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Monday, September 29, 1986

OPENING OF SESSION

At 10:05 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Cirilo A. Rigos.

Everybody remained standing for the Prayer.

PRAYER

REV. RIGOS: O God of truth and justice, as we face the duties of this day, grant us the wisdom to discern whatever is true and good and honorable, and the grace to subordinate our individual judgment to the greater wisdom of the majority. Make us conscious of our responsibility, so that we may act and speak with candor and exemplify in our behavior the dignity and nobility of our position.

As we come closer to the end of our work, may we find happiness in the thought that our labors will not be in vain. Teach us to cherish in our hearts the bond of friendship we have developed in this Commission. Help us transcend our differences without becoming unfaithful to our principles and convictions.

May this day be another fruitful day in the life of the nation and may our participation in the making of this historic event be both meaningful and significant.

We pray in Jesus' name. Amen.

ROLL CALL

THE PRESIDENT: The Secretary-General will call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar

Present [*] Natividad Present [*]

Alonto Absent Nieva Present

Aquino Present [*] Nollado Present [*]

Azcuna Present [*] Ople Present [*]

Bacani Present Padilla Present

Bengzon Present Quesada Present [*]

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present Reyes de los Present [*]

Calderon Present Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present [*]

Concepcion Present Rosales Absent

Davide Present Sarmiento Present [*]

Foz Present Suarez Present

Garcia Present [*] Sumulong Present

Gascon Present [*] Tadeo Present [*]

Guingona Present Tan Present

Jamir Present Tingson Present

Laurel Absent Treñas Present

Lerum Present [*] Uka Present

Maambong Present [*] Villacorta Present

Monsod

Present

The Secretariat is in receipt of official advice of absence of Commissioner Villegas.

The President is present.

The roll call shows 28 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of a quorum.

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that we dispense with the reading of the Journal of the previous session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of the previous session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. CALDERON: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.
The Secretary-General will read the Reference of Business.

REFERENCES OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Letter from Mr. Gilberto L. Tizon, Sr. of 229 Del Rosario Street, Ubanon, Catbalogan, Samar, inviting attention to the proliferation of electric cooperatives imposing exorbitant rate.

(Communication No. 1022 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from Ms. Romelita A. de Vera of Maryknoll College Foundation, Diliman, Quezon City, expressing trust and confidence in the able leadership of the President of the Constitutional Commission of 1986, that despite the differences of opinion, the Commission is expected to come up with a good constitution.

(Communication No. 1023 — Constitutional Commission of 1986)

To the Archives.

Letter from Mr. Ramon N. Leuterio of 105 P. Cruz Street, Mandaluyong, Metro Manila, expressing support to the draft Constitution regardless of how it may finally come out, saying that the country needs a Constitution to preserve its democratic institutions.

(Communication No. 1024 — Constitutional Commission of 1986)

To the Archives.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 531

(Article on General Provisions)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: I move that we continue the consideration of Committee Report No. 31 on the Article on General Provisions.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The body will now proceed to the consideration on Second Reading of the Article on General Provisions, and may

we request the honorable chairman and members of the committee to please come forward and occupy the front table.

MR. RAMA: Madam President, I ask that Commissioner Padilla be recognized to present an amendment to the first paragraph of Section 11.

THE PRESIDENT: The Vice-President is recognized.

MR. PADILLA: Madam President, Section 11(1) lines 7 to 11 on page 3 of the committee report is a substantial reproduction of Article XV, Section 7(1) of the 1973 Constitution, but the committee added the words "control" and "of any form" on line 8. My proposal is to restore the provision of the 1973 Constitution which reads: "The ownership and management of mass media shall be limited to citizens of the Philippines or to corporations, COOPERATIVES, or associations wholly owned and managed by such citizens."

MS. ROSARIO BRAID: The committee accepts the amendment.

MR. PADILLA: Thank you very much.

MR. RAMA: Madam President, there are no more registered proponents of amendments to Section 11(1). So, may I ask that we take a vote on this.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Section 11 has three paragraphs. We will be voting only on the first paragraph because I have an amendment to the second paragraph.

THE PRESIDENT: May we know if the succeeding paragraphs have no relation at all to Section 11(1)?

MR. DAVIDE: There is none.

THE PRESIDENT: Commissioner Rosario Braid, can a vote be made separately on paragraph 1 without considering paragraphs 2 and 3?

MS. ROSARIO BRAID: Yes, Madam President. Subsection 1 of Section 11(1) is independent. So we can vote on it.

May I request Commissioner Padilla to read the amended Section 11(1)?

MR. PADILLA: Section 11(1) will read: "The ownership AND management of mass media shall be limited to citizens of the Philippines, or to corporations, COOPERATIVES or associations wholly owned and managed by such citizens."

In other words, it is a readoption of the provision in the 1973 Constitution. This was accepted by the committee, and I think the Chair will just ask whether there is any objection. If there is no objection, the body need not vote anymore.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I just want to call attention to the fact that it is not a verbatim reproduction of the provision in the 1973 Constitution because the word "COOPERATIVES" has been added. But I have no objection to that.

MS. ROSARIO BRAID: Yes, Madam President. There is one word added here and that is "COOPERATIVES."

So, I hope the body will approve of that word added to the original 1973 Constitution.

MR. RAMA: There is no objection on the part of Commissioner Padilla.

THE PRESIDENT: Is there any objection to Section 11(1) as amended? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: Madam President, I ask that Commissioner Jamir be recognized to amend the second and third paragraphs.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: Madam President, I move to delete lines 12 to 18 on page 3 of the committee draft which consist of two paragraphs. May I know the response of the committee?

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, I was made to understand that this motion to delete these two paragraphs, if approved by the body, will not preclude further amendments to substitute for the two paragraphs that would be deleted. But just the same, before the body or the committee takes action on the motion to delete these two paragraphs, may I be given an opportunity to say a few words regarding this, Madam President?

THE PRESIDENT: Before the Commissioner does that, the Chair would be interested in knowing the purpose of the motion to delete paragraphs 2 and 3.

MR. JAMIR: Madam President, during the interpellations last Friday by Commissioner Monsod in which Commissioner Foz was replying in behalf of the committee, it was found out that the provision of the second paragraph of Section 11 is so confusing that it is practically impossible to make a reformulation to suit the intent of the committee.

Moreover, the publishers consider the second paragraph as somewhat confiscatory in character, for which reason they are 100 percent against this provision.

And may I say before I sit down, Madam President, that Commissioner Treñas is my cosponsor in this proposal.

Thank you, Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Thank you, Madam President.

I just would like to explain the rationale behind these provisions. With regard to the first paragraph about putting limitations on media ownership, the twin overriding objectives of the provision are to prevent media monopolies and to democratize media in this country.

In the recent past, we have seen the example of one powerful man in the administration party who is at the same time a businessman through his control of three TV stations and one major national newspaper, dominating a significant portion of mass media in this country. But the question may be asked: What is wrong with media monopolies? Do they not precisely evidence an untrammelled exercise of the freedom of the press?

A media monopoly is an abuse or perversion of the freedom of the press by a single individual or a company or companies controlled by him. Its danger lies in placing in the hands of a man or a group of men a weapon for the widespread manipulation of vehicles of public opinion, to influence the public mind and advance his or its selfish

economic or political influence to the prejudice of the larger public interest and welfare. We must regulate the right of an individual or a group of individuals through corporations or associations to acquire or own mass media establishments which will result in monopolies with harmful effects to the public.

In this connection, I submit that press freedom is not an individual right which belongs to an editor, publisher or proprietor of a newspaper, TV or radio station. It does not belong to him as an individual but only as a member of an institution which is the press.

If the basic role of the press is to invigorate the so-called marketplace of ideas, a concept enunciated by Justice Holmes for which many have a fixation, a concept which claims that the people will discover the truth from the welter of ideas, information and events aired or reported in the media, if such is the role of the press, then limitations must really be put on mass media ownership so that no single individual, family or corporation shall be allowed to own mass media establishments that will result in a kind of a monopolization or a situation that will place at his or its command a propaganda machine to control the minds of men for ulterior motives. For a media monopolist will aim to dominate the marketplace and so induce the buying public with neither the inclination nor the discernment needed to discriminate and make proper conclusions out of the confusion, to accept a given slant, a sensationalized account or a reduction of the truth for the truth itself and thus be misled with costly societal consequences. Granting without accepting the validity of the marketplace theory as making for a democratic choice by the people, concentration of ownership in mass media defeats the objectives of the theory. In media monopolies there is diminution of the marketplace of the views aired or reported to the people. Instead of being exposed, let us say, to as many as 25 different views, assuming that each newspaper in town presents, airs or pontificates different views, the reading public is subjected to a barrage of fewer views or shades of opinions.

The media monopolists are expected to present their own views in, say, 15 out of a total of 25 newspapers. To what extent is the marketplace delimited and to what extent is society deprived of a larger perspective?

To effectively counteract the tendency of the monopolization of the media, the limitation must not only operate horizontally but also vertically. Thus, a newspaper owner should be barred from owning TV or radio stations since what we have said earlier about newspaper magnates operating a chain of newspapers equally applies to a situation where a newspaper owner operates a TV station or a number of radio stations in the same market area.

Diversification of ownership will encourage would-be investors to service the rural areas or communities, of which there are many, which are still to be served by the mass media.

I maintain on my own behalf that we need a provision like this. Maybe we can modify this provision to express the idea in a more effective way. And with regard to the third paragraph, I have already expressed the view that this need not be mandatory. But, perhaps, the provision could be reformulated to express the desire to provide encouragement to such a setup in which the workers and the employees of media establishments could become part owners or can acquire stocks in a kind of arrangement called stock options.

THE PRESIDENT: Is Commissioner Jamir insisting on his motion to delete?

MR. JAMIR: Yes, Madam President, and as a matter of fact, in accordance with the opening statement of Commissioner Foz, he said that in case these two paragraphs are deleted, it will be without prejudice to certain proposals or reformulations, and I agree with that, Madam President.

Thank you.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, in the discussion last Saturday we fully appreciated the concern of

Commissioner Foz against monopolies, but as correctly stated by Commissioner Jamir, the Commissioner found some difficulty in the terms used here, and the Journal will show that even the committee members as well as those who interpellated could not agree precisely on the phrase "one form of commercial mass media in a single market." Of course, even the word "family" here was not properly defined by the committee. I was thinking that perhaps this little controversy we had may be clarified if there could be a common stand on just what would be one form of commercial mass media because there seems to have been some permutations there in the explanation of the concept of a single market and what the limitation or circumscription of the word "family" is. I think if we can have a clear and definite understanding, I do not think there would be any objection to the objective, as far as I recall, but it was in the formulation that there was some confusion.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I was the one who was involved and my name was mentioned. I believe that the objective of regulating or prohibiting the kind of monopolies that Commissioner Foz referred to would be better served by a different formulation of the text and, therefore, I would support the move to delete and also the suggestion of Commissioner Foz that this would not preclude a reformulation that would address the question of monopoly in mass media directly.

With respect to the other paragraph on shares, I submit that the first section of the Article on National Economy which also promotes the same thing, broad ownership of enterprises, already covers the character that Commissioner Foz wanted to emphasize: not mandatory but directory, voluntary. And, secondly, there is another section in the Article on National Economy on the role of cooperatives which was the point of Commissioner Rosario Braid. That section promotes the creation of an agency to promote cooperatives which would include, naturally, mass media cooperatives.

THE PRESIDENT: Are there any other comments?

MR. RAMA: There are none; no other Commissioner has registered to comment. So, the parliamentary situation, Madam President, calls for a vote on the anterior motion to delete, subject to the agreement that has been made between the proponent and Commissioner Foz. So I ask that we take a vote on the motion to delete the second and the third paragraphs of Section 11.

MR. VILLACORTA: Madam President.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Just a prejudicial question, Madam President. Would it be possible to ask for nominal voting on this matter inasmuch as this is a crucial question? Moreover, those who might move or vote for deletion might have different reasons.

THE PRESIDENT: Commissioner Villacorta, this particular motion to delete opens the same Section 11 to a rewording. So, I do not think that would be a gauge of determining the intent of the Commissioners. If the Commissioner does not mind, I believe that a nominal voting at this particular time would not serve the Commissioner's purpose.

MR. VILLACORTA: Madam President, do I understand that even if this proposal is deleted there will be a chance to propose an amended wording for this section?

THE PRESIDENT: Yes, precisely.

MR. VILLACORTA: Thank you very much, Madam President.

VOTING

THE PRESIDENT: As many as are in favor to delete paragraphs 2 and 3 of Section 11, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (No Member raised his hand.)

The results show 22 votes in favor, 10 against and no abstention; paragraphs 2 and 3 of Section 11 of the committee report are deleted.

MR. RAMA: Madam President, with respect to the second paragraph of Section 11, I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I would like to present an amendment to the second paragraph of Section 11 (1) to state: "CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION SHALL BE ALLOWED."

The purpose of the amendment is precisely to address the problems that Commissioner Foz mentioned earlier in order to protect the public from such monopolies or combinations in restraint of trade or unfair competition. I just wanted to mention that this harmonizes also with the Article on National Economy regarding monopolies, combinations in restraint of trade and unfair competition.

THE PRESIDENT: Is the committee ready to react?

MS. ROSARIO BRAID: The committee accepts the amendment, but we would like Commissioner Monsod to please restate the formulation.

MR. MONSOD: The formulation would be as follows: "CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION SHALL BE ALLOWED."

MR. VILLACORTA: Madam President.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Would the proponent, the Honorable Monsod, yield to some questions?

MR. MONSOD: Gladly, Madam President.

MR. VILLACORTA: When the Commissioner says "monopoly," does he refer to cross-ownership of different forms of mass media?

MR. MONSOD: It depends on whether there is control.

MR. VILLACORTA: Could the Commissioner please elaborate on that?

MR. MONSOD: I think even in the formulation of the committee of their provision, the intent was to prohibit cross-ownership or majority ownership. In the interpellations last Saturday, that was brought out by

Commissioner Foz. And so in appropriate cases, it would cover majority cross ownership.

MR. VILLACORTA: In other words, the Commissioner defines "control" as majority ownership?

MR. MONSOD: Actually, the original word of the committee was "own." And when I asked the meaning of "own," the answer was "majority ownership."

MR. VILLACORTA: Therefore, I am right in interpreting that "control" is majority ownership?

MR. MONSOD: Yes, I think the legal interpretation is one-half plus one.

MR. VILLACORTA: Thank you very much.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Will Commissioner Monsod of the committee yield to some questions?

MR. MONSOD: Gladly, Madam President.

MR. OPLE: As now reformulated, this section looks like an Anti-Trust Law, especially applicable to commercial mass media. In that respect, the constitutional control is restricted to combination in restraint of trade.

Would that interpretation be correct?

MR. MONSOD: May I add monopolies and unfair competition, Madam President.

MR. OPLE: Yes. "Combinations in restraint of trade" is synonymous with monopolies. Is that not correct, Madam President?

MR. MONSOD: Not necessarily, because monopolies suggest market control by one. Essentially, strictly speaking, that is what it means. Combinations in restraint of trade admit of the possibility of several entities but acting in concert in restraint of trade.

MR. OPLE: Such as when they cartelize their prices?

MR. MONSOD: Yes, Madam President.

MR. OPLE: The other dimension to this is, I believe, the extent to which a company can establish, let us say, operations of trimedia scope; that is to say, may I particularize now the case of the heirs of Eugenio Lopez, Sr. They published a newspaper jointly with some members of the Roces family, the Manila Chronicle. Presumably, they are interested in reviving their radio network, which was famous before the onset of martial law. And they have already taken over the old ABS-CBN Network in television. This is what I call a trimedia operation which allows for certain economies of scale for an enterprise of this magnitude, synergies, for example, in news gathering facilities and so on. Does the Commissioner contemplate a situation where the company in this concrete example can be guilty of monopoly and, therefore, subject to this proposed reformulated provision?

MR. MONSOD: In the interpellations last Saturday, it was precisely brought out that the complications on interpretation should be left to Congress because the matter of looking at stratification and reclassification of what constitutes a monopoly in a market cannot be exhausted by the discussions and, therefore, this provision was proposed to be put in the Constitution in order to enable Congress to have a policy mandate in protecting the public interest and to appropriately look into the different combinations or permutations of what monopolies would mean in that context. I would say that per se, trimedia ownership need not be harmful, but Congress can define situations in which it could be harmful and, therefore, regulate ownership or control of such enterprises.

MR. OPLE: Yes, I think we also owe it to the general public, those watching very closely and more intently as we approach the end of our deliberations, the decisions that are taken here. And I think that is a fair question requiring a categorical answer. May I say, Madam President, that based on precedents both here and abroad, there should be nothing censurable legally or constitutionally when an enterprising media company tries to establish synergies of operation, provided that it has the capital to do so to organize trimedia operations. The monopoly situation would arise where state policy and law would help a single company preserve exclusive control of a market, but so long as the field is open, ABS-CBN is there. But as there are also other companies engaged in trimedia operation and there is no law restricting entry into this field, then this cannot possibly be the subject of a monopoly situation. I think the test always is that, as Commissioner Monsod had stated earlier, there is exclusive control of the market which is probably reinforced by state policy. Then that will be indubitably a media monopoly which should be covered categorically by this prohibition now proposed by Commissioner Monsod.

That is all, Madam President. Thank you.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May I also add that this mandate would apply as well to government. In other words, government should not be in a monopoly position either with respect to commercial mass media. That is why we are not making the distinction between private and public for the same reason that we did not make the distinction in the Article on National Economy.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you.

May I seek some clarification from Commissioner Monsod since the purpose of this amendment is actually directed against monopolies, combinations in restraint of trade and unfair competition. As the Commissioner knows, we have both in our criminal laws as well as in commercial laws definite concepts of monopolies and combinations in restraint of trade under Article 186 of the Penal Code. And we also have our own concept of unfair competition. Is it the understanding that because this provision will peculiarly apply only to mass media, Congress shall be completely free to provide for the corresponding safeguards independent of or in addition to the present safeguards of what appear to be our antitrust laws?

