

SANTIAGO C. DIVINAGRACIA, PETITIONER, VS. CONSOLIDATED BROADCASTING SYSTEM, INC. AND PEOPLE'S BROADCASTING SERVICE, INC., RESPONDENTS.*G.R. No. 162272. April 07, 2009*

Ponente: TINGA, J.

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Does the National Telecommunications Commission (NTC) have jurisdiction over complaints seeking the cancellation of certificates of public convenience (CPCs) and other licenses it had issued to the holders of duly-issued legislative franchises on the ground that the franchisees had violated the terms of their franchises? The Court, in resolving that question, takes the opportunity to elaborate on the dynamic behind the regulation of broadcast media in the Philippines, particularly the interrelationship between the twin franchise and licensing requirements.

I.

Respondents Consolidated Broadcasting System, Inc. (CBS) and People's Broadcasting Service, Inc. (PBS) were incorporated in 1961 and 1965, respectively. Both are involved in the operation of radio broadcasting services in the Philippines, they being the grantees of legislative franchises by virtue of two laws, Republic Act (R.A.) No. 7477 and R.A. No. 7582. R.A. No. 7477, enacted on 5 May 1992, granted PBS a legislative franchise to construct, install, maintain and operate radio and television stations within the Philippines for a period of 25 years. R.A. No. 7582, enacted on 27 May 1992, extended CBS's previous legislative franchise^[1] to operate radio stations for another 25 years. The CBS and PBS radio networks are two of the three networks that comprise the well-known "Bombo Radyo Philippines."^[2]

Section 9 of R.A. No. 7477 and Section 3 of R.A. No. 7582 contain a common provision predicated on the "constitutional mandate to democratize ownership of public utilities."^[3] The common provision states:

SEC. 9. Democratization of ownership.â€- In compliance with the constitutional mandate to democratize ownership of public utilities, the herein grantee shall make public offering through the stock exchanges of at least thirty percent (30%) of its common stocks within a period of three (3) years from the date of effectivity of this Act: Provided, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offerings.^[4]

It further appears that following the enactment of these franchise laws, the NTC issued four (4) Provisional Authorities to PBS and six (6) Provisional Authorities to CBS, allowing them to install, operate and maintain various AM and FM broadcast stations in various locations throughout the nation.^[5] These Provisional Authorities were issued between 1993 to 1998, or after the enactment of R.A. No. 7477 and R.A. No. 7582.

Petitioner Santiago C. Divinagracia^[6] filed two complaints both dated 1 March 1999 with the NTC, respectively lodged against PBS^[7] and CBS.^[8] He alleged that he was "the actual and beneficial owner of Twelve percent

(12%) of the shares of stock" of PBS and CBS separately,[9] and that despite the provisions in R.A. No. 7477 and R.A. No. 7582 mandating the public offering of at least 30% of the common stocks of PBS and CBS, both entities had failed to make such offering. Thus, Divinagracia commonly argued in his complaints that the failure on the part of PBS and CBS "to comply with the mandate of their legislative franchise is a misuse of the franchise conferred upon it by law and it continues to exercise its franchise in contravention of the law to the detriment of the general public and of complainant who are unable to enjoy the benefits being offered by a publicly listed company." [10] He thus prayed for the cancellation of all the Provisional Authorities or CPCs of PBS and CBS on account of the alleged violation of the conditions set therein, as well as in its legislative franchises.[11]

On 1 August 2000, the NTC issued a consolidated decision dismissing both complaints.[12] While the NTC posited that it had full jurisdiction to revoke or cancel a Provisional Authority or CPC for violations or infractions of the terms and conditions embodied therein,[13] it held that the complaints actually constituted collateral attacks on the legislative franchises of PBS and CBS since the sole issue for determination was whether the franchisees had violated the mandate to democratize ownership in their respective legislative franchises. The NTC ruled that it was not competent to render a ruling on that issue, the same being more properly the subject of an action for quo warranto to be commenced by the Solicitor General in the name of the Republic of the Philippines, pursuant to Rule 66 of the Rules of Court.[14]

After the NTC had denied Divinagracia's motion for reconsideration,[15] he filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.[16] On 18 February 2004, the Court of Appeals rendered a decision[17] upholding the NTC. The appellate court agreed with the earlier conclusion that the complaints were indeed a collateral attack on the legislative franchises of CBS and PBS and that a quo warranto action was the proper mode to thresh out the issues raised in the complaints.

Hence this petition, which submits as the principal issue, whether the NTC, with its retinue of regulatory powers, is powerless to cancel Provisional Authorities and Certificates of Public Convenience it issued to legislative franchise-holders. That central issue devolves into several narrower arguments, some of which hinge on the authority of the NTC to cancel the very Provisional Authorities and CPCs which it is empowered to issue, as distinguished from the legislative franchise itself, the cancellation of which Divinagracia points out was not the relief he had sought from the NTC. Questions are raised as to whether the complaints did actually constitute a collateral attack on the legislative franchises.

Yet this case ultimately rests to a large degree on fundamentals. Divinagracia's case rotates on the singular thesis that the NTC has the power to cancel Provisional Authorities and CPCs, or in effect, the power to cancel the licenses that allow broadcast stations to operate. The NTC, in its assailed Decision, expressly admits that it has such power even as it refrained from exercising the same.[18] The Court has yet to engage in a deep inquiry into the question of whether the NTC has the power to cancel the operating licenses of entities to whom Congress has issued franchises to operate broadcast stations, especially on account of an alleged violation of the terms of their franchises. This is the opportune time to examine the issue.

II.

To fully understand the scope and dimensions of the regulatory realm of the NTC, it is essential to review the legal background of the regulation process. As operative fact, any person or enterprise which wishes to operate a broadcast radio or television station in the Philippines has to secure a legislative franchise in the form of a law passed by Congress, and thereafter a license to operate from the NTC.

