online training on the latest information and technology relevant to their work.[101] Cooperatives can also be updated with the prices of products they buy and sell.[102] By bringing the Internet directly to rural communities, families can "gain better livelihood opportunities, find new

91. *Id.*

92. Lallana & Soriano, *supra* note 86, at 2.

93. *Id.* at 3.

94. *Id.*

95. *Id.*

96. GUPTA, *supra* note 70, at 411.

97. *Id.* at 411-12.

98. *Id.* at 53.

99. *Id.*

100. Lallana & Soriano, *supra* note 86, at 3.

101. *Id.* at 3-4.

102. *Id.* at 4.

ways of learning for their children, and present new modes of communication with relatives and friends."[103]

Particular projects have also been launched in the agricultural, health, and education sectors.

The Farmers' Information and Technology Services provides "farmers, entrepreneurs[,] and other clients access to information and technology ... [by providing databases in the areas of] technology, experts' profile, farmers' profile, contact firms[,] and publication."[104]

The Agriculture Training Institute under the Department of Agriculture also plans to use digitized modules in training workers to be accessed through the Internet.[105]

The National Telehealth Institute's "Buddyworks" uses information technology to provide health care "for underserved communities and geographically remote areas where health care expertise is largely unavailable."[106] It provides assistance in various fields of medicine, such as dermatology, internal medicine, obstetrics and gynecology, pathology, radiology, and toxicology.[107]

The eSkwela — the information communication technology (ICT)-enhanced education program of the Bureau of Alternative Learning System under the Department of Education — allows out-of-school youth to learn through the use of digitized modules instead of textbooks and workbooks in printed form.[108] These materials can reach more of the youth if they are uploaded in the Internet or installed in computers.[109]

All in all, perhaps the most important reason why the Government must provide nationwide access to the Internet is "innovation,"[110] which, in turn, is the source of economic growth[111] —

> The Internet is a unique technology in that it provides universal access to information and knowledge, affording the 'same powerful capabilities to everyone who has access to the network no matter where they are.' This equality of access is a key reason why the Internet fosters innovation.

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103. *Id.*

104. *Id.* at 24.

105. *Id.* at 30.

106. Lallana & Soriano, *supra* note 86, at 24.

107. *Id.*

108. *Id.* at 30.

109. *Id.*

110. *Id.*

111. *Id.* at 4.

> Anyone with a possible solution can simply connect to the Internet to see if the solution works or might be seen by others as useful.[112]

Other countries have realized the significance of the power of the Internet. For instance, 94% of the population in South Korea have access to high speed Internet,[113] with a variety of three or four Internet providers offering "symmetric fiber access"[114] and with the process of installation taking only one day.[115] In Europe, Internet plans, with speeds as high as one gigabit per second (gbps) are available — on top of unlimited calls and text messages.[116] Worth mentioning is Finland, which, in 2010, made the Internet a legal right of its citizens.[117] Germany followed suit, with its Federal Court of Justice holding that compensation may be given those whose service providers fail to give them access[118] as it considered the Internet "an essential part of life."[119]

The future is anticipated to be no different —

> The South Korean government announced a plan to install [one gbps] of symmetric fiber data access in every home by 2012. Hong Kong, Japan[,] and the Netherlands are heading in the same direction. Australia plans to get [93%] of homes and businesses connected to fiber. In the [United Kingdom], a 300 [mbps] fiber-to-[ ]home service will be offered on a wholesale basis.[120]

At a time when globalization is at its finest hour, the Philippines, through Internet connectivity, should be given the opportunity to compete in the narrowing, though booming, world economy.

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112. Lallana & Soriano, *supra* note 86, at 4-5.

113. Gerad Hoyt, Should Internet Access be a Public Utility?, *available at* http://blogs.imediaconnection.com/blog/2013/01/30/should-internet-access-be-a-public-utility/ (last accessed Nov. 22, 2015).

114. Gustin, *supra* note 1.

115. *Id.*

116. *Id.*

117. Hoyt, *supra* note 113.

118. Steve Cooper, The Internet Is A 21st Century Utility And We Deserve Better, *available at* http://www.forbes.com/sites/stevecooper/2013/01/29/the-internet-is-a-21st-century-utility-and-we-deserve-better/ (last accessed Nov. 22, 2015).

119. *Id.*

120. Susan Crawford, U.S. Internet Users Pay More for Slower Service, *available at* http://www.bloomberg.com/news/2012-12-27/u-s-internet-users-pay-more-for-slower-service.html (last accessed Nov. 22, 2015).

B. Philippine Internet Speed and Cost

Given the Internet's capability to improve the country's development in all aspects, what must now be examined in detail is the state of Internet access in the Philippines. It is unfortunate to discover that, as it stands today, Internet in the Philippines is slow and expensive.

The global average broadband download speed is 18.63 mbps while the global average mobile Internet download speed is 7.99 mbps.[121] The average price of broadband Internet is $5.81 per mbps.[122]

Compare this to the Philippines' broadband download speed, which is at 3.36 mbps, and which costs a whopping $23.53 per mbps.[123] Mobile Internet download speed has an average download speed of 3.83 mbps.[124] In sum, Internet service, locally, is almost six times slower yet four times more expensive than Internet service worldwide.[125]

As to global ranking, the Philippines lags behind — placing 164th out of 192 countries. Hong Kong leads with 82.61 mbps, a speed almost 26 times faster, and costing only $2.80 per mbps.[126] Tabulated below are the top ten countries worldwide with the fastest speeds, vis-à-vis cost per mbps:[127]

Country	Speed in Mbps	Cost per Mbps
Hong Kong	82.61	US$2.80
Singapore	68.08	US$2.69
Romania	55.92	US$0.56
South Korea	53.36	No information
Sweden	47.93	US$3.37
Switzerland	46.64	US$3.87
Lithuania	46.04	US$0.88
Netherlands	44.85	US$2.62
Taiwan	41.91	US$1.60
Macau	41.42	No information

Compared to other Southeast Asian countries, the Philippines comes last, with Singapore ranking first at 68.08 mbps — a speed almost 21 times

121. Ookla, *supra* note 2.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. Ookla, *supra* note 2.

faster.[128] Tabulated below are the countries in Southeast Asia with their corresponding Internet speeds and ranking among 192 countries:[129]

Country	Speed in Mbps	Index Value of 192 Countries	Cost per Mbps
Singapore	68.08	2d	$2.69
Thailand	21.27	39th	$2.36
Vietnam	14.57	56th	$8.68
Malaysia	5.87	122d	$10.20
Brunei Darussalam	5.71	126th	No information
Myanmar	5.50	131st	No information
Cambodia	5.69	127th	No information
Indonesia	4.58	144th	$17.45
Laos	3.64	158th	No information
Philippines	3.36	164th	$23.53

In terms of cities in the country with the highest speeds, only the metropolitan cities are ranked, with speeds ranging from 3.06 to 4.09 mbps.[130] Tabulated below are the Philippine cities with the fastest speeds:[131]

City	Speed in Mbps
Manila	4.09
Quezon	4.05
Makati	3.33
Cebu	3.06

Finally, as to service provider rankings, the highest speed is 5.04 mbps, offered by Eastern Telecom Philippines, Inc.[132] Tabulated below are the top Philippine ISPs with the fastest speeds:[133]

Internet Service Provider	Speed in Mbps
Eastern Telecom Philippines, Inc.	5.04
PLDT	4.22
Sky Cable	3.16
BayanTel	3.11
Globe	2.76

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Ookla, *supra* note 2. As of press time, several Internet service providers offer as high as 50 mbps to its subscribers. *See* PLDT, Power Plus Plans, *supra* note 67.

Smart	1.96
ComClark Network & Technology	1.47
Digitel DSL IP Pool	0.88
DigitelOne	0.83
Liberty Broadcasting Network, Inc.	0.81

C. Current Legal Framework of Internet in the Philippines

To understand why Internet in the country is slow and expensive, the legal backdrop of its regulation must be examined.

The law comprehensively integrating the government's policy on telecommunications came in 1995 when Congress enacted the Public Telecommunications Policy Act.[134] This law covers all public telecommunications entities in the country[135] and subjects them to the administrative regulation of the NTC.[136] The said Act classifies telecommunications services into the following: (1) local exchange operator;[137] (2) inter-exchange carrier;[138] (3) international carrier;[139] and (4) VAS.[140]

Pertinent to the instant discussion is the last form of telecommunication service, the Public Telecommunications Policy Act defines VAS as "an entity which, relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers."[141] VAS providers need not secure a franchise provided they do not put up their own network.[142] Instead, telecommunications entities may offer this kind of service if

> (a) prior approval of the [NTC] is secured to ensure that such VAS offerings are not cross-subsidized from the proceeds of their utility operations;
>
> (b) other providers of VAS are not discriminated against in rates nor denied equitable access to their facilities; and

134. Public Telecommunications Policy Act, § 1.

135. *Id.* § 2.

136. *Id.* § 5.

137. *Id.* § 8.

138. *Id.* § 9.

139. *Id.* § 10.

140. Public Telecommunications Policy Act, § 11.

141. *Id.* § 3, ¶ h.

142. *Id.* § 11.

