

## Telecommunications over the centuries

Long distance communication initially started with the use of smoke signals and drums, and the first fixed semaphore systems<sup>1</sup> emerged in the 1790s while electrical telecommunications systems appear only in 1830s.<sup>2</sup>

In 1844, Morse was able to publicly demonstrate the use of the electric telegraph, and was adopted for US and Atlantic telecommunications in the years subsequent. In 1874, Bell was able to develop a galleys type telephone, and was able to make the first long distance call within Ontario, Canada through "borrowed" telegraph lines in 1876. Commercial telephone interchanges were set up in the years after. After the first Bell patent on the telephone expired in 1893, other companies competed to provide telephone equipment and telephone services.<sup>3</sup>

In 1901, a radio signal was made across the Atlantic. The first radio message was sent a year after. In 1915, the Inter-Continental line between New York and San Francisco was inaugurated, and the first transmission of speech across the Atlantic began in the same year. During the first World War (1917), Bell was able to demonstrate one-way radio telephone transmission between an airplane to the ground, and two-way telephone communications between two airplanes. By 1918, the United States president issued a proclamation assuming control of the country's telephone and telegraph systems, placing them under the direction of the Post Office Department.<sup>4</sup> By 1927, a public demonstration of television was made, as well as the first color telegraphs were sent, over wire.<sup>5</sup> In 1931, AT&T introduced a teletypewriter exchange service, which established central switching exchanges through which any subscriber could communicate by teletypewriter with any of the other subscribers to the service. In 1936, the first coaxial cable was installed and made available for multi-channel telephone tests, while in 1937, the combined handset telephone was introduced commercially.<sup>6</sup> By 1940, broad band carrier systems were introduced, allowing for simultaneous calls over a single pair of wires. By 1946, the first commercial multi-channel high frequency microwave radiotelephone system were introduced, and mobile telephone service was placed in commercial use.<sup>7</sup> Direct distance dialing was introduced in the 1950s, while a service allowing high-speed transmission of data over regular telephone circuits was announced in the same decade.<sup>8</sup>

By 1961, Bell System proposed a new service which would create "electronic highways" between specific points, over which many types of communications could be transmitted. In 1962, the first commercial application of the paging system was made. It was in the same year that the world's first international communications satellite rocketed into space to allow the first satellite transmission, and air-to-ground public telephone service was opened for commercial airline use for the first time. In 1966, a new FCC regulation prohibited eavesdropping of private conversations by the direct or indirect use of radio-controlled devices, and hence protected privacy.<sup>9</sup> By 1970, international DDD was introduced, and the FCC formally started regulating the cable television industry. In 1977, the FCC authorized cellular trials.<sup>10</sup> ISDN trials began in 1987, while the first transatlantic fiber optic cable was completed a year after.<sup>11</sup> In 1993, the first digital mobile network was established while the first all digital cellular network was brought up. By 1995, there were about 30 million Internet users. The 1990s also witnessed the merging of various telecommunication companies.<sup>12</sup> By 2000, DSL has become a new and sought service for homes and small businesses accessing the Internet.<sup>13</sup>

## Devices

**Telephone:** The telephone is a telecommunications device that is used to transmit and receive sound between conversing persons. Most telephones operate through transmission of electric signals over a complex telephone network.<sup>14</sup>

**Telegraph:** A telegraph is a machine for transmitting and receiving messages over long distances.<sup>15</sup> More specifically, a teleprinter (teletypewriter, Teletype or TTY for TeleTYpe/TeleTYpewriter) is a electro-mechanical typewriter which can be used to communicate typed messages over a variety of communications channels that range from a simple electrical connection to the use of radio and microwave as the transmission medium.<sup>16</sup> On the other hand, telex are systems that used telephone-like rotary dialing to connect teletypes.<sup>17</sup> A telegraph message is called a telegram or a cablegram.<sup>18</sup>

**Computer.** See previous discussions.

1 A semaphore line, optical telegraph, shutter telegraph chain, Chappe telegraph, or Napoleonic semaphore is a system of conveying information by means of visual signals. Information is encoded by the position of the mechanical elements. [http://en.wikipedia.org/wiki/Semaphore\\_line](http://en.wikipedia.org/wiki/Semaphore_line)

2 [http://en.wikipedia.org/wiki/History\\_of\\_telecommunication](http://en.wikipedia.org/wiki/History_of_telecommunication).

