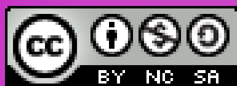
Haystacks

Telecommunications Law

Michael Vernon Guerrero Mendiola
2004

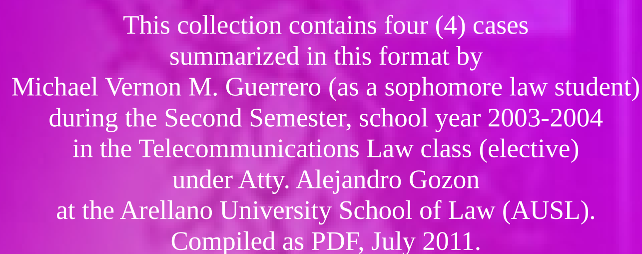
Shared under Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Philippines license.



Some Rights Reserved.

Table of Contents

GMCR vs. Bell Telecommunication Philippines (BellTel), GR 126496, 30 April 1997 ………. 1
PLDT vs. NTC, GR 88404, 18 October 1990 ………. 5
Republic vs. Meralco, GR 141314, 15 November 2002 ………. 11
Smart Communications vs. NTC, GR 151908, 12 August 2003 ………. 16



This collection contains four (4) cases
summarized in this format by
Michael Vernon M. Guerrero (as a sophomore law student)
during the Second Semester, school year 2003-2004
in the Telecommunications Law class (elective)
under Atty. Alejandro Gozon
at the Arellano University School of Law (AUSL).
Compiled as PDF, July 2011.

Berne Guerrero entered AUSL in June 2002
and eventually graduated from AUSL in 2006.
He passed the Philippine bar examinations immediately after (April 2007).

www.berneguerrero.com

[1]

GMCR vs. Bell Telecoms [G.R. No. 126496. April 30, 1997.]
Kintanar vs. Bell Telecoms [G.R. No. 126526]
First Division, Hermosisima Jr. (J): 2 concur, 1 concur in result, 1 took no part.

Facts: On 19 October 1993, Bell Telecommunication Philippines, Inc. (BellTel) filed with the National Telecommunications Commission (NTC) an Application for a Certificate of Public Convenience and Necessity to Procure, Install, Operate and Maintain Nationwide Integrated Telecommunications Services and to Charge Rates Therefor and with Further Request for the Issuance of Provisional Authority (NTC Case 93-481). At the time of the filing of this application, private respondent BellTel had not been granted a legislative franchise to engage in the business of telecommunications service. Since BellTel was, at that time, an unenfranchised applicant, it was excluded in the deliberations for service area assignments for local exchange carrier service Only GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation, among others, were beneficiaries of formal awards of service area assignments in April and May 1994. On 25 March 1994, RA 7692 was enacted granting BellTel a congressional franchise which gave private respondent BellTel the right, privilege and authority to carry on the business of providing telecommunications services. On 12 July 1994, BellTel filed with the NTC a second Application (NTC Case 94-229) praying for the issuance of a Certificate of Public Convenience and Necessity for the installation, operation and maintenance of a combined nationwide local toll (domestic and international) and tandem telephone exchanges and facilities using wire, wireless, microwave radio, satellites and fiber optic cable with Public Calling Offices (PCOs) and very small aperture antennas (VSATs) under an integrated system. In the second application, BellTel proposed to install 2,600,000 telephone lines in 10 years using the most modern and latest state-of-the-art facilities and equipment and to provide a 100% digital local exchange telephone network. BellTel moved to withdraw its earlier application docketed as NTC Case 93-481. In an Order dated 11 July 1994, this earlier application was ordered withdrawn, without prejudice. BellTel’s second application was opposed by GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation, Capitol Wireless, Inc., Eastern Misamis Oriental Telephone Cooperative, Liberty Broadcasting Network, Inc., Midsayap Communication, Northern Telephone, PAPTELCO, Pilipino Telephone Corporation, Philippine Global Communications, Inc., Philippine Long Distance Telephone Company, Philippine Telegraph and Telephone Corporation, Radio Communications of the Philippines, Inc. and Extelcom and Telecommunications Office. On 20 December 1994, BellTel completed the presentation of its evidence-in-chief. On 21 December 1994, BellTel filed its Formal Offer of Evidence together with all the technical, financial and legal documents in support of its application. Pursuant to its rules, the application was referred to the Common Carriers Authorization Department (CCAD) for study and recommendation. On 6 February 1995, the CCAD submitted to Deputy Commissioner Fidelo Q. Dumlao, a Memorandum manifesting that “based on technical documents submitted, BellTel’s proposal is technically feasible.” Subsequently, the chief of the Rates and Regulatory Division of CCAD, conducted a financial evaluation of the project proposal of BellTel. On 29 March 1995, it was declared that BellTel has the financial capability to support its proposed project at least for the initial 2 years. Agreeing with the findings and recommendations of the CCAD, NTC Deputy Commissioners Fidelo Dumlao and Consuelo Perez adopted the same and expressly signified their approval thereto. In view of the favorable recommendations by the CCAD and two members of the NTC, the Legal Department thereof prepared a working draft 10 of the order granting provisional authority to BellTel. The said working draft was initialed by Deputy Commissioners Fidelo Q. Dumlao and Consuelo Perez but was not signed by Commissioner Simeon Kintanar.

Anxious over the inaction of the NTC in the matter of its petition praying for the issuance of a provisional authority, BellTel filed on 5 May 1995 an Urgent Ex-Parte Motion to Resolve Application and for the Issuance of a Provisional Authority. No action was taken by the NTC on the aforecited motion. Thus, on 12 May 1995, BellTel filed a Second Urgent Ex-Parte Motion reiterating its earlier prayer. In an Order dated 16

May 1995, signed solely by Commissioner Simeon Kintanar, the NTC, instead of resolving the two pending motions of BellTel, set the said motions for a hearing on 29 May 1995. On said date, however, no hearing was conducted as the same was reset on 13 June 1995. On the latter date, BellTel filed a Motion to Promulgate (Amending the Motion to Resolve), praying for the promulgation of the working draft of the order granting a provisional authority to BellTel, on the ground that the said working draft had already been signed or initialed by Deputy Commissioners Dumlao and Perez who, together, constitute a majority out of the three commissioners composing the NTC. On 4 July 1995, the NTC denied the said motion in an Order solely signed by Commissioner Simeon Kintanar.

On 17 July 1995, BellTel filed with the Supreme Court a Petition for Certiorari, Mandamus and Prohibition seeking the nullification of the aforestated Order dated 4 July 1995 denying the Motion to Promulgate. On 26 July 1995, the Court issued a Resolution referring said petition to the Court of Appeals for proper determination and resolution pursuant to Section 9, par. 1 of BP 129. On 23 September 1996, the Court of Appeals promulgated decision, granting BellTel's petition for a writ of Certiorari and Prohibition, setting aside NTC Memorandum Circulars 1-1-93 and 3-1-93 for being contrary to law. BellTel's petition for mandamus was also granted, directing the NTC to meet and banc and to consider and act on the draft order within 15 days. Chairman Kintanar and the opposing telecommunications companies filed their separate petitions for review.