(c) separate books of accounts are maintained for the VAS.[143]

In the same year, the NTC, as the principal administrator of the Public Telecommunications Policy Act, issued the latter's Implementing Rules and Regulations through its Memorandum Circular (Memo. Circ.) No. 08-09-95.[144]

Under the heading "VAS," the circular reiterates that a non-PTE VAS provider need not secure a franchise from Congress.[145] Moreover, a non-PTE VAS provider "shall not put up its own network"[146] but shall only "use the transmission network, toll[,] or local distribution, of the authorized PTEs."[147] Instead of a franchise, a VAS provider only needs to submit an application to the NTC for registration, which it shall approve.[148] The only requirements are "documents showing, among others, system configuration, mode of operation, method of charging rates, [and a] lease agreement with the PTE[.]"[149] This whole process of registration for VAS providers is merely administrative.[150]

Another circular of the NTC, Memo. Circ. No. 21-11-98, provides that the provision of Internet connection is considered a VAS in that "entities intending to provide [VAS], which include among others, the provision of Internet connection, must first secure a Certificate of Registration [from] the [NTC]."[151]

In 2008, the NTC enumerated the requirements necessary for VAS providers in its circular, Memo. Circ. No. 02-05-2008:

(a) Valid registration from the Securities and Exchange Commission or from the Department of Trade and Industry[,] and [a]rticles of [i]ncorporation[;]

(b) System configuration and mode of operation[;]

(c) List of services to be offered[;]

(d) Facilities lease agreement with duly enfranchised and certificated public telecommunications entity[;] and

143. *Id.*

144. NTC Memo. Circ. No. 08-09-1995, intro.

145. *Id.* Value Added Services (VAS) (a).

146. *Id.* (b).

147. *Id.*

148. *Id.* (d).

149. *Id.*

150. NTC Memo. Circ. No. 08-09-1995, Value Added Services (VAS) (f).

151. NTC Memo. Circ. No. 21-11-1998, ¶ 1.

> (e) Written undertaking that the applicant will not discriminate other VAS providers in terms of rates and service quality for similar facilities leased to them (for duly enfranchised and certificated public telecommunications entity).[152]

Again, it particularly noted the mere requirement of a certificate of registration from the NTC,[153] which shall be valid for a maximum of five years and a minimum of one year.[154] Finally, the same circular provides that such certificates of registration may be renewed.[155]

D. Reasons Why the Current Policy Should Be Changed

For government policy purposes, the impact of classifying Internet service as a VAS is deregulation. Part C (9) of the NTC Memorandum Circular on VAS specifically states that "[t]he rates for [VAS] shall be deregulated."[156] Moreover, the incumbent NTC Commissioner, Gamaliel A. Cordoba said that "[t]his means [both] speed and price are dictated by the market."[157] The Senate's Trade, Commerce, and Entrepreneurship Committee, through its Chairperson, Senator Paolo Benigno A. Aquino IV, echoes the same implication in that "the NTC cannot fully regulate it."[158]

Some of the prefatory clauses of Memo. Circ. No. 05-08-2005 on voice over Internet protocol (VOIP) reflect the Government's deregulation policy on the Internet, to wit —

> WHEREAS, VAS is not strictly a public service offering in the way that voice-to-voice lines are, but is merely supplementary to the basic service[;]
>
> WHEREAS, given that it is not possible to accurately know or predict what other value added services would be available in the future, and

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152. NTC Memo. Circ. No. 02-05-2008, B (6) (a-e).

153. *Id.* B (7).

154. *Id.*

155. *Id.*

156. *Id.* C (9).

157. Ayee Macaraig, 'Make Internet a basic service in PH,' *available at* http://www.rappler.com/nation/59144-senate-hearing-slow-expensive-internet (last accessed Nov. 22, 2015). *See also* Boo Chanco, *NTC hands off slow Internet*, PHIL. STAR, May 7, 2014, *available at* http://www.philstar.com/business/2014/05/07/1320098/ntc-hands-slow-internet (last accessed Nov. 22, 2015); Andreo Calonzo, Senate bill to require faster Internet in PHL, *available at* http://www.gmanetwork.com/news/story/363038/scitech/technology/senate-bill-to-require-faster-internet-in-phl (last accessed Nov. 22, 2015); & Willard Cheng, Why is Philippine Internet so slow?, *available at* http://www.abs-cbnnews.com/focus/05/28/14/why-philippine-internet-so-slow (last accessed Nov. 22, 2015).

158. Macaraig, *supra* note 157.

> consistent with the national interest in encouraging competition and innovation, *services 'ordinarily offered by local exchange and inter-exchange operators and overseas carriers' under* [*R.A. No.*] *7925 must be construed strictly in terms of services ordinarily offered by such operators and carriers at the time the said law was passed*[.][159]

Essentially, the NTC's main stand is that VOIP is considered a VAS since the Public Telecommunications Policy Act must be "construed strictly in terms of services ordinarily offered by such operators and carriers at the time the said law was passed[.]"[160] At the time this law was passed, VOIP was not yet considered an enhanced service beyond that ordinarily provided; therefore, it must remain as a VAS.[161]

Moreover, the Explanatory Memorandum attached to the same circular on VOIP provides this explanation, to wit —

> With the definition of a VAS provider under [R.A. No.] 7925 serving as a guidepost, therefore; and considering that the services ordinarily offered by public telecommunications entities at the time [R.A. No.] 7925 was enacted into law were limited to voice services offered through circuit switched networks; and finally, in the context of the arguments and points raised by the NTC in its explanatory memorandum on VOIP dated [29 March 2005], the NTC hereby defines VAS as '*enhanced services beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers through circuit switched networks*.'[162]

In effect, it provided a restricted definition of VAS to "beyond those ordinarily provided for by local exchange and inter-exchange operators, and overseas carriers through circuit switched networks."[163] Thus, this serves as its justification to maintain the deregulatory policy of the NTC as regards VOIP.

However, worthy of examination is the comparison of the factual milieu in 1995 — when the Public Telecommunications Policy Act was passed — with the factual milieu today.

In November 1995, there were 18 local ISPs.[164] Two years later, in 1997, there were only 100,000 Internet users.[165] In 1998, only one percent of

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159. NTC, Memorandum Circular No. 05-08-2005 [NTC Memo. Circ. No. 05-08-2005], whereas cl. (Aug. 23, 2005) (emphasis supplied).

160. *Id.*

161. *Id.* § 2 (e).

162. *Id.* explan. n. 4 (emphasis supplied).

163. *Id.*

164. TORAL, ET AL., *supra* note 43, at 49.

165. *Id.* at 34. *See also* GUPTA, *supra* note 70, at 83.

Filipino households had Internet access.[166] But almost 20 years later, in March 2013, there were 7.5 million Filipinos making up the online audience.[167] In the fourth quarter of 2013, 18.9% of Filipino households had Internet access.[168]

The Public Telecommunications Policy Act, as enacted in 1995, could not have imagined today — the technological advancements, the public's demand for such, the crucial role the Internet plays in an individual's everyday life, and the effects it has on the country's annual gross domestic product (GDP). The law could not have foreseen that the Internet would not remain a mere supplement to those services ordinarily offered. The law did not consider that, in the future, the Internet could be the service that would be most ordinarily availed of by the public to access information and to communicate. The legal framework must adjust to these palpable and significant changes. It must adjust immediately considering the detriment it causes to the consuming public.

The Public Telecommunications Policy Act was enacted to "dismantle[,] gradually[,] the barriers to entry, replace [G]overnment control on price and income with market instruments, and shift the focus of government's intervention towards ensuring service standards and protection of customers."[169] The main thrust of the law is to modernize the legal framework for telecommunications[170] as this has become necessary due to rapid changes in the industry.[171] One of its declared policies is that "[a] healthy competitive environment shall be fostered, one in which telecommunications carriers are free to make business decisions and to interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates[.]"[172]

Representative Jerome V. Paras, a principal author of the law, said in his sponsorship speech —

> The guiding principle of the [law] is to liberalize the telecommunications industry in order to meet unmet demand. It is the objective of this bill to promote competition in the telecommunications market. This will allow

166. TORAL, ET AL., *supra* note 43, at 34.

167. ComScore, *supra* note 77, slide 10.

168. Broadband Commission for Digital Development, *supra* note 73, at 96.

169. Globe Telecom, Inc. v. National Telecommunications Commission, 435 SCRA 110, 122 (2004) (citing SENATE REC. Vol. III-50, at 810, 9th Cong., 5th Spec. Sess. (Mar. 1, 1995)).

170. *Id.* at 132.

171. *Id.*

172. Public Telecommunications Policy Act, § 4 (f).

> the Philippines to be part of the worldwide information highway. During the recent decade, irreversible forces have [begun] to change the telecommunications environment. Technology has led to the development of new services and has enabled alternative providers to offer those services economically. As [businesses have] come to recognize the importance of telecommunications as a strategic tool, business users have become more sophisticated and more demanding in their request for services. Both technological forces and consumer demand are pushing toward a competitive approach to the provision of services.[173]

It is recognized that innovation is inherent in technology, such as the Internet. Modernization was the moving force behind the enactment of the Public Telecommunications Policy Act and understandably so — barely a year before the law was enacted, the Philippines became connected to the Internet for the first time. Only a small percentage of the public were aware of the existence of the Internet, let alone what it could do and a lesser number could afford it. Only a handful of providers existed and it was difficult to establish a new ISP network considering the capital investment needed for its infrastructure, operation, and maintenance.

However, these circumstances do not exist anymore. Numerous ISPs have been established, granted they are not as strong as the industry's major players. The factual milieu today shows the sheer number of ISPs needs regulation, as opposed to 20 years ago, when there was hardly anything to regulate.

Though innovation is still an acceptable policy, the programs intended to carry it out must match the factual circumstances of present day society. Thus, it is vital to advocate modernization by welcoming progressive technology.

III. THE INTERNET IS A PUBLIC UTILITY — FOOTING THE BILL

A. What Makes a Public Utility

1. Public Use

In 1913, the statute first providing for the definition of a public utility highlighted that it must be for public use.[174] This has been retained despite the amendments to the law in 1916[175] and 1917.[176] In 1920, one of the first

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173. *Globe Telecom, Inc.*, 435 SCRA at 122 (citing SENATE REC. Vol. III-50, at 810).

