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[G.R. No. 88404. October 18, 1990]

PHILIPPINE LONG DISTANCE TELEPHONE CO. [PLDT], *petitioner, vs.* **THE NATIONAL TELECOMMUNICATIONS COMMISSION and CELLCOM, INC., (EXPRESS TELECOMMUNICATIONS CO., INC. [ETCI]),** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; PUBLIC SERVICE ACT; NATIONAL TELECOMMUNICATIONS COMMISSION; JURISDICTION.** — There can be no question that the NTC is the regulatory agency of the national government with jurisdiction over all telecommunications entities. It is legally clothed with authority and given ample discretion to grant a provisional permit or authority. In fact, NTC may, on its own initiative, grant such relief even in the absence of a motion from an applicant. "Sec. 3. Provisional Relief. — Upon the filing of an application, complaint or petition or at any stage thereafter, the Board may grant on motion of the pleaders or on its own initiative, the relief prayed for, based on the pleading, together with the affidavits and supporting documents attached thereto, without prejudice to a final decision after completion of the hearing which shall be called within thirty (30) days from grant of authority asked for." What the NTC granted was such a provisional authority, with a definite expiry period of eighteen (18) months unless sooner renewed, and which may be revoked, amended or revised by the NTC. It is also limited to Metro Manila only. What is more, the main proceedings are clearly to continue as stated in the NTC Order of 8 May 1989. The provisional authority was issued after due hearing, reception of evidence and evaluation thereof, with the hearings attended by various oppositors, *including PLDT. It was granted only* after a *prima facie* showing that ETCI has the necessary legal, financial and technical capabilities and that public interest, convenience and necessity so demanded.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FACTUAL ISSUES ARE NOT PROPER SUBJECTS OF A**

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SPECIAL CIVIL ACTION FOR *CERTIORARI*. — Factual issues are not subjects of a special civil action for *Certiorari*.

3. **ID.; ID.; *QUO WARRANTO*; MAY BE AVAILED OF TO DETERMINE THE RIGHT TO THE EXERCISE OF A FRANCHISE, OR WHETHER THE RIGHT TO ENJOY SUCH PRIVILEGE HAS BEEN FORFEITED BY NON-USER.** — A franchise is a property right and cannot be revoked or forfeited without due process of law. The determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State "upon complaint or otherwise," the reason being that the abuse of a franchise is a public wrong and not a private injury. A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government. "A . . . franchise is . . . granted by law, and its . . . unlawful exercise is the concern primarily of the Government. Hence, the latter as a rule is the party called upon to bring the action for such . . . unlawful exercise of . . . franchise."

4. **MERCANTILE LAW; PUBLIC SERVICE ACT; PUBLIC UTILITIES; TRANSFERS OF SHARES OF A PUBLIC UTILITY CORPORATION NEED ONLY THE NATIONAL TELECOMMUNICATIONS COMMISSION APPROVAL, NOT CONGRESSIONAL AUTHORIZATION.** — The sale of shares of stock of a public utility is governed by another law, *i.e.*, Section 20(h) of the Public Service Act (Commonwealth Act No. 146). Pursuant thereto, the Public Service Commission (now the NTC) is the government agency vested with the authority to approve the transfer of more than 40% of the subscribed capital stock of a telecommunications company to a single transferee, thus: SEC. 20. Acts requiring the approval of the Commission. Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had — x x x (h) To sell or register in its books the transfer or sale of shares of its capital stock, if the result of that sale in itself or in connection with another previous sale, shall be to vest in the transferee more than forty per centum

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of the subscribed capital of said public service. Any transfer made in violation of this provision shall be void and of no effect and shall not be registered in the books of the public service corporation. Nothing herein contained shall be construed to prevent the holding of shares lawfully acquired. In other words, transfers of shares of a public utility corporation need only NTC approval, not Congressional authorization.

5. **ID.; ID.; ID.; SHARES OF STOCKS AND FRANCHISE, DISTINGUISHED.** — A distinction should be made between shares of stock, which are owned by stockholders, the sale of which requires only NTC approval, and the franchise itself which is owned by the corporation as the grantee thereof, the sale or transfer of which requires Congressional sanction. Since stockholders own the shares of stock, they may dispose of the same as they see fit. They may not, however, transfer or assign the property of a corporation, like its franchise. In other words, even if the original stockholders had transferred their shares to another group of shareholders, the franchise granted to the corporation subsists as long as the corporation, as an entity, continues to exist. The franchise is not thereby invalidated by the transfer of the shares. A corporation has a personality separate and distinct from that of each stockholder. It has the right of continuity or perpetual succession.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; INHERENT POWERS OF THE STATE; POLICE POWER; THE REGULATION OF THE USE AND OWNERSHIP OF TELECOMMUNICATIONS SYSTEMS IS IN THE EXERCISE OF THE PLENARY POLICE POWER OF THE STATE FOR THE PROMOTION OF THE GENERAL WELFARE.** — Rep. Act No. 6849, or the Municipal Telephone Act of 1989, approved on 8 February 1990, mandates interconnection providing as it does that "all domestic telecommunications carriers or *utilities x x x shall be* interconnected to the public switch telephone network." Such regulation of the use and ownership of telecommunications systems is in the exercise of the plenary police power of the State for the promotion of the general welfare. The 1987 Constitution recognizes the existence of that power when it provides: "SEC. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations,

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cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands." The interconnection which has been required of PLDT is a form of "intervention" with property rights 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.*" 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.

CRUZ, *J., concurring and dissenting*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; VIOLATED WHERE PRIVATE PROPERTY IS TAKEN BY THE GOVERNMENT FROM ONE PRIVATE PERSON AND GIVEN TO ANOTHER PRIVATE PERSON FOR THE LATTER'S DIRECT BENEFIT. — I feel there is no due process where private property is taken by the Government from one private person and given to another private person for the latter's direct benefit. The fact that compensation is paid is immaterial; the flaw lies in the taking itself. The circumstance that PLDT is a public utility is no warrant for taking undue liberties with its property, which is protected by the Bill of Rights. "Public need" cannot be a blanket justification for favoring one investor against another in contravention of the system of free enterprise. If PLDT has misused its franchise, I should think the solution is to revoke its authority, not to force it to share its resources with its private competitors.

