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WORKSHOP ON MEDIA REGULATIONS FOR NEW TIMES

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TOPIC

THE LIMITS OF LEGAL REGULATIONS: STATUTORY REGULATION OR SELF-REGULATION IN THE MEDIA ENVIRONMENT

APRIL 16, 1998 - 8:30-9:30 AM
BGEN. TEODORO Y. YABES
DEPUTY COMMISSIONER
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PHILIPPINES
Ladies and Gentlemen:

I wish to express my thanks to the organizers of this Workshop on Media Regulations, the Asian Media Information and Communication Centre, for the opportunity of expressing our views on this very vital subject today.

Amid the proliferation of new information technology developments all over the world today, it is difficult not to find ourselves overwhelmed by the deluge of information that comes from traditional tri-media: the newspapers, radio and television.

We are fortunate, those of us who were born sometime during the Second World War, "baby boomers" as one of our popular radio stations call this generation, because we saw the development of electronic communications and information technology over the past 60 years in colorful panorama and how those developments have transformed the dissemination of "NEWS" as we know it then and now. Somehow this particular generation can better appreciate and savor with their senses the changes as they occurred in the media environment. Whereas in the 40's and 50's, radio was the predominant medium, TV kicked in the 60's. Black-and-white became full color by the 70's and quality continued to improve every decade until, in this decade, nothing less than "sharp, crisp and crystal clear" is now demanded by viewers all over the world.

In short, rapid developments in the processing and transmission of information allowed up-to-second NEWS to be made available to readers and viewers --- the fax machine, the electronic computer, fiber optics, communication satellites, VSAT's, video tape recorder, laser, the videodisc, the personal microcomputer, otherwise known as the PC, the cellular telephone, CATV, "wireless" cable TV, LMDS.

Perhaps the most dramatic manifestation that instantaneous and full-color news has indeed been brought to our doorsteps was CNN's coverage of the Gulf War. But dissemination of information has certainly not culminated there. We now have the internet and the deluge begins. And this is also where I feel my subject matter can logically begin --- in what we can call the New Media Environment.
The New Media Environment is characterized by the emergence of interactive services and multimedia applications as a result of convergence of broadcast, computer and telecommunications technologies. Regulation has always been necessary in the processing and dissemination of information by media. Concerns as to the impact of information on governments and people have always been a primordial consideration. Each country is guided by its particular concerns. Those of us in this part of the world have many common concerns. Although we all enjoy the value and availability now of almost unlimited information, we are concerned that there may be, as in fact there are, information that may adversely affect the still developing minds of our young children. This will be one of the major concerns of regulation in the New Media Environment.

Like the other countries in the region, the Philippines also finds itself experiencing the effects of all this new information technology. With the increase in the number of companies rushing to obtain franchises and the necessary authorities/licenses to install, maintain and operate radio and TV broadcast services, the NTC finds itself deluged with the number of applicants seeking its approval for every aspect of telecommunications and broadcast media.

Like any other developing country, the Philippines is faced with a number of legal, policy and regulatory issues arising from the dramatic technological advances in the sector and a growing interest by the industry and the general public which have become articulate in demanding regulatory reforms to avail of the benefits of the Global Information Age.

While governments, especially regulators, recognize the need for legislative frameworks to keep pace with the commercial and technological changes in the sector, it is a sad reality, that laws have not changed, and will not change, as fast as technological changes. Constitutional and other legal barriers as well as domestic administrative process exist which deter introduction of new services, competition and liberalization. This shall not, however, prevent the Philippines from moving forward.

My presentation will touch on the following topics:
1. A general overview and background of the Philippine Broadcast Industry,
2. An update of the Philippine Broadcast network growth,
3. Constitutional statutory and legal framework,
4. Aspects of government regulations and industry self-regulations,
5. Other domestic and regional issues; and lastly,
6. A conclusion on how we can achieve the right balance to regulation and self-regulation.

The Philippines probably has been one of the early pioneers in the Broadcasting Industry for Southeast Asian Region. It started in the early 1920's. From the start, radio stations were privately-owned and operated commercially by American businessmen who use this medium to promote their products including electronic goods.