174. Act No. 2307, § 14.

175. *See* An Act Amending Certain Sections of Act Number Twenty-Three Hundred and Seven: "An Act Creating a Board of Public Utility Commissioners and Prescribing Its Duties and Powers, and for Other Purposes," and for Other Purposes, Act No. 2362, § 10 (1916).

cases determining what constituted a public utility had occasion to define the "public use."[177] *Tan Piaco* enumerates the following requisites:

(1) "The essential feature of the public use is that it is not confined to privileged [individuals] but is open to the indefinite public."[178]

(2) "In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it."[179]

(3) "There must be, in general, a right[,] which the law compels the owner to give to the general public."[180]

(4) "The true criterion by which to judge the character of the use is whether the public may enjoy it by right or only by permission."[181]

In sum, public utilities must be open to the indefinite public, which must have the right to enjoy it.[182]

Iloilo Ice and Cold Storage Co. v. Public Utility Board,[183] in 1923, again defined the phrase "public use" in that the public may demand its service by right.[184] It construed the phrase using the following points:

(1) "[T]he public[,] generally, or that part of it[,] which has been served and which has accepted the service, has the right to demand that that service shall be conducted, so long as it is continued, with reasonable efficiency under reasonable charges[;]"[185] and

176. *See* An Act to Amend Act Numbered Twenty-Three Hundred and Seven, as Amended by Act Numbered Twenty-Three Hundred and Sixty-Two, Abolishing the Board of Public Utility Commissioners as at Presently Constituted and Creating in Lieu Thereof a Public Utility Commission, and for Other Purposes, Act No. 2694, as Amended, § 9 (1917).

177. *Tan Piaco*, 40 Phil. at 854.

178. *Id.* at 856.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Iloilo Ice and Cold Storage Co. v. Public Utility Board, 44 Phil. 551 (1922).

184. *Id.* at 563.

185. *Id.* at 562.

(2) "The use is public if all persons have the right to the use under the same circumstances."[186]

In the same year, the statute defining public utilities underwent another amendment but retained the phrases "public utility" and "public use."[187]

2. Shift to Public Service and For Hire or Compensation; Retention of Criterion of Public Use

However, in 1926, a new law was enacted, which shifted to the use of the phrases "public service" and "for hire or compensation."[188] A year later, in *Santos*, the Supreme Court noted the shift in the wording of the law.[189] Here, the Supreme Court ruled that, under the circumstances, the business, which supplied water to ships, would fall under the wording of both laws.[190] In determining that it was a "public utility" or "public service," the Supreme Court said that it sold its goods to "practically every person who desired to purchase it."[191] Despite the change in the wording of the law, the Supreme Court still used the same criterion applied to the phrase "public use."[192]

Again, in 1932, in *Luzon Brokerage Co. v. Public Service Commission*,[193] the Supreme Court noted the shift in the wording of the law to "public service."[194] However, the determining factor was still "public use" in that "[t]he idea of public use is implicit in the term 'public service[.]' A public service is a service for public use."[195] In holding that the trucks involved were not public utilities, the Supreme Court said that the truck operator did not hold itself out indiscriminately to the public.[196] Commonwealth Act (C.A.) No. 146, otherwise known as the Public Service Act, highlighted the

186. *Id.*

187. An Act Creating a Public Utility Commission and Prescribing Its Duties and Powers, and for Other Purposes, Act No. 3108, § 13 (1923).

188. An Act to Amend Certain Provisions of Act Numbered Thirty-One Hundred and Eight, as Amended, Entitled "An Act Creating a Public Utility Commission and Prescribing Its Duties and Powers, and for Other Purposes," Act No. 3316, § 6 (1926).

189. *Santos*, 50 Phil. at 723-24.

190. *Id.* at 724.

191. *Id.*

192. *Id.*

193. Luzon Brokerage Co. v. Public Service Commission, 57 Phil. 536, 541 (1932).

194. *Id.* at 548.

195. *Id.*

196. *Id.* at 541.

retention of the meaning of a public service or a public utility when, in defining its coverage, it used the phrase "public service."[197]

Three years later, in 1939, C.A. No. 454 amended several provisions of the Public Service Act and permanently removed the phrase "public utility."[198] As it stands now, the Public Service Act, as eventually amended again around 20 years later in 1960 by R.A. No. 2677, defines "public service" with the qualification "for hire or compensation."[199]

In 1995, *Bagatsing v. Committee on Privatization*[200] tackled if Petron, which operated an oil refinery, was a public utility. In holding that it was not, it highlighted a combination of the phrases "public utility" and "public service" and said that a public utility under the Constitution and the Public Service Act is "one organized 'for hire or compensation' to serve the public, which is given the right to demand its service."[201]

3. Philippine Jurisprudential Definition of a Public Utility

In 1997, in *National Power Corporation v. Court of Appeals*[202] and 10 years later, in *Metropolitan Cebu Water District v. Adala*,[203] jurisprudence finally defined[204] public utility. It is "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone[,] or telegraph service. The term implies public use and service."[205]

197. An Act to Reorganize the Public Service Commission, Prescribe its Powers and Duties, Define and Regulate Public Services, Provide and Fix the Rates and Quota of Expenses to be Paid by the Same, and for Other Purposes [Public Service Act], Commonwealth Act No. 146, ch. II, § 14 (1936).

198. An Act to Amend Various Sections of Commonwealth Act Numbered One Hundred and Forty-Six, Otherwise Known as the Public Service Act, Commonwealth Act No. 454, § 1 (1939).

199. An Act to Amend Sections Two, Three, Four, Ten, Thirteen, and Fourteen of Commonwealth Act Numbered One Hundred Forty-Six, as Amended, Otherwise Known as the Public Service Act, and for Other Purposes, Republic Act No. 2677, § 1 (1960).

200. Bagatsing v. Committee on Privatization, 246 SCRA 334 (1995).

201. *Id.* at 358.

202. *National Power Corporation*, 279 SCRA at 523.

203. Metropolitan Cebu Water District (MCWD) v. Adala, 526 SCRA 465 (2007).

204. This was a definition provided by the Supreme Court. *See* Albano v. Reyes, 175 SCRA 264, 270, n. 1 (1989).

205. *National Power Corporation*, 279 SCRA at 523 & *Metropolitan Cebu Water District (MCWD)*, 526 SCRA at 481.

4. 80 Years Later

In 2003, the Supreme Court was faced with the question of whether a shipyard was a utility.[206] It held that it was not because of its very nature — a shipyard being a place where ships are built and repaired.[207] The "principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public[,] as such[,] which has a legal right to demand and receive its services or commodities."[208]

In defining what a public utility is, the Supreme Court referred to *Iloilo Ice and Cold Storage Co.*, a case decided in 1923, 80 years prior, and quoted its discussion on "public use" — emphasizing that "the true criterion by which to judge the character of the use is whether the public may enjoy it by right or only by permission."[209]

B. Internet Access as a Human Right

In 2011, the international community enlightened the Philippines as to whether access to the Internet is a right, which every human being should enjoy, when the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion, Frank La Rue, submitted his report to the United Nations Human Rights Council (La Rue Report).[210]

The La Rue Report first discusses various general principles on the right to freedom of opinion and expression and the Internet.[211] Then, it deals with restriction of content on the Internet,[212] more specifically: arbitrary blocking or filtering of content;[213] criminalization of legitimate expression;[214] imposition of intermediary liability;[215] disconnecting users from Internet access;[216] cyber-attacks;[217] and inadequate protection of the right to privacy

206. JG Summit Holdings, Inc. v. Court of Appeals, 412 SCRA 10, 14 (2003).

207. *Id.*

208. *Id.* at 21.

209. *Id.*

210. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion, *Report of the Special Rapporteur on the Promotion and the Protection of the Right to Freedom of Opinion and Expression*, ¶ 1, 17th Session of the Human Rights Council, U.N. doc. A/HRC/17/27 (May 16, 2011) (by Frank La Rue) [hereinafter La Rue Report].

211. *Id.* ¶¶ 19-27.

212. *Id.* ¶¶ 28-59.

213. *Id.* ¶¶ 29-32.

214. *Id.* ¶¶ 33-37.

215. *Id.* ¶¶ 38-48.

216. La Rue Report, *supra* note 210, ¶¶ 49-50.

and data protection.[218] Lastly, it tackles the topic pertinent to this Note — Internet access and the necessary infrastructure.[219]

The La Rue Report says that without concrete means to access the Internet,[220] "the Internet will become a technological tool that is accessible only to a certain elite while perpetrating the 'digital divide.'"[221]

The digital divide is

> the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all. ... In addition, digital divides also exist along wealth, gender, geographical[,] and social lines within States. Indeed, with wealth being one of the significant factors in determining who can access [ICTs], Internet access is likely to be concentrated among socio-economic elites, particularly in countries where Internet penetration is low. In addition, people in rural areas are often confronted with obstacles to Internet access, such as lack of technological availability, slower Internet connection, and/or higher costs. Furthermore, even where Internet connection is available, disadvantaged groups, such as persons with disabilities and persons belonging to minority groups, often face barriers [in] accessing the Internet in a way that is meaningful, relevant[,] and useful to them in their daily lives.[222]

The La Rue Report says that the Internet can be an effective tool in economic development and the enjoyment of a gamut of human rights.[223] Such rights include "free speech and communication, receipt of information, civic involvement, education, and employment."[224]

For instance, it assists individuals and groups to:

(1) "Obtain information, assert their rights, and participate in public debates concerning social, economic[,] and political changes to improve their situation[;]"[225] and

217. *Id.* ¶¶ 51–52.

218. *Id.* ¶¶ 53–59.

219. *Id.* ¶¶ 60–66.

220. *Id.* ¶ 60.

221. *Id.*

222. La Rue Report, *supra* note 210, ¶ 61.

223. *Id.* ¶ 62.

224. Andrew T. Hopkins, *The Right to be Online: Europe's Recognition of Due Process and Proportionality Requirements in Cases of Individual Internet Disconnections*, 17 COLUM. J. EUR. L. 557, 578 (2011).