2. ID.; ID.; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; EXERCISE THEREOF BY THE LEGISLATURE AND BY A DELEGATE OF THE

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LEGISLATURE, DISTINGUISHED. — The rule is that where it is the legislature itself that directly calls for the expropriation of private property, its determination of the thing to be condemned and the purpose of the taking is conclusive on the courts. But where the power of eminent domain is exercised only by a delegate of the legislature, like ETCI, the courts may inquire into the necessity or propriety of the expropriation and, when warranted, pronounce its invalidity. I think this is what the Court should do in the case at bar.

GUTIERREZ, JR., *J., dissenting*:

1. **MERCANTILE LAW; PUBLIC SERVICE ACT; NATIONAL TELECOMMUNICATIONS COMMISSION; CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; ISSUED IN CASE AT BAR.** — I agree with the petitioner that what NTC granted is not merely provisional authority but what is in effect a regular certificate of public convenience and necessity or "CPCN." Starting with seven cell sites for 3,000 subscribers in Metro Manila, the cellular mobile system will establish 67 cell sites beginning October 1991. The initial expenses alone will amount to ₱130 million. At page 8 of its Comment, ETCI admits that "the provisional authority to operate will be *useless to ETCI* if it does not put up the system and interconnect said system with the existing PLDT network." The completion of interconnection arrangements, the setting up of expensive installations, the requirements as to maintenance and operation, and other conditions found in the NTC order are anything but provisional. The authority given to ETCI is entirely different from the provisional authority given to MERALCO or oil companies to increase the price of oil or electricity or to bus and jeepney operators to raise fares a few centavos. In these cases, the need for increases is not only urgent but is usually a foregone conclusion dictated by pressing circumstances. Further hearings are needed only to fix the amount which will be finally authorized. The NTC orders can also be easily revoked. Increased prices of oil or rates of transportation services can be lowered or struck down if the preliminary determinations are wrong. In the instant case, NTC has authorized a new company to start operations even if the issues have not been thoroughly threshed out. There is no urgent need which warrants operations before a final permit is granted. Once in

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operation, there can be no cancelling or revocation of the authority to operate, no dismantling of thousands of cellular phones and throwing to waste of over ₱100 million worth of investments in fixed facilities. Theoretically, it can be done but it is clear from the records that what was granted is really a CPCN.

2. **POLITICAL LAW; NATIONAL ECONONY AND PATRIMONY; A LEGISLATIVE FRANCHISE NECESSARY FOR THE OPERATION OF A TELEPHONE SYSTEM IS GRANTED ONLY BY CONGRESS.** — A legislative franchise is necessary for the operation of a telephone system. The NTC has no jurisdiction to grant the authority. The fact that ETCI has to rely on a 1958 legislative franchise shows that only Congress can give the franchise which will empower NTC to issue the certificate or CPCN.

3. **MERCANTILE LAW; PUBLIC SERVICE ACT; REPUBLIC ACT NO. 2090; PROHIBITS THE TRANSFER OF THE FRANCHISE AND THE RIGHTS AND PRIVILEGES UNDER THE FRANCHISE WITHOUT THE EXPRESS APPROVAL OF CONGRESS.** — Section 10 of Rep. Act No. 2090 prohibits the transfer of the franchise and the rights and privileges under that franchise without the express approval of Congress. No amount of legal niceties can cloak the fact that ETCI is not FACI, that the franchise was sold by FACI to ETCI, and that the permit given by NTC to ETCI is based on a purchased franchise. When the owners of FACI sold out their stocks, the 3,900 shares were on paper worth only 35 centavos each. The company had no assets and physical properties. All it had was the franchise, for whatever it was worth. The buyers paid ₱4,618,185.00 for the company's stocks, almost all of the amount intended for the franchise. It was, therefore, a sale or transfer of the franchise in violation of the express terms of Rep. Act No. 2090 which call for approval by Congress.

APPEARANCES OF COUNSEL

Alampan & Manhit Law Offices for petitioner.
Gozon, Fernandez, Defensor & Parel for private respondent.

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DECISION

MELENCIO-HERRERA, *J.*:

Petitioner Philippine Long Distance Telephone Company (PLDT) assails, by way of *Certiorari* and Prohibition under Rule 65, two (2) Orders of public respondent National Telecommunications Commission (NTC), namely, the Order of 12 December 1988 granting private respondent Express Telecommunications Co., Inc. (ETCI) provisional authority to install, operate and maintain a Cellular Mobile Telephone System in Metro-Manila (Phase A) in accordance with specified conditions, and the Order, dated 8 May 1988, denying reconsideration.

On 22 June 1958, Rep. Act No. 2090, was enacted, otherwise known as "An Act Granting Felix Alberto and Company, *Incorporated, a Franchise to Establish Radio Stations for* Domestic and Transoceanic Telecommunications." Felix Alberto & Co., Inc. (FACI) was the original corporate name, which was changed to ETCI with the amendment of the Articles of Incorporation in 1964. Much later, "CELLCOM, Inc." was the name sought to be adopted before the Securities and Exchange *Commission, but this was withdrawn and abandoned.*

On 13 May 1987, alleging urgent public need, ETCI filed an application with public respondent NTC (docketed as NTC Case No. 87-39) for the issuance of a Certificate of Public Convenience and Necessity (CPCN) to construct, install, establish, operate and maintain a Cellular Mobile Telephone System and an Alpha Numeric Paging System in Metro Manila and in the Southern Luzon regions, with a prayer for provisional authority to operate Phase A of its proposal within Metro Manila.

PLDT filed an Opposition with a Motion to Dismiss, based primarily on the following grounds: (1) ETCI is not capacitated or *qualified under its legislative franchise to operate a system*-wide telephone or network of telephone service such as the one proposed in its application; (2) ETCI lacks the facilities needed and indispensable to the successful operation of the

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proposed cellular mobile telephone system; (3) PLDT has itself a pending application with NTC, Case No. 86-86, to install and operate a Cellular Mobile Telephone System for domestic and international service not only in Manila but also in the provinces and that under the "prior operator" or "protection of investment" doctrine, PLDT has the priority or preference in the operation of such service; and (4) the provisional authority, if granted, will result in needless, uneconomical and harmful duplication, among others.

In an Order, dated 12 November 1987, NTC overruled PLDT's Opposition and declared that Rep. Act No. 2090 (1958) should be liberally construed as to include among the services under said franchise the operation of a cellular mobile telephone service.

In the same Order, ETCI was required to submit the certificate of registration of its Articles of Incorporation with the Securities and Exchange Commission, the present capital and ownership structure of the company and such other evidence, oral or documentary, as may be necessary to prove its legal, financial and technical capabilities as well as the economic justifications to warrant the setting up of cellular mobile telephone and paging systems. The continuance of the hearings was also directed.

