

Committee on Public Services
And
Committee on Trade and Commerce

(Joint Public Hearing)
Monday, March 14, 2005
1:29 p.m. to 3:02 p.m.
Senator Ambrosio B. Padilla Room

Senators Present: Senators Arroyo, *Chairman*, Committee on Public Services and presiding, Villar, Jr., and Magsaysay, Jr.

Senators Represented: Senators Lapid, Pimentel Jr., Enrile, and Roxas.

Resource Persons/Guests: Ronald Solis, Kathleen Heceta and Jorge Sarmiento, *Commissioner and Deputy Commissioners*, respectively, National Telecommunications Commission (NTC); Jaime Olmos, *Director*, Bureau of Trade Regulation and Consumer Protection-Department of Trade and Industry (BTRCP-DTI); Rodolfo Salalima and Froilan Castelo, *Head*, Corporate and Regulatory Affairs Group and *Lawyer*, respectively, Globe Telecommunications, Inc.; Enrico Español, *Head*, Legal Department, Smart Telecommunications, Inc.; and Joel Peneyra, *Assistant Vice-President for Legal Services*, Digitel Mobile Phils., Inc.

AGENDA

Proposed Senate Resolution No. 169, *introduced by Senator Roxas*, entitled: A Resolution Urging The Appropriate Senate Committee To Conduct An Inquiry, In Aid Of Legislation, Into The Practice Of Some Telecommunication Companies Of Sending Random Spam Messages To Subscribers Using Short Messaging Services (SMS) And Multimedia Messaging Services (MMS) Without The Latter's Consent And Approval, With The End In View Of Providing Remedial Measures To Address The Possible Invasion Of Privacy And The Potential Problem It Might Cause In The Efficient Delivery And Receipt Of Messages

Proposed Senate Resolution No. 188, *introduced by Senator Roxas*, entitled: A Resolution Directing The Committee On Public Services To Conduct An Investigation, In Aid Of Legislation, On The Per Minute Charge By Mobile Phone Service Providers

Proposed Senate Resolution No. 192, *introduced by Senator Magsaysay, Jr.*, entitled: Resolution Directing The Senate Committees On Public Services, On Trade And Commerce, And On Public Order, To Jointly Conduct An Inquiry, In Aid Of Legislation, Into The Necessity Of Affording Consumer Protection To Cellular Mobile Telephone Service (CMTS) Subscribers Against Alleged Unfair Trade Practices And Of Adopting Measures To Promote Their Safety And Security Against Criminal Elements, And For Other Purposes

Proposed Senate Resolution No. 200, *introduced by Senator Villar, Jr.*, entitled: Resolution Directing The Committee On Public Services To Conduct An Inquiry, In Aid Of Legislation, Into The 'Forfeiture Policy' On Unused Values Of Cellphone Load Practiced By Telecommunication Companies To Prepaid Subscribers, With The End View Of Determining Whether Such Practice Is In Violation Of R. A. No. 7925 And Recommending Policy Measures To Prevent Such Irregular and Unfair Practice

CALL TO ORDER

At 1:29 p.m., Senator Arroyo, Chairman of the Committee on Public Services and presiding called the meeting to order.

DISCUSSION

Senator Arroyo informed the body that the public hearing jointly conducted by the Committees on Public Services and on Trade and Commerce would tackle Proposed Senate Resolution Nos. 169, 188, 192 and 200.

For his part, Senator Villar stated that he filed P. S. Res. No. 2000 because of the numerous complaints he had been receiving that the various expiration periods for prepaid cards issued by the cellular phone companies are too short. He noted that Senator Roxas had filed P. S. Res. 169, seeking an inquiry into the practice of some telecommunication companies of sending random *spam* messages to subscribers using short messaging services (SMS) and multimedia messaging services (MMS) without the latter's consent and approval and P. S. Res. 188, calling for an investigation on the per minute charge by mobile phone service providers, while Senator Magsaysay filed P. S. Res. 192 calling for an inquiry into the necessity of affording consumer protection to cellular mobile telephone service (CMTS) subscribers against alleged unfair trade practices and of adopting measures to promote their safety and security against criminal elements.