225. La Rue Report, *supra* note 210, ¶ 62.

(2) Gain "access to a vast and expanding source of knowledge, supplements or transforms traditional forms of schooling, and makes, through 'open access' initiatives, previously unaffordable scholarly research available to people in developing States."[226]

The La Rue Report also mentions the several initiatives on the international and national levels that have made their way through, in order to grant Internet access to those who need it.[227]

There are several projects that have been launched to address this concern. First, there is the "Target 8.F of the Millennium Development Goals[, which] calls upon States, 'in consultation with the private sector, [to] make available the benefits of new technologies, especially information and communications.'"[228]

Second, there is the 2003 Plan of Action adopted at the Geneva World Summit on the Information Society,[229] which "outlines specific goals and targets[:] to 'build an inclusive Information Society; to put the potential of knowledge and [ICTs] at the service of development; [and] to promote the use of information and knowledge for the achievement of internationally agreed development goals.'"[230]

Third, there is the Connect the World project by the International Telecommunication Union.[231] Launched in 2005, it implements the 2003 Plan of Action.[232]

Last, there is the One Laptop Per Child project supported by the United Nations Development Programme,[233] which "distributes affordable laptops that are specifically customized for the learning environment of children."[234] At the time the La Rue Report was released, this project has reached 480,000 children in Uruguay, which accounts for almost all those enrolled in

226. *Id.*

227. *Id.* ¶ 63.

228. *Id.*

229. *Id.*

230. *Id.* (citing World Summit on the Information Society, *Plan of Action*, Dec. 10-12, 2003, § A (1), U.N. Doc. WSIS-03/GENEVA/DOC/5-E (Dec. 12, 2003)).

231. La Rue Report, *supra* note 210, ¶ 63.

232. *Id.*

233. *Id.* ¶ 63.

234. *Id.*

primary school. [235] The same project benefited 56,000 children in Rwanda.[236]

The La Rue Report also lists down certain States, which have specifically taken steps either through projects by the Executive Department or laws by the Legislative Department.[237]

In India, "[c]ommon [s]ervice [centers], or public 'e-Kiosks[,]' have been established by the [Indian] [g]overnment in collaboration with the private sector as part of [its] National E-Governance Plan of 2006."[238] Brazil's government "has launched a 'computers for all' [program,] which offers subsidies for purchasing computers."[239] In 2000, Estonia passed a law declaring Internet access as a human right.[240] France declared the same as a fundamental right in 2009,[241] as did Costa Rica.[242] Lastly, Finland "passed a decree in 2009 stating that every Internet connection needs to have a speed of at least one [mbps] (broadband level)."[243]

Finally, the La Rue Report highlights the positive obligation of States to promote access to the Internet in that they should "adopt effective and concrete policies ... to make the Internet widely available, accessible, and affordable to all."[244]

States may be able to enforce some regulation policies like "pricing regimes and universal service requirements, providing direct support for access[,] such as through community ICT centers, promoting awareness about Internet use, and establishing special measures to ensure access for disadvantaged populations."[245] Moreover, this positive obligation to grant the right of access implies that "States invest in the infrastructure needed for connection in poor areas and to establish competition policies that lower prices."[246] Other policies include "the build-up of high-speed connectivity infrastructure, establishment and maintenance of community telecenters,

235. *Id.*

236. *Id.*

237. La Rue Report, *supra* note 210, ¶ 64.

238. *Id.*

239. *Id.*

240. *Id.* ¶ 65.

241. *Id.*

242. *Id.*

243. La Rue Report, *supra* note 210, ¶ 65.

244. *Id.* ¶ 85.

245. Molly K. Land, *Toward an International Law of the Internet*, 54 HARV. INT'L L.J. 393, 421 (2013).

246. *Id.* at 421.

training of children and adults in information literacy, [and] subsidization of computers and broadband [I]nternet access[.]"[247]

It is not only public actors in the international arena who have taken initiatives to the call of the Special Rapporteur La Rue.

A Human Right, a private international organization, set up an online platform to pursue projects in order to carry out its stand — that the Internet is a human right.[248] Found below is why its members think it should be, and what they think Internet access can bring to people:

(1) Economic Opportunity. A Human Right argues that "[i]n developing countries a 10% increase in Internet access adds 1.28–2.5% to the GDP. Globally, Internet access added 1–1.4% to the employment growth rate."[249]

(2) Democracy. A Human Right argues that the "[I]nternet is its own digital civilization that allows for camaraderie to emerge across borders, nationalities, genders, and belief systems. Those with access have the ability to collaborate, learn, empathize, and participate."[250]

(3) Education. A Human Right argues, "[g]ive a man a fish [and] feed him for a day, teach him how to fish and feed him for a life time [—] but give a man the Internet, and he can teach himself how to fish, and anything else he wants to know."[251]

(4) Disaster Relief. A Human Right argues that without the Internet, "efforts are duplicated, resources are wasted, and health and safety are jeopardized. At best, you lose efficiency; at worst, you lose lives."[252]

(5) Healthcare. A Human Right argues that "[t]elemedicine technologies are revolutionizing the way the world's poor are accessing healthcare. With access, the world's best doctors can diagnose diseases from thousands of miles away."[253]

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247. Ivar A. Hartmann, *A Right to Free Internet? On Internet Access and Social Rights*, 13 J. HIGH TECH. L. 297, 387 (2013).

248. A Human Right, What are they missing?, *available at* http://ahumanright.org/ (last accessed Nov. 22, 2015).

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

Furthermore, the Internet serves as a platform to a myriad of human rights. "Whether in health, education, retail, payments, public services[,] or improved productivity,"[254] the impact of mobile Internet is universally evident. A study conducted by McKinsey and Company in 2013 "estimates the annual economic benefit of the mobile Internet as between [$]3.7 trillion to $10.8 trillion globally by 2025."[255]

Rather noteworthy is the finding that one of the effects of providing twice the broadband speed for a country's economy includes an increase in the GDP by 0.3% on average.[256]

The Internet pervades various aspects of a country, and can help its development in a multitude of ways. Such dimensions include "health care, education, energy and the environment, government performance, civic engagement, and public safety."[257] More specifically, and pertinent to the Philippines, it can help health information technology, online learning digital literacy and training, support for broadband in small and medium enterprises (SMEs), e-governance, cybersecurity, copyright of public digital media, public safety communications, and emergency alert systems, among others.[258]

In the U.S., between 1998 and 2002, communities where Internet was available dramatically grew in terms of employment and commerce.[259] A study says every increase by one percent in broadband penetration in a state in the U.S. corresponds to an increase of 0.2-0.3% in employment annually.[260] The same study also projected an increase of about 300,000 jobs for the the whole U.S. private non-farm economy.[261] Through the Internet,

254. Broadband Commission for Digital Development, *supra* note 73, at 16.

255. *Id.*

256. *Id.* at 28.

257. Kruger & Gilroy, *supra* note 57, at 12.

258. *Id.*

259. *Id.* at 8 (citing Sharon E. Gillet, et al., Measuring Broadband's Economic Impact (A Report Prepared for the Economic Development Administration of the U.S. Department of Commerce by the National Technical Assistance, Training, Research, and Evaluation Project) 4, *available at* http://cfp.mit.edu/publications/CFP_Papers/Measuring_bb_econ_impact-final.pdf (last accessed Nov. 22, 2015)).

260. *Id.* (citing Robert Crandall, et al., The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data (A Study by the Brookings Institution) 2, *available at* http://www.brookings.edu/~/media/research/files/papers/2007/6/labor-crandall/06labor_crandall.pdf (last accessed Nov. 22, 2015)).

261. *Id.*

doctors can monitor patients in rural villages,[262] farmers can access weather information and sales prices,[263] entrepreneurs can start businesses and access banking services,[264] and children can reach educational content even outside the classroom.[265]

The Internet generates economic and social benefits "either directly by investment in infrastructure deployment or through the use of the infrastructure to start new business activities and improve efficiency and productivity." [266] Hence, "Internet infrastructure contributes towards economic development by facilitating access to information, [ICT] literacy, news, current events[,] and links to remote markets."[267]

Particularly for SMEs, the Internet gives them a wider reach in buying and selling goods and services, further integrating them not only into their country's economies but into the global economy as well.[268] The Internet gives them immediate access to both customers and suppliers locally and globally.[269] Statistically speaking, SMEs, which heavily use the Internet, are almost 50% more likely to sell their goods outside of their immediate region and 63% more likely to buy their products and services farther from their own localities than medium or light Internet users.[270]

These various ways are additional ways through which the Internet aids in the growth of the following aspects of a country:

(1) Entrepreneurship and Employment:

   (a) Opening of regional and global markets to local entrepreneurs;[271] and

   (b) Generation of "more revenue, lower costs, and higher productivity, and jobs."[272]

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262. Broadband Commission for Digital Development, *supra* note 73, at 18.

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.* at 27.

267. *Id.*

268. Paul Zwillenberg, et al., The Connected World: Greasing the Wheels of the Internet Economy (A Report by The Boston Consulting Group for the Internet Corporation for Assigned Names and Numbers) 19, *available at* https://www.icann.org/en/system/files/files/bcg-internet-economy-27jan14-en.pdf (last accessed Nov. 22, 2015).

269. *Id.*

270. *Id.* at 19-20.

271. Broadband Commission for Digital Development, *supra* note 73, at 27.

(2) Education:

(a) Cheaper smartphones and tablets;[273] and

(b) Proliferation of open education resources.[274]

(3) Health:

(a) Medical records access;[275]

(b) Remote monitoring and diagnosis;[276] and

(c) Preventive care.[277]

(4) Agriculture:

(a) Improvement of access to financial services and agricultural information;[278] and

(b) Promotion of supply chain efficiencies.[279]

(5) Financial Inclusion

(a) Access to banking services which are not conventionally unavailable to majority of the population.[280]

(6) Government Services

(a) Updating of constituents by local and national government with news and events;[281] and

(b) Offering immediate and interactive access to services, such as licenses and voting.[282]

Note that for entrepreneurship and employment, "SMEs[,] which spend more than 30% of their budget on [Internet] technologies[,] grow their revenue nine times [faster with expenses amounting to] less than 10%."[283] Also, for health, "[m]obile health could save developed countries [$]400

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. Broadband Commission for Digital Development, *supra* note 73, at 27.