3 <http://www.webbconsult.com/1800.html>

4 <http://www.webbconsult.com/1900.html>

5 <http://www.webbconsult.com/1920.html>

6 <http://www.webbconsult.com/1930.html>

7 <http://www.webbconsult.com/1940.html>

8 <http://www.webbconsult.com/1950.html>

9 <http://www.webbconsult.com/1960.html>

10 <http://www.webbconsult.com/1970.html>

11 <http://www.webbconsult.com/1980.html>

12 <http://www.webbconsult.com/1990.html>

13 <http://www.webbconsult.com/2000.html>

14 <http://en.wikipedia.org/wiki/Telephone>

15 <http://en.wikipedia.org/wiki/Telegraphy>

16 <http://en.wikipedia.org/wiki/Teletypes>

17 <http://en.wikipedia.org/wiki/Telegraphy#Telex>

18 Supra; <http://en.wikipedia.org/wiki/Telegraphy>

## Relevance

Understanding the development of telecommunication systems provides for an understanding how data, images and sound are conveyed from one communication to another (and the necessary conversions to allow so); the possibility of transmission through different medium (electrical/electronic, optical, radio, etc.); and the parallelisms of basic communication devices with more sophisticated telecommunications devices proliferating today; among others. This in turn provides a broader insight to legal terms found in laws and regulations, which pertain to such technical information.

## Philippine Laws

**Section 11, Article XII, 1987 Constitution** provides “No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.”

### Other Laws

- Republic Act 4200: “Anti Wire-Tapping Law”<sup>19</sup>
- Republic Act 7925: “Public Telecommunications Policy Act of the Philippines.”<sup>20</sup>

### Sample of jurisprudence pertaining to telecommunications<sup>21</sup>

- Smart Communications vs. NTC, GR 151908, 12 August 2003; First Division, Ynares-Santiago (J)
- GMCR vs. Bell Telecommunication Philippines (BellTel), GR 126496, 30 April 1997; First Division, Hermosisima Jr. (J)
- Republic vs. Meralco, GR 141314, 15 November 2002; Third Division, Puno (J)
- PLDT vs. NTC, GR 88404, 18 October 1990; En Banc, Melencio-Herrera (J)

*Annexes “A,” “B,” and “C” are merely for reference.*



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<sup>19</sup> For copy of the law, see Annex “A”

<sup>20</sup> For copy of the law, see Annex “B”

<sup>21</sup> For digests, see Annex “C”. For more updated list, see Atty. Gozon’s case assignments in Telecommunication Law, Arellano University School of Law.

## Annex A

### REPUBLIC ACT NO. 4200

#### AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION, AND FOR OTHER PURPOSES

Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described:

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in Sec. 3 hereof, shall not be covered by this prohibition.

Sec. 2. Any person who wilfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding Sec. or who violates the provisions of the following Sec. or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

Sec. 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding Sec.s in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and (3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this Sec. shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

Sec. 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding Sec.s of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Sec. 5. All laws inconsistent with the provisions of this Act are hereby repealed or accordingly amended.

Sec. 6. This Act shall take effect upon its approval.

Approved: June 19, 1965

## Annex B

REPUBLIC ACT No. 7925

### AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES

#### ARTICLE I GENERAL PROVISIONS

Section 1. Short Title. - This Act shall be known as the "Public Telecommunications Policy Act of the Philippines."

Section 2. Scope and Application. - This Act shall apply to all public telecommunications entities in the Philippines.

Section 3. Definitions and Interpretations. - For purposes of this Act, the following terms shall be used:

(a) Telecommunications - any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means.

(b) Public telecommunications entity - any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation.

(c) Broadcasting - an undertaking the object of which is to transmit over-the-air commercial radio or television messages for reception of a broad audience in a geographic area.

(d) Franchise - a privilege conferred upon a telecommunications entity by congress, authorizing that entity to engage in a certain type of telecommunications service.

(e) Local exchange operator - an entity providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice service, in a geographic area anywhere in the Philippines.

