

## THIRD DIVISION

[ G.R. No. 189026, November 09, 2016 ]

**PHILIPPINE TELEGRAPH & TELEPHONE CORP., PETITIONER, VS.  
SMART COMMUNICATIONS, INC., RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

Since 1979, the National Telecommunications Commission (NTC) has been the lead government agency in charge of regulating the telecommunications industry. The Public Telecommunications Policy Act of the Philippines<sup>[1]</sup> (RA 7925) gave the NTC the authority to approve or adopt access charge arrangements between two public telecommunication entities. The issues here are whether the NTC has primary jurisdiction over questions involving access charge stipulations in a bilateral interconnection agreement, and whether regular courts can restrain the NTC from reviewing the negotiated access charges.

#### I

Petitioner Philippine Telegraph & Telephone Corporation (PT&T) and respondent Smart Communications, Inc. (Smart) entered into an Agreement<sup>[2]</sup> dated June 23, 1997 for the interconnection of their telecommunication facilities. The Agreement provided for the interconnection of Smart's Cellular Mobile Telephone System (CMTS), Local Exchange Carrier (LEC) and Paging services with PT&T's LEC service. Starting 1999, however, PT&T had difficulty meeting its financial obligations to Smart.<sup>[3]</sup> Thus, on November 28, 2003, the parties amended the Agreement, which extended the payment period and allowed PT&T to settle its obligations on installment basis. The amended Agreement also specified, among others, that Smart's access charge to PT&T would increase from P1.00 to P2.00 once PT&T's unpaid balance reaches P4 Million and that PT&T's access charge to Smart would be reduced from P8.69 to P6.50. Upon full payment, PT&T's access charge would be further reduced to P4.50.<sup>[4]</sup>

On April 4, 2005, Smart sent a letter informing PT&T that it increased the access charge from P1.00 to P2.00 starting April 1, 2005 in accordance with the amended Agreement. However, on September 2, 2005, PT&T sent a letter to Smart claiming that the latter overcharged PT&T on outbound calls to Smart's CMTS.<sup>[5]</sup> PT&T cited the NTC resolution in a separate dispute between Smart and Digitel, where the NTC ultimately disallowed the access charges imposed by Smart for being discriminatory and less favorable than terms offered to other public telecommunication entities (PTEs). Accordingly, PT&T demanded a refund of P12,681,795.13 from Smart.<sup>[6]</sup>

Thereafter, on September 15, 2005, PT&T filed a letter-complaint with the NTC raising the issue that the access charges imposed by Smart were allegedly

"discriminatory and not in conformity with those of other carriers."<sup>[7]</sup> On January 20, 2006, the NTC ordered Smart and PT&T to attend mediation conferences in order to thresh out the issues.<sup>[8]</sup> After the mediation efforts failed, the NTC directed the parties to file their respective pleadings, after which it would consider the case submitted for resolution. But before the parties were able to submit the pleadings, Smart filed a complaint with the Regional Trial Court of Makati City (RTC) against PT&T on April 7, 2006.<sup>[9]</sup> Smart alleged that PT&T was in breach of its contractual obligation when it failed to pay its outstanding debt and denied its liability to Smart. Accordingly, Smart prayed that PT&T be ordered to pay the sum of P1,387,742.33 representing its unpaid obligation and to comply with the amended Agreement.<sup>[10]</sup> Smart also asked the RTC to issue a temporary restraining order against the NTC and PT&T, which the RTC granted on April 25, 2006.<sup>[11]</sup>

In its answer to the complaint,<sup>[12]</sup> PT&T sought for the dismissal of the civil case on the grounds of lack of jurisdiction, non-observance of the doctrine of primary jurisdiction, exhaustion of administrative remedies, *litis pendentia* and *res judicata*. It also prayed that the restraining order be immediately set aside. After several hearings, the RTC issued a writ of preliminary injunction in favor of Smart.<sup>[13]</sup> The RTC reasoned that allowing the NTC to proceed and adjudicate access charges would violate Smart's contractual rights. The RTC also denied PT&T's motion to dismiss, finding that the nature of the civil case was incapable of pecuniary estimation which squarely falls within its jurisdiction.<sup>[14]</sup> It added that the NTC has no jurisdiction to adjudicate breaches of contract and award damages.