278. *Id.* at 28.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. Broadband Commission for Digital Development, *supra* note 73, at 27.

billion in 2017 and save one million lives over five years in [s]ub-[s]aharan Africa."[284] As for financial inclusion, "[two and a half] billion individuals are unbanked worldwide [—] [there is, therefore] an opportunity for many nations to achieve financial inclusion of the poor."[285]

That the Internet is able to permeate through various realms, such as employment, entrepreneurship, education, health, agriculture, financial inclusion, and government services, reflects that it is of public consequence.

C. Public Use of the Internet in the Philippines

The Internet is of use to the Philippine public. Even the Government and the country's private sectors have established their online presence to reach those who have access to it.

1. Government

a. Official Gazette

Being the official journal of the Republic of the Philippines — publishing Executive Issuances, Republic Acts, and other government documents — the Official Gazette[286] went online in 2010, after merely being in printed form since 1902.[287] The Official Gazette webpage is updated regularly with "speeches, reports, statements, press releases, and documents from the Office of the President and other departments."[288] The Government is required to publish all laws before they take effect pursuant to the Civil Code.[289] Hence, by taking the Official Gazette online, the Government has impliedly acknowledged that it may reach the public through the Internet. Aside from the Official Gazette, laws may also be published in newspapers of general circulation — these platforms, however, have also gone digital.[290]

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284. *Id.*

285. *Id.* at 28.

286. Official Gazette, About the Official Gazette: About This Website, *available at* http://www.gov.ph/official-gazette/ (last accessed Nov. 22, 2015).

287. *Id.*

288. *Id.*

289. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE] Republic Act No. 386, art. 2 (1950).

290. Office of the President, Providing for the Publication of Laws Either in the Official Gazette or in a Newspaper of General Circulation in the Philippines as a Requirement for their Effectivity, Executive Order No. 200 [E.O. No. 200] (June 18, 1987).

b. Government Agencies

Most, if not all, government agencies have established their online presence — not only setting up official webpages but also utilizing social media platforms such as Facebook and Twitter.

For instance, the Office of the President's website features news, project updates, electronic copies of presidential speeches and press statements, and video, photo, and podcast galleries.[291] The webpage itself leads to other social media links[292] such as Facebook[293] and Twitter.[294] It also has a panel for a sign-up form where individuals can register and receive updates from the Office of the President through e-mail in the form of a digital newsletter.[295]

The Office of the Vice President's website has essentially the same features of most Government agencies, such as news and project updates.[296] Additionally, it has its own search engine and portal to other Government agencies' webpages.[297] It also has its own Facebook[298] and Twitter pages.[299]

The departments of the Executive Branch also have their own websites. Most notable are the webpages of the Department of Agriculture, which posts updates of both local and international news,[300] and of the Department

291. Office of the President, Office of the President of the Philippines: Tanggapan ng Pangulo ng Pilipinas, *available at* http://www.president.gov.ph/ (last accessed Nov 22, 2015) [hereinafter OP, Tanggapan ng Pangulo ng Pilipinas].

292. *Id.*

293. *See* Facebook, Noynoy Aquino (P-Noy), *available at* https://www.facebook.com/presidentnoy (last accessed Nov. 22, 2015).

294. *See* Twitter, Noynoy Aquino, *available at* https://twitter.com/noynoyaquino (last accessed Nov. 22, 2015).

295. OP, Tanggapan ng Pangulo ng Pilipinas, *supra* note 291.

296. *See* Office of the Vice President, Republic of the Philippines: Office of the Vice President Home, *available at* http://www.ovp.gov.ph/ (last accessed Nov. 22, 2015).

297. *Id.*

298. *See* Facebook, Vice President Jejomar Binay, *available at* https://www.facebook.com/pages/Vice-President-Jejomar-Binay/116166918418343 (last accessed Nov. 22, 2015).

299. *See* Twitter, Jejomar C. Binay, *available at* https://twitter.com/VPJojoBinay (last accessed Nov. 22, 2015).

300. *See* Department of Agrarian Reform, Republic of the Philippines Department of Agrarian Reform (Kagawaran ng Repormang Pansakahan) Home, *available at* http://www.dar.gov.ph/ (last accessed Nov. 22, 2015).

of Energy, which updates weekly oil monitor reports.[301] Rather informative is the website of the Department of Social Welfare and Development — not only does it contain news on its programs and Twitter[302] and Facebook[303] links, it also contains updates regarding disaster relief efforts and various links to their partners.[304] Worthy of a visit are those with aesthetically appealing interface and straight-to-the-point information. The webpages of the Department of Budget and Management[305] and of the Department of Tourism[306] are examples of Government webpages, which contain upfront information and aesthetically appealing interfaces. The latter is especially engaging with its "It's More Fun in the Philippines" promotion.[307]

The Legislative Branch, composed of the Senate and the House of Representatives, also has its own online presence through their official webpages.[308] Notable features are the Legislative Information System, where laws, bills, legislative history, the Committee Meetings Calendar Panel, and the Congress Online Poll may be accessed.[309] The Senate President and the

301. *See* Department of Energy, Republic of the Philippines Department of Energy (Kagawaran ng Enerhiya) Home, *available at* https://www.doe.gov.ph/ (last accessed Nov. 22, 2015).

302. *See* Twitter, DSWD, *available at* https://twitter.com/dswdserves (last accessed Nov. 22, 2015).

303. *See* Facebook, Department of Social Welfare and Development, *available at* https://www.facebook.com/dswdserves?sk=wall (last accessed Nov. 22, 2015).

304. *See* Department of Social Welfare and Development, Republic of the Philippines Department of Social Welfare and Development Home, *available at* http://www.dswd.gov.ph/ (last accessed Nov. 22, 2015).

305. *See* Department of Budget and Management, Republic of the Philippines: Department of Budget and Management Home, *available at* http://www.dbm.gov.ph/ (last accessed Nov. 22, 2015).

306. *See* Department of Tourism (DOT), Department of Tourism Main Portal, *available at* http://www.tourism.gov.ph/pages/default.aspx (last accessed Nov. 22, 2015).

307. *See* DOT, It's More Fun in the Philippines, *available at* http://itsmorefuninthephilippines.com/ (last accessed Nov. 22, 2015).

308. *See* Senate of the Philippines, Senate of the Philippines 16th Congress Home, *available at* http://www.senate.gov.ph/ (last accessed Nov. 22, 2015) & House of Representatives of the Philippines, Republic of the Philippines House of Representatives 16th Congress Home, *available at* http://www.congress.gov.ph/ (last accessed Nov. 22, 2015).

309. *See* Senate of the Philippines, Senate of the Philippines 16th Congress Bills, *available at* http://www.senate.gov.ph/lis/leg_sys.aspx (last accessed Nov. 22, 2015) & House of Representatives of the Philippines, Republic of the Philippines House of Representatives 16th Congress Legislative Calendar, *available at* http://www.congress.gov.ph/legisinfo/ (last accessed Nov. 22, 2015).

Senate Majority Floor Leader, among other senators, have their respective Twitter accounts.[310]

Finally, the Judicial Branch has also established its online presence. The webpage of the Supreme Court of the Philippines contains an updated panel of its Twitter posts, which is managed by its Public Information Office.[311] It also has links to digital copies of recent and vintage jurisprudence.[312] More importantly, it provides updates on pertinent events involving the Judicial Branch.[313] The webpage provides access to its Public Information Panel, which includes links to news articles, annual reports, digital copies of its official publication, directory, frequently asked questions, call for bids and their corresponding bids and awards committees, and transparency and accountability features.[314]

c. Government personalities

A number of Government personalities are active users, whether managed personally or by their staff, of social media platforms, particularly Facebook and Twitter.[315]

Senator Miriam P. Defensor-Santiago was dubbed as "the most active," with the most number of posts and the most number of followers at 1.3 million on Facebook and 641,000 on Twitter.[316] President Benigno Simeon C. Aquino III's official Twitter and Facebook accounts however, albeit managed by social media administrators,[317] have more followers, with 3.7 million on Facebook and 1.97 million on Twitter.[318] Vice President Jejomar C. Binay, Sr. has 159,000 followers on Facebook and 81,000 on Twitter.[319]

310. *See* Presidential Communications Operations Office, Senate of the Philippines, *available at* http://www.pcoo.gov.ph/dir-senate.htm (last accessed Nov. 22, 2015). The directory contains the contact information of each Senator. Details include the address of each Senator's Office, official contact numbers, own webpage, and other social media accounts. *Id.*

311. *See, e.g.*, Twitter, SC PIO (Official), *available at* https://twitter.com/SCPh_PIO (last accessed Nov. 22, 2015).

312. *Id.*

313. *Id.*

314. *See* Supreme Court of the Philippines, Supreme Court of the Philippines Home, *available at* http://sc.judiciary.gov.ph/ (last accessed Nov. 22, 2015).

315. Mary Rose A. Hogaza, *Aquino, Santiago most followed in social media*, MANILA BULL., Mar. 12, 2014, *available at* http://www.mb.com.ph/aquino-santiago-most-followed-in-social-media/ (last accessed Nov. 22, 2015).

