

FIRST DIVISION

[G.R. No. 151908, August 12, 2003]

**SMART COMMUNICATIONS, INC. (SMART) AND PILIPINO
TELEPHONE CORPORATION (PILTEL), PETITIONERS, VS.
NATIONAL TELECOMMUNICATIONS COMMISSION (NTC),
RESPONDENT.**

G.R. NO. 152063

**GLOBE TELECOM, INC. (GLOBE) AND ISLA COMMUNICATIONS
CO., INC. (ISLACOM), PETITIONERS, VS. COURT OF APPEALS
(THE FORMER 6TH DIVISION) AND THE NATIONAL
TELECOMMUNICATIONS COMMISSION, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Pursuant to its rule-making and regulatory powers, the National Telecommunications Commission (NTC) issued on June 16, 2000 Memorandum Circular No. 13-6-2000, promulgating rules and regulations on the billing of telecommunications services. Among its pertinent provisions are the following:

(1) The billing statements shall be received by the subscriber of the telephone service not later than 30 days from the end of each billing cycle. In case the statement is received beyond this period, the subscriber shall have a specified grace period within which to pay the bill and the public telecommunications entity (PTEs) shall not be allowed to disconnect the service within the grace period.

(2) There shall be no charge for calls that are diverted to a voice mailbox, voice prompt, recorded message or similar facility excluding the customer's own equipment.

(3) PTEs shall verify the identification and address of each purchaser of prepaid SIM cards. Prepaid call cards and SIM cards shall be valid for at least 2 years from the date of first use. Holders of prepaid SIM cards shall be given 45 days from the date the prepaid SIM card is fully consumed but not beyond 2 years and 45 days from date of first use to replenish the SIM card, otherwise the SIM card shall be rendered invalid. The validity of an invalid SIM card, however, shall be installed upon request of the customer at no additional charge except the presentation of a valid prepaid call card.

(4) Subscribers shall be updated of the remaining value of their cards before the start of every call using the cards.

(5) The unit of billing for the cellular mobile telephone service whether postpaid or prepaid shall be reduced from 1 minute per pulse to 6 seconds per pulse. The authorized rates per minute shall thus be divided by 10.^[1]

The Memorandum Circular provided that it shall take effect 15 days after its publication in a newspaper of general circulation and three certified true copies thereof furnished the UP Law Center. It was published in the newspaper, The Philippine Star, on June 22, 2000.^[2] Meanwhile, the provisions of the Memorandum Circular pertaining to the sale and use of prepaid cards and the unit of billing for cellular mobile telephone service took effect 90 days from the effectivity of the Memorandum Circular.

On August 30, 2000, the NTC issued a Memorandum to all cellular mobile telephone service (CMTS) operators which contained measures to minimize if not totally eliminate the incidence of stealing of cellular phone units. The Memorandum directed CMTS operators to:

- a. strictly comply with Section B(1) of MC 13-6-2000 requiring the presentation and verification of the identity and addresses of prepaid SIM card customers;
- b. require all your respective prepaid SIM cards dealers to comply with Section B(1) of MC 13-6-2000;
- c. deny acceptance to your respective networks prepaid and/or postpaid customers using stolen cellphone units or cellphone units registered to somebody other than the applicant when properly informed of all information relative to the stolen cellphone units;
- d. share all necessary information of stolen cellphone units to all other CMTS operators in order to prevent the use of stolen cellphone units; and
- e. require all your existing prepaid SIM card customers to register and present valid identification cards.^[3]

This was followed by another Memorandum dated October 6, 2000 addressed to all public telecommunications entities, which reads:

This is to remind you that the validity of all prepaid cards sold on 07 October 2000 and beyond shall be valid for at least two (2) years from date of first use pursuant to MC 13-6-2000.

In addition, all CMTS operators are reminded that all SIM packs used by subscribers of prepaid cards sold on 07 October 2000 and beyond shall be valid for at least two (2) years from date of first use. Also, the billing unit shall be on a six (6) seconds pulse effective 07 October 2000.

For strict compliance.^[4]

On October 20, 2000, petitioners Isla Communications Co., Inc. and Pilipino Telephone Corporation filed against the National Telecommunications Commission, Commissioner Joseph A. Santiago, Deputy Commissioner Aurelio M. Umali and Deputy Commissioner Nestor C. Dacanay, an action for declaration of nullity of NTC Memorandum Circular No. 13-6-2000 (the Billing Circular) and the NTC Memorandum dated October 6, 2000, with prayer for the issuance of a writ of preliminary injunction and temporary restraining order. The complaint was docketed as Civil Case No. Q-00-42221 at the Regional Trial Court of Quezon City, Branch 77. [5]

Petitioners Islacom and Piltel alleged, *inter alia*, that the NTC has no jurisdiction to regulate the sale of consumer goods such as the prepaid call cards since such jurisdiction belongs to the Department of Trade and Industry under the Consumer Act of the Philippines; that the Billing Circular is oppressive, confiscatory and violative of the constitutional prohibition against deprivation of property without due process of law; that the Circular will result in the impairment of the viability of the prepaid cellular service by unduly prolonging the validity and expiration of the prepaid SIM and call cards; and that the requirements of identification of prepaid card buyers and call balance announcement are unreasonable. Hence, they prayed that the Billing Circular be declared null and void *ab initio*.