Asked by Senator Arroyo for his comments on Proposed Senate Resolution No. 200, lawyer Rodolfo Salalima, head of the Corporate and Regulatory Affairs Group of Globe Telecommunications, Inc., (Globe), stated that telecommunication companies (telcos) charge their prepaid and postpaid subscribers the so-called maintenance or carrying costs because the individual subscriber is assigned a dedicated line, whether or not the latter uses his mobile phone. He explained that while Globe's carrying cost of P150 is calibrated into the value of the call card, the first expiry date merely disallows the subscriber to call but other subscribers may still call him on his phone for a period of four months after the first expiry date.

Senator Villar inquired on the full impact of the carrying cost on the finances of the telcos even as he noted that said cost may not be reasonable and that the amount ought not to be charged the consumer. On his query on the amount that is generated by the telcos from the unused credits, Lawyer Salalima stated that he is not in a position to answer the queries as he would have to consult the financial department of Globe.

On the query of Senator Arroyo on the role of the National Telecommunications Commission (NTC) on the regulation of the pricing of the telcos, Commissioner Ronald Solis informed the Committees that the NTC issued in 2000 Memorandum Circular (MC No. 13-6-2000), ordering that prepaid cards "shall be valid for at least two (2) years from date of first use." He pointed out, however, that the telcos challenged the validity of the aforementioned MC before the court. The Regional Trial Court (RTC), Branch 77 of Quezon City subsequently issued a Temporary Restraining Order (TRO) and injunction, which injunction has been subsisting for the past four years, he added.

Asked to expound on the case, the NTC commissioner stated that one of the issues of the case is the question of the jurisdiction of the RTC on the rules promulgated by the NTC, which the RTC decided in favor of the petitioners. He then pointed out that the NTC appealed the ruling of the RTC and it was only recently that the Supreme Court remanded the case to the lower court for trial. The NTC, he said, has been coordinating with the Office of the Solicitor General (OSG) for the speedy resolution of the case in

the belief that this matter could be resolved on mere issues of law such that the parties may simply submit memoranda without necessity of filing factual evidence. The case, he added, remains pending with the RTC.

On the question of Senator Villar whether it was possible for the NTC to compute the amount that the telcos would have to refund to their subscribers in the event that the RTC decides in favor of the NTC, Commissioner Solis admitted the inability of NTC to monitor the amounts that have been forfeited for non-use, for lack of the necessary equipment that must rely on the reports submitted by the latter as mandated by law. He interjected that the NTC has not received any budget for capital expenditures for the past five years. The aforesaid equipment, he said, would cost some P200 million.

Senator Villar pointed out that the comptrollers of the telcos could be required to swear under oath the correct figures that have been forfeited to their respective companies for non-use as this would be simpler and cheaper. He maintained that it would make sense for the telcos to delay the court proceedings when the amount involved is unknown. He stressed that when the amount involved is known, then it becomes a contingent liability such that it would not make sense to delay the proceedings.

On the query of the senator then on other NTC circulars that have been challenged by the telcos before the courts, the NTC commissioner pointed out that the circular that defined SMS or text messaging as a value-added service (VAS) was challenged all the way to the Supreme Court. He stated that the Supreme Court decided against the NTC such that the matter is back with the Commission for further study as to what SMS really is. He noted, however, that there have been some NTC circulars that were sustained by the SC and are now being implemented by the NTC.

When Senator Arroyo inquired on the total number of cases that have been filed by the telcos against the NTC, challenging the orders or circulars of the latter, Commissioner Solis pointed out two cases, namely:

1. The imposition by the NTC of radio station licenses which was challenged by one of the cell phone companies, particularly on the matter of the computation. The case is pending in the Court of Appeals (CA); and
2. The appropriate basis of the NTC for imposing supervision and regulatory fees. The SC sustained the NTC thus putting the issue to rest such that the commission has been generating a lot of revenues as a result of said final decision.

