



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GLOBE TELECOM, INC. AND G.R. No. 200224
INNOVE COMMUNICATIONS,
INC.,

Petitioner,

-versus-

NATIONAL
TELECOMMUNICATIONS
COMMISSION, COMMISSIONER
GAMALIEL A. CORDOBA,
DEPUTY COMMISSIONER
DOUGLAS MICHAEL N.
MALLILLIN AND DEPUTY
COMMISSIONER JAIME M.
FORTES, JR.,

Respondents.

X-----X

X-----X

NATIONAL
TELECOMMUNICATIONS
COMMISSION,

Petitioner,

G.R. Nos. 200251-54

-versus-

DIGITEL MOBILE PHILIPPINES,
INC. ET AL.,

Respondent.

X-----X

X-----X

CONNECTIVITY UNLIMITED G.R. No. 200276
RESOURCE ENTERPRISES,
INC.,

Petitioner,

-versus-

NATIONAL
TELECOMMUNICATIONS
COMMISSION,

Respondent.

X-----X

X-----X

SMART COMMUNICATIONS,
INC.,

G.R. No. 200325

Petitioner,

Present:

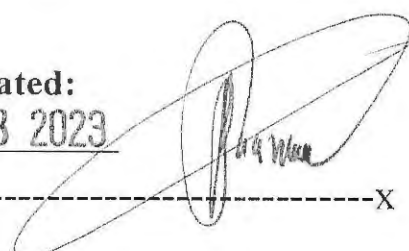
-versus-

LEONEN, *J.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
ROSARIO,* *JJ.*

NATIONAL
TELECOMMUNICATIONS
COMMISSION,

Respondent.

Promulgated:
FEB 13 2023



X-----X

DECISION

LEONEN, J.:

The regulatory power of administrative bodies such as the National Telecommunications Commission does not give it unbridled permission to impose rates without giving telecommunications companies an opportunity to air out their grievances or seek reconsideration. The fundamental right to due process still prevails in administrative proceedings.

* Designated additional Member per Raffle dated September 6, 2022.



This Court resolves four consolidated Petitions for Review on Certiorari of the consolidated Decision¹ and Resolution² of the Court of Appeals. In these consolidated cases, four telecommunications companies and the National Telecommunications Commission (Commission) come before this Court questioning the extent of the regulatory powers of the Commission over Cellular Mobile Telephone Service (CMTS) providers pursuant to Section 17 of Republic Act No. 7925 or the Public Telecommunications Policy Act.

G.R. Nos. 200251-54 is a Petition for Review on Certiorari³ filed by the National Telecommunications Commission against Globe Telecom, Inc. and Innove Communications, Inc. (collectively, Globe and Innove), Connectivity Unlimited Resource Enterprise, Inc. (Connectivity),⁴ Smart Communications, Inc. (Smart), and Digitel Mobile Philippines, Inc. (Digitel) (collectively, telecommunications companies) assailing the consolidated Decision of the Court of Appeals which reversed and set aside the Commission's December 5, 2009 Orders, and December 9, 2009 Show Cause Orders and Cease and Desist Orders. The Court of Appeals likewise imposed a permanent preliminary injunction on the Commission from enforcing its December 5 and 9, 2009 Orders.

G.R. Nos. 200224, 200276, and 200325 are Petitions for Review on Certiorari filed by Globe and Innove,⁵ Connectivity,⁶ and Smart,⁷ respectively. All are grantees of valid and subsisting legislative franchises. They assail the consolidated Court of Appeals' Decision which found that the Commission has the power and authority to impose default rates on CMTS providers and promulgate other rules not found in the legislative franchises, particularly its prohibition on using a prefix to implement the six-second-per-pulse billing scheme.

At the center of these Petitions is the July 23, 2009 Memorandum Circular No. 05-07-2009⁸ or the Guidelines on Unit of Billing of Mobile Voice Service issued by the Commission. This imposed a six-second-per-pulse unit as the default billing method for voice calls. Before the memorandum, voice calls were billed by the minute, hence, any portion of a minute is billed as an entire minute, whether it be one second or 30.⁹

¹ *Rollo* (G.R. No. 200251-54), pp. 81-138. The December 28, 2010 Decision in CA-G.R. SP Nos. 111947, 111970, 112198, and 112006 was penned by Associate Justice Hakim S. Abdulwahid with the concurrence of Associate Justices Fernanda A. Lampas Peralta and Florito S. Macalino of the Former Special Eleventh Division, Court of Appeals, Manila.

² *Rollo* (G.R. No. 200276), pp. 69-79. The January 19, 2012 Resolution in CA-G.R. SP Nos. 111947, 111970, 112198, and 112006 was penned by Associate Justice Hakim S. Abdulwahid with the concurrence of Associate Justices Fernanda A. Lampas Peralta and Florito S. Macalino of the Former Special Eleventh Division, Court of Appeals, Manila.

³ *Rollo* (G.R. No. 200251-54), pp. 17-74.

⁴ *Rollo* (G.R. No. 200276), pp. 174-203.

⁵ *Rollo* (G.R. No. 200224), pp. 14-86.

⁶ *Rollo* (G.R. No. 200276), pp. 174-203.

⁷ *Rollo* (G.R. No. 200325), pp. 10-45.

⁸ *Rollo* (G.R. No. 200251-54), pp. 84-85.

⁹ *Rollo* (G.R. No. 200224), pp. 223.

The provisions pertinent to the case state:

1. The maximum unit of billing for the cellular mobile telephone service (CMTS) whether postpaid or prepaid shall be six (6) seconds per pulse.
2. The authorized rates shall be adjusted accordingly. The rate for the first two (2) pulses, or equivalent if lower period per pulse is used, may be higher than the succeeding pulses to recover the cost of the call set-up. The CMTS providers shall submit to the Commission their respective proposed rates based on the herein prescribed unit of billing within thirty (30) days from the effectivity of this Circular.
3. Subscribers may opt to be billed on a one (1) minute per pulse basis or to subscribe to unlimited service offerings or any service offerings if they actively and knowingly enroll in the scheme.
4. International call service shall not be covered.
5. International agreements between cellular mobile telecommunications service (CMTS) providers and between CMTS providers and other interconnecting network and service providers shall be amended to incorporate the herein prescribed unit of billing within thirty (30) days from the effectivity of this Circular.
6. The CMTS providers and their interconnected network and service providers shall perform the necessary adjustments in their respective networks and systems to comply with herein prescribed unit of billing not later than one hundred and twenty (120) days from the effectivity of this Circular.¹⁰

In light of the directive to submit proposed rates based on the new billing scheme,¹¹ Globe and Innove filed a Joint Application for authority to charge a new set of rates.¹² Similarly, Smart filed an Application for Authority to Adopt a Revised Schedule of Rates for Cellular Mobile Telephone System (CMTS), with Prayer for Provisional Authority.¹³ Connectivity likewise filed a similar application adopting the rates proposed by Smart.¹⁴ Digitel also filed a Motion for Authority to Amend Rates for CMTS Voice Service.¹⁵

On December 5, 2009, the Commission issued Orders resolving the applications of Globe and Innove, Smart, Connectivity, and Digitel.¹⁶ The dispositive portion of the Orders were identical, save for the name of the companies involved:

¹⁰ *Rollo* (G.R. No. 200251-54), pp. 84-85.