Soon thereafter, petitioners Globe Telecom, Inc and Smart Communications, Inc. filed a joint Motion for Leave to Intervene and to Admit Complaint-in-Intervention. [6] This was granted by the trial court.

On October 27, 2000, the trial court issued a temporary restraining order enjoining the NTC from implementing Memorandum Circular No. 13-6-2000 and the Memorandum dated October 6, 2000. [7]

In the meantime, respondent NTC and its co-defendants filed a motion to dismiss the case on the ground of petitioners' failure to exhaust administrative remedies.

Subsequently, after hearing petitioners' application for preliminary injunction as well as respondent's motion to dismiss, the trial court issued on November 20, 2000 an Order, the dispositive portion of which reads:

WHEREFORE, premises considered, the defendants' motion to dismiss is hereby denied for lack of merit. The plaintiffs' application for the issuance of a writ of preliminary injunction is hereby granted. Accordingly, the defendants are hereby enjoined from implementing NTC Memorandum Circular 13-6-2000 and the NTC Memorandum, dated October 6, 2000, pending the issuance and finality of the decision in this case. The plaintiffs and intervenors are, however, required to file a bond in the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00), Philippine currency.

SO ORDERED. [8]

Defendants filed a motion for reconsideration, which was denied in an Order dated February 1, 2001. [9]

Respondent NTC thus filed a special civil action for certiorari and prohibition with the

Court of Appeals, which was docketed as CA-G.R. SP. No. 64274. On October 9, 2001, a decision was rendered, the decretal portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari and prohibition is GRANTED, in that, the order of the court *a quo* denying the petitioner's motion to dismiss as well as the order of the court *a quo* granting the private respondents' prayer for a writ of preliminary injunction, and the writ of preliminary injunction issued thereby, are hereby ANNULLED and SET ASIDE. The private respondents' complaint and complaint-in-intervention below are hereby DISMISSED, without prejudice to the referral of the private respondents' grievances and disputes on the assailed issuances of the NTC with the said agency.

SO ORDERED.^[10]

Petitioners' motions for reconsideration were denied in a Resolution dated January 10, 2002 for lack of merit.^[11]

Hence, the instant petition for review filed by Smart and Piltel, which was docketed as G.R. No. 151908, anchored on the following grounds:

A.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) AND NOT THE REGULAR COURTS HAS JURISDICTION OVER THE CASE.

B.

THE HONORABLE COURT OF APPEALS ALSO GRAVELY ERRED IN HOLDING THAT THE PRIVATE RESPONDENTS FAILED TO EXHAUST AN AVAILABLE ADMINISTRATIVE REMEDY.

C.

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE BILLING CIRCULAR ISSUED BY THE RESPONDENT NTC IS UNCONSTITUTIONAL AND CONTRARY TO LAW AND PUBLIC POLICY.

D.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRIVATE RESPONDENTS FAILED TO SHOW THEIR CLEAR POSITIVE RIGHT TO WARRANT THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.^[12]

Likewise, Globe and Islacom filed a petition for review, docketed as G.R. No. 152063, assigning the following errors:

1. THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINES OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES DO NOT APPLY SINCE THE INSTANT CASE IS FOR LEGAL NULLIFICATION

(BECAUSE OF LEGAL INFIRMITIES AND VIOLATIONS OF LAW) OF A PURELY ADMINISTRATIVE REGULATION PROMULGATED BY AN AGENCY IN THE EXERCISE OF ITS RULE MAKING POWERS AND INVOLVES ONLY QUESTIONS OF LAW.

2. THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES DOES NOT APPLY WHEN THE QUESTIONS RAISED ARE PURELY LEGAL QUESTIONS.
3. THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES DOES NOT APPLY WHERE THE ADMINISTRATIVE ACTION IS COMPLETE AND EFFECTIVE, WHEN THERE IS NO OTHER REMEDY, AND THE PETITIONER STANDS TO SUFFER GRAVE AND IRREPARABLE INJURY.
4. THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE PETITIONERS IN FACT EXHAUSTED ALL ADMINISTRATIVE REMEDIES AVAILABLE TO THEM.
5. THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED IN ISSUING ITS QUESTIONED RULINGS IN THIS CASE BECAUSE GLOBE AND ISLA HAVE A CLEAR RIGHT TO AN INJUNCTION.^[13]

The two petitions were consolidated in a Resolution dated February 17, 2003.^[14]

On March 24, 2003, the petitions were given due course and the parties were required to submit their respective memoranda.^[15]

We find merit in the petitions.

Administrative agencies possess quasi-legislative or rule-making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.^[16]

The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.^[17] They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a