By 1941, close to 64,000 radio receivers and six commercial AM radio stations were in operation. In the post war years, the radio broadcast industry entered into a remarkable period of growth with improvements brought about by new technologies more powerful transmitters and improved radio receivers set sensitivity expanded the radio service coverage area. Affordability of radio receivers allowed more listeners in the rural areas.

Black and White television broadcast was introduced in the 50's. By late 60's, broadcasting emerged as a national medium with an estimated 70% penetration on the total Philippine household. By 1967, Color TV Broadcasting was introduced in the country.

Throughout these decades, Radio and Television Broadcasting Service were in the hands of the private sector, with some operated directly by the Philippine Government.

On this slide, we can see the decade of the 90's as a banner year for Cable TV and television stations.

The Philippines remains to have the densest radio/TV Broadcast Stations in operation on a per square kilometer area. In fact in Metro Manila, there is no vacant channel in the radio AM and FM band including all assignable TV channels in the VHF band.

Television continued to be a strong medium. This year, authorization of the country's first Direct To Home (DTH) satellite has been granted and three operators on the Local Multi-Media Distribution Service (LMMDS) have been given license to operate this service.
AM radio stations growth was from 294 in 1992 to 334 in 1997, or a 13.6% increase. FM radio stations expanded from 201 to 399 over the same period or 98.5% increase. On the other hand, television stations increased by 80.7% with 157 TV stations ending last year. The CATV industry expanded by a whopping 508% from previous 147 to 894 operators by end of 1997. And the first authorized Direct To Home Satellite Broadcast became operational this year.

The operation of more broadcast stations and CATV operators have resulted in more diverse services and choice of more variety programs made available to the public. We expect that saturation will be reached within the next 5 years due to finite resources in frequencies and overlapping of service areas.

It is safe to say that broadcast service and its high household penetration have helped improve the literacy rate of the Philippine population as well its indispensable contribution to the social, economic and political well being of the Filipinos.

The operators of a broadcast station in the Philippines requires securing from Philippine Congress the franchise of exercising the privilege.

The Philippine Constitution limits the ownership and operation of broadcast facilities to Filipino citizens or companies owned 100% by Filipinos.

There is a clear dichotomy between ownership of Broadcast and Telecommunication Service. Mega-franchise which allow an entity to operate both a telecommunications carrier and a broadcast network is prohibited.

The National Telecommunications Commission (NTC) remain the sole regulatory agency of the government that supervises and regulates the technical operations of all Broadcast Stations in the country, in whatever terrestrial or space borne technology.

The NTC has vested power to regulate programming if it chooses to exercise it. However, with strong adherence to democratic principle of speech freedom, this power has been exercised in a very limited manner only. I recall that it was only used in a state of emergency during President Cory Aquino's Administration. Only then did the NTC Commissioner exercise this power or
shutting down a radio station promoting the coup and inciting the people to rebel against its own government.

The evolution of self-regulation in the Philippine Broadcast started in the 1960's. Several attempts were made by broadcasters to organize for the purpose of adopting industry standards. These attempts were doomed to failure as a small vested group tried to dominate the organization with their narrow self-interest. The Government supervision was limited to the operation of the Broadcast Stations on its conformance with technical and engineering standards. The business aspect in the operation of radio and TV stations were covered by the general business laws. It was extremely difficult for the Government to impose standards for fear of violating free speech and expression and compromising the independence of mass media.

It is a paradox that the policy of self-regulation was initiated and happened in 1972 when the Philippines was under Martial law of ex-President Marcos. It became apparent that there is a need to balance individual freedom of expression with that of the interest of the state.

Thus, several trials and experimentation has been done before we arrived into the present set-up.

After the declaration of Martial law, the Mass Media Council was organized to supervise print and broadcast media operations. This later led to the establishment of Media Advisory Council and shortly thereafter, the Bureau of Standards for Mass Media.

These are government agencies whose officers were appointed by the Government, paid by Government and funded from the National Budget.

Sometime in 1974, these government agencies were replaced by the Broadcast Media Council which while it was created by a National Law, its members came entirely from the private broadcast industry.

At about the same time, the operators of radio and television stations organized themselves into the Kapisanan ng mga Brodkaster sa Pilipinas (KBP), a trade association of Philippine broadcasters. The KBP took the responsibility of formulating and establishing standards for the Broadcast Media, with the Media Council focusing in the enforcement of standards.
Shortly after the lifting of Martial law, the Media Council was abolished and the responsibility for regulation was left to the hands of the KBP.