PT&T elevated the case to the Court of Appeals through a petition for *certiorari*. The Court of Appeals held that the RTC did not commit grave abuse of discretion and, consequently, denied the petition.<sup>[15]</sup> It found that the RTC had jurisdiction over the case because it involved an action for specific performance, *i.e.*, PT&T's compliance with the Agreement, and is therefore incapable of pecuniary estimation. And insofar as the dispute involved an alleged breach of contract, there was no need to refer the matter to the NTC because it had no jurisdiction over breach of contract cases.<sup>[16]</sup>

After its motion for reconsideration was denied by the Court of Appeals, PT&T filed this petition for review<sup>[17]</sup> seeking to overturn the RTC's order of injunction and non-dismissal of Smart's complaint. PT&T principally argues that the NTC has primary jurisdiction over the determination of access charges. PT&T characterizes the NTC case as one involving the validity of interconnection rates, as opposed to one involving purely a breach of contract and claim for damages cognizable by the RTC. PT&T adds that the writ of preliminary injunction issued by the RTC against NTC constitutes interference with a co-equal body. Smart counters by claiming that the dispute was purely contractual; hence, it properly falls within the jurisdiction of the RTC. Although the Agreement contained technical terms, Smart's position is that the NTC has no jurisdiction over bilateral interconnection agreements voluntarily negotiated and entered into by PTEs.

## II

Like the Court of Appeals below, Smart relies on the argument that its complaint before the RTC is one which is incapable of pecuniary estimation and, accordingly, falls within the RTC's jurisdiction. Smart's theory is that, because it is seeking to

enforce the Agreement, the action falls within the ruling of *Boiser v. Court of Appeals*<sup>[18]</sup> that the regular courts, not the NTC, have jurisdiction over cases involving breach of contract and damages. Invoking the freedom to contract and non-impairment clause, Smart posits that "[t]he specialized knowledge and expertise of the NTC is not indispensable or even necessary in this case since x x x [Smart] simply seeks to enforce and implement the contractual agreement between the parties and their rights and obligations in relation thereto."<sup>[19]</sup> Responding to PT&T's claim that it is seeking the NTC intervention only to resolve the issue on validity of the rates of charges between the two PTEs, Smart downplays this by stating that there is no dispute on the applicable rates since these were already stated in the Agreement.<sup>[20]</sup>

We cannot agree with Smart's position. While it is true that regional trial courts, as courts of general jurisdiction, can take cognizance of cases that are incapable of pecuniary estimation-including actions for breach of contract and damages-the fact that the interconnection agreement between Smart and PT&T involved access charges warrants a more nuanced analysis.

RA 7925 recognizes and encourages bilateral negotiations between PTEs, but it does not strictly adopt a *laissez-faire* policy. It imposes strictures that restrain within reason how PTEs conduct their business.<sup>[21]</sup> The law aims to foster a healthy competitive environment by striking a balance between the freedom of PTEs to make business decisions and to interact with one another on the one hand and the affordability of rates on the other.<sup>[22]</sup> However, one can speak of healthy competition only between equals. Thus, consistent with Section 19,<sup>[23]</sup> Article XII of the Constitution, RA 7925 seeks to break up the monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting new industry entrants 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.<sup>[24]</sup>

Specifically, Section 18 of RA 7925 regulates access charge arrangements between two PTEs:

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

In adopting or approving an access charge formula or revenue sharing agreement between two or more carriers, particularly, but not limited to a local exchange, interconnecting with a mobile radio, interexchange long distance carrier, or international carrier, **the Commission shall ensure equity, reciprocity and fairness among the parties concerned. In so approving the rates for interconnection between the telecommunications carriers, the Commission shall take into consideration the costs of the facilities needed to complete the interconnection, the need to provide the cross-subsidy to local exchange carriers to enable them to fulfill the primary national**

**objective of increasing telephone density in the country and assure a rate of return on the local exchange network investment that is at parity with those earned by other segments of the telecommunications industry:** Provided, That international carriers and mobile radio operators which are mandated to provide local exchange services, shall not be exempt from the requirement to provide the cross-subsidy when they interconnect with the local exchanges of other carriers: Provided, further, That the local exchanges which they will additionally operate, shall equally be entitled to the cross-subsidy from other international carriers, mobile radio operators, or inter-exchange carriers interconnecting with them. (Emphasis supplied.)