MR. MONSOD: Madam President, the jurisprudence, of course, on the interpretation of these phrases would be ruling. However, we do not preclude the possibility since this proceeds from a constitutional provision that Congress will define or refine in more detailed safeguards that would be peculiar to or applicable to mass media.

MR. REGALADO: Thank you.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

May I clear up some points with Commissioner Monsod?

MR. MONSOD: Gladly.

MR. SUAREZ: When the Commissioners uses the words "REGULATE OR PROHIBIT MONOPOLIES IN

COMMERCIAL MASS MEDIA," is he envisioning a situation where monopolies in commercial mass media would be allowed except that they may be properly regulated by Congress? Is that the meaning, Madam President?

MR. MONSOD: Yes, because in the interpellations last Saturday, Commissioner Rigos precisely raised the point that there may be areas where nobody wants to get involved in mass media, where there is only one entity or one proprietorship that is willing to engage in mass media. In such cases, since mass media play a very important role in the life of areas that are not covered by mass media, it would be counterproductive to prohibit the establishment of a mass media form there. And in those cases, perhaps the appropriate remedy would be to regulate such enterprises.

MR. SUAREZ: In other words, that is a departure from the basic principle that there should be no monopolies in commercial mass media. That would practically constitute an exception.

MR. MONSOD: Yes. And we will leave it up to Congress to define the terms of that exception and to balance the interests of the public to communication or information as against the dangers of monopoly.

MR. SUAREZ: Thank you.

The Commissioner's second sentence does not appear to be relevant to the first sentence because the second sentence is a blanket statement governing any and all kinds of enterprises including, of course, commercial mass media. Would the Commissioner have any objection if we separate the second sentence so that it would be a general provision operational against all forms of enterprises?

MR. MONSOD: If the intent is to apply this second sentence to all forms of enterprises, that is already aptly covered in Section 21 of the Article on National Economy where the same sentence is placed; it is a duplicate.

MR. SUAREZ: So, in this particular instance, the Commissioner would like this sentence to apply specifically only to commercial mass media?

MR. MONSOD: Yes, Madam President. It is a restatement of the policy as it applies to mass media.

MR. SUAREZ: I see. Thank you.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: The proposal has been accepted by the committee. May I be allowed to introduce an amendment?

MS. ROSARIO BRAID: No, Madam President, it has not yet been accepted. We are actually going to request a recess so we could harmonize certain concepts with the proponent.

THE PRESIDENT: Yes. We are just receiving comments.

MS. ROSARIO BRAID: Yes. We understand, Madam President, that this is equivalent to the antitrust laws and that whatever criteria that will be set by Congress will be based on need and on the nature of the mass media which is capital intensive. But we would like to harmonize our committee's additional proposal which will really be just a continuing proposal to Commissioner Monsod's proposal.

THE PRESIDENT: May we hear Commissioner Bernas?

FR. BERNAS: Madam President, just one question for the record and also an amendment. The first question is: Is it understood that no prohibition or regulation will be allowed which, in any way, impairs freedom of speech or of

the press?

MR. MONSOD: Yes, Madam President.

FR. BERNAS: The second point would be: Would the Commissioner object to the deletion of the second sentence?

MR. MONSOD: As I said, that sentence is already contained verbatim in Section 21 and we only wanted to emphasize its application to mass media. I would have no objection to removing it because anyway Section 21 would apply.

FR. BERNAS: That would be my point and the first sentence is general enough to also cover the second sentence.

MR. MONSOD: I would be amenable to the deletion but I would like to ask the committee.

THE PRESIDENT: Are there any other comments?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Under the Penal Code, Article 186 prohibits monopolies and combinations in restraint of trade. Unfair competition is under Article 189. As Commissioner Monsod said, this proposal covers three concepts: monopolies, combinations in restraint of trade and unfair competition. It seems that among these three, the lesser crime is unfair competition and the greater offense is monopoly and combination in restraint of trade. Could we say or rephrase it as saying: "CONGRESS SHALL REGULATE MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE IN COMMERCIAL MASS MEDIA." In other words, I would like to place monopolies and combinations in restraint of trade in the same category.

THE PRESIDENT: How about the word "prohibit"?

MR. PADILLA: There may be a situation whereby there may be no one who might want to go into mass media and the word "regulate" may amount even to control and control may, in some circumstances, justify prohibition.

THE PRESIDENT: What does Commissioner Monsod say?

MR. MONSOD: Is the Commissioner saying that "regulate" would include "prohibit"?

MR. PADILLA: Yes. I understand the word "regulation" may mean control and control may, at least in some instances, encompass the idea of prohibition.

MR. MONSOD: So the Commissioner's position is it does include?

MR. PADILLA: But if we immediately say "prohibit" in the beginning, then no circumstance whatever may be allowed.

MR. MONSOD: Yes, except that my formulation is "REGULATE OR PROHIBIT."

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

SUSPENSION OF SESSION

MS. ROSARIO B RAID: May we request a two-minute recess so that we can harmonize these problems.

THE PRESIDENT: The session is suspended for two minutes.

It was 10:55 a.m.

RESUMPTION OF SESSION

At 11:07 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, we have discussed with the committee a formulation of the proposal, and I would like to request the chairman of the committee to read the proposed amendment now.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: We have agreed to a reformulation of the original committee reformulation with the following Commissioners: Commissioners Foz, Monsod, Bacani, Bengzon, Suarez, Villacorta, Padilla, Gascon and myself. It states: "CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION IN COMMERCIAL MASS MEDIA SHALL BE ALLOWED."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: In the second sentence, instead of repeating "MASS MEDIA" may I propose to substitute the same with the word THEREIN" to read: "No combination in restraint of trade or unfair competition THEREIN shall be allowed."

MR. MONSOD: That is acceptable, Madam President.

MS. ROSARIO BRAID: Yes.

MR. DAVIDE: And, secondly, Madam President, if we will not include the clause which is found in the Article on National Economy which reads: "when the public interest so requires" this would become an exception to the general rule and there is, therefore, no parity or symmetry. In short, mass media, which are very vital because they involve freedom of the press and of speech, would be unduly restricted. So I would propose to add after "MONOPOLIES" the phrase "WHEN THE PUBLIC INTEREST OR GENERAL WELFARE SO REQUIRES."

MS. ROSARIO BRAID: The committee accepts the amendment, Madam President.

MR. DAVIDE: So, it will read: "Congress shall regulate or prohibit monopolies in commercial mass media WHEN THE PUBLIC INTEREST OR GENERAL WELFARE SO REQUIRES."

MR. MONSOD: May I suggest that we use "PUBLIC INTEREST" in order to harmonize it with the Article on National Economy.

MR. DAVIDE: I agree.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Just one query to the proponent. Would the proposal contemplate the requirement of prior licensing?

MR. MONSOD: No, Madam President.

MS. AQUINO: Would this contemplate likewise an aggressive campaign to diffuse ownership?

MR. MONSOD: That is already mandated even in the Article on National Economy. It is a policy of the State to encourage broad ownership.

MS. AQUINO: But this will not mean regulation by way of licensing?

MR. MONSOD: Yes.

MS. AQUINO: Thank you, Madam President.

MR. FOZ: May the committee add something to that, Madam President? Generally, of course, it will not involve licensing. But in the peculiar case of the broadcast media, there has to be some kind of licensing because broadcast media will be different. There have to be assignments of the airwaves.

MR. BENGZON: Madam President.

THE PRESIDENT: Yes.

MR. BENGZON: That is insofar as assignments of frequencies and locations are concerned, but not licensing to operate.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Yes.

MS. ROSARIO BRAID: This particular question is on Section 12 and we will come to that — the issuance of franchise.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: In the case of the broadcast media, it is understood that these are licensed by the Bureau of Telecommunications but only with respect to the allotment of bands of frequencies. And this really has nothing to do with the regulation of contents. But in the case of the newspapers, may I have the assurance of the committee, in line with the previous questions of Commissioners Bernas and Aquino, that there will be no attempt to compel newspapers to register for the purpose of doing business, since in this country right now anybody may publish without the requirement of registration except for strictly business purposes, let us say, in the SEC or in the Bureau of Domestic Trade. Would that be correct, Madam President?

MR. FOZ: That is the correct contemplation.

MR. OPLE: Thank you so much.

MR. MONSOD: May we have a vote, Madam President?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: I am not comfortable with the second sentence that begins with the word "NO" and ends with the words "SHALL BE ALLOWED." It is said that monopolies may be regulated, but combination in restraint of trade or unfair competition may be prohibited. And I concur with the suggestion of Commissioner Davide on the phrase "WHEN THE PUBLIC INTEREST SO REQUIRES."

May I suggest that the amendment be modified to read: "IN COMMERCIAL MASS MEDIA, CONGRESS SHALL REGULATE MONOPOLIES AND MAY PROHIBIT COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION WHEN THE PUBLIC INTEREST SO REQUIRES." So, it will just be one sentence.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I would like to suggest that we approve the amendment as stated by the committee because that is exactly in line with the corresponding section in the Article on National Economy. Perhaps the Style Committee can then work on both sections so that they will be aligned.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes.

It was 11:15 a.m.

RESUMPTION OF SESSION

At 11:18 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: After consultation with the committee members who have contributed to this formulation, we have agreed that we would like to keep the original formulation.

THE PRESIDENT: Please read the formulation so that we can vote on it.

MS. ROSARIO BRAID: "CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA WHEN THE PUBLIC INTEREST SO REQUIRES. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION THEREIN SHALL BE ALLOWED."

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand (No Member raised his hand.)

As many as are abstaining, please raise their hand. (No Member raised his hand.)

The results show 28 votes in favor and none against; the amendment is approved.

MR. RAMA: Madam President, I ask that Commissioner Monsod be recognized on subsection 2.

THE PRESIDENT: Is this still on Section 11?

MR. RAMA: Still on Section 11, subsection 2.

MS. ROSARIO BRAID: Subsection 2.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, last Saturday Commissioner Regalado stood up to question the inclusion of commercial telecommunications in the second paragraph here. I would like to reiterate that sentiment, that Section 11, subparagraph 2, should not include. . .

THE PRESIDENT: I am sorry. Can we not approve first the whole of Section 11, subparagraph 1 now before we proceed to subparagraph 2?

MR. MONSOD: I submit, Madam President.

THE PRESIDENT: We have been approving this piecemeal.

So that the entire subparagraph 1 of Section 11 consists of two paragraphs now. Will the Commissioner please read?

MS. ROSARIO BRAID: May I read, Madam President?

THE PRESIDENT: Yes; the first and second paragraph only.

MS. ROSARIO BRAID: Section 11, subsection 1: "The ownership AND management OF MASS MEDIA shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations wholly owned and managed by such citizens."

"CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES IN COMMERCIAL MASS MEDIA WHEN THE PUBLIC INTEREST SO REQUIRES. NO COMBINATION IN RESTRAINT OF TRADE OR UNFAIR COMPETITION THEREIN SHALL BE ALLOWED."

THE PRESIDENT: Is there any objection to subsection 1 of Section 11 as read? (Silence) The Chair hears none; the same is approved.

We are now in subsection 2 of Section 11.

MR. MONSOD: Yes, Madam President.

I just wanted to ask the committee if they would withdraw the references of subparagraph 2 to commercial telecommunications on the ground that that issue has already been discussed and resolved in the National Economy Article.

I have looked at the records, and in the minutes of the proceedings there was an exchange among some Commissioners regarding the Davide amendment at that time to increase the minimum Filipino ownership to 75 percent. At that time, the Ruling of the Chair was that after the vote, the issue of ownership of commercial telecommunications, which would be part of public utilities, would be foreclosed.

I will read the pertinent portion where we have talked about this point:

MR. BENGZON: Madam President, just a prejudicial question beyond that. Is it the understanding of the committee that after this issue is voted upon, the issue is foreclosed?

THE PRESIDENT: Yes, the issue is foreclosed.

MR. VILLEGAS: Yes, Madam President.

So we might just as well have the nominal voting.

FR. BERNAS: In conversation with some members of the committee, I was made to understand that it is possible they would be open to treating telecommunications separately, so I hope that this may foreclose the question of public utilities in general but without prejudice to reopening the matter with respect to telecommunications.

MR. ROMULO: No, it is the other way around.

MR. VILLEGAS: Communications is part of public utility, Madam President.

MR. ROMULO: Telecommunications is settled this morning. If you want to raise separate issues with regard to other utilities, that is up to you.

FR. BERNAS: With respect to telecommunications, after we vote on this I would like to raise the issue of telecommunications.

THE PRESIDENT: That would mean a motion for reconsideration.

MR. VILLEGAS: But no longer about the ratio, it could be something else like management, no longer about the ratio.

FR. BERNAS: It would be about the ratio in telecommunications.

MR. VILLEGAS: Our view is that it has been decided during the voting on the Jamir amendment.

At this point there was a recess, after which the President recognized Commissioner Bernas.

FR. BERNAS: Madam President, on the understanding that the vote on the Davide amendment will not close the issue of management, then they can proceed to vote. So the only reservation was management Madam President, and there was then a vote on the ratio which was defeated, and in view of this, we submit that the question of ratio of ownership in telecommunications is foreclosed and it would require a suspension of the Rules to reopen it directly or indirectly.

MR. PADILLA: Madam President.

THE PRESIDENT: Vice-President Padilla is recognized.

MR. PADILLA: I agree with the elimination of the commercial telecommunications, but under this Section 2 it mentions "advertising and commercial telecommunications." If the amendment is only to remove the phrase "commercial establishment," then this Section 2 might refer only to advertising. And in my interpellations I submitted that there are three things that are being discussed: 1) telecommunications, 2) mass media, 3) advertising agency. So may I request that this Section 2 be deleted without prejudice to inserting a section on advertising agency.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: It was the intent of the committee to have a separate provision on advertising so that at this time we are really discussing only the equity on telecommunications.

THE PRESIDENT: What is the manifestation of Commissioner Monsod with reference to the transcript of the previous hearings regarding this two-thirds issue on lines 24 and 25? What does the committee say? Is that a closed matter?

MS. ROSARIO BRAID: We will submit to the ruling of the Chair, Madam President.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we just clear up some things with the Honorable Monsod who cited the minutes of the proceedings in connection with the discussion on that particular section in the Article on National Economy.

I remember, Madam President, that when we voted on this particular section, we were thinking in terms of public utilities ownership. That was very clearly understood and conveyed to the Commissioners and we voted accordingly. Is that not borne out by the minutes of the proceedings, Madam President?

MR. MONSOD: Yes, Madam President, it was on public utilities but we also made it quite clear that telecommunications is part of public utilities. As a matter of fact, in the presentation of Commissioner Davide in his move to increase it to 75 percent, he complained about the fact that there was an undue concentration of discussions on telecommunications.

MR. SUAREZ: Thank you.

But I do not recall that the body voted that the term "commercial telecommunications" is encompassed within the term "public utilities." Is that reflected in the minutes, Madam President?

MR. MONSOD: The minutes reflect that telecommunications is part of public utilities. It is also part of jurisprudence as Commissioner Regalado said last Saturday. There is no question that it is part of public utilities, and that is the reason why it was included in all our discussions at the time.

MS. ROSARIO BRAID: Madam President, may I have just a couple of minutes.

THE PRESIDENT: Yes.

MS. ROSARIO BRAID: To give a little background, during the committee meetings of the Committee on National Economy, I was asked to be present. They then decided that anything that has to do with communication technology will be taken out of National Economy and transferred to General Provisions. Then, while we agree that telecommunications traditionally belonged to public utilities, the developments during the past decade has made present telecommunication facilities not only as carriers of telex, cable and commercial messages, but are, in fact, carriers of culture and economic and political information now. Because of developments in technology, because of combinations of computer communications, because of distance learning as shown by the developments that are happening all over the world in terms of global technology, such as Intersat and other experiments in satellite communications in India, in Indonesia or the Peacesat experiment in the South Pacific, telecommunications has become very powerful political forces. What we are trying to say, Madam President, is that while we are not insisting on the separation of telecommunications from public utilities, we would like to have this issue surface, so that in the future, Congress perhaps could organize a study of telecommunications so that subsequently, it would be understood in terms of its function as a technology for education and culture. Madam President, may I also add that the Philippines is the only country that has not used our existing satellite communications facilities like DOMSAT and PHILCOMSAT other than for commercial purposes. In other countries, such as Indonesia and India, their satellite communications facilities have been used for disaster warning systems, for agriculture, for health delivery and for education. In a previous discussion with Minister Perez, the latter recognized that we are the only country that has not used satellite communication facilities for delivery of development and education. And he promised at that time to help in convincing the then Minister of Information Locsin to see if DOMSAT and PHILCOMSAT may be used for development. We are not insisting,

Madam President, for a special consideration. I just want the issue to surface in view of the significant impact of communications technology, a "double-edged sword." In previous studies, it has been shown that those who own the facilities had access to power, most of it economic and political power. Therefore, this is the reason why I think some of the Members cannot just submit without the appropriate hearing. We hope that what we say now would influence developments in the next decade.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I think the body agrees with Commissioner Rosario Braid on this and that is the reason why we passed that section last Saturday on communications and information and its role in nation building. I think there is no contradiction between passing that section and the position that has been taken by this Representation with respect to the foreclosure on the ownership ratio in commercial telecommunications.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: I can see that there are two problems involved in connection with Section 11, paragraph 2, as pointed out by the chairman of the committee and by the honorable Commissioner Monsod.

One is substantive in character and the other is procedural in nature. I say substantive because it requires a categorical and an unequivocal definition of the term "public utilities," which may or may not include the term "commercial mass communication," as explained in its evolutionary aspect by the chairman of the committee.

