

BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI COLMENARES AND CARLOS ISAGANI ZARATE, PETITIONERS, VS. DIGITEL MOBILE PHILIPPINES, INC., GLOBE TELECOMMUNICATIONS, INC., SMART COMMUNI...

G.R. Nos. 233121-23 & 233626-28, January 28, 2026

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

These consolidated cases involve the Petition for Review on Certiorari[1] filed by Bayan Muna Party-List Representatives Neri Colmenares and Carlos Isagani Zarate (Bayan Muna), docketed as G.R. Nos. 233121-23, and the Petition for Review on Certiorari[2] filed by the National Telecommunications Commission (NTC), docketed as G.R. Nos. 233626-28. The said petitions assail the Decision[3] and Resolution[4] of the Court of Appeals (CA), which set aside the Decisions[5] and Resolutions[6] of the NTC.

Antecedents

Republic Act No. 7925, otherwise known as the "Public Telecommunications Policy Act of the Philippines," directs the NTC to "[m]andate 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." [7]

Interconnection pertains to "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." [8]

On October 24, 2011, pursuant to such mandate, the NTC issued Memorandum Circular (M.C.) No. 02-10-2011 with the subject "Interconnection Charge for Short Messaging Service" (Interconnection Circular). The circular aims to reduce communications costs, maintain and foster fair competition in the telecommunications industry, and make Short Messaging Service (SMS), commonly known as "text message," more affordable to the public. [9]

Noting that the SMS retail price consists of the cost of the network sending the text, plus the cost of the network receiving the text, plus the cost of the interconnection facilities, [10] the circular directed the lowering of interconnection charge for SMS between two separate networks or "off-net SMS" from PHP 0.35 to not more than PHP 0.15 per SMS. [11]

Consequently, the circular directed the public telecommunication entities (PTEs) to amend their respective interconnection agreements to comply with the circular. [12] The new interconnection charge took effect on December 1, 2011.

In compliance with the circular, respondents Digitel Mobile Philippines, Inc. (Digitel), Globe Telecommunications, Inc. (Globe), and Smart Communications, Inc. (Smart; collectively, respondent-PTEs) amended their respective interconnection agreements to reduce the interconnection charge for SMS from PHP 0.35 to PHP 0.15.[13]

On December 12, 2011, Engr. Froilan Jamias (Engr. Jamias), Head of the One-Stop Public Assistance Center (OSPAC) of the NTC, filed a Complaint-Affidavit,[14] alleging that he received various complaints from December 5 to 9, 2011 from several SMS subscribers saying that respondent-PTEs are still charging PHP 1.00 for every SMS sent to a subscriber of a different SMS provider despite the issuance of the Interconnection Circular. Thereafter, Engr. Jamias, together with his staff, conducted a test by using mobile numbers from respondent-PTEs, and confirmed that all those mobile numbers charged PHP 1.00 per SMS sent to other networks.[15]

The complaint was docketed into three administrative cases against respondent-PTEs: (1) Adm. Case No. 2011-098, titled "National Telecommunications Commission (NTC) and Engr. Froilan B. Jamias v. Globe Telecom, Inc.;" (2) Adm. Case No. 2011-099, titled "National Telecommunications Commission (NTC) and Engr. Froilan B. Jamias v. Digitel Mobile Philippines, Inc./Sun Cellular;" and (3) Adm. Case No. 2011-100, titled "National Telecommunications Commission (NTC) and Engr. Froilan B. Jamias v. Smart Communications, Inc."

On the same date, the NTC issued separate Show-Cause Orders[16] addressed to respondent-PTEs, directing them to explain why they failed to lower their regular SMS rates by at least PHP 0.20 as a necessary consequence of the lowering of the interconnection charge from PHP 0.35 to PHP 0.15, pursuant to the Interconnection Circular. It also directed respondent-PTEs to preserve and submit all SMS data sent to other networks of all its subscribers who were charged PHP 1.00 per SMS from December 1, 2011, with details such as the Subscriber Identity Module numbers, date, and quantity of SMS per date from 12:01 a.m. of December 1, 2011 until such time that the NTC requires. Respondent-PTEs were likewise required to submit a weekly report to the NTC on the total number of SMS charged with PHP 1.00 per SMS from December 1, 2011.

Respondent-PTEs filed their respective answers. Thereafter, respondent-PTEs went through separate administrative proceedings. Trial ensued, and hearings were held where the testimony of Engr. Jamias was presented as evidence. Respondent-PTEs did not present any witness and opted to file their respective memorandum.

Ruling of the NTC

On November 20, 2012, the NTC issued three separate Decisions[17] and ruled against respondent-PTEs, the dispositive portions of which read:

[ADM. CASE NO. 2011-098]

WHEREFORE, in view of the foregoing, respondent Globe Telecom, Inc., is hereby ordered to:

- Reduce its regular SMS retail price to other networks from [PHP] 1.00 to not more than [PHP] 0.80;
- Refund or reimburse its subscribers the excess charge of [PHP] 0.20 per off-net SMS or text message from the effectivity of the subject MC until fully settled, by crediting the prepaid load of prepaid subscribers and/or effecting the refund through the respective subscriber billing for postpaid subscribers;
- Pay a fine at the rate of [PHP 200.00/day] from [December 1,] 2011, until the date of compliance; and
- Immediately submit, within [15] days from receipt hereof, the documents, records and reports pertaining to SMS sent to other networks (off-net SMS) of all its subscribers who were charged the regular rate of [PHP

