

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
DEFENDANT-APPELLANT.**

G.R. No. L-18841. January 27, 1969

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

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

Direct appeals, upon a joint record on appeal, by both the plaintiff and the defendant from the dismissal, after hearing, by the Court of First Instance of Manila, in its Civil Case No. 35805, of their respective complaint and counterclaims, but making permanent a preliminary mandatory injunction there-tofore issued against the defendant on the infer-connection of telephone faci-lities owned and operated by said parties.

The plaintiff, Republic of the Philippines, is a political entity exercising governmental powers through its branches and instrumentalities, one of which is the Bureau of Telecommunications. That office was created on 1 July 1947, under Executive Order No. 94, with the following powers and duties, in addition to certain powers and duties formerly vested in the Director of Posts:

"SEC. 79. The Bureau of Telecommunications shall exercise the following powers and duties:

"(a) To operate and maintain existing wire-telegraph and radio-telegraph offices, stations, and facilities, and those to be established to restore the pre-war telecommunication service under the Bureau of Posts, as well as such additional offices or stations as may hereafter be established to provide telecommunication service in places requiring such service;

"(b) To investigate, consolidate, negotiate for, operate and maintain wire-telephone or radio tele-phone communication service throughout the Philip-pines by utilizing such existing facilities in cities, towns, and provinces as may be found feasible and under such terms and conditions or arrangements with the present owners or operators thereof as may be agreed upon to the satisfaction of all concerned;

"(c) To prescribe, subject to approval by the Department Head, equitable rates of charges for messages handled by the system and/or for time-calls and other services that may be rendered by said system;

"(d) To establish and maintain coastal stations to serve ships at sea or aircrafts and, when public interest so requires, to engage in the international telecommunication service in agreement with other countries desiring to establish such service with the Republic of the Philippines; and

"(e) To abide by all existing rules and regulations prescribed by the International Telecommunication convention relative to the accounting, disposition and exchange of messages handled in the international service, and those that may hereafter be promulgated by said convention and adhered to by the Government of the Republic of the Philippines."[1]

The defendant, Philippine Long Distance Telephone Company (PLDT for short), is a public service corporation holding a legislative franchise, Act 3426, as amended by Commonwealth Act 407, to install, operate and maintain

a telephone system throughout the Philippines and to carry on the business of electrical transmission of messages within the Philippines and between the Philippines and the telephone systems of other countries.[2] The RCA Communications, Inc., (which is not a party to the present case, but has contractual relations with the parties) is an American corporation authorized to transact business in the Philippines and is the grantee, by assignment, of a legislative franchise to operate a domestic station for the reception and transmission of long distance wireless messages (Act 2178) and to operate broadcasting and radio-telephone and radio-telegraphic communications services (Act 3180).[3]

Sometime in 1933, the defendant, PLDT, and the RCA Communications, Inc., entered into an agreement whereby telephone messages, coming from the United States and received by RCA's domestic station, could automatically be transferred to the lines of PLDT; and vice-versa, for calls collected by the PLDT for transmission from the Philippines to the United States. The contracting parties agreed to divide the tolls, as follows: 25% to PLDT and 75% to RCA. The sharing was amended in 1941 to 30% for PLDT and 70% for RCA, and again amended in 1947 to a 50-50 basis. The arrangement was later extended to radio-telephone messages to and from European and Asiatic countries. Their contract contained a stipulation that either party could terminate it on a 24-month notice to the other.[4] On 2 February 1956, PLDT gave notice to RCA to terminate their contract on 2 February 1958.[5]

Soon after its creation in 1947, the Bureau of Telecommunications set up its own Government Telephone System by utilizing its own appropriation and equipment and by renting trunk lines of the PLDT to enable government offices to call private parties.[6] Its application for the use of these trunk lines was in the usual form of applications for telephone service, containing a statement, above the signature of the applicant, that the latter will abide by the rules and regulations of the PLDT which are on file with the Public Service Commission.[7] One of the many rules prohibits the public use of the service furnished the telephone subscriber for his private use.[8] The Bureau has extended its services to the general public since 1948,[9] using the same trunk lines owned by, and rented from, the PLDT, and prescribing its (the Bureau's) own schedule of rates.[10] Through these trunk lines, a Government Telephone System (GTS) subscriber could make a call to a PLDT subscriber in the same way that the latter could make a call to the former.