And the second, which is the parliamentary situation, is the one brought out by Commissioner Monsod. On the basis of what he read, which happens to be the minutes of the proceedings, in connection with the debate and arguments/discussions on the Article on National Economy, it would appear or it may appear that this matter may already have been foreclosed.

Of course, Madam President, we submit that the matter is not really all that foreclosed. And granted that it is, it should not prevent this body from taking up this vital section as now included in paragraph 2 of Section 11. Given the fact, Madam President, time and again, the Commission, without suspending the Rules, had acted on its own to review and set aside and even reconsider many of the provisions already approved by the Commission.

So, Madam President, I respectfully submit that the matter should not be foreclosed in the discussions.

MR. MONSOD: Madam President, may I just quote?

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: As a matter of fact, Madam President, there was a question as to whether telecommunications was included in the definition of "public utilities." The question was raised by Commissioner Foz:

MR. FOZ: I would like to ask a few clarificatory questions of the proponent. By the term "public utilities," to what are we referring? Will you give some examples, Your Honor?

MR. DAVIDE: Not only these commercial telecommunications, but you have the corporations supplying electric power, transportation; even the matter of supplying ice, that is a public utility.

Subsequent to that was the exchange between Commissioner Bernas and the committee, in which Commissioner Bernas was precisely trying to ask that telecommunications be an exception, thereby admitting that it is part of public utilities. And that was the issue that was resolved, when I read the previous minutes, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: May we have a copy of the transcript which Commissioner Monsod has.
The session is suspended.

It was 11:38 a.m.

RESUMPTION OF SESSION

At 11:42 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

Just to clear the air: First, when the Article on National Economy and Patrimony was being discussed, on the particular section on public utilities, there were sufficient statements in the transcripts to show that commercial telecommunications was considered in the deliberations as being part of "public utilities." In fact, in one portion, before we took a vote on the equity ratio, Commissioner Bernas made a statement that we can proceed to a vote provided that what is not being foreclosed is the matter of management. In other words, there was an understanding among the Commissioners that commercial telecommunications was included in the term "public utilities" and what was to be voted upon was the ownership but not the matter of management of public utilities. So, there is no question, therefore, Commissioner Suarez, that commercial telecommunications was considered as part of "public utilities" when the Commission decided on the equity ratio 60:40. In fact, in one portion the Chair then ruled that any change would entail a motion to reconsider.

With respect to the present committee report which is before the body, that is, subsection 2 of Section 11, our attention is being called to what, in effect, would be in contravention of what has been agreed upon with respect to the section on public utilities in the Article on National Economy and Patrimony.

MR. SUAREZ: Madam President, before we go to the second point, may we just volunteer the observation regarding the first matter that was observed by the Commissioner. I think the minutes would show that the case of commercial telecommunications was cited as an example of what may constitute public utilities. But there was no categorical statement, judging from what I have heard of the Chair's ruling and of Commissioner Monsod's reading of the minutes that, indeed, there was a ruling to the effect that public utilities include commercial telecommunications or the other way around, that commercial telecommunications is public utilities. I recall that it was indeed cited as one of the examples of public utilities, Madam President. I do not know whether that will make any substantial difference in the formation of the Chair's ruling. I am just volunteering that observation, Madam President.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I make my own comment? My recollection is that commercial telecommunications was really included in our vote on the proportion, on the ratio. However, I would like to make the observation that in that same discussion, the ratio was not really 60:40. That can be misleading. The ratio was at least 60 percent of the capital of which will be owned by Filipinos. That is a little different from 60:40 because the term "at least 60 percent of the capital of which" means Congress can increase the capital owned by Filipinos 60 to 75 percent, even to 100 percent.

Thank you, Madam President.

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: May I cite a precedent in this regard? When Commissioner Padilla tried to return the phrase "imminent danger thereof" in the executive, Commissioner Bernas raised a point of order saying that that was already excluded from the Bill of Rights and, consequently, Commissioner Padilla was declared out of order. Secondly, the minutes will show that we really discussed nothing else except telecommunications in Section 15 between myself, Commissioner Rosario Braid and Commissioner Davide. In fact, Commissioner Rosario Braid read a long position paper in that regard.

Thank you.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Just for the record, Madam President. When I discussed commercial telecommunications, it was from the viewpoint of representatives from the Filipino owners of the telecommunications system. I reserved discussion of telecommunications from other perspectives such as the perspective of the possible uses and functions for development in our General Provisions. For instance, just for the record, when Domestic Satellite and PHILCOMSAT were organized, they obtained a lease on the proviso that they were going to be used for social and educational development. But we know what happened. They were taken over by President Marcos' cronies. The government's role was divested and instead, the cronies came in and used it for their own selfish interests. I could give the Commission Members at some appropriate time arguments that I reserved for the General Provisions. In summary, the discussion at that time was really not on the arguments on possible uses and impact of new communication technology but merely views from the Filipino group that represents the telecommunication industry. This is just for the record, Madam President.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, just to add to the argument that we should reconsider this question and possibly suspend the Rules, the Philippine Chamber of Communications Incorporated submitted an exhaustive study entitled, "A Second Look at the Controversial Issue of What the Foreign Equity Limit Should be for Vital Public Utilities." This Chamber is questioning the claim that the amount involved is too big for the present Filipino partners to raise or to expect other Filipino investors to raise for the purpose of divestment on the part of foreign shareholders. Possibly, later on, we could reproduce the relevant excerpts of this study, as claimed by Mr. Alfredo Parungao of PhilCom. If I may read a portion, Madam President.

Using P1.2 billion as the total foreign investment figure, a divestment as a result of a new 75-25 ratio between foreign equity to Filipino equity participation would not require P1.2 billion as it is now being claimed but only 15% of P1.2 billion. This is only equal to P180 million — the total amount involved in divestment in case the 75-25 ratio is finally approved. If the equity rule is two-thirds (2/3) to one-thirds (1/3), then the amount is much less as it will be only six and two-thirds percent of P1.2 billion. This will only be P80 million.

Certainly, the Ayalas, the Siguion Reynas and the Marcoses can bid.

MR. BENGZON: Madam President, parliamentary inquiry.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: The Chair has made a ruling. I would like to find out if Commissioner Villacorta, in his explanation, is seeking a reconsideration of the ruling of the Chair or is filing a motion to suspend the Rules. I just would like to find out.

MR. VILLACORTA: Just for a clarification, Madam President.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Has the Chair made a ruling for closing the discussion of this issue?

THE PRESIDENT: No, we have not yet made a definite ruling. We were just making our own personal observations. The Chair ruled that the subject of commercial telecommunications was already a part of the discussion and on the decision of the body on equity ratio concerning public utilities.

As to what we shall do with respect to subsection 2 of Section 11, we have not arrived at that point.

MR. BENGZON: So, Madam President, with respect to the point that commercial telecommunications was already discussed and foreclosed, has the Chair ruled on that already?

THE PRESIDENT: Yes, that is the ruling of the Chair, but we would like to allow Commissioner Villacorta to finish his comments.

Commissioner Villacorta may finish his comments.

MR. BENGZON: Yes.

MR. VILLACORTA: Madam President, I thought that this is vital information.

THE PRESIDENT: He is precisely reacting to what the Chair has stated.

MR. VILLACORTA: Yes.

THE PRESIDENT: Please proceed.

MR. VILLACORTA: Yes, Madam President. First of all, I am not challenging the ruling of the Chair. It is just that I think this is vital information which could guide us in our future decisions. It is even possible that we have made a wrong decision based on some information which the Philippine Chamber of Communications is challenging. May I continue?

Certainly, the Ayalas, the Siguion-Reynas, the Marcoses, the Benedictos, and Africa-Nietos of the Filipino counterpart could easily afford to pay off their foreign multinational partner's shares. Only P80 to P180 million is involved. In fact, if these Filipinos will not buy the shares, we are sure that in view of the financial performance of the stocks of GMCR, ETPI and PhilCom in the past where they have given such high and very attractive returns, there will be many interested new investors.

It was also claimed that PLDT is 100 percent Filipino-owned. This is not true, since PLDT has a high ratio of foreign ownership. The difference is that in the case of PLDT the foreign owners are composed of many foreign investors, while in the case of PhilCom, GMCR, and ETPI, they have only foreign multinationals as partners, respectively.

We wish to ask the honorable Commissioners to please distinguish between foreign investors whose goal is to make their investments yield the highest possible returns and those foreign multinationals that do not only want to make money but also want to control and dominate the local economy.

THE PRESIDENT: Commissioner Villacorta, we have a three-minute limit. May we know from the timekeeper if the three minutes has already been consumed? (An affirmative answer from the Secretariat.)

Yes, I am sorry, we have to close.

MR. VILLACORTA: If an extension is not granted, would it be possible to defer the voting until such a time as this material is distributed to all Commissioners and perused by them so that we can intelligently vote on this subject, Madam President?

THE PRESIDENT: We cannot act on the Gentleman's motion to defer, if that is a motion. But the Gentleman's time to express or to make his remarks has already expired. The Gentleman has consumed about six minutes. So, he has already been given an extension.

MR. VILLACORTA: I submit, Madam President, but may I just make a plea to the body.

THE PRESIDENT: But the rest of what the Gentleman is going to say can be inserted in the Record as part of his statement now.[*]

MR. VILLACORTA: Beyond that, Madam President, may I request that these few pages be distributed to all Commissioners and be analyzed by them so that we can intelligently vote on this subject. And may I make a motion, Madam President, to defer the voting on this subject inasmuch as this is a very vital information and it challenges the premises upon which the body bases its voting or decision.

RULING OF THE CHAIR

THE PRESIDENT: Commissioner Villacorta, what has to be decided is whether the body will suspend the Rules, because if the Chair will have to resolve the question regarding subsection 2, Section 11, with respect to lines 24 and 25, this would amount to a reconsideration or a reopening of what has already been decided in the section on public utilities and the Article on National Economy. That would require a motion for reconsideration which, of course, is no longer possible now under our Rules.

There can be a suspension of the Rules but the suspension can be held only upon a unanimous vote of the entire Commission.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: May I appeal for a reconsideration of the ruling of the Chair on this matter.

THE PRESIDENT: Which particular ruling? Is it that it would require a suspension of the Rules?

MS. AQUINO: Yes, Madam President, since the requirement for a suspension of the Rules is very stringent, for that means a unanimous vote of this Commission. Considering that there is a serious dispute as to the interpretation of the deliberations on the Article on the National Economy and Patrimony, I would appeal for the liberality of the Chair on behalf of the committee. The fact is that their committee report was submitted before the Commission's decision on the pertinent Article on the National Economy. The committee should be allowed to defend its report as originally drafted. I think we owe it to them, if only to give and accord due respect and integrity to the committee report. They should not be foreclosed on the basis of a mere technicality.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I believe that is not entirely accurate, Madam President. We are working with an amended committee report dated September 1, 1986, which is well after the vote we took on this particular issue on August 23.

MR. VILLACORTA: Madam President, may I just make a few statements.

Madam President, I think that while we respect the decision of the Chair to go by technicality, we would request if it is possible to forego with the technicality inasmuch as this is a crucial question.

THE PRESIDENT: But this is not a question of technicality. We have agreed here to abide by certain rules; we have enacted these rules. And, in fact, these rules have already been in part leniently applied.

With respect to reconsiderations, of setting aside decisions that have already been made and which were stated a month ago, that can no longer be done. And what cannot be done directly cannot also be done indirectly.

MR. VILLACORTA: Madam President, I just said this in the light of the motion to suspend the Rules. The basis for our voting on this particular issue, Madam President, was the information, I think, provided by one of our Commissioners which was submitted by Ayala Corporation, Siguion-Reyna and other companies, and which is being questioned. That is all, Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: This has nothing to do with the issue. But something was raised by a member of the committee, Commissioner Aquino, regarding the submission of the committee report, which was actually questioned by Commissioner Monsod.

Just to clarify, the committee report which contains the provision which is now at issue, was actually Committee Report No. 31, the first one of which was submitted by the Committee on General Provisions on July 16, 1986. So, it was ahead actually of the consideration of the Article on National Economy. That is all.

MS. AQUINO: Madam President.

MR. MONSOD: Madam President.

MS. AQUINO: Madam President, may I just be recognized first?

MR. MONSOD: May I just clarify the point? I agree that the first report was on July 16. I am only saying that the committee had the opportunity to amend. In fact, it submitted an amended report, dated September 1, 1986, which should have taken notice of the proceedings in this Assembly.

MS. ROSARIO BRAID: Madam President, the committee amendments based on the September 1 final report was a substitute amendment on the basis of insertions of new provisions. The committee did not really consider the other provisions that were earlier approved in the July article.

MR. MONSOD: Madam President, I submit that it does not exempt the committee from taking cognizance of what happened on August 23.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Parliamentary inquiry. The discussion seems to be on a so-called "motion to suspend." I do not remember hearing any particular motion to suspend the Rules. Where are we now really, on a motion to suspend the Rules?

THE PRESIDENT: From the remarks of Commissioner Villacorta, I gather that there is a motion to suspend the Rules. Is that not clear?

MR. DAVIDE: Yes.

THE PRESIDENT: That is why the Commissioner is giving arguments again in favor of a 75-25 ratio.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

SUSPENSION OF SESSION

MR. SUAREZ: It is a matter of record, I think, that not one of the Commissioners has formally filed a motion to suspend the Rules. What we are trying to do is to find ways and means of applying the principle of liberality in the matter of rulings, decisions, et cetera.

So, in view of this parliamentary situation, may we request for a suspension of about two minutes, Madam President.

THE PRESIDENT: The session is suspended.

It was 12:04 p.m.

RESUMPTION OF SESSION

At 12:22 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: I have looked over the Rules of the Commission and there is nothing said here about suspension of the Rules, although I understand from Mr. Nazareno that we are following Rule 22 of the Batasang Pambansa Rules. Section 124 states:

Who Can Move — Only the Committee on Rules can move for the suspension of the Rules.
And Section 12 states:

Vote Required — No Rule shall be suspended except by a vote of two-thirds of the Members, a quorum being present.

In view of this, I respectfully move that this matter of whether to reconsider or not be referred to our Committee on Rules.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: Under this situation, precisely, the motion to reconsider would call for a suspension of the Rules unanimously approved because of the absence of the recommendation by the Steering Committee.

THE PRESIDENT: But, in fact, there is no formal motion to suspend as yet.

MR. GUINGONA: Yes.

THE PRESIDENT: That is why when we suspended, before Commissioner Guingona had stood up, the Chair was going to ask if there was any formal motion to suspend.

Now we will come to that particular point of when we should suspend, how we shall suspend, and what vote is

necessary to suspend.

MR. GUINGONA: But my motion, Madam President, is that instead of going into this, perhaps what we could do, since we are following the Rules of the Batasan, is to refer this to the proper committee. And the proper committee is not the Steering Committee, according to these rules, but the Committee on Rules. My motion is precisely to refer this to the Committee on Rules so that it can decide, once and for all, whether there should be a motion for reconsideration or not. If the Committee on Rules decides that there should be no motion for reconsideration, then they will so state.

MR. RAMA: Madam President, I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

The way I understand it, the Chair has already made a ruling. Would Commissioner Guingona like to refer my ruling to the Committee on Rules now?

MR. MONSOD: Madam President, there is nothing to refer, because there has been no motion filed to suspend the Rules.

MR. GUINGONA: I am not appealing the ruling of the Chair, Madam President, but I said if there is going to be a motion for reconsideration, then the reconsideration should be made by the Committee on Rules and not by the Steering Committee.

THE PRESIDENT: Actually, the Chair cannot act on hypothetical matters. There has to be a definite issue that is presented before it before it can make a definite ruling. So, starting with the word "if," the Chair cannot make any ruling on that.

MR. GUINGONA: Thank you, Madam President.

MR. SUAREZ: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

I think the last statement of the Chair is absolutely correct. So may we clear up the parliamentary situation.

THE PRESIDENT: Please do so.

MR. SUAREZ: We are now in the process of discussing Section 11, paragraph 2. At that point the honorable Commissioner Monsod stood up to urge the committee to consider the wisdom and advisability of not pressing for the approval for discussion of this particular paragraph in Section 11. I take it that that is what he is trying to find out from the committee in order to avoid any further debate or discussion on this, but up to now I do not know what is the position of the committee regarding this appeal. May I consider it as an appeal of Commissioner Monsod, so that we can set the parliamentary situation in its correct perspective, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I wanted the committee to withdraw all references to commercial telecommunications on the ground that that was an issue that had already been foreclosed. And my argument was, if at all it had to be considered, it would require a suspension of the Rules because of the minutes that I quoted. If the committee does not withdraw, I will move for a ruling of the Chair that it is out of order and cannot be considered because it

would require a suspension of the Rules.

May I know from the committee its position?

As a matter of fact, if I remember, the Chair has already ruled that it would require a suspension of the Rules.

THE PRESIDENT: The Chair was called upon to decide whether lines 24 and 25 would contravene, as argued by Commissioner Monsod, or would be against the decision taken on the section on public utilities, and that gave rise to the ruling of the Chair.

MR. MONSOD: Yes. Madam President, does that mean now that Section 11, paragraph 2, will not include any reference to commercial telecommunications?

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I state what I remember is the parliamentary situation.

If I remember right, Commissioner Regalado presented an amendment to delete on lines 20 and 21 the words "and commercial telecommunications establishments." If I remember right, he also included in the deletion the same words, "and commercial telecommunications," on line 27, and Commissioner Regalado gave precisely the same argument. He said there are two bases for his amendment: 1) substantive and 2) procedural grounds. In discussing the procedural ground he precisely gave the argument that it was the argument that it was already passed upon and decided when we discussed the section on National Patrimony.

THE PRESIDENT: Was this last Saturday?

MR. MONSOD: Yes.

MR. RODRIGO: May I ask that Commissioner Regalado be recognized.

THE PRESIDENT: I do not think I heard Commissioner Regalado this morning.

MR. REGALADO: Yes, Madam President, I presented that motion to amend, by the deletion of the phrases mentioned by Commissioner Rodrigo.