1.00] per SMS from the effectivity of the subject MC, or on [December 1,] 2011, with details as required in the Commission's order dated [December 12,] 2011 and the mode of effecting the refund or reimbursement as provided in this Order.[18]

[ADM. CASE NO. 2011-099]

WHEREFORE, in view of the foregoing, respondent, Digitel Mobile Philippines, Inc., is hereby ordered to:

- Reduce its regular SMS retail price to other networks from [PHP] 1.00 to not more than [PHP] 0.80;
- Refund or reimburse its subscribers the excess charge of [PHP] 0.20 per off-net SMS or text message from the effectivity of the subject MC until fully settled, by crediting the prepaid load of prepaid subscribers and/or effecting the refund through the respective subscriber billing for postpaid subscribers;
- Pay a fine at the rate of [PHP 200.00/day] from [December 1,] 2011, until the date of compliance; and
- Immediately submit, within [15] days from receipt hereof, the documents, records and reports pertaining to SMS sent to other networks (off-net SMS) of all its subscribers who were charged the regular rate of [PHP 1.00] per SMS from the effectivity of the subject MC, or on [December 1,] 2011, with details as required in the Commission's order dated [December 12,] 2011 and the mode of effecting the refund or reimbursement as provided in this Order.[19]

[ADM. CASE NO. 2011-100]

WHEREFORE, in view of the foregoing, respondent, Smart Communications, Inc., is hereby ordered to:

- Reduce its regular SMS retail price to other networks from [PHP] 1.00 to not more than [PHP] 0.80;
- Refund or reimburse its subscribers the excess charge of [PHP] 0.20 per off-net SMS or text message from the effectivity of the subject MC until fully settled, by crediting the prepaid load of prepaid subscribers and/or effecting the refund through the respective subscriber billing for postpaid subscribers;
- Pay a fine at the rate of [PHP 200.00/day] from [December 1,] 2011, until the date of compliance; and
- Immediately submit, within [15] days from receipt hereof, the documents, records and reports pertaining to SMS sent to other networks (off-net SMS) of all its subscribers who were charged the regular rate of [PHP 1.00] per SMS from the effectivity of the subject MC, or on [December 1,] 2011, with details as required in the Commission's order dated [December 12,] 2011 and the mode of effecting the refund or reimbursement as provided in this Order.[20]

The NTC ruled that the purpose of the Interconnection Circular is to reduce the SMS interconnection rate for the benefit of the public. Its primary objective was for the PTEs to pass on their savings from the reduced interconnection charges to their subscribers through lower SMS rates. The NTC pointed out that prior to the issuance of the circular, the prevailing interconnection rate or cost paid by the sending network to the receiving network was PHP 0.35. Hence, the SMS rate, without the interconnection charge, is barely PHP 0.65. Consequently, with the reduction of the interconnection charge from PHP 0.35 to PHP 0.15, the basic SMS charge should be reduced because the interconnection charge is a component of the SMS retail price. On the other hand, respondent-PTEs failed to prove their claim that the PHP 1.00 SMS retail rate is exclusive of the PHP 0.35 interconnection charge and the 12% or PHP 0.12 per PHP 1.00 value added tax (VAT).[21]

On May 7, 2014, the NTC issued three separate Resolutions,[22] denying the respective motions for reconsideration of respondent-PTEs. This prompted respondent-PTEs to file with the CA their respective petitions for review under Rule 43 of the Rules of Court, with application for temporary restraining order and/or writ of

preliminary injunction against the NTC's Decisions. The petitions were docketed as follows: (1) CA-G.R. SP No. 135400, "Digitel Mobile Philippines, Inc. v. National Telecommunications Commission;" (2) CA-G.R. SP No. 135449, "Smart Communications, Inc. v. National Telecommunications Commission;" and (3) CA-G.R. SP No. 135440, "Globe Telecommunications, Inc. v. National Telecommunications Commission." [23]

On October 3, 2014, Bayan Muna filed their Motion for Leave to File Motion to Intervene and Petition-in-Intervention with Motion for Intervention, [24] which the CA granted in its Resolution [25] dated November 18, 2014. Respondent-PTEs then filed their respective comments on the petition-in-intervention. The NTC, on the other hand, filed on November 13, 2014 its Comment [26] on the petitions of Digitel and Smart. Digitel and Smart filed their Joint Reply on November 28, 2014.

In its Resolution [27] dated November 28, 2014, the CA consolidated the three cases.

In its Manifestation [28] dated May 8, 2015, the NTC adopted its Comment dated November 7, 2014, as its comment on Globe's petition for review.

Ruling of the CA

In the assailed June 27, 2016 Decision, the CA set aside the NTC Decisions and enjoined the NTC from implementing them, the dispositive portion of which reads:

WHEREFORE, the impugned Decisions and Resolutions of the National Telecommunications Commission dated November 20, 2012 and May 07, 2014, respectively, are hereby SET ASIDE for being bereft of legal basis and for having been rendered in utter disregard of the requirements of due process.

Accordingly, the respondent NTC and any and all of its agents are permanently enjoined from implementing its said issuances.