On the query of Senator Villar regarding the per minute charge imposed by the telcos that is the subject of P. S. Res. No. 188, Commissioner Solis stated that such is covered in MC No. 13-6-2000 that has been enjoined by the QC RTC.

Senator Villar iterated the need to ascertain the amount involved in the event that the RTC decides in favor of NTC, then the affected subscribers would be refunded for the unused value of their prepaid card. He then asked whether it was possible that the NTC issued the circulars knowing fully well that these would be challenged by the telcos.

Commissioner Solis replied that the NTC sought more regulatory powers in its proposed reorganization in order that they could better implement their rules and regulations.

Commenting on the explanation, Senator Arroyo stated that while the discussion has not gone into details, it would seem that the situation is a one-sided game between the government represented by the NTC and the telcos. It is for this reason, he said, that the resolutions under consideration are timely in view of the flood of complaints about what the consumers consider as lopsided arrangements and regulations adopted by the

telcos. He then inquired on whether the telcos consult the NTC on these matters and whether there is any intervention done by the NTC with regards to these questions.

Commissioner Solis stated that while the NTC issued several circulars to 1) impose the 6-second-pulse billing rate; 2) require the registration of SIM cards; and 3) require a longer expiration period for prepaid cards, all these measures have been enjoined by the courts thereby practically tying the hands of the NTC to implement these circulars. Reacting to the expression of disbelief of Senator Arroyo that a QC RTC has succeeded in preventing the giving of relief to some 30 million mobile phone subscribers, he iterated that the injunction is precisely the reason the NTC filed several motions in the QC RTC for the case to be set for hearing and that it be resolved on the basis of the mere submission of pleadings as the case involves issues of law only. On whether the Senate cannot provide relief to the complaints of the mobile phone users, he said that there are similar moves in the House of Representative to provide consumer protection. He maintained that the role, responsibility and extent of authority of the NTC ought to be modified in order to strengthen the commission.

Senator Arroyo reminded the body that the second sentence of Article XII, Section 11 of the Constitution provides in very clear language that: "**Neither shall any such franchise nor right be granted except that it shall be subject to amendment, alteration, or repeal when the common so good requires.**" He then cautioned the telcos to address the complaints of their subscribers lest the Congress enforces the constitutional provision.

For his part, Senator Villar stated that the Committees would be unable to proceed absent the computation of the amounts involved. He stressed that the telcos could be compelled to submit the same under oath if such is needed.

Senator Arroyo directed that the telcos through their respective responsible officer to submit under oath the amounts involved with regard to rounding off of calls made on mobile phones and the unused portions of the prepaid cards.

Asked for a definite date as to when the data would be submitted, lawyer Salalima asked that he be allowed to manifest the date later in the hearing, claiming that he has no control over their finance people and the intervening Holy Week.

At 2:09 p.m., the presiding Chair declared a recess to await the arrival of Senator Magsaysay, Jr., author of P. S. Res. 192.

At 2:14 p.m., Senator Arroyo called for the resumption of the joint public hearing.

Upon resumption, Senator Arroyo briefed Senator Magsaysay on what had been taken up earlier in the public hearing.

Senator Magsaysay recalled the fatal shooting of a La Salle student who was then driving his car when robbers attempted to steal his mobile phone. Noting that each mobile phone has its own International Mobile Equipment Identification Number (IMEI) thus enabling telcos to shut off a particular unit in the event that it is stolen or lost, he then inquired on the so-called "white list".

Commissioner Solis informed the Committees that the NTC and the cell phone companies, addressing the numerous complaints on lost and stolen mobile phones, entered into a Memorandum of Agreement (MOA) in 2002 whereby the NTC would issue blocking orders for a lost or stolen cell phone and the cell phone companies would block the particular unit after identifying the IMEI of the phone. He then enumerated the information that would be supplied by the user to the NTC, as follows: 1) the unit's IMEI; 2) the phone number of the unit; and 3) whether it is prepaid or postpaid. The NTC, he explained, would then issue a directive to the particular cell phone company to block the

phone in order that the finder or stealer will be unable to use the same. The NTC receives a monthly average of about 200 to 300 requests for blocking of cell phones, he added.