The Supreme Court dismissed the instant consolidated petitions for lack of merit; with costs against petitioners.

1. NTC is a collegial body; Vote requirement

NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.

2. Commissioner Kintanar is not the National Telecommunications Commission

Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. Having been organized by EO 146 as a three-man commission, the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.

3. Historical milieu of the NTC: CA 146 as amended by RA 2677

On 17 November 1936, the National Assembly passed Commonwealth Act 146 which created the Public Service Commission (PSC). While providing that the PSC shall consist of a Public Service Commissioner and a Deputy Commissioner, the law made it clear that the PSC was not a collegial body by stating that the Deputy Commissioner could act only on matters delegated to him by the Public Service Commissioner. As amended by RA 2677, the Public Service Commission was transformed into and emerged as a collegial body, composed of one Public Service Commissioner and five (5) Associate Commissioners. The amendment provided that contested cases and all cases involving the fixing of rates shall be decided by the Commission en banc.

4. Historical milieu of the NTC: PD 1 (Integrated Reorganization Plan)

On 24 September 1972, then President Ferdinand E. Marcos signed, into law, PD 1 adopting and approving the Integrated Reorganization Plan which, in turn, created the Board of Communications (BOC) in place of the PSC. This time, the new regulatory board was composed of 3 officers exercising quasi-judicial functions. On 25 January 1978, the BOC promulgated its "Rules of Procedure and Practice" in connection

with applications and proceedings before it.

5. Historical milieu of the NTC: EO 546, merger of BOC and the Telecommunications Control Bureau as NTC

On 23 July 1979, President Marcos issued Executive Order 546, creating the Ministries of Public Works, and of Transportation and Communications, merged the defunct Board of Communications and the Telecommunications Control Bureau into a single entity, the National Telecommunications Commission (NTC). The said law was issued by then President Marcos in the exercise of his legislative powers. Sec. 16 of EO 546 provides that "the Commission shall be composed of a Commissioner and two Deputy Commissioners, preferably one of whom shall be a lawyer and another an economist." The Executive Order took effect on 24 September 1979 . However, the NTC did not promulgate any Rules of Procedure and Practice. Consequently, the then existing Rules of Procedure and Practice promulgated by the BOC was applied to proceedings in the NTC.

6. Historical milieu of the NTC: Opinion of Justice Secretary (Puno) entitled to great weight but not conclusive upon the courts

The opinion of the Secretary of Justice is entitled to great weight. However, the same is not controlling or conclusive on the courts. The Puno Opinion that the NTC is not a collegial body is not correct. Admittedly, EO 546 does not specifically state that the NTC was a collegial body, and neither does it provide that the NTC should meet En Banc in deciding a case or in exercising its adjudicatory or quasi-judicial functions. But the absence of such provisions does not militate against the collegial nature of the NTC under the context of Section 16 of EO 546 and under the Rules of Procedure and Practice applied by the NTC in its proceedings. Under [Rule 15] of said Rules, the BOC (now the NTC), a case before the BOC may be assigned to and heard by only a member thereof who is tasked to prepare and promulgate his Decision thereon, or heard, En Banc, by the full membership of the BOC in which case the concurrence of at least 2 of the membership of the BOC is necessary for a valid Decision.

7. Historical milieu of the NTC: BOC Rules are NTC Rules, Philippine Consumers Foundation vs. NTC

While it may be true that the BOC Rules of Procedure was promulgated before the effectivity of Executive Order 546, however, the Rules of Procedure of BOC governed the rules of practice and procedure before the NTC when it was established under Executive Order 546. This was enunciated by the Supreme Court in the case of 'Philippine Consumers Foundation, Inc. versus National Telecommunications Commission, 131 SCRA 200' when it declared that: "The Rules of Practice and Procedure promulgated on 25 January 1978 by the Board of Communications, the immediate predecessor of NTC govern the rules of practice and procedure before the BOC then, now NTC."

8. Commission defined

A Commission is a body composed of several persons acting under lawful authority to perform some public service. (City of Louisville Municipal Housing Commission versus Public Housing Administration, 261 Southwestern Reporter, 2nd, page 286). A Commission is also defined as a board or committee of officials appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or service . . . (Black, Law Dictionary, page 246). There is persuasive authority that a 'commission' is synonymous with 'board' (State Ex. Rel. Johnson versus Independent School District No. 810, Wabash County, 109 Northwestern Reporter 2nd, page 596).

9. Statutory Construction: "And" construed

The conjunctive word 'and' is not without any legal significance. It is not, by any chance, a surplusage in the law. It means 'in addition to' (McCaull Webster Elevator Company versus Adams, 167 Northwestern Reporter, 330, page 332). The word 'and', whether it is used to connect words, phrases or full sentence[s], must be accepted as binding together and as relating to one another. From the context of Section

16 of Executive Order 546, the Commission is composed of a Commissioner and 2 deputy commissioners; not the commissioner alone.

10. Statutory Construction: Every part of statute should be given effect

In interpreting a statute, every part thereof should be given effect on the theory that it was enacted as an integrated law and not as a combination of dissonant provisions. As the aphorism goes, "that the thing may rather have effect than be destroyed." Herein, if it was the intention of President Marcos to constitute merely a single entity, a 'one-man' governmental body, instead of a commission or a three-man collegial body, he would not have constituted a commission and would not have specifically decreed that the Commission is composed of, not the commissioner alone, but of the commissioner and the 2 deputy commissioners.

11. Use of word "deputy" does not militate against the collegiality of the NTC

Even if Executive Order 546 used the word 'deputy' to designate the 2 other members of the Commission does not militate against the collegiality of the NTC. The collegiality of the NTC cannot be disparaged by the mere nominal designation of the membership thereof. Such nominal designations are without functional implications and are designed merely for the purpose of administrative structure or hierarchy of the personnel of the NTC.

12. NTC Circulars 1-1-93 and 3-1-93 void

NTC Circular No. 1-1-93, Memorandum Circular No. 3-1-93, and the Order of Kintanar declaring the NTC as a single entity or non-collegial entity, are contrary to law and thus null and void. Administrative regulations derive their validity from the statute that they were, in the first place, intended to implement. Memorandum Circulars 1-1-93 and 3-1-93 are on their face null and void ab initio for being unabashedly contrary to law. The fact that implementation of these illegal regulations has resulted in the institutionalization of the one-man rule in the NTC, is not and can never be a ratification of such an illegal practice. At the least, these illegal regulations are an erroneous interpretation of EO 546 and in the context of and its predecessor laws. At the most, these illegal regulations are attempts to validate the one-man rule in the NTC as executed by persons with the selfish interest of maintaining their illusory hold of power.