SO ORDERED. [29] (Emphasis in the original)

The CA held that the NTC's order to reduce the SMS retail rate was done without due process of law. Moreover, the reduction of interconnection charges under the Interconnection Circular does not result in the lowering of the SMS retail rate. Such interpretation is repugnant to NTC's own act of classifying SMS as a value-added service. Furthermore, the NTC's rate-fixing power is not absolute. It may also not exercise its residual powers relative to value-added service in the absence of exempting circumstances. [30]

In its assailed July 25, 2017 Resolution, [31] the CA denied the respective motions for reconsideration of the NTC and Bayan Muna. Hence, on September 22, 2017, Bayan Muna filed with the Court their Petition for Review on Certiorari, which was docketed as G.R. Nos. 233121-23. [32] On October 18, 2017, the NTC, through the Office of the Solicitor General, likewise filed its Petition for Review on Certiorari, which was docketed as G.R. Nos. 233626-28. [33]

In their petition, Bayan Muna argued, among others, that: (1) the reduction of respondent-PTEs' SMS retail rates is a necessary consequence of the reduction of their interconnection charges; (2) the NTC has the power to regulate SMS because it is not a value-added service, but a basic service ordinarily offered by respondent-PTEs; and (3) assuming that SMS is a value-added service, the NTC can still exercise its residual power to regulate a value-added service. [34]

Meanwhile, in its petition, the NTC argued that the Interconnection Circular directs not only the reduction of the interconnection rates, but also the reduction of the SMS retail rates. The "whereas" clauses of the circular are clear that the reduction of the interconnection charges should bring forth the intended reduction of SMS rates to the benefit of the public. The NTC likewise argued that respondent-PTEs have been aware from the very start that the

circular covers the reduction of the SMS retail rates. They were apprised of what the circular was about and were given an opportunity to be heard before it was issued. Thus, they feigned ignorance on the intent of the circular and misled the CA that they were not consulted.[35]

The NTC further argued that it has the authority to regulate SMS retail rate despite the deregulation of SMS as a value-added service. It invoked its residual power to regulate rates of services declared exempt from regulations. In any case, the Interconnection Circular partially modified the NTC's previous classification of SMS as value added service, reflecting a shift in the NTC's regulatory treatment of SMS. Moreover, respondent-PTEs failed to show why or how the reduction of interconnection charges does not necessarily result in the reduction of the SMS retail cost.[36]

In its Resolution[37] dated December 13, 2017, the Court resolved to consolidate G.R. Nos. 233626-28 (NTC petition) with G.R. Nos. 233121-23 (Bayan Muna petition).

Digitel and Smart then filed their Comment/Opposition[38] to Bayan Muna's petition on January 16, 2018, and Comment[39] on the NTC's petition on February 26, 2018.

They argued, among others, that: (1) the reduction of interconnection charges does not automatically or necessarily result in the reduction of SMS retail rates; (2) the Interconnection Circular merely directed the reduction of interconnection charges, not the SMS retail rates; (3) the NTC's directive to reduce the SMS retail rates violates respondent-PTEs' right to due process as it was not in issue during the proceedings; (4) the rates of SMS, a deregulated service, are outside the regulatory powers of the NTC as its rate-fixing power extends only to regulated services, except under certain conditions, which are not present in this case; (5) the NTC's invocation of its residual power lacks factual and legal basis; and (6) respondent-PTEs' various bucket and unlimited promotions to the public led to the low SMS retail rate of PHP 0.20.

On April 2, 2018, Globe filed its Consolidated Comment[40] on the petitions of Bayan Muna and the NTC.

Globe argued, among others, that (1) the Interconnection Circular only required PTEs to reduce their interconnection charge to each other; (2) the circular did not require the PTEs to reduce their SMS retail rate to their subscribers from PHP 1.00 to PHP 0.80; (3) the PTEs complied with the circular and therefore, there is no basis to penalize them, and they cannot be penalized for an inexistent requirement; (4) the NTC is bound by its own rule, which classified SMS as a value-added service; (5) none of the exempting situations exists to warrant the NTC's exercise of its residual power and the NTC admitted that it did not invoke the same when it called for public hearing prior to the issuance of the circular; (6) a reduction in the SMS interconnection charge does not automatically translate to a reduction in the SMS retail rate; (7) the interconnection charges are not the only component in PTEs' operating expense; the NTC disregarded their billions of dollars of investments to upgrade/transform their networks on a continuing basis; and (8) the NTC's order to produce records of SMS transactions is void for prejudging the PTEs and forcing them to furnish evidence against themselves.[41]

On July 4, 2018, the NTC filed its Reply,[42] countering that the bucket rates and promotions offered by respondent-PTEs are special deals where subscribers must first register and subject to change or have limited duration. It argued that the intent of the Interconnection Circular was for subscribers to enjoy lower SMS retail rates without conditions imposed by respondent-PTEs.[43]

Meanwhile, on September 12, 2018, Bayan Muna filed their Consolidated Reply,[44] arguing that the NTC's act was merely an interpretation and application of the Interconnection Circular, which should be accorded great weight. Further, maintaining the PHP 1.00 SMS retail rate would mean an increase in SMS cost.[45]

Issues

The issues for resolution of the Court are the following: (1) whether the interconnection Circular also directs the reduction of the SMS retail rates from PHP 1.00 to PHP 0.80; (2) whether the reduction of the interconnection charge for SMS automatically or necessarily results in the reduction of the SMS retail rates; and (3) whether the NTC can exercise its residual powers under Section 17 of Republic Act No. 7925 to order the reduction of SMS retail rates in this case.