(f) Inter-exchange carrier - an entity, sometimes referred to as carrier's carrier or national backbone network operator, authorized to install, own and operate facilities which connect local exchanges within the Philippines and to engage in the business of inter-exchange national long distance services.

(g) International carrier - an entity primarily engaged in the business of providing transmission and switching of any telecommunications service between the Philippines and any other point of the world to which it has an existing correspondent or prospective interconnection agreements.

(h) Value-added service provider (VAS) - 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.

(i) Public toll calling station - a non-exclusive facility at which the public may, by the payment of appropriate fees, place as well as receive telephone calls and/or telegrams or other messages.

(j) Mobile radio telephone system - a wide area mobile radio telephone system with its own switch, base stations and transmission facilities capable of providing high capacity mobile telecommunications by utilizing radio frequencies.

(k) Interconnection - the linkage, by wire, radio, satellite or other means, of two or more existing telecommunications carriers or operators with one another for the purpose of allowing or enabling the subscribers of one carrier or operator to access or reach the subscribers of the other carriers or operators.

#### ARTICLE II POLICY AND OBJECTIVES

Section 4. Declaration of National Policy. - Telecommunications is essential to the economic development, integrity and security of the Philippines, and as such shall be developed and administered as to safeguard, enrich and strength the economic, cultural, social and political fabric of the Philippines. The growth and development of telecommunications services shall be pursued in accordance with the following policies:

(a) A fundamental objective of government is 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;

(b) The expansion of the telecommunications network shall give priority to improving and extending basic services to areas not yet served. For this purpose, government shall promote a fair, efficient and responsive market to stimulate the growth and development of the telecommunications facilities and services, with emphasis on the accessibility by persons to basic services in unserved and underserved areas at affordable rates;

(c) The radio frequency spectrum is a scarce public resource that shall be administered in the public interest and in accordance with international agreements and conventions to which the Philippines is a party and granted to the best qualified. The government shall allocate the spectrum to service providers who will use it efficiently and effectively to meet public demand for telecommunications service and may avail of new and cost effective technologies in the use of methods for its utilization;

(d) Rates and tariff charges shall be fair, just and reasonable and for this purpose, the regulatory body shall develop tariff structures based on socioeconomic factors and on financial, technical and commercial criteria as measures to ensure a fair rate of return and as a tool to ensure economic and social development;

(e) Public telecommunications services shall be provided by private enterprises. The private sector shall be the engine of rapid and efficient growth in the telecommunications industry;

(f) 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;

(g) A fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services is necessary in order to achieve a viable, efficient, reliable and universal telecommunications services;

(h) The government shall give all the assistance and encouragement to Philippine international carriers in order to establish interconnection with other countries so as to provide access to international communications highways on a competitive basis;

(i) For efficiency, practicability, and convenience, but with due regard to the observance of due process at all times, regulation of telecommunications entities shall rely principally on an administrative process that is stable, transparent and fair, giving due emphasis to technical, legal, economic and financial considerations;

(j) No single franchise shall authorize an entity to engage in both telecommunications and broadcasting, either through the airwaves or by cable;

(k) Ownership of public telecommunications entities to as wide a number of people as possible, preferably to its customers, in order to encourage efficiency and public accountability and to tap personal savings shall be encouraged;

(l) The development of a domestic telecommunications manufacturing industry to meet the needs of the Philippines and to take advantage of export opportunities shall be promoted without preventing, deterring or hampering the goal of full universal service; and

(m) Human resources skills and capabilities must be harnessed and improved to sustain the growth and the development of telecommunications under a fast changing telecommunications environment.

