

**GLOBE TELECOM, INC., PETITIONER, VS. THE NATIONAL
TELECOMMUNICATIONS COMMISSION, COMMISSIONER JOSEPH A.
SANTIAGO, DEPUTY COMMISSIONERS AURELIO M. UMALI AND
NESTOR DACANAY, AND S...**

G.R. No. 143964. July 26, 2004

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TINGA, J.:

Telecommunications services are affected by a high degree of public interest.[1] Telephone companies have historically been regulated as common carriers,[2] and indeed, the 1936 Public Service Act has classified wire or wireless communications systems as a “public service,” along with other common carriers.[3]

Yet with the advent of rapid technological changes affecting the telecommunications industry, there has been a marked reevaluation of the traditional paradigm governing state regulation over telecommunications. For example, the United States Federal Communications Commission has chosen not to impose strict common regulations on incumbent cellular providers, choosing instead to let go of the reins and rely on market forces to govern pricing and service terms.[4]

In the Philippines, a similar paradigm shift can be discerned with the passage of the Public Telecommunications Act of 1995 (“PTA”). As noted by one of the law’s principal authors, Sen. John Osmeña, under prior laws, the government regulated the entry of pricing and operation of all public telecommunications entities. The new law proposed to dismantle gradually the barriers to entry, replace government control on price and income with market instruments, and shift the focus of government’s intervention towards ensuring service standards and protection of customers.[5] Towards this goal, Article II, Section 8 of the PTA sets forth the regulatory logic, mandating that “a healthy competitive environment shall be fostered, one in which telecommunications carriers are free to make business decisions and to interact with one another in providing telecommunications services, with the end in view of encouraging their financial viability while maintaining affordable rates.”[6] The statute itself defines the role of the government to “promote a fair, efficient and responsive market to stimulate growth and development of the telecommunications facilities and services.”[7]

The present petition dramatizes to a degree the clash of philosophies between traditional notions of regulation and the au corant trend to deregulation. Appropriately, it involves the most ubiquitous feature of the mobile phone, Short Messaging Service (“SMS”)[8] or “text messaging,” which has been transformed from a mere technological fad into a vital means of communication. And propitiously, the case allows the Court to evaluate the role of the National Telecommunications Commission (“NTC”) in this day and age.

The NTC is at the forefront of the government response to the avalanche of inventions and innovations in the dynamic telecommunications field. Every regulatory action it undertakes is of keen interest not only to industry analysts and players but to the public at large. The intensive scrutiny is understandable given the high financial stakes involved and the inexorable impact on consumers. And its rulings are traditionally accorded respect even by the courts, owing traditional deference to administrative agencies equipped with special knowledge, experience

and capability to hear and determine promptly disputes on technical matters.[9]

At the same time, judicial review of actions of administrative agencies is essential, as a check on the unique powers vested unto these instrumentalities.[10] Review is available to reverse the findings of the specialized administrative agency if the record before the Court clearly precludes the agency's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence, or both.[11] Review may also be warranted to ensure that the NTC or similarly empowered agencies act within the confines of their legal mandate and conform to the demands of due process and equal protection.[12]

Antecedent Facts

Globe and private respondent Smart Communications, Inc. ("Smart") are both grantees of valid and subsisting legislative franchises,[13] authorizing them, among others, to operate a Cellular Mobile Telephone System ("CMTS"), utilizing the Global System for Mobile Communication ("GSM") technology.[14] Among the inherent services supported by the GSM network is the Short Message Services (SMS),[15] also known colloquially as "texting," which has attained immense popularity in the Philippines as a mode of electronic communication.

On 4 June 1999, Smart filed a Complaint[16] with public respondent NTC, praying that NTC order the immediate interconnection of Smart's and Globe's GSM networks, particularly their respective SMS or texting services. The Complaint arose from the inability of the two leading CMTS providers to effect interconnection. Smart alleged that Globe, with evident bad faith and malice, refused to grant Smart's request for the interconnection of SMS.[17]

On 7 June 1999, NTC issued a Show Cause Order, informing Globe of the Complaint, specifically the allegations therein that, "among others...despite formal request made by Smart to Globe for the interconnection of their respective SMS or text messaging services, Globe, with evident bad faith, malice and to the prejudice of Smart and Globe and the public in general, refused to grant Smart's request for the interconnection of their respective SMS or text messaging services, in violation of the mandate of Republic Act 7925, Executive Order No. 39, and their respective implementing rules and regulations." [18]

Globe filed its Answer with Motion to Dismiss on 7 June 1999, interposing grounds that the Complaint was premature, Smart's failure to comply with the conditions precedent required in Section 6 of NTC Memorandum Circular 9-7-93,[19] and its omission of the mandatory Certification of Non-Forum Shopping.[20] Smart responded that it had already submitted the voluminous documents asked by Globe in connection with other interconnection agreements between the two carriers, and that with those voluminous documents the interconnection of the SMS systems could be expedited by merely amending the parties' existing CMTS-to-CMTS interconnection agreements.[21]

On 19 July 1999, NTC issued the Order now subject of the present petition. In the Order, after noting that both Smart and Globe were "equally blameworthy" for their lack of cooperation in the submission of the documentation required for interconnection and for having "unduly maneuvered the situation into the present impasse,"[22] NTC held that since SMS falls squarely within the definition of "value-added service" or "enhanced-service" given in NTC Memorandum Circular No. 8-9-95 (MC No. 8-9-95) the implementation of SMS interconnection is mandatory pursuant to Executive Order (E.O.) No. 59.[23]

The NTC also declared that both Smart and Globe have been providing SMS without authority from it, in violation of Section 420 (f) of MC No. 8-9-95 which requires PTEs intending to provide value-added services

(VAS) to secure prior approval from NTC through an administrative process. Yet, in view of what it noted as the “peculiar circumstances” of the case, NTC refrained from issuing a Show Cause Order with a Cease and Desist Order, and instead directed the parties to secure the requisite authority to provide SMS within thirty (30) days, subject to the payment of fine in the amount of two hundred pesos (P200.00) “from the date of violation and for every day during which such violation continues.”[24]

Globe filed with the Court of Appeals a Petition for Certiorari and Prohibition[25] to nullify and set aside the Order and to prohibit NTC from taking any further action in the case. It reiterated its previous arguments that the complaint should have been dismissed for failure to comply with conditions precedent and the non-forum shopping rule. It also claimed that NTC acted without jurisdiction in declaring that it had no authority to render SMS, pointing out that the matter was not raised as an issue before it at all. Finally, Globe alleged that the Order is a patent nullity as it imposed an administrative penalty for an offense for which neither it nor Smart was sufficiently charged nor heard on in violation of their right to due process.[26]

The Court of Appeals issued a Temporary Restraining Order on 31 August 1999.

In its Memorandum, Globe also called the attention of the appellate court to the earlier decision of NTC pertaining to the application of Isla Communications Co., Inc. (“Islacom”) to provide SMS, allegedly holding that SMS is a deregulated special feature of the telephone network and therefore does not require the prior approval of NTC.[27] Globe alleged that its departure from its ruling in the Islacom case constitutes a denial of equal protection of the law.

