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is exclusive. The clause "officers of the armed forces from the rank of colonel or naval captain" refers to military officers alone. This is clear from the deliberations of the Constitutional Commission on the proposed text of said Section 16, Article VII of the Constitution. Since the promotions and appointments of respondent officers are not covered by the above-cited provision of the Constitution, the same need not be confirmed by the CA.[4]

Accordingly, the Court declares that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by respondent officers of the PCG. Their assumption to office as well as the disbursement of their respective salaries and other emoluments by the respondent Secretary of the DBM are hereby declared valid and legal.

WHEREFORE, the petition is hereby *DISMISSED*.

SO ORDERED.

Puno (Chairman), *Panganiban, Sandoval-Gutierrez*, and *Carpio Morales, JJ.*, concur.

EN BANC

[G.R. No. 143867. March 25, 2003.]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC., *petitioner, vs.* **CITY OF DAVAO and ADELAIDA B. BARCELONA, in her capacity as the City Treasurer of Davao,** *respondents.*

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[4] *Manalo vs. Sistoza*, 312 SCRA 239 [1999]; *Calderon vs. Carale*, 208 SCRA 254 [1992]; *Sarmiento III vs. Mison*, 156 SCRA 549 [1987]; *Bautista vs. Salonga*, 172 SCRA 160 [1989]; *Teresita Quintos Deles, et al. vs. The Commission on Constitutional Commissions, et al.*, 177 SCRA 259 [1989].

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SYNOPSIS

Petitioner PLDT paid a franchise tax equal to three percent (3%) of the gross receipts. The franchise tax was paid "in lieu of all taxes on this franchise or earnings thereof" pursuant to RA No. 7082 amending its charter, Act No. 3436. Them exemption from "all taxes on this franchise or earnings thereof" was subsequently withdrawn by R.A. No. 7160 (Local Government Code of 1991), which at the same time gave local government units the power to tax businesses enjoying a franchise on the basis of income received or earned by them within their territorial jurisdiction. Subsequently, RA No. 7925 was passed exempting Globe and Smart from payment of local franchise tax The issue in this case is whether or not the franchise of petitioner PLDT giving it tax exemption, being a special law, should prevail over the LGC, a general law, giving the City of Davao the power to impose the franchise tax on PLDT. Petitioner further argues that as between two laws on the same subject matter (LGC and RA No. 7925), which are inconsistent, that which is passed later prevails as it is the latest expression of the legislative will.

The Supreme Court held that after petitioner's tax exemption by RA No. 7092 had been withdrawn by the LGC, no amendment to re-enact its previous tax exemption has been made by Congress. The phrase "in lieu of all taxes" in special franchises granting tax exemptions must be interpreted strictly against the taxpayer and it should give way to the peremptory language of Sec.193 of the LGC specifically providing for the withdrawal of such exemption privileges. The Court also held that the rule that a special law must prevail over the provisions of a later general law does not apply in this case.

Finally, the ruling of the Bureau of Local Government Finance (BLGF) that petitioner's exemption from local taxes has been restored must give way to the ruling of the Court of Tax Appeals which is the special court created for the purpose of reviewing tax cases, unlike the BLGF which was created only for the purpose of providing consultative services and technical assistance to local governments and the general public on local taxation and other related matters.

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SYLLABUS

1. TAXATION; TAX EXEMPTIONS; "IN LIEU OF ALL TAXES" PROVISIONS IN TELECOMMUNICATION FRANCHISES GRANTING TAX EXEMPTIONS MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER; CASE AT BAR. — The Court considers "the in lieu of all taxes" provisions as granting tax exemptions. As such, it is a privilege to which the rule that tax exemptions must be interpreted strictly against the taxpayer and in favor of the taxing authority applies. Along with the police power and eminent domain, taxation is one of the three necessary attributes of sovereignty. Consequently, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state. A state cannot be stripped of this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language. Indeed, both in their nature and in their effect there is no difference between tax exemption and tax exclusion. Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected. Exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, *e.g.*, exclusions from gross income and allowable deductions. Exclusion is thus also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that tax exemption should be applied in *strictissimi juris* against the taxpayer and liberally in favor of the government applies equally to tax exclusions. To construe otherwise the "in lieu of all taxes" provision invoked is to be inconsistent with the theory that R.A. No. 7925, § 23 grants tax exemption because of a similar grant to Globe and Smart.

2. ID.; ID.; PLDT HAS NO CLEAR GRANT OF EXEMPTION FROM PAYMENT OF FRANCHISE TAX; CASE AT BAR. — Indeed, petitioner's justification for its claim of tax exemption rests on a strained interpretation of R.A. No. 7925, § 23. For petitioner's claim for exemption is not based on an amendment to its charter but on a circuitous reasoning involving inquiry into the grant of tax exemption to other telecommunications companies and the lack of such grant to others, when Congress could more clearly and directly have granted tax exemption to all franchise holders or amended the charter of PLDT to again exempt it from tax if this had been

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its purpose. The fact is that after petitioner's tax exemption by R.A. No. 7082 had been withdrawn by the LGC, no amendment to re-enact its previous tax exemption has been made by Congress. Considering that the taxing power of local government units under R.A. No. 7160 is clear and is ordained by the Constitution, petitioner has the heavy burden of justifying its claim by a clear grant of exemption. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; BUREAU OF LOCAL GOVERNMENT FINANCE; FINDINGS THEREOF ON TAX PROBLEMS ARE MERELY CONSULTATIVE AND NOT BINDING ON THE SUPREME COURT; REASON.**— The ruling of the BLGF that petitioner's exemption from local taxes has been restored has been considered in this case. But unlike the Court of Tax Appeals, which is a special court created for the purpose of reviewing tax cases, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation and other related matters. Thus, the rule that the "Court will not set aside conclusions rendered by the CTA, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority" cannot apply in the case of BLGF.

CARPIO, *J., Separate Opinion*:

TAXATION; TAX EXEMPTIONS; MUST BE CLEAR AND UNEQUIVOCAL. — Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied reenactment of a repealed tax exemption clause.

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PUNO, *J., Dissenting Opinion:*

CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION; DENIAL OF PLDT TAX EXEMPTION PRIVILEGE GRANTED TO OTHER TELECOMMUNICATIONS COMPANIES, A VIOLATION THEREOF; CASE AT BAR. – I cannot understand what is unclear in Section 23 of Republic Act No. 7925 mandating equality of treatment in the telecommunications industry. Favor, privilege, exemption and immunity are ordinary words without any mystic meaning. The provision states without any flourish that if any favor, privilege, exemption or immunity is granted in the franchise of *any* telecommunications company, it will be deemed granted to *other* telecommunications companies with *prior* franchises. The grant is unequivocal for the provision directs that it is "*ipso facto*," and should be immediately and unconditionally." The language of the law cannot be more limpid, indeed, the work of a worthy wordsmith. After the enactment of RA No. 7925 on March 16, 1995, Congress granted several franchises containing both an 'equality clause' similar to Section 23 and an 'in lieu of all taxes' clause.". . . I agree that all these subsequent laws should be considered and not only the laws granting exemptions to Smart and Globe. With due respect, however, I have great difficulty following the flow of the logic of the majority. To my mind, the *reiteration* of the "equality clause" as well as the "in lieu of all taxes clause" in the telecommunications franchises granted by Congress *after* March 16, 1995 *fortifies* the claim for exemption of the petitioner. The reiteration of the clauses shows that Congress never wavered in its touchstone policy of equalizing the status of our companies in the telecommunications industry. To be sure, Congress need not reiterate the "equality clause" and the "in lieu of all taxes clause" in these subsequent telecommunications franchises for without it, Republic Act No. 7925, Section 23 could still be availed of by them. The reiteration is simply a stubborn stress on the importance of equality in the entire telecommunications industry but the majority inexplicably reads it as denying the rule of equality to the petitioner. By treating alikes as unalike, the majority is violating the equal protection clause of the Constitution.

