LIBERTY BROADCASTING NETWORK, INC., NOW KNOWN AS WI-TRIBE TELECOMS, INC., PETITIONER, VS. ATLOCOM WIRELESS SYSTEM, INC., RESPONDENT.

G.R. No. 205875. June 30, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The consolidated petitions before us assail the Decision[1] dated June 29, 2012 and Resolution[2] dated February 18, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 119868. The CA reversed and set aside the Orders[3] dated December 9, 2010 and March 21, 2011 of the Regional Trial Court (RTC) of Quezon City, Branch 95 denying the application for a writ of prohibitory or mandatory injunction in Civil Case No. Q-09-65566.

Antecedent Facts

Atlocom Wireless System, Inc. (Atlocom) is a grantee of a legislative franchise under Republic Act (R.A.) No. 8605.[4] On October 8, 2003, the National Telecommunications Commission (NTC) issued an Order[5] in NTC Case No. 98-158 relative to the application of Atlocom for a Certificate of Public Convenience (CPC), as follows:

> WHEREFORE, it appearing that applicant is financially and technically capable of undertaking the proposed project and that the operation thereof will promote the interest of the people in Metro Manila, in a proper and suitable manner, the Commission hereby grants to herein applicant ATLOCOM WIRELESS SYSTEM, INC. a Provisional Authority (PA) to install, operate and maintain a Multi-Point Multi-Channel Distribution System [MMDS] in METRO MANILA, subject to the assignment of frequency by the Frequency Management Division of this Commission and to the following -
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> CONDITIONS
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> x x x x x x x x x[6]

As stated in the above order, the PA shall be valid for a period of eighteen (18) months, or until April 8, 2005. In a letter[7] dated April 5, 2004, Atlocom thru its counsel requested for "an extension of time of the allocation of the above-enumerated frequencies and for the period for the construction and installation of the radio stations in the condition no. 2 of the Order." Earlier, Atlocom filed an Application for Permit to Import[8] the necessary equipment. Atlocom followed up its application for extension of PA through a letter[9] dated June 2, 2005 addressed to Deputy Commissioner Jorge V. Sarmiento. Subsequently, Atlocom filed a Motion for Extension of Provisional Authority[10] in NTC Case No. 98-158 on March 3, 2005.

On August 23, 2005, NTC issued Memorandum Circular No. (MC) 06-08-2005[11] re-allocating the following bands for broadband wireless access for fixed, nomadic and mobile networks:

- 450 - 470 Mhz

- 1900-1910 MHz

- 1980-1990 MHz

- 2400-2483 MHz

- 2500-2700 MHz

- 3400-3600 MHz

- 5150-5350 MHz

- 5470-5850 MHz

- 10150-10650 MHz

On December 23, 2008, NTC denied Atlocom's motion for extension of PA, citing the re-allocation of MMDS frequencies for Broadband Wireless Access in accordance with MC 06-08-2005 and the unavailability of other alternative frequencies.[12]

On September 8, 2009, Atlocom filed in the RTC a Petition[13] to enjoin the implementation of MC 06-08-2005 and reinstate the frequencies of Atlocom. It was further prayed that after hearing the court render judgment declaring the said issuance as null and void because NTC unlawfully deprived Atlocom of the right to its assigned frequencies without notice and hearing. The case was docketed as Civil Case No. Q-09-65566.

Liberty Broadcasting Network, Inc. (LBNI), also a grantee of a legislative franchise (R.A. No. 1553, as amended by R.A. No. 4154) for radio and television broadcasting, as well as radio stations for international and domestic communications of all types and services, and holder of a Certificate of Public Convenience and Necessity (CPCN) to operate a radio communications network, was allowed to intervene in the case, joining the defendant NTC in opposing Atlocom's claims. Pursuant to MC 06-08-2005, frequency bands 2535-2545 MHz and 2565-2595 MHz were re-allocated and assigned to LBNI, which covered the 2572-2596 MHz being claimed by Atlocom as allegedly assigned to it.

Per Certification[14] dated October 22, 2003 issued by Alvin N. Blanco, Chief, Broadcast Services Division of NTC, the following frequencies were "identified" for Atlocom's MMDS (Metro Manila) system:

> C3 2572 - 2578 Mhz
> D3 2578 - 2584 Mhz
> C4 2584 - 2590 Mhz
> D4 2590 - 2596 Mhz

On December 9, 2010, the RTC, after due hearing, issued an Order denying Atlocom's application for a writ of preliminary prohibitory or mandatory injunction. Atlocom filed a motion for reconsideration but it was likewise denied by the RTC under Order dated March 21, 2011.

In a petition for certiorari filed before the CA, Atlocom questioned the validity of the aforesaid orders of the RTC.