On 22 November 1999, a Decision[28] was promulgated by the Former Special Fifth Division of the Court of Appeals[29] affirming in toto the NTC Order. Interestingly, on the same day Globe and Smart voluntarily agreed to interconnect their respective SMS systems, and the interconnection was effected at midnight of that day.[30]

Yet, on 21 December 1999, Globe filed a Motion for Partial Reconsideration,[31] seeking to reconsider only the portion of the Decision that upheld NTC’s finding that Globe lacked the authority to provide SMS and its imposition of a fine. Both Smart and NTC filed their respective comments, stressing therein that Globe indeed lacked the authority to provide SMS.[32] In reply, Globe asserted that the more salient issue was whether NTC complied with its own Rules of Practice and Procedure before making the finding of want of authority and imposing the fine. Globe also reiterated that it has been legally operating its SMS system since 1994 and that SMS being a deregulated special feature of the telephone network it may operate SMS without prior approval of NTC.

After the Court of Appeals denied the Motion for Partial Reconsideration,[33] Globe elevated the controversy to this Court.

Globe contends that the Court of Appeals erred in holding that the NTC has the power under Section 17 of the Public Service Law[34] to subject Globe to an administrative sanction and a fine without prior notice and hearing in violation of the due process requirements; that specifically due process was denied Globe because the hearings actually conducted dwelt on different issues; and, the appellate court erred in holding that any possible violation of due process committed by NTC was cured by the fact that NTC refrained from issuing a Show Cause Order with a Cease and Desist Order, directing instead the parties to secure the requisite authority within thirty days. Globe also contends that in treating it differently from other carriers providing SMS the Court of Appeals denied it equal protection of the law.

The case was called for oral argument on 22 March 2004. Significantly, Smart has deviated from its original position. It no longer prays that the Court affirm the assailed Decision and Order, and the twin rulings therein that SMS is VAS and that Globe was required to secure prior authority before offering SMS. Instead, Smart now

argues that SMS is not VAS and that NTC may not legally require either Smart or Globe to secure prior approval before providing SMS. Smart has also chosen not to make any submission on Globe's claim of due process violations.[35]

As presented during the oral arguments, the central issues are: (1) whether NTC may legally require Globe to secure NTC approval before it continues providing SMS; (2) whether SMS is a VAS under the PTA, or special feature under NTC MC No. 14-11-97; and (3) whether NTC acted with due process in levying the fine against Globe.[36] Another issue is also raised – whether Globe should have first filed a motion for reconsideration before the NTC, but this relatively minor question can be resolved in brief.

Necessity of Filing Motion for Reconsideration

Globe deliberately did not file a motion for reconsideration with the NTC before elevating the matter to the Court of Appeals via a petition for certiorari. Generally, a motion for reconsideration is a prerequisite for the filing of a petition for certiorari.[37] In opting not to file the motion for reconsideration, Globe asserted before the Court of Appeals that the case fell within the exceptions to the general rule.[38] The appellate court in the questioned Decision cited the purported procedural defect,[39] yet chose anyway to rule on the merits as well.

Globe's election to elevate the case directly to the Court of Appeals, skipping the standard motion for reconsideration, is not a mortal mistake. According to Globe, the Order is a patent nullity, it being violative of due process; the motion for reconsideration was a useless or idle ceremony; and, the issue raised purely one of law.[40] Indeed, the circumstances adverted to are among the recognized exceptions to the general rule.[41] Besides, the issues presented are of relative importance and novelty[42] so much so that it is judicious for the Court to resolve them on the merits instead of hiding behind procedural fineries.

The Merits

Now, on to the merits of the petition.

Deregulation is the mantra in this age of globalization. Globe invokes it in support of its claim that it need not secure prior authority from NTC in order to operate SMS. The claim has to be evaluated carefully. After all, deregulation is not a magic incantation that wards off the spectre of intrusive government with the mere invocation of its name. The principles, guidelines, rules and regulations that govern a deregulated system must be firmly rooted in the law and regulations that institute or implement the deregulation regime.[43] The implementation must likewise be fair and evenhanded.

Globe hinges its claim of exemption from obtaining prior approval from the NTC on NTC Memorandum Circular No. 14-11-97 ("MC No. 14-11-97"). Globe notes that in a 7 October 1998 ruling on the application of Islacom for the operation of SMS, NTC declared that the applicable circular for SMS is MC No. 14-11-97.[44] Under this ruling, it is alleged, NTC effectively denominated SMS as a "special feature" which under MC No. 14-11-97 is a deregulated service that needs no prior authorization from NTC. Globe further contends that NTC's requiring it to secure prior authorization violates the due process and equal protection clauses, since earlier it had exempted the similarly situated Islacom from securing NTC approval prior to its operation of SMS.[45]

On the other hand, the assailed NTC Decision invokes the NTC Implementing Rules of the PTA (MC No. 8-9-95) to justify its claim that Globe and Smart need to secure prior authority from the NTC before offering SMS.

The statutory basis for the NTC's determination must be thoroughly examined. Our first level of inquiry should be into the PTA. It is the authority behind MC No. 8-9-95. It is also the law that governs all public telecommunications entities ("PTEs") in the Philippines.[46]

Public Telecommunications Act

The PTA has not strictly adopted laissez-faire as its underlying philosophy to promote the telecommunications industry. In fact, the law imposes strictures that restrain within reason how PTEs conduct their business. For example, it requires that any access charge/revenue sharing arrangements between all interconnecting carriers that are entered into have to be submitted for approval to NTC.[47] Each “telecommunication category”[48] established in the PTA is governed by detailed regulations. Also, international carriers and operators of mobile radio services are required to provide local exchange service in unserved or underserved areas.[49]

At the same time, the general thrust of the PTA is towards modernizing the legal framework for the telecommunications services sector. The transmutation has become necessary due to the rapid changes as well within the telecommunications industry. As noted by Senator Osmeña in his sponsorship speech:

[D]ramatic developments during the last 15 years in the field of semiconductors have drastically changed the telecommunications sector – worldwide as well as in the Philippines. New technologies have fundamentally altered the structure, the economics and the nature of competition in the telecommunications business. Voice telephony is perhaps the most popular face of telecommunications, but it is no longer the only one. There are other faces – such as data communications, electronic mail, voice mail, facsimile transmission, video conferencing, mobile radio services like trunked radio, cellular radio, and personal communications services, radio paging, and so on. Because of the mind-boggling developments in semiconductors, the traditional boundaries between computers, telecommunications, and broadcasting are increasingly becoming blurred.[50]

One of the novel introductions of the PTA is the concept of a “value-added service” (“VAS”). Section 11 of the PTA governs the operations of a “value-added service provider,” which the law defines as “an entity which relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers.”[51] Section 11 recognizes that VAS providers need not secure a franchise, provided that they do not put up their own network.[52] However, a different rule is laid down for telecommunications entities such as Globe and PLDT. The section unequivocally requires NTC approval for the operation of a value-added service. It reads, viz:

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

- prior approval of the Commission is secured to ensure that such VAS offerings are not cross-subsidized from the proceeds of their utility operations;
- other providers of VAS are not discriminated against in rates nor denied equitable access to their facilities; and
- separate books of accounts are maintained for the VAS. (Emphasis supplied)[53]

Oddly enough, neither the NTC nor the Court of Appeals cited the above-quoted provision in their respective decisions, which after all, is the statutory premise for the assailed regulatory action. This failure is but a mere indicia of the pattern of ignorance or incompetence that sadly attends the actions assailed in this petition.