THE PRESIDENT: So, that was the parliamentary situation last Saturday.

MR. MONSOD: No, that was withdrawn.

THE PRESIDENT: Let us just confine ourselves to the parliamentary situation this morning and this noon.

MR. REGALADO: Last Saturday, Madam President, after I had made the proposed amendment and there was some discussion, the committee asked that the voting be deferred. That was the last note on the point. Voting was deferred last Saturday and then we adjourned.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I think just to make it clear, the deletion is not being requested to be put to a vote. I think the position that Commissioner Regalado and I will take is that it should not have been included in the first place. And, therefore, to include that in the discussion would require a suspension of the Rules.

MR. SUAREZ: Madam President, I am a little confused because if we take the word of the Honorable Regalado,

that means he has a pending motion to delete. And here is Commissioner Monsod saying it is out of order. Which is the issue before the body now?

THE PRESIDENT: What is out of order is this subsection 2 but not the motion to delete because the attention of the Chair has not been called. In other words, there was no motion on the part of anyone asking for a vote on the pending motion to delete by Commissioner Regalado when we resumed this morning. Commissioner Monsod immediately opened with his appeal to the committee which gave rise to all these subsequent events.

MR. MONSOD: May I just add, Madam President, that my motion would be an anterior motion that should not have been submitted to the floor for discussion because that issue is foreclosed.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: The parliamentary situation is that a motion calling for a point of order is a privileged motion despite the fact that there was a previous motion to delete. That previous motion to delete is annulled by the motion calling for a point of order which had been decided by the Chair. So, the parliamentary situation now is that as far as this phrase is concerned, that has been deleted because of the ruling of the Chair that the inclusion of that phrase is out of order, regardless of what the view or the opinion of the committee is. So, what is called for, if there is going to be a continuance of our deliberation, is for a motion to suspend the Rules to put it back. We are waiting for that motion to suspend the Rules; nobody has come up with that motion. As things stand now, that controversial phrase has already been eliminated.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: The committee would just want to make a clarification. Is the motion presented for the insertion of a word in Section 11 out of order? Is a motion seeking a ruling from the Chair to call the committee out of order? I think there is something wrong here. In procedural terms, how could the Chair declare the committee out of order? We presented a committee report dated July 16. We did our work. If there is something in that committee report which should be deleted, then let it be so. But why should the committee be called out of order? I cannot understand this.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: It is just a point of order that the phrase should not be considered at all because the issue is foreclosed. And if it is going to be reinstated, it would require a suspension of the Rules.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

On behalf of the committee, I think that when the committee made this report we were not reconsidering what has been decided on public utilities at 60-40 percent equity, Madam President. Because telecommunication is only a part of the whole gamut of public utilities, therefore, the committee is not precluded from making an exception to the 60-40 percent equity on public utilities.

In my answer to the interpellation of Commissioner Regalado, I said the term "public utility," which is almost

synonymous with public service, shall include transportation, electric service and telecommunications. Transportation alone will cover transportation on land, air, water, et cetera. And so, when the committee made the report, the committee is making an exception of the whole gamut of public utilities. The motion to delete by Commissioner Regalado is most appropriate. The committee report, therefore, should be subjected to amendment, alteration or deletion.

The committee does not intend and will not intend to file a motion for reconsideration. Anyone filing a motion to reconsider will really be out of order, Madam President.

Thank you, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for lunch and it will be resumed at two-thirty in the afternoon.

It was 12:36 p.m.

RESUMPTION OF SESSION

At 3:12 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, there has been some agreement between the protagonist and the members of the committee, which the Chair has reserved its right to restate the parliamentary situation.

THE PRESIDENT: What the Chair would like to do at the opening of the session is to ask the indulgence of the body if we could forego further discussion on this point which has been raised here in subsection 2 of Section 11 on the basis of the ruling of the Chair this morning.

If the Members will recall, the Chair was called upon to rule actually on two issues. First, whether the subject of "commercial telecommunications" was included in the discussion of the section on public utilities in the Article on National Economy and Patrimony. So I had to refer to the transcripts of the proceedings on that particular day. This appears to be August 23, and I stated and I ruled that the subject of "commercial telecommunications" was, in fact, included in the deliberations and in the decision of the body with respect to the issue of ownership which is the 60-40 percent equity ratio.

The other point that I was called upon to resolve was what would then happen to the phrase on lines 24 and 25 which is: ". . . two-thirds of whose voting stock or controlling interest is owned by such citizens." My ruling was that that matter is foreclosed. And so, if we can start our discussions this afternoon from that premise, it would expedite our proceedings on this particular subsection 2 of Section 11.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: The committee accepts the ruling of the Chair with the understanding that this matter is on the issue of equity and ownership and it will not preclude other issues affecting the telecommunication industry which may be proposed by the committee or other Members of the Commission.

May I also state for the record that all the ASEAN countries have nationalized their telecommunications industry. Even the United States and the United Kingdom, which are mostly the principal members of the multinational group, do not allow foreigners in controlling or managing their industry. We have also the local capability. If we

need foreign consultants, they could work with our telecommunications industry, but not for Filipinos to work for them.

Additionally, we can always turn to multinational financing, if necessary. So, at the proper time, we will suggest a provision that will ensure the continuing study of this very powerful technology.

With that, Madam President, we, therefore, withdraw the phrase on the telecommunication equity. And if the body would allow, we retain the provision only on advertising. I understand there are some proposal on the equity on advertising, not necessarily in consonance with our provision.

Thank you, Madam President.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Just to make it very clear. Are we to understand then, Madam President, that the words "and commercial telecommunications" appearing on lines 20 and 21 and the words "and commercial telecommunications" appearing on line 27 of the committee draft are thereby deleted?

THE PRESIDENT: They are considered deleted from this particular subsection 2 insofar as it relates to the ownership as stated by Commissioner Rosario Braid.

MR. BENGZON: Yes, Madam President. In which case, subsection 2 now, therefore, solely relates to advertising establishments.

THE PRESIDENT: Yes, to advertising; that is clear.

MR. BENGZON: We will now move whatever amendments may be proposed by the various Commissioners on this subsection 2?

MS. ROSARIO BRAID: Yes, Madam President. That is correct.

THE PRESIDENT: That is correct.

MR. BENGZON: Thank you.

MR. RAMA: Madam President, with that understanding, I ask that Commissioner Padilla be recognized to present an amendment.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, with the correct elimination of commercial telecommunications, it seems that paragraph 2 of Section 11 will only apply to advertising.

MS. ROSARIO BRAID: Yes, Madam President, which means that the applicable phrase would, therefore, be from lines 26 to 28. An amendment on advertising will delete the first two phrases. Hence, the only reformulation of this particular provision would be in terms of equity for advertising as well as the management board of advertising. I think we have some amendments on the floor towards this effect.

MR. PADILLA: Madam President, I made a suggestion because an advertising agency precisely does not need any franchise certificate or other form of authorization for its operation. And as I observed before, the most important is telecommunications, then mass media, and these are of less category.

I wanted to suggest an amendment by substitution which states: "ADVERTISING AGENCY AS A PRIVATE

ACTIVITY IMPRESSED WITH PUBLIC INTEREST SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CUSTOMERS AND THE PROMOTION OF THE GENERAL WELFARE." That will be a new provision in my own wording.

Actually, this is not public utility; this is not even mass media, which have to be given a franchise. There are agencies that are mainly for advertising commercial products. So I submit that it is really a private activity though impressed with public interest. Therefore, an advertising agency may be regulated by law for the principal purpose of protecting the consumers and promoting the general welfare.

THE PRESIDENT: Therefore, Commissioner Padilla's proposal would be a substitute for Section 2 instead of a new section?

MR. PADILLA: Yes. That is correct, Madam President.

THE PRESIDENT: It is a substitute section.

MR. PADILLA: So that in lieu of subparagraph 2, Section 11 from lines 19 to 28, I suggested this amendment by substitution and it reads as follows: "ADVERTISING AGENCY AS A PRIVATE ACTIVITY IMPRESSED WITH PUBLIC INTEREST SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE."

THE PRESIDENT: What does the committee say?

MS. ROSARIO BRAID: We accept the intent except that we would like to amend with a clause on equity, Madam President, and I think we have asked some Commissioners who may want to suggest equity in advertising agency in view of the discussion earlier. In other words, Madam President, we would like to retain as many of Commissioner Padilla's phrases with an additional phrase on equity.

MR. PADILLA: So that may be an additional sentence?

MS. ROSARIO BRAID: Yes, Madam President.

MR. PADILLA: So if there is no objection and if the committee accepts that first sentence, then we adopt the amendment without prejudice to the addition of another sentence.

MS. ROSARIO BRAID: Yes, Madam President.

MR. PADILLA: Thank you.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

May I ask some clarificatory questions? Under the proposal then, it is not required that ownership of advertising agencies must be wholly owned or to a certain percentage by Filipino citizens?

MS. ROSARIO BRAID: That is right but it is still an open question.

MR. DAVIDE: But what is the thinking of the committee? Would the committee prefer that the ownership and management of advertising establishments be owned by Filipino citizens or corporations or associations?

MS. ROSARIO BRAID: In view of the deletion of the phrase on advertising in Section 9, the committee is willing to amend this 66 2/3 to even a higher equity for Filipinos.

MR. DAVIDE: For purposes of advertising?

MS. ROSARIO BRAID: Yes.

MR. DAVIDE: May we be enlightened, Madam President? To what extent is the control of multinational corporations on the business of advertising in the Philippines?

MS. ROSARIO BRAID: Most of the advertising agencies now are owned by either multinationals or jointly owned with Filipinos. There are two wholly owned and that is J. Walter Thompson and McCann Erickson and in the others, the equity consideration in the joint venture has not been defined in favor of the Filipino shareholders. Likewise, most of the advertisements that appear now in the three media are foreign products that are produced or canned by multinational agencies. Most often they are produced abroad and aired here and they are, of course, mostly on multinational products.

So this is the extent of influence of multinational agencies in advertising.

MR. DAVIDE: In other words, if we really want protection to be afforded to Filipino citizens, it is necessary that we also have a certain ratio on equity in corporations engaged in advertising.

MS. ROSARIO BRAID: Yes, Commissioner Davide is right.

MR. DAVIDE: Thank you, Madam President.

So I will propose an amendment, if this is acceptable to Commissioner Padilla, to the effect that the business of advertising should be in the control of Filipino citizens or words to that effect. I will propose it after the Padilla amendment.

THE PRESIDENT: Should be "in the control" without any statement of how much?

MR. DAVIDE: Yes, Madam President.

Therefore, it would read: "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS THE CONTROLLING STOCK OR INTEREST OF WHICH IS WHOLLY OWNED BY FILIPINO CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING BUSINESS."

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: I would like to fully support the proposal of Commissioner Davide on the ownership of advertising companies to be relegated to Filipino citizens. While we have already excluded this whole ownership of the telecommunications industry for a 60-40 percent equity because we reverted to our original agreement in the National Economy, I feel that the advertising industry is one area where we have a pool of Filipino talents which even now are already being employed by multinational advertising companies.

This is one industry which is not capital intensive but talent intensive. We cannot deny the fact that we already have many talents. They create advertising copies; they produce TV spots; they design marketing strategies; and they work out media plans for their clientele. So, if indeed we are true to our principle — which we have stated in the Article on Declaration of Principles — that we must help our people become self-reliant in our national economy, and one area of our economy is advertising, then I think we must show faith in the capacity of Filipino talents to manage and own their own advertising companies.

We are losing out many of our talents to multinational corporations, and I guess this is the test on how really sincere we are in developing self-reliance in one area which we know we really have a cadre of talented advertising people. Therefore, I fully support the proposal of Commissioner Davide on this particular provision.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nolleto is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to ask some clarificatory questions of Commissioner Davide.

MR. DAVIDE: Gladly, Madam President.

MR. NOLLEDO: Thank you, Madam President.

By using the term "controlling stock or interest," is the Gentleman not aware that controlling stock or interest may refer merely to 50 percent plus one? So we have to specify the percentage that should be owned by Filipinos because 51 percent is already controlling.

I suggest that we adopt the two-thirds/one-third equity. Is he amenable?

MR. DAVIDE: I am very amenable. So it will read: "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS TWO-THIRDS OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING BUSINESS. THE GOVERNING AND MANAGING BODIES OF SUCH CORPORATIONS OR ASSOCIATIONS SHALL BE EXCLUSIVELY VESTED IN CITIZENS OF THE PHILIPPINES."

MR. NOLLEDO: Thank you, Madam President.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I propose an amendment to the amendment. Instead of the word "two-thirds," change the words to "AT LEAST SIXTY (60) PER CENTUM."

My reason is: If we have adopted the policy of providing at least sixty (60) per centum of capital in the hands of Filipinos for more vital industries like public utilities, development and exploitation of our natural resources and telecommunications, it is absolutely illogical that we should demand more than sixty percent for mere advertising. What public interest is involved in advertising which is more important than in public utilities, than in corporations exploiting our natural resources, than in telecommunications, Madam President, that we should impose a higher percentage for minimum capital to be Filipino owned?

Another point, Madam President. Since this is not so important; this is only advertising, as contrasted with the other enterprises I have mentioned, this can produce a bad effect on our economic recovery.

Our President just came from the United States, where she tried to invite foreign investments to come to the Philippines, because we need foreign capital to remedy our economic crisis. And if they see that in the Constitutional Commission, composed of Commissioners appointed by the President, we have increased the equity of Filipinos just for advertising to 66 2/3 percent, I think this can discourage foreign investments.

My amendment is not set at 60-40. It says, "at least, 60 percent of the capital of which should be owned by the Filipinos." It would mean that Congress may increase the 60 percent Filipino equity. Congress may increase it to 2/3. Congress may even increase it to 75 percent. Leave this to them, because they will know the situation — the changing times. And Congress will be composed of Senators and Representatives elected by the people. I do not minimize our importance, but let us not forget that we are just appointive officials, as compared to the Members of the coming Congress who will be Senators elected at large and Representatives elected by the people directly

by districts.

I submit that we should have uniformity, Madam President, uniformity in "at least 60 percent" for all enterprises, like public utility, development and exploitation of natural resources and telecommunications.

THE PRESIDENT: I am sorry; the time of Commissioner Rodrigo has expired.

MR. RODRIGO: Yes, I was going to end; I was looking at the clock. (Laughter) I think that we should make it uniform, and make it also "at least 60 percent" for advertising.

MR. GARCIA: Madam President.

THE PRESIDENT: Yes, before we ask Commissioner Davide if he accepts the amendment or not, Commissioner Garcia is recognized first.

MR. GARCIA: Madam President, I would like to respond to the points raised by Commissioner Rodrigo.

First of all, I would like to say that the advertising industry, as pointed out by Commissioner Quesada, is rather critical; it is important.

It is, in fact, a P2 billion industry annually and the share of multinationals has increased from 43.2 percent in 1981 to 53 percent in 1985. In fact, there are two large ones which are wholly owned, they are J. Walter Thompson and McCann Erikson.

The important point to note here is the effect the advertising industry has on the mentality of the consumers and the expectations it raises. If we really study the amount of advertising that we are bombarded with, the average adult Filipino receives more advertising than other nationalities. A study has it that the average adult Filipino is exposed to 90 to 103 commercials daily, as compared to the Americans, 80 to 100 or to the Australians, 75 to 100.

The other point, which is still more important, is that a study of the advertising industry in 1983 shows that 76 percent of products advertised are all foreign brands. Another point which is also important in this advertising is the stress on urban and western lifestyle. Therefore, we can say that the advertising that we have in this country especially with the predominance of the foreign orientation essentially creates a consumption-oriented mentality, a strong urban bias, elitism and very often a favorable image of foreign products. That is why I would subscribe to the point of the amendment of Commissioner Davide. I think we must try as much as possible to enlarge the Filipino ownership of the advertising industry and, secondly, to make sure that the management of this industry be in Filipino hands so that we can effectively protect the national interest.

Thank you.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: The arguments given by Commissioner Garcia have some validity, but I do not think that those problems can be remedied by just increasing the equity from 66 to 66 2/3 percent. By increasing the equity to 66 2/3 percent will not make any difference in the control of the corporations. On the other hand, it can do a great harm for, as I said, it will discourage foreign investors from coming to the Philippines.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Yes, I would just like to express my disagreement with the position of Commissioner Rodrigo that advertising is not that important in our economy and since we have already given 60-40 percent for the other enterprises, we might as well be consistent and give the same equity share for advertising. But I feel that this is

one area which has something to do again with value orientation and our national leadership has embarked on such a crusade — a reorientation of the values of the Filipino people — and media, particularly advertising, have a very important role in the molding of the kind of orientation and national consciousness that people must have. If we cannot liberate ourselves from this kind of control, then we will never get started to what we envision to be a self-reliant and independent country.

So I would really support the position that we must have 100 percent ownership, and it will be very simplistic to say that it does not matter if we have 60 or 40 percent. We know for a fact that whoever controls the economic power of any entity, any enterprise, will have the compelling decision in many of the policies that a business would have. And, therefore, we would still contend that it should be in this one area to at least give our Filipinos this chance to have that 100-percent ownership.

Madam President, it is so pathetic; it is so sad that we have to beg for 100-percent ownership for something that we feel Filipinos have much capacity on. We do not need foreign investments in advertising because it is not capital intent. We do not need machines, we need just people. We have talents and artists galore here in the Philippines. They are exported to other countries. Why should we rely on foreign advertising to come here when the Filipino have shown and wanted to have that chance to be able to have that kind of control.

MR. BENGZON: Madam President.

THE PRESIDENT: But the proposal of Commissioner Davide is 75 percent and not 100 percent.

MR. BENGZON: No; it is 66 2/3 percent.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: There are two issues here, Madam President. The first one is ownership; the second is management.