On whether the cell phone users are aware of the IMEI and the blocking of stolen or lost cell phones, Mr. Solis stated that the NTC launched an information drive to the extent of posting posters in the malls and the mass transit systems to inform the public of the IMEI and the blocking process. He then informed the body that the mobile phone owner merely has to punch in the following symbols on his/her phone, “*#06#” in order to get the IMEI of the unit.

When asked by Senator Arroyo for the reason the mobile phone owner has to report the loss or theft of his/her unit to the NTC and not to the cell phone companies, the NTC commissioner explained that the telcos would not want to block the IMEI from their respective systems without the intercession of the NTC lest they ran afoul of the Anti-Wiretapping Law. He clarified, however, that the blocking service is available to postpaid subscribers. He pointed out that while the postpaid subscriber simply has to inform the mobile phone company of the loss of the cell phone unit, it is different for prepaid subscribers where the identity of the subscriber is not known, inasmuch as the telcos do not maintain a registry of their respective prepaid subscribers. About 90 percent of the users are prepaid subscribers while postpaid subscribers only account for 10 percent of the market, he noted. To verify the identity of a prepaid subscriber would require the submission of all pertinent documents such as the proof of purchase, he stressed.

On the query of Senator Magsaysay on why the telcos cannot put a system in place to identify their respective prepaid subscribers, Mr. Solis stated that such is provided in the circular that was enjoined by the QC RTC.

On the question of Senator Arroyo as to the reason why the telcos could not assume that responsibility, Atty. Salalima asserted that requiring the registration of prepaid cards would entail a lot of administrative expense which would ultimately have a bearing on the cost, as these prepaid cards are sold over the counter on a nationwide basis which would call for the employment of more retailers if prepaid card registration is to be required. He then pointed out that the mobile phone itself with its IMEI is not necessarily sold by the telcos.

Lawyer Enrico Español, head of the Legal Department of Smart Communications, Inc. (Smart), pointed out that the practice of changing the IMEI of a mobile phone is prevalent and having the unit unlocked is commonplace in Greenhills. He then stressed the importance of the NTC issuing a universal blocking order so that all the cellphone companies would block a particular mobile phone because if the network responsible is the only one that is going to block a particular phone, it is easy for the holder of the phone to go to another network, get another SIM card and use it again.

Noting that the problem under discussion could be solved with the advance of technology, Senator Arroyo then stressed the need to provide some remedy for the consumers, he, however surmised that the cellphone companies do not want to shoulder the administrative cost.

Atty. Español maintained that the philosophy behind the prepaid service is to make the telecommunications service available to everybody and that facility would be restricted if a similar requirement as that of the postpaid service is imposed.

Senator Arroyo replied that while it would prejudice the business of the telcos as there would be fewer customers, protection is given to the consumers.

Atty. Froilan Castelo, a Globe counsel, stated that the accessibility of the prepaid service is actually the singular effect of having good telecommunication service in the country. The accessibility of prepaid SIM cards, he asserted, would be hampered if telcos would require a credit card type approval. It would necessitate the presentation of a valid identification card which majority of the Filipinos do not have, he added.

Atty. Salalima pointed out that the approach to the solution to prepaid and postpaid services differs such that there is a need to strike a balance between the relative disadvantage of a rigid registration and the incidence of theft of mobile phones. He stressed that the cell phone companies have to rely on the NTC when it comes to blocking a prepaid SIM card because of the lack of identification of the owner. He stated that there are white lists for both the prepaid and postpaid services. The Globe representative added that the cell phone company would block a prepaid SIM only if the NTC orders the blocking of said SIM card so that it would not be vulnerable to a damage suit from an innocent owner whose card was blocked.