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

Senator Pilar Juliana S. Cayetano has 230,000 followers on Twitter[320] while Senator Francis Joseph G. Escudero has 175,000 followers on Twitter.[321] Of note is the Twitter account of Senator Juan Edgardo M. Angara, which has 36,600 followers,[322] and is managed personally by the Senator.[323]

Other Senators personally use their accounts, yet they have social media administrators who handle them,[324] such as Senators Joseph Victor G. Ejercito, Grace S. Poe-Llamanzares, and Cynthia A. Villar.[325] Some Senators, like Aquilino Q. Pimentel III[326] and Alan Peter S. Cayetano,[327] use two sets of accounts — one for personal and private use and another for public consumption, the latter being handled by his staff.[328]

d. Election Campaigns

During elections, candidates take advantage of webpages, Facebook pages, and Twitter accounts to reach a wider audience.[329] Even President Aquino employed social media as a strategy in his campaign in light of the limited legal campaign expense restriction and campaign time.[330] The operations head of President Aquino's team said that the team focused on Facebook and Twitter to gain supporters nationwide at a minimal cost.[331] Moreover, the webpages engaged users "by posting questions, allowing the followers to put up videos of [then Senator] Aquino they took themselves, and updating them about the campaign's progress."[332] It also gave them the opportunity

320. *Id.*

321. Hogaza, *supra* note 315.

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. Hogaza, *supra* note 315.

328. *Id.*

329. The Author could not access examples of online campaign pages for past elections because of existing regulations in relation to taking down campaign materials after a certain time. The Author implores the reader to take cognizance of the use of webpages and social media platforms, such as Facebook and Twitter, by political candidates during elections. *See* RAUL PERTIERRA, THE NEW MEDIA, SOCIETY & POLITICS IN THE PHILIPPINES 20-29 (2012).

330. Jon Russell, Social media's key role in the Aquino Philippines presidential campaign, *available at* http://asiancorrespondent.com/41473/social-medias-key-role-in-the-aquino-philippines-presidential-campaign/ (last accessed Nov. 22, 2015).

331. *Id.*

332. *Id.*

"to break down barriers and provide [them with] a platform [where they can] engage with the public on a scale that has never been possible before."[333] Finally, "social media can equip politicians ... with the tools to reach out, gather and answer questions, canvass opinion, and provide the public with a new level of access to information[.]"[334]

That Government offices have successfully tried and reached the public through the Internet shows that the Government itself believes that a majority, if not all, of the public are online.

2. News

a. In General

Popular newspaper broadsheets, such as the Philippine Star, the Philippine Daily Inquirer, and the Manila Bulletin, have established their own webpages[335] and Twitter accounts[336] — opting to publish their news articles online alongside the hard copies of the same. Their webpages all feature breaking news ticker panels, search engines, and menus classified according to news categories — such as headlines, opinions, and lifestyle.[337] Broadsheets are not the only publications that have established their online presence as tabloid newspapers, such as Abante,[338] Remate,[339] and Tempo,[340] have their own webpages as well.

ABS-CBN, GMA, and TV5 — all of which used to broadcast news exclusively on radio and television — established their presence with their

333. *Id.*

334. *Id.*

335. *See* Philippine Star, Home, *available at* http://www.philstar.com/ (last accessed Nov. 22, 2015); Philippine Daily Inquirer, Home, *available at* http://www.inquirer.net/ (last accessed Nov. 22, 2015); & Manila Bulletin, Home, *available at* http://www.mb.com.ph/ (last accessed Nov. 22, 2015).

336. *See* Twitter, The Philippine Star, *available at* https://twitter.com/PhilippineStar (last accessed Nov. 22, 2015); Twitter, Phil. Daily Inquirer, *available at* https://twitter.com/Team_Inquirer (last accessed Nov. 22, 2015); & Twitter, Manila Bulletin News, *available at* https://twitter.com/manila_bulletin (last accessed Nov. 22, 2015).

337. Philippine Star, *supra* note 335; Philippine Daily Inquirer, *supra* note 335; & Manila Bulletin, *supra* note 335.

338. *See* Abante, Abante Online Home, *available at* http://www.abante.com.ph/ (last accessed Nov. 22, 2015).

339. *See* Remate, Remate Ang Diaryo ng Masa, *available at* http://www.remate.ph/ (last accessed Nov. 22, 2015).

340. *See* Tempo, Tempo News in a Flash Home *available at* http://www.tempo.com.ph/ (last accessed Nov. 22, 2015).

own webpages[341] and Twitter accounts.[342] Leading radio amplitude modulation (AM) stations, such as DZMM and DZBB — themselves, the AM radio counterparts of ABS-CBN and GMA, respectively — also established their own webpages and social media accounts.[343] It is interesting how one views the live streaming broadcast of the news merely through Internet access.[344] Even the television and radio broadcasts of these networks always refer to their websites, Facebook accounts, and Twitter accounts for feedback on and inputs of the public's own reports and opinions.

That these forms of media have established their presence online signifies their acknowledgement that their audience — previously accessing them only through print, television, and radio — now spend a significant amount of time online. The supplemental migration of these outfits to the Internet shows that they deem it important to follow their audience through another and a more powerful medium.

b. Traffic Reports

The Metro Manila Development Authority (MMDA) has a webpage[345] and a Twitter account[346] to reach motor vehicle users. The MMDA also collaborated with TV5 for a technologically savvy platform where traffic

341. *See* ABS-CBN News, Home, *available at* http://www.abs-cbnnews.com/ (last accessed Nov. 22, 2015); GMA News Online, Home, *available at* http://www.gmanetwork.com/news/archives/source/philippinenews (last accessed Nov. 22, 2015); & InterAksyon, Home, *available at* http://www.interaksyon.com/ (last accessed Nov. 22, 2015).

342. *See* Twitter, ABS-CBN News, *available at* https://twitter.com/ABSCBNNews (last accessed Nov. 22, 2015); Twitter, GMA News, *available at* https://twitter.com/gmanews (last accessed Nov. 22, 2015); & Twitter, News5 Aksyon, *available at* https://twitter.com/News5AKSYON (last accessed Nov. 22, 2015).

343. *See* DZMM.com.ph, Home, *available at* http://dzmm.abs-cbnnews.com/ (last accessed Nov. 22, 2015) & GMANetwork.com, DZBB 594 khz Super Radyo, *available at* http://www.gmanetwork.com/radio/dzbb (last accessed Nov. 22, 2015).

344. *See* DZMM.com.ph, Audio Live Stream, *available at* http://dzmm.abs-cbnnews.com/page/audiostreaming.html (last accessed Nov. 22, 2015) & GMANetwork.com, DZBB 594 khz Super Radyo Streaming, *available at* http://www.gmanetwork.com/radio/streaming (last accessed Nov. 22, 2015).

345. *See* Metropolitan Manila Development Authority (MMDA), Office of the President Metropolitan Manila Development Authority Home, *available at* http://www.mmda.gov.ph/ (last accessed Nov. 22, 2015).

346. *See* Twitter, Official MMDA, *available at* https://twitter.com/MMDA (last accessed Nov. 22, 2015).

updates in Metropolitan Manila can be accessed.[347] The webpage includes a map featuring the various roadmap lines — mostly main thoroughfares, such as Epifanio Delos Santos Avenue, Commonwealth Avenue, Quezon Avenue, Circumferential Road 5, South Luzon Express Way, and North Luzon Express Way.[348]

An important development in the realm of traffic reports is Waze — a social navigation system with real-time traffic updates.[349] An individual can access it through a smartphone — for free — as long as the user is connected to the Internet.[350] Established in Israel in 2008,[351] Waze is utilized globally. The company has mapped out 13 countries[352] and has an estimated 50 million users worldwide.[353] Waze displays traffic and road directions, average speed, police locations, traffic hotspots, estimated times of arrival, distance to destination, and alternate routes to help motorists.[354]

c. Weather Advisories, Calamity Warnings, and Disaster Relief Operations

The Philippine Atmospheric, Geophysical, and Astronomical Services Administration (PAGASA) has established its online presence through its webpage[355] and Twitter account[356] — deeming these the most effective way

347. InterAksyon, News5, & MMDA, Metro Manila Traffic Navigator, *available at* http://mmdatraffic.interaksyon.com/system-view.php (last accessed Nov. 22, 2015).

348. *Id.* The updated information on traffic in the South Luzon Expressway and the North Luzon Expressway can also be accessed through the Twitter accounts of Skyway and NLEX Traffic. *See also* Twitter, SKYWAY SOMCO, *available at* https://twitter.com/SkywaySOMCO (last accessed Nov. 22, 2015) & Twitter, NLEX Traffic, *available at* https://twitter.com/nlextraffic (last accessed Nov. 22, 2015).

349. *See* Waze, Home, *available at* https://www.waze.com/ (last accessed Nov. 22, 2015).

350. *See* Waze, About Us, *available at* https://www.waze.com/about (last accessed Nov. 22, 2015).

351. Botchi Santos, *Waze to beat traffic, together*, PHIL. DAILY INQ., June 18, 2014, *available at* http://motioncars.inquirer.net/29608/waze-to-beat-traffic-together (last accessed Nov. 22, 2015).

352. *Id.*

353. *Id.*

354. *Id.*

355. *See* Philippine Atmospheric, Geophysical, and Astronomical Services Administration (PAGASA), Republic of the Philippines Philippine Atmospheric Geophysical and Astronomical Services Administration Home, *available at* http://web.pagasa.dost.gov.ph/ (last accessed Nov. 22, 2015).