¹¹ *Id.* at 25.

¹² *Rollo* (G.R. No. 200224), pp. 297-301. Docketed as NTC Case No. 2009-138.

¹³ *Rollo* (G.R. No. 200325), pp. 130-133. Docketed as NTC Case No. 2009-139.

¹⁴ *Rollo* (G.R. No. 200276), pp. 330-332. Docketed as NTC Case No. 2009-140.

¹⁵ *Rollo* (G.R. No. 200251-54), pp. 28-29.

¹⁶ *Id.* at 87.

IN VIEW THEREOF, and in order to enable applicant to continuously provide a cost efficient and satisfactory service to its subscribers, the Commission hereby GRANTS applicants [Globe and Innove, Smart, Connectivity, and Digitel] a PROVISIONAL AUTHORITY to charge new rates for CMTS, as follows:

BILLING RATES

The six (6) second pulse billing regime shall apply only to CMTS to CMTS voice calls.

The pulse billing regime shall be the default billing mode.

International call service shall not be covered.

For purposes of this Order, "*prevailing rates*" shall be the rates imposed by CMTS operators prior to 06 December 2009 pursuant to Memorandum Circular (MC) No. 05-07-2009.

The flag-down rate for the first two (2) pulses shall in no case exceed the prevailing rate.

The pulse rate for the succeeding minutes shall in no case exceed the prevailing rate per minute divided by ten (10).

Interconnection charges shall also conform and comply with the six-second pulse billing regime.


The pulse billing regime for intra-network calls (i.e. Globe network to Globe network, Smart network to Smart network and Sun network to Sun network) shall take effect at 12:01 a.m. of 06 December 2009 pursuant to MC No. 05-07 2009.

The pulse billing regime for inter-network calls (i.[e]. Globe network to Globe network, Smart network to Smart network and Sun network to Sun network, vice versa), shall take effect at 12:01 a.m. of 16 December 2009 in order to provide sufficient time for system adjustments.

Subscribers may opt to be billed/charged on a one (1) minute per pulse basis or subscribe to unlimited or any service offerings if they actively and knowingly enroll in the scheme.

and subject to the following

CONDITIONS

1. That applicant shall adhere strictly to the authorized rates and shall not modify, revise or alter the said rates without prior authority from this Commission;
 2. That the applicant shall, after one (1) year of operation(,) submit to the Commission its Audited Financial Statements; and
 3. That applicant shall comply with all existing laws, rules and regulations of the land.
- 

SO ORDERED.¹⁷

In the meantime, Globe and Innove offered their new rates to the public in an advisory published in *The Philippine Star* on December 6, 2009,¹⁸ which reads:

In compliance with NTC Memorandum Circular No. 05-07-2009 entitled Guidelines on Unit of Billing of Mobile Voice Service mandating per pulse charging beginning December 6, 2009, *per second charging for Globe-Globe/TM [Touch Mobile] and TM-TM/Globe is available by dialing 232 plus the 10-digit Globe or TM number for Globe Subscribers and 803 plus the 10-digit TM or Globe number for TM subscribers.*

Per second rates when using the aforementioned dialing sequence as follows:

- P0.10/second for Globe-Globe/TM and TM-TM/Globe calls Monday to Saturday
- P0.05/second for Globe-Globe/TM and TM-TM/Globe calls Sunday

Minimum maintaining balance of P7.50 required for Globe, P6.50 required for TM.

Applicable to Globe Postpaid, Globe Prepaid, Globe Tattoo Prepaid, and TM.¹⁹ (Emphasis supplied).

Similarly, Smart published an advisory to comply with the six-second-per-pulse scheme. It states:

ADVISORY TO SMART SUBSCRIBERS

Smart Communications, Inc. (SMART) has implemented the per-pulse billing system for mobile voice calls effective December 6, 2009.

The new billing uses a six-second pulse charging system applicable to domestic on-net calls. It will apply to postpaid (Smart Gold and Infinity) and prepaid services (Smart Buddy, Talk 'N Text and Red Mobile).

A flag-down rate of P3 will be charged on the first two pulses (or 12 seconds) and P0.31 (for Talk 'N Text), P0.43 (for Smart Buddy, Smart Gold, and Infinity) and P0.25 (for Red Mobile) on the succeeding pulses of the first minute. For succeeding minutes, P0.55 (for Talk 'N Text), P0.65 (for Smart Buddy, Smart Gold, and Infinity) and P0.50 (for Red Mobile) per pulse will be charged.

To call per-pulse, the following prefixes must be used, plus the number being called:

Smart Gold and Infinity: *5433

¹⁷ *Id.* at 88-89, 95, 103, 107.

¹⁸ *Rollo* (G.R. No. 200224), p. 30.

¹⁹ *Id.*

Smart Buddy:	*5434
Talk N' Text:	*2255
Cure:	*3152

Subscribers can also opt to be billed per minute, P5.50 for Talk N' Text and P6.50 for Smart Buddy, Smart Gold, and Infinity, or to subscribe to unlimited or bucket-price service offerings.

Call types supported by the per-pulse billing scheme are call features such as call forwarding and teleconferencing. At present, rates apply to call made within SMART network only.²⁰ (Emphasis supplied).

On December 9, 2009, the Commission issued individual Show Cause Orders²¹ against Globe and Innove, Smart, Connectivity, and Digitel, directing them to explain why their Certificates of Public Convenience and Necessity should not be suspended, revoked, or canceled. The Show Cause Orders identically state:

Based on the monitoring conducted by the Commission in connection with [Globe and Innove, Smart, Connectivity, and Digitel]'s compliance with NTC Memorandum Circular (MC) No. 05-07-2009 directing and mandating respondent to implement and consequently impose charges on the basis of a six-second pulse billing regime for voice calls commencing on 12:01 A.M. of 06 December 2009, it appears that [Globe and Innove, Smart, Connectivity, and Digitel have] adamantly refused and has chosen to defy such directive and instead continues to implement and charge its subscribers under the old billing system or regime that was in effect prior to the issuance of the said MC.

IN VIEW THEREOF, [Globe and Innove, Smart, Connectivity, and Digitel are] hereby directed to appear before the NTC on December 14, 2009 at 3:00 o'clock in the afternoon and to show cause in writing why its Certificate of Public Convenience and Necessity (CPCN) / Provisional Authority (PA) should not be suspended, revoked or cancelled as warranted under the circumstances.

....