### ARTICLE III ADMINISTRATION

Section 5. Responsibilities of the National Telecommunications Commission. - The National Telecommunications Commission (Commission) shall be the principal administrator of this Act and as such shall take the necessary measures to implement the policies and objectives set forth in this Act. Accordingly, in addition to its existing functions, the Commission shall be responsible for the following:

(a) Adopt an administrative process which would facilitate the entry of qualified service providers and adopt a pricing policy which would generate sufficient returns to encourage them to provide basic telecommunications services in unserved and underserved areas;

(b) Ensure quality, safety, reliability, security, compatibility and inter-operability of telecommunications facilities and services in conformity with standards and specifications set by international radio and telecommunications organizations to which the Philippines is a signatory;

(c) Mandate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services through appropriate modalities of interconnection and at a reasonable and fair level of charges, which make provision for the cross subsidy to unprofitable local exchange service areas so as to promote telephone density and provide the most extensive access to basic telecommunications services available at affordable rates to the public;

(d) Foster fair and efficient market conduct through, but not limited to, the protection of telecommunications entities from unfair trade practices of other carriers;

(e) Promote consumers welfare by facilitating access to telecommunications services whose infrastructure and network must be geared towards the needs of individual and business users;

(f) Protect consumers against misuse of a telecommunications entity's monopoly or quasi-monopolistic powers by, but not limited to, the investigation of complaints and exacting compliance with service standards from such entity; and

(g) In the exercise of its regulatory powers, continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities.

Section 6. Responsibilities of and Limitations to Department Powers. - The Department of Transportation and Communications (Department) shall not exercise any power which will tend to influence or effect a review or a modification of the Commission's quasi-judicial functions.

In coordination with the Commission, however, the Department shall, in accordance with the policies enunciated in this Act,

be responsible for:

(a) the development and maintenance of a long-term strategic national development plan for telecommunications to serve as a guide to the industry and potential investors as well as to the Commission;

(b) the coordination of research and development activities in government with the work of other institutions in the field of telecommunications;

(c) the representation and promotion of Philippine interests in international bodies, and the negotiation of the nation's rights and obligations in international telecommunications matters; and

(d) the operation of a national consultative forum to facilitate interaction amongst the telecommunications industries, user groups, academic and research institutions in the airing and resolution of important issues in the field of communications.

#### ARTICLE IV TELECOMMUNICATIONS ENTITIES

Section 7. Categories of Telecommunications Entities. - A telecommunications entity shall be authorized to operate in one or more of the telecommunications categories mentioned in this Act provided each category is covered by its franchise.

Section 8. Local Exchange Operator. - A local exchange operator shall:

(a) provide universal basic telephone service to all subscribers who applied for such service, within a reasonable period and at such standards as may be prescribed by the Commission and at such tariff as to sufficiently give it a fair return on its investments.

(b) be protected from uncompensated bypass or overlapping operations of other telecommunications entities in need of physical links or connections to its customers in the area except when it is unable to provide, within a reasonable period of time and at desired standard, the interconnection arrangements required by such entities.

(c) have the first option to provide pay telephone services or public calling stations in the area covered by its network.

(d) be entitled to a fair and equitable revenue sharing arrangement with the inter-exchange carrier or such other carriers connected to its basic network.

Section 9. Inter-Exchange Carrier. - The number of entities allowed to provide inter-exchange national long distance services may be limited, but as a matter of policy, where it is economically viable, at least two (2) carriers, shall be authorized: Provided, however, That a local exchange carrier shall not be restricted from operating its own inter-exchange carrier service if its viability is dependent thereto. Such inter-exchange carrier shall have the following obligations:

(a) It shall interconnect with other networks in the same category and with local exchange carriers or other telecommunications entities, upon application and within a reasonable time period, and under fair and reasonable level charges, in order that domestic and international long distance services are made possible; and

(b) It shall have the right to establish and operate its own tandem switching facilities to which international calls or overseas carriers have to course their messages or signals.

Section 10. International Carrier. - Only entities which will provide local exchange services and can demonstrably show technical and financial capability to install and operate an international gateway facility shall be allowed to operate as an international carrier.

The entity so allowed shall be required to produce a firm correspondent or interconnection relationships with major overseas telecommunications authorities or carriers within one (1) year from the grant of the authority.

The international carrier shall also comply with its obligations to provide the local exchange service in unserved or underserved areas within three (3) years from the grant of the authority as required by existing regulations: Provided, however, That said carrier shall be deemed to have complied with the said obligation in the event it allows an affiliate thereof to assume such obligation and who complies therewith.

Failure to comply with the above obligations shall be a cause to cancel its authority or permit to operate as an international carrier.