Ruling of the Court

We deny the Petitions.

The Interconnection Circular does not direct the reduction of SMS retail rates

The NTC asserts that the Interconnection Circular directs not only the reduction of the interconnection charges, but also the SMS retail rates. The Interconnection Circular reads:

MEMORANDUM CIRCULAR

No. 02-10-2011

SUBJECT: INTERCONNECTION CHARGE FOR SHORT MESSAGING SERVICE

WHEREAS, the 1987 Constitution fully recognizes the vital role of communications in nation[-]building and provides for the emergence of communications structures suitable to the needs and aspirations of the nation;

WHEREAS, promotion of competition in the telecommunications market is a key objective of [Republic Act No. 7925], otherwise known as The Public Telecommunications Policy Act of the Philippines, which mandates 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";

WHEREAS, [Republic Act No. 7925] further defines the role of the government to "promote a fair, efficient and responsive market to stimulate growth and development of the telecommunication facilities and services";

WHEREAS, Sec. 5(c) of [Republic Act No. 7925] directs NTC to "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";

WHEREAS, the short messaging service (SMS) is widely used by the citizens in their day-to-day activities;

WHEREAS, the existing interconnection charge for SMS is [PHP] 0.35 per SMS;

WHEREAS, public telecommunications entities (PTEs) are offering SMS at a price as low as [PHP] 0.10 per SMS within their respective networks;

WHEREAS, the retail price of SMS consists of the cost of the network sending the short message or text plus cost of the network receiving the text plus the cost of the interconnection facilities;

NOW, THEREFORE, pursuant to [Republic Act No. 7925], Executive Order [No.] 546 series of 1979, and [to] reduce communications costs, maintain and foster fair competition in the telecommunications industry and in order to make SMS more affordable to the general public, the National Telecommunications Commission hereby promulgates the following guidelines:

Section 1. The interconnection charge for SMS between [two] separate networks shall not be higher than

[PHP] 0.15 per SMS

Sec. 2. SMS network providers shall ensure that facilities are sufficient to guarantee that 99% of short messages or texts sent are received by the addressees within 30 seconds from the time the texts are sent.

Sec. 3. Each of the parties to the interconnection shall provide the interconnection links or circuits required to carry their respective SMS traffic. The parties shall ensure that termination equipment is sufficient to connect the interconnection links or circuits to their respective networks. The parties shall provide the interconnection links and facilities with sufficient capacity in a timely manner.

Sec. 4. The PTEs shall amend their respective interconnection agreements to comply with this Circular within [10] days from the effectivity of this Circular. The new interconnection charges shall be imposed not later than [20] days from the effectivity of this Circular.

Sec. 5. Violations of herein prescribed guidelines shall be imposed penalties pursuant to existing laws, rules[,] and regulation.

Sec. 6. This memorandum circular shall take effect [15] days after publication in a newspaper of general circulation, and [three] certified true copies furnished to the UP Law Center.

Quezon City, Philippines [October 24,] 2011.

A plain reading of the circular would confirm that the Interconnection Circular only directs the reduction of the interconnection charge for off-net SMS from PHP 0.35 to PHP 0.15, and the corresponding amendment of the PTEs' respective interconnection agreements to effect such reduction.

The Interconnection Circular is an administrative issuance related to the implementation of Republic Act No. 7925, which the NTC is entrusted to enforce.[46] Hence, the circular has the force and effect of law.[47]

It is a basic rule of statutory construction that "when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*." [48]

In this case, the records show that respondent-PTEs have reduced their interconnection rates for off-net SMS from PHP 0.35 to PHP 0.15, and they have made the corresponding amendment to their respective interconnection agreements to effect such reduction prior to December 1, 2011.[49] Thus, applying the plain, unambiguous provisions of the circular, it is clear that respondent-PTEs have complied with its directives.

It is also clear that there is no directive or requirement in the circular about the reduction of the SMS retail rates. Another basic rule of statutory construction is that "a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein by construction." [50]

Thus, there is no merit in the NTC's argument that the Interconnection Circular "does not only direct the reduction of the interconnection rates, but also the reduction of the SMS retail rates." [51] The NTC cannot construe or interpret the circular as directing the reduction of the SMS retail rates when the very language of the circular does not state or reflect such directive.

The NTC cannot also rely on the Interconnection Circular's "whereas" clauses, which argues that "the reduction of the interconnection charges should bring forth the intended reduction of SMS rates to the benefit of the general public." [52]

In the first place, "a preamble is not an essential part of an act as it is an introductory or preparatory clause that

explains the reasons for the enactment, usually introduced by the word 'whereas.' Whereas clauses do not form part of a statute because, strictly speaking, they are not part of the operative language of the statute." [53] Consequently, whereas clauses or the preamble of a law (or the circular in this case) "cannot be used as basis for giving it a meaning not apparent on its face." [54]

Second, whereas clauses may only be resorted to "for clarification in cases of doubt." [55] In other words, a preamble only "aids in the interpretation of any ambiguities within the statute to which it is prefixed." [56]

It is well-settled that doubt or ambiguity in the language of the statute is a condition sine qua non before the court may construe or interpret the same. [57] Since, as discussed above, the provisions of the Interconnection Circular are clear and unambiguous, the Court may not interpret or construe its intent. The duty of the Court, in this case, is to apply the circular the way it is worded. [58] As there is a clear absence of any directive in the circular to reduce the SMS retail rates, there is no doubt or ambiguity that would call for construction or interpretation of the circular. The circular can only be applied without any attempt of interpretation.