SO ORDERED.²²

On the same day, the Commission likewise issued individual Cease and Desists Orders against the same telecommunications companies:

IN VIEW THEREOF, [Globe and Innove, Smart, Connectivity, and Digitel are] hereby directed to CEASE AND DESIST from charging its subscribers under and using the previous billing system or regime and to immediately effect a refund to its subscribers for the difference in the new six-second pulse billing regime and the previous billing system by means of a rebate/credit until the same has been fully settled. Further, [Globe and

²⁰ *Rollo* (G.R. No. 200325), pp. 16-17.

²¹ *Rollo* (G.R. No. 200251-54), pp. 89.

²² *Id.* at 89-90, 96, 103, 107.

Innove, Smart, Connectivity, and Digital are] hereby ordered to preserve and submit all call data records from 12:01 A.M. of 06 December 2009 until [they] would have complied with this order.

SO ORDERED.²³

Finding the Commission's Orders punitive, Globe and Innove, Smart, Connectivity, and Digital filed their respective Petitions²⁴ before the Court of Appeals.

Globe and Innove filed a Petition for Review under Rule 43 of the Rules of Court, claiming that the subject orders should be declared void for violating its constitutional and statutory right to due process.²⁵ It added that the Commission committed grave abuse of discretion when it issued the Orders in excess of its rate making powers under Republic Act No. 7925.²⁶

Digital similarly filed a Petition for Review²⁷ under Rule 43 of the Rules of Court with an urgent prayer for the issuance of a temporary restraining order and writ of preliminary mandatory injunction. It asserted that the December 5, 2009 Order of the Commission violated its right to due process since it was not given the opportunity to controvert the information used by the Commission as basis for its Order. It also contended that the December 5, 2009 Order finds no basis in Memorandum Circular No. 05-07-2009 and that the Commission exceeded its authority. Lastly, it claimed that the implementation of the Show Cause Order would do greater harm than good to the public.²⁸

On the other hand, Smart filed a Petition for Certiorari and Prohibition under Rule 65²⁹ on the ground that the subject Orders of the Commission had no basis and was done with grave abuse of discretion since it started complying with Memorandum Circular No. 05-07-2009 on December 6, 2009. It further claimed that the Commission exceeded its authority when it required the six-second-per-pulse unit of billing, which violated due process.³⁰

Like Smart, Connectivity filed a Petition for Certiorari and Prohibition³¹ under Rule 65, adopting the same arguments of Smart.³²

²³ *Id.* at 90, 96, 103, 107.

²⁴ *Id.* at 90-93, 96-102, 104-105, 107-112.

²⁵ *Id.* at 90-93.

²⁶ *Id.* at 90.

²⁷ *Id.* at 104-105. Docketed as CA-G.R. SP No. 112006.

²⁸ *Id.* at 104.

²⁹ *Id.* at 96. Docketed as CA-G.R. SP No. 111970.

³⁰ *Id.* at 96-97.

³¹ *Id.* at 107. Docketed as CA-G.R. SP No. 112198.

³² *Id.* at 108.

Smart,³³ Connectivity,³⁴ and Digitel³⁵ separately filed motions to consolidate their Petitions with that of Globe and Innove. The Court of Appeals granted these motions, and thus, all Petitions against the National Telecommunications Commission were consolidated.³⁶

Before the consolidation of the cases, the Court of Appeals issued a January 25, 2010 Resolution holding in abeyance Digitel's application for a temporary restraining order pending receipt of the Commission's comment on Digitel's Petition.³⁷

Meanwhile, on January 27, 2010, the Court of Appeals issued a Resolution denying Connectivity's application for the issuance of a temporary restraining order for failure to show that it will sustain irreparable damage.³⁸

On February 18, 2010, the Court of Appeals issued a temporary restraining order³⁹ enjoining the Commission and all its officers and representatives from enforcing its December 5 and 9, 2009 Orders pending the determination of the propriety of a preliminary injunction and upon posting of Globe and Innove, and Smart of a bond in the amount of ₱200,000.00.⁴⁰

On May 25, 2010, the Court of Appeals issued a writ of preliminary injunction⁴¹ in favor of Globe, Innove, and Smart, enjoining the National Telecommunications Commission and all its officers and representatives from enforcing its December 5 and 9, 2009 Orders pending the decision in the subject petitions and upon posting of Globe and Innove, and Smart of a bond in the amount of ₱1,000,000.00.⁴²

In its Consolidated Comment,⁴³ the Commission prayed for the dismissal of the consolidated Petitions, arguing that the assailed Orders were

³³ *Id.* at 112.

³⁴ *Id.* at 112-113.

³⁵ *Id.* at 112.

³⁶ *Rollo* (G.R. No. 200325), pp. 2600-2603. The March 26, 2010 Resolution in CA-G.R. SP Nos. 112006 was penned by Presiding Justice Andres B. Reyes, Jr. (now a retired member of this Court) and concurred in by Associate Justices Isaias P. Dicedican and Priscilla J. Baltazar-Padilla (now a retired member of this Court); *Rollo* (G.R. No. 200276), p. 1363-1364. The March 2, 2010 Resolution in CA-G.R. SP No. 112198 was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Elihu A. Ybañez of the Seventh Division, Court of Appeals, Manila.

³⁷ *Rollo* (G.R. No. 200251-54), p. 114. Issued by the Second Division of the Court of Appeals.

³⁸ *Id.* Issued by the Seventh Division of the Court of Appeals.

³⁹ *Rollo* (G.R. No. 200325), pp. 257-259. The February 18, 2010 Resolution in CA-G.R. SP Nos. 111947, 111970 was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino of the Eleventh Division, Court of Appeals, Manila.

⁴⁰ *Rollo* (G.R. No. 200251-54), p. 113.

⁴¹ *Rollo* (G.R. No. 200325), pp. 274-280. The May 25, 2010 Resolution in CA-G.R. SP Nos. 111947, 111970, 112198, and 112006 was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Fernanda Lampas Peralta and Florito S. Macalino of the Special Former Eleventh Division, Court of Appeals, Manila.

⁴² *Rollo* (G.R. No. 200251-54), p. 113

⁴³ *Id.* at 114-119.

issued pursuant to their powers and authority from Republic Act No. 7925 and was in line with the intent of Memorandum Circular No. 05-07-2009. It stated that the telecommunications companies involved were all afforded due process before the issuance of the assailed Orders and thus their claims have no basis. Lastly, they contend that Smart and Connectivity's Petitions should be dismissed outright for having been filed under the wrong remedy or rule in the Rules of Court.⁴⁴

On December 28, 2010, the Court of Appeals rendered a Decision⁴⁵ granting the consolidated Petitions, reversing and setting aside the assailed Orders of the Commission.

The dispositive portion of the Decision states:

WHEREFORE, the petitions are **GRANTED**. The assailed issuances of respondent NTC in NTC Case Nos. 2009-138, 2009-139, 99-121, 2009-140, 2009-268, 2009-269, 2009-270, and 2009-271, to wit: Orders December 5, 2009, Show Cause Orders dated December 9, 2009, and Cease and Desist Orders dated December 9, 2009, are **REVERSED** and **SET ASIDE**.