13. Courts cannot refrain from duty to nullify illegal regulations

Since the questioned memorandum circulars are inherently and patently null and void for being totally violative of the spirit and letter of EO 546 that constitutes the NTC as a collegial body, no court may shirk from its duty of striking down such illegal regulations.

14. Only the NTC and Commissioner Kintanar are indispensable parties in the action for certiorari

In its certiorari action before the Court of Appeals, BellTel was proceeding against the NTC and Commissioner Kintanar for the former's adherence and defense of its one-man rule as enforced by the latter. Thus, only the NTC and Commissioner Kintanar may be considered as indispensable parties. After all, it is they whom BellTel seek to be chastised and corrected by the court for having acted in grave abuse of their discretion amounting to lack or excess of jurisdiction.

15. Oppositors not absolutely necessary in an action for certiorari, as the action does not go into merits of the case; Claim of non-joinder of indispensable parties untenable

The oppositors in NTC Case 94-229 are not absolutely necessary for the final determination of the issue of grave abuse of discretion on the part of the NTC and of Commissioner Kintanar in his capacity as chairman of NTC because the task of defending them primarily lies in the Office of the Solicitor General. Furthermore, were the court to find that certiorari lies against the NTC and Commissioner Kintanar, the oppositors' cause could not be significantly affected by such ruling because the issue of grave abuse of discretion goes not into the merits of the case in which the oppositors are interested but into the issue of collegiality that requires, regardless of the merits of a case, that the same be decided on the basis of a majority vote of at least two members of the commission. All that Court of Appeals passed upon was the question of

whether or not the NTC and Commissioner Kintanar committed grave abuse of discretion, and so the Supreme Court must review and ascertain the correctness of the findings of the appellate court on this score, and this score alone.

16. Mandamus does not control discretion

Jurisprudence is settled as to the propriety of mandamus in causing a quasi-judicial agency to exercise its discretion in a case already ripe for adjudication and long-awaiting the proper disposition. As to how this discretion is to be exercised, however, is a realm outside the office of the special civil action of mandamus. It is elementary legal knowledge, after all, that mandamus does not lie to control discretion. Herein, when the Court of Appeals directed Commissioners to meet en banc and to consider and act on the working draft of the order granting provisional authority to BellTel, said court was simply ordering the NTC to sit and meet en banc as a collegial body, and the subject of the deliberation of the 3-man commission would be the said working draft which embodies one course of action that may be taken on BellTel's application for a provisional authority. The appellate court did not order the NTC to forthwith grant said application.

17. No evidence proffered that working draft was obtained by BellTel was obtained through illegal means

The working draft was said to have been prepared by Atty. Basilio Bolante of the Legal Department of the NTC; initialed by the CCAD Head, Engr. Edgardo Cabarios and by Deputy Commissioners Dumlao and Perez. No one among the aforementioned persons has renounced the working draft or declared it to be spurious. Petitioners have not proffered a single piece of evidence to prove the charge that the working draft of the order granting provisional authority to BellTel was obtained by the latter through illegal means. In the ultimate, the issue of the procurement of the working draft is more apropos for a criminal or administrative investigation than in the instant proceedings largely addressed to the resolution of a purely legal question.

[2]

PLDT vs. NTC [G.R. No. 88404. October 18, 1990.]
En Banc, Melencio-Herrera (J): 6 concurring

Facts: On 22 June 1958, RA 2090, was enacted (An Act Granting Felix Alberto and Company, Incorporated, a Franchise to Establish Radio Stations for Domestic and Transoceanic Telecommunications). Felix Alberto & Co., Inc. (FACI) was the original corporate name, which was changed to ETCI with the amendment of the Articles of Incorporation in 1964. On 13 May 1987, alleging urgent public need, ETCI filed an application with NTC (NTC Case 87-89) for the issuance of a Certificate of Public Convenience and Necessity (CPCN) to construct, install, establish, operate and maintain a Cellular Mobile Telephone System and an Alpha Numeric Paging System in Metro Manila and in the Southern Luzon regions, with a prayer for provisional authority to operate Phase A of its proposal within Metro Manila. PLDT filed an Opposition with a Motion to Dismiss, based primarily on the grounds that (1) ETCI is not capacitated or qualified under its legislative franchise to operate a systemwide telephone or network of telephone service such as the one proposed in its application; (2) ETCI lacks the facilities needed and indispensable to the successful operation of the proposed cellular mobile telephone system; (3) PLDT has itself a pending application with NTC (Case 86-86) to install and operate a Cellular Mobile Telephone System for domestic and international service not only in Manila but also in the provinces and that under the "prior operator" or "protection of investment" doctrine, PLDT has the priority or preference in the operation of such service; and (4) the provisional authority, if granted, will result in needless, uneconomical and harmful duplication, among others. In an Order, dated 12 November 1987, NTC overruled PLDT's Opposition and declared that RA 2090 should be liberally construed as to include among the services under said franchise the operation of a cellular mobile telephone service. After evaluating the reconsideration sought by PLDT, the NTC, in October 1988, maintained its ruling that liberally construed, and that ETCI's franchise carries with it the privilege to operate and maintain a cellular mobile telephone service.

On 12 December 1988, NTC issued an order opining that "public interest, convenience and necessity further demand a second cellular mobile telephone service provider and finds prima facie evidence showing ETCI's legal, financial and technical capabilities to provide a cellular mobile service using the AMPS system," NTC granted ETCI provisional authority to install, operate and maintain a cellular mobile telephone system initially in Metro Manila, Phase A only, subject to the terms and conditions set forth in the same Order. One of the conditions prescribed (Condition 5) was that, within ninety (90) days from date of the acceptance by ETCI of the terms and conditions of the provisional authority, ETCI and PLDT "shall enter into an interconnection agreement for the provision of adequate interconnection facilities between applicant's cellular mobile telephone switch and the public switched telephone network and shall jointly submit such interconnection agreement to the Commission for approval." In a "Motion to Set Aside the Order" granting provisional authority, PLDT alleged essentially that the interconnection ordered was in violation of due process and that the grant of provisional authority was jurisdictionally and procedurally infirm. On 8 May 1989, NTC issued an order denying reconsideration and set the date for continuation of the hearings on the main proceedings. PLDT challenged the NTC orders of 12 December 1988 and 8 May 1989 before the Supreme Court.

On 15 June 1989, the Supreme Court dismissed the petition for its failure to comply fully with the requirements of Circular 188. Upon satisfactory showing, however, that there was such compliance, the Court reconsidered the order and reinstated the petition. On 27 February 1990, the Court issued a Temporary Restraining Order, upon PLDT's urgent manifestation, enjoining NTC to "Cease and Desist from all or any of its on-going proceedings and ETCI from continuing any and all acts intended or related to or which will amount to the implementation/execution of its provisional authority." PLDT was required by the Court to post a bond of P5 million. PLDT complied.