Section 11. Value-added Service Provider. - Provided that it does not put up its own network, a VAS provider need not secure a franchise. A VAS provider shall be allowed to competitively offer its services and/or expertise, and lease or rent telecommunications equipment and facilities necessary to provide such specialized services, in the domestic and/or international market in accordance with network compatibility.

Telecommunications entities may provide VAS, subject to the additional requirements that:

(a) prior approval of the Commission 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

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

Section 12. Mobile Radio Services. - In a local telephone exchange area, more than one duly enfranchised provider of mobile radio services, distinct and separate from the local exchange carrier, may be allowed to operate. However, such entities shall secure prior authority from the Commission and, in addition, comply with the conditions imposed on VAS and with the norms on radio frequency spectrum utilization.

The operator of a mobile radio telephone system shall comply with its obligations to provide local exchange service in unserved and underserved areas in accordance with existing regulations. Failure to comply with this obligation within (3) years from the grant of the authority shall be a cause to cancel its authority or permit to operate a mobile radio telephone system.lawphil&159;

Section 13. Radio Paging Services. - Duly enfranchised radio paging services involving either voice or data messages, shall be allowed to compete freely in rates, number of operators, or variety of operating modalities, subject only to the norms on radio frequency spectrum utilization.

#### ARTICLE V OTHER SERVICES AND FACILITIES

Section 14. Customer Premises Equipment. - Telecommunications subscribers shall be allowed to use within their premises terminal equipment, such as telephone, PABX, facsimile, data, record, message and other special purpose or multi-function telecommunication terminal equipment intended for such connection: Provided, That the equipment is type-approved by the Commission.

Section 15. Radio Frequency Spectrum. - The radio frequency spectrum allocation and assignment shall be subject to periodic review. The use thereof shall be subject to reasonable spectrum user fees. Where demand for specific frequencies exceed availability, the Commission shall hold open tenders for the same and ensure wider access to this limited resource.

#### ARTICLE VI FRANCHISE, RATES AND REVENUE DETERMINATION

Section 16. Franchise. - No person shall commence or conduct the business of being a public telecommunications entity without first obtaining a franchise.

The Commission, in granting a Certificate of Public Convenience and Necessity (CPCN), may impose such conditions as to duration and termination of the privilege, concession, or standard or technical aspects of the equipment, rates, or service, not contrary to the terms of the franchise. In no case, however, shall the CPCN be shorter than five (5) years, nor longer than the life of the franchise. A CPCN expiring at the same time as the franchise shall be deemed to have been renewed for the same term if the franchise itself is also renewed or extended.

Expansion and financing of networks and services, utilizing equipment compatible with or homologous to existing or previously approved plant and facilities, in order to service additional demand in the same areas where the previously approved network and services have been installed, shall not require any approval by the Commission.

The upgrading of existing plant and network facilities including the financing thereof, for the purpose of retiring or replacing obsolete or outmoded equipment with state of the art equipment and technology in order to improve the quality or grade of service being rendered to the public within the same areas covered by the existing plant and facilities previously approved, shall likewise not require the approval of the Commission.

The Commission, however, shall not grant a subsequent CPCN for another segment of service or extend the area service coverage of an entity which has failed to satisfactorily comply with its commitments to the Commission to provide a particular service in the original area coverage under an earlier authorization.

Section 17. Rates and Tariffs. - The Commission shall establish rates and tariffs which are fair and reasonable and which provide for the economic viability of telecommunications entities and a fair return on their investments considering the prevailing cost of capital in the domestic and international markets.

The Commission shall exempt any specific telecommunications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs. The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

Section 18. Access Charge/Revenue Sharing. - The access charge/revenue sharing arrangements between all interconnecting carriers shall be negotiated between the parties and the agreement between the parties shall be submitted to the Commission. In the event the parties fail to agree thereon within a reasonable period of time, the dispute shall be submitted to the Commission for resolution.