Further, the writ of preliminary injunction issued by this Court in CA-G.R. SP Nos. 111947 and 111970, enjoining respondents and their representatives from enforcing all the assailed Orders in the aforementioned two cases, are hereby made permanent. Respondents and all persons acting on their behalf are also permanently enjoined from implementing the assailed Orders in CA-G.R. SP Nos. 112006 and 112198 against petitioners DMPI and CURE.

The foregoing pronouncements, however, shall be without prejudice to the filing by petitioners of new applications for authority to charge new rates for cellular mobile telephone service for voice calls under the six-second-per-pulse billing scheme pursuant to NTC Memorandum Circular No. 05-07-2009, subject to the approval of the NTC and with due regard by the latter to petitioners' right to due process of law.

SO ORDERED.⁴⁶ (Emphasis in the original)

The Court of Appeals found that the Petitions for Review on Certiorari filed by Smart and Connectivity should not be dismissed outright.⁴⁷ It held that although judgments or final orders of the Commission should be appealed by filing a petition for review under Rule 43 of the Rules of Court, jurisprudence admits certain exceptions which are present in the case.⁴⁸

⁴⁴ *Id.* at 114.

⁴⁵ *Rollo* (G.R. No. 200251-54), pp. 81-138.

⁴⁶ *Id.* at 138.

⁴⁷ *Id.* at 120.

⁴⁸ *Id.* at 121.

Second, it held that although the Commission has the power to regulate the rates of CMTS providers under Section 17 of Republic Act No. 7925 even in the absence of circumstances that would restrain free competition, due process must still be observed.⁴⁹ The Court of Appeals held that the Commission violated the rights of Globe and Innove, Smart, Connectivity, and Digitel when it imposed the fixed rates in its December 5, 2009 Order without considering the evidence submitted by the telecommunications companies and for not basing its orders on substantial evidence.⁵⁰ Moreover, the Court of Appeals found that the Commission violated the administrative due process of the telecommunications companies when it did not give them time to file a motion for reconsideration of the December 5, 2009 Order and instead issued the December 9, 2009 Show Cause and Cease and Desists Orders for their alleged noncompliance.⁵¹ Notwithstanding its findings on the assailed Orders of the Commission, the Court of Appeals held that it was inappropriate to resolve the issue of the constitutionality of Memorandum Circular No. 05-07-2009 as the telecommunications companies merely sought the reversal and setting aside of the assailed December 5, 2009 Orders, and December 9, 2009 Show Cause Orders and Cease and Desist Orders. At this juncture, the six-second-per-pulse per billing scheme was suspended.⁵²

Globe and Innove, Smart, and Connectivity, as well as the Commission, filed their respective Motions for Reconsideration of the Court of Appeals' Decision.⁵³

On January 19, 2012, the Court of Appeals issued its consolidated Resolution⁵⁴ denying all Motions for Reconsideration.⁵⁵

Hence, Globe and Innove, Connectivity, Smart, and the Commission filed their respective Petitions for Review under Rule 45 of the Rules of Court.

On April 23, 2012, this Court issued a Resolution⁵⁶ consolidating the case docketed as G.R. No. 200224 (*Globe Telecom, Inc. and Innove Communications, Inc. v. National Telecommunications Commission et al.*) with the cases docketed as G.R. Nos. 200251-54 (*National Telecommunications Commission v. Digitel Mobile Philippines, Inc.*), 200276 (*Connectivity Unlimited Resources Enterprises, Inc. v. National Telecommunications Commission*) and 200325 (*Smart Communications, Inc. v. National Telecommunications Commission*).

⁴⁹ *Id.* at 123, 127.

⁵⁰ *Id.* at 128.

⁵¹ *Id.* at 133.

⁵² *Id.* at 137.

⁵³ *Id.* at 50.

⁵⁴ *Rollo* (G.R. No. 200276), pp. 69-79.

⁵⁵ *Id.* at 79.

⁵⁶ *Rollo* (G.R. 200224), pp. 375-377.

In the same Resolution, this Court also required Globe and Innove, Digital, Connectivity, and Smart to file comments on the Petition of the Commission, while the latter was required to file a consolidated comment to the Petitions filed by Globe and Innove, Connectivity, and Smart.⁵⁷

Smart filed its Comment⁵⁸ on June 7, 2012. Globe and Innove,⁵⁹ as well as Connectivity,⁶⁰ filed their respective Comments on June 18, 2012. The Commission⁶¹ filed its Consolidated Comment on August 6, 2012 through the Office of the Solicitor General.

In an April 18, 2016 Resolution,⁶² this Court dispensed with the comment of Digital for failure to file the same. In addition, this Court required the Commission to submit its consolidated reply to the comments on the Petition docketed as G.R. Nos. 200251-54. The other respondents were likewise directed to file separate replies to the Consolidated Comment of the Office of the Solicitor General.

In a November 6, 2017 Resolution,⁶³ this Court gave due course to the Petitions and required all the parties to submit their respective memoranda within 30 days from notice.

In its Manifestation and Motion,⁶⁴ the Commission asserts that the Court of Appeals erred in reversing and setting aside their December 5, 2009 Orders and December 9, 2009 Show Cause Orders and Cease and Desist Orders for lack of due process.⁶⁵ The Commission claims that Globe and Innove, Digital, Connectivity, and Smart were all afforded the opportunity to present evidence supporting their rate proposal. Moreover, they were given ample explanation on why their proposals were denied.⁶⁶

On the other hand, the telecommunications companies assail the Court of Appeals' finding that the Commission has the authority to regulate and impose its own rates on CMTS providers even in the absence of ruinous competition, monopoly, cartel, or a combination thereof in restraint of free competition.⁶⁷ They assert that although the Commission has been given the authority to fix the rates of telecommunications companies, Section 17 of Republic Act No. 7925 directs it to exempt telecommunications companies from regulating rates and tariffs if there is sufficient competition.⁶⁸

⁵⁷ *Id.* at 376.

⁵⁸ *Id.* at 390-411.

⁵⁹ *Id.* at 420-467.

⁶⁰ *Id.* at 470-486.

⁶¹ *Id.* at 494-552.

⁶² *Id.* at 1773

⁶³ *Id.* at 1883-1885.

⁶⁴ *Rollo* (G.R. No. 200251-54), pp. 8-74.

⁶⁵ *Id.* at 61.

⁶⁶ *Id.* at 67-72.

⁶⁷ *Rollo* (G.R. No. 200224), pp. 1887, 1956, 2028.

⁶⁸ *Id.* at 1908.