The Supreme Court dismissed the petition for lack of merit and lifted the Temporary Restraining Order issued. The bond issued as a condition for the issuance of said restraining Order is declared forfeited in favor of Express Telecommunications Co., Inc.; with cost against PLDT.

1. Abuse of discretion or lack of jurisdiction only issue in a special civil action for Certiorari and Prohibition

Being a special civil action for Certiorari and Prohibition, the Court only need determine if NTC acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in granting provisional authority to ETCI under the NTC questioned Orders of 12 December 1988 and 8 May 1989.

2. NTC has jurisdiction

NTC is the regulatory agency of the national government with jurisdiction over all telecommunications entities. It is legally clothed with authority and given ample discretion to grant a provisional permit or authority. In fact, NTC may, on its own initiative, grant such relief even in the absence of a motion from an applicant.

3. Section 3 (Provisional Remedy), Rule 15, Rule of Practice and Procedure before the Board of Communications (now NTC)

"Upon the filing of an application, complaint or petition or at any stage thereafter, the Board may grant on motion of the pleaders or on its own initiative, the relief prayed for, based on the pleading, together with the affidavits and supporting documents attached thereto, without prejudice to a final decision after completion of the hearing which shall be called within 30 days from grant of authority asked for."

4. Provisionary authority properly granted

The provisional authority granted by the NTC has a definite expiry period of 18 months unless sooner renewed, and which may be revoked, amended or revised by the NTC; and covers one of four phases. It is

also limited to Metro Manila only. The installation and operation of an alpha numeric paging system was not authorized. The main proceedings are clearly to continue as stated in the NTC Order of 8 May 1989. Further, the provisional authority was issued after due hearing, reception of evidence and evaluation thereof, with the hearings attended by various oppositors, including PLDT. It was granted only after a prima facie showing that ETCI had the necessary legal, financial and technical capabilities and that public interest, convenience and necessity so demanded.

5. Provisional authority meaningless if grantee is not allowed to operate

Provisional authority would be meaningless if the grantee were not allowed to operate. Its lifetime is limited and may be revoked by the NTC at any time in accordance with law. The initial expenditure of P130M more or less, is rendered necessary even under a provisional authority to enable ETCI to prove its capability.

6. Differences exist between a Provisional Authority and a Certificate of Public Convenience and Necessity

Basic differences exist between a provisional authority and a Certificate of Public Convenience and Necessity (CPCN). If what had been granted were a CPCN, it would constitute a final order or award reviewable only by ordinary appeal to the Court of Appeals pursuant to Section 9(3) of BP 129, and not by Certiorari before the Supreme Court.

7. The Coverage of ETCI's Franchise (RA 2090)

RA 2090 grants ETCI (formerly FACI) "the right and privilege of constructing, installing, establishing and operating in the entire Philippines radio stations for reception and transmission of messages on radio stations in the foreign and domestic public fixed point-to-point and public base, aeronautical and land mobile stations, . . . with the corresponding relay stations for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony . . . . "

8. Radiotelephony defined

As defined by the New International Webster Dictionary the term "radiotelephony" is defined as a telephony carried on by aid of radiowaves without connecting wires. The International Telecommunications Union (ITU) defines a "radiotelephone call" as a "telephone call, originating in or intended on all or part of its route over the radio communications channels of the mobile service or of the mobile satellite service."

9. Radiotelephony construed liberally to include cellular mobile telephone system (CMTS)

In its Order of 12 November 1987, the NTC construed the technical term "radiotelephony" liberally as to include the operation of a cellular mobile telephone system. While under Republic Act 2090 a system-wide telephone or network of telephone service by means of connecting wires may not have been contemplated, it can be construed liberally that the operation of a cellular mobile telephone service which carries messages, either voice or record, with the aid of radiowaves or a part of its route carried over radio communication channels, is one included among the services under said franchise for which a certificate of public convenience and necessity may be applied for.

10. Construction given by administrative agency given great weight and respect

The construction given by an administrative agency possessed of the necessary special knowledge, expertise and experience and deserves great weight and respect. It can only be set aside by judicial intervention on proof of gross abuse of discretion, fraud, or error of law.

11. Factual issues not subject of a special civil action for certiorari

Whether or not ETCI (previously FACI), in contravention of its franchise, started the first of its radio telecommunication stations within 2 years from the grant of its franchise and completed the construction within 10 years from said date; and whether or not its franchise had remained unused from the time of its issuance, are questions of fact beyond the province of this Court, besides the well-settled procedural

consideration that factual issues are not subjects of a special civil action for Certiorari. Moreover, neither Section 4, RA 2090 nor PD 36 should be construed as self-executing in working a forfeiture. Franchise holders should be given an opportunity to be heard, particularly so, where ETCI does not admit any breach, in consonance with the rudiments of fair play.

12. Legislative franchise cannot be collaterally attacked; cannot be revoked without due process of law

PLDT's allegation – that the ETCI franchise had lapsed into non-existence for failure of the franchise holder to begin and complete construction of the radio system authorized under the franchise and that PD 36 (2 November 1972) which legislates the mandatory cancellation or invalidation of all franchises for the operation of communications services, which have not been availed of or used by the party or parties in whose name they were issued – partakes of a collateral attack on a franchise (RA 2090), which is not allowed. A franchise is a property right and cannot be revoked or forfeited without due process of law.

13. Forfeiture by non-user proper subject of prerogative writ of quo warranto; Right to assert belongs to the State

The determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of quo warranto, the right to assert which, as a rule, belongs to the State "upon complaint or otherwise" the reason being that the abuse of a franchise is a public wrong and not a private injury. A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government.

14. Section 10 of RA 2090

"The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. . . . . " The foregoing provision is directed to the "grantee" of the franchise, which is the corporation itself and refers to a sale, lease, or assignment of that franchise. It does not include the transfer or sale of shares of stock of a corporation by the latter's stockholders.

15. Section 20 (h) of CA 146, as amended by CA 454; Acts requiring the approval of the Commission

Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had ... ... (h) To sell or register in its books the transfer or sale of shares of its capital stock, if the result of that sale in itself or in connection with another previous sale, shall be to vest in the transferee more than forty per centum of the subscribed capital of said public service. Any transfer made in violation of this provision shall be void and of no effect and shall not be registered in the books of the public service corporation. Nothing herein contained shall be construed to prevent the holding of shares lawfully acquired.

16. Sales of shares of stock of a public utility governed by Section 20h of the Public Service Act (CA 146)

The sale of shares of stock of a public utility is governed by another law, i.e., Section 20(h) of the Public Service Act (Commonwealth Act 146). Pursuant thereto, the Public Service Commission (now the NTC) is the government agency vested with the authority to approve the transfer of more than 40% of the subscribed capital stock of a telecommunications company to a single transferee. Transfers of shares of a public utility corporation need only NTC approval, not Congressional authorization.