May I move, Madam President, that we separate the two issues. We will decide first on the ownership, after which we will decide on the governing and management body. I would like to pose that as a motion before I go to my second point.

MR. FOZ: Madam President.

MR. RODRIGO: I second that motion.

MR. FOZ: Just a moment, Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: I understand that right now the management of even multinational advertising agencies is in Filipino hands.

MR. BENGZON: That is the reason, I do not know, Madam President, why the second one is an issue. Not only that; I think we have approved a section in the Article on the National Economy and Patrimony which gives the management and officerships of corporations to Filipinos. So, I would question even the validity of bringing up the second issue but I wanted to separate them assuming that there is really such an issue.

MR. FOZ: Madam President, I just also would like to give the information that under existing BOI rules and regulations, they provide for a 70-30 percent equity in advertising. But, of course, this rule has largely remained unimplemented. There is that intention by BOI to provide a 70 percent for Filipino equity to 30 percent maximum

alien participation in capitalization. But, as I said, that rule has remained unimplemented. There seems to be a government policy of sorts to provide for such an equity. And the proposal of Commissioner Davide is even lower. It is two-thirds equity, I understand.

MR. PADILLA: Madam President.

THE PRESIDENT: Before we act on the motion of Commissioner Bengzon, may we hear Commissioner Padilla.

MR. PADILLA: Madam President, in my proposal that was accepted by the committee and it was not opposed. I already stated that they shall be regulated by law, and mainly for the protection of the consumers and the promotion of the general welfare. According to Commissioner Foz, the BOI may provide a rule of 70-30 percent. I believe that this should be left for Congress to decide. Let us not decide prematurely here in this Commission because this is really a private activity, of course, impressed with public interest. That is the reason why no law requires a franchise or a specific authorization. This is part of the private initiative and the private sector.

As far as I am concerned, Madam President, I concur with the observations of Commissioner Rodrigo. And, moreover, as remarked to me by Commissioner Lerum, if we want to prohibit a fully owned foreign corporation to engage in advertising, then we should not permit any such incorporation. The government, through the SEC, should prohibit any foreign corporation but, in fact, our Lady President even invited not only foreign investments but even corporations that will be fully owned by foreigners to invest in the Philippines. If such important aspect of our economy like, as I said earlier, investments, telecommunications and others with more effective reactions to our national growth are not required to be fully owned, why should we require even 60-40 percent for this activity in the business circle of advertising.

It is claimed by Commissioner Quesada that we can have Filipino owned business that there are Filipino talents. I agree. But that is no reason for total prohibition or exclusion of foreign corporations, especially in this very restrictive activity of an advertising agency.

THE PRESIDENT: The time of Commissioner Padilla has expired.

MR. PADILLA: Madam President, as far as I am concerned, we should even disregard any further provision because it is already included in the term "to be regulated by law" by the Congress of the Philippines.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: It seems to me, Madam President, that the amendment of Commissioner Padilla was accepted by the committee.

THE PRESIDENT: The first sentence was accepted.

MR. BENGZON: Yes the first sentence. May I suggest, Madam President, that we vote on that, after which we go to the amendment of Commissioner Davide, which is also being amended by Commissioner Rodrigo.

THE PRESIDENT: What does the committee say?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Before we put this to a vote, the committee has accepted the amendment of Commissioner Padilla. But during the discussion, it was mentioned several times, especially by Commissioner Garcia, that an advertising agency is really big business. I do not know if it will improve the formulation of Commissioner

Padilla and if he would accept an amendment to his amendment to change the word "private activity" to "business activity."

THE PRESIDENT: Is that acceptable that instead of "private" it be "business"?

MR. PADILLA: I really have no objection, but I was stressing that this is part of the private sector, the private enterprise. So if the Commissioner would want to say "private business activity," I have no objection.

MR. MAAMBONG: I have another suggestion, can we make the "agency" plural, "advertising agencies"?

MR. PADILLA: I agree, Madam President, although the singular really includes the plural. But I have no objection. It is a matter of form.

MR. FOZ: I have a suggestion regarding that, which is to eliminate "agency."

MR. PADILLA: Advertising agencies are private business activities?

MR. DAVIDE: Madam President.

THE PRESIDENT: Can we just settle this?

MR. MAAMBONG: There is a suggestion by Commissioner Foz to eliminate the word "agency" and just say advertising as a private business activity. I think it would look better, Madam President.

MR. PADILLA: The problem there is we are trying to talk about advertising agencies. I heard from Commissioner Romulo that an ad, that is, advertisement, may not be done through an advertising agency.

MR. FOZ: But in that case, that is just one particular placement, we are not in the business. It is just one single shot, one single placement of advertising material. We are referring here to the usual, regular and periodic placement of ads in the papers or in the broadcast media.

MR. PADILLA: No. But to be engaged as an agency in advertising, one may resort to different kinds of methods and means, not necessarily always television, because television is very expensive. Likewise, it may not necessarily be in the newspapers because an ad is also very expensive. There are many other ways by which a smaller Filipino advertising agency can resort to other means for the same purpose. So it is not exactly correct that an advertising agency must continuously put up ads in the newspapers or in television or radio. But probably that can be left to the Committee on Style whether we say advertising alone or advertising agency. But the substance or the essence is there, and I think there has been no objection, Madam President, and there is no need to vote unless there are objections.

MS. NIEVA: Madam President.

BISHOP BACANI: Madam President, the committee has a formulation.

MS. ROSARIO BRAID: Madam President, maybe we can hear from Commissioner Nieva first.

THE PRESIDENT: Commissioner Nieva is recognized.

MS. NIEVA: Perhaps we could refer to the advertising industry since it is an industry. We are not just referring to an act or an agency or a body but the entire advertising industry which we hope we should regulate by law for the protection of consumers and the promotion of the general welfare.

THE PRESIDENT: What does the committee say?

MS. ROSARIO BRAID: Madam President, we are just reformulating it because of that accepted amendment.

Commissioner Nieva's amendment is acceptable. We have to look at the text. So I ask the Chair to give us a minute to rephrase the subsequent phrases.

SUSPENSION OF SESSION

BISHOP BACANI: We ask for a suspension of the session, Madam President.

THE PRESIDENT: The session is suspended.

It was 3:52 p.m.

RESUMPTION OF SESSION

At 3:54 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: The committee, Commissioner Nieva and the other Commissioners, have helped us in reformulating the Padilla proposal and it now reads: "THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE."

MR. PADILLA: Madam President, I would like to retain the phrase "AS PRIVATE BUSINESS ACTIVITY IMPRESSED WITH PUBLIC INTEREST."

MS. ROSARIO BRAID: Madam President, we deleted the words "PRIVATE ACTIVITY" but retained the phrase "IMPRESSED WITH PUBLIC INTEREST."

MR. PADILLA: Yes, precisely, what we should also stress is "PRIVATE ACTIVITY," and I accept the suggestion of Commissioner Maambong to insert "BUSINESS," so that it will read: "AS PRIVATE BUSINESS ACTIVITY IMPRESSED WITH PUBLIC INTEREST," and there is that correlation.

MS. ROSARIO BRAID: Madam President, it is known that the advertising industry is a private enterprise — a private business activity — so we feel that this is a surplusage.

MR. PADILLA: But it is necessary to put it there. Since the committee is keeping my second phrase "public interest," why should we eliminate the essence of advertising as a private business activity?

BISHOP BACANI: It is, precisely, presupposed as a private business activity. That is why we keep the second phrase.

MR. PADILLA: No, it is hard to be presupposing and to be assuming. It can also be presumed that it is impressed with public interest and yet the committee keeps the second phrase and eliminates the first phrase, but both are necessary for correlation.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I think there is no point in continuing the argument, Madam President. I submit that the point of Commissioner Padilla; that is, to keep the phrase "as a private business activity," be first submitted to the body for

a vote.

MR. ABUBAKAR: Madam President, before we go to that, may I say a few comments that will neither be for each side.

THE PRESIDENT: Commissioner Abubakar is recognized.

MR. ABUBAKAR: I am not to lecture my colleagues whose wisdom and vision are probably wider than mine, but constitution-making defines its very purpose, that is, to define the powers and limitations of government and of the individual rights. I do not think I have come across any constitution of any country where even the matter of advertising is dealt with in the constitution. This can be dealt with by law. Let us enshrine our Constitution as a document for all, whose provisions are not only correct but beautiful. Let our children then look at them and even recite their own provisions.

We are talking about advertising and its ownership. When we say 60-40 percent or 70-25 percent this is like bargaining in a house of business people. This has no place in the Constitution, Madam President.

So, with the indulgence of the body, we might just as well pass and even eliminate this proviso from the Constitution. Let us make our Constitution a document for all Filipinos to revere and, if possible, to recite. A 20-60 percent profit or denomination would not be in that order. For the body to meet and say that this is part, a proviso that should be incorporated into the fundamental law is not in order, referring again to my contention that a constitution defines the power and limitations of government as well as the individual rights. Let us leave our legislature to formulate and adopt the laws governing certain business transactions, capitalizations and all that. There is the corporation law. There are many other laws but why should this matter of 60-40 percent be incorporated in any constitution?

THE PRESIDENT: Yes. We will now proceed to a vote.

MR. BENGZON: Yes, Madam President.

VOTING

THE PRESIDENT: Therefore, what will be voted upon is the retention of the phrase "as a private activity" which I understand the committee does not accept because that is already included or considered as part of the advertising industry.

As many as are in favor, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 10 votes in favor, 21 against and 2 abstentions; the amendment is lost.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I propose an amendment to the amendment, Madam President, which is to delete the words "AND TO PROMOTE THE GENERAL WELFARE" because that is already presumed insofar as all acts of Congress are concerned. We could say that it is to protect the consumers because that is a specific objective but general welfare is a general objective and to put that in the Constitution would be a superfluity. I would propose to delete that last portion about the general welfare, if the honorable Commissioner Padilla and the committee

would accept.

THE PRESIDENT: What does the Committee say?

The committee has accepted it already, so it is in the hands of the committee to delete the clause, "promotion of general welfare."

MS. ROSARIO BRAID: Madam President, we would like to present this to the body for approval.

MR. FOZ: But just the same, Madam President, may we say that that is the very idea of categorizing the advertising industry as one impressed with public interest. The idea is really to promote the general welfare.

MR. GUINGONA: Yes. The fact that there is already an expression about interest would already subsume that concept of general welfare.

MS. NIEVA: Madam President.

THE PRESIDENT: Commissioner Nieva is recognized.

MS. NIEVA: Yes. I would like to register an objection to the deletion of the phrase "promotion of the general welfare" because, as was brought out earlier by Commissioners Quesada and Garcia, it is not only the consumer's interest that is involved here but due to the dominance of foreign advertising, the values that we are protecting here are of the whole society — all the values of patriotism, nationalism and so forth. So, I think we would stress that we should retain the phrase "promotion of general welfare."

THE PRESIDENT: So let us vote on that now.

MR. GUINGONA: Madam President, may I please say just one word.

THE PRESIDENT: Commissioner Guingona may proceed.

MR. GUINGONA: The values that Commissioner Nieva is talking about is already taken care of by the expression "public interest."

VOTING

THE PRESIDENT: As many as are in favor to delete the phrase "promotion of the general welfare," please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 3 votes in favor, 25 against and 1 abstention; the amendment is lost.

We shall now proceed to vote on the whole sentence.

MS. ROSARIO BRAID: Yes, Madam President.

THE PRESIDENT: Commissioner Rosario Braid will please read the whole sentence.

MS. ROSARIO BRAID: It reads: "THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE."

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (Few Members raised their hand.)

The results show 33 votes in favor, none against and 3 abstentions; the first sentence is approved.

We will now proceed to the Davide amendment.

MR. DAVIDE: Madam President.

THE PRESIDENT: Will Commissioner Davide please restate his amendment?

MR. DAVIDE: There was a statement made earlier to the Commission that the ratio presently required by the BOI is actually 70:30. That being the policy of the government, I would modify my proposal and it should now read as follows: "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS AT LEAST SEVENTY PER CENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY."

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: May I propose an amendment to that amendment? Instead of "SEVENTY PER CENTUM," it should be "AT LEAST 60 PERCENT."

THE PRESIDENT: Does Commissioner Davide accept the amendment?

MR. DAVIDE: I regret, Madam President, that I cannot accept the proposal in view of the far-reaching significance of the business and the reasons earlier alluded to by Commissioners Garcia and Quesada.

MR. RODRIGO: I think we are ready to vote.

THE PRESIDENT: The proposed amendment has not been accepted. So we will vote on the proposed amendment of Commissioner Rodrigo.

MR. DAVIDE: The other reason is that it is now really the policy of the government. And if this proposal is followed, it would mean a downgrading of the requirement. It would be a retrogression, not necessarily of the highest order but equally as that.

MR. RODRIGO: No, Madam President, there is no inconsistency, because my amendment is "AT LEAST 60 PERCENT," just to be consistent with the rest of the similar provisions in our Constitution regarding public utilities, development and exploitation of our natural resources, telecommunications, et cetera.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Should the proposal of Commissioner Davide be considered first?

THE PRESIDENT: The Rodrigo proposal, because it is a proposed amendment to the Davide amendment. Under our Rules, we should first decide on that.

MS. QUESADA: But is it not illogical to come out with a 60-40 and then with 70-30? If one is higher, then we go

lower instead of from lower then we go higher. So would it be all right to consider first the presentation of Commissioner Davide?

MR. RODRIGO: Madam President.

THE PRESIDENT: The Chair is open to any suggestion as to which shall be voted on first, although as a rule the Rodrigo amendment should be voted on ahead.

MR. RODRIGO: Madam President, an amendment to an amendment is voted upon first.

MR. PADILLA: Madam President, point of information before we vote on the Rodrigo amendment. I do not know about the so-called "declared policy of the BOI." We just took it for granted, and Commissioner Foz admittedly said that that has never been followed or implemented. My point is, it should be regulated by law, which means it is up to Congress, not for this Commission, at this time to decide.

MR. RAMA: The body is ready to vote on the amendment to the amendment.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: This is only to clear up the parliamentary situation because if the Rodrigo amendment to the amendment would be voted upon and considered favorably by the Commission, that means the 60-40 suggested by him would prevail without prejudice to the parliamentary standpoint on the part of the Honorable Davide to ask for a voting on his main amendment. But my parliamentary inquiry, Madam President, is: Would the approval of the Rodrigo amendment not preclude the Honorable Davide later on from pressing for a decision on his amendment? I ask because if Commissioner Davide would press his amendment after a favorable consideration of the Rodrigo amendment, his proposal might turn out to be ridiculous. So, we want to avoid this. That is why we submit that there is merit in the suggestion of the Honorable Quesada that in this particular instance, since we are talking here of figures, percentages, it might be better, from the logical and parliamentary standpoint, to first vote on the Davide amendment. That is our respectful suggestion by way of a liberal application of the Rules.

THE PRESIDENT: Not the Padilla amendment but the Davide amendment.

MR. SUAREZ: The Davide amendment, Madam President.

THE PRESIDENT: So whatever may be our action later, this point should be cleared with the Members, that we have two situations here: 60 percent or 70 percent, whether one is called ahead for a voting or later on. I think the minds of the Commissioners should be settled on which ratio they would prefer, whether at least 60 percent or at least 70 percent, and that should guide them in voting whether we call the Davide amendment ahead of the Rodrigo amendment. That is the principal point that we should have in mind in voting.

MR. RODRIGO: Madam President, the situation is this: I have an amendment to the amendment, that instead of "seventy," make it "SIXTY."

THE PRESIDENT: Yes, there is no question about that.

MR. RODRIGO: If we were to vote first on the Davide amendment and it is lost, then I would have nothing to amend because the whole amendment is lost; whereas, if we vote on my amendment and it is lost, then it remains 70 percent. But if my amendment is approved, then the "seventy" in his amendment becomes "SIXTY."

THE PRESIDENT: That is right.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Before answering that particular point, may I know from the committee whether or not it is accepting my amendment?

MS. ROSARIO BRAID: Madam President, the committee accepts Commissioner Davide's amendment.

MR. DAVIDE Thank you for that.

In view of the acceptance of the committee, Madam President, while I am tempted to throw the matter of whether or not the Rodrigo amendment will be accepted by the committee, it already having assumed full control over the particular amendment, I would offer a proposal. If at all the Rodrigo amendment shall be presented, the body will be divided voting only once. The vote will be either for the Rodrigo amendment or the committee amendment, so we will not look awkward later. So it is a choice between the two insofar as voting is concerned.

THE PRESIDENT: Can that be left now to the Chair?

MR. RODRIGO: It amounts to the same thing. The normal procedure is to vote on the amendment to the amendment. However, I will have no objection to that. I would like to ask: Let us say "SIXTY percent" wins, so "seventy percent" loses. Can somebody stand up now and say, "Let us make it "SEVENTY-FIVE percent" or 65:35 or 80:20? I would like to know. What does Commissioner Davide say?

MR. DAVIDE: I would propose that that would be the end. In other words, it is a choice between 60:40 or 70:30.

MR. RODRIGO: No, not 60:40.

MR. DAVIDE: So there will be no more increase of Filipino equity nor a reduction later of the foreign equity.

THE PRESIDENT: I think that is the same principle that guides the body.

MR. RODRIGO: So it is a choice between "at least SIXTY percent" and "at least seventy percent."

THE PRESIDENT: Yes. That is why the Chair said whichever is called ahead. In other words, this is immaterial to me because insofar as I am concerned, if, let us say, I would take a vote, I would have already set my mind on which of the two I would choose. Therefore, if I call the Rodrigo amendment, I will not vote in favor of the Rodrigo amendment.

But inasmuch as the Davide amendment has been accepted by the committee, the Chair rules that it is this amendment which will be submitted first to the body for a vote.

MR. PADILLA: Madam President.

THE PRESIDENT: The Honorable Padilla is recognized.