On 5 March 1958, the plaintiff, through the Director of Telecommunications, entered into an agreement with RCA Communications, Inc., for a joint overseas telephone service whereby the Bureau would convey radio-telephone overseas calls received by RCA's station to and from local residents.[11] Actually, they inaugurated this joint operation on 2 February 1958, under a "provisional" agreement.[12]

On 7 April 1958, the defendant Philippine Long Distance Telephone Company, complained to the Bureau of Telecommunications that said bureau was violating the conditions under which their Private Branch Exchange (PBX) is inter-connected with the PLDT's facilities, referring to the rented trunk lines, for the Bureau had used the trunk lines not only for the use of government offices but even to serve private persons or the general public, in competition with the business of the PLDT; and gave notice that if said violations were not stopped by midnight of 12 April 1958, the PLDT would sever the telephone connections.[13] When the PLDT received no reply, it disconnected the trunk lines being rented by the Bureau at midnight on 12 April 1958.[14] The result was the isolation of the Philippines, on telephone services, from the rest of the world, except the United States.[15]

At that time, the Bureau was maintaining 5,000 telephones and had 5,000 pending applications for telephone connection.[16] The PLDT was also maintaining 60,000 telephones and had also 20,000 pending applications.[17] Through the years, neither of them has been able to fill up the demand for telephone service.

The Bureau of Telecommunications had proposed to the PLDT on 8 January 1958 that both enter into an interconnecting agreement, with the government paying (on a call basis) for all calls passing through the

interconnecting facilities from the Government Telephone System to the PLDT.[18] The PLDT replied that it was willing to enter into an agreement on overseas telephone service to Europe and Asian countries provided that the Bureau would submit to the jurisdiction and regulations of the Public Service Commission and in consideration of 37 1/2% of the gross revenues.[19] In its memorandum in lieu of oral argument in this Court dated 9 February 1964, on page 8, the defendant reduced its offer to 33 1/3% (1/3) as its share in the overseas telephone service. The proposals were not accepted by either party.

On 12 April 1958, plaintiff Republic commenced suit against the defendant, Philippine Long Distance Telephone Company, in the Court of First Instance of Manila (Civil Case No. 35805), praying in its complaint for judgment commanding the PLDT to execute a contract with plaintiff, through the Bureau, for the use of the facilities of defendant's telephone system throughout the Philippines under such terms and conditions as the court might consider reasonable, and for a writ of preliminary injunction against the defendant company to restrain the severance of the existing telephone connections and/or restore those severed.

Acting on the application of the plaintiff, and on the ground that the severance of telephone connections by the defendant company would isolate the Philippines from other countries, the court a quo, on 14 April 1958, issued an order for the defendant:

"(1) to forthwith reconnect and restore the seventy-eight (78) trunk lines that it has disconnected between the facilities of the Government Telephone System, including its overseas telephone services, and the facilities of defendant; (2) to refrain from carrying into effect its threat to sever the existing telephone communication between the Bureau of Telecommunications and defendant, and not to make connection over its telephone system of telephone calls coming to the Philippines from foreign countries through the said Bureau's telephone facilities and the radio facilities of RCA Communications, Inc.; and (3) to accept and connect through its telephone system all such telephone calls coming to the Philippines from foreign countries -- until further order of this Court."

On 28 April 1958, the defendant company filed its answer, with counterclaims.

It denied any obligation on its part to execute a contract of services with the Bureau of Telecommunications; contested the jurisdiction of the Court of First Instance to compel it to enter into interconnecting agreements, and averred that it was justified to disconnect the trunk lines heretofore leased to the Bureau of Telecommunications under the existing agreement because its facilities were being used in fraud of its rights. PLDT further claimed that the Bureau was engaging in commercial telephone operations in excess of authority, in competition with, and to the prejudice of, the PLDT, using defendant's own telephone poles, without proper accounting of revenues.