Commissioner Solis informed the senators that under the MOA, the NTC issues a universal blocking order so that all cell phone companies are required to: 1) block the SIM from their respective systems whether it is a Globe, Smart or Suncell SIM; 2) block the SIM within 24 hours from receipt of the blocking order; and 3) submit a report of their compliance with the said order to the NTC within one week from blocking.

Atty. Salalima pointed out that while the universal whitelisting prevents the user of the stolen or lost and found mobile phone from shifting from one cell phone company to another, the problem vis-à-vis the tampering of the phone's IMEI which, in effect, is the chassis of the equipment, is prevalent in the Greenhills area.

Reacting to the observation, Commissioner Solis informed the Committees that the NTC has taken steps in order to minimize, if not totally eradicate, the altering of IMEI through the issuance of a memorandum circular requiring the registration with the NTC of all mobile phone dealers and repair centers. He then went on to say that one of the conditions for the registration of these businesses is the prohibition on the altering of IMEI under penalty of losing its license to operate as such. He pointed out that there is a sustained public information campaign on the matter and that the registration of mobile phone dealers and repair centers is currently ongoing.

The NTC commissioner assured compliance within the week on Senator Magsaysay's request for information on the IMEI.

Senator Arroyo said that he could not understand the reason why a problem that is the concern of the cell phone companies is being handled by a government regulatory agency. He emphasized that the NTC is a regulatory agency and not a blocking agency. Cell phone companies are duty-bound to provide protection to the purchasers of their goods, he stressed. He noted that while the cell phone companies are making money, the NTC had to scrimp as it has difficulty in getting a bigger budget.

Given the opportunity to speak, Mr. Jaime Olmos, Director, Bureau of Trade Regulation and Consumer Protection-Department of Trade and Industry (BTRCP-DTI), reported on the problem of the so-called "text scams" which has been the subject of numerous complaints that has been received by the BTRCP. The text scam is perpetrated when the prospective victim receives a text message informing him/her that he/she has won a certain amount provided that he calls a particular cell phone number, the number of the con artist. He pointed out that their office has been advising the public to avoid being victimized by the scam and has requested the NTC to issue blocking orders for the con artists' phones.

At this juncture, the discussion shifted to the issue of international calls through the use of a mobile phone.

Senator Arroyo asked if both parties in a mobile-to-mobile phone call would be charged for the call.

By way of illustration, Commissioner Solis said that in the event that Senator Arroyo calls Senator Villar who is abroad and using his phone on roaming connection, both of them would be charged for the international call. He then explained that it is an international practice to charge both parties because the caller extends the use of his mobile phone to another area where the carrier has no network and the carrier being used has to pay its roaming partner for the use of the latter's network abroad.

On the query of Senator Villar whether the NTC has the authority to regulate the rates charged by cell phone companies, Commissioner Solis pointed out that while the NTC has such authority, Republic Act No. 7925, *the Public Telecommunications Policy Act of the Philippines*, provides, among others, that the rates should, as much as possible, be deregulated and that the NTC will only step in if the situation would result in ruinous competition.

Noting that outbound calls cost US 40 cents per minute while inbound calls from the United States vary in cost from 7 to 12 cents per minute and noting the disparity of from 28 to 33 cents, Senator Villar inquired whether the rates charged by local carriers for outbound calls are fair to the consumers.

Commissioner Solis stated that one has to take into account the arrangement between the local carrier and the foreign carrier and the amount paid by the former to the latter for the international call.

For her part, Ms. Kathleen Heceta, an NTC deputy commissioner, stated that the rates are fixed by the respective governments through their corresponding regulatory bodies. The NTC on the part of the Philippine government and the Federal Communications Commission (FCC) on the part of the US government. The rates, she noted, depends on the maturity in the development of the particular telecommunications sector.

Adverting to the question of Senator Villar dealing on the termination rate, the deputy commissioner stated that the NTC does not fix such rates as it is an arrangement between governments as to how much would each carrier share from the revenue or income from the service being offered.