MR. PADILLA: May I ask for a reconsideration of that ruling? Madam President, the basic rule is that when there is a proposal by way of an amendment and there is an amendment to the amendment, it is the amendment that is to be voted first. I do not agree that it is either one of the two because I favor the Rodrigo amendment even if it is 60-40. I personally prefer that there be no such provision because it should be regulated by law rather than by this Commission in the Constitution. So the choice is, if the Rodrigo amendment wins, then the ratio is 60-40. But it does not necessarily mean that that is final, because there may be an amendment that I will probably propose which is the deletion of the Davide amendment as amended by Commissioner Rodrigo. So I think we should first vote on the Rodrigo amendment to the amendment. As a matter of fact, Madam President, the committee has accepted my first sentence and there was no objection, only that there was no motion by the Floor Leader to see whether or not there is really any objection. And yet it was later amended when it was already accepted.

VOTING

THE PRESIDENT: The Chair has already ruled and, therefore, what we will submit now to the body is the 70-30 ratio which has been accepted by the committee.

As many as are in favor of the 70-30 ratio, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

The results show 18 votes in favor and 18 against; so there is a tie.

So I am called to vote. I am voting in favor of the 70-30 ratio. (Applause)

We will have as our next business the whole sentence of Commissioner Davide's amendment. Will he please read it?

MR. DAVIDE: The second sentence will read: "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS, AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS, SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY."

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, in our previous formulations in the National Economy Article, we have always been using the term "voting stock or controlling interest." Now Commissioner Davide is using the term "CAPITAL STOCK."

MR. NOLLEDO: Point of information, Madam President.

MR. DAVIDE: May we have the point of information of the Commissioner, Madam President?

MR. NOLLEDO: I was the one who asked the committee to change "voting stock" to "CAPITAL STOCK." I think Commissioner Maambong must have forgotten. The committee accepted my recommendation so what appears now is "CAPITAL STOCK." Commissioner Davide is correct, Madam President.

MR. MAAMBONG: If the Commissioner is using "CAPITAL STOCK," we also used "controlling interest" before. He is not putting that in his formulation now; it is only "CAPITAL STOCK."

MR. DAVIDE: Yes, only "CAPITAL STOCK."

MR. MAAMBONG: Also, I would like to call the Commissioner's attention to the formulation. His sentence starts with "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS" and ends with "OWNED BY SUCH CITIZENS . . .," which sounds a bit awkward. The word "CITIZENS" certainly cannot refer to corporations.

MR. DAVIDE: No, because its capital is owned by such citizens — meaning, Filipino citizens because the beginning is "ONLY FILIPINO CITIZENS."

MR. MAAMBONG: Could we have it again, Madam President?

MR. DAVIDE: It will read: "ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS, AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS, SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY."

MR. RAMA: The body is ready to vote, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: There is a provision in the National Economy Article with respect to public utilities about proportionate representation on the Board and the qualification that the management executive and officers should be all Filipino. Why do we not just adopt the same?

MR. DAVIDE: That is actually another sentence, but there was a motion earlier of the chairman of the Steering Committee to split the two sentences to be voted upon separately. So after this, I will propose the next sentence.

THE PRESIDENT: So how shall we read the amendment?

MR. DAVIDE: ". . . THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS . . ."

THE PRESIDENT: Is Commissioner Maambong happy with that?

MR. MAAMBONG: We are ready to vote, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of the second sentence as read by Commissioner Davide, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 23 votes in favor and 5 against; the second sentence is approved.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: May I now suggest that we clarify before the body whether or not there is still a need for us to decide that the governing and management body of these advertising companies be in the hands of the Filipinos, considering that we have already adopted a sentence to this effect in the National Economy Article?

MR. DAVIDE: May I be allowed to answer, Madam President.

THE PRESIDENT: Commissioner Davide may proceed.

MR. DAVIDE: It becomes more necessary because we allow a foreign equity of 30 percent.

MR. BENGZON: Then I ask that we move to this issue now, Madam President.

THE PRESIDENT: Yes. So we will vote on the third sentence which states "The governing or managing body of such corporations or associations shall be exclusively vested in citizens of the Philippines."

Did I read it correctly?

MR. DAVIDE: Yes, Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Did I hear "of such corporation," Madam President?

MR. DAVIDE: It reads: ". . . such corporations or associations shall be exclusively vested in citizens of the

Philippines."

MR. MAAMBONG: Will the Commissioner accept a suggestion? There is a prepared text in the formulation of the committee and if it is all right with the Commissioner, I will read it:

The governing and management body of every entity engaged in advertising shall in all cases be controlled by citizens of the Philippines.

MR. DAVIDE: We can have that, Madam President. So we can keep the committee language.

MR. MAAMBONG: Therefore, could we put this to a vote, Madam President? I will read it again:

The governing and management body of every entity engaged in advertising shall in all cases be controlled by citizens of the Philippines.

We are ready to vote, Madam President.

MR. BENGZON: I have a question, Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: We voted to give aliens 30 percent. When we say "controlled," I assume that the granting of 30 percent to the foreigners would allow them to vote their representative into the board. So when we say "controlled," it only means that a majority of the board will be in the hands of the Filipinos. Am I correct?

THE PRESIDENT: The chairman of the committee is recognized.

MS. ROSARIO BRAID: Yes, this is the sense of the committee, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: If that is the sense of the committee, I am not willing to accept the committee amendment because by then the management of the advertising entity will also be 70-30, which means 30 percent alien. The idea is really to place the management in the total control of Filipino citizens. Even in public utilities that was the effect: total control by Filipinos of management; no percentage is given to aliens when the ratio was 60:40.

So it is with more reason now that the management of advertising entities should be vested exclusively in Filipino citizens.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes so that Commissioners Rosario Braid, Bengzon and Davide can confer.

It was 4:29 p.m.

RESUMPTION OF SESSION

At 5:08 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: The last sentence of Section 11(2) has already been formulated by the committee.
May I ask that Commissioner Rosario Braid be recognized?

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, the committee proposes that the subsection in the National Economy Article be used likewise here in this provision. It reads: "The participation of foreign investors in the governing body of any enterprise shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such corporations or associations must be citizens of the Philippines."

MR. RAMA: The body is ready to vote, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May we have the wording.

MS. ROSARIO BRAID: Willingly, Madam President.

MR. MONSOD: When the Commission says "governing body of," whose governing body?

MS. ROSARIO BRAID: We changed "public utility" to "ADVERTISING." That is the change from the provision in the National Economy Article, and it reads: "The participation of foreign investors in the governing body of any ADVERTISING enterprise shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such corporations or associations must be citizens of the Philippines."

MR. MONSOD: Madam President, how does the Commissioner's first sentence start the Padilla amendment?

MR. MAAMBONG: It reads: "THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE."

MR. MONSOD: So we can put in the second sentence "ENTITIES IN SUCH INDUSTRY."

MS. ROSARIO BRAID: "Of foreign investors in the governing body of ENTITIES IN SUCH INDUSTRY," meaning, the advertising industry.

Thank you.

MS. ROSARIO BRAID: I thank the Commissioner.

May I read again: "The participation of foreign investors in the governing body of ENTITIES IN SUCH INDUSTRY shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such corporations or associations must be citizens of the Philippines."

THE PRESIDENT: What does Commissioner Davide say?

MR. DAVIDE: Madam President, with this proposal, I would formally withdraw my original amendment.

MS. QUESADA: Madam President.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Can we just seek some clarifications from the committee? How does this new formulation differ from that which the Commissioner has already presented in his draft? In simple terms, it is so long-winded that

one gets lost somehow. What is the essence basically? Is it any better? I ask because it is stated here that all cases shall be controlled by citizens of the Philippines.

MS. ROSARIO BRAID: Madam President, this present reformulation is better because in response to Commissioner Bengzon's query, we noted that foreigners can participate in the governing board proportionate to their share. Therefore, this present reformulation defines their participation — that their participation is not in the management board but only in the governing board. The management board will be fully Filipinized.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Why do we not just keep silent on the governing body because this is controlled by the Corporation Law? The Filipinos are limited to 70 percent and the foreigners to 30 percent, so the foreigners can only elect representatives to the maximum extent of 30 percent. Why do we not just say what we mean, that the management and the officers of the corporation shall be in the hands of the Filipinos?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: With that suggestion, do I take it to mean that we will retain only the phrase "all the executive and managing officers of such corporations or associations must be citizens of the Philippines"?

MR. BENGZON: Yes.

MR. MAAMBONG: So we delete the first part.

MR. BENGZON: We delete the first part because it is already understood. The whole thing is governed by the Corporation Law.

MS. ROSARIO BRAID: The committee accepts. This was just a suggestion by some Members, so we decided to go as far back as the governing body.

MR. BENGZON: Yes.

MS. ROSARIO BRAID: The committee will not object to merely mentioning management.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: With all due respect to the opinion of Commissioner Bengzon, I think if we delete the first portion, the whole membership of the board of directors could be 100 percent foreigners. Under the Corporation Law, all that is needed to be a member of the board is to have at least one share of stock. But with this provision, the membership in the board of directors of the foreign interest cannot exceed 30 percent. That is why I respectfully object to the suggestion that we delete the first portion.

Thank you, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I also object to the proposal of Commissioner Bengzon, but I think he is going to withdraw his proposal. So I will not expound further.

MR. BENGZON: Madam President, I understand that the proposal of the committee is an exact copy of what we have in the National Economy Article.

MS. ROSARIO BRAID: But, Madam President, with a few changes because we wanted this provision to refer to the advertising industry.

MR. BENGZON: Yes, but the concept stated in the National Economy Article is what is stated here.

MS. ROSARIO BRAID: Yes, Madam President.

MR. BENGZON: On that basis, Madam President, I withdraw my suggestion.

THE PRESIDENT: The suggestion of the Commissioner is withdrawn.

MR. RAMA: Madam President, may we request the committee chairman to read the whole paragraph, which is an integral portion, so that we can vote on it.

MS. ROSARIO BRAID: The last paragraph reads: "The participation of foreign investors in the governing body of ENTITIES IN SUCH INDUSTRY shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such ENTITIES must be citizens of the Philippines."

MR. RAMA: We are ready to vote.

VOTING

THE PRESIDENT: As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 27 votes in favor, none against and I abstention; the third sentence is approved.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Just to clarify. All that we have approved is the first sentence which is the Padilla amendment, the second sentence which is the Davide amendment and the third sentence which is combined Davide and committee amendments. These all constitute as Section 11(2). Is that correct, Chairman Rosario Braid?

MS. ROSARIO BRAID: That is right, Madam President.

MR. RAMA: May I ask that Commissioner Monsod be recognized.

MR. MAAMBONG: Madam President, we have not yet voted on the whole section.

THE PRESIDENT: Yes. We have to vote on the whole section because we have voted by sentences. So will Commissioner Rosario Braid read the entire Section 11(2)?

MS. ROSARIO BRAID: Madam President, it reads: "THE ADVERTISING INDUSTRY, IMPRESSED WITH PUBLIC INTEREST, SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF THE GENERAL WELFARE. ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS, AT LEAST SEVENTY PERCENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY. The participation of foreign investors in the governing body of ENTITIES IN SUCH INDUSTRY shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such ENTITIES

must be citizens of the Philippines."

VOTING

THE PRESIDENT: As many as are in favor of Section 11(2), please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 31 votes in favor, none against and 1 abstention; Section 11(2) is approved.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Just for the record, Commissioner Quesada is a coauthor of my amendment.

MR. RAMA: Madam President, I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I would like to move for the deletion of Section 12. The reason is that the right to give franchises is in the State and normally there are already conditions attached to those grants, and I do not think we should constitutionalize a provision that would give an excuse for the regulatory agency to censor or impair the operations of these broadcasting and telecommunications entities.

Madam President, what happened in the past 14 years was that these franchises were given only very short terms and, therefore, they were, for all intents and purposes, intimidated into following the wishes of the administration. The provision, as formulated now, would give a constitutional opening to invoke this provision in order to possibly do the same thing. The right to regulate anyway is inherent, and I contend that it would be unnecessary to provide for that in the Constitution.

MS. ROSARIO BRAID: Madam President, the committee does not accept because under the present system where this regulation and allocation of franchises are handled by the National Telecommunications Commission under the Ministry of Transportation and Communications, we observed that they do not have a code that has criteria that we would like to specify here which will then prevent the year-to-year granting and allocation of franchises.

Furthermore, since the NTC was organized in 1979, what happened was that because of the lack of criteria, in the case of broadcast media, some were granted franchises on the basis of access to centers of powers. There was also the practice of selling franchises or frequencies to other individuals. And this provision prohibits transfer, lease or mortgage to any other entity but that it provides that such frequency or franchise to operate should be returned to the State.

We find that this is a common practice and we submit, Madam President, that when a franchise holder ceases to operate, he can only sell his physical facilities, his equipment, but not the frequency. This provision would put a stop to this malpractice. We feel that this is very important, Madam President. We will likewise be happy for a reformulation that would capture the intent of this concern.

MR. MONSOD: Madam President, I do not think that the section really serves the purpose because franchises are granted by Congress and the terms of the franchises are specified by Congress.

MS. ROSARIO BRAID: This was before martial law and since then, it has always been granted by the National Telecommunications Commission in the case of broadcast and telecommunications.

MR. MONSOD: Madam President, under the Constitution we are framing that is provided for, and just because it was abused during the Marcos administration does not mean that we have to put something in this new Constitution that would be merely a redundancy or a reemphasis of what is the proper function of the granting of the franchise.

What I am afraid of is that this is, in effect, a double-edged sword. If we put this here, it could also be used as an excuse to control broadcast and telecommunications. And it is better to be silent on it because anyway it is going to be done rather than to provide an excuse for control.

MS. ROSARIO BRAID: Madam President, may I request Commissioner Natividad, a member of our committee who has given some background on this matter since he had been a Member of the Congress, to be recognized?

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: This is about franchises which were formerly approved by Congress and which we discussed in the committee. I stated in the committee hearings that the problem of poor telecommunications — telephone service or even electric service — based on franchises given by Congress was that, after they had been given these franchises, they had merely serviced the town plazas, and the barrios were then neglected to the extent that in my experience I had the franchises which I worked for as a Congressman cancelled. I filed the appropriate petition with the SEC because these franchises did not serve the interest of the people or the towns for which the franchises were issued.

So, during the committee hearings, I said that there should be some reforms in this regard because it is a stumbling block to the progress in telecommunications. Up to this time, it is very difficult to call from Manila to even a very near province, like Bulacan, or from Manila to Pampanga or Tarlac, by telephone because while these areas are covered by franchises, no improvement had been experienced due to the monopoly of these franchises, which are especially issued but not properly serviced.

So, as I stated in the committee hearings, something must be done to remedy the situation in order to provide these essential public services to the communities. And this is validated by our experience now especially in telecommunications. It is easier to call the United States than to call nearby neighboring provinces because of the defects in the issuance of franchises.

MR. RAMA: Madam President, there are no more registered proponents to amend this section, so the body is ready to vote on the motion to delete by Commissioner Monsod.

THE PRESIDENT: Before the body is the motion of Commissioner Monsod to delete Section 12. Is Commissioner Monsod insisting on his motion to delete?

MR. MONSOD: Yes, Madam President, I would like the body to vote on it.

VOTING

THE PRESIDENT: So the motion is to delete the entire Section 12 which has not been accepted by the committee.

As many as are in favor of deleting the entire Section 12, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 17 votes in favor and 13 against; Section 12 is deleted.

MR. RAMA: Madam President, Commissioner Uka has registered to present an amendment on Section 13.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: We have an anterior amendment that has been distributed to everybody, and it reads: "THE STATE SHALL ENCOURAGE THE CONTINUING STUDY OF THE NATURE AND IMPACT OF COMMUNICATION TECHNOLOGY IN SOCIETY AND SHALL PROVIDE APPROPRIATE AND SPECIAL MEASURES FOR ITS ROLE IN NATIONAL DEVELOPMENT." The sponsors, in addition to myself, are Commissioners Regalado, Azcuna, Foz and Davide.

The reason for this proposal is that it will operationalize Section 9 and it will also provide for the study of telecommunications and other forms of technology, particularly in reference to the concern we expressed when we voted for the 60-40 ratio. We felt that it should be an exception to the other public utilities.

So we hope that with this provision, Congress shall encourage studies that will plan and study the role of technology for development.

THE PRESIDENT: Where will this particular sentence be placed?

MS. ROSARIO BRAID: If approved, Madam President, it will take the place of Section 10, which was deleted last Saturday.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, in the discussions last Saturday, I think we made it quite clear that there were some reservations in the body about giving the State or Congress certain rights that could be used to control the industry. That is the reason why when we formulated that policy statement, we took pains to formulate the text, to provide the policy environment. Precisely, we had reservations about measures and steps that could be taken by the State which could lead in the opposite direction to freedom of speech and of the press.

This proposal now would try to bring back the idea of the State stepping into the picture with appropriate and special measures for its role in national development; meaning, the role of communications. And while it may sound innocuous, this provision would reopen the possibility of State intervention under the excuse that these are measures to facilitate or enhance the role of communications in national development.

I believe, Madam President, that the section approved last Saturday already sets the tone, the direction and the overall policy of the State with respect to the vital role of communication in nation-building and national development. Therefore, I object to the insertion of this new section.

MS. ROSARIO BRAID: Madam President, may I just explain that the intent of this provision is really to suggest the operationalization of Section 9. It will encourage media education; that is, teaching children discrimination in TV and film viewing and newspaper reading which will be integrated in some courses. We say that we do not want to arrive at the age of space technology where we will have direct broadcast satellite without preparing for it. We do not wish to employ technical filters or economic filters. We would allow the free flow of information so we could teach our children to become discriminating in terms of their media habits. Also, this will suggest to

Congress needed studies such as whether telecommunications should be a part of public utilities, among other things. It would also mean that before we begin the implementation of satellite communications, we should have studies about it. We should have cost-effectiveness studies. A criticism in most technology projects in most countries was that the "hardware" of technology was introduced before there had been any study about the needs of society. This is why we say that we must have "software" before "hardware." I regard this as an encouragement to universities, research institutes and schools to undertake studies on media.