After trial, the lower court rendered judgment that it could not compel the PLDT to enter into an agreement with the Bureau because the parties were not in agreement; that under Executive Order 94, establishing the Bureau of Telecommunications, said Bureau was not limited to servicing government offices alone, nor was there any in the contract of lease of the trunk lines, since the PLDT knew, or ought to have known, at the time that their use by the Bureau was to be public throughout the Islands, hence the Bureau was neither guilty of fraud, abuse, or misuse of the poles of the PLDT; and, in view of serious public prejudice that would result from the disconnection of the trunk lines, declared the preliminary injunction per-manent, although it dismissed both the complaint and the counterclaims.

Both parties appealed.

Taking up first the appeal of the Republic, the latter complains of the action of the trial court in dismissing the part of its complaint seeking to compel the defendant to enter into an interconnecting contract with it, because the parties could not agree on the terms and conditions of the interconnection, and of its refusal to fix the terms and

conditions therefor.

We agree with the court below that parties can not be coerced to enter into a contract where no agreement is had between them as to the principal terms and conditions of the contract. Freedom to stipulate such terms and conditions is of the essence of our contractual system, and by express provision of the statute, a contract may be annulled if tainted by violence, intimidation or undue influence (Articles 1306, 1336, 1337, Civil Code of the Philippines). But the court a quo has apparently overlooked that while the Republic may not compel the PLDT to celebrate a contract with it, the Republic may, in the exercise of the sovereign power of eminent domain, require the telephone company to permit interconnection of the government telephone system and that of the PLDT, as the needs of the government service may require, subject to the payment of just compensation to be determined by the court. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way. The use of the PLDT's lines and services to allow interservice connection between both telephone systems is not much different. In either case private property is subjected to a burden for public use and benefit. If, under section 6, Article XIII, of the Constitution, the State may, in the interest of national welfare, transfer utilities to public ownership upon payment of just compensation, there is no reason why the State may not require a public utility to render services in the general interest, provided just compensation is paid therefor. Ultimately, the beneficiary of the interconnecting service would be the users of both telephone systems, so that the condemnation would be for public use.

The Bureau of Telecommunications, under section 78 (b) of Executive Order No. 94, may operate and maintain wire telephone or radio telephone communications throughout the Philippines by utilizing existing facilities in cities, towns, and provinces under such terms and conditions or arrangement with present owners or operators as may be agreed upon to the satisfaction of all concerned; but there is nothing in this section that would exclude resort to condemnation proceedings where unreasonable or unjust terms and conditions are exacted, to the extent of crippling or seriously hampering the operations of said Bureau.

A perusal of the complaint shows that the Republic's cause of action is predicated upon the radio telephonic isolation of the Bureau's facilities from the outside world if the severance of interconnection were to be carried out by the PLDT, thereby preventing the Bureau of Telecommunications from properly discharging its functions, to the prejudice of the general public. Save for the prayer to compel the PLDT to enter into a contract (and the prayer is no essential part of the pleading), the averments make out a case for compulsory rendering of interconnecting services by the telephone company upon such terms and conditions as the court may determine to be just. And since the lower court found that both parties "are practically at one that defendant (PLDT) is entitled to reasonable compensation from plaintiff for the reasonable use of the former's telephone facilities" (Decision, Record on Appeal, page 224), the lower court should have proceeded to treat the case as one of condemnation of such services independently of contract and proceeded to determine the just and reasonable compensation for the same, instead of dismissing the petition.

This view we have taken of the true nature of the Republic's petition necessarily results in overruling the plea of defendant-appellant PLDT that the court of first instance had no jurisdiction to entertain the petition and that the proper forum for the action was the Public Service Commission. That body, under the law, has no authority to pass upon actions for the taking of private property under the sovereign right of eminent domain. Furthermore, while the defendant telephone company is a public utility corporation whose franchise, equipment and other properties are under the jurisdiction, supervision and control of the Public Service Commission (Sec. 13, Public

Service Act), yet the plaintiff's telecommunications network is a public service owned by the Republic and operated by an instrumentality of the National Government, hence exempt, under Section 14 of the Public Service Act, from such jurisdiction, supervision and control. The Bureau of Telecommunications was created in pursuance of a state policy reorganizing the government offices -

"to meet the exigencies attendant upon the establishment of the free and independent Government of the Republic of the Philippines, and for the purpose of promoting simplicity, economy and efficiency in its operation" (Section 1, Republic Act No. 51) ---

and the determination of state policy is not vested in the Commission (Utilities Com. vs. Bartonville Bus Line, 290 Ill. 574; 124 N.E. 373).