It is clear that the PTA has left open-ended what services are classified as “value-added,” prescribing instead a general standard, set forth as a matter of principle and fundamental policy by the legislature.[54] The validity of this standard set by Section 11 is not put into question by the present petition, and there is no need to inquire into its propriety.[55] The power to enforce the provisions of the PTA, including the implementation of the standards set therein, is clearly reposed with the NTC.[56]

It can also be gleaned from Section 11 that the requirement that PTEs secure prior approval before offering VAS

is tied to a definite purpose, i.e., “to ensure that such VAS offerings are not cross-subsidized from the proceeds of their utility operations.” The reason is related to the fact that PTEs are considered as public services,[57] and mandated to perform certain public service functions. Section 11 should be seen in relation to E.O. 109, which mandates that “international gateway operators shall be required to provide local exchange service,”[58] for the purpose of ensuring availability of reliable and affordable telecommunications service in both urban and rural areas of the country.[59] Under E.O. No. 109, local exchange services are to be cross-subsidized by other telecommunications services within the same company until universal access is achieved.[60] Section 10 of the PTA specifically affirms the requirements set by E.O. No. 109. The relevance to VAS is clear: public policy maintains that the offer of VAS by PTEs cannot interfere with the fundamental provision by PTEs of their other public service requirements.

More pertinently to the case at bar, the qualification highlights the fact that the legal rationale for regulation of VAS is severely limited. There is an implicit recognition that VAS is not strictly a public service offering in the way that voice-to-voice lines are, for example, but merely supplementary to the basic service. Ultimately, the regulatory attitude of the State towards VAS offerings by PTEs is to treat its provisioning as a “business decision” subject to the discretion of the offeror, so long as such services do not interfere with mandatory public service requirements imposed on PTEs such as those under E.O. No. 109. Thus, non-PTEs are not similarly required to secure prior approval before offering VAS, as they are not burdened by the public service requirements prescribed on PTEs.[61] Due regard must be accorded to this attitude, which is in consonance with the general philosophy of deregulation expressed in the PTA.

The Pertinent NTC Memorandum Circulars

Next, we examine the regulatory framework devised by NTC in dealing with VAS.

NTC relied on Section 420(f) of the Implementing Rules of the PTA (“Implementing Rules”) as basis for its claim that prior approval must be secured from it before Globe can operate SMS. Section 420 of the Implementing Rules, contained in MC No. 8-9-95, states in full:

VALUE ADDED SERVICES (VAS)

- A non-PTE VAS provider shall not be required to secure a franchise from Congress.
- A non-PTE VAS provider can utilize its own equipment capable only of routing, storing and forwarding messages in whatever format for the purpose of providing enhanced or augmented telecommunications services. It shall not put up its own network. It shall use the transmission network, toll or local distribution, of the authorized PTES.
- The provision of VAS shall not in any way affect the cross subsidy to the local exchange network by the international and national toll services and CMTS service.
- Entities intending to provide value added services only shall submit to the commission application for registration for approval. The application form shall include documents showing, among others, system configuration, mode of operation, method of charging rates, lease agreement with the PTE, etc.
- The application for registration shall be acted upon by the Commission through an administrative process within thirty (30) days from date of application.
- PTEs intending to provide value added services are required to secure prior approval by the Commission through an administrative process.
- VAS providers shall comply strictly with the service performance and other standards prescribed commission. (Emphasis supplied.)

Instead of expressly defining what VAS is, the Implementing Rules defines what “enhanced services” are, namely: “a service which adds a feature or value not ordinarily provided by a public telecommunications entity such as format, media conversion, encryption, enhanced security features, computer processing, and the like.”[62] Given that the PTA defines VAS as “enhanced services,” the definition provided in the Implementing Rules may likewise be applied to VAS. Still, the language of the Implementing Rules is unnecessarily confusing. Much trouble would have been spared had the NTC consistently used the term “VAS” as it is used in the PTA.

The definition of “enhanced services” in the Implementing Rules, while more distinct than that under the PTA, is still too sweeping. Rather than enumerating what possible features could be classified as VAS or enhanced services, the Implementing Rules instead focuses on the characteristics of these features. The use of the phrase “the like,”[63] and its implications of analogy, presumes that a whole myriad of technologies can eventually be subsumed under the definition of “enhanced services.” The NTC should not be necessarily faulted for such indistinct formulation since it could not have known in 1995[64] what possible VAS would be available in the future. The definition laid down in the Implementing Rules may validly serve as a guide for the NTC to determine what emergent offerings would fall under VAS.

Still, owing to the general nature of the definition laid down in the Implementing Rules, the expectation arises that the NTC would promulgate further issuances defining whether or not a specific feature newly available in the market is a VAS. Such expectation is especially demanded if the NTC is to penalize PTEs who fail to obtain prior approval in accordance with Section 11 of the PTA. To our knowledge, the NTC has yet to come out with an administrative rule or regulation listing which of the offerings in the market today fall under VAS or “enhanced services.”

Still, there is MC No. 14-11-97, entitled “Deregulating the Provision of Special Features in the Telephone Network.” Globe invokes this circular as it had been previously cited by the NTC as applicable to SMS.

On 2 October 1998, Islacom wrote a letter to the NTC, informing the agency that “it will be offering the special feature” of SMS for its CMTS, and citing therein that the notice was being given pursuant to NTC Memorandum Circular No. 14-11-97.[65] In response, the NTC acknowledged receipt of the letter “informing” it of Islacom’s “offering the special feature” of SMS for its CMTS, and instructed Islacom to “adhere to the provisions of MC No. 14-11-97.”[66] The clear implication of the letter is that NTC considers the Circular as applicable to SMS.

An examination of MC No. 14-11-97 further highlights the state of regulatory confusion befalling the NTC. The relevant portions thereof are reproduced below:

SUBJECT: DEREGULATING THE PROVISION OF SPECIAL FEATURES IN THE TELEPHONE NETWORK.

For the purpose of exempting specific telecommunications service from rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs, the Commission hereby deregulates the provision of special features inherent to the Telephone Network.

Section 1. For the purpose of this Circular, Special Feature shall refer to a feature inherent to the telephone network which may not be ordinarily provided by a Telephone Service Provider such as call waiting, call forwarding, conference calling, speed dialing, caller ID, malicious call ID, call transfer, charging information, call pick-up, call barring, recorded announcement, no double connect, warm line, wake-up call, hotline, voicemail, and special features offered to customers with PABXs such as direct inward dialing and number hunting, and the like; provided that in the provision of the feature, no law, rule, regulation or international convention on telecommunications is circumvented or violated. The Commission shall periodically update the list of special features in the Telephone Network which, including the charging of rates therefor, shall be deregulated.

Section 2. A duly authorized Telephone Service Provider shall inform the Commission in writing of the special features it can offer and the corresponding rates thirty (30) days prior to launch date.

xxx

Section 4. Authorized Telephone Service Providers shall continue to charge their duly approved rates for special services for 3 months from the effectivity of this circular, after which they may set their own rates.

xxx (Emphasis supplied)

Just like VAS as defined under the PTA, “special features” are also “not ordinarily provided” by the telephone company. Considering that MC No. 14-11-97 was promulgated after the passage of the PTA, it can be assumed that the authors of the Circular were well aware of the regulatory scheme formed under the PTA. Moreover, MC No. 14-11-97 repeatedly invokes the word “deregulation,” and it cannot be denied that the liberalization ethos was introduced by the PTA. Yet, the net effect of MC No. 14-11-97 is to add to the haze beclouding the NTC’s rationale for regulation. The introduction of a new concept, “special feature,” which is not provided for in the PTA just adds to the confusion, especially in light of the similarities between “special features” and VAS. Moreover, there is no requirement that a PTE seeking to offer “special features” must secure prior approval from the NTC.