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APPEARANCES OF COUNSEL

Estelito P. Mendoza for petitioner.
The Office of the City Legal Officers for respondents.

RESOLUTION

MENDOZA, *J.*:

Petitioner seeks a reconsideration of the decision of the Second Division in this case. Because the decision bears directly on issues involved in other cases brought by petitioner before other Divisions of the Court, the motion for reconsideration was referred to the Court *en banc* for resolution.[1] The parties were heard in oral arguments by the Court *en banc* on January 21, 2003 and were later granted time to submit their memoranda. Upon the filing of the last memorandum by the City of Davao on February 10, 2003, the motion was deemed submitted for resolution.

To provide perspective, it will be helpful to restate the basic facts.

Petitioner PLDT paid a franchise tax equal to three percent (3%) of its gross receipts. The franchise tax was paid "in lieu of all taxes on this franchise or earnings thereof" pursuant to R.A. No. 7082 amending its charter, Act No. 3436. The exemption from "all taxes on this franchise or earnings thereof" was subsequently withdrawn by R.A. No. 7160 (Local Government Code of 1991), which at the same time gave local government units the power to tax businesses enjoying a franchise on the basis of income received or earned by them within their territorial jurisdiction. The Local Government Code (LGC) took effect on January 1, 1992.

The pertinent provisions of the LGC state:

Sec. 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent

[1] Resolution, dated July 9, 2002.

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(50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. . . .

Sec. 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or - controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Pursuant to these provisions, the City of Davao enacted Ordinance No. 519, Series of 1992, which in pertinent part provides:

Notwithstanding any exemption granted by any law or other special law, there is hereby imposed a tax on businesses enjoying a franchise, at a rate of Seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income or receipts realized within the territorial jurisdiction of Davao City.

Subsequently, Congress granted in favor of Globe Mackay Cable and Radio Corp. (Globe)[2] and Smart Information Technologies, Inc. (Smart)[3] franchises which contained "in lieu of all taxes" provisos. In 1995, it enacted R.A. No. 7925 (Public Telecommunications Policy of the Philippines), § 23 of which provides that "Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises." The law took effect on March 16, 1995.

In January 1999, when PLDT applied for a mayor's permit to operate its Davao Metro Exchange, it was required to pay the local franchise tax for the first to the fourth quarter of 1999

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[2] R.A. No. 7229, effective March 19, 1992.

[3] R.A. No. 7294, effective March 27, 1992.

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which then had amounted to ₱3,681,985.72. PLDT challenged the power of the city government to collect the local franchise tax and demanded a refund of what it had paid as local franchise tax for the year 1997 and for the first to the third quarters of 1998. For this reason, it filed a petition in the Regional Trial Court of Davao. However, its petition was dismissed and its claim for exemption under R.A. No. 7925 was denied. The trial court ruled that the LGC had withdrawn tax exemptions previously enjoyed by persons and entities and authorized local government units to impose a tax on businesses enjoying franchises within their territorial jurisdictions, notwithstanding the grant of tax exemption to them. Petitioner, therefore, brought this appeal.

In its decision of August 22, 2001, this Court, through its Second Division, held that R.A. No. 7925, § 23 cannot be so interpreted as granting petitioner exemption from local taxes because the word "exemption," taking into consideration the context of the law, does not mean "tax exemption." Hence this motion for reconsideration.

The question is whether, by virtue of RA. No. 7925, § 23, PLDT is again entitled to exemption from the payment of local franchise tax in view of the grant of tax exemption to Globe and Smart.

Petitioner contends that because their existing franchises contain "in lieu of all taxes" clauses, the same grant of tax exemption must be deemed to have become *ipso facto* part of its previously granted telecommunications franchise. But the rule is that tax exemptions should be granted only by clear and unequivocal provision of law "expressed in a language too plain to be mistaken."[4] If, as PLDT contends, the word "exemption" in R.A. No. 7925 means "tax exemption" and assuming for the nonce that the charters of Globe and of Smart grant tax exemptions, then this runabout way of granting tax exemption to PLDT is not a direct, "clear and unequivocal" way of communicating the legislative intent.

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[4] *Davao Gulf Lumber Corp. v. Commissioner of Internal Revenue*, 293 SCRA 76, 88 (1998).

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But the best refutation of PLDT's claim that R.A. No. 7925, § 23 grants tax exemption is the fact that after its enactment on March 16, 1995, Congress granted several franchises containing both an "equality clause" similar to § 23 and an "in lieu of all taxes" clause. If the equality clause automatically extends the tax exemption of franchises with "in lieu of all taxes" clauses, there would be no need in the same statute for the "in lieu of all taxes" clause in order to extend its tax exemption to other franchises not containing such clause. For example, the franchise of Island Country Telecommunications, Inc., granted under R.A. No. 7939 and which took effect on March 22, 1995, contains the following provisions:

> Sec. 8. *Equality Clause.* — If any subsequent franchise for telecommunications service is awarded or granted by the Congress of the Philippines with terms, privileges and conditions more favorable and beneficial than those contained in this Act, then the same privileges or advantages shall *ipso facto* accrue to the herein grantee and be deemed part of this Act.
>
> Sec. 10. *Tax Provisions.* — The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunications entities are now or hereafter may be required by law to pay. In addition hereto, the grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts transacted under this franchise, and the said percentage shall be *in lieu of all taxes on this franchise or earnings thereof*; *Provided*, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code. The grantee shall file the return with and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representatives in accordance with the National Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Italicized added)

Similar provisions ("in lieu of all taxes" and equality clauses) are also found in the franchises of Cruz Telephone Company, Inc.,[5] Isla Cellular Communications, Inc.,[6] and Islatel Corporation.[7]

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[5] R.A. No. 7961, §§ 7 & 9 (April 20, 1995).

[6] R.A. No. 8065, §§ 9 & 17 (June 19, 1995).

[7] R.A. No. 8095, §§ 10 & 18 (July 6, 1995).

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We shall now turn to the other points raised in the motion for reconsideration of PLDT.

First. Petitioner contends that the legislative intent to promote the development of the telecommunications industry is evident in the use of words as "development," "growth," and "financial viability," and that the way to achieve this purpose is to grant tax exemption or exclusion to franchises belonging in this industry. Furthermore, by using the words "advantage," "favor," "privilege," "exemption," and "immunity" and the terms "*ipso facto*," "immediately," and "unconditionally," Congress intended to automatically extend whatever tax exemption or tax exclusion has been granted to the holder of a franchise enacted after the LGC to the holder of a franchise enacted prior thereto, such as PLDT.

The contention is untenable. The thrust of the law is to promote the gradual deregulation of entry, pricing, and operations of all public telecommunications entities and thus to level the playing field in the telecommunications industry. An intent to grant tax exemption cannot even be discerned from the law. The records of Congress are bereft of any discussion or even mention of tax exemption. To the contrary, what the Chairman of the Committee on Transportation, Rep. Jerome V. Paras, mentioned in his sponsorship of H.B. No. 14028, which became R.A. No. 7925, were "equal access clauses" in interconnection agreements, not tax exemptions. He said:

> There is also a need to promote a level playing field in the telecommunications industry. New entities must be granted protection against dominant carriers through the encouragement of *equitable access charges and equal access clauses in interconnection agreements* and the strict policing of predatory pricing by dominant carriers. *Equal access should be granted to all operators connecting into the interexchange network.* There should be no discrimination against any carrier in terms of priorities and/or quality of services.[8]

Nor does the term "exemption" in § 23 of R.A. No. 7925 mean tax exemption. The term refers to exemption from certain

[8] 3 RECORDS OF PLENARY PROCEEDINGS, HOUSE OF REPRESENTATIVES 552 (Dec. 5, 1994). (Italics added)

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regulations and requirements imposed by the National Telecommunications Commission (NTC). For instance, R.A. No. 7925, § 17 provides: "The Commission shall exempt any specific telecommunications service from its rate or tariff regulations if the service has sufficient competition to ensure fair and reasonable rates or tariffs." Another exemption granted by the law in line with its policy of deregulation is the exemption from the requirement of securing permits from the NTC every time a telecommunications company imports equipment.[9]

Second. PLDT says that the policy of the law is to promote healthy competition in the telecommunications industry.[10] According to PLDT, the LGC did not repeal the "in lieu of all taxes" provision in its franchise but only excluded from it local taxes, such as the local franchise tax. However, some franchises, like those of Globe and Smart, which contain "in lieu of all taxes" provisions, were subsequently granted by Congress. The result is that while the holders of franchises granted prior to January 1, 1992, when the LGC took effect, had to pay local franchise tax in view of the withdrawal of their local tax exemption, those whose franchises were granted after January 1, 1992, because of the "in lieu of all taxes" provisions contained therein, were exempted from such local tax. It is argued that it is this disparate situation which R.A. No. 7925, § 23 seeks to rectify.

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[9] 3 RECORD OF THE SENATE 827 (January 17, 1995); 4 RECORD OF THE SENATE 52 (January 24, 1995); See R.A. No. 7925, § 16:

> Expansion and financing of network and services, utilizing equipment compatible with or homologous to existing or previously approved plant and facilities, in order to service additional demand in the same areas where the previously approved network and services have been installed, shall not require any approval by the Commission.
>
> The upgrading of existing plant and network facilities including the financing thereof, for the purpose of retiring or replacing obsolete or outmoded equipment with state of the art equipment and technology in order to improve the quality or grade of service being rendered to the public within the same areas covered by the existing plant and facilities previously approved, shall likewise not require the approval of the Commission.

[10] Motion for Reconsideration, pp. 5–6, 16–17.

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One can speak of healthy competition only between equals. For this reason, the law seeks to break up monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting to new telecommunications entities protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers.[11] Interconnection among carriers is made mandatory to prevent a dominant carrier from delaying the establishment of connection with a new entrant and to deter the former from imposing excessive access charges.[12]

That is also the reason there are franchises[13] granted by Congress after the effectivity of R.A. No. 7925 which do not contain the "in lieu of all taxes" clause, just as there are franchises, also granted after March 16, 1995, which contain such exemption from other taxes.[14] If, by virtue of § 23, the tax exemption

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[11] 3 RECORD OF THE SENATE, 810 (Jan. 16, 1995); 3 RECORDS OF PLENARY PROCEEDINGS, HOUSE OF REPRESENTATIVES 552 (Dec. 5, 1994).

[12] RECORD OF THE SENATE 872 (April 20, 1994); *id.*, p. 557.

[13] *E.g.*, R.A. No. 8198 (Unicorn Communications Corporation; July 11, 1996); R.A. No. 8675 (Mati Telephone Corporation; June 25, 1998); R.A. No. 8676 (Western Misamis Oriental Telephone Cooperative, Inc.; June 25, 1998); R.A. No. 8677 (Radio Communications of the Philippines, Inc.; June 25, 1998); R.A. No. 8678 (Sear Telecommunications Inc.; June 25, 1998); R.A. No. 8690 (Santos Telephone Corporation, Inc.; July 2, 1998); R.A. No. 8955 (Polaris Telecommunications, Inc.; Sept. 2, 2000); R.A. No. 8956 (Odiongan Telephone Corporation; Sept. 2, 2000); R.A. No. 8959 (Palawan Telephone Company, Inc.; Sept. 7, 2000); R.A. No. 8961 (L.M. United Telephone Company, Inc.; Sept. 7, 2000); R.A. No. 8962 (Iriga Telephone Company, Inc.; Sept. 7, 2000); R.A. No. 8992 (Primeworld Digital Systems, Inc.; Jan. 5, 2001); R.A. No. 9002 (Click Communications, Inc.; Jan. 21, 2001); R.A. No. 9101 (Tupi Telephone Cooperative, Inc.; April 9, 2001); R.A. No. 9116 (Solid Broadband Corporation; April 15, 2001); R.A. No. 9117 (Battlex, Inc./Bataan Telephone Exchange; April 15, 2001); R.A. No. 9124 (Zenith Telecommunications Company, Inc.; April 20, 2001); R.A. No. 9130 (Connectivity Unlimited Resource Enterprise, Inc.; April 24, 2001); and R.A. No. 9133 (Pampanga Telephone Company, Inc.; April 24, 2001).

[14] *E.g.*, R.A. No. 7961 (Cruz Telephone Company, Inc.; March 29, 1995); R.A. No. 8004 (Millenia Telecommunications Corporation; April 27,

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granted under existing franchises or thereafter granted is deemed applicable to previously granted franchises (*i.e.*, franchises granted before the effectivity of R.A. No. 7925 on March 16, 1995), then those franchises granted after March 16, 1995, which do not contain the "in lieu of all taxes" clause, are not entitled to tax exemption. The "in lieu of all taxes" provision in the franchises of Globe and Smart, which are relatively new entrants in the telecommunications industry, cannot thus be deemed applicable to PLDT, which had virtual monopoly in the telephone service in the country for a long time,[15] without defeating the very policy of leveling the playing field of which PLDT speaks.

Third. Petitioner argues that the rule of strict construction of tax exemptions does not apply to this case because the "in lieu of all taxes" provision in its franchise is more a tax exclusion than a tax exemption. Rather, the applicable rule should be that tax laws are to be construed most strongly against the government and in favor of the taxpayer.

This is contrary to the uniform course of decisions[16] of this Court which consider "in lieu of all taxes" provisions as granting

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1995); R.A. No. 8065 (Isla Cellular Communication, Inc.; June 19, 1995); R.A. No. 8095 (Islatel Corporation; July 6, 1995); R.A. No. 8153 (Rex Electronics Communications System, Inc.; September 23, 1995).

[15] *Compare*: "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 improve 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)." (*PLDT v. National Telecommunications Commission*, 190 SCRA 717, 737 (1990)).

[16] *Province of Tarlac v. Alcantara*, 216 SCRA 790 (1992), where real property taxes were held not included in the exemption granted to all electric franchise holders by the "in lieu of all taxes" provision of P.D. No. 551; *Manila Gas Corp. v. Collector of Internal Revenue*, 104 Phil. 727 (1958), where the Court ruled that the rights and privileges which the "in lieu of all

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tax exemptions. As such, it is a privilege to which the rule that tax exemptions must be interpreted strictly against the taxpayer and in favor of the taxing authority applies. Along with the police power and eminent domain, taxation is one of the three necessary attributes of sovereignty. Consequently, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state. A state cannot be stripped of this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language.[17]

Indeed, both in their nature and in their effect there is no difference between tax exemption and tax exclusion. Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected.[18] Exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, *e.g.*, exclusions from gross income and allowable deductions.[19] Exclusion is thus also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that tax exemption should be applied in *strictissimi juris* against the taxpayer and liberally in favor of the government applies equally to tax exclusions. To construe otherwise the "in lieu of all taxes" provision invoked is to be inconsistent with the theory that R.A. No. 7925, § 23 grants tax exemption because of a similar grant to Globe and Smart.

Petitioner cites *Cagayan Electric Power & Light Co., Inc. v. Commissioner of Internal Revenue*[20] in support of its argument

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taxes" provision exempts from taxation are those enjoyed by the grantee of the franchise and not by the public in general; *Philippine Telephone and Telegraph Company v. Collector of Internal Revenue*, 58 Phil. 639 (1933), where the exemption was not extended to the income tax on the dividends paid and delivered to stockholders as they ceased to be corporate property and have already become property of the stockholders.

[17] *Memphis Gas-Light Co. v. Taxing District*, 109 U.S. 398, 27 L.Ed. 976 (1883).

[18] *Greenfield v. Meer*, 77 Phil. 394 (1946).

[19] NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 32(b) and 34.

[20] 138 SCRA 629 (1985).

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that a "tax exemption" is restored by a subsequent law re-enacting the "tax exemption." It contends that by virtue of R.A. No. 7925, its tax exemption or exclusion was restored by the grant of tax exemptions to Globe and Smart. *Cagayan Electric Power & Light Co., Inc.*, however, is not in point. For there, the re-enactment of the exemption was made in an amendment to the charter of Cagayan Electric Power and Light Co.

Indeed, petitioner's justification for its claim of tax exemption rests on a strained interpretation of R.A. No. 7925, § 23. For petitioner's claim for exemption is not based on an amendment to its charter but on a circuitous reasoning involving inquiry into the grant of tax exemption to other telecommunications companies and the lack of such grant to others.[21] Surely, Congress could more clearly and directly have granted tax exemption to all franchise holders or amended the charter of PLDT to again exempt it from tax if this had been its purpose.

The fact is that after petitioner's tax exemption by R.A. No. 7082 had been withdrawn by the LGC,[22] no amendment to re-enact its previous tax exemption has been made by Congress. Considering that the taxing power of local government units under R.A. No. 7160 is clear and is ordained by the Constitution, petitioner has the heavy burden of justifying its claim by a clear grant of exemption.[23]

Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain. to be mistaken.[24] They cannot be extended by mere implication

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[21] All along, we simply assume that Globe and Smart enjoy exemption from local taxation.

[22] See *Manila Electric Company v. Province of Laguna*, 306 SCRA 750, 760 (1999), citing *City Government of San Pablo v. Reyes*, 305 SCRA 353, 362 (1999).

[23] *Light Rail Transit Authority v. Central Board of Assessment Appeals*, 342 SCRA 692 (2000); *Commissioner of Customs v. Court of Tax Appeals*, 328 SCRA 822 (2000); *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue*, 293 SCRA 76 (1998).

[24] *Afisco Ins. Corp. v. Court of Appeals*, 302 SCRA 1 (1999).

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or inference. Thus, it was held in *Home Insurance & Trust Co. v. Tennessee*[25] that a law giving a corporation all the "powers, rights reservations, restrictions, and liabilities" of another company does not give an exemption from taxation which the latter may possess. In *Rochester R. Co. v. Rochester*,[26] the U.S. Supreme Court, after reviewing cases involving the effect of the transfer to one company of the powers and privileges of another in conferring a tax exemption possessed by the latter, held that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity. Thus:

> We think it is now the rule, notwithstanding earlier decisions and *dicta* to the contrary, that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity. We, therefore, conclude that the words "the estate, property, rights, privileges, and franchises" did not embrace within their meaning the immunity from the burden of paving enjoyed by the Brighton Railroad Company. Nor is there anything in this, or any other statute, which tends to show that the legislature used the words with any larger meaning than they would have standing alone. The meaning is not enlarged, as faintly suggested, by the expression in the statute that they are to be held by the successor "fully and entirely, and without change and diminution," — words of unnecessary emphasis, without which all included in "estate, property, rights, privileges, and franchises" would pass, and with which nothing more could pass. On the contrary, it appears, as clearly as it did in the Phoenix Fire Insurance Company Case, that the legislature intended to use the words "rights, franchises, and privileges" in the restricted sense. . . .[27]

Fourth. It is next contended that, in any event, a special law prevails over a general law and that the franchise of petitioner giving it tax exemption, being a special law, should prevail over

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[25] 161 U.S. 198, 40 L.Ed. 669 (1896).

[26] 205 U.S. 236, 51 L.Ed. 784 (1907).

[27] At 252–253, 51 L.Ed., 791.

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the LGC, giving local governments taxing power, as the latter is a general law. Petitioner further argues that as between two laws on the same subject matter which are irreconcilably inconsistent, that which is passed later prevails as it is the latest expression of legislative will.

This proposition flies in the face of settled jurisprudence. In *City Government of San Pablo, Laguna v. Reyes*,[28] this Court held that the phrase "in lieu of all taxes" found in special franchises should give way to the peremptory language of § 193 of the LGC specifically providing for the withdrawal of such exemption privileges. Thus, the rule that a special law must prevail over the provisions of a later general law does not apply as the legislative purpose to withdraw tax privileges enjoyed under existing laws or charters is apparent from the express provisions of §§ 137 and 193 of the LGC.

As to the alleged inconsistency between the LGC and R.A. No. 7925, this Court has already explained in the decision under reconsideration that no inconsistency exists and that the rule that the later law is the latest expression of the legislature does not apply. The matter need not be further discussed.

In any case, it is contended, the ruling of the Bureau of Local Government Finance (BLGF) that petitioner's exemption from local taxes has been restored is a contemporaneous construction of § 23 and, as such, it is entitled to great weight.

The ruling of the BLGF has been considered in this case. But unlike the Court of Tax Appeals, which is a special court created for the purpose of reviewing tax cases, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation and other related matters.[29] Thus, the rule that the "Court will not set aside conclusions rendered by the CTA, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily

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[28] 305 SCRA 353 (1999).

[29] ADMINISTRATIVE, CODE, Book IV, Title II, Chapter 4, §33(4).

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developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority"[30] cannot apply in the case of BLGF.

WHEREFORE the motion for reconsideration is *DENIED* and this denial is final.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

Vitug, J., I concur; a statute effectively limiting the constitutionally-delegated tax powers of LGU's can only be done in a clear and express manner.

Carpio, J., see separate opinion.

Bellosillo, Ynares-Santiago, Sandoval-Gutierrez and *Austria-Martinez, JJ.*, join dissent of *J. Puno.*

Puno, J., please see dissent.

Panganiban, J., took no part; same reason given in original Decision.

CARPIO, *J., separate opinion*:

I concur in the result of the ponencia of Justice Vicente V. Mendoza that petitioner Philippine Long Distance Telephone Company, Inc. (PLDT) is subject to the local franchise tax imposed by the City of Davao.

My concurrence is based on two grounds. First, the "in lieu of all taxes" clause was not re-enacted in the franchise of Globe Mackay Cable and Radio Corporation (Globe) when Congress adopted Republic Act No. 7229 approving the merger of Globe and Clavecilla Radio System (Clavecilla). Second, the "in lieu of all taxes" clause in the franchise of Smart Communications, Inc. (Smart) has become *functus officio* with the abolition of

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[30] *Commissioner of Internal Revenue v. Court of Appeals*, 271 SCRA 605, 619 (1997).

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the franchise tax on telecommunications companies. Moreover, this clause applies only to national internal revenue taxes and not to local taxes.

PLDT claims that the "in lieu of all taxes" clause in the franchises of Globe and Smart applies to PLDT by virtue of the equality clause[1] in Republic Act No. 7925. However, if the "in lieu of all taxes" clauses in the franchises of Globe and Smart are no longer in effect, then PLDT's claim to tax exemption will necessarily fail even if the equality clause applies to tax exemptions. I find that Globe's existing franchise has no "in lieu of all taxes" clause. I also find that the abolition of the franchise tax on telecommunications companies and its replacement by the value-added tax (VAT) effective January 1, 1996 has rendered ineffective the "in lieu of all taxes" clause in the franchise of Smart.

On June 19, 1965, Republic Act No. 4540 amended the franchise of Clavecilla and inserted the following "in lieu of all taxes" clause in Section 9 (b) of its franchise:

"The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted, effective from the date of the approval of Republic Act Numbered Sixteen Hundred Eighteen."

On the other hand, the franchise of Globe contained no "in lieu of all taxes" clause.

The Local Government Code of 1991,[2] which took effect on January 1, 1992, *repealed* Section 9 (b) of Clavecilla's franchise with respect to local taxes. Sections 137, 151, and 193 of the Local Government Code of 1991 provide that —

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[1] Section 23 of RA No. 7925.

[2] Republic Act No. 7160.

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"Section 137. Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein."

"Section 151. Scope of Taxing Powers. — Except as otherwise provided in this Code, the city may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes."

"Section 193. Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

Thus, from January 1, 1992 up to the enactment on March 19, 1992 of RA No. 7229, Clavecilla did not enjoy, with respect to local taxes, the tax exemption under its "in lieu of all taxes" clause. The only question is whether RA No. 7229 re-enacted Section 9 (b) of Clavecilla's old franchise to restore its "in lieu of all taxes" clause, at least with respect to local taxes.

The answer is a categorical ***no*** for two reasons. First, there is no language in RA No. 7229, express or even implied, re-enacting Section 9 (b) of Clavecilla's old franchise with respect to local taxes. RA No. 7229 merely approved the merger of

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Globe and Clavecilla, and transferred the ***then existing franchise***[3] of Clavecilla to the surviving corporation, Globe. When Congress approved RA No. 7229, Clavecilla's then existing franchise did not contain the "in lieu of all taxes" clause with respect to local taxes. Logically, the transfer of Clavecilla's franchise to Globe did not transfer the "in lieu of all taxes" clause since Clavecilla's franchise no longer had such clause with respect to local taxes.

Second, RA No. 7229 ***expressly*** provides that original provisions of the franchise of Clavecilla under Republic Act No. 402, as amended, ***which have not been repealed***, shall continue in full force and effect. The clear intent of the law is that provisions in Clavecilla's franchise which had already been repealed as of the enactment of RA No. 7229 shall remain repealed and shall not be re-enacted with the passage of RA No. 7229. Thus, Section 11 of RA No. 7229 states —

"All other provisions of Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, and other provisions of Batas Pambansa Blg. 95 which are not inconsistent with the provisions of this Act and are *still unrepealed* shall continue to be in full force and effect." (Italics supplied)

Clearly, Congress did not intend to re-enact any of the provisions in the franchise of Clavecilla that had already been repealed by prior laws.

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption

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[3] The first two sections of RA No. 7229 provide as follows: "Section 1. The merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System, with Globe Mackay Cable and Radio Corporation thenceforth known as GMCR, Inc., and hereinafter referred to as the grantee as the surviving corporation, is hereby approved. Section 2. The transfer of the franchise of Clavecilla Radio System under Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, as well as all the rights, privileges and licenses arising therefrom with the exception of broadcasting, to the grantee as a consequence of the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System, is hereby approved."

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exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause. In the instant case, there is even no implied re-enactment of Section 9 (b) of Clavecilla's old franchise since Section 11 of RA No. 7229 expressly states that only unrepealed provisions of Clavecilla's franchise shall continue in force and effect. Measured against these well-recognized principles of taxation, PLDT's claim to tax exemption based on the franchise of Globe must necessarily fail.

PLDT also relies on Smart's franchise which PLDT claims contains the "in lieu of all taxes" clause. PLDT points to Section 9 of Republic Act No. 7294, Smart's franchise, which states —

"Tax provisions. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay *a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes* on this franchise or earnings thereof: Provided, that the grantee, its successors or assigns shall *continue to be liable for income taxes payable under Title II of the National Internal Revenue Code* pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue." (Italics supplied)

RA No. 7294 took effect on May 27, 1992, after the effectivity of the Local Government Code of 1991. Thus, the withdrawal of tax exemptions in the Local Government Code cannot apply to Smart. Applying the equality clause in Section 23 of RA No. 7925, PLDT claims that the "in lieu of all taxes" clause in Smart's franchise should also benefit PLDT.

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PLDT's reliance on the "in lieu of all taxes" clause in Smart's franchise is misplaced for two reasons. First, Republic Act No. 7716 abolished the franchise tax on telecommunications companies effective January 1, 1996. To replace the 3 percent franchise tax in Section 227 (now Section 119) of the National Internal Revenue Code, RA No. 7716 imposed a 10 percent VAT on telecommunications companies under Section 102 (now Section 108) of the Tax Code. As explained by PLDT, "presently, the telecommunications companies do not anymore pay a franchise tax of varying percentages and instead pay a uniform VAT of 10%."[4] The franchise tax in Section 119 of the Tax Code still exists but is now applicable only to "electric, gas and water utilities" and no longer to telecommunications companies.

The franchise tax is imposed ***only*** on franchise holders, while the VAT is imposed on all sellers of goods and services, whether or not they hold franchises. The franchise tax is now imposed in Section 119 of the Tax Code, while the VAT on telecommunications companies is imposed in Section 108 of the Tax Code. The Tax Code defines the VAT as an indirect tax which can be passed on to the buyer. The Tax Code precludes payment of a "VAT on the VAT" by excluding the VAT in computing the gross receipts. This is not the case of the franchise tax. Certainly, the franchise tax is a *different tax* from the VAT.

Smart's franchise states that the 3 percent "***franchise tax***" shall be "in lieu of all taxes." Clearly, it is the ***franchise tax*** that shall be in lieu of all taxes referred to in Section 9, and not the VAT or any other tax. Following the rule on strict interpretation of tax exemptions, the "in lieu of all taxes" clause cannot apply when what is paid is a tax other than the franchise tax. Since the franchise tax on telecommunications companies has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative for lack of a franchise tax. Revenue Memorandum Circular No. 5-96 issued by the Commissioner of Internal Revenue stating that the VAT shall be "in lieu of all taxes" since it merely replaced the franchise tax is void for lack of a legal basis.

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[4] p. 7, PLDT's Motion for Reconsideration.

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Second, the "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.

If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9 (b) of Clavecilla's old franchise, as follows:

"xxx in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, ***municipal,*** *provincial* or national, from which the grantee is hereby expressly exempted, xxx" (Italics supplied)

However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

PLDT cites *Philippine Railway Co. v. Nolting*[5] to support its claim[6] that the "in lieu of all taxes" clause includes exemption

[5] 34 Phil. 401 (1916).

[6] pp. 1–5, PLDT's Memorandum dated February 7, 2003.

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from local taxes. However, in Philippine Railway the franchise of the railway company expressly exempted it from ***municipal and provincial taxes***, as follows:

"Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature — *municipal, provincial* or central — upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee, under this concession or franchise." (Italics supplied)

If anything, ***Philippine Railway*** shows the need to avoid ambiguity by specifying the taxing authority — municipal, provincial or national — from whose jurisdiction the taxing power is withheld to create the tax exemption. This is not the case in Smart's franchise, where the "in lieu of all taxes" clause refers only to national internal revenue taxes.

The existing legislative policy is clearly against the revival of the "in lieu of all taxes" clause in franchises of telecommunications companies. After the VAT on telecommunications companies took effect on January 1, 1996, Congress *never* again included the "in lieu of all taxes" clause in any telecommunications franchise it subsequently approved. Also, from September 2000 to July 2001, all the fourteen telecommunications franchises[7] approved by Congress uniformly and expressly state that the franchisee shall be subject to all taxes under the National Internal Revenue Code, except the specific tax. The following is substantially the uniform tax provision in these fourteen franchises:

"Tax Provisions. — The grantee, its successors or assigns, shall be ***subject to the payment of all taxes, duties, fees, or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws***: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications entities shall likewise be extended to the grantee."[8] (Italics supplied)

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[7] RA Nos. 8955, 8956, 8959, 8961, 8962, 8992, 9002, 9101, 9116, 9117, 9124, 9130, 9133 and 9149.

[8] Section 11 of RA No. 8955.

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Thus, after the imposition of the VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax. More importantly, the uniform tax provision in these new franchises expressly states that the franchisee shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "***other applicable laws***." One of the "***other applicable laws***" is the Local Government Code of 1991, which empowers local governments to impose a franchise tax on telecommunications companies. This, to reiterate, is the existing legislative policy.

Lastly, although it has no bearing on the instant case, I find that the equality clause in Section 23 of RA No. 7925 applies to tax exemptions. This Section provides as follows:

"Equality of Treatment in the Telecommunications Industry. — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise."

The legislative intent behind Section 23 is unquestionably to level the playing field among all competing companies in the telecommunications industry. If one telecommunications company enjoys a tax advantage over its competitors, while enjoying equal treatment with its competitors in all other aspects like interconnection, fee sharing and the like, then there obviously will be no level playing field. A tax exemption granted to one telecommunications company, but not to others, will sooner than later kill all its competitors and result in a monopoly. This obviously is not the meaning of "equality of treatment."

Besides, a tax exemption granted to one or more, but not to all, telecommunications companies similarly situated will violate

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the constitutional rule on uniformity of taxation.[9] It will deny equal protection of the law to those similarly situated but to whom the tax exemption is denied. A tax exemption granted to one or some telecommunications companies, but not to all, can only be constitutionally justified if there is a reasonable basis for classifying some companies exempt and others not exempt. RA No. 7925, which prescribes the state policy on public telecommunications, does not allow any classification or discrimination in the grant of any "advantage, favor, privilege, exemption, or immunity." This is precisely to observe, as far as taxation is concerned, the rule of uniformity and thus significantly level the playing field. The law mandates "equality of treatment" to promote a "healthy competitive environment."[10] If this manifest state policy is to have any meaning, Section 23 must include tax exemption.

Under Section 23, a tax exemption in a franchise granted after the effectivity of RA No. 7925 is deemed automatically written in all prior franchises, whether the prior franchises were granted before or after the effectivity of RA No. 7925. Section 23 states that a tax exemption in a new franchise "*shall ipso facto* become part of previously granted telecommunications franchises." There is no limitation whatsoever that only franchises issued prior to the effectivity of RA No. 7925 can benefit from Section 23. To interpret such limitation in Section 23 is to negate the legislative intent in Section 23. Such a limitation will result in unfair advantage to new franchisees, grossly distort market forces and prevent the level playing field that Section 23 seeks to create.

That Section 23 uses the word "exemption" and not the term "tax exemption" does not exclude exemption from tax, which by far is the most important exemption in a telecommunications franchise. If the word "exemption" is inadequate to embrace tax exemption, then it will be inadequate to embrace any kind of exemption. To have any significance, the law will have to

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[9] Section 28, Article VI of the Constitution.

[10] Section 4 (f) of RA No. 7925.

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spell out each kind of exemption before or after the word "exemption," like "exemption from reportorial requirements," "exemption from monitoring requirements" and the like. This will render the word "exemption" in Section 23 meaningless because at present this word stands alone. Certainly, we must avoid an interpretation that will effectively erase the word "exemption" from Section 23.

The reiteration in individual franchises of rights or privileges already guaranteed in RA No. 7925 does not nullify or deny such guarantees in RA No. 7925. The right to a fair and reasonable interconnection is expressly mandated in RA No. 7925.[11] The same right is expressly reiterated in 21[12] of the 23 franchises approved by Congress after the effectivity of RA No. 7925 up to July 31, 2001. The reiteration does not mean that the same right never existed in RA No. 7925, thus requiring the right to be expressly stated in the individual franchises. No such inference can be drawn. Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law. This is the situation in 17 franchises[13] granted after the effectivity of RA No. 7925 up to July 31, 2001, all of which reiterate the equality clause found in Section 23 of RA No. 7925.

In view of the foregoing, I vote to deny the motion for reconsideration for lack of merit.

PUNO, *J., dissenting*:

The sole issue in the case at bar is whether petitioner Philippine Long Distance Telephone Company, Inc. (PLDT) is liable to pay the franchise tax imposed by the City of Davao. The issue

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[11] Sections 4 (g) and 5 (c) of RA No. 7925.

[12] RA Nos. 7961, 8004, 8065, 8095, 8198, 8675, 8676, 8677, 8678, 8690, 8955, 8956, 8959, 8961, 8962, 9002, 9101, 9117, 9130, 9133, and 9149.

[13] RA Nos. 7961, 8065, 8095, 8198, 8678, 8955, 8956, 8959, 8961, 8962, 9002, 9101, 9117, 9124, 9130, 9133 and 9149.

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can be resolved only by untangling the different laws dealing with local government and the telecommunications industry. It is thus necessary to first lay down these laws.

On January 1, 1992, the Local Government Code took effect. The Code pertinently provides:

"Sec. 137. *Franchise Tax. — Notwithstanding any exemption granted by any law or other special law*, the province may impose a tax on business enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. . .

Sec. 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, *tax exemptions* or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, *are hereby withdrawn upon the effectivity of this Code.*"

In accord with this Code, the City of Davao enacted Ordinance No. 519, Series of 1992. It provides:

"Notwithstanding any exemption granted by any law or other special law, *there is hereby imposed a tax on business* enjoying a franchise, at a rate of seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income or receipts realized within the territorial jurisdiction of Davao City."

On March 19, 1992, Congress enacted Republic Act No. 7229 entitled "An Act approving the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System and the consequent transfer of the franchise of Clavecilla Radio System granted under Republic Act No. 402, as amended, to *Globe Mackay* Cable and Radio Corporation, extending the life of said franchise and repealing certain sections of RA No. 402, as amended." Section 3 thereof provides:

"Sec. 3. Section 9 of the same Act is hereby amended to read as follows:

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Sec. 9. . . .

(b) The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, *in lieu of any and all taxes* of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national from which the grantee is hereby expressly exempted, effective from the date of the approval of R.A. No. 1618. . ."

Section 5 provides:

"Sec. 5. Section twenty of the same Act is hereby amended to read as follows:

Sec. 20. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for, however, in the event of any competing individual, partnership, or corporation, receiving from the Congress of the Philippines a similar permit or franchise more *favorable* than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms, shall ipso facto become part of the terms hereof, and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation."

On March 27, 1992, Congress enacted Republic Act No. 7294 entitled "An Act granting *Smart* Information Technologies, Inc. (SMART) a franchise to establish, maintain, lease and operate integrated telecommunications/computer/electronic services, and stations throughout the Philippines for public domestic and international communications, and for other purposes." Section 9 of the Act provides:

"Section 9. *Tax provisions.* — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of' this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be *in lieu* of all taxes on this franchise or earnings thereof . . ."

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On March 16, 1995, Republic Act No. 7925 entitled "Public Telecommunications Policy" was enacted. Section 23 of the Act states:

"Section 23. ***Equality of Treatment in the Telecommunications Industry.*** — Any advantage, favor, privilege, exemption, or immunity granted under existing franchise, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded ***immediately and unconditionally*** to the grantees of such franchises: ***Provided, however,*** that the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise."

It also appears that ***after 1995***, Congress enacted laws granting franchises to other telecommunications companies. Some of these franchises contain the "in lieu of all taxes" clause as well as the "equality clause." The others, however, did not.[1]

On the basis of these laws, petitioner PLDT wrote to the City Treasurer of Davao protesting the assessment of the local franchise tax amounting to ₱3,681,985.75 for the year 1999. It likewise claimed exemption from the payment of said franchise tax on the basis of the opinion of the Bureau of Local Government Finance (BLGF). The opinion holds that petitioner is exempt from payment of franchise and business taxes imposable by local government units upon the effectivity of Republic Act No. 7925 on March 16, 1995. The protest was denied by the City Treasurer of Davao. Petitioner challenged the denial in Branch 13 of the RTC of Davao but was unsuccessful. The trial court ruled that the Local Government Code had withdrawn the tax exemption previously granted to petitioner PLDT.

Petitioner thus filed a petition for review on *certiorari* with this Court. On August 22, 2001, the Second Division of this Court denied the petition. It held: (1) petitioner's claim of tax

[1] Resolution, pp. 4–5. These subsequent laws are vital. Petitioner's motion for reconsideration should take them into account and its resolution should not be limited to the laws granting exemptions to Globe and Smart.

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exemption is based on strained inferences; (b) the claim would result in absurd consequences; (c) the word "exemption" in RA No. 7925, Sec. 23 does not mean "tax exemption"; and (d) there can be no reliance on the alleged expertise of the BLGF for the issue involves the interpretation of a law.

Petitioner contends in its Motion for Reconsideration, *viz*:

"A. THE 'ABSURD CONSEQUENCES' REFERRED TO BY THE COURT AS ALLEGEDLY RESULTING FROM PETITIONER'S POSITION(,) HAVE NO BASIS IN FACT AND IN LAW; IN ANY CASE, FOR THE COURT TO SAY THAT PETITIONER'S POSITION WOULD RESULT IN ABSURD CONSEQUENCES, IS TO QUESTION, UNDER THE GUISE OF INTERPRETATION, THE WISDOM OF THE POLICY BEHIND REPUBLIC ACT NO. 7925.

B. THE PROVISIONS OF SECTION 23 OF REPUBLIC ACT NO. 7925 ARE CLEAR AND NEED NO INTERPRETATION; ASSUMING THERE IS A NECESSITY FOR INTERPRETATION, THE RULING OF THE BUREAU OF LOCAL GOVERNMENT FINANCE, WHICH IS A CONTEMPORANEOUS CONSTRUCTION OF SECTION 23 AND IS THEREFORE ENTITLED TO GREAT WEIGHT, SHOULD BE CONSIDERED BY THE COURT.

C. SECTION 23 OF REPUBLIC ACT NO. 7925 CLEARLY GRANTS A TAX EXEMPTION OR TAX EXCLUSION TO PETITIONER.

D. THE AUTHORITIES ON STRICT CONSTRUCTION CITED BY THE COURT HAVE NO APPLICATION IN THIS CASE.

E. THE 'IN LIEU OF ALL TAXES' PROVISION IN PETITIONER'S FRANCHISE WAS DEEMED RESTORED WITH REGARD TO LOCAL TAXES BY SECTION 23 OF REPUBLIC ACT NO. 7925 IN RELATION TO THE FRANCHISES OF GLOBE TELECOM, INC. AND SMART COMMUNICATIONS, INC.

F. THE COURT FAILED TO CONSIDER THE OTHER ARGUMENTS OF PETITIONER."

Petitioner's Motion for Reconsideration was elevated to the Court *en banc* considering its significance and as similar cases are pending decision in its other divisions.

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The majority will now deny petitioner's motion for reconsideration. It holds that section 23 of Republic Act No. 7925 mandating equality of treatment in the telecommunications industry and relied upon by the petitioner is not "clear and unequivocal." Again, I quote Section 23, *viz*:

> "Sec. 23. ***Equality of Treatment in the Telecommunications Industry***. — Any advantage, favor, privilege, exemption, or immunity granted *under existing franchise* or *may hereafter be granted*, shall *ipso facto* become part of *previously* granted telecommunications franchise and shall be accorded *immediately* and *unconditionally* to the grantees of such franchises . . ."

I cannot understand what is unclear in Section 23. Favor, privilege, exemption and immunity are ordinary words without any mystic meaning. The provision states without any flourish that if any favor, privilege, exemption or immunity is granted in the franchise of *any* telecommunications company, it will be deemed granted to *other* telecommunications companies with *prior* franchises. The grant is unequivocal for the provision directs that it is "*ipso facto*," and should be "immediately and unconditionally." The language of the law cannot be more limpid, indeed, the work of a worthy wordsmith.

Next, the majority holds that "xxx the best refutation of PLDT's claim that RA No. 7925, Section 23 grants tax exemption is the fact that after its enactment on March 16, 1995, Congress granted several franchises containing both an 'equality clause' similar to Section 23 and an 'in lieu of all taxes' clause."[2] It cites the laws granting franchises to the Island Country Telecommunications, Inc., Cruz Telephone Company, Inc., ISLA Cellular Communications, Inc., and Islatel Corporation.[3]

I agree that all these subsequent laws should be considered and not only the laws granting exemptions to Smart and Globe. With due respect, however, I have great difficulty following the flow of the logic of the majority. To my mind, the *reiteration*

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[2] *Ibid.*

[3] *Ibid.*

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of the "equality clause" as well as the "in lieu of all taxes clause" in the telecommunications franchises granted by Congress *after* March 16, 1995 *fortifies* the claim for exemption of the petitioner. The reiteration of the clauses shows that Congress never wavered in its touchstone policy of equalizing the status of our companies in the telecommunications industry. To be sure, Congress need not reiterate the "equality clause" and the "in lieu of all taxes clause" in these subsequent telecommunications franchises for without it, Republic Act No. 7925, Section 23 could still be availed of by them. The reiteration is simply a stubborn stress on the importance of equality in the entire telecommunications industry but the majority inexplicably reads it as denying the rule of equality to the petitioner. By treating alikes as unalike, the majority is violating the equal protection clause of the Constitution.

Further to its stance that the law is vague, the majority parleys the proposition that "an intent to grant tax exemption cannot even be discerned from the law." It quotes the sponsorship speech of Rep. Jerome B. Paras of H.B. No. 14028, *viz*:[4]

> "There is also a need to promote a level playing field in the telecommunications industry. New entities must be granted protection against dominant carriers through the encouragement of equitable access charges and equal access clauses in interconnection agreements and the strict policing of predatory pricing by dominant carriers. Equal access should be granted to all operators connecting into the inter-exchange network. There should be no discrimination against any carrier in terms of priorities and/or equality of service."

Again, I do not see how this one-paragraph observation of Congressman Paras can serve as a crutch to support the majority ruling. Congressman Paras merely clarified that the aim of the law is to promote a level playing field in the telecommunications industry. And, doubtless, *one way* of leveling the playing field is by granting equal access to all operators connecting into the inter-exchange network. *But this is not all* that has to be done to level the playing field. There are other acts and practices

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[4] *Id.* at 6.

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that distort the playing field in the telecommunications industry and they were addressed by Congress. One destructive practice that can really dislevel the playing field is the imposition of discriminatory tax. Precisely to eliminate these practices, Congress enacted Section 23 decreeing for equality of treatment of *all* companies in the telecommunications industry. By one sweep, it did away with the grant of unequal favors to telecommunication companies, which is anathema to fair competition in deregulated industries.

More untenable is the majority ruling that "exemption" in Section 23 does not refer to tax exemption but "exemptions from certain regulations and requirements imposed by the National Telecommunications Commission" like, for instance, exemption from securing permits for every import equipment. The ruling is not based on any clear cut provision of law but is a mere surmise. It is all too easy for the law to define exemption as the majority interprets it but the law did not. I submit that the majority reading of the word "exemption" collides with the basic rule in statutory construction that the meaning of a word should be understood in light of the cluster of words to which it is associated. The word "exemption'' is clustered with the words "advantage, favor, privilege and immunity." Its most natural meaning is that it refers, to and at least includes, tax exemption.

Petitioner has also called our attention to what would result from the majority decision under reconsideration — "xxx the result is that while the holders of franchise granted prior to January 1, 1992 when the LGC took effect, had to pay local franchise tax in view of the withdrawal of their local tax exemption; those whose franchises were granted after January 1, 1992, because of the 'in lieu of all taxes' provisions contained therein, were exempted from such local tax."[5] The disparate treatment, petitioner contends, will not promote healthy competition in the telecommunications industry. The majority, however, dismisses petitioner's fear by holding:

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[5] Resolution, pp. 7–8.

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"One can speak of healthy competition only between equals. For this reason, the law seeks to break up monopoly in the telecommunications industry by gradually dismantling the barriers to entry and granting to new telecommunications entities protection against dominant carriers through equitable access charges and equal access clauses in interconnection agreements and through the strict policing of predatory pricing by dominant carriers. Interconnection among carriers is made mandatory to prevent a dominant carrier from delaying the establishment of connection with a new entrant and to deter the former from imposing excessive access charges.

"That is also the reason there are franchises granted by Congress after the effectivity of R.A. No. 7925 which do not contain the 'in lieu of all taxes' clause, just as there are franchises, also granted after March 16, 1995, which contain such exemption from other taxes. If, by virtue of Section 23, the tax exemption granted under existing franchises or thereafter granted is deemed applicable to previously granted franchises (*i.e.*, franchises granted before the effectivity of R.A. No. 7925 on March 16, 1995), then those franchises granted after March 16, 1995, which do not contain the 'in lieu of all taxes' clause, are not entitled to tax exemption. The 'in lieu of all taxes' provision in the franchises of Globe and Smart, which are relatively new entrants in the telecommunications industry, cannot thus be deemed applicable to PLDT, which had virtual monopoly in the telephone service in the country for a long time, without defeating the very policy of leveling the playing field of which PLDT speaks."[6]

Again, I am unable to agree with the majority. With due respect, the majority fails to grasp the processes of deregulation followed in the telecommunications industry. The key move to take before deregulating is to break up the monopoly or oligopoly in control of the industry. For with a monopoly or oligopoly enjoying a stranglehold on the industry, the market forces cannot have a free play and prices in the industry will be dictated by the lucre of commerce. For this reason, petitioner PLDT's monopoly had to be broken. Among others, the law made interconnection among carriers mandatory and provided for equitable access charges and equal access clauses in interconnection agreements.

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[6] *Ibid.*

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With this provision, the law busted the biggest barrier to the effective entry of new players in the telecommunications industry. The next step in deregulation is to level the playing field. The mechanism for leveling the playing field is installed in Section 23 of the law which requires equality of treatment in the telecommunications industry. In no uncertain terms, it orders that "any advantage, favor, privilege, exemption, or immunity granted under existing franchise, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises xxx." A level playing field is indispensable to prevent predatory pricing on the part of any player in the industry. Without a level playing field, competition will be unfair and prices in the industry will not be determined by market forces but by unregulated greed. Inexplicably, the majority would deny to petitioner PLDT the right to a level playing field. Its reasons are tenuous to say the least. Its prime reason is that petitioner PLDT had enjoyed virtual monopoly in the telephone service in the country for a long time.[7] The monopoly status of petitioner PLDT is past and should be viewed in its proper historical perspective. In the early years of our economic history, monopolies in certain industries had to be allowed. They have to be entertained in industries which are high-risk, capital intensive and indispensable to economic growth. No company will risk venture capital in these industries unless they are accorded favored treatment, usually a monopoly status, for a certain time. Even then, administrative mechanisms were put in place to regulate their activities especially their pricing policies to protect the interest of the consuming public. Indeed, a great part of the United States would still be a wilderness if it did not allow monopolies in its railroad and telecommunications industries. We adopted this proven strategy and allowed monopolies in some of our industries like electric power, transportation and telecommunications. It is in line with this strategy that Congress granted to petitioner PLDT a monopoly status for a certain

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[7] *Id.* at 9.

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time. No company would then invest in our telecommunications industry but petitioner PLDT did, assumed the risk and undeniably played a vital role in our economic development which cannot be dismissed as insignificant. For this reason, our Constitution does not ban monopolies as evil *per se* for they are not.

It appears that a misappreciation of the past dominant role of petitioner PLDT in our telecommunications industry has poisoned the position of the majority. The majority thinks that if it orders equal tax treatment to petitioner *vis-à-vis* the other companies in the telecommunications industry, there will be inequality because there is no parity between them in terms of resources. Following this thought, the majority again surmises that the strategy of Congress to achieve equality in the industry is to grant exemptions on a case to case basis. Thus, it holds that "that is xxx the reason there are franchises granted by Congress after the effectivity of R.A. No. 7925 which do not contain the 'in lieu of all taxes' clause, just as there are franchises, also granted after March 16, 1995, which contain such exemption from other taxes."[8] Footnote no. 13 of the majority decision cites a list of telecommunications companies whose franchises do not contain the "in lieu of all taxes" clause while footnote no. 14 cites the companies whose franchises contain the said clause. A cursory glance at the companies in footnote no. 13 will, however, show that they are not the giant-type which will explain why their franchises do not contain the "in lieu of all taxes" clause. Similarly, there appears in footnote no. 14 big companies yet their franchises contain the aforesaid clause. Significantly, the majority does not cite the legislative proceedings of the laws granting these franchises to support its ruling that the grant or non-grant of the "in lieu of all taxes" clause in the franchises of the companies involved is part of the strategy of Congress to equalize them and level the playing field in the telecommunications industry. The ruling is an ex-cathedra pronouncement unsupported by any footnote. Again, I submit the view that Section 23 granted equal tax treatment to *ALL* telecommunications companies and to stress again, this was

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[8] *Id.* at 8.

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done only after breaking up the monopoly in the industry. Today, petitioner PLDT no longer controls the industry and there is no reason to treat it unequally from other companies. The inclusion of the "in lieu of all taxes" clause in some franchises simply reiterates Section 23 of Republic Act No. 7925. The non-inclusion of the clause in other franchises does not mean its non-grant for the exemption can be claimed under Section 23 of Republic Act 7925 which still stands for it has not been repealed by any subsequent law. By insisting that petitioner cannot claim its tax exemption because of its prior dominant status, the majority is substituting its own concept of equality from that of Section 23, and it is restructuring the level playing field designed by the legislature. It is not our business to construct the law but to construe it for we are not another chamber of Congress.

I vote to grant the Motion for Reconsideration.

THIRD DIVISION

[A.M. No. P-02-1534. March 26, 2003.]

JUDGE OSCAR S. AQUINO, *petitioner, vs.* **RICARDO C. OLIVARES,* Clerk of Court, MCTC, Babak, Davao del Norte,** *respondent.*

SYNOPSIS

Respondent Clerk of Court Olivares in this case was administratively held liable for simple neglect of duty for having incurred delay in depositing the bail bond of ₱12, 000.00 to the Municipal Treasurer, allegedly due to oversight. Supreme

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* Compulsorily retired effective April 17, 2000.