The first paragraph mandates that any agreement pertaining to access charges must be submitted to the NTC for approval; in case the parties fail to agree, the matter shall be resolved by the NTC. Smart contends that the NTC's authority under the second paragraph of Section 18 is limited to instances where the parties fail to agree on the rates. This interpretation is incorrect. There is no indication that-and Smart has not pointed to any significant reason why-the second paragraph of Section 18 should be construed as limited to the latter instances. On the contrary, We observe that Congress deliberately used the word "approve," in conjunction with "adopt," in describing the action that the NTC may take. The plain dictionary meaning of approve is "to express often formally agreement with and support of or commendation of as meeting a standard."<sup>[25]</sup> This presupposes that something has been submitted to the NTC, as the approving authority, contrasted with the NTC adopting its own formula. Under Section 18, it is either the access charge formula or revenue-sharing arrangement that is submitted to the NTC for approval. Smart and PT&T's Agreement, insofar as it specifies the access charge rates for the interconnection of their networks, falls within the coverage of the provision. Therefore, the Agreement should have been submitted to the NTC for its review and approval in accordance with the second paragraph of Section 18. Conspicuously, however, neither Smart nor PT&T claims that the access charges in the Agreement have been submitted to, much less approved, by the NTC. This further justifies the intervention of the NTC.

It is clear that the law did not intend the approval to simply be a ministerial function. The second paragraph of Section 18 enumerates the guidelines to be considered by the NTC before it approves the access charges. Thus, the NTC must be satisfied that the access charge formula is fair and reasonable based on factors such as cost, public necessity and industry returns; otherwise, it has the discretion to disapprove the rates in the event that it finds that they fall short of the statutory standards.<sup>[26]</sup> Evidently, the proceeding under Section 18 is quasi-judicial in nature. Any action by the NTC would particularly and immediately affect the rights of the interconnecting PTEs-in this case, Smart and PT&T-rather than being applicable to all PTEs throughout the Philippines.<sup>[27]</sup> The NTC, therefore, correctly treated the dispute as adversarial and gave both Smart and PT&T the opportunity to be heard.

The mere fact that Smart and PT&T negotiated and executed a bilateral interconnection agreement does not take their stipulations on access charges out of the NTC's regulatory reach. This has to be so in order to further one of the declared policies of RA 7925 of expanding the telecommunications network by improving and extending basic services in unserved and underserved areas *at affordable rates*.<sup>[28]</sup>

A contrary ruling would severely limit the NTC's ability to discharge its twin mandates of protecting consumers and promoting consumer welfare,<sup>[29]</sup> and would go against the trend towards greater delegation of judicial authority to administrative agencies in matters requiring technical knowledge.<sup>[30]</sup> Smart cannot rely on the non-impairment clause because it is a limit on the exercise of legislative power and not of judicial or quasi-judicial power.<sup>[31]</sup> As discussed in the preceding paragraph, the approval of the access charge formula under Section 18 is a quasi-judicial function.

The foregoing interpretation is equally supported by the structure of RA 7925. Congress gave the NTC broad powers over interconnection matters in order to achieve the goal of universal accessibility. Apart from the authority to approve or adopt interconnection rates, the NTC can even "[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."<sup>[32]</sup> Such extensive powers may generally be traced to the Constitution, which recognizes the vital role of communication and information in nationbuilding.<sup>[33]</sup> In *Philippine Long Distance Telephone Co. (PLDT) v. National Telecommunications Commission*,<sup>[34]</sup> we explained why the NTC may regulate—in that case, mandate—interconnection between PTEs:

The interconnection which has been required of PLDT is a form of "intervention" with property rights [recognized by Article XII, Section 6 of the Constitution] dictated by "the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines, x x x to maximize the use of telecommunications facilities available, x x x in recognition of the vital role of communications in nation building x x x and to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost" (DOTC Circular No. 90-248). Undoubtedly, the encompassing objective is the common good. The NTC, as the regulatory agency of the State, merely exercised its delegated authority to regulate the use of telecommunications networks when it decreed interconnection.

x x x

The decisive considerations are public need, public interest, and the common good. x x x Article II, Section 24 of the 1987 Constitution, recognizes the vital role of communication and information in nation building. It is likewise a State policy to provide the environment for the emergence of communications structures suitable to the balanced flow of information into, out of, and across the country (Article XVI, Section 10, x x x). A modern and dependable communications network rendering efficient and reasonably priced services is also indispensable for accelerated economic recovery and development. To these public and