Is SMS a VAS, “enhanced service,” or a “special feature”? Apparently, even the NTC is unsure. It had told Islacom that SMS was a “special feature,” then subsequently held that it was a “VAS.” However, the pertinent laws and regulations had not changed from the time of the Islacom letter up to the day the Order was issued. Only the thinking of NTC did.

More significantly, NTC never required ISLACOM to apply for prior approval in order to provide SMS, even after the Order to that effect was promulgated against Globe and Smart. This fact was admitted by NTC during oral arguments.[67] NTC’s treatment of Islacom, apart from being obviously discriminatory, puts into question whether or not NTC truly believes that SMS is VAS. NTC is unable to point out any subsequent rule or regulation, enacted after it promulgated the adverse order against Globe and Smart, affirming the newly-arrived determination that SMS is VAS.

In fact, as Smart admitted during the oral arguments, while it did comply with the NTC Order requiring it to secure prior approval, it was never informed by the NTC of any action on its request.[68] While NTC counters that it did issue a Certificate of Registration to Smart, authorizing the latter as a provider of SMS, such Certificate of Registration was issued only on 13 March 2003, or nearly four (4) years after Smart had made its request.[69] This inaction indicates a lack of seriousness on the part of the NTC to implement its own rulings. Also, it tends to indicate the lack of belief or confusion on NTC’s part as to how SMS should be treated. Given the abstract set of rules the NTC has chosen to implement, this should come as no surprise. Yet no matter how content the NTC may be with its attitude of sloth towards regulation, the effect may prove ruinous to the sector it regulates.

Every party subject to administrative regulation deserves an opportunity to know, through reasonable regulations promulgated by the agency, of the objective standards that have to be met. Such rule is integral to due process, as it protects substantive rights. Such rule also promotes harmony within the service or industry subject to regulation. It provides indubitable opportunities to weed out the most frivolous conflicts with minimum hassle, and certain footing in deciding more substantive claims. If this results in a tenfold in administrative rules and regulations, such price is worth paying if it also results in clarity and consistency in the operative rules of the game. The administrative process will best be vindicated by clarity in its exercise.[70]

In short, the legal basis invoked by NTC in claiming that SMS is VAS has not been duly established. The fault

falls squarely on NTC. With the dual classification of SMS as a special feature and a VAS and the varying rules pertinent to each classification, NTC has unnecessarily complicated the regulatory framework to the detriment of the industry and the consumers. But does that translate to a finding that the NTC Order subjecting Globe to prior approval is void? There is a fine line between professional mediocrity and illegality. NTC's byzantine approach to SMS regulation is certainly inefficient. Unfortunately for NTC, its actions have also transgressed due process in many ways, as shown in the ensuing elucidation.

Penalized Via a Quasi-Judicial Process,
Globe and Smart are Entitled to
Corresponding Protections

It is essential to understand that the assailed Order was promulgated by NTC in the exercise of its quasi-judicial functions. The case arose when Smart had filed the initial complaint against Globe before NTC for interconnection of SMS.[71] NTC issued a Show Cause Order requiring Globe to answer Smart's charges. Hearings were conducted, and a decision made on the merits, signed by the three Commissioners of the NTC, sitting as a collegial body.[72]

The initial controversy may have involved a different subject matter, interconnection, which is no longer contested. It cannot be denied though that the findings and penalty now assailed before us was premised on the same exercise of jurisdiction. Thus, it is not relevant to this case that the process for obtaining prior approval under the PTA and its Implementing Rules is administrative in nature. While this may be so, the assailed NTC's determination and corresponding penalty were rendered in the exercise of quasi-judicial functions. Therefore, all the requirements of due process attendant to the exercise of quasi-judicial power apply to the present case. Among them are the seven cardinal primary rights in justiciable cases before administrative tribunals, as enumerated in *Ang Tibay v. CIR*.^[73] They are synthesized in a subsequent case, as follows:

There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.^[74]

NTC violated several of these cardinal rights due Globe in the promulgation of the assailed Order.

First. The NTC Order is not supported by substantial evidence. Neither does it sufficiently explain the reasons for the decision rendered.

Our earlier discussion pertained to the lack of clear legal basis for classifying SMS as VAS, owing to the failure of the NTC to adopt clear rules and regulations to that effect. Muddled as the legal milieu governing SMS already is, NTC's attempt to apply its confusing standards in the case of Globe and Smart is even more disconcerting. The very rationale adopted by the NTC in its Order holding that SMS is VAS is short and shoddy. Astoundingly, the Court of Appeals affirmed the rationale bereft of intelligent inquiry, much less comment. Stated in full, the relevant portion of the NTC Order reads:

xxx Getting down [to] the nitty-gritty, Globe's SMS involves the transmission of data over its CMTS which is Globe's basic service. SMS is not ordinarily provided by a CMTS operator like Globe, and since SMS

enhances Globe's CMTS, SMS fits in to a nicety [sic] with the definition of "value-added-service" or "enhanced-service" under NTC Memorandum Circular [8]-9-95 (Rule 001, Item [15]).[75]

The Court usually accords great respect to the technical findings of administrative agencies in the fields of their expertise, even if they are infelicitously worded. However, the above-quoted "finding" is nothing more than bare assertions, unsupported by substantial evidence.[76] The Order reveals that no deep inquiry was made as to the nature of SMS or what its provisioning entails. In fact, the Court is unable to find how exactly does SMS "fits into a nicety" with NTC M.C. No. 8-9-95, which defines "enhanced services" as analogous to "format, media conversion, encryption, enhanced security features, computer processing, and the like." [77] The NTC merely notes that SMS involves the "transmission of data over [the] CMTS," a phraseology that evinces no causal relation to the definition in M.C. No. 8-9-95. Neither did the NTC endeavor to explain why the "transmission of data" necessarily classifies SMS as a VAS.

In fact, if "the transmission of data over [the] CMTS" is to be reckoned as the determinative characteristic of SMS, it would seem that this is already sufficiently covered by Globe and Smart's respective legislative franchises.[78] Smart is authorized under its legislative franchise to establish and operate integrated telecommunications/computer/ electronic services for public domestic and international communications,[79] while Globe is empowered to establish and operate domestic telecommunications, and stations for transmission and reception of messages by means of electricity, electromagnetic waves or any kind of energy, force, variations or impulses, whether conveyed by wires, radiated through space or transmitted through other media and for the handling of any and all types of telecommunications services.[80]

The question of the proper legal classification of VAS is uniquely technical, tied as it is to the scientific and technological application of the service or feature. Owing to the dearth of substantive technical findings and data from the NTC on which a judicial review may reasonably be premised, it is not opportune proper for the Court to make its own technical evaluation of VAS, especially in relation to SMS. Judicial fact-finding of the de novo kind is generally abhorred and the shift of decisional responsibility to the judiciary is not favored as against the substantiated and specialized determination of administrative agencies. [81] With greater reason should this be the standard for the exercise of judicial review when the administrative agency concerned has not in the first place come out with a technical finding based on evidence, as in this case.

Yet at the same time, this absence of substantial evidence in support of the finding that SMS is VAS already renders reversible that portion of the NTC Order.