17. Grant of provisional authority deemed approval of series of transfers of shares in ETCI

The approval of the NTC may be deemed to have been met when it authorized the issuance of the provisional authority to ETCI. There was full disclosure before the NTC of the transfers that transpired starting in 1964 until 1987. In fact, the NTC Order of 12 November 1987 required ETCI to submit its "present capital and ownership structure." Further, ETCI even filed a Motion before the NTC, dated 8 December 1987, or more than a year prior to the grant of provisional authority, seeking approval of the increase in its capital stock from P960,000.00 to P40M, and the stock transfers made by its stockholders.

18. Distinction between shares of stock and sale of franchise itself; Corporation has separate and distinct personality from its stockholders

A distinction should be made between shares of stock, which are owned by stockholders, the sale of which requires only NTC approval, and the franchise itself which is owned by the corporation as the grantee thereof, the sale or transfer of which requires Congressional sanction. Since stockholders own the shares of stock, they may dispose of the same as they see fit. They may not, however, transfer or assign the property of a corporation, like its franchise. In other words, even if the original stockholders had transferred their shares to another group of shareholders, the franchise granted to the corporation subsists as long as the corporation, as an entity, continues to exist. The franchise is not thereby invalidated by the transfer of the shares. A corporation has a personality separate and distinct from that of each stockholder. It has the right of continuity or perpetual succession.

19. PLDT cannot justifiably refuse to interconnect, pursuant to RA 6849

RA 6849, or the Municipal Telephone Act of 1989, approved on 8 February 1990, mandates interconnection providing as it does that "all domestic telecommunications carriers or utilities . . . shall be interconnected to the public switch telephone network." Such regulation of the use and ownership of telecommunications systems is in the exercise of the plenary police power of the State for the promotion of the general welfare.

20. Constitutional mandate as to the use of property (Section 6, Article XII)

Section 6, Article XII, of the 1987 Constitution provides that "the use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."

21. NTC merely exercised delegated authority when it decreed interconnection

The interconnection which has been required of PLDT is a form of "intervention" with property rights dictated by "the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines, . . . to maximize the use of telecommunications facilities available, . . . in recognition of the vital role of communications in nation building . . . and to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost" (DOTC Circular 90-248). Undoubtedly, the encompassing objective is the common good. The NTC, as the regulatory agency of the State, merely exercised its delegated authority to regulate the use of telecommunications networks when it decreed interconnection.

22. Interconnection; Sections 1 and 5 of Ministry Circular 82-81 (6 December 1982)

Section 1 of Ministry Circular 82-81 provides "that the government encourages the provision and operation of public mobile telephone service within local sub-base stations, particularly, in the highly commercialized areas." Section 5 on the other hand provides "that, in the event the authority to operate said service be granted to other applicants, other than the franchise holder, the franchise operator shall be under obligation to enter into an agreement with the domestic telephone network, under an interconnection agreement."

22. Interconnection; DOTC Circular 87-188 (1987)

Department of Transportation and Communication (DOTC) Circular No. 87-188, issued in 1987, also decrees that "all public communications carriers shall interconnect their facilities pursuant to comparatively efficient interconnection (CEI) as defined by the NTC in the interest of economic efficiency."

23. DOTC Circular 90-248 (14 June 1990); Policy on Interconnection and Revenue Sharing by Public Communications Carriers

The sharing of revenue was an additional feature considered in DOTC Circular 90-248. The circular provides that "It is the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines. There is s need to maximize the use of telecommunications facilities available and encourage investment in telecommunications infrastructure by suitably qualified service providers. In recognition of the vital role of communications in nation building, there is a need to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost. Thus, all facilities offering public telecommunication services shall be interconnected into the nationwide telecommunications network/s; the interconnection of networks shall be effected in a fair and non-discriminatory manner and within the shortest timeframe practicable; and the precise points of interface between service operators shall be as defined by the NTC; and the apportionment of costs and division of revenues resulting from interconnection of telecommunications networks shall be as approved and/or prescribed by the NTC."

24. Other interconnection-related circulars: DOTC Circular 7-13-90 (12 July 1990)

The NTC, on 12 July 1990, issued Memorandum Circular 7-13-90 prescribing the "Rules and Regulations Governing the Interconnection of Local Telephone Exchanges and Public Calling Offices with the Nationwide Telecommunications Network/s, the Sharing of Revenue Derived Therefrom, and for Other Purposes."

25. Interconnection allows parties to discuss and agree terms; Negotiations provides right to be heard

The NTC order to interconnect allows the parties themselves to discuss and agree upon the specific terms and conditions of the interconnection agreement instead of the NTC itself laying down the standards of interconnection which it can very well impose. Thus it is that PLDT cannot justifiably claim denial of due process. It has been heard. It will continue to be heard in the main proceedings. It will surely be heard in the negotiations concerning the interconnection agreement.

26. Purpose of interconnection

What interconnection seeks to accomplish is to enable the system to reach out to the greatest number of people possible in line with governmental policies laid down. Cellular phones can access PLDT units and vice versa in as wide an area as attainable. With the broader reach, public interest and convenience will be better served. The interconnection sought by ETCI is by no means a "parasitic dependence" on PLDT. The ETCI system can operate on its own even without interconnection, but it will be limited to its own subscribers. To be sure, ETCI could provide no mean competition, and eat into PLDT's own toll revenue, but all for the eventual benefit of all that the system can reach.

27. Ultimate Considerations to which public utilities must yield

The decisive considerations are public need, public interest, and the common good. Those were the overriding factors which motivated NTC in granting provisional authority to ETCI. Article II, Section 24 of the 1987 Constitution, recognizes the vital role of communication and information in nation building. It is likewise a State policy to provide the environment for the emergence of communications structures suitable to the balanced flow of information into, out of, and across the country (Article XVI, Section 10, ibid.). A modern and dependable communications network rendering efficient and reasonably priced services is also

indispensable for accelerated economic recovery and development. To these public and national interests, public utility companies must bow and yield.

28. Free competition in industry answer to improvement in telecommunication industry; No public utility has a constitutional right to a monopoly position

Free competition in the industry may also provide the answer to a much-desired improvement in the quality and delivery of this type of public utility, to improved technology, fast and handy mobile service, and reduced user dissatisfaction. After all, neither PLDT nor any other public utility has a constitutional right to a monopoly position in view of the Constitutional proscription that no franchise certificate or authorization shall be exclusive in character or shall last longer than 50 years (ibid., Section 11; Article XIV, Section 5, 1973 Constitution; Article XIV, Section 8, 1935 Constitution). Additionally, the State is empowered to decide whether public interest demands that monopolies be regulated or prohibited (1987 Constitution, Article XII, Section 19).

[3]

Republic vs. Meralco [G.R. No. 141314. November 15, 2002.]
Lawyers against Monopoly and Poverty (LAMP) vs. Meralco [G.R. No. 141369]
Third Division, Puno (J): 4 concurring.