After evaluating the reconsideration sought by PLDT, the NTC, in October 1988, maintained its ruling that liberally construed, applicant's franchise carries with it the privilege to operate and maintain a cellular mobile telephone service.

On 12 December 1988, NTC issued the first challenged Order. Opining that "public interest, convenience and necessity further demand a second cellular mobile telephone service provider and finds *PRIMA FACIE* evidence showing applicant's legal, financial and technical capabilities to provide a cellular mobile service using the AMPS system," NTC granted ETCI provisional authority to install, operate and maintain a cellular mobile telephone system initially in Metro Manila, Phase A only, subject to the terms and conditions set forth in the same Order. One of the conditions prescribed (Condition No. 5) was that, within ninety (90) days from date of the acceptance by ETCI of the terms

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and conditions of the provisional authority, ETCI and PLDT "shall enter into an interconnection agreement for the provision of adequate interconnection facilities between applicant's cellular mobile telephone switch and the public switched telephone network and shall jointly submit such interconnection agreement to the Commission for approval."

In a "Motion to Set Aside the Order" granting provisional authority, PLDT alleged essentially that the interconnection ordered was in violation of due process and that the grant of provisional authority was jurisdictionally and procedurally infirm. On 8 May 1989, NTC denied reconsideration and set the date for continuation of the hearings on the main proceedings. This is the second questioned Order.

PLDT urges us now to annul the NTC Orders of 12 December 1988 and 8 May 1989 and to order ETCI to desist from, suspend, and/or discontinue any and all acts intended for its implementation.

On 15 June 1989, we resolved to dismiss the petition for its failure to comply fully with the requirements of Circular No. 1-88. Upon satisfactory showing, however, that there was, in fact, such compliance, we reconsidered the order, reinstated the Petition, and required the respondents NTC and ETCI to submit their respective Comments.

On 27 February 1990, we issued a Temporary Restraining Order enjoining NTC to "Cease and Desist from all or any of its on-going proceedings and ETCI from continuing any and all acts intended or related to or which will amount to the implementation/execution of its provisional authority." This was upon PLDT's urgent manifestation that it had been served an NTC Order, dated 14 February 1990, directing immediate compliance with its Order of 12 December 1988, "otherwise the Commission shall be constrained to take the necessary measures and bring to bear upon PLDT the full sanctions provided by law."

We required PLDT to post a bond of ₱5M. It has complied, with the statement that it was "post(ing) the same on its agreement and/or consent to have the same forfeited in favor

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of Private Respondent ETCI/CELLCOM should the instant Petition be dismissed for lack of merit." ETCI took exception to the sufficiency of the bond considering its initial investment of approximately ₱225M, but accepted the forfeiture proferred.

ETCI moved to have the TRO lifted, which we denied on 6 March 1990. We stated, however, that the inaugural ceremony ETCI had scheduled for that day could proceed, as the same was not covered by the TRO.

PLDT relies on the following grounds for the issuance of the Writs prayed for:

"1. Respondent NTC's subject order effectively licensed and/or authorized a corporate entity without any franchise to operate a public utility, legislative or otherwise, to establish and operate a telecommunications system.

"2. The same order validated stock transactions of a public service enterprise contrary to and/or in direct violation of Section 20(h) of the Public Service Act.

"3. Respondent NTC adjudicated in the same order a controverted matter that was not heard at all in the proceedings under which it was promulgated."

As correctly pointed out by respondents, this being a special civil action for *Certiorari* and Prohibition, we only need to determine if NTC acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in granting provisional authority to ETCI under the NTC questioned Orders of 12 December 1988 and 8 May 1989.

The case was set for oral argument on 21 August 1990 with the parties directed to address, but not limited to, the following issues: (1) the status and coverage of Rep. Act No. 2090 as a franchise; (2) the transfer of shares of stock of a corporation holding a CPCN; and (3) the principle and procedure of interconnection. The parties were thereafter required to submit their respective Memoranda, with which they have complied.

We find no grave abuse of discretion on the part of NTC, upon the following considerations:

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1. *NTC Jurisdiction*

There can be no question that the NTC is the regulatory agency of the national government with jurisdiction over all telecommunications entities. It is legally clothed with authority and given ample discretion to grant a provisional permit or authority. In fact, NTC may, on its own initiative, grant such relief even in the absence of a motion from an applicant.

"Sec. 3. Provisional Relief. — Upon the filing of an application, complaint or petition or at any stage thereafter, the Board may grant on motion of the pleaders or on its own initiative, the relief prayed for, based on the pleading, together with the affidavits and supporting documents attached thereto, without prejudice to a final decision after completion of the hearing which shall be called within thirty (30) days from grant of authority asked for." (Rule 15, Rules of Practice and Procedure Before the Board of Communications (now NTC).

What the NTC granted was such a provisional authority, with a definite expiry period of eighteen (18) months unless sooner renewed, and which may be revoked, amended or revised by the NTC. It is also limited to Metro Manila only. What is more, the main proceedings are clearly to continue as stated in the NTC Order of 8 May 1989.

The provisional authority was issued after due hearing, reception of evidence and evaluation thereof, with the hearings attended by various oppositors, including PLDT. It was granted only after a *prima facie* showing that ETCI has the necessary legal, financial and technical capabilities and that public interest, convenience and necessity so demanded.

PLDT argues, however, that a provisional authority is nothing short of a Certificate of Public Convenience and Necessity (CPCN) and that it is merely a "distinction without a difference." That is not so. Basic differences do exist, which need not be elaborated on. What should be borne in mind is that provisional authority would be meaningless if the grantee were not allowed to operate. Moreover, it is clear from the very Order of 12 December 1988 itself that its scope is limited only to the first phase, out of four, of the proposed nationwide telephone system.

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The installation and operation of an alpha numeric paging system was not authorized. The provisional authority is not exclusive. Its lifetime is limited and may be revoked by the NTC at any time in accordance with law. The initial expenditure of ₱130M more or less, is rendered necessary even under a provisional authority to enable ETCI to prove its capability. And as pointed out by the Solicitor General, on behalf of the NTC, if what had been granted were a CPCN, it would constitute a final order or award reviewable only by ordinary appeal to the Court of Appeals pursuant to Section 9(3) of B.P. Blg. 129, and not by *Certiorari* before this Court.