MR. MONSOD: Madam President, may I just have a short response? In this section we approved last Saturday, we were talking about the full development of Filipino capability; we were talking about communications structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of and across the country. This is a very broad statement that already includes the thoughts in this other section. And I would like to state that the proposed section cannot add anymore to the broadness and clarity of the section we approved last Saturday.

MR. RAMA: Madam President, the issue has been sufficiently discussed. I ask for a vote on the motion of Commissioner Monsod.

THE PRESIDENT: No, what is before the body is the anterior amendment submitted by the committee.

MR. RAMA: So there is an anterior amendment submitted by the committee.

THE PRESIDENT: Yes, which we have to approve or disapprove.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: I just call attention to the provision of Section 11, under "SCIENCE AND TECHNOLOGY," which states:

Science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services.

I think this covers the issue under discussion; we should not clutter our Constitution with repetitions.

MR. SARMIENTO: Madam President.

THE PRESIDENT: The Commissioner is recognized.

MR. SARMIENTO: May I just invite the attention of my colleagues to our Journal last Saturday, September 27, 1986. We have this paragraph on page 23, which reads:

On whether "communication structures" would mean "organizational or physical structures," Mr. Azcuna explained that the phrase would not only include physical structures but also the softwares or the know-how. He also affirmed that it includes organizational structures for the development of a communication system suitable to the needs and aspirations of the nation.

Then on page 24, a portion of that page reads:

At this juncture, Mr. Sarmiento volunteered the information that the UNESCO approved the creation of a New International Information and Communication Order (NIICO), of which the Philippines is a participant, which proposed the formulation of a national communication policy to be participated in by all social sectors concerned through democratic consultation, and to make communications more responsive to the needs of the

people. Thereafter, in reply to his query, Mr. Monsod affirmed that the proposed amendment is compatible with the UNESCO proposal.

My humble submission, Madam President, is, with due respect to the committee, this amendment is covered by the flagship section.

Thank you, Madam President.

THE PRESIDENT: Are there any other comments?

MS. ROSARIO BRAID: Madam President, we just want to put on record that this is a priority in the development of communications structures in view of the concern this morning about communications technology being a part of public utilities. It is just for this that we would like to let this issue surface. And if it is covered by that omnibus paragraph, the committee will withdraw the amendment. But we want to put on record that this is one of the study projects that will be accomplished under that omnibus provision.

THE PRESIDENT: The Chair believes that that has been made clear by the statement also of Commissioner Sarmiento. So the same has been withdrawn.

We now proceed to Section 13.

MR. RAMA: Madam President, may I call on Commissioner Uka to present an amendment.

THE PRESIDENT: Commissioner Uka is recognized.

MR. UKA: Madam President, Commissioner Treñas and I are cosponsors of this motion to delete Section 13.

There are valid and strong arguments against inserting the provisions of Section 13 of Proposed Resolution No. 531 in the new Constitution, the most cogent among which are the following:

- (1) There is a wealth of statistical evidence that proves that population growth has been a major stimulus for economic development and progress in countries that are now industrialized.
- (2) The major determinants of a country's economic development are economic policies and political system. Very densely populated countries like Japan, Taiwan, South Korea, Hongkong and Singapore reached heights of economic progress much before any organized population programs.
- (3) It is very dangerous to give the State a constitutional mandate to determine what is an optimum population. This can lead to a gross violation of human rights like in the case of some Asian countries that implemented forced sterilization programs, such as the more recent attempt of an Asian leader to limit childbearing only to the educated women, making the extremely objectionable assumption that poor women give birth to less intelligent babies.
- (4) In the Philippines, population control programs have been an unmitigated disaster. Hundreds of millions, as a matter of fact, close to P340 million, have been spent for these population control programs from 1981 to 1986. And, of course, hundreds of millions of pesos have gone down the drain without any real impact on alleviating mass poverty.

As the current Minister of Social Services, Mita Pardo de Tavera has recently declared, funds for population control are better utilized in providing social services to the existing population. Population policies should be exclusively population welfare policies. It has been proved beyond statistical doubt that economic development and social justice will automatically lead to the slowing down of population growth as increased urbanization and industrialization are achieved. There is no need for the State to take an active role in determining the optimum level of population. Once the State is wrongly given the mandate to interfere in the basic rights of parents to

determine the number of children they will have, all the qualifying limitations about respecting individual consciences are often more honored in their breach as can be gleaned from the experience of developing countries in Asia.

The 1935 Constitution did not include any provisions on population. The only reason why a population policy was included in the 1973 Constitution was that there was a strong lobby supported by the USAID, which at that time was aggressively committed to population control. Since that time under the new policy of President Reagan, American aid programs have been focused on such positive solution as food productivity and the development of small-and medium-scale industries.

Very recently, America stopped all financial support to the U.N. Fund for Population Activities because of the latter's involvement in China's population program, which the United States has reason to suspect, contains the widespread use of compulsory abortion.

The new Reagan doctrine on population was first announced in the 1984 Population Meet in Mexico. It states that the most effective solution to the population problem is economic development and social justice.

Given appropriate policies in economic development and social justice which have been our concern in this Constitution, the Philippines today can comfortably accommodate as many as 100 million Filipinos given the present technology. The Philippines is far from being overpopulated. Existing mass poverty in the Philippines can be attributed to an unenlightened economic policies and the wrong political leadership in the past.

THE PRESIDENT: Commissioner Uka, I am sorry I have to interrupt you because your three-minute time has expired.

MR. UKA: One minute more, Madam President. What is one minute among friends.

THE PRESIDENT: The Commissioner is granted a one-minute extension.

MR. UKA: Thank you, Madam President.

Today, every major nation is both modern and free; it is also on a fertility trap, which will lead to a substantial loss in population. Why should we target our CPG when other nations want to have more babies? In fact, President Francois Mitterrand of France recently argued that the decline in birth rate constitutes a grave menace to the West.

So we can see that the modern nations in Europe are even having a problem of decline in population. And some of them are even sending their people here to adopt Filipino children. What does this mean? If Rizal said that the youth, the conceived child in the womb included, is the fair hope of the Fatherland, then the Western contraceptive is already preventing that to happen in our country. There will be no more hope — children or youth — for our Fatherland.

I cannot resist the temptation to quote Jesus on this subject when he said:

Suffer little children and forbid them not to come unto me for such is the Kingdom of Heaven.

We should welcome children, not kill them.

THE PRESIDENT: What does the committee say to the motion to delete Section 13?

BISHOP BACANI: Madam President.

THE PRESIDENT: May we have the reaction of the committee first.

BISHOP BACANI: The committee is divided regarding this matter. Personally, I would not object to the deletion of the first sentence, but I would like to ask that the second sentence be transferred to the provision on family rights, where it says that the parents have the right to found a family according to their religious convictions.

THE PRESIDENT: That has been approved already.

BISHOP BACANI: Yes. What I would like to say, Madam President, is whether it is possible to transfer the second sentence.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: I would like to ask a few questions of Commissioner Uka. Will he yield?

MR. UKA: Very willingly, Madam President.

MR. DE LOS REYES: At present, there is a program being undertaken by the government on family planning. Will the deletion of Section 13 mean the disbandment of all family planning activities being undertaken by the government? Does it mean that after the ratification of this Constitution, assuming that Section 13 is deleted, the government is duty-bound to stop all family planning activities?

MR. UKA: My answer is that any population control program that contains contraceptive measures or abortion should be stopped.

MR. DE LOS REYES: No, my question is that what will happen to the ongoing family planning projects undertaken by the government at present?

BISHOP BACANI: Madam President, may we venture an answer from the committee?

MR. DE LOS REYES: Yes. I have no objection whether it is Commissioner Uka or the committee who will answer.

BISHOP BACANI: Yes. That means the constitutional mandate for such programs will disappear. But the government will then have to make its own decision whether or not to continue such programs after this even though there is no constitutional mandate.

MR. DE LOS REYES: So there is nothing wrong with Section 13 which states:

It shall be the responsibility of the State to adopt population policies conducive to the national welfare.

The only difference is that we delete it from the Constitution. But, anyway, the government may adopt a policy on population which it believes conducive to the national welfare.

BISHOP BACANI: Yes, the government can do that even without a constitutional mandate. That is the only difference. The difference between deletion and non-deletion is not that the government cannot do such a thing. Whether it does or not the mandate will not come from the Constitution.

MR. DE LOS REYES: In other words, there will be nothing unconstitutional for any public official to adopt a population policy most conducive to the national welfare. Only we remove that mandate as if it is a mandate on the government to adopt family planning policies. Is that correct?

BISHOP BACANI: Yes. There will be nothing to prevent the government. Of course, we are preserving the constitutional rights of the people also where such planning is done.

MR. DE LOS REYES: If that is the answer of the committee, that anyway it is the same whether we delete the

section or not, then I respectfully object to the deletion. Even before we have started amending this Constitution, we have stated that we shall use as a basis the 1935 and 1973 Constitution. This means that we will amend only when it is absolutely necessary. But when the 1973 Constitution is not harmful anyway, then there is no need to remove such provision.

I respectfully submit, Madam President.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: I am constrained to take issue with the position of Commissioner de los Reyes.

The Philippine Constitution is the only Constitution in the world that carries a policy, an aggressive policy, on population planning. In fact, the Equadorian and Peruvian Constitutions would at best provide for State support for child spacing, nothing more.

The issue of population planning given a mandate in the Constitution is specific and general at once. It is specific because it carries with it serious political implications. In fact, as a tool for political agenda I think the population policy is not only deceptive but also unfair.

As early as the first United Nations conference on population, the conferees/experts in this field have agreed that the true culprit is not population explosion but rather the continuation of equitable economic structures that are aggravated by relationships of dependence and exploitation. Any attempt at effective solution is really through a process of social transformation. It appears that the population policy is not really directed at arresting poverty but at arresting population growth.

Now, the statistics, upon cursory reading, are very revealing. The industrialized nations would account only for about 16 percent of the world's population. Even then, they consume 57 percent of the world's energy resource. While the population of the countries in the Third World would account for 62 percent, they are left to grapple with only 14 percent of the world's energy resources. The history of the United States is likewise very revealing. President Johnson himself said that it is even wiser to spend \$5 to abort a child than to spend \$100 to solve the problem of economic development. In fact, in the 1960's the highest budgetary allocation of the United States Congress for foreign nonmilitary aid is given to population control.

Apparently, population control does not come out of our own desire. It is a dictate of the foreign policies. Cesar Virata himself admitted in 1982 that the release of the developmental and assistance funds is contingent upon the government adopting an aggressive policy on population control. Now on the general issues, population control raises serious philosophical, ethical and moral questions. I have always believed that the question of child bearing and child spacing is inextricably linked to religious and spiritual beliefs. It is also vitally linked to bodily integrity which is inherent in dignity and self-determination.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Thank you very much, Madam President.

MR. COLAYCO: I sustain in full the positions taken by Commissioners Uka and Aquino, and I wish to add that from the admission of the committee last Saturday, I think, we have already spent P864 million from 1983 to 1986 alone. Considering that the family control plans started in 1973, it would be safe to say that we have spent no less than P1.5 billion, money which could have been better spent for the education, for the improvement of the conditions of the poor people whom we are trying to help.

Now, why is it important to delete the first sentence? Commissioner de los Reyes believes that there is no harm in leaving this here. I would think that if we retain the first sentence, at least, it will always remain as a continuing encouragement to the sectors of the government who are bent on controlling population to pour more funds for the purpose of controlling our population. Commissioner Uka mentioned that there is no relation or connection between fast population growth and high economic growth. I would like to add the following statistics: This has been round to be so in the countries of Thailand, Malaysia, Ecuador, Jordan, Brazil, Mexico, Syria, Panama, Taiwan, South Korea, Singapore and Hongkong.

With these additional statistics, we believe that there is justification to delete the first sentence of Section 13 and personally I support the position of Commissioner Bacani to retain the second sentence which, if approved with the following deletions, should read: "It shall be the right of parents . . ." we delete the words "however" and "duty" from the second sentence.

Thank you very much.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: May I ask the committee if they continue to support Section 13 since this is part of a committee report, unless the committee, in the meantime, has decided to repudiate its own report with respect to Section 13.

MS. ROSARIO BRAID: The committee is divided. What we did is: we came up with the report that had the agreement of everybody and which formulation was even acceptable to Commissioner Bacani at one time, but after reviewing and studying this problem there has been a change.

MR. OPLE: But there has been a change in the attitude of the committee, is that correct?

MS. ROSARIO BRAID: Yes. That is right.

MR. OPLE: As a committee member, the Commissioner is now repudiating what is embodied in Section 13?

BISHOP BACANI: Madam President, may I respond?

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Yes. As I said, I would personally want to retain the second sentence and I think the other members of the committee would also want to retain that. I am amenable to the deletion of the first sentence. I will not fight for it. I am not an opponent as such of this but I am willing to have it deleted.

MR. OPLE: I am speaking of the stability of a committee report. But, of course, I suppose a report does not bind the committee in all instances especially where they decide to disown it. Nevertheless, I should like to speak in favor of retaining the first sentence, not to retain it in accordance with the committee report. It might be a reckless reversal of a long standing policy of the Philippine government. Commissioner de los Reyes asked a question as to whether the elimination of this section could mean a constitutional signal to the State to abandon whatever it is doing in the field of population policy. There are many thousands who are actively engaged in the prosecution of this policy all over down to the barangay level. Wherever there is a puericulture center is the headquarters of a family planning movement. There is a Population Commission in which most of the social and economic ministries are represented. There are population programs. Every governor in every province is obligated to carry on these programs with the support of the Population Commission. The five-year economic development program contains a very specific commitment to this kind of population policy. And so, especially in the light of the statement of Commissioner Uka that practically has asserted the superfluity of population policies, I think there

might be a basis for the concern of Commissioners de los Reyes that the elimination of this sentence means a mandate to the State to cease and desist from carrying out any population policy whatsoever on the ground that it is up to the social and economic development, the abolition of mass poverty and the enhancement of the general welfare to accomplish what a population policy is supposed to do.

THE PRESIDENT: The three-minute allotment has already expired.

MR. OPLE: May I ask for just one minute more to wind up.

THE PRESIDENT: The Commissioner is given a one-minute extension.

MR. OPLE: Thank you.

I think there is nothing in this sentence that suggest a coercive approach to population policy. It just speaks of the right of the responsibility of the State to adopt population policies most conducive to the national welfare. If we can mandate the State to regulate advertising for the general welfare, I see no reason why on this momentous issue of permitting our people voluntarily to control the size of their own families, we should begrudge the State this kind of power and responsibility.

And so, Madam President, I repeat, it might be reckless given the very little time we have, to support a proposal to eliminate this sentence and overturn a policy of long standing in our country that according to visible evidence has succeeded in bringing down our population growth rate in 12 years, from a high of 3 percent to only 2.4 percent at this time. This is according to the U.P. Institute of Statistics. That was a period of rapid economic decline; and, therefore, if population had not exploded to match the declining population, some credit must be given to the population policy of the government.

Thank you, Madam President.

THE PRESIDENT: Thank you.

Commissioner Quesada is recognized.

BISHOP BACANI: Madam President, just for a clarification.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: I just like to reiterate in response to Commissioner Ople's comment that he is afraid that the elimination of this first sentence will mandate the abandonment of all population policies and that the removal of this provision only means that there will be no constitutional mandate henceforth for such population policies. The government can still pursue its population policies on its own. There is no constitutional block either for that, aside from what is provided for in the Constitution itself, in our own Bill of Rights and in accordance with our morality.

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Thank you, Madam President.

This is just to support the position that actually the deletion of this particular provision on population policy will not prevent the State and the other instrumentalities, like the Ministry of Health and other agencies, to include in its comprehensive health program services that will enable women to make a choice on the size of their families. As a matter of fact, in the health sector we always include family planning as part of a comprehensive and effective maternal and child health program. So, this will still be part of the health programs that we now render to our people, especially to women.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: In response to the manifestations of Commissioner Ople, this obsession with population control, in effect, subconsciously pointing the accusing finger to a culture or to a people as the cause of poverty, is very diversionary. In fact, there are statistics which show that in highly-urbanized cities and centers, there is a progressive decline in population. What matters, therefore, is the consciousness and the understanding of the rudiments of responsible parenthood. In time, Commissioner Romulo will present an amendment which, I think, correctly addresses the problem of population through consciousness raising and through the approaches of education, instead of an aggressive subliminal attempt to delimit population, as if it were the source of the problem of poverty.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: During the interpellations, the committee was clearly against the present thrust in family planning. It was very clear that when we talked about population policy, we meant that there are other ways of addressing ourselves to these problems, such as, for instance, studying demography, studying urbanization and the causes of urbanization, studying the role of women, and indirect means of population planning. We are quite willing to support the phraseology as it appears here. Population policy means that at some point in time the government or other entities would be better informed and better qualified to be able to come up with other ways of understanding the problems, such as urbanization and improved economic measures. So, this is addressed to other alternative means. It also means that at some future time we may opt for even larger families and this is the intent of this policy.

MR. CALAYCO: Madam President, may I have a reaction?

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: All that we are saying is that there is no need to keep this statement in our Constitution. It is admitted that without it, the government can continue with whatever program it believes to be most conducive to the welfare of the country. In addition, the retention of this policy in the Constitution, I said, indirectly may encourage emphasis on contraceptive means setting aside the consideration of other policies just mentioned by Commissioner Rosario Braid. For this reason, speaking for myself, I would not accept any proposal to amend our position which is total deletion of the first sentence.

MR. RAMA: Madam President, the amendment of Commissioner Uka has been more than adequately debated.

THE PRESIDENT: Is the body ready to vote now?

BISHOP BACANI: Madam President, just a moment, please. Will the voting be on the whole Section 13 or just on the first sentence?