356. *See* Twitter, PAGASA-DOST, *available at* https://twitter.com/dost_pagasa (last accessed Nov. 22, 2015).

to transmit urgent and updated news in a country where typhoons are frequent. The PAGASA webpage features weather, hydrological, climate, and astronomical updates in its ticker panel, interactive maps for information on the weather, and an integrated board linked to its Twitter account.[357]

The Internet not only informs the public of forthcoming typhoons; it also has a crucial role once they arrive. In November 2013, during Typhoon Yolanda, users maximized Twitter, Facebook, and Google to reach those who needed help.[358]

In Twitter, account users used standard hashtags to coordinate updates, rescue, and relief efforts following the typhoon, which also streamlined the coordination process through the Internet — the net effect being quick relief and recovery efforts.[359] These hashtags were for specific purposes, such as rescue coordination, urgent rescue needed, damage reporting, report missing people, and media storm coverage.[360] Moreover, "for the [hashtags] to be effective, Twitter users [were] reminded to 'refrain from using the [ ] hashtags outside of its supposed function,' to be able to send and receive messages and announcements clearly."[361]

Facebook installed a donate button on every user's news feed, which, once clicked, allowed the user to donate money to the Red Cross and Red Crescent organizations.[362] If the Facebook account user opted for a different payment option or for donations other than money, the user was directed to the organizations' respective webpage.[363]

Google dedicated a "Google Person Finder"[364] webpage solely for the victims and survivors of Typhoon Yolanda, which allowed the public to look for missing relatives.[365] Once victims in the devastated areas had access to the webpage, they could place information about their current location and condition.[366]

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357. *Id.*

358. Jing Garcia, *The crucial role of the Internet and social media*, MANILA TIMES, Nov. 17, 2013, *available at* http://www.manilatimes.net/the-crucial-role-of-the-internet-and-social-media/53651/ (last accessed Nov. 22, 2015).

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.*

364. Garcia, *supra* note 358.

365. *Id.*

366. *Id.*

That the Government, private companies, and platform users acknowledge the vital role of the Internet before, during, and after a calamity admits that the people who need to be reached — the public itself — can and will be reached through the use of the Internet.

IV. RECOMMENDATIONS

A. Amendments to the Public Telecommunications Policy Act (Republic Act No. 7925) and the Public Service Act (Commonwealth Act No. 146)

1. Declassification of the Internet as a VAS

As the law on public utilities now stands, Internet service is classified as a mere VAS.[367] It is deregulated[368] — market forces dictate the price and speed. The Author recommends that Internet service be categorized as a public utility through an amendment of the definitions of "telecommunications"[369] to include ISPs and of "[VAS] [p]roviders"[370] to exclude ISPs, which would result to closer supervision by the State in terms of requirements, sanctions, regulation of rates, and prescription of standards for quality.

a. Constitutional Implications

The following are the constitutional implications:

(a) A franchise, as determined by the Legislative Department, if necessary, will be required for the operation of an ISP and will only be granted to Filipino citizens or to corporations at least 60% of which is owned by Filipino citizens.[371]

(b) The State may take over ISPs during national emergencies when public interest so requires.[372] This could mean that, before, during, and after typhoons and other natural calamities, the State may direct the operation of Internet access in the country to utilize its full capability for disaster prevention, mitigation, and response. More lives and property could be spared and saved.

(c) The Government, upon payment of just compensation, may transfer the establishment and operation of vital industries to

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367. NTC Memo. Circ. No. 21-11-1998, ¶ 1.

368. NTC Memo. Circ. No. 02-05-2008, C (9).

369. Public Telecommunications Policy Act, art. I, § 3, ¶ a.

370. *See* NTC Memo. Circ. No. 21-11-1998, ¶ 1.

371. PHIL. CONST. art. XII, § 11.

372. PHIL. CONST. art. XII, § 17.

public ownership in the interest of national welfare or defense.[373]

(d) The Commission on Elections shall regulate the enjoyment of franchises for the operation of public utilities during election period.[374] This could mean that the State may now limit the use of how much candidates spend on the Internet in terms of campaigning just as they do with above-the-line media, such as television and radio; thus, allowing equal opportunity for those who wish to run for public positions.

b. Statutory and Jurisprudential Implications

The following are the statutory and jurisprudential implications:

(a) The State's inherent police power[375] shall serve as the basis for the regulation of ISPs.

(b) A Certificate of Public Convenience or Certificate of Public Convenience and Necessity[376] is indispensable in providing Internet access to the public. Consequently, ISPs must have the financial capacity[377] to undertake and maintain the service they propose to offer.

(c) A Government body, in accordance with law, shall have jurisdiction to determine reasonable rates, impose serviceable standards, issue rules and regulations, and rather importantly, suspend and revoke the authority to continue operating as an ISP.

(d) The unlawful acts defined by and the penal clauses under the Public Service Act[378] shall also apply. For instance, it would be considered a violation of the law if an ISP operated without the requisite Certificate of Public Convenience or Certificate of Public Convenience and Necessity or, if in the course of its operation, it violates any of the terms of such certificate. It would also be unlawful to provide inadequate services and to neglect or fail to perform an act required to be done.

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373. PHIL. CONST. art. III, § 18.

374. PHIL. CONST. art. IX-C, § 4.

375. *See generally Ermita-Malate Hotel and Motel Operators, Inc.*, 20 SCRA at 458 & *Churchill*, 32 Phil. at 602-03.

376. *See* Public Telecommunications Policy Act, art. VI, § 16.

377. *Id.* art. IV, § 10.

378. Public Service Act, ch. IV, §§ 21-28.

2. Update of Penal Provisions

By amending the Public Telecommunications Policy Act to include Internet service, the legal consequences of becoming a public utility will, then, become applicable to it. The Public Service Act is the general governing law for public utilities and penal clauses to carry out the mandate of the statute are embodied in the same.[379]

However, the fines are old and not updated. NTC Commissioner Cordoba has pointed out that the NTC is working under an 80-year old law — the Public Service Act was passed in 1936[380] — with only a ₱200.00 fine for every violation committed.[381] He has suggested that the penalties be updated.[382]

The Author adopts the NTC Commissioner's suggestion to amend the penal provisions in the Public Service Act to reflect the value of today's peso considering the inflation rate of the past 80 years.[383] Such a proposal ensures that the NTC can properly carry out its mandate to protect public interest in relation to its regulation and supervision of telecommunications entities.

B. Separate and Unified Governing Body

To subject the Internet to the current regulatory framework of public utilities in the country necessitates the establishment of a regulatory body to implement the pertinent governing public utilities laws. However, because of the rapidly changing nature of the Internet and its far-reaching power, the Author believes that one specialized government agency, with highly qualified members, should supervise Internet regulation.

According to Dr. Torres,[384] there are only three players in the local ICT market — "telecommunications companies, 'gadget providers,' and consumers."[385] As lack of reliable infrastructure is considered one of the

379. *Id.*

380. Chanco, *supra* note 157.

381. *Id.*

382. *Id.*

383. However, the Author shall not give exact values as she acknowledges the technical expertise needed to determine the proper fines. For a historical recount of inflation rates in the Philippines, the website of the Philippine Statistical Authority has a table on the matter. *See* Philippine Statistical Authority, Republic of the Philippines Philippine Statistical Authority Statistics – Prices, *available at* http://www.nscb.gov.ph/secstat/d_price.asp (last accessed Nov. 22, 2015). *See also* Corpuz v. People, 724 SCRA 1 (2014).

384. TORAL, ET AL., *supra* note 43, at 25.

385. T.J. Dimacali, 20 years on, the PHL Internet is still 'a puzzle waiting to be assembled,' *available at* http://www.gmanetwork.com/news/story/354566/

biggest obstacles to fast and affordable Internet, he opines that there is a need for a fourth player — the Government — to make everyone work together.[386] He says that, "[t]he task of the [Department of Information and Communications Technology (DICT)] must be to bring ICT to the mainstream. In the same way that we think of water, electricity, and other utilities as essential, so[,] too[,] must we also think of ICT in the long-term[.]"[387]

According to the head of an international ICT enterprise service provider, one of the reasons for slow and expensive Internet connection speed is "the lack of a central organization that heads the development of the [ICT] sector."[388] Due to the "scattered programs under multiple government agencies[,] ... [it is] very difficult to come up with a holistic end-to-end program to facilitate the overall development[.]"[389]

As of this writing, the Government abolished the existing Commission on ICT (CICT), the supposed pre-cursor of the DICT.[390] The CICT was replaced with an ICT Office under the watch of the DOST.[391]

In early 2015, Senator Teofisto D. Guingona III filed Senate Bill No. 2144, or the Department of Information and Communications Technology Act of 2014.[392] After the first reading, it was referred to the Committees on Science and Technology, Civil Service and Government Reorganization, and Finance.[393] In the explanatory note, Senator Guingona proposed to have

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scitech/technology/20-years-on-the-phl-internet-is-still-a-puzzle-waiting-to-be-assembled (last accessed Nov. 22, 2015).

386. *Id. See also* Ben O. de Vera, *Internet infra in PH trails Asean peers*, PHIL. DAILY INQ., Apr. 7, 2014, *available at* http://business.inquirer.net/167845/internet-infra-in-ph-trails-asean-peers (last accessed Nov. 22, 2015).

387. Dimacali, *supra* note 385.

388. Matikas Santos, *Gov't blamed for PH's slow Internet speed*, PHIL. DAILY INQ., May 1, 2014, *available at* http://technology.inquirer.net/35871/govt-blamed-on-phs-slow-internet-speed (last accessed Nov. 22, 2015).

389. *Id.*

390. Dimacali, *supra* note 385.

391. *Id.*

392. An Act Creating the Department of Information and Communications Technology, Defining Its Powers and Functions, Appropriating Funds Therefor, and for Other Purposes, Senate Bill No. 2144, § 1, 16th Cong., 1st Reg. Sess. (2014).

393. Senate of the Philippines, Senate Bill No. 2144: Legislative History, *available at* http://www.senate.gov.ph/lis/bill_res.aspx?congress=16&q=SBN-2144 (last accessed Nov. 22, 2015). As of publication time, Senate Bill 2144 has already been approved by the Senate in its third and final reading. However, its counterpart bill in the House of Representatives is still pending with its

a separate executive department to govern information and communications technology from the department in charge of transportation.[394]

The Author agrees with Senator Guingona in the need for a department. Focus is on the Internet — the main platform for allowing access to information and enabling better means of communication.[395] Such realms have evolved through time. With fast-changing technology as the primary driving force, it now merits its own governing body.