The final outcome of the application rests within the exclusive prerogative of the NTC. Whether or not a CPCN would eventually issue would depend on the evidence to be presented during the hearings still to be conducted, and only after a full evaluation of the proof thus presented.

2. *The Coverage of ETCI's Franchise*

Rep. Act No. 2090 grants ETCI (formerly FACI) "the right and privilege of constructing, installing, establishing and operating in the entire Philippines radio stations for *reception and transmission of messages* on radio stations in the foreign and domestic public fixed point-to-point and public base, aeronautical and *land mobile stations*, x x x with the corresponding relay stations *for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony* x x x." PLDT maintains that the scope of the franchise is limited to "radio stations" and excludes telephone services such as the establishment of the proposed Cellular Mobile Telephone System (CMTS). However, in its Order of 12 November 1987, the NTC construed the technical term "radiotelephony" liberally as to include the operation of a cellular mobile telephone system. It said:

"In resolving the said issue, the Commission takes into consideration the different definitions of the term "radiotelephony." As defined by the New International Webster Dictionary the term "radiotelephony" is defined as a telephony carried on by aid of radiowaves without connecting wires. The International Telecommunications Union (ITU) defines a "radiotelephone call" as

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a "telephone call, originating in or intended on all or part of its route over the radio communications channels of the mobile service or of the mobile satellite service." From the above definitions, while under Republic Act 2090 a system-wide telephone or network of telephone service by means of connecting wires may not have been contemplated, it can be construed liberally that the operation of a cellular mobile telephone service which carries messages, either voice or record, with the aid of radiowaves or a part of its route carried over radio communication channels, is one included among the services under said franchise for which a certificate of public convenience and necessity may be applied for."

The foregoing is the construction given by an administrative agency possessed of the necessary special knowledge, expertise and experience and deserves great weight and respect (*Asturias Sugar Central, Inc. v. Commissioner of Customs, et al.*, L-19337, September 30, 1969, 29 SCRA 617). It can only be set aside on proof of gross abuse of discretion, fraud, or error of law (*Tupas Local Chapter No. 979 v. NLRC, et al.*, Nos. 60532-33, November 5, 1985, 139 SCRA 478). We discern none of those considerations sufficient to warrant judicial intervention.

3. *The Status of ETCI's Franchise*

PLDT alleges that the ETCI franchise had lapsed into non-existence for failure of the franchise holder to begin and complete construction of the radio system authorized under the franchise as explicitly required in Section 4 of its franchise, Rep. Act No. 2090.[1] PLDT also invokes Pres. Decree No. 36, enacted on 2 November 1972, which legislates the mandatory cancellation or invalidation of all franchises for the operation of communications services, which have not been availed of or used by the party or parties in whose name they were issued.

However, whether or not ETCI, and before it FACI, in contravention of its franchise, started the first of its radio

[1] SEC. 4. This franchise shall continue for a period of fifty years from the date the first of said stations shall be placed in operation, and is granted upon the express condition that same shall be void unless the construction of said station be begun within two years from the date of the approval of this Act and be completed within ten years from said date.

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telecommunication stations within (2) years from the grant of its franchise and completed the construction within ten (10) years from said date; and whether or not its franchise had remained unused from the time of its issuance, are questions of fact beyond the province of this Court, besides the well-settled procedural consideration that factual issues are not subjects of a special civil action for *Certiorari* (*Central Bank of the Philippines vs. Court of Appeals*, G.R. No. 41859, 8 March 1989, 171 SCRA 49; *Ygay vs. Escareal*, G.R. No. 44189, 8 February 1985, 135 SCRA 78; *Filipino Merchant's Insurance Co., Inc. vs. Intermediate Appellate Court*, G.R. No. 71640, 27 June 1988, 162 SCRA 669). Moreover, neither Section 4, Rep. Act No. 2090 nor Pres. Decree No. 36 should be construed as self-executing in working a forfeiture. Franchise holders should be given an opportunity to be heard, particularly so, where, as in this case, ETCI does not admit any breach, in consonance with the rudiments of fair play. Thus, the factual situation of this case differs from that in *Angeles Ry Co. vs. City of Los Angeles* (92 Pacific Reporter 490) cited by PLDT, where the grantee therein admitted its failure to complete the conditions of its franchise and yet insisted on a decree of forfeiture.

More importantly, PLDT's allegation partakes of a collateral attack on a franchise (Rep. Act No. 2090), which is not allowed. A franchise is a property right and cannot be revoked or forfeited without due process of law. The determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State "upon complaint or otherwise" (Sections 1, 2 and 3, Rule 66, Rules of Court),[2]

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[2] SECTION 1. Action by Government against individuals. — An action for the usurpation of office or franchise may be brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, or a franchise, or an office in a corporation created by authority of law;

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the reason being that the abuse of a franchise is a public wrong and not a private injury. A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government.

"A . . . franchise is . . . granted by law, and its . . . unlawful exercise is the concern primarily of the Government. Hence, the latter as a rule is the party called upon to bring the action for such . . . unlawful exercise of . . . franchise." (IV-B V. FRANCISCO, 298 [1963 ed.], citing *Cruz vs. Ramos*, 84 Phil. 226).

4. *ETCI's Stock Transactions*

ETCI admits that in 1964, the Albertos, as original owners of more than 40% of the outstanding capital stock sold their holdings to the Orbes. In 1968, the Albertos re-acquired the shares they had sold to the Orbes. In 1987, the Albertos sold more than 40% of their shares to Horacio Yalung. Thereafter, the present stockholders acquired their ETCI shares. Moreover, in 1964, ETCI had increased its capital stock from ₱40,000.00 to ₱360,000.00; and in 1987, from ₱360,000.00 to ₱40M.

PLDT contends that the transfers in 1987 of the shares of stock to the new stockholders amount to a transfer of ETCI's

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SECTION 2. Like actions against corporations — A like action may be brought against a corporation:

(a) When it has offended against a provision of an Act for its creation or renewal;

(b) When it has forfeited its privileges and franchises by non-user;

(c) When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, or franchises;

(d) When it has misused a right, privilege, or franchise conferred upon it by law, or when it has exercised a right, privilege, or franchise in contravention of law.

SECTION 3. When Solicitor General or fiscal must commence action. — The Solicitor General or a fiscal, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the last two preceding sections can be established by proof, must commence such action.

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franchise, which needs Congressional approval pursuant to Rep. Act No. 2090, and since such approval had not been obtained, *ETCI's franchise had been invalidated. The provision relied* on reads, in part, as follows:

SECTION 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. x x x."