In adopting or approving an access charge formula or revenue sharing agreement between two or more carriers, particularly, but not limited to a local exchange, interconnecting with a mobile radio, interexchange long distance carrier, or international carrier, the commission shall ensure equity, reciprocity and fairness among the parties concerned. In so approving the rates for interconnection between the telecommunications carriers, the Commission shall take into consideration the costs of the facilities needed to complete the interconnection, the need to provide the cross-subsidy to local exchange carriers to enable them to fulfill the primary national objective of increasing telephone density in the country and assure a rate of return on the local exchange network investment that is at parity with those earned by other segments of the telecommunications industry: Provided, That international carriers and mobile radio operators which are mandated to provide local exchange services,

shall not be exempt from the requirement to provide the cross-subsidy when they interconnect with the local exchanges of other carriers: Provided, further, That the local exchanges which they will additionally operate, shall equally be entitled to the cross-subsidy from other international carriers, mobile radio operators, or inter-exchange carriers interconnecting with them.

Section 19. Uniform System of Accounts. - The Commission shall require telecommunications entities to set up a uniform system of accounts which shall be one of the bases in establishing rates and tariffs. Where a single entity spans more than one category of telecommunications service, a separate book of accounts shall be maintained for each category or specialized classification.

#### ARTICLE VII RIGHTS OF TELECOMMUNICATIONS USERS

Section 20. Rights of End-Users. - The user of telecommunications service shall have the following basic rights:

(a) Entitlement of utility service which is non-discriminatory, reliable and conforming with minimum standards set by the Commission;

(b) Right to be given the first single-line telephone connection or the first party-line connection within two (2) months of application for service, against deposit; or within three (3) months after targeted commencement of service in the barangay concerned per the original schedule of service expansion approved by the Commission, whichever deadline comes later;

(c) Regular, timely and accurate billing, courteous and efficient service at utility business offices and by utility company personnel; and

(d) Thorough and prompt investigation of, and action upon complaints. The utility shall endeavor to allow complaints to be received over the telephone and shall keep a record of all written or phoned-in complaints.

#### ARTICLE VIII TELECOMMUNICATIONS DEVELOPMENT

Section 21. Public Ownership. - In compliance with the Constitutional mandate to democratize ownership of public utilities, all telecommunications entities with regulated types of services shall make a bona fide public offering through the stock exchanges of at least thirty percent (30%) of its aggregate common stocks within a period of five (5) years from effectivity of this Act or the entity's first start of commercial operations, whichever date is later. The public offering shall comply with the rules and regulations of the Securities and Exchange Commission.

Section 22. Privatization of Existing Facilities. - The Department shall, within three (3) years from effectivity of this Act, privatize all telecommunications facilities currently owned and/or operated by the government for public use, plus those facilities currently being planned under various bilateral funding arrangements. Unless otherwise authorized by law, privatization of telecommunications facilities as well as construction of telephone infrastructure shall be made through public bidding.

Section 23. Equality of Treatment in the Telecommunications Industry. - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

#### ARTICLE IX FINAL PROVISIONS

Section 24. Transitory Provision. - All telecommunications services deregulated hereby and which are operating at the effectivity of this Act, may continue to have their rates and tariffs approved by the Commission until the end of the calendar year of the effectivity of this Act.

Existing franchises that are not operating or without pending applications for certificates of public convenience at the time of effectivity of this Act are deemed revoked.

All interconnection agreements previously entered into between telecommunications carriers shall remain in full force and effect but the parties shall, within six (6) months from the effectivity of this Act, review their access charging/revenue sharing formula and submit to the Commission an amendment thereof, if necessary, in order to comply with the guidelines on the access charging/revenue sharing formula contained in Section 18 of this Act.

Section 25. Separability Clause. - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

Section 26. Repealing Clause. - All laws, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act are hereby repealed or modified accordingly.

Section 27. Effectivity Clause. - This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved: March 1, 1995

## Annex C

### **Smart Communications vs. NTC**

GR 151908, 12 August 2003; First Division, Ynares-Santiago (J)

Facts: On 16 June 2000, the NTC issued Memorandum Circular 13-6-2000, promulgating rules and regulations on the billing of telecommunications services; which includes provisions pertaining to the use and sale of pre-paid cards and unit of billing for cellular mobile telephone service (CMTS). On 30 August 2000, the NTC issued a memorandum to all CMTS operators which contained measures to minimize if not totally eliminate the incidence of stealing of cellular phone units. Another memorandum dated 6 October 2000 addressed to all telecommunications entities reminding them that the validity of all prepaid cards and SIM packs sold and used on 7 October 2000 and beyond shall be valid for at least 2 years from the date of first use. On 20 October 2000, Islacom and Piltel questioned the validity of the memoranda, and prayed for the issuance of a writ of preliminary injunction. The lower court granted the issuance of the injunction. NTC moved for reconsideration, but was denied. NTC thereafter filed a special civil action for certiorari and probation before the Court of Appeals. The appellate court granted the petition and dismissed the companies' complaint without prejudice to the referral of their grievances with the NTC. Hence, the petition for review with the Supreme Court.