Thus, the Author recommends the passage of this law.

C. National Internet Access Policy to Facilitate Infrastructure Development in the Long Term

Updated infrastructure improves the state of Internet access in the Philippines. However, who will provide it? The Internet Corporation for Assigned Names and Numbers (ICANN), an international non-profit corporation, may have an answer. With the dedication to keep the Internet "secure, stable[,] and interoperable,"[396] ICANN, through its officer, has said that considering the price a country has to pay for infrastructure,[397] "business and government should work together."[398]

In terms of the means to build infrastructure, the Government has been urged to make investments to increase Internet access and speed.[399] Other countries that have spent money for infrastructure include Australia (AUD 46 billion), Germany (EUR 36 billion), and Finland ($131 billion).[400] The U.S. has also spent $7.2 billion for the provision of broadband access.[401] Some cities in the U.S. have shelled out money to build fiber optic networks.[402] Closer to home is Singapore, where its national government gave SGD 750 million to build a "broadband network [capable of] providing

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Committee on Information and Communications Technology. *See* Kathrina Charmaine Alvarez, Senate approves bill creating ICT governing body, *available at* http://www.gmanetwork.com/news/story/497094/scitech/technology/senate-approves-bill-creating-ict-governing-body (last accessed Nov. 22, 2015).

394. S.B. No. 2144, explan. n.

395. *Id.*

396. ICANN, Who we are: ICANN, *available at* https://www.icann.org/get-started (last accessed Nov. 22, 2015).

397. de Vera, *supra* note 386.

398. *Id.*

399. *See* Chanco, *supra* note 157.

400. *Id.*

401. *Id.*

402. *Id.*

at least one gbps at [SGD] 15 [per] month for residential subscribers and [SGD] 50 [per] month for business."[403]

Last 28 May 2014, the Senate Committee on Trade, Commerce, and Entrepreneurship conducted a hearing on the dismal state of Internet access in the Philippines.[404] Claiming it did not have sufficient funds,[405] the Senate seemed unwilling to shoulder the whole amount needed to build infrastructure for Internet service.[406] The Government's position was to rely on private telecommunications companies to construct the necessary infrastructure.[407]

However, the Author has come across a study that provides a springboard for her last recommendation. The study suggested that what would be advisable are mandatory service obligations in the form of required establishment and management of centers for technology.[408] Private sectors are required to establish centers for technology and permit them to strategize ways they believe would optimize investments, while ensuring that what is being delivered is quality service at affordable prices.[409] This addresses the unfortunate concern that the Government is improperly using funds, which, from the very beginning, could be one of the reasons why telecommunications companies would oppose it.[410]

In a similar manner, the Author recommends that, instead of establishing the aforementioned telecommunications centers, what should be required from the ISPs is to do their part in the procurement and construction of infrastructure. In the same way, instead of requiring a percentage of their profits, which has the risk being improperly used, what will be required from them is an obligation in capital investment — infrastructure.

Through the proponent's first recommendation of subjecting ISPs to the State's police power, they can be mandated to do their part in building the necessary infrastructure. This would not jeopardize them as the proposal could allow them some wiggle room as to reasonable optimization of the companies' investments. Moreover, the capital outlay does not come in the

403. *Id. See also* Macaraig, *supra* note 157.

404. Rappler, AS IT HAPPENS: Senate committee hearing on slow PH Internet connection, *available at* http://www.rappler.com/video/specials/59120-senate-hearing-slow-internet-connection (last accessed Nov. 22, 2015). The Author was present at this Senate committee hearing.

405. *Id.*

406. *Id.*

407. *Id.*

408. Lallana & Soriano, *supra* note 86, at 27.

409. *Id.*

410. *Id.* at 26-27.

form of transferring money from their profits to the Government and, thus, the fear of fund misappropriation is allayed.

As for the Government, mention has been made of annual collections — an amount close to five billion pesos — made by the NTC in the form of supervision fees, which, as of this writing, go to the Government's general fund.[411] These funds may be collected by the NTC and could be used for the purchase of equipment to improve Internet service.[412]

The Author believes that this is something the governing regulatory body may do in order for it to carry out its mandate efficiently. An alternative, however, is for this fund to be allotted for the construction of infrastructure to be undertaken by the private sector. Along with it is the amount the Government intends to appropriate — through the national budget — for the same purpose.

By virtue of the legal classification of Internet service as a public utility, the State may exercise its police power for the protection of public interest. Through the amendment of the Public Telecommunications Policy Act and the Public Service Act, regulatory measures may be introduced and, subsequently, carried out. The proposed unified body should give the Internet the focus and specialization it needs. Lastly, a much better infrastructure could improve Internet service.

No one is willing to shoulder the expenses needed for this capital outlay. The Author suggests that the Government and private telecommunications companies work together to procure the necessary infrastructure. The Government should appropriate funds already existing and the private telecommunications companies shall engage in the mandatory construction of the much needed infrastructure. The latter is a form of contribution in kind. This non-monetary obligation would ensure that it would be used for its intended purpose.

V. CONCLUSION

A century ago, the first law defined public utilities as that for "public use."[413] Thereafter, jurisprudence expounded the meaning of the said phrase. The criterion is whether it may be used by the public as a right — to demand the service without discrimination.[414] Later, it consolidated its definition — "a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water,

411. Chanco, *supra* note 157.

412. *Id.*

413. Act No. 2307, § 4.

414. *Iloilo Ice and Cold Storage Co.*, 44 SCRA at 563.

transportation, telephone[,] or telegraph service. The term implies public use and service."[415]

Internet service is a public utility. The public has the right to use it. Not only is it a commodity for individual use but, more importantly, it is essential to the workings of the society-at-large. The Government — the Legislative, Executive, and Judicial Departments — rely on the Internet for the performance of their respective functions. Broadsheets, television, and radio broadcast outlets — formerly operating solely on their own media — now thrive in the novel form called social media. But most helpful are the real-time traffic updates, weather forecasts, and disaster responses. The Internet also empowers other rights. Even the United Nations promotes access to the Internet.

The Internet, fitting in the legal framework of a public utility, must then comply with requirements prescribed by the Constitution, the Public Service Act, and jurisprudence. The State's inherent police power justifies this mandate. As with other public utilities, the State protects public interest — the moving force behind every public utility's operations.

Who may operate public utilities? Individuals with Filipino citizenship and corporations, with at least 60% Filipino-owned capital, are allowed.[416] Certificates of Public Convenience or of Public Convenience and Necessity, as the case may be, additionally require the financial capability to undertake the service and the resolve to promote public interest.[417] Relevant, too, is the establishment of regulatory bodies, which have various powers to ensure the enforcement of their mandate, which is to protect public interest. For these agencies to be effective, laws on public utilities containing provisions on unlawful acts and their corresponding penal clauses should be updated, accordingly.[418] Finally, as public utilities are subject to the State's police power, Congress, and at times, administrative agencies, may regulate the rates the public is charged with and ensure the quality of service the public is provided with.[419]

This suggested regulatory framework shall address the abysmal speed and extortionate cost of Internet service in the country as a consequence of deregulation. The legal framework governing Internet service classifies it as a VAS. Market forces control the speed and cost of the Internet. The State has

415. *National Power Corporation*, 279 SCRA at 523 & *Metropolitan Cebu Water District*, 526 SCRA at 481.

416. PHIL. CONST. art. XII, § 11.

417. *See also* Public Telecommunications Policy Act, art. IV, § 10.

418. *See generally* Public Service Act, ch. 4, §§ 21-28.

419. *See* PHIL. CONST. art. XII, § 17.

no hand in securing reasonable rates and serviceable standards. All that is required of these companies is mere registration.

Sectors lobbying against Internet regulation may argue that the Public Telecommunications Policy Act, under which VAS was impliedly defined, should be construed to cover only what was envisioned when it was passed. Because the Internet, then, was only a supplementary service, it could not come under full regulation as an ordinary service intended at the time the said law was passed.

This is precisely the point. Because Internet service was not foreseen to be ordinarily availed of, the Government must amend the said law. It must be regulated because the Internet is already ordinarily and commonly availed of today by a huge number of Filipinos.

The Internet has become so indispensable to information and communication. It has begun to replace technology already classified as public utilities — television, radio, and telephones. The common media user has migrated to the Internet — achieving the results more efficiently than what a television, radio, and telephone can provide. The Internet has become so far-reaching. It knows no boundaries as to place and as to sector in society. For instance, the Government can serve summons to a foreign entity abroad for violation of Philippine laws. Commercial transactions are closed in seconds despite territorial boundaries. Doctors in Manila could instruct medical practitioners in the rural areas as regards first aid and appropriate treatment protocol. Filipinos have the opportunity to compete with foreigners from developed countries through discovery, inventions, or studies — all by simply using the Internet.

Those against Internet regulation also argue that innovation and modernization, as the impelling forces behind the Public Telecommunications Policy Act, are still sufficient justifications for deregulation.

The Author does not suggest dispensing with innovation and modernization in any way. In fact, the Author acknowledges that technology — such as the Internet — is inherently linked to innovation and modernization. The Author argues that the factual circumstances surrounding the passage of the Public Telecommunications Policy Act are not present anymore. Twenty years ago, no one knew the Internet and its potential. Only a small portion of the public could afford to access it. Only a few ISPs existed and the government espoused a liberalization of the rules to allow players to enter the arena. No regulation existed at the time the Public Telecommunications Policy Act was passed because there were not many players to regulate. Two decades have passed. More players are in the field yet not everyone can afford access to the Internet. Those who can do not experience the quality of service they pay for and deserve.

The status quo is unacceptable. The public — the beneficiaries of the Internet — is suffering. Classify Internet service as a public utility now. Philippine law is ripe and is ready. The Government just has to remember its mandate — to protect public interest.