

(This is a faithful reproduction, in Microsoft Word, of the document distributed by Fr. Archie Intengan SJ to students of his Sexual Ethics class at the Ateneo College of Theology in late March 2008. This is the white paper distributed by Cerge Remonde to Cardinal Vidal of Cebu)

THE NBN-ZTE CONTROVERSY: A Primer

In sifting through the cacophony of accusations, countercharges, claims, denials, news and commentary regarding the NBN-ZTE controversy, it is essential to keep in mind certain facts and issues, to find truth amid conflicting allegations and hidden agenda.

What is the NBN-ZTE project?

- The national broadband network (NBN) was a project of the Department of Transportation and Communications (DOTe), which contracted the Chinese telecom company ZTE last April as supplier chosen by China under the loan accord for NBN.
- NBN-ZTE would set up a nationwide computer and telecom network linking national government agencies, state corporations and financial institutions, local governments down to 5th and 6th class municipalities, and 23,000 barangay internet centers.
- Before it was canceled last October amid bribery allegations, NBN-ZTE was intended to cut government telecom costs, estimated by the Commission on Audit at P4 billion in 2004 for national agencies alone, with billions more for state firms and local governments, also to be covered by NBN.
- A government-only broadband system would also reduce calls and messages through public telecom networks, which are more prone to security breaches. And NBN-ZTE would bring information services to far-flung villages not served by private networks.

Why was the NBN-ZTE canceled?

- Through unproven, allegations of overpricing and bribery led President Gloria Arroyo to cancel the ZTE contract on October 2, 2007, with not one cent spent on it. She told DOTC to explore other ways to cut telecom costs, working with local firms.
- Overpricing and bribery charges were made mainly by Jose "Joey" de Venecia III, son of then Speaker Jose de Venecia Jr. and failed proponent of a rival broadband proposal from his Amsterdam Holdings Inc. (AHI), which DOTC did not favor.
- Commission on Higher Education Secretary Romulo Neri, former head of the National Economic and Development Authority (NEDA), which evaluated major projects including NBN, also alleged a P200-million bribe offer to approve it.

Was the national broadband project overpriced?

- DOTC and the Commission on Information and Communications Technology (CICT), which first evaluated NBN-ZTE, AHI and a third national broadband proposal, have maintained that NBN-ZTE was the best proposal in design and price.
- Comparing NBN-ZTE's \$329-million cost with Joey de Venecia's \$242-million AHI proposal, it should be noted that AHI would cover only 30% of municipalities up to 2nd and some 3rd class, against all municipalities up to 6th class for NBN-ZTE.

- The actual cost to the government of NBN-ZTE would be about \$247million, which is the value in present-day money of repayments on the loan that would fund NBN, over 20 years at a low 3% interest with nothing to pay in the project's first five years.
- To reach all municipalities, the first ZTE proposal was expanded to 300 base stations from 40, and nearly 26,000 connections from 320. For this 80-fold expansion in facilities, the cost went up by just 25%, to \$329 million from \$262 million originally.
- Joey de Venecia argued that AHI's build-operate-transfer (BOT) project was cheaper because no public funds would be spent on it. But DOTC said the telecom fees that AHI would charge the government were more than the NBN-ZTE loan payments.
- Being a private venture, AHI must make a profit and would use commercial loans costlier than the China loan for NBN-ZTE. Moreover, since AHI would be an open public network, it is less secure than the government-only NBN-ZTE system.
- DOTC found AHI lacking in financial capacity with about \$250,000 capital for its \$242-million project, no technical expertise, and no telecom franchise. ZTE is a global telecom systems giant with huge broadband projects in different countries.
- Joey de Venecia and former broadband project consultant and resigned Philippine Forest Corp. president Rodolfo Lozada Jr. claimed that NBN-ZTE was overpriced to give resigned Comelec Chairman Benjamin Abalos a \$130-million commission.
- No impartial study has been done to assess if NBN-ZTE was overpriced. Neri asked Lozada to do one, but the latter had not done so before he left the project. Joey de Venecia did his own report, with no industry data or supporting documents.

What about bribery?

- Three people linked to the project made bribery allegations, all denied by the accused. a) Losing proponent Joey de Venecia accused Abalos, reputed backer of the winning ZTE project, of offering him \$10 million to withdraw his rival AHI proposal. b) Neri alleged that Abalos told him in a golf cart chat, "Sec. may 200 ka dito," which he believed was a bribe offer of P200 million for NEDA to approve NBN-ZTE. c) Lozada claimed that Abalos told him of the P200-million bribe offer to Neri.
- There is no other direct testimony of payoffs offered, sought or received. Amid the bribery allegations and a looming impeachment, Abalos quit as Comelec Chairman on October 1, 2007. No non-partisan body has verified the accusations or subjected the accusers to cross-examination. Nor has any documentary proof of bribery been given.

Are there national leaders mentioned in the controversy?

- DOTC Secretary Leandro Mendoza said Speaker de Venecia asked him to meetings at his home, where his son lobbied for AHI. The Speaker admitted advocating a BOT mode for the broadband project. In his petition against the Speaker dismissed by the House, Atty. Roel Pulido cited Joey de Venecia's lobbying as violating the Constitution's ban on close relatives of high officials seeking government contracts.
- In his first Senate hearing, Joey de Venecia accused the First Gentleman (FG) of telling him to "back off" the broadband project. Weeks later, he claimed that tycoon Enrique Razon said FG would get payoff. FG and Razon denied these accusations.