The franchise requirement traces its genesis to Act No. 3846, otherwise known as the Radio Control Act, enacted in 1931.[19] Section 1 thereof provided that "[n]o person, firm, company, association or corporation shall

construct, install, establish, or operate x x x a radio broadcasting station, without having first obtained a franchise therefor from the National Assembly x x x"[20] Section 2 of the law prohibited the construction or installation of any station without a permit granted by the Secretary of Public Works and Communication, and the operation of such station without a license issued by the same Department Secretary.[21] The law likewise empowered the Secretary of Public Works and Communication "to regulate the establishment, use, and operation of all radio stations and of all forms of radio communications and transmissions within the Philippine Islands and to issue such rules and regulations as may be necessary." [22]

Noticeably, our Radio Control Act was enacted a few years after the United States Congress had passed the Radio Act of 1927. American broadcasters themselves had asked their Congress to step in and regulate the radio industry, which was then in its infancy. The absence of government regulation in that market had led to the emergence of hundreds of radio broadcasting stations, each using frequencies of their choice and changing frequencies at will, leading to literal chaos on the airwaves. It was the Radio Act of 1927 which introduced a licensing requirement for American broadcast stations, to be overseen eventually by the Federal Communications Commission (FCC).[23]

This pre-regulation history of radio broadcast stations illustrates the continuing necessity of a government role in overseeing the broadcast media industry, as opposed to other industries such as print media and the Internet.[24] Without regulation, the result would be a free-for-all market with rival broadcasters able with impunity to sabotage the use by others of the airwaves.[25] Moreover, the airwaves themselves the very medium utilized by broadcast—are by their very nature not susceptible to appropriation, much less be the object of any claim of private or exclusive ownership. No private individual or enterprise has the physical means, acting alone to actualize exclusive ownership and use of a particular frequency. That end, desirable as it is among broadcasters, can only be accomplished if the industry itself is subjected to a regime of government regulation whereby broadcasters receive entitlement to exclusive use of their respective or particular frequencies, with the State correspondingly able by force of law to confine all broadcasters to the use of the frequencies assigned to them.

Still, the dominant jurisprudential rationale for state regulation of broadcast media is more sophisticated than a mere recognition of a need for the orderly administration of the airwaves. After all, a united broadcast industry can theoretically achieve that goal through determined self-regulation. The key basis for regulation is rooted in empiricism - "that broadcast frequencies are a scarce resource whose use could be regulated and rationalized only by the Government." This concept was first introduced in jurisprudence in the U.S. case of *Red Lion v. Federal Communications Commission*. [26]

Red Lion enunciated the most comprehensive statement of the necessity of government oversight over broadcast media. The U.S. Supreme Court observed that within years from the introduction of radio broadcasting in the United States, "it became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government... without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard." The difficulties posed by spectrum scarcity was concretized by the U.S. High Court in this manner:

Scarcity is not entirely a thing of the past. Advances in technology, such as microwave transmission, have led to more efficient utilization of the frequency spectrum, but uses for that spectrum have also grown apace. Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting midair collisions through radio warning devices. "Land mobile services" such as police, ambulance, fire department, public utility, and other communications systems have been occupying an increasingly crowded portion of the frequency spectrum and there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the

"citizens' band" which is also increasingly congested. Among the various uses for radio frequency space, including marine, aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole with an even smaller allocation to broadcast radio and television uses than now exists. (citations omitted) [27]

After interrelating the premise of scarcity of resources with the First Amendment rights of broadcasters, *Red Lion* concluded that government regulation of broadcast media was a necessity:

Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast [395 U.S. 367, 389] licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech."

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves. [28]

x x x x

Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far. They assert that under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use.

In terms of constitutional principle, and as enforced sharing of a scarce resource, the personal attack and political editorial rules are indistinguishable from the equal-time provision of §315, a specific enactment of Congress requiring stations to set aside reply time under specified circumstances and to which the fairness doctrine and these constituent regulations are important complements. That provision, which has been part of the law since 1927, Radio Act of 1927, §18, 44 Stat. 1170, has been held valid by this Court as an obligation of the licensee relieving him of any power in any way to prevent or censor the broadcast, and thus insulating him from liability for defamation. The constitutionality of the statute under the First Amendment was unquestioned. (citations omitted) [29]

As made clear in *Red Lion*, the scarcity of radio frequencies made it necessary for the government to step in and

allocate frequencies to competing broadcasters. In undertaking that function, the government is impelled to adjudge which of the competing applicants are worthy of frequency allocation. It is through that role that it becomes legally viable for the government to impose its own values and goals through a regulatory regime that extends beyond the assignation of frequencies, notwithstanding the free expression guarantees enjoyed by broadcasters. As the government is put in a position to determine who should be worthy to be accorded the privilege to broadcast from a finite and limited spectrum, it may impose regulations to see to it that broadcasters promote the public good deemed important by the State, and to withdraw that privilege from those who fall short of the standards set in favor of other worthy applicants.

Such conditions are peculiar to broadcast media because of the scarcity of the airwaves. Indeed, any attempt to impose such a regulatory regime on a medium that is not belabored under similar physical conditions, such as print media, will be clearly antithetical to democratic values and the free expression clause. This Court, which has adopted the "scarcity of resources" doctrine in cases such as *Telecom. & Broadcast Attys. of the Phils., Inc. v. COMELEC*,^[30] emphasized the distinction citing *Red Lion*:

Petitioners complain that B.P. Blg. 881, §92 singles out radio and television stations to provide free air time. They contend that newspapers and magazines are not similarly required as, in fact, in *Philippine Press Institute v. COMELEC* we upheld their right to the payment of just compensation for the print space they may provide under §90.

The argument will not bear analysis. It rests on the fallacy that broadcast media are entitled to the same treatment under the free speech guarantee of the Constitution as the print media. There are important differences in the characteristics of the two media, however, which justify their differential treatment for free speech purposes. Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is no similar justification for government allocation and regulation of the print media.

In the allocation of limited resources, relevant conditions may validly be imposed on the grantees or licensees. The reason for this is that, as already noted, the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of the print media. To require the radio and television broadcast industry to provide free air time for the COMELEC Time is a fair exchange for what the industry gets.^[31]

Other rationales may have emerged as well validating state regulation of broadcast media,^[32] but the reality of scarce airwaves remains the primary, indisputable and indispensable justification for the government regulatory role. The integration of the scarcity doctrine into the jurisprudence on broadcast media illustrates how the libertarian ideal of the free expression clause may be tempered and balanced by actualities in the real world while preserving the core essence of the constitutional guarantee. Indeed, without government regulation of the broadcast spectrum, the ability of broadcasters to clearly express their views would be inhibited by the anarchy of competition. Since the airwaves themselves are not susceptible to physical appropriation and private ownership, it is but indispensable that the government step in as the guardian of the spectrum.

Reference to the scarcity doctrine is necessary to gain a full understanding of the paradigm that governs the state regulation of broadcast media. That paradigm, as it exists in the United States, is contextually similar to our own, except in one very crucial regard - the dual franchise/license requirements we impose.

III.