Moreover, the Order does not explain why the NTC was according the VAS offerings of Globe and Smart a different regulatory treatment from that of Islacom. Indeed, to this day, NTC has not offered any sensible explanation why Islacom was accorded to a less onerous regulatory requirement, nor have they compelled Islacom to suffer the same burdens as Globe and Smart.

While stability in the law, particularly in the business field, is desirable, there is no demand that the NTC slavishly follow precedent.[82] However, we think it essential, for the sake of clarity and intellectual honesty, that if an administrative agency decides inconsistently with previous action, that it explain thoroughly why a different result is warranted, or if need be, why the previous standards should no longer apply or should be overturned.[83] Such explanation is warranted in order to sufficiently establish a decision as having rational basis.[84] Any inconsistent decision lacking thorough, ratiocination in support may be struck down as being arbitrary. And any decision with absolutely nothing to support it is a nullity.[85]

Second. Globe and Smart were denied opportunity to present evidence on the issues relating to the nature of VAS and the prior approval.

Another disturbing circumstance attending this petition is that until the promulgation of the assailed Order Globe and Smart were never informed of the fact that their operation of SMS without prior authority was at all an issue for consideration. As a result, neither Globe or Smart was afforded an opportunity to present evidence in their behalf on that point.

NTC asserts that since Globe and Smart were required to submit their respective Certificates of Public Convenience and Necessity and franchises, the parties were sufficiently notified that the authority to operate such service was a matter which NTC could look into. This is wrong-headed considering the governing law and regulations. It is clear that before NTC could penalize Globe and Smart for unauthorized provision of SMS, it must first establish that SMS is VAS. Since there was no express rule or regulation on that question, Globe and Smart would be well within reason if they submitted evidence to establish that SMS was not VAS. Unfortunately, no such opportunity arose and no such arguments were raised simply because Globe and Smart were not aware that the question of their authority to provide SMS was an issue at all. Neither could it be said that the requisite of prior authority was indubitable under the existing rules and regulations. Considering the prior treatment towards Islacom, Globe (and Smart, had it chosen to do so) had every right to rely on NTC's disposal of Islacom's initiative and to believe that prior approval was not necessary.

Neither was the matter ever raised during the hearings conducted by NTC on Smart's petition. This claim has been repeatedly invoked by Globe. It is borne out by the records or the absence thereof. NTC could have easily rebuffed this claim by pointing to a definitive record. Yet strikingly, NTC has not asserted that the matter of Globe's authority was raised in any pleading or proceeding. In fact, Globe in its Consolidated Reply before this Court challenged NTC to produce the transcripts of the hearings it conducted to prove that the issue of Globe's authority to provide SMS was put in issue. The Court similarly ordered the NTC to produce such transcripts.[86] NTC failed to produce any.[87]

The opportunity to adduce evidence is essential in the administrative process, as decisions must be rendered on the evidence presented, either in the hearing, or at least contained in the record and disclosed to the parties affected.[88] The requirement that agencies hold hearings in which parties affected by the agency's action can be represented by counsel may be viewed as an effort to regularize this struggle for advantage within a legislative adversary framework.[89] It necessarily follows that if no evidence is procured pertinent to a particular issue, any eventual resolution of that issue on substantive grounds despite the absence of evidence is flawed. Moreover, if the parties did have evidence to counter the ruling but were wrongfully denied the opportunity to offer the evidence, the result would be embarrassing on the adjudicator.

Thus, the comical, though expected, result of a definitive order which is totally unsupported by evidence. To this blatant violation of due process, this Court stands athwart.

Third. The imposition of fine is void for violation of due process

The matter of whether NTC could have imposed the fine on Globe in the assailed Order is necessarily related to due process considerations. Since this question would also call to fore the relevant provisions of the Public Service Act, it deserves its own extensive discussion.

Globe claims that the issue of its authority to operate SMS services was never raised as an issue in the Complaint filed against it by Smart. Nor did NTC ever require Globe to justify its authority to operate SMS services before the issuance of the Order imposing the fine.

The Court of Appeals, in its assailed decision, upheld the power of NTC to impose a fine and to make a pronouncement on Globe's alleged lack of operational authority without need of hearing, simply by citing the

provision of the Public Service Act^[90] which enumerates the instances when NTC may act *motu proprio*. That is Section 17, paragraph (a), which reads thus:

Sec. 17. Proceedings of [the National Telecommunications Commission] without previous hearing. The Commission shall have power, without previous hearing, subject to established limitations and exceptions and saving provisions to the contrary:

- To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate, and proper service as the public interest may require and warrant; to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, and to prohibit or prevent any public service as herein defined from operating without having first secured a certificate of public convenience or public necessity and convenience, as the case may be, and require existing public services to pay the fees provided for in this Act for the issuance of the proper certificate of public convenience or certificate of public necessity and convenience, as the case may be, under the penalty, in the discretion of the Commission, of the revocation and cancellation of any acquired rights.

On the other hand, NTC itself, in the Order, cites Section 21 as the basis for its imposition of fine on Globe. The provision states:

Sec. 21. Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continues; and the Commission is hereby authorized and empowered to impose such fine, after due notice and hearing. [Emphasis supplied.]

Sections 17 and 21 of the Public Service Act confer two distinct powers on NTC. Under Section 17, NTC has the power to investigate a PTE compliance with a standard, rule, regulation, order, or other requirement imposed by law or the regulations promulgated by NTC, as well as require compliance if necessary. By the explicit language of the provision, NTC may exercise the power without need of prior hearing. However, Section 17 does not include the power to impose fine in its enumeration. It is Section 21 which adverts to the power to impose fine and in the same breath requires that the power may be exercised only after notice and hearing.

Section 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings.^[91] The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.^[92]

In citing Section 21 as the basis of the fine, NTC effectively concedes the necessity of prior notice and hearing. Yet the agency contends that the sanction was justified by arguing that when it took cognizance of Smart's complaint for interconnection, "it may very well look into the issue of whether the parties had the requisite authority to operate such services."^[93] As a result, both parties were sufficiently notified that this was a matter that NTC could look into in the course of the proceedings. The parties subsequently attended at least five hearings presided by NTC.^[94]

That particular argument of the NTC has been previously disposed of. But it is essential to emphasize the need for a hearing before a fine may be imposed, as it is clearly a punitive measure undertaken by an administrative agency in the exercise of its quasi-judicial functions. Inherently, notice and hearing are indispensable for the valid exercise by an administrative agency of its quasi-judicial functions. As the Court held in *Central Bank of the Phil.*

v. Hon. Cloribel:[95]

[T]he necessity of notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved. In so far as generalization is possible in view of the great variety of administrative proceedings, it may be stated as a general rule that notice and hearing are not essential to the validity of administrative action where the administrative body acts in the exercise of executive, administrative, or legislative functions; but where a public administrative body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whose rights or property may be affected by the action is entitled to notice and hearing.[96]

The requirement of notice and hearing becomes even more imperative if the statute itself demands it, as in the case of Section 21 of the Public Service Act.