Defendant PLDT, as appellant, contends that the court below was in error in not holding that the Bureau of Telecommunications was not empowered to engage in commercial telephone business, and in ruling that said defendant was not justifiably in disconnecting the telephone trunk lines it had previously leased to the Bureau. We find that the court a quo ruled correctly in rejecting both assertions.

Executive Order No. 94, Series of 1947, reorganizing the Bureau of Telecommunications, expressly empowered the latter in its Section 79, subsection (b), to "negotiate for, operate and maintain wire telephone or radio telephone communication service throughout the Philippines", and, in subsection (c), "to prescribe, subject to approval by the Department Head, equitable rates of charges for messages handled by the system and/or for time calls and other services that may be rendered by the system". Nothing in these provisions limits the Bureau to non-commercial activities or prevents it from serving the general public. It may be that in its original prospectuses the Bureau officials had stated that the service would be limited to government offices: but such limitations could not block future expansion of the system, as authorized by the terms of the Executive Order, nor could the officials of the Bureau bind the Government not to engage in services that are authorized by law. It is a well-known rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute (PLDT vs. Collector of Internal Revenue, 90 Phil. 676), and that the Government is never stopped by mistake or error on the part of its agents (Pineda vs. Court of First Instance of Tayabas, 52 Phil. 803, 807; Benguet Consolidated Mining Co. vs. Pineda, 98 Phil. 711, 724).

The theses that the Bureau's commercial services constituted unfair competition, and that the Bureau was guilty of fraud and abuse under its contract, are, likewise, untenable.

First, the competition is merely hypothetical, the demand for telephone service being very much more than the supposed competitors can supply. As previously noted, the PLDT had 20,000 pending applications at the time, and the Bureau had another 5,000. The telephone company's inability to meet the demands for service are notorious even now. Second, the charter of the defendant expressly provides:

"Sec. 14. The rights herein granted shall not be exclusive, and the rights and power to grant to any corporation, association or person other than the grantee franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise: ---." (Act 3436)

And third, as the trial court correctly stated, "when the Bureau of Telecommunications subscribed to the trunk lines, defendant knew or should have known that their use by the subscriber was more or less public and all embracing in nature, that is, throughout the Philippines, if not abroad" (Decision, Record on Appeal, page 216).

The acceptance by the defendant of the payment of rentals, despite its knowledge that the plaintiff had extended the use of the trunk lines to commercial purposes, continuously since 1948, implies assent by the defendant to such extended use. Since this relationship has been maintained for a long time and the public has patronized both

telephone systems, and their interconnection is to the public convenience, it is too late for the defendant to claim misuse of its facilities, and it is not now at liberty to unilaterally sever the physical connection of the trunk lines

"- - - -, but there is high authority for the position that, when such physical connection has been voluntarily made, under a fair and workable arrangement and guaranteed by contract and the continuous line has come to be patronized and established as a great public convenience, such connection shall not in breach of the agreement be severed by one of the parties. In that case, the public is held to have such an interest in the arrangement that its rights must receive due consideration. This position finds approval in *State ex rel. vs. Cadwallar*, 172 Ind. 619, 636, 87 N. E. 650, and is stated in the elaborate and learned opinion of Chief Justice Myers as follows: 'Such physical connection cannot be required as of right, but if such connection is voluntarily made by contract, as is here alleged to be the case, so that the public acquires an interest in its continuance, the act of the parties in making such connection is equivalent to a declaration of a purpose to waive the primary right of independence, and it imposes upon the property such a public status that it may not be disregarded' - - - citing *Mahan v. Mich. Tel. Co.*, 132 Mich. 242, 93 N.W. 629, and the reasons upon which it is in part made to rest are referred to in the same opinion, as follows: 'Where private property is by the consent of the owner invested with a public interest or privilege for the benefit of the public, the owner can no longer deal with it as private property only, but must hold it subject to the rights of the public in the exercise of that public interest or privilege conferred for their benefit.' *Allnut v. Inglis* (1810) 12 East, 527. The doctrine of this early case is the acknowledged law." (*Clinton?Dunn Tel. Co. v. Carolina Tel. & Tel. Co.*, 74 S.E. 636, 638).