Recall that the Radio Control Act specifically required the obtention of a legislative franchise for the operation of a radio station in the Philippines. When the Public Service Act was enacted in 1936, the Public Service

Commission (PSC) was vested with jurisdiction over "public services," including over "wire or wireless broadcasting stations." [33] However, among those specifically exempted from the regulatory reach of the PSC were "radio companies, except with respect to the fixing of rates." [34] Thus, following the Radio Control Act, the administrative regulation of "radio companies" remained with the Secretary of Public Works and Communications. It appears that despite the advent of commercial television in the 1950s, no corresponding amendment to either the Radio Control Act or the Public Service Act was passed to reflect that new technology then.

Shortly after the 1972 declaration of martial law, President Marcos issued Presidential Decree (P.D.) No. 1, which allocated to the Board of Communications the authority to issue CPCs for the operation of radio and television broadcasting systems and to grant permits for the use of radio frequencies for such broadcasting systems. In 1974, President Marcos promulgated Presidential Decree No. 576-A, entitled "Regulating the Ownership and Operation of Radio and Television Stations and for other Purposes." Section 6 of that law reads:

Section 6. All franchises, grants, licenses, permits, certificates or other forms of authority to operate radio or television broadcasting systems shall terminate on December 31, 1981. Thereafter, irrespective of any franchise, grants, license, permit, certificate or other forms of authority to operate granted by any office, agency or person, no radio or television station shall be authorized to operated without the authority of the Board of Communications and the Secretary of Public Works and Communications or their successors who have the right and authority to assign to qualified parties frequencies, channels or other means of identifying broadcasting systems; Provided, however, that any conflict over, or disagreement with a decision of the aforementioned authorities may be appealed finally to the Office of the President within fifteen days from the date the decision is received by the party in interest.

A few years later, President Marcos promulgated Executive Order (E.O.) No. 546, establishing among others the National Telecommunications Commission. Section 15 thereof enumerates the various functions of the NTC.

Section 15. Functions of the Commission.â€- The Commission shall exercise the following functions:

- Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;
- Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;
- Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;
- Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;
- Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;
- Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;
- Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective

competition among private entities in these activities whenever the Commission finds it reasonably feasible;

- Supervise and inspect the operation of radio stations and telecommunications facilities;
- Undertake the examination and licensing of radio operators;
- Undertake, whenever necessary, the registration of radio transmitters and transceivers; and
- Perform such other functions as may be prescribed by law.

These enactments were considered when in 2003 the Court definitively resolved that the operation of a radio or television station does require a congressional franchise. In *Associated Communications & Wireless Services v. NTC*,^[35] the Court took note of the confusion then within the broadcast industry as to whether the franchise requirement first ordained in the 1931 Radio Control Act remained extant given the enactment of P.D. No. 576-A in 1974 and E.O. No. 546 in 1979. Notably, neither law had specifically required legislative franchises for the operation of broadcast stations. Nonetheless, the Court noted that Section 1 of P.D. No. 576-A had expressly referred to the franchise requirement in stating that "[n]o radio station or television channel may obtain a franchise unless it has sufficient capital on the basis of equity for its operation for at least one year...".^[36] Section 6 of that law made a similar reference to the franchise requirement.^[37] From those references, the Court concluded that the franchise requirement under the Radio Control Act was not repealed by P.D. No. 576-A.^[38]

Turning to E.O. No. 546, the Court arrived at a similar conclusion, despite a Department of Justice Opinion stating that the 1979 enactment had dispensed with the congressional franchise requirement. The Court clarified that the 1989 ruling in *Albano v. Reyes*, to the effect that "franchises issued by Congress are not required before each and every public utility may operate" did not dispense with the franchise requirement insofar as broadcast stations are concerned.

Our ruling in *Albano* that a congressional franchise is not required before "each and every public utility may operate" should be viewed in its proper light. Where there is a law such as P.D. No. 576-A which requires a franchise for the operation of radio and television stations, that law must be followed until subsequently repealed. As we have earlier shown, however, there is nothing in the subsequent E.O. No. 546 which evinces an intent to dispense with the franchise requirement. In contradistinction with the case at bar, the law applicable in *Albano*, i.e., E.O. No. 30, did not require a franchise for the Philippine Ports Authority to take over, manage and operate the Manila International Port Complex and undertake the providing of cargo handling and port related services thereat. Similarly, in *Philippine Airlines, Inc. v. Civil Aeronautics Board, et al.*, we ruled that a legislative franchise is not necessary for the operation of domestic air transport because "there is nothing in the law nor in the Constitution which indicates that a legislative franchise is an indispensable requirement for an entity to operate as a domestic air transport operator." Thus, while it is correct to say that specified agencies in the Executive Branch have the power to issue authorization for certain classes of public utilities, this does not mean that the authorization or CPC issued by the NTC dispenses with the requirement of a franchise as this is clearly required under P.D. No. 576-A.^[39]

The Court further observed that Congress itself had accepted it as a given that a legislative franchise is still required to operate a broadcasting station in the Philippines.

That the legislative intent is to continue requiring a franchise for the operation of radio and television broadcasting stations is clear from the franchises granted by Congress after the effectivity of E.O. No. 546 in 1979 for the operation of radio and television stations. Among these are: (1) R.A. No. 9131 dated April 24, 2001, entitled "An Act Granting the Iddes Broadcast Group, Inc., a Franchise to Construct, Install, Establish, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines"; (2) R.A. No. 9148 dated July 31, 2001, entitled "An Act Granting the Hypersonic Broadcasting Center, Inc., a Franchise to Construct, Install, Establish, Operate and Maintain Radio Broadcasting Stations in the Philippines;" and (3) R.A. No.

7678 dated February 17, 1994, entitled "An Act Granting the Digital Telecommunication Philippines, Incorporated, a Franchise to Install, Operate and Maintain Telecommunications Systems Throughout the Philippines." All three franchises require the grantees to secure a CPCN/license/permit to construct and operate their stations/systems. Likewise, the Tax Reform Act of 1997 provides in Section 119 for tax on franchise of radio and/or television broadcasting companies x x x [40]

Associated Communications makes clear that presently broadcast stations are still required to obtain a legislative franchise, as they have been so since the passage of the Radio Control Act in 1931. By virtue of this requirement, the broadcast industry falls within the ambit of Section 11, Article XII of the 1987 Constitution, the one constitutional provision concerned with the grant of franchises in the Philippines.[41] The requirement of a legislative franchise likewise differentiates the Philippine broadcast industry from that in America, where there is no need to secure a franchise from the U.S. Congress.