As earlier stated, the Court is convinced that prior to the promulgation of the assailed Order Globe was never notified that its authority to operate SMS was put in issue. There is an established procedure within NTC that provides for the steps that should be undertaken before an entity such as Globe could be subjected to a disciplinary measure. Section 1, Rule 10 of the NTC Rules of Procedure provides that any action, the object of which is to subject a holder of a certificate of public convenience or authorization, or any person operating without authority from NTC, to any penalty or a disciplinary or other measure shall be commenced by the filing of a complaint. Further, the complaint should state, whenever practicable, the provisions of law or regulation violated, and the acts or omissions complained of as constituting the offense.[97] While a complaint was indeed filed against Globe by Smart, the lack of Globe's authority to operate SMS was not raised in the Complaint, solely predicated as it was on Globe's refusal to interconnect with Smart.[98]

Under the NTC Rules of Procedure, NTC is to serve a Show Cause Order on the respondent to the complaint, containing therein a "statement of the particulars and matters concerning which the Commission is inquiring and the reasons for such actions." [99] The Show Cause Order served on Globe in this case gave notice of Smart's charge that Globe, acting in bad faith and contrary to law, refused to allow the interconnection of their respective SMS systems.[100] Again, the lack of authority to operate SMS was not adverted to in NTC's Show Cause Order.

The records also indicate that the issue of Globe's authority was never raised in the subsequent hearings on Smart's complaint. Quite noticeably, the respondents themselves have never asserted that the matter of Globe's authority was raised in any pleading or proceeding. In fact, Globe in its Consolidated Reply before this Court challenged NTC to produce the transcripts of the hearings it conducted to prove that the issue of Globe's authority to provide SMS was put in issue. It did not produce any transcript.

Being an agency of the government, NTC should, at all times, maintain a due regard for the constitutional rights of party litigants.[101] In this case, NTC blindsided Globe with a punitive measure for a reason Globe was not made aware of, and in a manner that contravened express provisions of law. Consequently, the fine imposed by NTC on Globe is also invalid. Otherwise put, since the very basis for the fine was invalidly laid, the fine is necessarily void.

Conclusion

In summary: (i) there is no legal basis under the PTA or the memorandum circulars promulgated by the NTC to denominate SMS as VAS, and any subsequent determination by the NTC on whether SMS is VAS should be made with proper regard for due process and in conformity with the PTA; (ii) the assailed Order violates due process for failure to sufficiently explain the reason for the decision rendered, for being unsupported by substantial evidence, and for imputing violation to, and issuing a corresponding fine on, Globe despite the absence

of due notice and hearing which would have afforded Globe the right to present evidence on its behalf.

Thus, the Order effectively discriminatory and arbitrary as it is, was issued with grave abuse of discretion and it must be set aside. NTC may not legally require Globe to secure its approval for Globe to continue providing SMS. This does not imply though that NTC lacks authority to regulate SMS or to classify it as VAS. However, the move should be implemented properly, through unequivocal regulations applicable to all entities that are similarly situated, and in an even-handed manner.

Concurrently, the Court realizes that the PTA is not intended to constrain the industry within a cumbersome regulatory regime.[102] The policy as pre-ordained by legislative fiat renders the traditionally regimented business in an elementary free state to make business decisions, avowing that it is under this atmosphere that the industry would prosper.[103] It is disappointing at least if the deregulation thrust of the law is skirted deliberately. But it is ignominious if the spirit is defeated through a crazy quilt of vague, overlapping rules that are implemented haphazardly.

By no means should this Decision be interpreted as removing SMS from the ambit of jurisdiction and review by the NTC. The issue before the Court is only the prior approval requirement as imposed on Globe and Smart. The NTC will continue to exercise, by way of its broad grant, jurisdiction over Globe and Smart's SMS offerings, including questions of rates and customer complaints. Yet caution must be had. Much complication could have been avoided had the NTC adopted a proactive position, promulgating the necessary rules and regulations to cope up with the advent of the technologies it superintends. With the persistent advent of new offerings in the telecommunications industry, the NTC's role will become more crucial than at any time before. If NTC's behavior in the present case is but indicative of a malaise pervading this crucial regulatory arm of the State, the Court fears the resultant confusion within the industry and the consuming public. The credibility of an administrative agency entrusted with specialized fields subsists not on judicial doctrine alone, but more so on its intellectual strength, adherence to law, and basic fairness.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated 22 November 1999, as well as its Resolution dated 29 July 2000, and the assailed Order of the NTC dated 19 July 1999 are hereby SET ASIDE. No cost.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] *Boiser v. Court of Appeals*, G.R. No. L-61438, 24 June 1983, 122 SCRA 945, 956.

[2] See K. Middleton, R. Trager & B. Chamberlin, *The Law of Public Communication* 5th ed., 578 (2001), citing 47 U.S.C. secs. 201, 202. See also Section 13 (b), Public Service Act, as amended (1936). But see note 4.

[3] See Section 13(b), Public Service Act, as amended. (1936)

[4] In a recent speech, US Federal Communications Commission (FCC) Commissioner Kathleen Q. Abernathy noted that after federal oversight over the wireless industry was granted to the FCC under the Communications Act in 1993, the FCC was faced with the choice of imposing strict common carrier regulations on incumbent cellular providers based on their supposed entrenchment, thus mandating for example, price regulation, service quality controls and mandated certain technologies. Instead, the FCC went the other direction, opting for less government regulation to allow for market forces to dictate pricing and service mandates. See "Fifth Annual Midwestern Telecommunications Conference Keynote Address of FCC Commissioner Kathleen Q. Abernathy,

Milwaukee WS – May 10, 2002” at www.fcc.gov/Speeches/Abernathy/2002/spkqa211.html (Visited 28 June 2004).

[5] See III RECORD OF THE SENATE No. 50, p. 810. The sponsorship remarks of Congressman Jerome Paras, another principal author of the law, are in the same vein: “The guiding principle of the abovementioned bill is to liberalize the telecommunications industry in order to meet unmet demand. It is the objective of this bill to promote competition in the telecommunications market. This will allow the Philippines to be part of the worldwide information highway. During the recent decade, irreversible forces have begun to change the telecommunications environment. Technology has led to the development of new services and has enabled alternative providers to offer those services economically. As business has come to recognize the importance of telecommunications as a strategic tool, business users have become more sophisticated and more demanding in their request for services. Both technological forces and consumer demand are pushing toward a competitive approach to the provision of services.” (Records of the House of Representatives of 5 December 1994, p. 3)

[6] Art. II, Sec. 4, par. (f), Rep. Act No. 7925.

[7] Art. II, Sec. 4, par. (b), Rep. Act No. 7925.

[8] SMS is the technology that allows the transmission and receipt of text messages to and from mobile telephones, personal digital assistants and personal computers. It is a type of Instant Messaging communications service and it enables users to exchange messages in real time with other users. It was created as part of the GSM (Global System for Mobile Communication) Phase 1 standard. See “SMS – An Introduction”, at <http://www.ewh.ieee.org/r10/bombay/news6/SMSAndMMS/SMS.htm> (Last visited 23 April 2004) It first appeared on the wireless scene in 1991 in Europe, where digital wireless technology first took root. The European standard for digital wireless, now known as the GSM, included SMS from the outset. See “Wireless Short Message Service (SMS)”, at <http://www.iec.org> (Last visited 24 April 2004).

[9] See e.g., *China Banking Corp. v. Court of Appeals*, 337 Phil. 223, 235 (1997).

[10] “Administrative agencies threaten this system of safeguards [of separation of powers within government] by combining powers in ways that threaten to short-circuit the checks relied upon by Madison. xxx Because agency decisionmaking is not highly visible and is not directly subject to the electoral check, there is a danger that the redistributive authority of agencies will be exercised in favor of a limited group of organized interests with a special stake in an agency’s policies.” S. Breyer & R. Stewart, *Administrative Law and Regulatory Policy* 105 (1979). Co-author Stephen Breyer, who currently sits in the United States Supreme Court, is recognized as one of the preeminent experts in Administrative Law in the United States.