There is likewise no merit in petitioner Bayan Muna's argument that the NTC's act was merely an interpretation and application of the Interconnection Circular, which should be accorded great weight.

While it is the general rule that an administrative agency's construction of a law, which it is charged to implement, is entitled to great weight and respect, the Court "is not bound to apply said rule where such executive interpretation, is clearly erroneous, or when there is no ambiguity in the law interpreted, or when the language of the words used is clear and plain," [59] as in this case. Hence, the NTC's interpretation, which effectively supplemented the Interconnection Circular with what was clearly not stated there, cannot bind the Court.

Clearly, the Interconnection Circular does not order or direct the reduction of the SMS retail rates. The Court cannot judicially supply such omission in the circular even if it was the intention of the NTC. The Court is not authorized to insert into the circular what should have been in it, or to supply what the NTC would have supplied if its attention had been called to the omission. [60]

The reduction of the interconnection charge does not necessarily result in the reduction of the SMS retail rates

Petitioner Bayan Muna argues that the reduction of SMS retail rate was merely a necessary consequence of the lowering of the interconnection charge. They argue that the CA should have given credence to the NTC's pronouncement that interconnection charges form part of SMS retail rates, and asked respondent-PTEs to present evidence to prove otherwise.

It is elementary that "whoever alleges a fact has the burden of proving it because a mere allegation is not evidence." [61] Jurisprudence has consistently applied the ancient rule "[E]i incumbit probatio qui dicit, non qui negat (He who asserts, not he who denies, must prove)." [62] Thus, if the plaintiffs, upon whom rests the burden of proving their cause of action, fail to show in a satisfactory manner facts which they base their claim, the defendants are under no obligation to prove their exception or defense. [63] This rule applies even to the State, which is not excused from providing evidence to support its allegations. [64]

In this case, the complainants are the NTC and its OSPAC Head, Engr. Jamias. They alleged that respondent-PTEs violated the Interconnection Circular when the latter continued to charge PHP 1.00 per off-net SMS despite the mandated reduction of the interconnection charge. They claimed that the SMS retail rates should be rationally reduced because the interconnection charge is a component of the SMS retail price. [65]

The NTC and Engr. Jamias, however, failed to substantiate their claims. They failed to present evidence to prove that the interconnection charge is a component of the SMS retail price. They also failed to prove that the SMS

retail price is necessarily reduced when the interconnection charge was reduced. They likewise failed to show any sufficient finding or investigation that respondent-PTEs' PHP 1.00 per off-net SMS amounted to overcharging, such that there is a need to reduce the same.[66]

In fact, when the NTC rendered its Decisions, no proof or evidence was cited from the records of the administrative proceedings to support the NTC's conclusions that the interconnection charge is a component of SMS retail rates, and that the reduction of the interconnection charge necessarily results in the reduction of the SMS retail rates. In other words, such findings or conclusions were not supported by substantial evidence contained in the record, in violation of the cardinal primary rights of interested parties before administrative tribunals.[67]

Even during trial before the CA, the NTC failed to substantiate its allegations and conclusions. The CA found that the NTC failed to justify its case in ordering the reduction of the SMS retail rate, thus:

In this case, the only reason given by the NTC for its interference is to make SMS rate more affordable to the public. During trial, the NTC claimed that it conducted studies on how to make SMS more economical. It then discovered that the interconnection charge is one of the components of SMS. Accordingly, it easily concluded that if the former could be lowered, it could also lower the SMS rate that the telecommunications companies are charging their subscribers. However, the NTC was not able to explain the need to make the SMS "more affordable". WE find this essential because the NTC is invoking its power of regulation over a telecommunications service which is deregulated. The record is also devoid of any evidence to show whether the present [PHP] 1.00 per text is unreasonable and unjust to justify the NTC's interference. Apparently, the NTC harps on the popular belief that anything that is lower is good.[68]

Instead, the NTC passed the burden of proof to respondent-PTEs and argued that they failed to prove that the interconnection charge was not a component of the SMS retail rates, and there was no overcharging of the off-net SMS.

However, as mentioned, the NTC had the burden to prove its affirmative allegations. Since the NTC failed to substantiate its claims, respondent-PTEs are under no obligation to prove their defense:

The Court, therefore, cannot sustain the claim or conclusion that the reduction of the interconnection charge necessarily results in the reduction of SMS retail rates.

The NTC cannot exercise its residual powers to order the reduction of the SMS retail rates in this case

In its Petition,[69] the NTC asks, "[I]f the reduction of interconnection charge does not result in the lowering of the SMS retail rate, what does it result to then? What then is the purpose of the reduction of interconnection charge as mandated by the [NTC] when no one is to be benefitted thereby? Why did [the NTC] mandate the reduction of interconnection charge on SMS?"[70]

The NTC may not be asking the proper questions. If it was truly what it intended, why did the NTC not expressly direct the reduction of SMS retail rates in the Interconnection Circular that it issued? Section 1 of the Interconnection Circular specifically states that "[t]he interconnection charge for SMS between [two] separate networks shall not be higher than [PHP] 0.15 per SMS." Why did the NTC not include a specific provision in the same Circular to the effect that the retail price for SMS between [two] separate networks shall not be higher than [PHP] 0.80 per SMS?[71] The answer is probably because it cannot simply do so.