Asked about the status of the Grand Jury investigation of certain officers of Philippine telcos, Atty. Salalima, reported that the Grand Jury, in effect sustained Philippine law over American law since the US Department of Justice (DOJ) would like to impose American law in Philippine soil. The Honolulu case, he said, involves the so-called restraint to trade angle which is criminal under American law and which the US DOJ seeks to apply in the Philippine setting. As to the query of the US DOJ on why the termination rates in the Philippines are uniform, he said that they are uniform because RA 7925 requires that termination rates in the country and amongst carrier be non-discriminatory.

On who determines the rates, Atty. Salalima stated that while the NTC determines the rates, the NTC should not, however, after fixing the rate for one carrier, discriminate against the other carriers.

Senator Villar stressed his previous query on why there is a great disparity in the rates charged for inbound and outbound calls.

Deputy Commissioner Heceta clarified that previous to the enactment of RA 7925, Philippine carriers could not make a rate of return of more than 12 percent on its rate base but the same is no longer true. She then agreed with the observation of Senator Arroyo that this is so because Philippine carriers are public utilities and as such, are granted franchises.

She then quoted the first paragraph of Section 17 of the Public Telecommunications Policy Act of the Philippines which states: "*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.*"

Senator Villar iterated his previous queries on whether the rates charged by Philippine carriers are fair and reasonable and on why there is a great disparity in the rates charged for inbound and outbound calls.

Ms. Heceta pointed out that the country used to have very expensive rates but which have since gone down a number of times because of the liberalization of the telecommunications industry.

Commissioner Solis identified two factors that must be taken into account namely:

1. The economies of scales between the Philippines and the US; and
2. RA 7925 which requires cross subsidies.

After stating that the financial statements of the telcos are submitted to the NTC on an annual basis as mandated by law, the NTC commissioner admitted that it may be time to review the rates.

Adopting Senator Villar's position, Senator Arroyo inquired whether or not the rates of the telcos are fair and reasonable in relation to their income.

After quoting the second paragraph of Section 17 of RA 7925 which reads: "*The Commission shall exempt any specific telecommunications 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 a 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.*", Senator Villar inquired whether there is ruinous competition.

Commissioner Solis stated that there is a price war among the cellular phone companies because of the introduction of new services. He then informed the Committees that the Commission is in the process of reviewing the rules and regulations including the fixing of new rates and drafting a competition policy framework. The NTC, he said, is consulting with economic experts and members of the academe on the said framework to include the reasonableness of the rates. Further, the Commission is looking at best practices on competition policy framework as well as the telecommunications industries of other countries, he added.

Senator Villar clarified that he has nothing against the telcos but only wants to ensure that they become profitable because they are efficient. Nonetheless, he said that he is bothered by all the expenses being thrown around by the telcos.

Senator Magsaysay requested the Smart representative to provide the Committees with a written opinion on the practice in other countries of charging cellular phone users based on 6-second pulse rates as compared to the per minute rate being charged in the Philippines. He then asked the NTC to make a PowerPoint presentation that would explain the reason for the great disparity in the rates charged for outbound and inbound calls.

He agreed with the view of Senator Villar that indeed the telcos are not economizing in view of the proliferation of newspaper advertisements. He then requested the representatives of the various telcos to submit their respective budgets for media expenses for 2004.

For his part, Senator Villar requested for a breakdown of the revenues generated by the telcos from the outbound calls.

Lawyer Salalima corrected the previous statement of Senator Villar by saying that the connecting rate in the country is 12 cents for landline and 16 cents for mobile phone and not 7 cents.

Adjournment

Before adjourning the joint public hearing, Senator Arroyo stated that the next hearing would be scheduled after the Lenten recess of Congress. He also gave an April 8, 2005 deadline for the submission of all requested material.

He then adjourned the hearing.

It was 2:09 p.m.

*Prepared and submitted by **Anthony A. Samonte**,
Committee Secretary, Committee on Public Services.*