[11] *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951).

[12] “Judicial review of the decision of an administrative official is of course subject to certain guideposts laid down in many decided cases. Thus, for instance, findings of fact in such decision should not be disturbed if supported by substantial evidence; but review is justified when there has been a denial of due process, or mistake of law, or fraud, collusion or arbitrary action in the administrative proceeding.” *Atlas Cement Corp. v. Hon. Gozon, et al.*, 127 Phil. 271, 279 (1967).

[13] Smart’s franchise is covered by Rep. Act No. 7294 (1992), while Globe’s franchise is ordained in Rep. Act No. 7229 (1992).

[14] Rollo, p. 149.

[15] *Ibid.*

[16] Docketed as NTC Case No. 99-047. See Rollo, p. 36.

[17] Rollo, pp. 149-150.

[18] Id. at 152.

[19] Section 6 of NTC Memorandum Circular 9-7-93 requires that the NTC can only intervene “[s]hould parties fail to reach an agreement in ninety (90) days from the start of negotiations in accordance with Section 6.1.3 Article II hereof.” The start of negotiations is in turn explicitly defined in the same Memorandum Circular as being “from the time the party requesting interconnection shall have submitted to the other party the complete data or information” required elsewhere in the Memorandum Circular. Globe alleges that Smart admits to not having complied with these conditions precedent. (Rollo, p. 37.)

[20] Rollo, p. 37.

[21] Id. at 83.

[22] Id. at 86. Particularly, Smart was faulted for its failure to resubmit the “voluminous” documents which it had already previously submitted to Globe in relation to previous interconnections, considering that all Smart would have to do would be to reproduce said documents. On the other hand, Globe was faulted for insisting on the submission of these voluminous documents, and yet in the same breath, claiming that the SMS service is not a value-added-service and thus not covered by the mandatory interconnection requirement. Id. at 84-85.

[23] Section 5 of E.O. No. 59 provides: “Interconnection shall be mandatory with regard to connecting other telecommunications services such as but not limited to value-added services of radio paging, trunking radio, store and forward systems of facsimile or messaging (voice or data), packet switching and circuit data switching (including the conveyance of messages which have been or are to be transmitted or received at such points of connection), information and other services as the NTC may determine to be in the interest of the public and in the attainment of the objective of a universally accessible, fully integrated nationwide telecommunications network.”

[24] Rollo, p. 87.

[25] Docketed as CA-G.R. SP No. 54262.

[26] Rollo, p. 40.

[27] Id. at 43.

[28] Rollo, p. 67.

[29] Justice A. Tuquero penned the decision, which was concurred in by Justices B. L. Salas and E.J. S. Asuncion.

[30] Ibid.

[31] Rollo, p. 89.

[32] Smart, on the other hand, filed an application with the NTC on 22 July 1999, seeking authorization to operate SMS services. NTC Records, pp. 8-12.

[33] In a Resolution dated 29 July 2000.

[34] Commonwealth Act No. 146, as amended. The provisions of the Public Service Act, as amended, govern the National Telecommunications Commission. As explained in *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, G.R. No. L-68729, 29 May 1987, 150 SCRA 455; “Pursuant to

Presidential Decree No. 1 dated September 23, 1972, reorganizing the executive branch of the National Government, the Public Service Commission was abolished and its functions were transferred to three specialized regulatory boards, as follows: the Board of Transportation, the Board of Communications and the Board of Power and Waterworks. The functions so transferred were still subject to the limitations provided in sections 14 and 15 of the Public Service Law, as amended. With the enactment of Executive Order No. 546 on July 23, 1979 implementing P.D. No. 1, the Board of Communications and the Telecommunications Control Bureau were abolished and their functions were transferred to the National Telecommunications Commission (Sec. 19(d), Executive Order No. 546).” See also *Republic v. Express Telecommunication Co., Inc.*, G.R. No. 147096, 15 January 2002, 373 SCRA 316, 334.

[35] See Memorandum for Smart Communications, Inc., pp. 17-19.

[36] TSN dated 22 March 2004, p. 1.

[37] *Pilipino Telephone Corporation v. NTC*, G.R. No. 138295, 28 August 2003, citing *Bernardo v. Abalos Sr.*, G.R. No. 137266, 5 December 2001, 371 SCRA 459.

[38] Specifically, Globe asserted that the Order was issued without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, the Order was a patent nullity, that the deprivation of due process rendered the proceedings as nullity, and that motion for reconsideration was a useless and inutile or idle ceremony, and that the issue raised was one purely of law. Rollo, pp. 175-176.

[39] See Rollo, p. 22.

[40] *Supra*, note 26.

[41] “The Court has ruled that a motion for reconsideration may be dispensed with prior to commencement of an action for certiorari where the decision is a patent nullity or where petitioner was deprived of due process.” *PNCC v. NLRC, et al.*, G.R. No. 103670, 10 July 1998, 292 SCRA 266, 271.

[42] See *NFSW v. Ovejera*, No. L-59743, 31 May 1982, 114 SCRA 354, 363; *Filoteo, Jr. v. Sandiganbayan*, G.R. No. 79543, 331 Phil. 539, 569 (1996).

[43] During legislative deliberations, Congressman Paras clarified that the deregulation contemplated in the Public PTA was insofar as “pricing and operating modalities are concerned” Records of the House of Representatives of 6 December 1994, p.2.

[44] Captioned, “Deregulating the Provision of Special Features in the Telephone Network.”

[45] Rollo, p. 60.

[46] See Rep. Act No. 7925 (1994), art I, sec. 2. Article I, Section 3 of the PTA defines a public telecommunications entity as “any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation.”

[47] *Id.*, art. VI, sec. 18.

[48] *Id.*, article IV, Sec. 7. There are six telecommunications categories provided for in the PTA. They are “local exchange operator,” “inter-exchange carrier,” “international carrier,” “value-added service provider,” “mobile radio services,” and “radio paging systems.” *Id.*, art. IV.

[49] *Id.*, art. IV, secs. 10 and 12.

[50] IV RECORD OF THE SENATE No. 73, p. 870.

[51] *Id.*, art. I, sec. 3(h).

[52] “Provided that it does not put 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.” Rep. Act No. 7925 (1994), art. IV, Sec. 11.

[53] *Id.*, art. IV, sec. 11.

[54] See *Edu v. ERICTA*, 146 Phil. 469, 485 (1970); *Agustin v. Edu*, G.R. No. L-49112 February 2, 1979; *Free Telephone Workers Union vs. MOLE, et al.*; G.R. No. L-58184, 30 October 1981, 108 SCRA 757, 768; *De La Llanza v. Alba*, G.R. No. 57883, 12 March 1982, 112 SCRA 292, 335; “A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations.” *Edu v. ERICTA*, *id.*

[55] An eminent member of this Court enunciated the following test for valid delegation: “Although Congress may delegate to another branch of the Government the power to fill details in the execution, enforcement or administration of a law, it is essential, to forestall a violation of the principle of separation of powers, that said law: (a) be complete in itself -it must set forth therein the policy to be executed, carried out or implemented by the delegate - and (b) to fix a standard - the limits of which are sufficiently determinate or determinable - to which the delegate must conform in the performance of his functions. Indeed, without a statutory declaration of policy, which is the essence of every law, and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority.” *J. Puno, concurring and dissenting, Defensor-Santiago v. COMELEC*, 336 Phil. 848, 912; citing *Pelaez v. Auditor General*, 15 SCRA 569 (1965).