The telecommunications companies further question the Court of Appeals' declaration that the default six-second-per-pulse billing imposed by the Commission was proper,⁶⁹ claiming that this is tantamount to rate fixing which may only be exercised under the special conditions enumerated in the statute.⁷⁰ They likewise assail the Court of Appeals' prohibition against the prefix dialing in implementing the six-second-per-pulse billing scheme.⁷¹ They argue that the use of prefix numbers is a technical solution to create a distinct routing plan for the specific plan offering.⁷²

In its Consolidated Comment,⁷³ the Commission asserts that it has the power to regulate the rates of CMTS providers despite the absence of the conditions enumerated in Section 17 of Republic Act No. 7925⁷⁴ and that it is not mandated to exempt telecommunications companies from the rates and tariff regulations it imposes.⁷⁵ It further argues that the legislative franchises of the telecommunications companies categorically state that the charges and rates offered to the public are subject to approval of the Commission.⁷⁶

In addition, the Commission contends that its implementation of the six-second-per-pulse billing was a valid exercise of its authority to protect public interest. It explains that through the new billing scheme, the subscribers have a choice to be charged on a per six-second-per-pulse basis instead of a per minute basis, with a fraction of a minute constituting an entire minute.⁷⁷

Lastly, the Commission claims that the use of prefixes by the telecommunications companies is a circumvention of the directive to implement the six-second-per-pulse billing scheme.⁷⁸ By requiring subscribers to dial the prefix before the six-second-per-pulse billing scheme is activated, the mandated billing scheme is turned into an option instead of the default billing method.⁷⁹

The issues for this Court's resolution are:

first, whether the National Telecommunications Commission has the authority to impose rates on the services offered by Cellular Mobile Telephone Service providers to the public;

⁶⁹ *Id.* at 1887, 1956, 2028.

⁷⁰ *Id.* at 1912.

⁷¹ *Id.* at 1957.

⁷² *Id.* at 1970.

⁷³ *Id.* at 494-551.

⁷⁴ *Id.* at 517.

⁷⁵ *Id.* at 525.

⁷⁶ *Id.* at 522.

⁷⁷ *Id.* at 540.

⁷⁸ *Id.* at 542.

⁷⁹ *Id.* at 543.

second, whether the imposition of the six-second-per-pulse billing scheme and the prohibition on using prefixes for the implementation of the scheme is valid; and

lastly, whether or not the December 5, 2009 Order and December 9, 2009 Show Cause Orders and Cease and Desist Orders issued by the National Telecommunications Commission are valid.

I

The primary issue in this case is whether the National Telecommunications Commission, as the principal administrator⁸⁰ of Republic Act No. 7925 or the Public Telecommunications Policy Act, has the authority to regulate the operations of CMTS providers and impose rates for the services it offers to the public.

The Commission asserts that it has the authority to impose rules and regulations pursuant to its statutory responsibilities. It claims that it is within its power to impose the six-second-per-pulse billing as the default rate for voice calls, as well as prohibit the use of a prefix in implementing the imposed billing scheme.

On the other hand, the telecommunications companies maintain that the Commission's authority to regulate is discouraged by the same law that the Commission cites. They further claim that the assailed Orders of the Commission are in excess of its powers since it was restricted to implementing rules and regulations only when there is ruinous competition, monopoly, cartel, or a combination thereof, in restraint of free competition.

Both arguments do not hold water.

To properly appreciate and apply the Act, it is necessary to revisit the history of the Commission.

Commonwealth Act No. 146 or the Public Service Act, as amended, created the Public Service Commission, which has "jurisdiction, supervision, and control over all public services and their franchises, equipment, and other properties."⁸¹ Under the Act, public services include wire or wireless communications system, giving it jurisdiction and regulatory authority over telecommunications companies. Section 16(c) tasked the Commission "to fix

⁸⁰ Republic Act No. 7925 (1995), sec. 5.

⁸¹ Commonwealth Act No. 146 (1936), sec. 13, as amended by Republic Act No. 1270 (1955).

and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed and followed thereafter by any public service.”

The same statute mandated any public service provider to seek approval or authority in imposing or collecting rates or charges for its services. Section 20 of the Act states:

SECTION 20. *Acts Requiring the Approval of the Commission.* – Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had –

- (a) To adopt, establish, fix, impose, maintain, collect or carry into effect any individual or joint rates, commutation, mileage or other special rate, toll, fare, charge, classification or itinerary. The Commission shall approve only those that are just and reasonable and not any that are unjustly discriminatory or unduly preferential, only upon reasonable notice to the public services and other parties concerned, giving them a reasonable opportunity to be heard and the burden of the proof to show that the proposed rates or regulations are just and reasonable shall be upon the public service proposing the same.

In 1972, the Public Service Commission was abolished, and its functions were transferred to the Board of Communications.⁸² Later, the Board of Communications was rendered obsolete and was replaced by the National Telecommunications Commission by virtue of Executive Order No. 546.⁸³ Section 15 of the Executive Order enumerates the functions of the Commission, which includes the prescribing and regulating of rates and charges pertinent to the operation of public utilities:

SECTION. 15. *Functions of the Commission.* – The Commission shall exercise the following functions:

....

- b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates[.]

⁸² Letter of Implementation No. 1, (1972). Implementing the Reorganization of the Public Service Commission.

⁸³ Creating a Ministry of Public Works and a Ministry of Transportation and Communications.

The constitutionality of Executive Order No. 546 was put into question in *Philippine Communications Satellite Corporation v. Alcuaz*⁸⁴ for empowering the Commission to fix rates for public service communications. It was claimed that this was an undue delegation of legislative power and was unconstitutional for not ascertaining the proper standards to be followed by the Commission when exercising its authority. In denying the assertions, this Court confirmed that the Commission had the power and authority to fix rates as part of the delegated power of the legislature for as long as the rates imposed were fair, reasonable, and just:

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

It becomes important then to ascertain the nature of the power delegated to respondent NTC and the manner required by the statute for the lawful exercise thereof.

Pursuant to Executive Orders Nos. 546 and 196, respondent NTC is empowered, among others, to determine and prescribe rates pertinent to the operation of public service communications which necessarily include the power to promulgate rules and regulations in connection therewith. And, under Section 15(g) of Executive Order No. 546, respondent NTC should be guided by the requirements of public safety, public interest and reasonable feasibility of maintaining effective competition of private entities in communications and broadcasting facilities. Likewise, in Section 6(d) thereof, which provides for the creation of the Ministry of Transportation and Communications with control and supervision over respondent NTC, it is specifically provided that the national economic viability of the entire network or components of the communications systems contemplated therein should be maintained at reasonable rates. We need not go into an in-depth analysis of the pertinent provisions of the law in order to conclude that respondent NTC, in the exercise of its rate-fixing power, is limited by the requirements of public safety, public interest, reasonable feasibility and reasonable rates, which conjointly more than satisfy the requirements of a valid delegation of legislative power.⁸⁵ (Emphasis supplied, citation omitted)

While the power of the Commission to fix rates was clear in the past, uncertainty set in with the passage of Republic Act No. 7925 or the Public Telecommunications Policy Act in 1995. The Act promoted free competition to stimulate the growth of the telecommunications industry. Consequently, it experienced a shift from traditional government regulation to a less stringent supervision.⁸⁶

⁸⁴ 259 Phil. 707 (1989) [Per J. Regalado, *En Banc*].