It should be noted, however, that the foregoing provision is, directed to the "grantee" of the franchise, which is the corporation itself and refers to a sale, lease, or assignment of that franchise. It does not include the transfer or sale of shares of stock of a corporation by the latter's stockholders.

The sale of shares of stock of a public utility is governed by another law, *i.e.*, Section 20(h) of the Public Service Act (Commonwealth Act No. 146). Pursuant thereto, the Public Service Commission (now the NTC) is the government agency vested with the authority to approve the transfer of more than 40% of the subscribed capital stock of a telecommunications company to a single transferee, thus:

SEC. 20. Acts requiring the approval of the Commission. Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had —

xxx xxx xxx

(h) To sell or register in its books the transfer or sale of shares of its capital stock, if the result of that sale in itself or in connection with another previous sale, shall be to vest in the transferee more than forty per centum of the subscribed capital of said public service. Any transfer made in violation of this provision shall be void and of no effect and shall not be registered in the books of the public service corporation. Nothing herein contained shall be construed to prevent the holding of shares lawfully acquired. (As amended by Com. Act No. 454)."

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In other words, transfers of shares of a public utility corporation need only NTC approval, not Congressional authorization. What transpired in ETCI were a series of transfers of shares starting in 1964 until 1987. The approval of the NTC may be deemed to have been met when it authorized the issuance of the provisional authority to ETCI. There was full disclosure before the NTC of the transfers. In fact, the NTC Order of 12 November 1987 required ETCI to submit its "present capital and ownership structure." Further, ETCI even filed a Motion before the NTC, dated 8 December 1987, or more than a year prior to the grant of provisional authority, seeking approval of the increase in its capital stock from ₱360,000.00 to ₱40M, and the stock transfers made by its stockholders.

A distinction should be made between shares of stock, which are owned by stockholders, the sale of which requires only NTC approval, and the franchise itself which is owned by the corporation as the grantee thereof, the sale or transfer of which requires Congressional sanction. Since stockholders own the shares of stock, they may dispose of the same as they see fit. They may not, however, transfer or assign the property of a corporation, like its franchise. In other words, even if the original stockholders had transferred their shares to another group of shareholders, the franchise granted to the corporation subsists as long as the corporation, as an entity, continues to exist. The franchise is not thereby invalidated by the transfer of the shares. A corporation has a personality separate and distinct from that of each stockholder. It has the right of continuity or perpetual succession (Corporation Code, Sec. 2).

To all appearances, the stock transfers were not just for the purpose of acquiring the ETCI franchise, considering that, as heretofore stated, a series of transfers was involved from 1964 to 1987. And, contrary to PLDT's assertion, the franchise was not the only property of ETCI of meaningful value. The "zero" book value of ETCI assets, as reflected in its balance sheet, was plausibly explained as due to the accumulated depreciation over the years entered for accounting purposes and was not reflective of the actual value that those assets would command in the market.

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But again, whether ETCI has offended against a provision of its franchise, or has subjected it to misuse or abuse, may more properly be inquired into in *quo warranto* proceedings instituted by the State. It is the condition of every franchise that it is subject to amendment, alteration, or repeal when the common good so requires (1987 Constitution, Article XII, Section 11).

5. *The NTC Interconnection Order*

In the provisional authority granted by NTC to ETCI, one of the conditions imposed was that the latter and PLDT were to enter into an interconnection agreement to be jointly submitted to NTC for approval.

PLDT vehemently opposes interconnection with its own public switched telephone network. It contends: that while PLDT welcomes interconnections in the furtherance of public interest, only parties who can establish that they have valid and subsisting legislative franchises are entitled to apply for a CPCN or provisional authority, absent which, NTC has no jurisdiction to grant them the CPCN or interconnection with PLDT; that the 73 telephone systems operating all over the Philippines have a viability and feasibility independent of any interconnection with PLDT; that "the NTC is not empowered to compel such a private raid on PLDT's legitimate income arising out of its gigantic investment"; that "it is not public interest, but purely a private and selfish interest which will be served by an interconnection under ETCI's terms"; and that "to compel PLDT to interconnect merely to give viability to a prospective competitor, which cannot stand on its own feet, cannot be justified in the name of a non-existent public need" (PLDT Memorandum, pp. 48 and 50).

PLDT cannot justifiably refuse to interconnect.

Rep. Act No. 6849, or the Municipal Telephone Act of 1989, approved on 8 February 1990, mandates interconnection providing as it does that "all domestic telecommunications carriers or utilities x x x shall be interconnected to the public switch telephone network." Such regulation of the use and ownership of telecommunications systems is in the exercise of the plenary

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police power of the State for the promotion of the general welfare. The 1987 Constitution recognizes the existence of that power when it provides:

"SEC. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands" (Article XII).

The interconnection which has been required of PLDT is a form of "intervention" with property rights 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.

The importance and emphasis given to interconnection dates back to Ministry Circular No. 82-81, dated 6 December 1982, providing:

"Sec. 1. That the government encourages the provision and operation of public mobile telephone service within local sub-base stations, particularly, in the highly commercialized areas;

"Sec. 5. That, in the event the authority to operate said service be granted to other applicants, other than the franchise holder, the franchise operator shall be under obligation to enter into an agreement with the domestic telephone network, under an interconnection agreement";

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Department of Transportation and Communication (DOTC) Circular No. 87-188, issued in 1987, also decrees:

"12. All public communications carriers shall interconnect their facilities pursuant to comparatively efficient interconnection (CEI) as defined by the NTC in the interest of economic efficiency."

The sharing of revenue was an additional feature considered in DOTC Circular No. 90-248, dated 14 June 1990, laying down the "Policy on Interconnection and Revenue Sharing by Public Communications Carriers," thus:

"WHEREAS, it is the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines;

"WHEREAS, there is a need to maximize the use of telecommunications facilities available and encourage investment in telecommunications infrastructure by suitably qualified service providers;

"WHEREAS, in recognition of the vital role of communications in nation building, there is a need 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.

"WHEREFORE, xxx the following Department policies on interconnection and revenue sharing are hereby promulgated:

1. All facilities offering public telecommunication services shall be interconnected into the nationwide telecommunications network/s,

xxx xxx xxx

4. The interconnection of networks shall be effected in a fair and non-discriminatory manner and within the shortest timeframe practicable.