The Videogram Regulatory Board (VRB) regulates the importation, exportation, production, reproduction, distribution, exhibition, showing, sales, lease or disposition of Videograms including, among other Videograms, discs and cassettes.

It's the government agency that is in the forefront against video piracy.

On the other hand the Movie and Television Review and Classification Board, or MTRCB, is responsible for the classification of film and television programs and prohibits the broadcast of materials which are objectionable for being "immoral, indecent, contrary to law and good customs." The MTRCB also prohibits materials which tend to incite subversion, insurrection, rebellion or sedition against the state.

The National Telecommunications Commission is the foremost agency of the Government tasked to oversee the Broadcast Industry.

It is the sole authority that implements government technical policies in Broadcast Industry. This includes the:
1. Allocation and management of the broadcast radio frequency spectrum;
2. Granting of radio and television licenses including those of the CATV, satellite Direct To Home (DTH), and LMMDS operations;
3. Enforcement and monitoring of technical standards;
4. Regulation of programming and if warranted, to the point of closing down radio or television stations that is deemed inimical to the national interest. This power was exercised during the coup against the previous Administration of President Cory Aquino.

Let me go now to the main topic of my presentation: regulation and self-regulation in the Broadcast Industry. The issue is how to strike a balance between the goal of protecting public interest versus that of the broadcast operators. This issue can be further divided into two aspects with the first, dealing between the Government and the Broadcast Industry.

The Philippine Government exercises its regulatory and administrative functions through several agencies tasked with the end goal of the national
interest. This specifically covers the ownership and operation, enforcement of technical standards, and program content regulations.

The second aspect, is that of the broadcast operators and the advertising industry. Government regulation stops short of interfering with the conduct of business and programming. The enforcement of radio and television codes is the responsibility of the trade organization which enlists the support, participation and cooperation of the broadcasters, advertisers and the advertising agencies. Trade regulation is embodied in the radio code and television code. While compliance with advertising standards and trade practices is extended to the advertising industry.

As mentioned earlier, sometime in 1974, the industry organized the Kapisanan ng mga Brodkaster sa Pilipinas (KBP), which today continues to function both as a trade association and a regulatory body for the Broadcast Industry. It is the key component in the industry quest for self-regulation.

The cornerstone of this self-regulation is the standards set and embodied in the radio code and television code. A question might be asked: do these standards adopted by the KBP under self-regulation require the approval of the government? The answer is no. These standards can be generally classified under three main headings: Program Standards, Advertising Standards, and Standards of Trade and Commercial Practices.

Program Standards and Advertising Standards are generally concerned with good taste, decency, truth, excellence, and fairness. The Standards of trade and Commercial Practices deal primarily with the business or trade aspect of broadcasting such as relationships with clients and advertising agencies and, to a certain degree, business competition.

The enforcement of the radio and television codes is performed by a body in the KBP separate and distinct from the Board of Directors. It is called the KBP Standards Authority. This body enjoys a certain degree of independence from the Board in order to provide some check and balance, and free from the board influence. The KBP Standards Authority follows a set of procedures in the investigation, hearing, and adjudication of cases involving violations of the radio and television codes.
Among its other objectives it to promote and develop a stable competitive environment that will be conducive to the growth and development of the Broadcast Industry. It conducts training programs to improve the services of its member stations. The KBP also runs a credit and collection system which makes sure that unpaid accounts of advertisers and agencies are settled within a reasonable period. The KBP speaks as the collective voice of the Broadcast Industry in government hearings and policy making.

Membership in the KBP is by broadcast company or network. As of today we have 141 members networks which include representatives from commercial as well as government networks.

It is clear that for the broad coverage of the radio and television codes to be effective, the support, participation and cooperation not just of the broadcasters themselves but also the sectors which do business with it. For example the advertising standards and standards trade practices in the radio and television codes would require compliance not only of broadcast stations but of advertisers and advertising agencies as well.

We are fortunate in the Philippines that self-regulation has been extended beyond the media and have covered the Advertising Industry as well. The Advertising Industry primary organization that sets the pace for self-regulation is called Advertising Board, or Adboard for short, which formulates and enforces advertising standards for both print and broadcast media. As a member of the Adboard, the KBP is bound to require its member stations not to air commercials which do not pass Adboard approval.