[56] Section 5 of Rep. Act No. 7925 reads:

SEC. 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. xxx

[57] *Supra* note 3.

[58] Local exchange service “refers to a telecommunications service, primarily but not limited to voice-to-voice service, within a contiguous geographic area furnished to individual” See Sec. 1(c), E.O. 109 (1992).

[59] Termed under E.O. 109 as “universal access.”

[60] Section 4, E.O. 109.

[61] Nor are they required to secure a legislative franchise. See Section 11, Rep. Act No. 7925.

[62] Section 001 (15), MC No. 8-9-95.

[63] *Ibid.*

[64] The year the Implementing Rules was promulgated.

[65] *Rollo*, p. 267.

[66] *Ibid.*

[67] See TSN dated 22 March, 2004, pp. 105, 134-135, 153.

[68] TSN dated 22 March 2004, pp. 107-108.

[69] Annex “B” to NTC’s Memorandum.

[70] *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 197.

[71] NTC has jurisdiction to “[M]andate a fair and reasonable interconnection of facilities of authorized public network operators and other providers of telecommunications services.” See Art. III, Section 5(c), Rep. Act No. 7925.

[72] See *GMCR, Inc. v. Bell Telecommunications, Phils., Inc.*, 338 Phil. 507, 520 (1997).

[73] 69 Phil. 635 (1940).

[74] *National Development Co., et al. v. Coll. of Customs of Manila*, 118 Phil. 1265, 1270-1271. (1963), citing *Ang Tibay v. CIR*, *id.*

[75] Rollo, p. 85. The cited paragraph actually refers to “Memorandum Circular 9-9-95 (Rule 001, Item 16)” as providing for the definition of an enhanced service. However, Memorandum Circular No. 9-9-95 does not exist. It is Memorandum Circular 8-9-95 (Rule 001, Item 15) that defines what an enhanced service is. We can reasonably presume that it is the latter circular that the NTC was referring to in its assailed Order.

[76] Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Ang Tibay v. CIR*, *supra* note 73.

[77] *Supra* note 62.

[78] As aptly noted by Senator J. Osmeña in his sponsorship speech of the Public PTA; “Because of the mind-boggling developments in semiconductors, the traditional boundaries between computers, telecommunications, and broadcasting are increasingly becoming blurred.” *Supra* note 50.

[79] Section 1, Rep. Act No. 7294 (1992).

[80] Section 1, Rep. Act No. 4540, in relation to Section 1, Rep. Act No. 7229. The reason why the language contained in Smart’s legislative franchise sounds more modish is that it was drawn up in 1992, while Globe’s franchise is the franchise issued to Clavercilla Radio System in 1965.

[81]. . . de novo judicial fact-finding would destroy many of the reasons for creating administrative agencies in the first place. Speedy and cheap administrative resolution of controversies would be threatened. The capability of administrative agencies to draw specialized inferences based on their experience would be lost. xxx Administrative agencies would become little more than evidence gatherers, and most decisional responsibility would be shifted to the judiciary. S. Breyer & R. Stewart, *supra* note 10, at 184.

[82] See *Philippine Trust Co. and Smith, Bell & Co. vs. Mitchell*, 59 Phil. 30, 36 (1933); *Osmeña v. COMELEC*, G.R. No. 132231, 31 March 1998., 288 SCRA 447, 964.

[83] “While administrative agencies can change previously announced policies xxx and can fashion exceptions and qualifications, they must explain departures from agency policies or rules apparently dispositive of a case. xxx *Brennan v. Gilles & Cotting, Inc.*, 504 F.2d 1255 (4th Cir. 1974); as cited in Breyer & Stewart, *supra* note 10, at 353.

[84] “Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary.”

Contractors Transport Corp. v. U.S., 537 F.2d 1160 (4[th] Cir. 1976), cited in Breyer & Stewart, *supra* note 10, at 352.

[85] *Edwards v. McCoy*, 22 Phil. 598; *Ang Tibay v. C.I.R.*, 69 Phil. 635, 642; *Bataan Shipyard Co. v. PCGG*, G.R. No. L-75885, 27 May 1987; 150 SCRA 181, 217.

[86] TSN dated 22 March 2004, p. 155.

[87] In a Manifestation and Motion dated 3 May 2004, the NTC manifested that the TSNs could no longer be located. An affidavit executed by the Chief of the Secretariat Division of the NTC was attached, attesting to the fact that the case folder of NTC Adm. Case No. 99-047 has been lost, and was alleged to have been last seen in the possession of former Deputy Commissioner Aurelio M. Umali. Interestingly, while the affidavit attests to the entries of the docket book with respect to the said NTC Adm. Case, as well as the contents of the records previously submitted to this Court, no mention whatsoever is made therein of any transcript to any hearing conducted by NTC on the matter.

[88] *Air Manila, Inc. v. Balatbat*, L-29064, 29 April 1971, 38 SCRA 489, 493; citing *Garcia v. Executive Secretary*, 6 SCRA 1 (1962); *Ang Tibay v. CIR*, 69 Phil. 635.

[89] S. Breyer & R. Stewart, *supra* note 10, at 105.

[90] Rollo, p. 21.

[91] *Ang Tibay v. CIR*, 65 Phil. 635 (1940).

[92] *Matuguina Integrated Wood Products, Inc. v. CA*, 331 Phil. 795, 812 (1996).

[93] Rollo, p. 334.

[94] *Ibid.*

[95] 150-A Phil. 86, 102 (1972).

[96] *Ibid.*

[97] Rule 10, Section 3, NTC Rules of Procedure.

[98] Rollo, pp. 148-150.

[99] Rule 10, Section 4, NTC Rules of Procedure.

[100] Rollo, p. 152.

[101] *Danan and Fernandez v. Aspillera and Galang, et al.*, 116 Phil. 921, 924 (1962).

[102] The following remarks of Sen. J. Osmeña in his sponsorship speech of the Public PTA bear noting; “Technology, for one, has radically changed the nature and scope of telecommunications. The very reason for the State’s intervention in telecommunications has been altered. In many parts of the world, the trend is toward deregulation; or more accurately, less meddling from the bureaucratic hands has taken place.” IV Record of the Senate No. 73, p. 870.

[103] Primary reliance for this statement is premised on par.(f), Section 4 of the Public PTA. *Supra* note 24. The same provision has been used to justify the exercise by the NTC of its regulatory powers, albeit under different factual circumstances. See *Pilipino Telephone Corporation v. NTC*, G.R. No. 138295, 28 August 2003, citing *Republic v. Express Telecommunications Co., Inc.*, G.R. No. 147096, 15 January 2002, 373 SCRA 316, both

cases pertaining to the authority of the NTC to issue provisional authority or certificates of public convenience and necessity. The discretionary authority of the NTC vis-à-vis these licenses, is, of course, also explicitly provided for by the statute. See Art. VI, Section 16, Public PTA. Apparently, the aforementioned para. (f) affirms at the same time the due respect accorded PTEs in making business decisions and the authority of the NTC to enforce the law. This is indicative of the judicious balance adopted by the law towards state concerns and business concerns.

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