5. The precise points of interface between service operators shall be as defined by the NTC; and the apportionment of costs and division of revenues resulting from interconnection of telecommunications networks shall be as approved and/or prescribed by the NTC.

x x x x x x x x x"

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Since then, the NTC, on 12 July 1990, issued Memorandum Circular No. 7-13-90 prescribing the "Rules and Regulations Governing the Interconnection of Local Telephone Exchanges and Public Calling Offices with the Nationwide Telecommunications Network/s, the Sharing of Revenue Derived Therefrom, and for Other Purposes."

The NTC order to interconnect allows the parties themselves to discuss and agree upon the specific terms and conditions of the interconnection agreement instead of the NTC itself laying down the standards of interconnection which it can very well impose. Thus it is that PLDT cannot justifiably claim denial of due process. It has been heard. It will continue to be heard in the main proceedings. It will surely be heard in the negotiations concerning the interconnection agreement.

As disclosed during the hearing, the interconnection sought by ETCI is by no means a "parasitic dependence" on PLDT. The ETCI system can operate on its own even without interconnection, but it will be limited to its own subscribers. What interconnection seeks to accomplish is to enable the system to reach out to the greatest number of people possible in line with governmental policies laid down. Cellular phones can access PLDT units and vice versa in as wide an area as attainable. With the broader reach, public interest and convenience will be better served. To be sure, ETCI could provide no mean competition (although PLDT maintains that it has nothing to fear from the "innocuous interconnection"), and eat into PLDT's own toll revenue ("cream PLDT revenue," in its own words), but all for the eventual benefit of all that the system can reach.

6. *Ultimate Considerations*

The decisive considerations are public need, public interest, and the common good. Those were the overriding factors which motivated NTC in granting provisional authority to ETCI. 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,

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Section 10, *ibid.*). 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 national interests, public utility companies must bow and yield.

Despite the fact that there is a virtual monopoly of the telephone system in the country at present, service is sadly inadequate. Customer demands are hardly met, whether fixed or mobile. There is a unanimous cry to hasten the development of a modern, efficient, satisfactory and continuous telecommunications service not only in Metro Manila but throughout the archipelago. The need therefor was dramatically emphasized by the destructive earthquake of 16 July 1990. It may be that users of the cellular mobile telephone would initially be limited to a few and to highly commercialized areas. However, it is a step in the right direction towards the enhancement of the telecommunications infrastructure, the expansion of telecommunications services in, hopefully, all areas of the country, with chances of complete disruption of communications minimized. It will thus impact on the total development of the country's telecommunications systems and redound to the benefit of even those who may not be able to subscribe to ETCI.

Free competition in the industry may also provide the answer to a much-desired improvement in the quality and delivery of this type of public utility, to improved technology, fast and handy mobile service, and reduced user dissatisfaction. After all, neither PLDT nor any other public utility has a constitutional right to a monopoly position in view of the Constitutional proscription that no franchise certificate or authorization shall be exclusive in character or shall last longer than fifty (50) years (*ibid.*, Section 11; Article XIV, Section 5, 1973 Constitution; Article XIV, Section 8, 1935 Constitution). Additionally, the State is empowered to decide whether public interest demands that monopolies be regulated or prohibited (1987 Constitution, Article XII, Section 19).

WHEREFORE, finding no grave abuse of discretion, tantamount to lack of or excess of jurisdiction, on the part of

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the National Telecommunications Commission in issuing its challenged Orders of 12 December 1988 and 8 May 1989 in NTC Case No. 87-39, this Petition is DISMISSED for lack of merit. The Temporary Restraining Order heretofore issued is LIFTED. The bond issued as a condition for the issuance of said restraining Order is declared forfeited in favor of private respondent Express Telecommunications Co., Inc.

Costs against petitioner.

SO ORDERED.

Paras, Feliciano, Padilla, Sarmiento, Cortés, Griño-Aquino, and *Regalado, JJ.*, concur.

Cruz, J., see separate and concurring opinion.

Gutierrez, Jr., J., please see dissenting opinion.

Fernan, C.J. and *Narvasa, J.*, join the dissents of Justices Gutierrez, Jr. and Cruz.

Gancayco, Bidin, and *Medialdea, JJ.*, join the dissenting opinion of Justice Gutierrez, Jr.

CONCURRING AND DISSENTING

CRUZ, *J.*:

As one of the many dissatisfied customers of PLDT, I should have no objection to the grant of the provisional authority to ETCI. I have none. Its admission will improve communication facilities in the country, conformably to the constitutional objective. It will also keep PLDT on its toes and encourage it to correct its deficient service in view of the competition.

I fully agree with all the rulings in the *ponencia* except the approval of the requirement for PLDT to interconnect with ETCI. I think it violates due process. It reminds me of the story of the little red hen who found some rice and asked who would help her plant it. None of the animals in the farm was willing and neither did they help in watering, harvesting and

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finally cooking it. But when she asked, "Who will help me eat the rice?" everyone wanted to join in. The little red hen is like PLDT.

If ETCI wants to operate its own telephone system, it should rely on its own resources instead of riding piggy-back on PLDT. It seems to me rather unfair for the Government to require PLDT to share with a newcomer and potential rival what it took PLDT tremendous effort and long years and billions of pesos to build.

The case of *Republic of the Philippines v. PLDT*, 26 SCRA 620, is not applicable because it was the Government itself that was there seeking interconnection of its own telephone system with PLDT. The Court recognized the obvious public purpose that justified the special exercise (by the Government) of the power of eminent domain. But in the case before us, the intended beneficiary is a private enterprise primarily organized for profit and, indeed, to compete with PLDT. In effect, the Government is forcing PLDT to surrender its competitive advantage and share its resources with ETCI, which may not only supplement but, possibly, even ultimately supplant PLDT. I do not think government authority extends that far.

The majority disposes of the question of due process by simply saying that PLDT will have full opportunity to be heard in the ascertainment of the just compensation ETCI will have to pay for the interconnection. That is not the issue. What PLDT is objecting to is not the amount of the just compensation but *the interconnection itself that is being forced upon it.*

I feel there is no due process where private property is taken by the Government from one private person and given to another private person for the latter's direct benefit. The fact that compensation is paid is immaterial; the flaw lies in the taking itself (*Davidson v. New Orleans*, 90 U.S. 97). The circumstance that PLDT is a public utility is no warrant for taking undue liberties with its property, which is protected by the Bill of Rights. "Public need" cannot be a blanket justification for favoring one investor against another in contravention of the system of free enterprise. If PLDT has misused its franchise, I should

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think the solution is to revoke its authority, not to force it to share its resources with its private competitors.