- Lozada said Abalos spoke on the phone about NBN to someone who he said was Mike Arroyo, but Lozada did not hear the voice on the phone. FG denied involvement in NBN-ZTE, and DOTC and CICT officials said he never contacted them about it.
- Neri said he told the President about Abalos's apparent bribe offer. She instructed him to reject it, but continue evaluating the project. The Palace said she also ordered a discreet investigation of the bribery claim, which found no corroborating evidence. (A full probe would have put undue pressure on the Comelec head in an election year.)
- Lozada said Neri told him that the President removed water and housing from China loan projects to accommodate NBN. In fact, housing agencies did not use China funds because the interest rate would have increased their low mortgage charge. And the Laiban bulk water project for Metro Manila is still under evaluation.
- Joey de Venecia and Lozada have presented no evidence to corroborate their hearsay testimonies, and have yet to face cross-examination in a non-partisan judicial inquiry.

Is the government withholding information?

- The government says it has provided as much information as it can without violating laws and proprietary rights. DOTC even ran newspaper ads and was sued by the opposition for discussing the subject of its High Court petition to void the ZTE deal.
- Due to the opposition suit, the government was reluctant to discuss the project even in Congress, and the opposition repeatedly accused it of hiding the truth. Eventually, Neri, Mendoza, former CICT chairman Ramon Sales, and Budget Secretary Rolando Andaya appeared in marathon Senate hearings, plus an executive session with Neri.
- Executive privilege and proprietary rights restricted some of the information from the government. As the Senate refused to do for its own executive session with Neri, the government does not disclose confidential discussions of the President and the Cabinet. This executive privilege also cloaks Supreme Court deliberations and Congress executive sessions, to allow full, free and unfettered discussions in shaping policies, laws and rulings. Such secrecy is lifted only when there is solid evidence of wrongdoing. In the Estrada plunder trial, presidential instructions to SSS and GSIS were revealed, but only after there were verified deposits of illicit stock commissions.
- Executive privilege was invoked for Neri's discussions with the President on NBN, and minutes of Cabinet-level meetings on it. Sen. Jamby Madrigal asked Neri if secrecy should be used to hide high crimes; Neri said he was not hiding high crimes.
- DOTC gave the Senate copies of the ZTE contract, including annexes containing proprietary information from the company, and the itemized list of all equipment to be purchased with quantities and unit prices. Despite ZTE's fears of its technology being disclosed, the Senate made those annexes public with the rest of the documents.

Was Lozada protected or abducted?

- There are two conflicting accounts of Lozada's trip abroad and return. One account, which some of Lozada's own statements affirm, is that he did not want to testify in the Senate due to death threats, and sought government help to legally avoid it. He went abroad on an official trip planned before the Senate's arrest order, and faxed a letter to Senator Juan Ponce Emile for the order to be lifted. He was provided security upon his return, requested by his direct superior, Environment Secretary Lito Atienza, his sister Carmen, and himself. At his request, his escort brought him to

La Salle Greenhills, where his family saw him hours after his arrival on Feb. 5. The next day, with a private lawyer, he made an affidavit to limit his testimony to technical matters.

- However, in his Feb. 7 early morning press conference and his Senate testimony the next day, Lozada said Atienza, Palace officials, and former Presidential Chief of Staff Michael Defensor tried to stop or restrict his testimony. He and his family claimed that military and police abducted him upon arrival and held him against his will. He said the government made him do a letter and an affidavit limiting his testimony. He added that police forced him and his sister Carmen to sign requests for security.
- A thorough, unbiased inquiry and due process can help show which account is true. But even now, there is one indisputable fact, which Lozada himself has confirmed: he was brought by his escorts to La Salle at his request in the evening of Feb. 5, and his family saw him there that same night. Yet the family loudly proclaimed in media the next day that they could not find Lozada, and accused the PNP of kidnapping. They even petitioned the Supreme Court for writs of habeas corpus and amparo, demanding that the police produce Lozada. Some commentators now wonder if the family maligned the PNP to get back at it for the police killings of Lozada's brother in 2001, and to make the public pity him and accept his testimony even without proof.

What next for the NBN-ZTE controversy?

- Besides Abalos, the Senate may look into the de Venecias' involvement in NBN as well as Northrail and other China projects cited by Lozada. Sen. Emile once related that the former Speaker had asked him to let the Northrail project proceed.
- The Senate committee report on the aborted project may include proposed bills and recommendations for further investigation and prosecution by an impartial body.
- The Ombudsman can use the findings in probing the complaint filed last August against Abalos by opposition Congressman Carlos Padilla, over the project.
- As the President ordered last week, the Department of Justice will probe individuals with possible criminal liability in NBN-ZTE. DOJ expects to begin hearings using the transcript of Lozada's testimony and the Senate committee report.
- In weighing the highly politicized NBN-ZTE issue, rule of law and careful assessment of hard evidence by non-partisan bodies, are crucial. Revered legal luminary Jovito Salonga has called for charges to be filed in court. Let due process now shed light on NBN-ZTE.