It is thus clear that the operators of broadcast stations in the Philippines must secure a legislative franchise, a requirement imposed by the Radio Control Act of 1931 and accommodated under the 1987 Constitution. At the same time, the Court in Associated Communications referred to another form of "permission" required of broadcast stations, that is the CPC issued by the NTC. What is the source of such requirement?

The Radio Control Act had also obliged radio broadcast stations to secure a permit from the Secretary of Commerce and Industry[42] prior to the construction or installation of any station.[43] Said Department Secretary was also empowered to regulate "the establishment, use and operation of all radio stations and of all forms of radio communications and

transmission within the Philippines." [44] Among the specific powers granted to the Secretary over radio stations are the approval or disapproval of any application for the construction, installation, establishment or operation of a radio station[45] and the approval or disapproval of any application for renewal of station or operation license.[46]

As earlier noted, radio broadcasting companies were exempted from the jurisdiction of the defunct Public Service Commission except with respect to their rates; thus, they did not fall within the same regulatory regime as other public services, the regime which was characterized by the need for CPC or CPCN. However, following the Radio Control Act, it became clear that radio broadcast companies need to obtain a similar license from the government in order to operate, at that time from the Department of Public Works and Communications.

Then, as earlier noted, in 1972, President Marcos through P.D. No. 1, transferred to the Board of Communications the function of issuing CPCs for the operation of radio and television broadcasting systems, as well as the granting of permits for the use of radio frequencies for such broadcasting systems. With the creation of the NTC, through E.O. No. 546 in 1979, that agency was vested with the power to "[i]ssue certificate[s] of public convenience for the operation of... radio and television broadcasting system[s]." [47] That power remains extant and undisputed to date.

This much thus is clear. Broadcast and television stations are required to obtain a legislative franchise, a requirement imposed by the Radio Control Act and affirmed by our ruling in Associated Broadcasting. After securing their legislative franchises, stations are required to obtain CPCs from the NTC before they can operate their radio or television broadcasting systems. Such requirement while traceable also to the Radio Control Act, currently finds its basis in E.O. No. 546, the law establishing the NTC.

From these same legal premises, the next and most critical question is whether the NTC has the power to cancel the CPCs it has issued to legislative franchisees.

IV.

The complexities of our dual franchise/license regime for broadcast media should be understood within the context of separation of powers. The right of a particular entity to broadcast over the airwaves is established by law --i.e., the legislative franchise -- and determined by Congress, the branch of government tasked with the creation of rights and obligations. As with all other laws passed by Congress, the function of the executive branch of government, to which the NTC belongs, is the implementation of the law. In broad theory, the legal obligation of the NTC once Congress has established a legislative franchise for a broadcast media station is to facilitate the operation by the franchisee of its broadcast stations. However, since the public administration of the airwaves is a requisite for the operation of a franchise and is moreover a highly technical function, Congress has delegated to the NTC the task of administration over the broadcast spectrum, including the determination of available bandwidths and the allocation of such available bandwidths among the various legislative franchisees. The licensing power of the NTC thus arises from the necessary delegation by Congress of legislative power geared towards the orderly exercise by franchisees of the rights granted them by Congress.

Congress may very well in its wisdom impose additional obligations on the various franchisees and accordingly delegate to the NTC the power to ensure that the broadcast stations comply with their obligations under the law. Because broadcast media enjoys a lesser degree of free expression protection as compared to their counterparts in print, these legislative restrictions are generally permissible under the Constitution. Yet no enactment of Congress may contravene the Constitution and its Bill of Rights; hence, whatever restrictions are imposed by Congress on broadcast media franchisees remain susceptible to judicial review and analysis under the jurisprudential framework for scrutiny of free expression cases involving the broadcast media.

The restrictions enacted by Congress on broadcast media franchisees have to pass the mettle of constitutionality. On the other hand, the restrictions imposed by an administrative agency such as the NTC on broadcast media franchisees will have to pass not only the test of constitutionality, but also the test of authority and legitimacy, i.e., whether such restrictions have been imposed in the exercise of duly delegated legislative powers from Congress. If the restriction or sanction imposed by the administrative agency cannot trace its origin from legislative delegation, whether it is by virtue of a specific grant or from valid delegation of rule-making power to the administrative agency, then the action of such administrative agency cannot be sustained. The life and authority of an administrative agency emanates solely from an Act of Congress, and its faculties confined within the parameters set by the legislative branch of government.

We earlier replicated the various functions of the NTC, as established by E.O. No. 546. One can readily notice that even as the NTC is vested with the power to issue CPCs to broadcast stations, it is not expressly vested with the power to cancel such CPCs, or otherwise empowered to prevent broadcast stations with duly issued franchises and CPCs from operating radio or television stations.

In contrast, when the Radio Control Act of 1931 maintained a similar requirement for radio stations to obtain a license from a government official (the Secretary of Commerce and Industry), it similarly empowered the government, through the Secretary of Public Works and Communications, to suspend or revoke such license, as indicated in Section 3(m):

Section 3. The Secretary of Public Works and Communications is hereby empowered, to regulate the construction or manufacture, possession, control, sale and transfer of radio transmitters or transceivers (combination transmitter-receiver) and the establishment, use, the operation of all radio stations and of all form of radio communications and transmissions within the Philippines. In addition to the above he shall have the following specific powers and duties:

(m) He may, at his direction bring criminal action against violators of the radio laws or the regulations and confiscate the radio apparatus in case of illegal operation; or simply suspend or revoke the offender's station or operator licenses or refuse to renew such licenses; or just reprimand and warn the offenders;[48]

Section 3(m) begets the question - did the NTC retain the power granted in 1931 to the Secretary of Public Works and Communications to "x x x suspend or revoke the offender's station or operator licenses or refuse to renew such licenses"? We earlier adverted to the statutory history. The enactment of the Public Service Act in 1936 did not deprive the Secretary of regulatory jurisdiction over radio stations, which included the power to impose fines. In fact, the Public Service Commission was precluded from exercising such jurisdiction, except with respect to the fixing of rates.