Issue: Whether a party should have exhausted administrative remedies before it filed the case in court.

Held: A party need not exhaust administrative remedies before going to Court, when questioning the validity or constitutionality of a rule or regulation issued by an administrative agency. The principle only applies when the act of the agency was performed pursuant to its quasi-judicial function, and not when the assailed and pertained to its rule-making or quasi-legislative power.

Issue: Whether the court or NTC has jurisdiction over the issues pertaining to the memoranda.

Held: The issues raised in the complaint do not entail highly technical matters, and thus are within the competence of a judge in the lower court. What is required of the judge who will resolve the issue is a basic familiarity with the workings of the cellular telephone service, including pre-paid SIM and call cards (which is within the knowledge of a good percentage of the Philippine population) and expertise in fundamental principles of civil law and the Constitution.

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### **GMCR vs. Bell Telecommunication Philippines (BellTel)**

GR 126496, 30 April 1997; First Division, Hermosissima Jr. (J)

Facts: On 19 October 1993, BellTel filed with the NTC an application for a certificate of public convenience with a further request for the issuance of a provisional authority (NTC Case 93-481). On 25 March 1994, RA 7692 was enacted granting BellTel a legislative franchise to operate business of providing telecommunication services. In 12 July 1994, BellTel a legislative franchise to operate business of providing telecommunication services. On 12 July 1994, BellTel filed a second application for a certificate of public convenience, proposing to install 2.6 million telephone lines in 10 years and to provide a 100% digital local exchange network (NTC Case 94-229). It also moved for the withdrawal of the first application, without prejudice, which was granted by the NTC. BellTel's application (2nd ) was opposed by various telecommunication companies. BellTel's application was referred to the Common Carriers Authorization Department (CCAD), which found BellTel's proposal technically feasible and BellTel to be financially capable. The two deputy commissioners of the NTC signified their approval of the CCAD recommendation. The working draft was prepared by the legal department, was initialed by the two deputy commissioners, but was not signed by NTC Commissioner Simeon Kintanar. BellTel filed a motion to promulgate, after previously filing two urgent ex-parte motion to resolve application which were not acted upon by the NTC. On 4 July 1995, the NTC denied the motion in an order signed solely by Commissioner Kintanar. On 17 July 1995, BellTel filed a petition for certiorari, mandamus and prohibition against NTC before the Supreme Court. The Court referred the case to the Court of Appeals pursuant to Paragraph 1, Section 9 of BP 129. The Court of Appeals granted BellTel's position. Hence, the petitions for review by the opposing telecommunication companies and Commissioner Kintanar.

Issue: Whether the vote of the Chairman of the Commission is sufficient to legally render an NTC order, resolution or decision.

Held: Having been organized under Executive Order 146 as a three-man commission, the NTC is a collegial body and was a collegial body even during the time it was acting as a one-man regime. NTC is a collegial body requiring a majority vote out of three members of the commission in order to validly decide a case or any incident therein. 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. NTC Circulars 1-1-93, 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 are null and void.

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### **Republic vs. Meralco**

GR 141314, 15 November 2002; Third Division, Puno (J)

Facts: On 23 December 1993, Meralco filed with the Energy Regulatory Board (ERB) an application for the revision of its rate schedules. On 28 January 1994, the ERB issued an order granting a provisional increase of P0.184/kwh subject to the condition that in event that the board finds that Meralco is entitled to a lesser increase in rates, all excess amounts collected shall be refunded or credited to its customers. Subsequently, ERB rendered its decision adopting the audit of the Commission on Audit (COA) and authorized Meralco to implement a rate adjustment of P0.017/kwh, but ordered the refund of the excess amount of P0.167/kwh collected from the billing cycles of February 1994 to February 1997, holding that

income tax should not be treated as operating expense, and applying the net average investment method in the computation of the rate base. On appeal, the Court of Appeals set aside the ERB decision insofar as it directed the reduction of the rates by P0.167/kwh and the refund to Meralco's customers. Motions for reconsideration were denied. Hence, the petition before the Supreme Court.