⁸⁵ *Id.* at 715-716.

⁸⁶ Republic Act No. 7925 (1995), sec. 4.

In *Globe Telecom, Inc. v. National Telecommunications Commission*,⁸⁷ this Court explained the paradigm shift in this wise:

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.

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. *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." 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."*⁸⁸ (Emphasis supplied, citations omitted)

Notwithstanding the policy of deregulation, the statute retained the regulatory powers of the Commission. Section 17 states:

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.

The Commission interprets Section 17 as bestowing it with the power to regulate rates of telecommunications entities, with the only limitation being that the imposed rates be fair, reasonable, and economically viable to enable

⁸⁷ 479 Phil. 1 (2004) [Per J. Tinga, Second Division].

⁸⁸ *Id.* at 9–10.

a fair return on their investments.⁸⁹ Conversely, the telecommunications companies claim that the provision permits the Commission to regulate the rates of the CMTS providers only when there is ruinous competition, monopoly, cartel, or a combination thereof in order to promote free competition⁹⁰ and assert that in this age of deregulation and promotion of free markets, the Act requires the least government intervention as possible.

None of the arguments prevail.

Section 17 of Republic Act No. 7925 gives the Commission a two-fold power:

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.

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.

In both instances, the Commission's authority to impose rates or tariffs is not unbridled. In exercising the first power, three considerations must be established. *First*, that the rates to be set are fair and reasonable; *second*, that the rates provide for the economic viability of telecommunications entities; and *lastly*, that there is a fair return on the investments of telecommunications companies considering the prevailing cost of capital in the domestic and

⁸⁹ *Rollo* (G.R. No. 200224), p. 520.

⁹⁰ *Rollo* (G.R. No. 200251-54), p. 123.

international markets. These parameters were laid down by the legislature to prevent the telecommunications companies and the regulatory body from arbitrarily imposing rates.

In economics, a “fair return” is defined as “commensurate with returns on investment” in the enterprise, equal to cost of capital and sufficient to attract further capital.⁹¹ This entails a utility or company to adjust its prices suitable for its amount of revenue, measured against its operational expenses, depreciation, and cost of capital.⁹² Under the principle, the prices charged are deemed fair and reasonable for giving the company an opportunity to recover the costs of its operations and capital making it economically viable to continue its services.

Appropriately, the telecommunications companies are in a better position to know the conditions that need to be factored in to compute for the proper price levels. Moreover, they have access to the documents and knowledge that would be needed to reach the required rate of profit suitable for economic efficiency.

Accordingly, the Commission may not arbitrarily impose rates and tariffs without consulting and considering the different economic positions of each company. Simultaneously, the Commission must protect the customers from paying prices that are over those deserved by the company.

Similarly, the argument of the telecommunications companies stating that the Commission can only regulate rates when there is ruinous competition cannot lie. As public utilities, they must be subject to regulation of the government to ensure that they properly serve the people. Moreover, the regulatory body, in promoting free competition, must protect the public from monopoly.

A monopoly exists when there is only one seller or producer providing a certain service or product to the public. When there are two or three companies in the scene, it is called an oligopoly. These dominant companies have the capability of excluding actual or potential competitors from the field by controlling market prices and resultant profits.⁹³ When there is a monopoly or oligopoly, price fixing or price manipulation may occur, preventing new players to compete in the industry and resulting in limited choices being offered to the public. This is precisely what the law seeks to prevent.

⁹¹ Bruce C. Greenwald. *Admissible Rate Bases, Fair Rates of Return and the Structure of Regulation*, 35 THE JOURNAL OF FINANCE 359 (1980).

⁹² Bruce C. Greenwald. *Admissible Rate Bases, Fair Rates of Return and the Structure of Regulation*, 35 THE JOURNAL OF FINANCE 359 (1980).

⁹³ *Garcia v. Corona*, 378 Phil. 848, 860–861 (1999) [J. Ynares-Santiago, *En Banc*]. (Citation omitted)

In *Philippine Long Distance Telephone Company v. City of Davao*,⁹⁴ the Court held:

One can speak of healthy competition only between equals. For this reason, the law seeks to break up monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting to new telecommunications entities protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers. Interconnection among carriers is made mandatory to prevent a dominant carrier from delaying the establishment of connection with a new entrant and to deter the former from imposing excessive access charges.⁹⁵ (Citation omitted)

Thus, the Commission, as a regulatory body, is tasked to safeguard the consumers from exorbitant or unconscionable charges of public utilities. It is also mandated to offer to the public different choices among competing carriers that offer fair and reasonable prices, coupled with efficient and satisfactory service.

While the policy of deregulation relaxed previously stringent rules on operations and aimed to lessen government intervention, it did not give telecommunications companies full autonomy on their rates and charges. They may propose their own rates and tariffs which they deem suitable to allow a fair return on their investments while the Commission ascertains whether such rates are fair and reasonable on the consumers. It is the Commission's duty as the regulatory body to determine whether the proposed rates meet the parameters set forth in Section 17. If the parameters are met, there is no reason to step in. However, if the proposal is lacking, the Commission has the power to impose a more appropriate charge.

Ultimately, while the Commission has the authority to impose a new default baseline rate for voice calls, this cannot be done unilaterally. Moreover, it cannot deny a telecommunications company's application for new rates without proper justification. Several factors must be considered before this power is exercised. In addition, an extensive study of the current market, considering both the telecommunications providers and the consumers, must be made. Unfortunately, no such analysis was established in the present case.

II

In imposing the six-second-per-pulse regime, the Commission intended to bill mobile phone calls more accurately based on shorter pulses reflective

⁹⁴ 447 Phil. 571 (2003), [Per J. Mendoza, *En Banc*].

⁹⁵ *Id.* at 582.

of the real duration of the call. The Commission claims that “the financial interest of petitioners must yield to the common good by adjusting their system accordingly because the promotion of the consumers is pursuant to the State’s police power.”⁹⁶

By implementing the per pulse billing, the Commission did not aim to reduce the profit of telecommunications companies or interfere with the free market. Its objective was to refrain the companies from charging mobile users excessively and instead charge them only of their actual usage. Before the six-second-per-pulse billing, subscribers availing voice call services were charged by the minute, with a fraction of a minute automatically being charged as a minute. With the 60-second-per-pulse billing, a 10-second call was charged a full minute and a 65-second call, charged two minutes. Through the six-second-per-pulse billing, users are made to pay charges reflective only of the time they consumed. However, notwithstanding the good intentions of the Commission, there was no showing that its new billing method was based on numbers that would strike a balance for both the telecommunications companies and its customers.