The rule is that where it is the legislature itself that directly calls for the expropriation of private property, its determination of the thing to be condemned and the purpose of the taking is conclusive on the courts (*City of Manila v. Chinese Community*, 40 Phil. 349). But where the power of eminent domain is exercised only by a delegate of the legislature, like ETCI, the courts may inquire into the necessity or propriety of the expropriation and, when warranted, pronounce its invalidity (*Republic of the Philippines v. La Orden de Pp. Benedictinos de Filipinas*, 1 SCRA 646). I think this is what the Court should do in the case at bar.

A final point. It is argued that requiring ETCI to start from scratch (as PLDT did) and import its own equipment would entail a tremendous outflow of foreign currency we can ill afford at this time. Perhaps so. But we must remember that the Bill of Rights is not a marketable commodity, like a piece of machinery. Due process is an indispensable requirement that cannot be assessed in dollar and cents.

DISSENTING OPINION

GUTIERREZ, JR., *J.*:

I share with the rest of the Court the desire to have a "modern, efficient, satisfactory, and continuous telecommunications service" in the Philippines. I register this dissent, however, because I believe that any frustrations over the present state of telephone services do not justify our affirming an illegal and inequitable order of the National Telecommunications Commission (NTC). More so when it appears that the questioned order is not really a solution to the problems bugging our telephone industry.

My dissent is based on three primary considerations, namely:

(1) The Court has sustained nothing less than the desire of respondent ETCI to set-up a profitable business catering to an affluent clientele through the use of billions of pesos worth of

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another company's properties. No issues of public welfare, breaking up of monopolies, or other high sounding principles are involved. The core question is purely and simply whether or not to grant ETCI's desire for economic gains through riding on another firm's investments.

(2) The Court has permitted respondent ETCI to operate a telephone system without a valid legislative franchise. It strains the imagination too much to interpret a legislative franchise authorizing "radio stations" as including the provisional permit for a sophisticated telephone system which has absolutely nothing to do with radio broadcasts and transmissions. The Court subverts the legislative will when it validates a provisional permit on the basis of authority which never envisioned much less intended its use for a regular telephone system catering to thousands of individual receiver units. There is nothing in Rep. Act No. 2090 which remotely suggests a cellular mobile telephone system.

(3) The authority given by Rep. Act No. 2090 has expired. ETCI is not only riding on another company's investments and using legislative authority for a purpose never dreamed of by the legislators but is also trying to extract life from and resurrect an unused and dead franchise.

My principal objection to the disputed NTC order arises from the fact that respondent Express Telecommunications Co. Inc. (ETCI) cannot exist without using the facilities of Philippine Long Distance Telephone Co. (PLDT). Practically all of its business will be conducted through another company's property.

While pretending to set up a separate phone company, ETCI's cellular phones would be useless most of the time, if not all the time, unless they use PLDT lines. It would be different if ETCI phone owners would primarily communicate with one another and tap into PLDT lines only rarely or occasionally.

To compare ETCI with the Government Telephone System (GTS) or with an independent phone company serving a province or city is misleading. The defunct GTS was set up to connect government offices and personnel with one another. It could exist independently and was not primarily or wholly dependent

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on PLDT connections. A provincial or city system serves the residents of a province or city. It primarily relies on its own investments and infrastructure. It asks for PLDT services only when long distance calls to another country, city, or province have to be made.

I can, therefore, understand PLDT's reluctance since it has its own franchise to operate exactly the same services which ETCI is endeavoring to establish. PLDT would be using its own existing lines. Under the Court's decision, it would be compelled to allow another company to use those same lines in direct competition with the lines' owner. The cellular system is actually only an adjunct to a regular telephone system, not a separate and independent system. As an adjunct and component unit or as a parasite (if a foreign body) it must be fed by the mother organism or unit if it is to survive.

Under the disputed order, ETCI will be completely dependent upon its use of the ₱16 billions worth of infrastructure which PLDT has built over several decades. The vaunted payment of compensation everytime an ETCI phone taps into a PLDT line is illusory. There can be no adequate payment for the use of billions of pesos of investments built up over 60 years. Moreover, it is actually the phone owner or consumer who pays the fee. The rate will be fixed by Government and will be based on the consumer's best interests and capacity, ignoring or subordinating the petitioner's investments. Payment will depend on how much the phone user should be charged for making a single phone call and will disregard the millions of pesos that ETCI will earn through its use of billions of pesos worth of another company's investments and properties.

The "hated monopoly" and "improved services" arguments are not only misleading but also illusory.

To sustain the questioned NTC order will not in any way improve telephone services nor would any monopoly be dismantled. The answer to inadequate telephone facilities is better administrative supervision. The NTC should pay attention to its work and compel PLDT to improve its services instead of saddling with the burden of carrying another company's system.

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For better services, what the country needs is to improve the existing system and provide enough telephone lines for all who really need them. The proposed ETCI cellular phones will serve mostly those who can afford to ride in expensive cars and who *already* have two or three telephones in their offices and residences. Cellular phones should legally and fairly be provided by PLDT as just another facet of its expansion program.

The mass of applicants for *new* telephones will not benefit from cellular phones. In fact, if PLDT is required by NTC to open up new exchanges or interconnections for the rich ETCI consumers, this will mean an equivalent number of low income or middle income applicants who will have to wait longer for their own PLDT lines. The Court's resolution favors the conveniences of the rich at the expense of the necessities of the poor.*

I agree with the petitioner that what NTC granted is not merely provisional authority but what is in effect a regular certificate of public convenience and necessity or "CPCN."

Starting with seven cell sites for 3,000 subscribers in Metro Manila, the cellular mobile system will establish 67 cell sites beginning October 1991. The initial expenses alone will amount to ₱130 million. At page 8 of its Comment, ETCI admits that "the provisional authority to operate will be *useless to ETCI* if it does not put up the system and interconnect said system with the existing PLDT network." (Italics supplied) The completion of interconnection arrangements, the setting up of expensive installations, the requirements as to maintenance and operation, and other conditions found in the NTC order are anything but provisional.

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* The subscriber pays ₱38,00.00 for a vehicle-borne telephone, ₱47,500.00 for a portable phone, and ₱57,000.00 for a Pocketfone, although NTC allows 15% discounts on these amounts. There is a basic service charge which includes ₱750.00 a month for free answering services. If the subscriber uses his phone from 7:00 AM to 7:00 PM, he pays ₱7.00 for the first minute and ₱5.50 for each additional minute. For long distance calls, the PLDT toll is added. Even for unsuccessful and unconnected operator assisted calls there is a ₱4.00 charge per call.