Self-regulation requires broad alliances. How broad the alliance of self-regulation in the Philippines can be partly gleaned from the list of members in the Adboard. Beside the KBP, the membership includes the:
1. Philippine Association of National Advertisers (PANA);
2. Advertising Suppliers Association of the Philippines (ASAP);
3. Association of Accredited Advertising Agencies (4A's);
4. Cinema Advertising Association of the Philippines (CAAP);
5. Independent Blocktimers Association (IBA);
6. Marketing and Opinion Research Society (MORES);
7. Outdoor Advertising Association of the Philippines (OAAP); and the
8. Print Media Organization (PRIMO).
There are other issues which I believe pose as a potential problem and challenge to our ability to regulate and self-regulate the Media Industry. We can group them into two. The first are those that may be unique or peculiar only to the Philippines. The second are those which confront and shared by other countries in the region.

The domestic problems we see are the active growth of broadcast station reaching saturation point due to the limited number of channels and overlapping service areas. The Asian currency meltdown had slowed down advertising budget and, if cost cutting trend in the advertising placement continues, the viability of broadcast stations could be threatened. This may lead to our third fear of industry shake-out where the major networks will take over the operations of small independent stations which cannot compete and therefore the protracted change of ownership may lead to dominant or monopolistic powerful network operators.

At the regional level, the issues that commonly confront us regardless of nationality are:

1. The increasing demands of copyrights owners, composers, performers and recording companies from media for payment of royalties. In the Philippines, we have already agreed to pay composers, however, we believe that the claims of performers and recording companies are a different matter. We remain strong in our position and the belief that the playing of records or showing of movies create economic benefits for the firm. This should be adequate compensation for any royalty claims that they have. Paying royalties to recording companies would upset the balance of interest which no exists between them and the broadcasters.

2. Another concern is the emerging competition from Cable TV as well as space or satellite based Direct To Home (DTH) broadcast. The crux of the issue whether to allow or not advertising on cable or satellite. Should these operators then just be contented in obtaining their revenues from subscription fees and leave the advertising market to the broadcaster? What about the cost and benefit of "must carry" provision of local air channel? Should there be revenue sharing or fee from these kinds of operators that benefit in increased viewership?
In the advent of space based broadcast transmission where transmission signals spill over the territorial boundaries of counties of programs origins and intended audience, how do we prevent pirating of programs to unauthorized audience in the neighboring countries? What influence will the program content impact the religious, moral and customs of the adjacent countries? These I feel need cooperation among the affected countries. And a new set of media regulations agreements.

3. Multimedia presents the most challenging and the most difficult to regulate. With the blurring of service distinction between broadcast telecommunication and media, who should regulate this service? When broadcast information is presented in the Internet Webpage, are they crossing the division between broadcast and telecommunication service? When newspaper publishers deliver their news electronically to end users by pointcasting, are they engaged in broadcasting? With program contents left in the Webpage and mass produced by those who visit this site, what responsibility will the media owner have on the intellectual property rights?

4. The next anticipated challenges that will impact the Broadcast Industry is the planned digitalization of television broadcast signal. While this is seen as a move towards high definition television or multiple simultaneous digital channels through compression, we can see that conflicts in the current regulatory policy is affected. Consider the typical 6 MHZ single TV channel assignment to TV station. If four or five separate TV signals can be carried, do we have the power to recall or reduce their bandwidth assignment? With the digitalization process, who will this impact on the RF spectrum allocation in broadcast? Digitalization does not impose the RF spectrum band to which it must operate. In the costly infrastructure and frequency move out for digitalization, who should share the cost? I believe that we need to address this soon, so that an orderly and smooth transition can happen in our desire to move from analog to digital transmission.

From the presentation, we can arrive at the conclusion that the Philippine experience may be a model for those desiring to do a balance of regulation and self-regulation in the Broadcast Media Industry. The center of this issue is arriving at a balance between the interest of the government and that of the private sector. Clearly, the government regulation function is not only desirable but necessary in the issuance of franchises and operating licenses, including the setting of standards for program content. However, it should be
to the interest of the Broadcast Media Industry to establish industry and make association standards to allow stringent self regulation and thereby reduce government intervention and regulation.