Then, in 1972, the regulatory authority over broadcast media was transferred to the Board of Communications by virtue of P. D. No. 1, which adopted, approved, and made as part of the law of the land the Integrated Reorganization Plan which was prepared by the Commission on Reorganization.[49] Among the cabinet departments affected by the plan was the Department of Public Works and Communications, which was now renamed the Department of Public Works, Transportation and Communication.[50] New regulatory boards under the administrative supervision of the Department were created, including the Board of Communications.[51]

The functions of the Board of Communications were enumerated in Part X, Chapter I, Article III, Sec. 5 of the Integrated Reorganization Plan.[52] What is noticeably missing from these enumerated functions of the Board of Communications is the power to revoke or cancel CPCs, even as the Board was vested the power to issue the same. That same pattern held true in 1976, when the Board of Communications was abolished by E.O. No. 546.[53] Said executive order, promulgated by then President Marcos in the exercise of his legislative powers, created the NTC but likewise withheld from it the authority to cancel licenses and CPCs, even as it was empowered to issue CPCs. Given the very specific functions allocated by law to the NTC, it would be very difficult to recognize any intent to allocate to the Commission such regulatory functions previously granted to the Secretary of Public Works and Communications, but not included in the exhaustive list of functions enumerated in Section 15.

Certainly, petitioner fails to point to any provision of E.O. No. 546 authorizing the NTC to cancel licenses. Neither does he cite any provision under P.D. No. 1 or the Radio Control Act, even if Section 3(m) of the latter law provides at least, the starting point of a fair argument. Instead, petitioner relies on the power granted to the Public Service Commission to revoke CPCs or CPCNs under Section 16(m) of the Public Service Act.[54] That argument has been irrefragably refuted by Section 14 of the Public Service Act, and by jurisprudence, most especially *RCPI v. NTC*.^[55] As earlier noted, at no time did radio companies fall under the jurisdiction of the Public Service Commission as they were expressly excluded from its mandate under Section 14. In addition, the Court ruled in *RCPI* that since radio companies, including broadcast stations and telegraphic agencies, were never under the jurisdiction of the Public Service Commission except as to rate-fixing, that Commission's authority to impose fines did not carry over to the NTC even while the other regulatory agencies that emanated from the Commission did retain the previous authority their predecessor had exercised.^[56] No provision in the Public Service Act thus can be relied upon by the petitioner to claim that the NTC has the authority to cancel CPCs or licenses.

It is still evident that E.O. No. 546 provides no explicit basis to assert that the NTC has the power to cancel the licenses or CPCs it has duly issued, even as the government office previously tasked with the regulation of radio stations, the Secretary of Public Works and Communications, previously possessed such power by express mandate of law. In order to sustain petitioner's premise, the Court will be unable to rely on an unequivocally current and extant provision of law that justifies the NTC's power to cancel CPCs. Petitioner suggests that since

the NTC has the power to issue CPCs, it necessarily has the power to revoke the same. One might also argue that through the general rule-making power of the NTC, we can discern a right of the NTC to cancel CPCs.

We must be mindful that the issue for resolution is not a run-of-the-mill matter which would be settled with ease with the application of the principles of statutory construction. It is at this juncture that the constitutional implications of this case must ascend to preeminence.

A.

It is beyond question that respondents, as with all other radio and television broadcast stations, find shelter in the Bill of Rights, particularly Section 3, Article III of the Constitution. At the same time, as we have labored earlier to point out, broadcast media stands, by reason of the conditions of scarcity, within a different tier of protection from print media, which unlike broadcast, does not have any regulatory interaction with the government during its operation.

Still, the fact that state regulation of broadcast media is constitutionally justified does not mean that its practitioners are precluded from invoking Section 3, Article III of the Constitution in their behalf. Far from it. Our democratic way of life is actualized by the existence of a free press, whether print media or broadcast media. As with print media, free expression through broadcast media is protected from prior restraint or subsequent punishment. The franchise and licensing requirements are mainly impositions of the laws of physics which would stand to periodic reassessment as technology advances. The science of today renders state regulation as a necessity, yet this should not encumber the courts from accommodating greater freedoms to broadcast media when doing so would not interfere with the existing legitimate state interests in regulating the industry.

In *FCC v. League of Women Voters of California*,^[57] the U.S. Supreme Court reviewed a law prohibiting noncommercial broadcast stations that received funding from a public corporation from "engaging in editorializing." The U.S. Supreme Court acknowledged the differentiated First Amendment standard of review that applied to broadcast media. Still, it struck down the restriction, holding that "[the] regulation impermissibly sweeps within its prohibition a wide range of speech by wholly private stations on topics that do not take a directly partisan stand or that have nothing whatever to do with federal, state, or local government."^[58] We are similarly able to maintain fidelity to the fundamental rights of broadcasters even while upholding the rationale behind the regulatory regime governing them.

Should petitioner's position that the NTC has the power to cancel CPCs or licenses it has issued to broadcast stations although they are in the first place empowered by their respective franchise to exercise their rights to free expression and as members of a free press, be adopted broadcast media would be encumbered by another layer of state restrictions. As things stand, they are already required to secure a franchise from Congress and a CPC from the NTC in order to operate. Upon operation, they are obliged to comply with the various regulatory issuances of the NTC, which has the power to impose fees and fines and other mandates it may deem fit to prescribe in the exercise of its rule-making power.

The fact that broadcast media already labors under this concededly valid regulatory framework necessarily creates inhibitions on its practitioners as they operate on a daily basis. Newspapers are able to print out their daily editions without fear that a government agency such as the NTC will be able to suspend their publication or fine them based on their content. Broadcast stations do already operate with that possibility in mind, and that circumstance ineluctably restrains its content, notwithstanding the constitutional right to free expression. However, the cancellation of a CPC or license to operate of a broadcast station, if we recognize that possibility, is essentially a death sentence, the most drastic means to inhibit a broadcast media practitioner from exercising the constitutional right to free speech, expression and of the press.

This judicial philosophy aligns well with the preferred mode of scrutiny in the analysis of cases with dimensions of the right to free expression. When confronted with laws dealing with freedom of the mind or restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection, the Court has deemed it appropriate to apply "strict scrutiny" when assessing the laws involved or the legal arguments pursued that would diminish the efficacy of such constitutional right. The assumed authority of the NTC to cancel CPCs or licenses, if sustained, will create a permanent atmosphere of a less free right to express on the part of broadcast media. So that argument could be sustained, it will have to withstand the strict scrutiny from this Court.

Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest. It is through that lens that we examine petitioner's premise that the NTC has the authority to cancel licenses of broadcast franchisees.

B.

In analyzing the compelling government interest that may justify the investiture of authority on the NTC advocated by petitioner, we cannot ignore the interest of the State as expressed in the respective legislative franchises of the petitioner, R.A. No. 7477 and R. A. Act No. 7582. Since legislative franchises are extended through statutes, they should receive recognition as the ultimate expression of State policy. What the legislative franchises of respondents express is that the Congress, after due debate and deliberation, declares it as State policy that respondents should have the right to operate broadcast stations. The President of the Philippines, by affixing his signature to the law, concurs in such State policy.