It is clear that the main reason for the objection of the PLDT lies in the fact that said appellant did not expect that the Bureau's telephone system would expand with such rapidity as it has done; but this expansion is no ground for the discontinuance of the service agreed upon.

The last issue urged by the PLDT as appellant is its right to compensation for the use of its poles for bearing telephone wires of the Bureau of Telecommunications. Admitting that section 19 of the PLDT charter reserves to the Government -

"the privilege without compensation of using the poles of the grantee to attach one ten-pin cross-arm, and to install, maintain and operate wires of its telegraph system thereon: Provided, however, That the Bureau of Posts shall have the right to place additional cross-arms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Posts and the grantee; - - -"

the defendant counterclaimed for P8,772.00 for the use of its poles by the plaintiff, contending that what was allowed free use, under the aforequoted provision, was one ten-pin cross-arm attachment and only for plaintiff's telegraph system, not for its telephone system; that said section could not refer to the plaintiff's telephone system, because it did not have such telephone system when defendant acquired its franchise. The implication of the argument is that plaintiff has to pay for the use of defendant's poles if such use is for plaintiff's telephone system and has to pay also if it attaches more than one (1) ten-pin cross-arm for telegraphic purposes.

As there is no proof that the telephone wires strain the poles of the PLDT more than the telegraph wires, nor that they cause more damage than the wires of the telegraph system, or that the Government has attached to the poles more than one ten-pin cross-arm as permitted by the PLDT charter, we see no point in this assignment of error. So long as the burden to be borne by the PLDT poles is not increased, we see no reason why the reservation in favor of the telegraph wires of the government should not be extended to its telephone lines, any time that the government decided to engage also in this kind of communication.

In the ultimate analysis, the true objection of the PLDT to continue the link between its network and that of the Government is that the latter competes "parasitically" (sic) with its own telephone services. Considering, however, that the PLDT franchise is non-exclusive; that it is well-known that defendant PLDT is unable to

adequately cope with the current demands for telephone service, as shown by the number of pending applications therefor; and that the PLDT's right to just compensation for the services rendered to the Government telephone system and its users is herein recognized and preserved, the objections of defendant-appellant are without merit. To uphold the PLDT's contention is to subordinate the needs of the general public to the right of the PLDT to derive profit from the future expansion of its services under its non-exclusive franchise.

WHEREFORE, the decision of the Court of First Instance, now under appeal, is affirmed, except in so far as it dismisses the petition of the Republic of the Philippines to compel the Philippine Long Distance Telephone Company to continue servicing the Government telephone system upon such terms, and for a compensation, that the trial court may determine to be just, including the period elapsed from the filing of the original complaint or petition. And for this purpose, the records are ordered returned to the court of origin for further hearings and other proceedings not inconsistent with this opinion. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

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- [1] , [2] and [3] Stipulated by parties (Record on Appeal, pages 70-72).
- [4] Exhibit "Q", folder of exhibits, pages 1-2, 11, 66-67, 69, 72-73, 82-83, 88.
- [5] T.s.n., 26 January 1959, page 11.
- [6] Exhibit "12-A".
- [7] Partial Stipulation of Facts and its Annex "D", record on appeal, pages 72, 134-135.
- [8] Exhibit "16", page 49.
- [9] T.s.n., 9 March 1960, page 9.
- [10] T.s.n., 9 March 1960, page 57.
- [11] Annex "M" to Partial Stipulation of Facts, record on appeal, pages 164-177.
- [12] T.s.n., 9 March 1960, pages 30-31.
- [13] Annex "P", record on appeal, pages 184-186.
- [14] Partial Stipulation of Facts, record on appeal, page 78.
- [15] Decision, record on appeal, pages 221-222.
- [16] & [17] Decision, record on appeal, page 211; Exhibit "3", record of exhibits, page 103; T.s.n., 9 March 1960, pages 56 and 59.
- [18] Partial Stipulation of Facts, record on appeal, page 72.
- [19] Partial Stipulation of Facts, record on appeal, page 77.

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