Facts: On 23 December 1993, Manila Electric Company (MERALCO) filed with the Energy Regulatory Board (ERB) an application for the revision of its rate schedules. The application reflected an average increase of P0.21/kwh in its distribution charge. The application also included a prayer for provisional approval of the increase pursuant to Section 16(c) of the Public Service Act and Section 8 of Executive Order 172. On 28 January 1994, the ERB issued an Order granting a provisional increase of P0.184/kwh, subject to the condition that in the event that the Board finds that MERALCO is entitled to a lesser increase in rates, all excess amounts collected from the applicant's customers as a result of this Order shall either be refunded to them or correspondingly credited in their favor for application to electric bills covering future consumptions. Subsequent to an audit by the Commission on Audit (COA), the ERB rendered its decision adopting COA's recommendations and authorized MERALCO to implement a rate adjustment in the average amount of P0.017/kwh, effective with respect to MERALCO's billing cycles beginning February 1994. The ERB further ordered that "the provisional relief in the amount of P0.184/kwh granted under the Board's Order dated 28 January 1994 is hereby superseded and modified and the excess average amount of P0.167/kwh starting with MERALCO's billing cycles beginning February 1994 until its billing cycles beginning February 1998, be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption." The ERB held that income tax should not be treated as operating expense as this should be "borne by the stockholders who are recipients of the income or profits realized from the operation of their business" hence, should not be passed on to the consumers. Further, in applying the net average investment method, the ERB adopted the recommendation of COA that in computing the rate base, only the proportionate value of the property should be included, determined in accordance with the number of months the same was actually used in service during the test year.

On appeal (CA GR SP 46888), the Court of Appeals set aside the ERB decision insofar as it directed the reduction of the MERALCO rates by an average of P0.167/ kwh and the refund of such amount to MERALCO's customers beginning February 1994 and until its billing cycle beginning February 1998. Separate Motions for Reconsideration filed by the petitioners were denied by the Court of Appeals. Hence, the petition before the Supreme Court.

The Supreme Court granted the petitions and reversed the decision of the Court of Appeals. MERALCO was authorized to adopt a rate adjustment in the amount of P0.017/kwh, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated 16

February 1998, the excess average amount of P0.167/kwh starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.

1. Regulation of rates by public utilities founded on the State's police powers

The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be juris privati only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.

2. Purpose and limitations in State's regulation of rates

In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered. The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests.

3. Rationale of a public utility; Southwestern Bell Tel. Vs. Public Service Commission (Dissenting Opinion of Justice Brandeis)

The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in an enterprise. Upon the capital so invested, the Federal Constitution guarantees to the utility the opportunity to earn a fair return. . . . The Constitution does not guarantee to the utility the opportunity to earn a return on the value of all items of property used by the utility, or of any of them. The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His company is the substitute for the State in the performance of the public service, thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. (Southwestern Bell Tel. Co. v. Public Service Commission [1923])

4. Fixing rate may be delegated to administrative agency; Whether rates are reasonable justiciable

While the power to fix rates is a legislative function, whether exercised by the legislature itself or delegated through an administrative agency, a determination of whether the rates so fixed are reasonable and just is a purely judicial question and is subject to the review of the courts.

5. Mandate of ERB to fix rates

The ERB was created under Executive Order 172 to regulate, among others, the distribution of energy resources and to fix rates to be charged by public utilities involved in the distribution of electricity.

6. Standard in fixing rates

In the fixing of rates, the only standard which the legislature is required to prescribe for the guidance of the administrative authority is that the rate be reasonable and just. It has been held that even in the absence of an express requirement as to reasonableness, this standard may be implied.

7. Determination of just and reasonable rates; else rate that is confiscatory

What is a just and reasonable rate is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment. The requirement of reasonableness comprehends such rates which must not be so low as to be confiscatory, or too high as to be oppressive. In determining whether a rate is confiscatory, it is essential also to consider the given situation, requirements and

opportunities of the utility.

8. Factual findings of administrative bodies in technical matters accorded respect and finality unless evidence is insufficient to support their conclusion

Factual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if not overwhelming or preponderant. The courts "refrain from substituting their discretion on the weight of the evidence for the discretion of the Public Service Commission on questions of fact and will only reverse or modify such orders of the Public Service Commission when it really appears that the evidence is insufficient to support their conclusions."

9. Court's exercise of power of judicial review; Separation of Power

The function of the court, in exercising its power of judicial review, is to determine whether under the facts and circumstances, the final order entered by the administrative agency is unlawful or unreasonable. Thus, to the extent that the administrative agency has not been arbitrary or capricious in the exercise of its power, the time-honored principle is that courts should not interfere. The principle of separation of powers dictates that courts should hesitate to review the acts of administrative officers except in clear cases of grave abuse of discretion.

10. Factors in determining just and reasonable rates charged by a public utility

In determining the just and reasonable rates to be charged by a public utility, three major factors are considered by the regulating agency: a) rate of return; b) rate base and c) the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base.

11. Rate of return defined; Basis

The rate of return is a judgment percentage which, if multiplied with the rate base, provides a fair return on the public utility for the use of its property for service to the public. The rate of return of a public utility is not prescribed by statute but by administrative and judicial pronouncements. This Court has consistently adopted a 12% rate of return for public utilities.

12. Rate base defined

The rate base is an evaluation of the property devoted by the utility to the public service or the value of invested capital or property which the utility is entitled to a return.

13. Operating expenses

Operating expenses are those which are reasonably incurred in connection with business operations to yield revenue or income. They are items of expenses which contribute or are attributable to the production of income or revenue. As correctly put by the ERB, operating expenses "should be a requisite of or necessary in the operation of a utility, recurring, and that it redounds to the service or benefit of customers."

14. Income tax not included in computation of operating expenses of a public utility

Income tax should not be included in the computation of operating expenses of a public utility. Income tax paid by a public utility is inconsistent with the nature of operating expenses. Income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income. In exchange for the protection extended by the State to the taxpayer, the government collects taxes as a source of revenue to finance its activities. By its nature, income tax payments of a public utility are not expenses which contribute to or are incurred in connection with the production of profit of a public utility.

15. Income tax payment should not be shifted to the customers of a public utility

Income tax should be borne by the taxpayer alone as they are payments made in exchange for benefits received by the taxpayer from the State. No benefit is derived by the customers of a public utility for the taxes

paid by such entity and no direct contribution is made by the payment of income tax to the operation of a public utility for purposes of generating revenue or profit. Herein, the burden of paying income tax should be Meralco's alone and should not be shifted to the consumers by including the same in the computation of its operating expenses.