In exercising its authority over the telecommunications companies and imposing the default six-second-per-pulse regime, the Commission did not consider the evidence presented by the telecommunications companies in their respective proposals. Moreover, its explanation for the rejection of the proposed rates was insufficient. The Court of Appeals observed:

Notably, however, the NTC failed to substantially show why the CMTS rates it imposed upon petitioners are preferable to the rates proposed by the latter. The NTC did not cite any substantial evidence showing how its computations of petitioners’ subscribers’ average cost per minute for average rates of P6.00 per minute, the revenue per minute above cost, and the average cost per minute for average rates of PhP5.25, P3.75, P1.50, all at an average of at P0.75 per 6-second pulse, translate to a finding that petitioners, as applicants, failed to support their submitted cost figures. All that the NTC interpreted from its cited computations in the assailed Order dated December 5, 2009 are: 1) that the cost of providing the voice service of Sun Cellular is above the revenue it generated from voice service while the cost of Globe and Smart from providing voice service is below the revenue they generate; and 2) that based on the foregoing calculations, it appears that if the rate per pulse is decreased, it would have a negative impact on Sun Cellular. Lacking from the foregoing pronouncements is a discussion on why the computations of the NTC and its interpretation of the same led it to conclude that the prevailing rates imposed by CMTS operators prior to December 6, 2009 are more acceptable to it over the rates proposed by petitioners pursuant to NTC MC No. 05-07-2009.

....

In addition, the NTC did not give any justification for its disposition that the flag-down rate for the first two (2) pulses shall in no case exceed

⁹⁶ *Rollo* (G.R. No. 200224), p. 524.

P3.00, and that the total of the flag-down rate and the sum of eight (8) remaining pulses for the first minute shall in no case exceed the prevailing rate. This Court carefully perused the records and did not find any basis for the NTC's imposition of such rates and its setting of limits on the total of the same.⁹⁷

It is the Commission's responsibility to base its imposition of rates on substantial evidence and to anchor its decision on the application of the telecommunications companies. It cannot arbitrarily impose rates it deems proper without explaining its findings and presenting why its imposed rates are more appropriate than those proposed by the applicants. It is imperative that it investigates the evidence submitted by the telecommunications companies to determine whether they met the three parameters in Section 17. It is only when these are not met that the Commission can reject their application.

However, the assailed Order of the Commission did not state clearly the facts or law upon which its directive stood. Instead, it merely had a general statement that the "applicants failed to justify or support their submitted cost figures"⁹⁸ and made no attempt to explain why the cost figures and proposed rates submitted by the telecommunications companies were not proper. Moreover, it was silent on the pieces of evidence presented by the telecommunications companies.

Furthermore, the Commission confined itself with the findings of the Common Carrier Authorization Department on the average cost per minute *vis-à-vis* average cost per six-second pulse, and the revenue of each method compared to the cost of the telecommunications companies' voice calls as seen in the their 2008 annual reports.⁹⁹ However, the report of the Common Carrier Authorization Department was neither presented in the proceedings regarding the proposed rates of the telecommunications companies, nor was it offered into evidence. Consequently, the telecommunications companies were not afforded the opportunity to examine and refute the statements made on the report on which the Commission based its assailed Orders.¹⁰⁰

There being no sufficient reason to deny the proposals of the telecommunications companies, the same must have been properly considered by the Commission. The Commission's power to impose rules and regulations on the business operations of telecommunications companies must be done within reason.¹⁰¹ In addition, its rule-making and regulatory powers does not give it unbridled permission to immediately impose rates without allowing the telecommunication companies an opportunity to air out their

⁹⁷ *Rollo* (G.R. No. 200251-54), pp. 129-130.

⁹⁸ *Id.* at 192.

⁹⁹ *Rollo* (G.R. No. 200224), p. 783.

¹⁰⁰ *Id.* at 785.

¹⁰¹ *Globe Telecom, Inc. v. National Telecommunications Commission*, 479 Phil. 1, 29 (2004) [Per J. Tinga, Second Division].

grievances or seek reconsideration. The basic and fundamental right to due process also prevail in administrative proceedings.

While the Commission has the authority to impose certain rates and regulations, in this case, a default six-second-per-pulse billing scheme and the prohibition on using a prefix to implement such, it cannot reject the proposed rates of telecommunications companies on mere whim. It must justify why its regulations are more appropriate than that of the proposal of the telecommunications companies.

Although telecommunications companies are public utilities, they remain as private entities operating a business catered to the public. This dynamic between the functions of the Commission *vis-à-vis* the industry they regulate was concisely explained in *Alcuaz*:¹⁰²

The rule is that the power of the State to regulate the conduct and business of public utilities is limited by the consideration that it is not the owner of the property of the utility, or clothed with the general power of management incident to ownership, since the private right of ownership to such property remains and is not to be destroyed by the regulatory power. The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, foster, promote, preserve, and control with due regard for the interest, first and foremost, of the public, then of the utility and of its patrons. Any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringement of property rights is void, because it is repugnant to the constitutional guaranties of due process and equal protection of the laws.

Hence, the inherent power and authority of the State, or its authorized agent, to regulate the rates charged by public utilities should be subject always to the requirement that the rates so fixed shall be reasonable and just. A commission has no power to fix rates which are unreasonable or to regulate them arbitrarily. This basic requirement of reasonableness comprehends such rates which must not be so low as to be confiscatory, or too high as to be oppressive.

What is a just and reasonable rate is not a question of formula but of sound business judgment based upon the evidence; it is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment[.] In determining whether a rate is confiscatory, it is essential also to consider the given situation, requirements and opportunities of the utility. A method often employed in determining reasonableness is the fair return upon the value of the property to the public utility. Competition is also a very important factor in determining the reasonableness of rates since a carrier is allowed to make such rates as are necessary to meet competition.¹⁰³ (Citations omitted)

¹⁰² 259 Phil. 707 (1989) [Per J. Regalado, *En Banc*].

¹⁰³ *Id.* at 721-722.

In exercising their regulatory powers, the Commission must impose rates that are just and fair to both the customers and the telephone operators. Moreover, the rates must be reasonable and sufficient to cover the cost of operating the business in accordance with the data collected through hearing and consultation with participating telecommunications companies.

III

The rights of participants subjected to an administrative hearing was laid down by this Court as early as 1940 in *Ang Tibay v. Court of Industrial Relations*:¹⁰⁴

There are cardinal primary rights which must be respected even in proceedings of this character:

- (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present [their] own case and submit evidence in support thereof[.]
- (2) Not only must the party be given an opportunity to present [their] case and to adduce evidence tending to establish the rights which [they] assert[] but the tribunal *must consider* the evidence presented[.]
- (3) 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[.]
- (4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be “substantial[.]”
- (5) 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[.]
- (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or [their] own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision[.]
- (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.¹⁰⁵ (Citations omitted, emphasis in the original)

Given the requirements of due process in an administrative proceeding, the telecommunications companies assert that the Commission violated their right to be heard when it issued its December 5, 2009 Orders. They claim that while they were asked to participate in the hearings, the data they submitted were not considered in releasing the December 5, 2009 Orders.

This Court agrees.

¹⁰⁴ 69 Phil. 635 (1940) [Per J. Laurel. *En Banc*].