Allowing the NTC to countermand State policy by revoking respondent's vested legal right to operate broadcast stations unduly gives to a mere administrative agency veto power over the implementation of the law and the enforcement of especially vested legal rights. That concern would not arise if Congress had similarly empowered the NTC with the power to revoke a franchisee's right to operate broadcast stations. But as earlier stated, there is no such expression in the law, and by presuming such right the Court will be acting contrary to the stated State interest as expressed in respondents' legislative franchises.

If we examine the particular franchises of respondents, it is readily apparent that Congress has especially invested the NTC with certain powers with respect to their broadcast operations. Both R.A. No. 7477[59] and R.A. No. 7582[60] require the grantee "to secure from the [NTC] the appropriate permits and licenses for its stations," barring the private respondents from "using any frequency in the radio spectrum without having been authorized by the [NTC]." At the same time, both laws provided that "[the NTC], however, shall not unreasonably withhold or delay the grant of any such authority."

An important proviso is stipulated in the legislative franchises, particularly under Section 5 of R.A. No. 7477 and Section 3 of R.A. No. 7582, in relation to Section 11 of R.A. No. 3902.

Section 5. Right of Government. "A special right is hereby reserved to the President of the Philippines, in times of rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the stations of the grantee, temporarily suspend the operation of any stations in the interest of public safety, security and public welfare, or authorize the temporary use and operation thereof by any agency of the Government, upon due compensation to the grantee, for the use of said stations during the period when they shall be so operated.

The provision authorizes the President of the Philippines to exercise considerable infringements on the right of the franchisees to operate their enterprises and the right to free expression. Such authority finds corollary

constitutional justification as well under Section 17, Article XII, which allows the State "in times of national emergency, when the public interest so requires x x x during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest." We do not doubt that the President or the State can exercise such authority through the NTC, which remains an agency within the executive branch of government, but such can be exercised only under limited and rather drastic circumstances. They still do not vest in the NTC the broad authority to cancel licenses and permits.

These provisions granting special rights to the President in times of emergency are incorporated in our understanding of the legislated state policy with respect to the operation by private respondents of their legislative franchises. There are restrictions to the operation of such franchises, and when these restrictions are indeed exercised there still may be cause for the courts to review whether said limitations are justified despite Section 3, Article I of the Constitution. At the same time, the state policy as embodied in these franchises is to restrict the government's ability to impair the freedom to broadcast of the stations only upon the occurrence of national emergencies or events that compromise the national security.

It should be further noted that even the aforequoted provision does not authorize the President or the government to cancel the licenses of the respondents. The temporary nature of the takeover or closure of the station is emphasized in the provision. That fact further disengages the provision from any sense that such delegated authority can be the source of a broad ruling affirming the right of the NTC to cancel the licenses of franchisees.

With the legislated state policy strongly favoring the unimpeded operation of the franchisee's stations, it becomes even more difficult to discern what compelling State interest may be fulfilled in ceding to the NTC the general power to cancel the franchisee's CPC's or licenses absent explicit statutory authorization. This absence of a compelling state interest strongly disfavors petitioner's cause.

C.

Now, we shall tackle jointly whether a law or policy allowing the NTC to cancel CPCs or licenses is to be narrowly tailored to achieve that requisite compelling State goal or interest, and whether such a law or policy is the least restrictive means for achieving that interest. We addressed earlier the difficulty of envisioning the compelling State interest in granting the NTC such authority. But let us assume for argument's sake, that relieving the injury complained off by petitioner - the failure of private respondents to open up ownership through the initial public offering mandated by law - is a compelling enough State interest to allow the NTC to extend consequences by canceling the licenses or CPCs of the erring franchisee.

There is in fact a more appropriate, more narrowly-tailored and least restrictive remedy that is afforded by the law. Such remedy is that adverted to by the NTC and the Court of Appeals - the resort to quo warranto proceedings under Rule 66 of the Rules of Court.

Under Section 1 of Rule 66, "an action for the usurpation of a public office, position or franchise may be brought in the name of the Republic of the Philippines against a person who usurps, intrudes into, or unlawfully holds or exercises public office, position or franchise." [61] Even while the action is maintained in the name of the Republic [62], the Solicitor General or a public prosecutor is obliged to commence such action upon complaint, and upon good reason to believe that any case specified under Section 1 of Rule 66 can be established by proof. [63]

The special civil action of quo warranto is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise. [64] It is settled that "[t]he

determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of quo warranto, the right to assert which, as a rule, belongs to the State `upon complaint or otherwise,' the reason being that the abuse of a franchise is a public wrong and not a private injury." [65] A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government. [66] Quo warranto is specifically available as a remedy if it is thought that a government corporation has offended against its corporate charter or misused its franchise. [67]

The Court of Appeals correctly noted that in *PLDT v. NTC*, [68] the Court had cited quo warranto as the appropriate recourse with respect to an allegation by petitioner therein that a rival telecommunications competitor had failed to construct its radio system within the ten (10) years from approval of its franchise, as mandated by its legislative franchise. [69] It is beyond dispute that quo warranto exists as an available and appropriate remedy against the wrong imputed on private respondents.

Petitioners argue that since their prayer involves the cancellation of the provisional authority and CPCs, and not the legislative franchise, then quo warranto fails as a remedy. The argument is artificial. The authority of the franchisee to engage in broadcast operations is derived in the legislative mandate. To cancel the provisional authority or the CPC is, in effect, to cancel the franchise or otherwise prevent its exercise. By law, the NTC is incapacitated to frustrate such mandate by unduly withholding or canceling the provisional authority or the CPC for reasons other than the orderly administration of the frequencies in the radio spectrum.

What should occur instead is the converse. If the courts conclude that private respondents have violated the terms of their franchise and thus issue the writs of quo warranto against them, then the NTC is obliged to cancel any existing licenses and CPCs since these permits draw strength from the possession of a valid franchise. If the point has not already been made clear, then licenses issued by the NTC such as CPCs and provisional authorities are junior to the legislative franchise enacted by Congress. The licensing authority of the NTC is not on equal footing with the franchising authority of the State through Congress. The issuance of licenses by the NTC implements the legislative franchises established by Congress, in the same manner that the executive branch implements the laws of Congress rather than creates its own laws. And similar to the inability of the executive branch to prevent the implementation of laws by Congress, the NTC cannot, without clear and proper delegation by Congress, prevent the exercise of a legislative franchise by withholding or canceling the licenses of the franchisee.