Under NTC's M.C. No. 02-05-2008 with the subject "Value Added Services" (VAS Circular), messaging services, including SMS, are classified as a value added service (VAS). The same Circular provides that "[t]he rates for value added services shall be deregulated."[72] Hence, SMS rates have been deregulated.

Deregulation means "the reduction of government regulation of business to permit freer markets and competition." [73] The CA thus correctly observed that the government's interference on the SMS, being a VAS and having deregulated rates, is limited. [74]

The NTC's authority to deregulate the rates for VAS is found in Section 17 of Republic Act No. 7925, which provides:

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. (Emphasis supplied)

It is clear from the quoted provision that when the NTC deregulates or exempts a telecommunications service from rate regulations, the NTC still retains residual powers to regulate such service's rates or tariffs.

Thus, while acknowledging that SMS retail rates have been deregulated, the NTC further justifies its order to reduce the SMS retail rates by invoking its residual powers under Section 17 of Republic Act No. 7925. Such invocation, however, cannot be sustained.

In the first place, it is worth noting that the NTC did not invoke its residual powers when it issued the Interconnection Circular. Such powers were not used or cited as basis in issuing the Circular. Neither did the NTC invoke the same during its administrative proceedings with respondent-PTEs, even when it rendered its decisions ordering the reduction of SMS retail rates.

Instead, the NTC invoked its residual powers only for the first time on appeal, particularly in its Comments on the Rule 43 Petitions for Review of respondent-PTEs before the CA. This fact is confirmed by the records of the case, the CA, and the NTC itself during the hearing held before the CA. [75]

It is a well-settled rule that "points of law, theories, issues, and arguments not brought to the attention of the trial court adequately and on time need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal." [76] Parties are forbidden from changing the theory of their case on appeal. [77] To allow this "would be offensive to the basic rules of fair play, justice, and due process." [78]

Thus, the NTC cannot invoke its residual powers for the first time on appeal without violating the basic rules of fair play, justice, and due process. It cannot change the theory of its case when, during the administrative proceedings, it merely cited the Interconnection Circular, which neither invoked the NTC's residual powers and its general regulatory authority over telecommunications companies. Consequently, the CA correctly noted that respondent-PTEs were completely denied the opportunity to refute the NTC's invocation of its residual powers. [79]

In any case, even if the NTC is allowed to invoke its residual powers, the NTC failed to prove the presence of the conditions to warrant the exercise of such powers.

The NTC's powers, under Section 17 of Republic Act No. 7925, as discussed in *Globe Telecom, Inc. and Innove Communications, Inc. v. NTC*, [80] are two-fold:

The first paragraph of the provision pertains to the daily regulatory function of the Commission when the free market is stable and unrestricted competition serves the public interest. In this instance, the Commission may or may not establish a floor or a ceiling, depending on the present circumstances of the market and economy.

The second paragraph likewise grants the Commission residual powers to regulate rates and tariffs when conditions detrimental to public interest and the economy are present. This power comes into play when there is ruinous competition or an existence of a monopoly or a cartel or combination which creates distortions in the free market.[81] (Emphasis supplied)

The NTC's residual power to regulate the rates of deregulated telecommunications services is not the general norm but the high exception. It is a contingent power that remains dormant until certain extraordinary circumstances trigger its exercise.[82] As held in the case of *Globe Telecom*, it only arises when conditions adverse to both public interest and economy are present. This includes the presence of any of the following: a ruinous competition, monopoly, cartel, or combination thereof; and coupled with either a distortion of rates or tariffs, or their inability to function freely.[83] Thus, the burden of proof lies heavily on the NTC to demonstrate with empirical data and evidence that these specific adverse circumstances are present before it can exercise its residual powers. Here, the NTC failed in this regard.

The CA correctly held that the existence of these adverse conditions is a factual matter that must be substantiated by clear and satisfactory evidence.[84] Thus, the determination of the existence of the said conditions involves questions of fact.

The Court, however, is not a trier of facts.[85] The resolution and appreciation of factual issues are functions of the lower courts, whose findings are received with respect and binding upon this Court.[86]

In this case, the CA found that the NTC failed to present concrete evidence to support its conclusion that the required conditions for the exercise of its residual powers are present in this case.[87] A review of the NTC's Petition would also confirm that it was unable to cite from the records any proof of the existence of such conditions. Likewise, the NTC failed to conduct and present an extensive study of the current market, which takes into consideration both the telecommunications providers and the consumers[88] that would aid it in determining whether such adverse conditions truly exist.

In accordance with established rule and practice, this Court will not, and it finds no reason, to disturb or disregard the CA's determination that the required conditions are not present in this case.

Meanwhile, *Bayan Muna's* Petition cites news articles in support of its position that the required conditions are present in this case.[89] However, aside from the fact that such news articles were not presented as evidence despite the conduct of hearings before the CA, it is established in jurisprudence that "news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted." [90] As such, this Court cannot anchor its decision on, or even consider, such news articles in determining the presence of the required conditions for the NTC's residual powers.