¹⁰⁵ *Id.* at 642-644.

On December 5, 2009, the Commission granted the companies provisional authority to charge new rates for voice calls, provided that their rates for mobile voice services shall be their prevailing rates prior to December 6, 2009, pursuant to Memorandum Circular No. 05-07-2009. It added a restriction that the flag-down rate for the first two pulses shall in no case exceed ₱3.00, and that the total flag-down rate and the sum of the eight remaining pulses for the first minute shall not exceed the remaining rate. The assailed Order included a directive for immediate implementation.

In *Globe Telecom, Inc. v. National Telecommunications Commission*,¹⁰⁶ this Court held:

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.¹⁰⁷ (Emphasis in the original, citation omitted)

The Commission violated the right to due process of the telecommunications companies when it did not give them a chance to assail the contents of the December 5, 2009 Orders. By directing immediate implementation of the new rates as early as December 6, 2009, the Commission robbed the telecommunications companies a chance to seek a reconsideration of its Decision. Clearly, their right to due process was violated the moment the December 5, 2009 Orders was issued. Moreover, the Show Cause Orders and Cease and Desist Orders for alleged noncompliance were released a mere four days after the December 5, 2009 Orders.

As correctly pointed out by the Court of Appeals, Rule 13, Section 2 of The 2006 Rules of Practice and Procedure Before the National Telecommunications Commission (2006 Rules of Practice and Procedure) states that “[a] party adversely affected by a decision, order or resolution may within fifteen (15) days from receipt of a copy thereof, file a motion for reconsideration.” Thus, the December 9, 2009 Show Cause Orders and Cease and Desist Orders effectively removed the telecommunications companies’ right to seek a reversal of the December 5, 2009 Orders.

In addition, the Cease and Desist Orders were served on the parties without prior notice or hearing. This was another violation of its right to due

¹⁰⁶ 479 Phil. 1 (2004), [Per J. Finga, Second Division].

¹⁰⁷ *Id.* at 29.

process. Under Rule 10, Section 4 of the 2006 Rules of Practice and Procedure, an entity may be subjected to disciplinary measure for violating a law, rule, or regulation only after notice and hearing. A show cause order must first be issued by the Commission, showing the particulars and matters which it is inquiring and give the parties an opportunity to file an answer to “explain why no judgment or action” should be taken against them. The Commission’s Rules allows for a summary proceeding on the matter when applicable.¹⁰⁸ However, even the Commission did not avail of this when it issued its December 9, 2009 Orders.

In this case, the telecommunications companies were not given proper notice and hearing. Instead, the Commission issued Show Cause Orders and Cease and Desist Orders on the same date, displaying how it was dispensed with such haste.

In *Montoya v. Varilla*,¹⁰⁹ this Court ruled that due process, even in administrative proceedings, is essential to give the other party an opportunity to enlighten the quasi-judicial body of its grievances that may possibly sway its original decision:

Hence, even if administrative tribunals exercising quasi-judicial powers are not strictly bound by procedural requirements, they are still bound by law and equity to observe the fundamental requirements of due process. Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.¹¹⁰ (Citations omitted)

In view of the foregoing, the December 5, 2009 and December 9, 2009 Orders of the Commission must be stricken down.

Although the Commission retains its power to create rules and authority to impose regulations, these functions cannot be prioritized over the elements of due process “constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding[.]”¹¹¹

Due process applies just as well in the administrative setting, albeit less stringent and often applied liberally. Basic procedural rights, such as the opportunity to explain one’s side or seek reconsideration, are so fundamental

¹⁰⁸ The 2006 Rules of Practice and Procedure Before the National Telecommunications Commission (2006), Rule 10, sec. 5.

¹⁰⁹ 595 Phil. 507 (2008) [Per J. Chico-Nazario, *En Banc*].

¹¹⁰ *Id.* at 520.

¹¹¹ *The Central Bank of the Philippines v. Cloribel*, 150-A Phil. 86, 101 (1972) [Per J. Concepcion, Second Division].

that they cannot be set aside to implement supposedly fair and reasonable rates.

As a final remark, we recognize that during the pendency of this case, numerous developments in the telecommunications industry may have rendered the six-second-per-pulse regulation less attractive to both the regulatory commission and the consumers they seek to protect. Due to the intensifying competition between telecommunications giants, promotions on mobile calls and short messaging services, such as unlimited calls and texts, render the pulse billing system nearly obsolete. Moreover, the downward trend of mobile service fees in neighboring nations has also resulted in a consistent decline of mobile service fees in our country. At present, voice service interconnection fees are at a rate of ₱0.50 per minute as stipulated by Memorandum Circular No. 05-07-2018 issued by the National Telecommunications Commission.¹¹² Indeed, the Commission, in collaboration with telecommunications providers, reduced the cost of telecommunications services for the benefit of the public. Nonetheless, the process must always adhere to the principles of due process and fairness.

ACCORDINGLY, the December 28, 2010 Decision and January 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP Nos. 111947, 111970, 112006, and 112198 are **UPHELD**.

The December 5, 2009 Orders and December 9, 2009 Show Cause Orders and Cease and Desist Orders issued by the National Telecommunications Commission in NTC Case Nos. 2009-138, 2009-139, 99-121, 2009-140, 2009-268, 2009-269, 2009-270, and 2009-271 are **REVERSED** and **SET ASIDE**.

The writ of preliminary injunction issued by the Court of Appeals in CA-G.R. SP Nos. 111947 and 111970 enjoining the National Telecommunications Commission and its representatives from enforcing all the assailed Orders in the two cases, are hereby made **permanent**. The National Telecommunications Commission and all persons acting on its behalf are also permanently enjoined from implementing the assailed Orders in CA G.R. SP Nos. 112006 and 112198.

SO ORDERED.

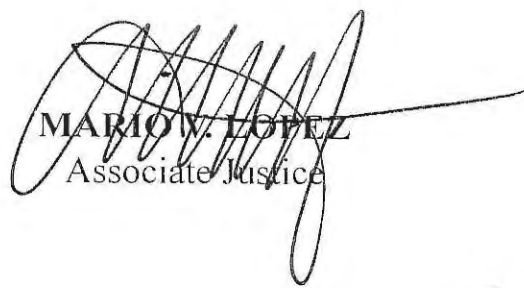

MARVIC M.V.F. LEONEN
Senior Associate Justice

¹¹² Interconnection Charge for Short Messaging Services and Voice Service (2018).

WE CONCUR:



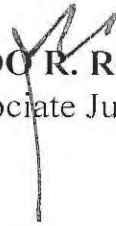
AMY C. LAZARO-JAVIER
Associate Justice



MARIO W. LOPEZ
Associate Justice




JHOSEP V. LOPEZ
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

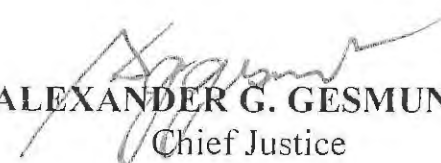
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice