

REPUBLIC TELEPHONE CO., INC., PETITIONER, VS. PHILIPPINE LONG DISTANCE TELEPHONE CO., INC., CALTEX (PHILIPPINES) INC. AND PUBLIC SERVICE COMMISSION, RESPONDENTS.*G.R. No. L-21070. September 23, 1968*

Ponente: REYES, J.B.L., J.

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From the decision of the Public Service Commission in PSC Case No. 91179-C, finding therein respondent Philippine Long Distance Telephone Company (hereinafter referred to as PLDT) guilty of violation of Section 20 (b) of the Public Service law as well as of its certificate of public convenience and necessity to operate a telephone service in Manila, and imposing upon it a fine of P10.00 a day, from January 27, 1953 until the proper application for a certificate of public convenience to operate the telephone system at the Caltex refinery in Bauan, Batangas, shall have been filed, all parties [complainant Republic Telephone Company, respondent PLDT, and intervenor Caltex (Phil.), Inc.] filed separate appeals to this Court. Being interrelated and directed against a single decision of the Public Service Commission, these appeals are here taken up jointly.

Insofar as pertinent to these appeals, the facts of the case, briefly, are as follows:

Pursuant to a contract entered into by the PLDT and Caltex (Philippines) Inc., referred to hereafter as CALTEX, one of its subscribers in Manila, the former undertook the establishment and construction of communication facilities between the CALTEX refinery in Bauan, Batangas, and its head office at Padre Faura, Manila, upon payment by the latter of certain fixed amounts. The communication system actually commenced operation on January 28, 1953.

On April 17, 1956, the Republic Telephone Co., Inc., to be referred to hereafter as RETELCO, was granted by the Public Service Commission a certificate of public convenience and necessity to operate a local telephone service in the municipality of Batangas, province of Batangas (PSC Case No. 94598). On October 29, 1959, it was also authorized to establish a local telephone system in Bauan, Batangas (PSC Case No. 119597). By arrangement with PLDT, RETELCO's telephone service in Batangas was interconnected with the PLDT's telephone system in Manila and other points in the Philippines, on long distance basis.

In May, 1960, RETELCO filed a complaint in the Public Service Commission against the alleged illegal operation by PLDT of the telephone service between the CALTEX main office in Manila and its refinery in Bauan (PSC Case No. 91179-C), and prayed for its discontinuance. Answering the complaint, PLDT, joined in by CALTEX which was allowed to intervene, claimed, among other things, that the disputed telephone connection was merely a private line leased by CALTEX from the respondent; that this line was just an extension of the main-office telephone of CALTEX at Padre Faura, which extension-service PLDT has authority to render; that the lease of said private line was executed before complainant was granted a certificate of public convenience to operate a local telephone system in Batangas; that the certificate granted to complainant is not exclusive so as to eliminate a telephone service which was already existing long before such certificate was applied for; that the continuance of

the lease agreement between respondent and intervenor did not cause damage or injury to the complainant; and that to grant the relief sought in the complaint would violate the constitutional protection against impairment of the obligation of contract.

In the decision dated August 21, 1962, a majority of the Commissioners, rejecting the contentions of respondent and intervenor, ruled that the operation by PLDT of the telephone service in the CALTEX refinery in Bauan, Batangas, constituted a violation of the Public Service law (Commonwealth Act 146, as amended). However, considering that the installations had been in full operation since January 27, 1953, and that complainant was fully aware thereof when it applied for a certificate of public convenience to operate a local telephone service, the telephone service complained of, in the interest of the public, was not ordered discontinued. Instead, PLDT was directed to file with the Commission the necessary application for a certificate to operate such system in 15 days from receipt of the decision. And, for having violated the law, the PLDT was ordered to pay a fine of P10.00 a day from January 27, 1953 until the required application shall have been filed and received by the Public Service Commission. As previously stated, all parties to the case appealed to this Court.

In L-21074 and L-21075, appellants CALTEX and PLDT assail the ruling of the Public Service Commission that the PLDT should have secured the Commission's prior approval before the telephone lines connecting the private automatic branch exchanges (PABX) in the CALTEX office in Manila and in its refinery in Bauan, Batangas, were installed and operated. They also claim as erroneous the findings of the Commission that the private automatic branch exchange in the Bauan refinery is a substation; that the lines connecting the two automatic telephone exchanges are not being used exclusively by CALTEX for its business, but are available to the public; and that these lines were owned by PLDT. It is further alleged that as RETELCO has actual knowledge of the existence of the leased lines when it applied for a certificate of public convenience to operate a local telephone service in Batangas, the certificate so issued should be considered subject to the existing lease between CALTEX and PLDT; that PLDT has not violated any "territorial restrictions" because no such restrictions were imposed on its certificate to operate a telephone service in Manila; that the Public Service Commission has no authority to impose a penalty for alleged violation of the Public Service law; and that, even if it has such power, the imposition of the fine on PLDT was already barred by prescription under Section 28 of Commonwealth Act 146. Consequently, they contend that the Public Service Commission erred in imposing upon the appellant PLDT a fine of P10.00 a day from January 27, 1953 until an application for a certificate of public convenience has been filed.

For a better understanding of the operation of the disputed telephone "system", we are reproducing hereunder the pertinent portion of the report of Engineer Alli, who inspected the premises in the company of representatives of appellants PLDT and CALTEX, upon order of the Commission, thus:

"To begin with, the Philippine Long Distance Telephone Co., Inc. has provided the Caltex (Philippines) Inc. with a private automatic branch exchange (PABX) at the latter's main office at Padre Faura St., Malate, Manila, which is connected by trunk lines to the former's central office located in Indiana St., Malate, Manila. The principal equipment of the aforementioned PABX consist of a main distributing frame (MDF), sets connectors with accessories for automatic operation, two-position monotype switchboards which handle incoming calls, 'Exide' storage batteries which provide power at 48 volts d.c, 'Convotrol' battery charger of 100 watts capacity, etc. The PABX has a total of 20, 2-way trunk lines which have been divided into two (2) groups of 10 trunks per group, the first group of which handles calls on telephone Nos. 5-70-31 to 5-70-41 and the second group of which handles calls on telephone Nos. 5-70-41 to 5-70-50, and has also 5 one-way outgoing trunk lines. From the telephone PABX of the Caltex in Padre Faura St., the Philippine Long Distance Telephone Co., Inc. has extended its telephone service to the Caltex Refinery office in Bauan, Batangas. The description of the installation, maintenance and operation on the said extension telephone service is now the principal subject of this report.

"x x x

x x x

x x x

"The PABX in the Caltex refinery office handles 188 telephones within the compound including those in the housing area outside the refinery compound, as of the time of the inspection. Power comes from a local battery of 24 volts d.e. The Caltex telephone system is tied with that of the telephone system of the Republic Telephone Company, Inc. in Bauan.

"Operation of the Telephone System:

"The manual switchboard in the telephone PABX in Padre Faura St., Manila, has a 'control key' which has direction connection to a 'bridge cut-off relay' at the '09 switchboard' of the PLDT Co. in its Riverside office building. By putting the 'control key' at the PABX in the 'off position, a calling party in Bauan can talk with a called party in Manila, and vice-versa, only through the '09 switchboard' of the PLDT Co. without passing through the Padre Faura PABX. This arrangement is used after office hours when no telephone operator is present in the Caltex Padre Faura PABX.

"By means of the above switching scheme, a calling party in the Caltex office, or anywhere in Manila, can talk with another party in the Caltex refinery office in Bauan, Batangas, and vice-versa from 7:30 a.m. to 5:30 p.m., Monday through Friday (except on holidays), and from 8:00 a.m. to 12:00 noon on Saturdays, through the telephone PABX in Padre Faura St., Manila, but during the rest of the period, only through the '09 switchboard' of the PLDT Co. During the period when the Caltex refinery office in Bauan is connected to the '09 switchboard', i.e., the period at night time, half of Saturday, all of Sunday and holiday, or the period after switching off, a party in the said refinery office can call somebody with a telephone in Manila, and vice-versa. Payment of the sum of ten centavos (P0.10) is charged by the PLDT Co. to Caltex for each attempted or completed call. Besides that, during the period after switching off, a party in Caltex office in Bauan can call another party outside Manila, like Baguio City, and vice-versa, wherein the PLDT Co. has a direct telephone connection, upon payment of the long distance call charge. It may be seen, therefore, that after switching off at the Caltex Padre Faura St. PABX, the Caltex telephone extension in Bauan, Batangas, operates as a toll station of the PLDT Co."

It is well to note that the accuracy of the description of the system and how it operates, contained in the above-quoted report and which was fully reproduced in the decision on appeal, are not being challenged, appellants confining their attack against the conclusions drawn by the Commission from such facts. To meet, therefore, the factual issues now being raised by said appellants, we can point to the settled rule that conclusions of fact by the Public Service Commission shall be respected by this Court as long as they are supported by the evidence (*Red Line Transportation et al. vs. Santo Tomas*, L-18584, January 30, 1967, and cases therein cited). The factual report on the outcome of the inspection of the premises involved herein constitutes such evidence.

But what is decisive in these cases is not the nature or condition of the telephone system but the effect or consequence of the work itself. In other words, the main issue to be determined is whether or not the installation by PLDT of the telephone system in Bauan, without securing prior approval thereof by the Public Service Commission, constituted a violation of law and justifies the imposition upon it, by the Commission, of a daily fine until the proper application for a certificate is actually filed.

The Public Service Law (Commonwealth Act 146, as amended), in its Section 20, provides:

"SEC. 20. Act 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

x x x

x x x

"(b) To establish, construct, maintain, or operate new units or extend existing facilities or make any other addition to or general extension of the service.

x x x

x x x

x x x"

By specific provision of law, therefore, prior approval by the Commission is required, not only in the establishment, construction, maintenance or operation of new units or extension of existing facilities but also in making any other addition to, or general extension of, a public service.

In claiming exemption from this requisite, appellants contend that to require the PLDT to secure a separate certificate of public convenience and necessity in order to serve a single user in Bauan (referring to CALTEX) would be unfair. Furthermore, it is alleged that the law is vague, there being no specification of what work may be considered an "extension"; and, at any rate, the installation service rendered by PLDT is allowed under Section 2 of the PSC Rule and Regulation No. 39.

We find no merit in these contentions.

The allegation that the "system" serves only one user (CALTEX), and that it is not available to the public, is contradicted by the findings of the Commission that the 188 telephone units handled by the PABX in Bauan are located inside the refinery and in the housing area outside of the compound; that after office hours and during Sundays and holidays, a party can call from Bauan to Manila, and vice-versa, through the "09 switchboard" of the PLDT without said call passing through the CALTEX office in Padre Faura, Manila. From these established facts, it is evident that the telephone "system" in Bauan is not being operated solely to provide a direct link between the CALTEX refinery and its main office for official or business purposes; that at least during the period when the PABX in the Manila Office is switched "off", the telephone system in Bauan can not be considered a mere extension of the CALTEX lines in Manila, but more of a toll station of the PLDT.

Disputing the applicability of Section 20(b) of the Public Service Law to the present case, appellant PLDT charges the provisions to be vague about the kind of extension service that it covers. Then, it makes a capital of the fact that only 2 pairs of wire were installed to connect the communication equipment in the refinery with those in the CALTEX main office.

There is no ambiguity in the law, as claimed. In declaring as unlawful the making by a public service of "any other addition to or general extension of the service", the law could not have contemplated the mere transfer of a telephone from one part of a house to another, or work of like character, but an undertaking of some degree in size or complexity. Hence, the use of the word "general" as distinguished from "limited" or "specific" or "particular".

It is also incorrect to say that no certificate should be required in the case at bar because only two pairs of wire to connect the two private automatic branch exchanges were installed. The utility and capacity of those wires are not as minor as appellant would like to impress. For, with these two pairs of wire (one, representing three voice channels, and one teletype channel), the PABX in the Bauan refinery which handles 188 telephone units and a teletype machine are connected with the PABX in the main office at Padre Faura, which can carry 20 calls at the same time (telephone numbers 5-70-31 to 5-70-50). Such extension service, certainly, can not be considered simple or limited.

It is, likewise, argued for the appellants that since the Public Service Commission has never specified the particular linear boundaries of the territory that PLDT can serve under its certificate to operate a telephone service in Manila, then it can not be penalized for extending such service allegedly to the premises of a Manila subscriber, outside the Manila base area.

Assuming it to be true that the Public Service Commission has ailed to the present, to define the extent of the so-called "Manila Exchange Area" within which the PLDT may lawfully render service, such failure would not justify its operation or extension of its services to Bauan, Batangas, a place over 117 kilometers away. That would be, literally, stretching the meaning of "Manila Exchange Area" too far. It would place within that "Manila Area" any locality in the Islands that PLDT's wires could reach. The fact remains that in the decision rendered by the Public Service Commission on August 12, 1930 in PSC Case No. 23979, approving the purchase by PLDT of all the rights, franchise and equipment of the Philippine Telephone and Telegraph Company, the PLDT was ordered to file "a written undertaking whereby it assumes the obligation to continue the operation of the telephone service heretofore operated by the Philippine Telephone and Telegraph Company in the City of Manila and suburbs —". The certificate of public convenience and necessity issued to PLDT as a consequence of that decision, therefore, is subject to the condition that the service will be rendered in-the City of Manila and its suburbs.

Neither can appellants rely on PSC Rule and Regulation No. 39 to justify the extension job. The connecting service allowable under its Section 2, wherein a subscriber who furnishes the equipment necessary to a service is connected by PLDT to the system, is understood to refer to the performance of such service only within the area where PLDT can legally operate. Otherwise, a mere service regulation could nullify the restrictions imposed by a legislative franchise or the general law on the matter.

In view of the conclusion thus reached, the matter of ownership of the equipment and materials used in the construction of the telephone system in the CALTEX refinery has become immaterial. For the provision of Section 20 of the Public Service Act to be operative, it is enough that a public service, or its lessee or operator, has committed any of the acts therein prohibited. Admittedly, the PLDT constructed or installed the disputed telephone system without securing prior authorization from the Commission, contrary to law.

There having been violation by appellant PLDT not only of Section 20(b) of the Public Service law but also of its certificate to operate a telephone service in Manila, the imposition by the commission of fine upon said appellant is proper.[1]

Appellants, however, contend that since the installation and operation of the system commenced on January 28, 1953, the violation or offense committed by appellant PLDT has already prescribed in accordance with Section 28 of the Public Service Act.[2] Suffice it to state, in this regard, that there being no representation when the illegality of the operation of the disputed telephone system was discovered by complainant, from which date the period of prescription is to be reckoned,[3] the power of the Commission to penalize PLDT must be upheld. Certainly, an offense remains an offense, whether discovered or not.

For its part, RETELCO, as appellant in L-21070, maintains that the Public Service Commission was in error in

not ordering the discontinuance of the questioned telephone system after it was found to be operating illegally. It is claimed that as the only authorized operator of telephone service in Batangas, appellant is entitled to protection against the competition offered by unauthorized operators.

The Public Service Commission, in ordering the continuation by PLDT of the telephone service and requiring the latter to file the corresponding application for a certificate to "legalize" its unauthorized operation of such service, justified the same by saying that public interest would thus be better served. In so deciding, the Commission gave due consideration to the length of time that the service has been maintained, and by the fact that the certificate of public convenience and necessity to operate a telephone service issued to appellant RETELCO did not confer upon it the exclusive right to render such service in Bauan.

In the determination of whether a certificate to operate a public service is to be granted or not, public interest and convenience must be the prime consideration.^[4] And, the Public Service Commission, with the facilities at its command, would be in the position to properly gauge what would serve public interest. The ruling of the Commission on the question of what would serve the interest of the public should be respected, unless there is evidence to the contrary.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is affirmed in toto. Costs in L-21074 and L-21075 are taxed against appellants PLDT and CALTEX; in L-21070, against appellant RETELCO.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

Fernando, J., took no part.

Judgment affirmed.

[1] Section 21, Commonwealth Act 146, as amended. SEC. 28. Violations of the orders, decisions, and regulations of the Commission

[2] "Sec. 28. Violation of the orders, decisions, and regulations of the Commission and of the terms and conditions of any certificates issued by the Commission shall prescribe after sixty days, and violations of the provisions of this Acts shall prescribe after one hundred and eighty days."

[3] Pangasinan Transp. Co. vs. Phil. Farming Co., Ltd., 81 Phil. 273; Everett steamship Corp. vs. Chuahiong, 90 Phil. 64.

[4] Cababa vs. Remingo, et al., L-17832-33, May 29, 1963.

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