

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 216, QUEZON CITY

PHILIPPINE LEAGUE FOR DEMOCRATIC
TELECOMMUNICATIONS, INC., (PLDTI),
GERARDO B. KAIMO, VICENTE F. GAMBITO,
ADRIAN O. SISON AND MA. MYLENE M.
DELA CRUZ, in their behalf and in
behalf of seven (7) million, handyphone
subscribers, more or less,
Plaintiffs,

- versus -

CIVIL CASE NO. Q-01-44976

GLOBE TELECOM (GMCR), INC, SMART
TELECOMMUNICATIONS, INC., ISLA
TELECOMMUNICATIONS CO., INC.,
PILIPINO TELEPHONE CORPORATION and
NATIONAL TELECOMMUNICATIONS COMMISSION.
Defendants.

x - - - - - x

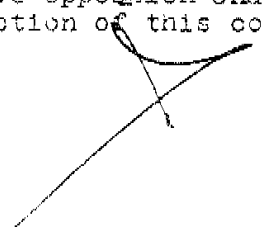
FOR: Injunction with
Application for
Temporary Restraining
Order (TRO) and Writ
of Preliminary
Prohibitory Injunction

O R D E R

Before this Court is plaintiffs' application for Writ of Preliminary Injunction which seek to prohibit, enjoin and restrain defendants from committing the alleged acts complained of (reduction by 67% of the Free Text Messages). In support of this application, plaintiffs presented Gerardo Kaimo and Adrian Sison, who identified their joint affidavits (Exh A) executed by Jonathan Emmanuel P. Domingo (President PLDTI) Gerardo B. Kaimo (Plaintiff) Vicente P. Gambito (Plaintiff) Adrian O. Sison (Plaintiff) and Mylene M. dela Cruz (Plaintiff).

On the part of defendants, Globe marked Exhibit 1 (TRO & Preliminary Injunction) individual service application form, Exhibit 2 (TRO & Preliminary Injunction) list of requirements for individual application, Exhibit 3 (Preliminary Injunction) Motion to Dismiss. Defendant Smart presented and marked Exhibit 1 (TRO & Preliminary Injunction) individual service application form, Exhibit 2 (TRO & Writ of Preliminary Injunction) prepaid card. Exhibit 3 - photocopy of the decision in GMCR vs Bell Tel. (GR#126496) Kintanar vs Bell (GR#126526). Piltel - Exhibit 1 (Preliminary Injunction) Opposition to Preliminary Injunction. ISLA - Communication Co., Inc., filed a Motion to Dismiss.

Instead of presenting further evidence in opposition to the application for writ of preliminary injunction, defendants merely filed their respective opposition and Motion to Dismiss anchored on lack of jurisdiction of this court to



try and hear this case. In other words, NTC has jurisdiction over the controversy and not this Court.

After judicious evaluation, the Court ruled:

Jurisdiction is conferred by law. RA 7925 conferred upon the National Telecommunications Commission (as Principal Administrator) obligation to implement the policies and objectives of RA 7925. In addition to its existing functions, the NTC shall have the following exclusive and original jurisdiction as follows:

Section 5 Art. III of RA 7925 provides: Responsibilities of the National Telecommunications Commission - The National Telecommunications Commission shall be the principal administrator of this Act as such shall take the necessary measures to implement the policies and objectives set forth in this Act. Accordingly, in addition to its existing functions the Commission shall be responsible for the following:

x x x x x x x

e) Promote consumers welfare by facilitating access to telecommunications services whose infrastructure and network must be geared towards the needs of individual and business users:

f) Protect consumers against misuse of a telecommunications entity's monopoly or quasi-monopolistic powers by, but not limited to, the investigation of complaints and exacting compliance with service standards from such entity.

"Section 17 Art. VI of RA 7925 provides: Rates and Tariffs - The Commission shall establish rates and tariffs which are fair and reasonable and which provide for the economic viability of the telecommunications entities and for 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 plaintiff admitted in their complaint the aforesaid jurisdiction and function of NTC, pertinent portion of the complaint reads:



"Among other functions, NTC is created to address consumer concerns and in particular."

a. to maintain and promote intensive public information drive and consumers' rights and privileges;

b. to improve expeditious and impartial settlement and implementation of interconnection agreements between carriers;

c. to address telecommunications and broadcast problems;

d. to address consumer complaints; and

e. to enhance and strengthen NTC's capability to monitor the quality of service of all service providers (whether regulated or deregulated service) and telephone equipment suppliers, CPE suppliers (training).

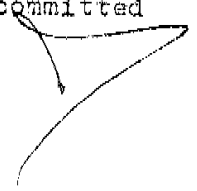
2.5. Furthermore, NTC retains "its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs." (P. 4 & 5 Complaint)

The plaintiffs filed this case with this Court because of NTC's "dismal failure and staunch refusal not only to adequately address the best interest of the consumers but also of the public welfare in general and that it made a reckless, imprudent and Misleading Public Pronouncement, through its newly appointed Commissioner, Eliseo M. Rio, Jr., that the short message service (SMS) or "free" text messaging is deregulated and beyond the jurisdiction of the NTC for being a value added Service."

The refusal of the NTC to address the best interest of consumers regarding free texting (SMS) could not divest NTC of its original and exclusive jurisdiction conferred to it by RA 7925.

NTC likewise is empowered to regulate rates or tariffs when ruinous competitions results or when there are alliances amounting to restraint of free competition or monopoly (Sec. 17 Art. VI) or when the rates or tariffs are distorted or unable to function freely and the public is likewise adversely affected. In such cases, the commission shall either establish a floor or ceiling on the rates or tariffs (ibid). The scheduled reduction of free texting of about 67% comes within the purview of this provision.

On probability that defendants may have committed



acts repugnant to RA 7925, then NTC has original and exclusive jurisdiction as principal administrator of Telecommunications per RA 7925, to investigate, try and hear violations of the provisions of said Act.

NTC exercises quasi-judicial functions. It is mandated by law to regulate, administer and enforce rules and policies of telecommunications development, not even the DOTC could influence or effect a review or modification of the commission's quasi-judicial functions (Sec. 6 Art. III).

Even assuming fixing of rates or tariffs on Text Messages is deregulated (as claimed by Atty Garfin, Chief Legal Dept. NTC), the Commission may still assume jurisdiction and investigate any abuse in the fixing of tariffs. Reduction by 67% of free text messages is an abuse.

NTC is special body highly equipped with modern technology managed by well trained personnel and is qualified (than this Court) to monitor, supervise and investigate matters involving development of the complex field of Telecommunications.

This court has no jurisdiction to try, hear and decide this complaint for injunction.

The TRO issued by the Court is hereby dissolved, set aside and recalled.

Let this complaint be dismissed.

SO ORDERED.

Quezon City, Metro Manila, September 13, 2001.

MODESTO C. JUANSON
Acting Judge

cc: *mailed*
9-14-01

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