And the role of the courts, through quo warranto proceedings, neatly complements the traditional separation of powers that come to bear in our analysis. The courts are entrusted with the adjudication of the legal status of persons, the final arbiter of their rights and obligations under law. The question of whether a franchisee is in breach of the franchise specially enacted for it by Congress is one inherently suited to a court of law, and not for an administrative agency, much less one to which no such function has been delegated by Congress. In the same way that availability of judicial review over laws does not preclude Congress from undertaking its own remedial measures by appropriately amending laws, the viability of quo warranto in the instant cases does not preclude Congress from enforcing its own prerogative by abrogating the legislative franchises of respondents should it be distressed enough by the franchisees' violation of the franchises extended to them.

Evidently, the suggested theory of petitioner to address his complaints simply overpowers the delicate balance of separation of powers, and unduly grants superlative prerogatives to the NTC to frustrate the exercise of the constitutional freedom speech, expression, and of the press. A more narrowly-tailored relief that is responsive to the cause of petitioner not only exists, but is in fact tailor-fitted to the constitutional framework of our government and the adjudication of legal and constitutional rights. Given the current status of the law, there is utterly no reason for this Court to subscribe to the theory that the NTC has the presumed authority to cancel licenses and

CPCs issued to due holders of legislative franchise to engage in broadcast operations.

V.

An entire subset of questions may arise following this decision, involving issues or situations not presently before us. We wish to make clear that the only aspect of the regulatory jurisdiction of the NTC that we are ruling upon is its presumed power to cancel provisional authorities, CPCs or CPCNs and other such licenses required of franchisees before they can engage in broadcast operations. Moreover, our conclusion that the NTC has no such power is borne not simply from the statutory language of E.O. No. 546 or the respective stipulations in private respondents' franchises, but moreso, from the application of the strict scrutiny standard which, despite its weight towards free speech, still involves the analysis of the competing interests of the regulator and the regulated.

In resolving the present questions, it was of marked impact to the Court that the presumed power to cancel would lead to utterly fatal consequences to the constitutional right to expression, as well as the legislated right of these franchisees to broadcast. Other regulatory measures of less drastic impact will have to be assessed on their own terms in the proper cases, and our decision today should not be accepted or cited as a blanket shearing of the NTC's regulatory jurisdiction. In addition, considering our own present recognition of legislative authority to regulate broadcast media on terms more cumbersome than print media, it should not be discounted that Congress may enact amendments to the organic law of the NTC that would alter the legal milieu from which we adjudicated today.

Still, the Court sees all benefit and no detriment in striking this blow in favor of free expression and of the press. While the ability of the State to broadly regulate broadcast media is ultimately dictated by physics, regulation with a light touch evokes a democracy mature enough to withstand competing viewpoints and tastes. Perhaps unwittingly, the position advocated by petitioner curdles a most vital sector of the press - broadcast media - within the heavy hand of the State. The argument is not warranted by law, and it betrays the constitutional expectations on this Court to assert lines not drawn and connect the dots around throats that are free to speak.

WHEREFORE, the instant petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Peralta, JJ.[*], concur.

[*]Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.

[1] Under Republic Act No. 3902.

[2] See Rollo, p. 45.

[3] See Constitution, Art. XII, Sec. 11, which provides in part: "The State shall encourage equity participation in public utilities by the general public." Particular to mass media organizations, one may also refer to Section 11(1), Article XVI, Constitution, which provides in part: "The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed."

[4] See rollo, pp. 73, 75; citing Section 9, R.A. No. 7477 and Section 3, R.A. No. 7582. Even as the above-cited provision is found in both sections, Section 9 of Rep. Act No. 7477 is captioned "Democratization of Ownership;" while Section 3 of Rep. Act No. 7582 is captioned "Public Ownership." Nonetheless, the variance in caption has

no bearing for this Court, which acknowledges the sameness of both provisions.

[5] See id. at 92, 96. In the case of CBS, it was likewise granted a Provisional Authority to install, operate and maintain a Cable Television System in Aroroy, Masbate. See id. at 96.

[6] Petitioner died on 14 April 2004 and is now legally represented by his daughter, Elsa. See id. at 207.

[7] Id. at 91-94, docketed as Adm. Case No. 99-022.

[8] Id. at 95-98, docketed as Adm. Case No. 99-023.

[9] Id. at 91, 95. In the complaint against CBS, petitioner stated that he was the actual and beneficial owner of Twelve percent (12%) of the shares of stock "of PBS," id. at 95. This appears to be a typographical error, petitioner intending to say therein "of CBS." This conclusion is borne out by the fact that the present petition alleges petitioner's ownership "of twelve (12%) percent of the shares of stock of [PBS] and twelve (12%) percent of the shares of CBS," id. at 12, and also by the narration of facts of the Court of Appeals which states that "[p]etitioner owns twelve (12%) percent of the shares of stock of [CBS] and twelve (12%) percent of the shares of stock of [PBS]," id. at 45.

[10] Id. at 93, 97.

[11] Id.

[12] Id. at 100-106. Decision signed by Deputy Commissioners Aurelio M. Umali and Nestor Dacanay.

[13] Id. at 103.

[14] Id. at 104-105.

[15] Id. at 107-113.

[16] Id. at 53-70.

[17] Id. at 44-52. Penned by Associate Justice Regalado Maambong, concurred in by Associate Justices Buenaventura Guerrero and Andres Reyes, Jr.

[18] See id. at 103. "We [at the NTC] are cognizant that the Commission has full jurisdiction to revoke or cancel a PA or even a CPC for violation or infractions of the terms and conditions embodied therein."

[19] "An Act Providing for the Regulation of Radio Stations and Radio Communications in the Philippine Islands, And For Other Purposes." 27 Public Laws 294-297.

Mystifyingly, the official website of the National Telecommunications Commission has published therein a "Republic Act No. 3846," purportedly enacted on 10 August 1963, which has exactly the same title as Act No. 3846 of 1931. (http://portal.ntc.gov.ph/wps/portal!/ut/p/_s.7_0_A/7_0_LU/.cmd/ad/.ps/X/.c/6_0_FM/.ce/7_0_95U/.p/5_0_7DI/.d/0?PC_7_0_95U_F=law3846.html#7_0_95U, last visited 24 November 2008) A similar "Republic Act No. 3846" dated to 1963 is also published in the popular but unofficial online compilation prepared by the Chan Robles Virtual Law Library (<http://www.chanrobles.com/republicacts/republicactno3846.html>, last visited 24 November 2008). However, as confirmed by the Supreme Court Library, "Republic Act No. 3846" is in fact a general appropriations law and not a statute governing the regulation of radio stations in the Philippines.