The wide scope of codes and standards requires the broad alliances, cooperation and participation of those who play important part in this industry, namely the broadcasters, advertisers and the advertising agencies.

The key therefore to the success of self regulation is unity and cooperation. Broadcast Media is a powerful and effective tool in mobilizing the resources of the nation and especially in shaping public opinion. It is important that the imperative goals of the government could work with strong alliances and ties with each other in a spirit of mutual understanding and benefit for the nation and the people we serve.

Convergence among the telecommunications, media and computing industries bring about a multitude of benefits, but it can also bring regulatory confusion. Now that the information age is upon us, the challenge is for the government to come up with the "right" policies and to implement them at the right time.

Regulation should be reexamined for the purpose of improving them to meet the challenges of the information age and to ensure that the country is well positioned to take advantage of the opportunities this presents. Success depends on not only the ability to provide equal access to information to people on all levels of society or to link and facilitate growth in regions; its is also critical that users are empowered to take advantage of the vast array of services possible in converging environment.

The decision to shift policy must begin with the examination of the prevailing regulatory setup. New policies should take stock of the strengths and weaknesses of the industry's implementing agencies, but must not be limited by them.

The Philippines is open to new challenges and looks forward to building a Philippine Information Infrastructure by the 21st Century.

Whether our current laws governing NTC's regulatory rules and regulations, in the New Media Environment, are adequate is an obviously legitimate question. Having informed you of what is obtaining in the Philippines in this
Environment and what we currently have in our inventory of regulatory laws, I earnestly seek your advise and counsel as to what you have in your countries that we can probably adopt. Perhaps through this sharing of information, we can all benefit and improve and upgrade our laws and policies to benefit our countrymen in their employment of this burgeoning Global Information Age.

The convergence of technology creates a powerful system that makes multimedia applications possible. This leads to new services that could radically improve productivity:
1. Techniques and systems of production and distribution in the economic sector
2. Creates better information-based products and services in business
3. Giving way to more affordable products and services which in turn creates an environment where both rich and poor can benefit.

Since the structure resulting from their synergy is different from the sum of its parts, traditional policies that have been proven effective in stimulating the growth of each may no longer be suitable. The government should take on a new approach in regulation aimed at producing an integrated policy for Information Technology, telecommunications.

Developing countries would not be able to enjoy these unless their telecommunications infrastructure, the backbone for the application of a wide range of communication and multimedia services, is improved and policies are drafted to ensure the best phase-in scenario for these new technologies.

Convergence among the telecommunications, media and computing industries bring about a multitude of benefits, but it can also bring regulatory confusion. Now that the information age is upon us, the challenge is for the government to come up with the "right" policies and to implement them at the right time.

The ability of the telecommunications industry to absorb new technologies and use them to provide new services affects the welfare of businesses and consumers. Essentially, these technologies make it possible to provide a service at lower cost. In an environment of open trade and investment, the way for Philippine business to survive and contribute to regional development is to be globally competitive. An important ingredient to this competitiveness is the ability to link with the rest of the world via an efficient
telecommunications system. Thus, policies that not only permit but encourage the efficient use of converging technologies must be studied and drafted tailoring them to the need and peculiarities of Philippine consumers.

In the same way, regulation should be reexamined for the purpose of improving them to meet the challenges of the information age and to ensure that the country is well positioned to take advantage of the opportunities this presents. Success depends on not only the ability to provide equal access to information to people on all levels of society or to link and facilitate growth in regions; it is also critical that users are empowered to take advantage of the vast array of services possible in converging environment.

The Philippines is open to new challenges and looks forward to building a Philippine Information Infrastructure that shall launch the country as a telecommunication hub in the Asia-Pacific Region by the 21st Century.

Whether our current laws governing NTC's regulatory rules and regulations, in the light of the complexities created by the continuing developments in information technology and consequently the New Media Environment, are adequate is an obviously legitimate question. Having informed you of what is obtaining in the Philippines in this Environment and we currently have in our inventory of regulatory laws, I earnestly seek your advise and counsel as to what you have in your countries that we can probably adopt. Perhaps through this sharing of information, we can all benefit and improve and upgrade our laws and policies to benefit our countrymen in their employment of this burgeoning Global Information Age.