16. Rationale behind the inclusion of operating expenses in determination of just and reasonable rate

The principle behind the inclusion of operating expenses in the determination of a just and reasonable rate is to allow the public utility to recoup the reasonable amount of expenses it has incurred in connection with the services it provides. It does not give the public utility the license to indiscriminately charge any and all types of expenses incurred without regard to the nature thereof, i.e., whether or not the expense is attributable to the production of services by the public utility. To charge consumers for expenses incurred by a public utility which are not related to the service or benefit derived by the customers from the public utility is unjustified and inequitable.

17. Public cannot be subjected to unreasonable rates for stockholders to earn dividends

The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. . If a corporation cannot maintain such a facility and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens on the public.

18. In rate-determination, government not hidebound to apply any particular method or formula

With regard to rate-determination, the government is not hidebound to apply any particular method or formula. The question of what constitutes a reasonable return for the public utility is necessarily determined and controlled by its peculiar environmental milieu. What is a just and reasonable rate cannot be fixed by any immutable method or formula. Hence, it has been held that no public utility has a vested right to any particular method of valuation.

19. Factors in determining rates

Aside from the financial condition of the public utility, there are other critical factors to consider for purposes of rate regulation. Among others, they are: particular reasons involved for the request of the rate increase, the quality of services rendered by the public utility, the existence of competition, the element of risk or hazard involved in the investment, the capacity of consumers, etc. Rate regulation is the art of reaching a result that is good for the public utility and is best for the public. With respect to a determination of the proper method to be used in the valuation of property and equipment used by a public utility for rate-making purposes, the administrative agency is not bound to apply any one particular formula or method simply because the same method has been previously used and applied.

20. The Court cannot blindly apply the rulings of American courts on the treatment of income tax as operating expenses

The Court cannot blindly apply the rulings of American courts on the treatment of income tax as operating expenses in rate regulation cases. An approach allowing the indiscriminate inclusion of income tax payments as operating expenses may create an undesirable precedent and serve as a blanket authority for public utilities to charge their income tax payments to operating expenses and unjustly shift the tax burden to the customer. To be sure, public utility taxation in the United States is going through the eye of criticism. Some commentators are of the view that by allowing the public utility to collect its income tax payment from its customers, a form of "sales tax" is, in effect, imposed on the public for consumption of public utility services. By charging their income tax payments to their customers, public utilities virtually become "tax collectors" rather than taxpayers.

21. Public utilities in the United States taxed differently from those in Philippines

Under American laws, public utilities are taxed differently from other types of corporations and thus carry a heavier tax burden. Moreover, different types of taxes, charges, tolls or fees are assessed on a public utility depending on the state or locality where it operates. At a federal level, public utilities are subject to corporate income taxes and Social Security taxes — in the same manner as other business corporations. At the state and local levels, public utilities are subject to a wide variety of taxes, not all of which are imposed on each state. Thus, it is not unusual to find different taxes or combinations of taxes applicable to respective utility industries within a particular state. A significant aspect of state and local taxation of public utilities in the United States is that they have been singled out for special taxation, i.e., they are required to pay one or more taxes that are not levied upon other industries. Within Philippine jurisdiction, public utilities are subject to the same tax treatment as any other corporation and local taxes paid by it to various local government units are substantially the same. The reason for this is that the power to tax resides in Philippine legislature which may prescribe the limits of both national and local taxation, unlike in the federal system of the United States where state legislature may prescribe taxes to be levied in their respective jurisdictions.

22. Determination of rate base

In the determination of the rate base, property used in the operation of the public utility must be subject to appraisal and evaluation to determine the fair value thereof entitled to a fair return. With respect to those properties which have not been used by the public utility for the entire duration of the test year, i.e., the year subject to audit examination for rate-making purposes, a valuation method must be adopted to determine the proportionate value of the property.

23. Rate base determination: Net average investment method

Under the "net average investment method," properties and equipment used in the operation of a public utility are entitled to a return only on the actual number of months they are in service during the period.

24. Rate base determination: Average investment method

The "average investment method" computes the proportionate value of the property by adding the value of the property at the beginning and at the end of the test year with the resulting sum divided by two.

25. Soundness of the application of the net average investment method

The reasonableness of net average investment method is borne by the records of the case. In its report, the COA explained that the computation of the proportionate value of the property and equipment in accordance with the actual number of months such property or equipment is in service for purposes of determining the rate base is favored, as against the trending method employed by MERALCO, "to reflect the real status of the property." 36 By using the net average investment method, the ERB and the COA considered for determination of the rate base the value of properties and equipment used by MERALCO in proportion to the period that the same were actually used during the period in question. This treatment is consistent with the settled rule in rate regulation that the determination of the rate base of a public utility entitled to a return must be based on properties and equipment actually being used or are useful to the operations of the public utility.

26. Computation of proportionate value of assets used in services vis-à-vis actual number of months in test year a more accurate method

Computing the proportionate value of assets used in service in accordance with the actual number of months the same is used during the test year is a more accurate method of determining the value of the properties of a public utility entitled to a return. If, as determined by COA, the date of recordal in the books of MERALCO reflects the actual date the equipment or property is used in service, there is no reason for the ERB to adopt the trending method applied by MERALCO if a more precise method is available for determining the proportionate value of the assets placed in service.

27. Evil that would result in the application of the "trending method"

If the "trending method" is to be applied, the public utility may easily manipulate the valuation of its

property entitled to a return (rate base) by simply including a highly capitalized asset in the computation of the rate base even if the same was used for a limited period of time during the test year.

28. Presumption that rates are reasonable; Burden of proof to show otherwise

There is a legal presumption that the rates fixed by an administrative agency are reasonable, and it must be conceded that the fixing of rates by the Government, through its authorized agents, involves the exercise of reasonable discretion and, unless there is an abuse of that discretion, the courts will not interfere (Ynchausti S.S. Co. v. Public Utility Commissioner). The burden is upon the oppositor, MERALCO, to prove that the rates fixed by the ERB are unreasonable or otherwise confiscatory as to merit the reversal of the ERB. Herein, MERALCO was unable to discharge this burden.

[4]

Smart Communications vs. NTC [G.R. No. 151908. August 12, 2003]
Globe Telecom vs. CA [G.R. No. 152063]
First Division, Ynares-Santiago (J): 3 concurring, 1 took no part

Facts: On 16 June 2000, pursuant to its rule-making and regulatory powers, the National Telecommunications Commission (NTC) issued Memorandum Circular 13-6-2000, promulgating rules and regulations on the billing of telecommunications services. The Memorandum Circular provided that it shall take effect 15 days after its publication in a newspaper of general circulation and three certified true copies thereof furnished the UP Law Center. It was published in the newspaper, The Philippine Star, on 22 June 2000. Meanwhile, the provisions of the Memorandum Circular pertaining to the sale and use of prepaid cards and the unit of billing for cellular mobile telephone service took effect 90 days from the effectivity of the Memorandum Circular. On 30 August 2000, the NTC issued a Memorandum to all cellular mobile telephone service (CMTS) operators which contained measures to minimize if not totally eliminate the incidence of stealing of cellular phone units. This was followed by another Memorandum dated 6 October 2000 addressed to all public telecommunications entities reminding them that the validity of all prepaid cards and SIM packs sold and used by subscribers of prepaid cards, respectively, sold on 7 October 2000 and beyond shall be valid for at least 2 years from the date of first use.