Accordingly, the NTC cannot invoke its residual powers under Section 17 of Republic Act No. 7925 in view of the absence of the required conditions for the exercise of such powers. Consequently, the NTC cannot cite such powers to justify its order of reduction of the SMS retail rates in this case.

Considering all the foregoing, it is clear that the NTC cannot order the reduction of the SMS retail rates based on the Interconnection Circular as it does not direct such reduction. Neither can the NTC order the reduction of the SMS retail rates pursuant to its residual powers under Section 17 of Republic Act No. 7925 in view of the absence of the required conditions for the exercise of such powers.

Necessarily, respondent-PTEs cannot be held liable or be penalized for violation of the circular when they did not reduce their SMS retail rates despite the issuance of the Interconnection Circular.

ACCORDINGLY, the Petitions for Review on Certiorari filed by petitioners Bayan Muna Party-List Representatives Neri Colmenares and Carlos Isagani Zarate, and the National Telecommunications Commission are DENIED. The June 27, 2016 Decision and the July 25, 2017 Resolution of the Court of Appeals in CA-G.R. S.P. Nos. 135400, 135440, and 135449 are AFFIRMED.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Hernando, Rosario, and Marquez, JJ., concur.

[1] Rollo (G.R. Nos. 233121-23), pp. 24-71.

[2] Rollo (G.R. Nos. 233636-38), pp. 16-60.

[3] Rollo (G.R. Nos. 233121-23), pp. 73-97; rollo (G.R. Nos. 233626-28), pp. 61-85. The June 27, 2016 Decision in CA-G.R. SP. Nos. 135400, 135440, and 135449 was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Noel G. Tijam (now a former member of the Court) and Agnes Reyes Carpio of the Former Sixth Division, Court of Appeals, Manila.

[4] Rollo (G.R. Nos. 233121-23), pp. 99-100; rollo (G.R. Nos. 233626-28), pp. 86-87. The July 25, 2017 Resolution in CA-G.R. SP. Nos. 135400, 135440, and 135449 was penned by Associate Justice Priscilla J. Baltazar-Padilla (now a former member of the Court) and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Pedro B. Corales of Special Former Sixth Division, Court of Appeals, Manila.

[5] Rollo (G.R. Nos. 233121-23), pp. 231-242, 349-405, 1875-1888.

[6] Id. at 243-248, 406-411, 1889-1894.

[7] Republic Act No. 7925 (1995), sec. 5(c).

[8] Republic Act No. 7925 (1995), sec. 3(k).

[9] National Telecommunications Commission (NTC) Memorandum Circular (M.C.) No. 02-10-2011 (NTC M.C. No. 02-10-2011).

[10] NTC M.C. No. 02-10-2011, 8[th] WHEREAS Clause.

[11] NTC M.C. No. 02-10-2011, sec. 1.

[12] NTC M.C. No. 02-10-2011, sec. 4.

[13] Rollo (G.R. Nos. 233121-23), pp. 24-69.

[14] Id. at 74.

[15] Id.

[16] Rollo (G.R. Nos. 233121-23), pp. 249-251, 451-453, 2434-2436; rollo (G.R. Nos. 233626-28), pp. 148-150, 153-155, 156-158.

[17] Rollo (G.R. Nos. 233121-23), pp. 231-242, 394-405, 1889-1894; rollo (G.R. Nos. 233626-28), pp. 159-172, 173-184, 185-196. The November 20, 2021 Decision in ADM Case Nos. 2011-098, 2011-099 and 2011-100 was

signed by Commissioner Gamaliel A. Cordoba and Deputy Commissioners Carlo Jose A. Martinez and Delilah F. Deles of the National Telecommunications Commission, Office of the President, Quezon City.

[18] Rollo (G.R. Nos. 233121-23), pp. 1886-1887; rollo (G.R. Nos. 233626-28), pp. 170-171.

[19] Rollo (G.R. Nos. 233121-23), p. 241; rollo (G.R. Nos. 233626-28), p. 183.

[20] Rollo (G.R. Nos. 233121-23), pp. 403-404; rollo (G.R. Nos. 233626-28), pp. 194-195.

[21] Rollo (G.R. Nos. 233121-23), p. 2413.

[22] Rollo (G.R. Nos. 233121-23), pp. 243-248, 406-411, 1889-1894; rollo (G.R. Nos. 233626-28), pp. 197-202, 203-208, 209-214. The May 7, 2014 Resolution in ADM Case Nos. 2011-098, 2011-099 and 2011-100 was signed by Commissioner Gamaliel A. Cordoba and Deputy Commissioners Carlo Jose A. Martinez and Delilah F. Deles of the National Telecommunications Commission, Office of the President, Quezon City.

[23] Rollo (G.R. Nos. 233626-28), pp. 31-32.

[24] Rollo (G.R. Nos. 233121-23), pp. 764-792.

[25] Id. at 1096-1100.

[26] Id. at 837-865.

[27] Id. at 1125-1128.

[28] Id. at 1850-1856.

[29] Id. at 96.

[30] Id. at 83-95.

[31] Rollo (G.R. Nos. 233121-23), pp. 99-100; rollo (G.R. Nos. 233626-28), pp. 86-87.

[32] Rollo (G.R. Nos. 233121-23), p. 24.

[33] Rollo (G.R. Nos. 233626-28), p. 16.