THE PRESIDENT: The motion is to delete the entire Section 13.

MR. COLAYCO: That is the Uka and Colayco amendment.

BISHOP BACANI: So, we will vote for the deletion of the entire Section 13.

MR. COLAYCO: Yes.

THE PRESIDENT: The second sentence is already covered by another provision on family rights.

MR. COLAYCO: I would like to clarify the position. The position of Commissioner Uka is for the deletion of the total section.

THE PRESIDENT: Yes.

MR. COLAYCO: However, if Commissioner Uka is agreeable, I am willing to amend only the first sentence of Section 13.

BISHOP BACANI: So, can we vote first on the first sentence, Madam President, only on the first sentence?

MR. COLAYCO: That is better.

THE PRESIDENT: Let us inquire from Commissioner Uka.

MR. UKA: The vote should be on the deletion of the whole section.

THE PRESIDENT: That is because the second sentence appears to be a consequence of the first sentence.

BISHOP BACANI: Madam President, I do not know whether I can still present an amendment to that proposal of deleting the entire Section 13. I would like to propose that it will be a deletion of the first sentence only.

MR. COLAYCO: I am agreeable to the submission to the body of the deletion of the first sentence only.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 6:13 p.m.

RESUMPTION OF SESSION

At 6:15 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: I ask that Commissioner Colayco be recognized.

THE PRESIDENT: Before that, Commissioner Bacani, I think, has some additional statements to make.

BISHOP BACANI: Before Commissioner Rigos left this morning, he charged me to deliver his message to the body. I do not know whether this will be embodied in a future amendment. This is not my own personal suggestion, but the Commissioner wanted me to convey to the body that he will be amenable to saying that the State, through education, shall promote a responsible parenthood. So I would be disloyal to him if I do not pass on his message. That is all, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Yes. That is Commissioner Rigos' amendment, but I think our present formulation is even broader because we talk about population policies that have nothing to do with family planning. Also, if we do not have a constitutional provision here, we leave the present programs helter-skelter and not knowing where they are. Maybe they may even step up their family planning programs.

MR. BENGZON: May I raise a point of order, Madam President?

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: The point of order is that we are now in the midst of discussing and voting on the amendment of Commissioner Uka to delete the entire section.

THE PRESIDENT: Yes, but this was interrupted because the Chair permitted Commissioner Bacani to make additional statements which he felt he had to do because of the absence of Commissioner Rigos. Now, the statement of Commissioner Rigos requires a reply from Commissioner Rosario Braid. So, may we just allow the committee to settle that particular point?

MS. ROSARIO BRAID: Yes.

MS. NIEVA: Madam President.

THE PRESIDENT: Is Commissioner Rosario Braid through? Is Commissioner Nieva's remarks still on the same section?

MS. NIEVA: Yes. That second sentence is not necessary because I believe that that is already contained in the Article on Family Rights which says that the State shall promote or defend the right of spouses to found a family according to their religious convictions and the demands of responsible parenthood. So, I think that second sentence may be a repetition because it is understood by the right of the spouses to found a family according to their religious convictions. That would include determining the number of children that they would like to have. I think we have already explained that in the deliberations.

If we look at our deliberations, I have mentioned that very specifically that it would include that right.

MR. BENGZON: Madam President.

MR. COLAYCO: Madam President.

THE PRESIDENT: So, what we have here is a total deletion of Section 13.

MR. COLAYCO: Yes.

THE PRESIDENT: Does Commissioner Uka stand by that?

MR. COLAYCO: After conferring with Commissioner Uka and Commissioner Aquino, I am now supporting the proposal to delete the entire Section 13.

That is the parliamentary situation now.

THE PRESIDENT: Yes, we are ready to vote on that now.

MR. UKA: It is on the total deletion of the entire Section 13, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of deleting Section 13, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 27 votes in favor and 4 against; so, Section 13 is deleted.

Can we proceed now to Section 14?

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Since the late amendment or provision that was approved in the Article on National Economy and Patrimony expresses the same idea, the committee had decided to delete Section 14.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the amendment is approved.

Section 14 is deleted.

MR. RAMA: Madam President.

THE PRESIDENT: We now go to Section 15 which reads: "The State may not be sued without its consent."

Is there any objection or remarks to this section? (Silence) The Chair hears none; Section 15, as worded, is approved.

We now go to Section 16.

MR. ROMULO: Madam President.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO. This is just a manifestation. I was going to propose a substitute amendment on Section 13 on behalf of Commissioner Rigos and others but in view of Commissioner Nieva's manifestation, I believe that our proposed amendment is no longer necessary.

Thank you.

THE PRESIDENT: Thank you.

So, we now go to Section 16. Commissioner Rosario Braid, is there any proposed amendment to Section 16?

MR. RAMA: There is none as far as my record is concerned.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I would like to ask the committee what is meant by "malpractices." Would it mean to protect consumers from trade malpractices?

THE PRESIDENT: Is this necessary?

MR. RAMA: This is on Section 16, Madam President.

MS. ROSARIO BRAID: Yes, we are referring here to services and products. I do not think trade malpractices would fall under this category.

MR. MONSOD: Is this just the principle of protection of consumers?

MS. ROSARIO BRAID: Consumerism, yes.

MR. MONSOD: I would like to move that the word "TRADE" be put before "malpractices" and to delete the phrase "of manufacturers and producers." Then we put a period (.) after the word "products."

THE PRESIDENT: So how will it read?

MR. MONSOD: "The State shall protect consumers from TRADE malpractices and substandard products."

THE PRESIDENT: Is that accepted?

MR. AZCUNA: Madam President.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: I would like to object to that proposal, Madam President, because when I interpellated the committee on this, the committee precisely pointed out that one of the evils which they wish to prevent was that of manufacturers and producers dumping defective products into the market and we, in fact, alluded to the doctrine of strict product liability wherein manufacturers of defective products will be held liable for harm done by the defect in their products. Therefore, I think it should not be limited to traders only but it should also include precisely manufacturers and producers.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I believe if we put a period (.) after "products," there would be enough flexibility and leeway for the State to go after the traders, retailers and the manufacturers. Whereas, if we keep the words "manufacturers and producers," we will be exempting the retailers and the traders.

MR. AZCUNA: Madam President.

THE PRESIDENT: What does Commissioner Azcuna say?

MR. AZCUNA: With that clarification, I withdraw my objection.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I am just going to support the position of Commissioner Monsod, Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I propose an amendment after the word "substandard." This is really against the dumping of hazardous goods or products, so I seek to insert the words "OR HAZARDOUS" between the words "substandard" and "products."

So it will read: "OR HAZARDOUS products."

MR. MONSOD: Madam President.

BISHOP BACANI: Madam President, may I ask Commissioner Davide. Would not every hazardous product be substandard also?

MR. DAVIDE: Not necessarily because substandard may refer only to the quality.

BISHOP BACANI: Then we will accept that, Madam President.

MS. ROSARIO BRAID: We will accept.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I think there are certain products that are naturally hazardous and by putting the word "HAZARDOUS" here, we are saying that the State shall protect the consumers by making sure that these are not sold or retailed.

MR. DAVIDE: Not necessarily so, but the State may regulate. So this will now prevent, for instance, the dumping of radioactive milk or probably certain drugs which are really hazardous to health. It is not total prohibition against certain kinds of hazardous products.

MR. MONSOD: So, it is not per se against hazardous products.

MR. BENGZON: Madam President, may I be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Besides, Madam President, if we use other words here, it is more of a delimitation. We are already on legislation, no longer on Constitution-making. As a matter of fact, Section 16, as it is formulated, is already legislation. However, I would not object to it. In fact, I am supporting the position of Commissioner Monsod because the committee has accepted the amendment by inserting the word "TRADE" and by putting a period (.) after the word "products."

MS. AQUINO: Madam President.

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: May I be clarified by the committee.

Has the committee accepted the amendment by insertion of the word "TRADE"?

MS. ROSARIO BRAID: Yes, on the understanding that this would include the practices in retail and transfer of goods.

MS. AQUINO: In the context of that and in the context of the manifestation of Commissioner Azcuna, would this section guarantee as well certain rights to the consumer, such as the right to safety, information, redress and consumer education? Meaning, even as it would seek to protect the consumers from malpractices, would this guarantee certain rights?

BISHOP BACANI: I believe so, Commissioner Aquino.

MS. AQUINO: Those are enforceable.

BISHOP BACANI: Yes.

MS. AQUINO: Thank you.

THE PRESIDENT: Does Commissioner Bennagen want to say something?

MR. BENNAGEN: The questions I want to ask are already asked by Commissioner Aquino.

Thank you, Madam President.

MR. OPLE: Madam President, may I ask a question.

THE PRESIDENT: Commissioner Ople may proceed.

MR. OPLE: What do we mean by "substandard products"?

MS. ROSARIO BRAID: It means poor quality.

MR. OPLE: Generally, it is the right of the sovereign consumer to accept or reject a product in the market-place. By substandard products, do we mean products that fall short of the specifications of the Bureau of Standards in the Ministry of Trade and Industry?

MS. ROSARIO BRAID: Yes.

MR. OPLE: So, there is an element of a fraudulent intent on the part of the manufacturer to deceive the consumer?

MS. ROSARIO BRAID: Yes. With or without the fraudulent intent we insure here the right of the consumer to seek redress and to get action. In other words, the appropriate government agencies will be mandated to respond to consumers' complaints. Even consumer groups would be reactivated or strengthened.

MR. OPLE: May I know if under this provision, the State may require the manufacturer of products, judged later on to be substandard, to recall all of these products and withdraw them from the market?

MS. ROSARIO BRAID: Yes.

MR. OPLE: Will that not open manufacturers to potential harassments possibly organized by their own competitors in order to ruin a business on the basis of some lopsided technical finding that the product issued to the market is substandard?

MR. BENGZON: Madam President, may I answer that?

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I think there are already rules and regulations now not only promulgated by the Bureau of Standards but also by the Ministry of Health. We have got the Food and Drug Administration precisely to check and clear all these, not only the imports but also the locally produced goods.

MR. OPLE: The food and drug field is a special case in every jurisdiction in the world. This is subject to rigorous State control and supervision.

But, for example, the other day, I hurt my hands because of an unusually sharp fastener that I have bought. In my opinion, this is completely not only substandard but hazardous. And yet, I think if we look for locally made fasteners in the market, they hardly differ in terms of the sharpness of their edges and the hazard they pose to consumers.

Let us take the auto industry. In the United States and in Japan, it is customary for Ford, Chrysler or General Motors to recall certain issues of cars covered by serial numbers 1 to 100 because of a defective brake or some defect in some specific and perhaps isolated parts of the car. Because of the nature of the competition they have no choice, except to do what is right by the customer. There are no laws that compel these companies to withdraw all their products.

THE PRESIDENT: The Commissioner has already consumed three minutes.

MR. OPLE: Yes. May I know, whether in this case, we leave no margin of initiative and discretion whatsoever to manufacturers. Are they to be summoned in a court or in a quasi-court and then ordered literally to withdraw their products from the market by fiat of the government?

THE PRESIDENT: May we hear from Commissioner Bengzon.

MR. BENGZON: Madam President, that is precisely why we are trying to put Section 16. Although, to me this is legislation, I am willing to go along with it, if only to be able to state here that the government has the right to issue rules and regulations. So, it is a matter of regulation and law that will be issued by the government and it is a matter of hard evidence on a case-to-case basis whether or not a particular manufacturer or producers would be liable. But we are not saying here that just because a fastener cuts the hands of someone, then that particular manufacturer is already liable. It has to be on a case-to-case basis depending on the evidence that appears.

MR. OPLE: Considering the nebulous character of the explanation for this and Commissioner Bengzon's own position that this is legislation, may I move, unless it is out of order, that we delete this paragraph, Madam President.

MR. RAMA: That is an anterior amendment.

MR. GUINGONA: Madam President.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: We, from the committee, do not accept the deletion. Besides that, may I just reply to the point raised by Commissioner Ople. The possibility of abuse is always a possibility for any constitutional provision in its implementation in any giving of power and the exercise of that power. So the fact that it can be abused is not an argument against its being placed in the Constitution.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Commissioner Bengzon said that he believed that this particular provision would be more of a matter for legislation. But I contend that even in the absence of legislation, malpractices can be regulated through the exercise of state police power.

MR. RAMA: Madam President, the body is ready to vote on the anterior amendment to delete Section 16.

MR. BENGZON: There is an anterior motion, Madam President.

THE PRESIDENT: Is Commissioner Ople insisting on his motion to delete?

BISHOP BACANI: We asked him to withdraw.

MR. OPLE: Madam President, I am withdrawing my motion to delete. I just want to call attention to the possible risk which Commissioner Bacani assures me will be adequately managed under this provision.

BISHOP BACANI: Thank you very much, Commissioner Ople.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote, I have just one or two questions. Section 16 protects consumers from malpractices or manufacturers and producers. How about the malpractices of distributors, wholesalers, retailers and middlemen, are they not included?

MR. BENGZON: Point of information, Madam President. In the amendment of Commissioner Monsod, we put a

period after the words "substandard products." It eliminates the phrase "manufacturers and producers" precisely to make it all encompassing. In the amendment, we insert the word "TRADE" between the words "from" and "malpractices" on lines 15 and 16; then we put a period after the word "products."

MR. RODRIGO: Was that amendment approved already?

THE PRESIDENT: Can we now proceed to vote?

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Is Commissioner Rodrigo satisfied?

MR. RODRIGO: What are we voting on?

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. RODRIGO: I based my question from the wording of Section 16 in the committee report. Are we voting on the amendment of Commissioner Monsod?

MR. MONSOD: May I read, Madam President?

MR. RODRIGO: Then, may I listen to the amendment.

MR. MONSOD: Madam President, may I have the floor so I can read the amendment.

THE PRESIDENT: The Commissioner may proceed.

MR. MONSOD: "The State shall protect consumers from TRADE malpractices and substandard OR HAZARDOUS products."

THE PRESIDENT: This has been accepted by the committee.

MS. ROSARIO BRAID: Madam President, in addition to that amendment, the committee would also like to include the word "SERVICES" here, because when Commissioner Rodrigo raised a certain question, we feel that the word "SERVICES" should be included here.

THE PRESIDENT: Where will it be included?

MR. MONSOD: Madam President.

MR. RAMA: Commissioner Monsod would like to be recognized.

MR. MONSOD: I believe that the words "malpractices" or "products" would already subsume the word "SERVICES."

BISHOP BACANI: May we hear from Commissioner Monsod again?

MR. MONSOD: I believe that the word "SERVICES" is already subsumed in "malpractices" and in the generic term "products."

MS. ROSARIO BRAID: Yes. We were initially confused when the Commissioner proposed "TRADE" before "malpractices," but if we are assured that "malpractices" would include other kinds of services. . .

MR. OPLE: Madam President, may I have one question for Commissioner Monsod, if he does not mind?

MR. MONSOD: Gladly.

MR. OPLE: Will this provision not repeal the general law of caveat emptor or buyer beware?

MR. MONSOD: No.

MR. OPLE: Thank you very much.

MR. RAMA: The body is ready to vote on the amendment of Commissioner Monsod.

VOTING

THE PRESIDENT: So, Section 16 now would read: "The State shall protect consumers from TRADE malpractices and substandard OR HAZARDOUS products."

As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 29 votes in favor and none against; Section 16, as amended, is approved.

MR. RAMA: Madam President, I ask that Commissioner Monsod be recognized.

MR. MONSOD: Madam President, I believe we should take up Sections 17 to 21, and I would like to refer this matter to Commissioner de Castro.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

I am the chairman of the Subcommittee on the Armed Forces and the Police in the Committee on General Provisions. Last Saturday, I received many comments from several Commissioners about the lengthy sections on the armed forces and also yesterday; that is, Sunday, I tried my best to reformulate without seriously affecting the contents of Sections 17, 18, 19 and 21 on the armed forces and after my reformulation, I issued a paper to every Commissioner without convening with my committee because I thought then that we shall be taking this up this morning, and so the committee may even put amendments on what I reformulated as Sections 17 and 18 only for the Armed Forces.

I am ready to discuss this matter with the body now.

THE PRESIDENT: Is the Commissioner proposing the deletion of Sections 19, 20 and 21?

MR. DE CASTRO: It is a reformulation of Sections 17, 18, 19 and 21, reduced to Sections 17 and 18 only. I have distributed copies of these sections this morning.

THE PRESIDENT: Thank you.

Does the committee have time to go over this?

MR. DE CASTRO: The members of the committee have it since this morning. However, as I said, I was not able to meet them, because I thought these will all be taken up this morning and there will be no more time to convene the committee.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: In view of the lateness of the hour and because the committee would like to study these amended provisions, may we request for an adjournment.

MR. DE CASTRO: It is not amendment; it is a reformulation of Sections 17, 18, 19 and 21.

THE PRESIDENT: In other words, it is a consolidation into two sections.

MR. OPLE: Madam President, may I support the manifestation made by Commissioner Rosario Braid that we consider an earlier adjournment so that we can all study this latest reformulation on vital provisions of the General Provisions affecting the armed forces and the national security.

THE PRESIDENT: What does the Floor Leader say?

MR. RAMA: Madam President, before I move for adjournment, there is a short manifestation that Commissioner Romulo requested.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: Madam President, I have misunderstood Commissioner Nieva as including "education" in her explanation of the Article on Family Rights. So, I should simply like to reserve the right to file an amendment tomorrow on Section 13 after consulting with Commissioner Rigos.

Thank you.

ADJOURNMENT OF SESSION

MR. RAMA: Madam President, I move for the adjournment of the session until tomorrow at nine-thirty in the morning.

THE PRESIDENT: The session is adjourned until tomorrow at nine-thirty in the morning.

It was 6:42 p.m.

[*] Appeared after the roll call.

[*] See Appendix. (Editor's Note: Not provided in the Appendices.)

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