On 20 October 2000, Isla Communications Co., Inc. and Pilipino Telephone Corporation filed against the National Telecommunications Commission, Commissioner Joseph A. Santiago, Deputy Commissioner Aurelio M. Umali and Deputy Commissioner Nestor C. Dacanay, an action for declaration of nullity of NTC Memorandum Circular 13-6-2000 (the Billing Circular) and the NTC Memorandum dated 6 October 2000, with prayer for the issuance of a writ of preliminary injunction and temporary restraining order. Soon thereafter, Globe Telecom, Inc and Smart Communications, Inc. filed a joint Motion for Leave to Intervene and to Admit Complaint-in-Intervention. This was granted by the trial court. On 27 October 2000, the trial court issued a TRO. Subsequently after hearing, the trial court issued on 20 November 2000 an Order granting the issuance of a writ of preliminary injunction and thus enjoining the NTC, et. al. from implementing the challenged memoranda. The plaintiffs and intervenors are, however, required to file a bond of P500,000.00. NTC et. al. filed a motion for reconsideration, which was denied in an Order dated 1 February 2001.

NTC filed a special civil action for certiorari and prohibition with the Court of Appeals (CA-GR SP 64274). On 9 October 2001, a decision was rendered, granting the petition for certiorari and prohibition, setting aside and annulling the writ of preliminary issued by the lower court, and dismissing the telecommunication companies' complaint and complaint-in-intervention without prejudice to the referral of their grievances and disputes on the assailed issuances of the NTC with the said agency. The companies' motions for reconsideration were denied in a Resolution dated 10 January 2002 for lack of merit. The petitioners and the intervenors filed their respective petitions for review with the Supreme Court. The two petitions were consolidated in a Resolution dated 17 February 2003. On 24 March 2003, the petitions were given due course

and the parties were required to submit their respective memoranda.

The Supreme Court granted the consolidated petitions; reversed and set aside the decision of the Court of Appeals dated 9 October 2001 and its Resolution dated 10 January 2002; reinstated the order dated 20 November 2000 of the Regional Trial Court of Quezon City, Branch 77; and remanded the case to the court a quo for continuation of the proceedings.

1, Pertinent provisions of Memorandum Circular 13-6-2000

Among the pertinent provisions of Memorandum Circular 13-6-2000 are : "(1) The billing statements shall be received by the subscriber of the telephone service not later than 30 days from the end of each billing cycle. In case the statement is received beyond this period, the subscriber shall have a specified grace period within which to pay the bill and the public telecommunications entity (PTEs) shall not be allowed to disconnect the service within the grace period. (2) There shall be no charge for calls that are diverted to a voice mailbox, voice prompt, recorded message or similar facility excluding the customer's own equipment. (3) PTEs shall verify the identification and address of each purchaser of prepaid SIM cards. Prepaid call cards and SIM cards shall be valid for at least 2 years from the date of first use. Holders of prepaid SIM cards shall be given 45 days from the date the prepaid SIM card is fully consumed but not beyond 2 years and 45 days from date of first use to replenish the SIM card, otherwise the SIM card shall be rendered invalid. The validity of an invalid SIM card, however, shall be installed upon request of the customer at no additional charge except the presentation of a valid prepaid call card. (4) Subscribers shall be updated of the remaining value of their cards before the start of every call using the cards. (5) The unit of billing for the cellular mobile telephone service whether postpaid or prepaid shall be reduced from 1 minute per pulse to 6 seconds per pulse. The authorized rates per minute shall thus be divided by 10."

2. Directions of NTC Memorandum of 30 August 2000 to CMTS operators

The Memorandum of 30 August 2000 directed CMTS operators to (a) strictly comply with Section B(1) of MC 13-6-2000 requiring the presentation and verification of the identity and addresses of prepaid SIM card customers; (b) require all your respective prepaid SIM cards dealers to comply with Section B(1) of MC 13-6-2000; (c) deny acceptance to your respective networks prepaid and/or postpaid customers using stolen cellphone units or cellphone units registered to somebody other than the applicant when properly informed of all information relative to the stolen cellphone units; (d) share all necessary information of stolen cellphone units to all other CMTS operators in order to prevent the use of stolen cellphone units; and (e) require all your existing prepaid SIM card customers to register and present valid identification cards.

3. Powers of admininstrative agencies

Administrative agencies possess quasi-legislative or rule-making powers and quasi-judicial or administrative adjudicatory powers.

4. Quasi-legislative or rule-making power

Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.

5. Requisites for the validity of rules of regulations promulgated by administrative agencies

The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid.

6. Statute prevails over an administrative order in case of conflict

Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.

7. Quasi-judicial or administrative adjudicatory power

Quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.

8. When exhaustion of administrative remedies is applicable

In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. (See case of Association of Philippine Coconut Dessicators v. Philippine Coconut Authority).

9. Even if exhaustion of administrative remedies not applicable, petitioners have complied with requirements

Even assuming arguendo that the principle of exhaustion of administrative remedies apply in this case, the records reveal that petitioners sufficiently complied with this requirement. Even during the drafting and deliberation stages leading to the issuance of Memorandum Circular 13-6-2000, petitioners were able to register their protests to the proposed billing guidelines. They submitted their respective position papers setting forth their objections and submitting proposed schemes for the billing circular. After the same was issued, petitioners wrote successive letters dated 3 and 5 July 2000 asking for the suspension and reconsideration of the so-called Billing Circular. These letters were not acted upon until 6 October 2000, when NTC issued the second assailed Memorandum implementing certain provisions of the Billing Circular. This was taken by petitioners as a clear denial of the requests contained in their previous letters, thus prompting them to seek judicial relief.

10. Application of doctrine of primary jurisdiction; Objective of doctrine

The doctrine of primary jurisdiction applies only where the administrative agency exercises its quasi-judicial or adjudicatory function. Thus, in cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence pursuant to the doctrine of primary jurisdiction. The courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where the claim is originally

cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.

11. Judicial Power; Courts have jurisdiction over constitutionality of rule or regulations issued in performance of quasi-legislative functions

The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

12. Issues raised not technical, within competence of a Judge in the Regional Trial Court

Whether the Circular contravened Civil Code provisions on sales and violated the constitutional prohibition against the deprivation of property without due process of law are within the competence of the trial judge. Contrary to the finding of the Court of Appeals, the issues raised in the complaint do not entail highly technical matters. Rather, what is required of the judge who will resolve this issue is a basic familiarity with the workings of the cellular telephone service, including prepaid SIM and call cards – and this is judicially known to be within the knowledge of a good percentage of our population – and expertise in fundamental principles of civil law and the Constitution.