[20] See Act No. 3846 (1931), Sec. 1, as amended by Commonwealth Act No. 365, Commonwealth Act No. 571 and Republic Act No. 584 (1950).

[21] See Act No. 3846 (1931), Sec. 2 as amended by Republic Act No. 584 (1950). The Cabinet Secretary originally designated in Sections 2 and 3 of the law was the Secretary of Commerce and Communications.

[22] See Act No. 3846 (1931), as amended by Republic Act No. 584 (1950).

[23] With the passage of the Communications Act of 1934.

[24] It has been entrenched in American constitutional law that the Internet enjoys the same degree of constitutional protection as print media, in contrast to the lower level of First Amendment protection guaranteed to broadcast media. See *Reno v. ACLU*, 521 U.S. 844 (1997);

[25] "Although broadcasting is clearly a medium affected by a First Amendment interest, *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166(1948), differences in the characteristics of new media justify differences in the First Amendment standards applied to them. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952). For example, the ability of new technology to produce sounds more raucous than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. *Kovacs v. Cooper*, 336 U.S. 77(1949). Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others. *Associated Press v. United States*, 326 U.S. 1, 20(1945).

When two people converse face to face, both should not speak at once if either is to be clearly understood. But the range of the human voice is so limited that there could be meaningful communications if half the people in the United States were talking and the other half listening. Just as clearly, half the people might publish and the other half read. But the reach of radio signals is [395 U.S. 367, 388] incomparably greater than the range of the human voice and the problem of interference is a massive reality. The lack of know-how and equipment may keep many from the air, but only a tiny fraction of those with resources and intelligence can hope to communicate by radio at the same time if intelligible communication is to be had, even if the entire radio spectrum is utilized in the present state of commercially acceptable technology." *Red Lion v. FCC*, *infra*, at 386-387.

[26] 395 U.S. 367 (1969).

[27] *Id.* at 396 -398.

[28] *Id.* at 388-389.

[29] *Id.* at 390-391.

[30] 352 Phil. 153 (1998).

[31] *Id.* at 182-183.

[32] See, e.g., *Eastern Broadcasting Corp. (DYRE) v. Hon. Dans, Jr.*, 222 Phil. 151 (1985).

[33] See Section 13(b), C.A. No. 146, as amended.

[34] See Section 14, C.A. No. 146, as amended. This point was made especially clear in *Radio Communications of the Philippines, Inc. v. Santiago*, G.R. Nos. L-29236 & 29247, 21 August 1974, 58 SCRA 493, 495-497; and *Radio Communications of the Philippine, v. National Telecommunications Commission*, G.R. No. 93237, 6 November 1992, 215 SCRA 455.

[35] 445 Phil. 621 (2003).

[36] See *id.* at 637.

[37] *Id.*

[38] *Id.* at 637-640.

[39] *Id.* at 644.

[40] *Id.* at 645.

[41] The provision reads:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[42] Earlier known as the Secretary of Commerce and Communications.

[43] Act No. 3846 (1931), Sec. 2.

[44] Act No. 3846 (1931), Sec. 3. That function later devolved to the Director, Telecommunication Control Bureau of the Department of Public Works and Communications.

[45] Act No. 3846 (1931), Sec. 3(k).

[46] Act No. 3846 (1931), Sec. 3(m).

[47] Executive Order No. 546 (1979), Sec. 15(a).

[48] Act No. 3846 (1931), Sec. 3; See also *Bolinao Electronics Corp., et al. v. Valencia and San Andres*, 120 Phil. 469 (1964).

[49] See Presidential Decree No. 1 (1972).

[50] See Integrated Reorganization Plan, Part X, Chapter I, Article II.

[51] See Integrated Reorganization Plan, Part X, Chapter I, Article III, Sec. 1.

[52] "5. The Board of Communications shall be composed of a full-time Chairman who shall be of unquestioned integrity and recognized prominence in previous public and/or private employment; two full-time members who shall be competent on all aspects of communications and preferably one of whom shall be a lawyer and the other an economist; and the Director of the Radio Control Office and a senior representative of the Institute of Mass Communication of the University of the Philippines, as ex-officio members.

The functions of this Board are as follows:

- Issue Certificates of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting systems and other similar public utilities;

- Establish, prescribe and regulate routes, zones and/or areas of operation of particular operator of public service communications; and determine, fix and/or prescribe charges and/or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;
- Grant permits for the use of radio frequencies for wireless telephone and telegraph systems, radio communications systems and radio and television broadcasting systems including amateur radio stations;
- Suballocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;
- Establish, fix and/or prescribe rules, regulations, standards, specifications in all cases related to the Issued Certificates of Public Convenience and administer and enforce the same through the Radio Control Office of the Department;
- Promulgate rules requiring any operator of any public communications utilities to equip, install and provide in such utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote or insure the highest degree of safety, protection, comfort and convenience to persons, and property in their charge as well as the safety of persons and property within their areas of operation;
- Coordinate and cooperate with government agencies and entities concerned with any aspect involving communications with a view to continually improve the communications service in the country;
- Make such rules and regulations, as public interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain competition in these activities whenever the Board finds it reasonably feasible;
- Promulgate from time to time, such rules and regulations, and prescribe such restrictions and conditions, not inconsistent with law, as public convenience, interest or necessity may require; and
- Exercise such other functions as may be prescribed by law."

[53] See Section 14, E.O. No. 546 (1972)

[54] Rollo, p. 32.

[55] See note 34.

[56] *Id.* at 460-461.

[57] 468 U.S. 364 (1984).

[58] *Id.* at 395.

[59] See R.A. No. 7477 (1992), Sec. 3.

[60] See R.A. Act No. 3902 (1964) in relation with R.A. No. 7582 (1992), Sec. 2.

[61] See Rules of Court, Sec. 1.

[62] *Id.*

[63] See Section 2, Rule 66.

[64] O. Herrera, III Remedial Law (1999 ed.), at 295; citing *Newman v. U.S.*, 238 U.S. 537, 545, 56 L.Ed. 513, and Moran, Comments on the Rules of Court, Vol. 3, 1970 ed.

[65] PLDT v. NTC, G.R. No. 88404, 18 October 1990, 190 SCRA 717, 730-731.

[66] *Id.*

[67] *Kilosbayan v. Morato*, 316 Phil. 652 (1995).

[68] PLDT v. NTC, G.R. No. 88404, 18 October 1990, 190 SCRA 717.

[69] Rollo, pp. 49-50.

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