[34] Rollo (G.R. Nos. 233121-23), p. 25.

[35] Rollo (G.R. Nos. 233626-28), pp. 33-44.

[36] Id. at 45-49.

[37] Rollo (G.R. Nos. 233626-28), p. 472.

[38] Rollo (G.R. Nos. 233121-23), pp. 120-181.

[39] Id. at 2148-2204.

[40] Id. at 2295-2387.

[41] Id. at 2314-2318.

[42] Id. at 2781-2792.

[43] Id. at 2788.

[44] Id. at 2796-2812.

[45] *Id.* at 2802.

[46] Republic Act No. 7925 (1995), sec. 5.

[47] See *Commissioner of Internal Revenue v. Taganito Mining Corp.*, 918-A Phil. 613, 637 (2021) [Per C.J. Gesmundo, First Division].

[48] *Tumabini v. People*, 871 Phil. 289, 304 (2020) [Per J. Gesmundo, Third Division].

[49] *Rollo* (G.R. Nos. 233626-28), pp. 25-26.

[50] *Philippine International Trading Corp. v. Commission on Audit*, 635 Phil. 447, 459 (2010) [Per J. Perez, En Banc] (Citation omitted)

[51] *Rollo* (G.R. Nos. 233626-28), p. 34.

[52] *Id.* at 37.

[53] *Risos-Vidal v. Commission on Elections*, 751 Phil. 479, 552 (2015) [Per J. Leonardo-De Castro, En Banc] (Emphasis supplied, citations omitted)

[54] *People v. Garcia*, 85 Phil. 651, 663 (1950) [Per J. Tuason, En Banc]. (Emphasis supplied)

[55] *Id.* at 668.

[56] *Kuwait Airways Corp. v. Philippine Airlines, Inc.*, 605 Phil. 474, 487 (2009) [Per J. Tinga, Second Division]. (Emphasis supplied)

[57] *People v. Barrera*, 891 Phil. 55, 91 (2020) [Per J. Gaerlan, En Banc].

[58] *Id.*

[59] *National Food Authority v. Masada Security Agency Inc.*, 493 Phil. 241, 251 (2005) [Per J. Ynares-Santiago, First Division]. (Emphasis supplied)

[60] See *Kida v. Senate of the Philippines*, 683 Phil. 198, 221 (2012) [Per J. Brion, En Banc].

[61] *BJDC Construction v. Lanuzo*, 730 Phil. 240, 252 (2014) [Per J. Bersamin, First Division]. (Citation omitted)

[62] *Castilex Industrial Corp. v. Vasquez, Jr.*, 378 Phil. 1009, 1018 (1999) [Per C.J. Davide, Jr., First Division].

[63] *Id.*

[64] *Republic v. Spouses Noval*, 818 Phil. 298, 318 (2017) [Per J. Leonen, Third Division]. (Emphasis supplied)

[65] *Rollo* (G.R. Nos. 233121-23), p. 74.

[66] *Id.* at 87.

[67] *Globe Telecom Inc. v. National Telecommunications Commission*, 479 Phil. 1, 30-31 (2004) [Per J. Tinga, Second Division].

[68] *Rollo* (G.R. Nos. 233121-23), p. 93.

[69] *Rollo* (G.R. Nos. 233626-28), pp. 16-52.

[70] *Id.* at 35.

[71] *Id.* at 30.

[72] NTC M.C. No. 02-05-2008 (2008), sec. 9.

[73] Batangas CATV, Inc. v. Court of Appeals, 482 Phil. 544, 568 (2004) [Per J. Sandoval-Gutierrez, En Banc]. (Citation omitted)

[74] Rollo (G.R. Nos. 233626-28), p. 80.

[75] Rollo (G.R. Nos. 233121-123), p. 94.

[76] Spouses Hipolito, Jr. v. Cinco, 677 Phil. 331, 344-345 (2011) [Per J. Del Castillo, First Division], citing Remman Enterprises, Inc. v. Court of Appeals, 335 Phil. 1150, 1162 (1997) [Per J. Panganiban, Third Division].

[77] Bote v. Spouses Veloso, 700 Phil. 78, 86 (2012) [Per J. Velasco, Jr., Third Division].

[78] Id., citing Union Bank of the Philippines v. Court of Appeals, 412 Phil. 64, 73 (2001) [Per J. De Leon, Jr., Second Division].

[79] Rollo (G.R. Nos. 233121-23), p. 95.

[80] 935 Phil. 837 (2023) [Per J. Leonen, Second Division].

[81] Id. at 858-859.

[82] Id. at 856.

[83] Republic Act No. 7925 (1995), sec. 17.

[84] Rollo (G.R. Nos. 233121-23), p. 94.

[85] Maglana Rice and Corn Mill, Inc. v Spouses Tan, 673 Phil. 532, 539 (2011) [Per J. Bersamin, First Division].

[86] Id.

[87] Rollo (G.R. Nos. 233121-23), pp. 94-95.

[88] See Globe Telecom, Inc. and Innove Communications, Inc. v. National Telecommunications Commission, 935 Phil. 837, 861 (2023) [Per J. Leonen, Second Division].

[89] Rollo (G.R. Nos. 233121-23), pp. 59-60.

[90] Lagman v. Medialdea, 812 Phil. 179, 312 (2017) [Per J. Peralta, En Banc]. (Citation omitted)

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