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The authority given to ETCI is entirely different from the provisional authority given to MERALCO or oil companies to increase the price of oil or electricity or to bus and jeepney operators to raise fares a few centavos. In these cases, the need for increases is not only urgent but is usually a foregone conclusion dictated by pressing circumstances. Further hearings are needed only to fix the amount which will be finally authorized. The NTC orders can also be easily revoked. Increased prices of oil or rates of transportation services can be lowered or struck down if the preliminary determinations are wrong. In the instant case, NTC has authorized a new company to start operations even if the issues have not been thoroughly threshed out. There is no urgent need which warrants operations before a final permit is granted. Once in operation, there can be no cancelling or revocation of the authority to operate, no dismantling of thousands of cellular phones and throwing to waste of over ₱100 million worth of investments in fixed facilities. Theoretically, it can be done but it is clear from the records that what was granted is really a CPCN.

There is no dispute that a legislative franchise is necessary for the operation of a telephone system. The NTC has no jurisdiction to grant the authority. The fact that ETCI has to rely on a 1958 legislative franchise shows that only Congress can give the franchise which will empower NTC to issue the certificate or CPCN.

Rep. Act No. 2090 is a franchise for the construction and operation of radio stations. Felix Alberto and Co. Inc. (FACI) was authorized in the *operation of those radio stations* to acquire and handle transmitters, receivers, electrical machinery and other related devises. The use of radio telephony was never intended or envisioned for a regular telephone company. "Radio telephony" is governed and circumscribed by the basic purpose of operating radio stations. Telephony may be used only to enable communications between the stations, to transmit a radio message to a station where it would be transcribed into a form suitable for delivery to the intended recipient. FACI was authorized to communicate to, between, and among its radio stations. There is no authority for thousands of customers to

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be talking to PLDT subscribers directly. FACI was never given authority by Rep. Act 2090 to operate switching facilities, wire-line transmissions, and telecommunication stations of a telephone company. The entire records can be scrutinized and they will show that ETCI has all but ignored and kept silent about the purpose of its alleged franchise — which is for the real operation of radio stations. There can be no equating of "radio stations" with a complete cellular mobile telephone system. The two are poles apart.

The most liberal interpretation can not possibly read in a 1958 franchise for radio stations, the authority for a mobile cellular system vintage 1990. No amount of liberal interpretation can supply the missing requirement. And besides, we are not interpreting a Constitution which is intended to cover changing situations and must be read liberally. Legislative franchises are always construed *strictly* against the franchise.

The remedy is for ETCI to go to Congress. I regret that in dismissing this petition, we may be withholding from Congress the courtesy we owe to it as a co-equal body and denigrating its power to examine whether or not ETCI really deserves a legislative franchise.

My third point has to do with the sudden resurrection of a dead franchise and its coming to life in an entirely different form — no longer a radio station but a modern telephone company.

I have searched the records in vain for any plan of ETCI to operate radio stations. It has not operated and does not plan to operate radio stations. Its sole objective is to set up a telephone company. For that purpose, it should go to Congress and get a franchise for a telephone company. NTC cannot give it such a franchise.

Section 10 of Rep. Act No. 2090 prohibits the transfer of the franchise and the rights and privileges under that franchise without the express approval of Congress. No amount of legal niceties can cloak the fact that ETCI is not FACI, that the franchise was sold by FACI to ETCI, and that the permit given by NTC to ETCI is based on a purchased franchise.

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When the owners of FACI sold out their stocks, the 3,900 shares were on paper worth only 35 centavos each. The company had no assets and physical properties. All it had was the franchise, for whatever it was worth. The buyers paid ₱4,618,185.00 for the company's stocks, almost all of the amount intended for the franchise. It was, therefore, a sale or transfer of the franchise in violation of the express terms of Rep. Act No. 2090 which call for approval by Congress.

ETCI tried to show a series of transactions involving the sales of almost all of its stocks. Not only are the circumstances surrounding the transfers quite suspicious, but they were effected without the approval and authorization of the Commission as required by law.

Sec. 4 of Rep. Act No. 2090 also provides that the franchise *shall be void* unless the construction of radio stations is begun within two years or June 22, 1960 and completed within ten years or June 22, 1968.

As of April 14, 1987, ETCI formally admitted that it was still in the pre-operating stage. Almost 30 years later, it had not even started the business authorized by the franchise. It is only now that it proposes to construct, not radio stations, but a telephone system.

During the oral arguments and in its memorandum, ETCI presented proof of several radio station construction permits. A construction permit authorizes a construction but does not prove it. There is no proof that the entire construction of all stations was completed within ten years. In fact, there is not the slightest intimation that ETCI, today, is operating radio stations. What it wants is to set up a telephone system.

In addition to the franchise being void under its own charter, P.D. 36 on November 2, 1972, cancelled all unused or dormant legislative franchises. Rep. Act No. 2090, having been voided by its own Section 4, suffered a second death if that is at all possible.

The violations of law — (1) the giving of life to an already dead franchise, (2) the transfer of ownership against an express statutory provision, and (3) the use of a franchise for radio stations

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to justify the setting up of a cellular mobile telephone system — are too glaring for us to ignore on the basis of "respect" for a questionable NTC order and other purely technical considerations. We should not force PLDT to open its lines to enable a competitor to operate a system which cannot survive unless it uses PLDT properties.

The NTC bases its order on alleged grounds of public need, public interest, and the common good. There is no showing that these considerations will be satisfied, at least sufficient to warrant a strained interpretation of legal provisions. Any slight improvement which the expensive ETCI project will accomplish cannot offset its violation of law and fair dealing.

I, THEREFORE, VOTE to GRANT the petition.

FIRST DIVISION

[G.R. No. 88683. October 18, 1990]

RAPID MANPOWER CONSULTANTS, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, DAVID PRODIGALIDAD, FERNANDO DABU, WILFREDO NAZARENO and DANTE SAN MIGUEL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; IN LABOR CASES, THE RULES OF EVIDENCE PREVAILING IN COURTS OF LAW OR EQUITY ARE NOT CONTROLLING. — In labor cases, the rules of evidence prevailing in courts of law or equity are not controlling. The law requires the Commission and its members and the Labor Arbiters to use every and reasonable means to ascertain the facts in each case speedily and objectively in the interest of