Issue: Whether the rates are just and reasonable.

Held: The ERB has the power to fix rates to be charged by public utilities involved in the distribution of electricity, under Executive Order 172. What is just, reasonable rate is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment. In determining the just and reasonable rates to be charged by a public utility, the regulating agency must consider the rate of return, the rate base, and the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base. Aside from the financial condition of the public utility, particular reasons involved for the request of the rate increase, the quality of the 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. should be considered for the purpose of rate regulation. Herein, the factual findings of the administrative body should be accorded great respect, even finality, if supported by substantial evidence. To the extent that the agency has not been arbitrary or capricious in the exercise of its powers, the courts should not interfere.

Issue: Whether income tax may be shifted to the public utility's customer.

Held: 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 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. Thus, the burden of paying income tax should be Meralco's alone and should not be shifted to the customers by including the same in the computation of its operating expenses.

Issue: Whether the net average investment method or the trending method should be used in determining the tax base.

Held: 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. What constitutes a reasonable return for the public utility is necessarily determined and controlled by its peculiar environmental milieu. The reasonableness of the net average investment method is borne by the records of the case. By using the said method, the ERB and COA considered for determination of the rate base the value of the properties and equipment used by Meralco in proportion to the period that the same were actually used during the period in question. If the "trending method" is to be applied, the public utility may easily manipulate the valuation of its property entitled to a return (tax 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.

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### **PLDT vs. NTC**

GR 88404, 18 October 1990; En Banc, Melencio-Herrera (J)

Facts: On 22 June 1958, RA 2090 was enacted granting Felix Alberto & Co. (later ETCL) a franchise to establish radio stations for domestic and transoceanic telecommunications. On 13 May 1987, ETCL filed an application with the NTC for the issuance of a certificate of public convenience and necessity to operate, etc. 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 within Metro Manila. PLDT filed an opposition with a motion to dismiss. On 12 November 1987, NTC overruled PLDT's opposition and declared RA 2090 should be liberally construed so as to include the operation of a cellular mobile telephone service as part of services of the franchise. On 12 December 1988, NTC granted ETCL provisional authority to install, operate, and maintain a cellular mobile telephone service initially in Metro Manila subject to the terms and conditions set forth in its order, including an interconnection agreement to be entered with PLDT. PLDT filed a motion to set aside order which was denied by the NTC on 8 May 1989. PLDT challenged the 12 December 1988 and 8 May 1989 NTC orders before the Supreme Court through a special civil action for certiorari and prohibition.

Issue: Whether the provisional authority was properly granted.

Held: The provisional authority granted by the NTC (which is the regulatory agency of the National Government over all telecommunications entities) has a definite expiry period of 18 months unless sooner renewed; may be revoked, amended or revised by the NTC; covers one of four phases; limited to Metro Manila only; and does not authorize the installation and operation of an alphanumeric paging system. It was further issued after due hearing, with PLDT attending and granted after a prima facie showing that ETCL had the necessary legal, financial and technical capabilities; and that public interest, convenience and necessity so demanded. Provisional authority would be meaningless if the grantee were not allowed to operate, as its lifetime is limited and may be revoked by the NTC at any time in accordance with law.

Issue: Whether ETCL's franchise includes operation of cellular mobile telephone system (CMTS)

Held: The NTC construed the technical term "radiotelephony" liberally as to include the operation of a cellular mobile telephone system. 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.

Issue: Whether PLDT can refuse interconnection with ETCL.

Held: The NTC merely exercised its delegated authority to regulate the use of telecommunication networks when it decreed interconnection. PLDT cannot refuse interconnection as such is mandated under RA 6949 or the Municipal Telephone Act of

1989. 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. With the broader reach, public interest and convenience will be better served. Public need, public interest, and the common good are the decisive, if not the ultimate, considerations. To these public and national interests, public utility companies must yield.

The NTC order does not deprive PLDT due process as it 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.