In its Resolution[15] dated August 12, 2011, the CA denied Atlocom's prayer for the issuance of a writ of preliminary prohibitory injunction and its alternative prayer for a provisional mandatory injunction.

However, in its Decision dated June 29, 2012, the CA ruled in favor of Atlocom and reversed the RTC's denial of application for preliminary injunction. The fallo of the decision reads:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated December 9, 2010 and March 21, 2011 of the Regional Trial Court (RTC) of Quezon City, Branch 95 are hereby REVERSED and SET ASIDE. The plea for the issuance of a Preliminary Prohibitory Injunction is GRANTED. Let

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> therefore a writ of preliminary prohibitory injunction issue enjoining Respondent NTC from implementing Memorandum Circular No. 06-08-2005, insofar as the frequencies ranging from 2572-2596 Mhz are concerned and for its Co-Respondent LBNI from using the said frequencies during the pendency of Civil Case No. Q-09-65566 pending before Branch 95 of the Regional Trial Court of Quezon City upon the posting of a bond in the amount of Php 200,000.00 to answer for all damages which they may sustain by reason of the injunction if the RTC should finally decide that petitioner is not entitled thereto. The alternative plea for a writ of Preliminary Mandatory Injunction is DENIED.
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> SO ORDERED.[16]

LBNI filed a Motion for Reconsideration with Ad Cautelam Offer to File Counter-Bond and Addendum to Motion for Reconsideration with Ad Cautelam Offer to File Counter-Bond. NTC also filed a Motion for Reconsideration and Supplemental Motion for Reconsideration. The CA denied these motions.

LBNI filed its petition (G.R. No. 205875) in this Court on April 22, 2013. Acting on LBNI's motion for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, we issued a TRO enjoining the implementation of the writ of preliminary injunction issued by the CA, conditioned upon LBNI's posting of a cash bond in the sum of P300,000.00.

On April 18, 2013, NTC filed its separate petition (G.R. No. 208916) for review from the same CA Decision and Resolution. We ordered the consolidation of the two cases as they arose from the same factual setting, involve the same parties and raise identical issues.

Issues

The main issues to be resolved are: (1) whether Atlocom complied with the requisites for issuance of a writ of preliminary injunction; and (2) whether LBNI's motion to file counter-bond was correctly denied by the CA.

Specifically, LBNI asserts that the CA erred: (1) in finding that the NTC did not observe due process when it issued MC 06-08-2005 and basing such conclusion on a mistaken notion that the grant of PA is tantamount to a frequency assignment; (2) in failing to recognize that Atlocom has not sufficiently established its claim that it had been assigned the 2572-2596 frequency bands by the NTC; (3) in granting the provisional injunctive writ that in effect pre-judged the civil case pending in the RTC; and (4) in denying LBNI's motion to file counter-bond on the basis of a technical conclusion it is not qualified to make in the first place.

NTC faults the CA in finding that Atlocom's right to due process was violated because it was not notified of the hearing prior to the issuance of MC 06-08-2005, and concluding that Atlocom has a clear and unmistakable property right over the 2572-2596 frequency range.

Our Ruling

The petitions are meritorious.

A preliminary injunction is defined as "[a]n order granted at any stage of an action prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular actor acts."[17] It may be a prohibitory injunction, which requires a party to refrain from doing a particular act, or a mandatory injunction, which commands a party to perform a positive act to correct a wrong in the past.[18] It is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action.[19]

Section 3, Rule 58 of the Rules of Court provides:

> SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is

established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

The following requisites must be proved before a writ of preliminary injunction will issue: (1) The applicant must have a clear and unmistakable right to be protected, that is, a right in esse; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[20]

The grant or denial of a writ of preliminary injunction is discretionary upon the trial court because the assessment and evaluation of evidence towards that end involve findings of fact left to the said court for its conclusive determination. For this reason, the grant or denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.[21]

In denying Atlocom's application for a writ of preliminary injunction, the RTC held that Atlocom failed to demonstrate a clear and unmistakable legal right thereto, as evidence showed Atlocom has no more right to be protected considering that its PA had already expired and its application for extension was subsequently denied by the NTC. As to the claim of violation of right to due process, the RTC found that prior to the issuance of MC 06-08-2005, NTC published a notice of public hearing in The Manila Times, a newspaper of general circulation, and at the said hearing the participants were given opportunity to be heard through oral arguments and submission of position papers. Atlocom's alternative plea for a writ of mandatory injunction was likewise denied. According to the RTC, ordering the NTC to reinstate Atlocom's frequencies would create an impression that the court had pre-judged the main case by nullifying MC 06-08-2005 as prayed for by Atlocom in its petition.

However, the CA rendered a contrary ruling. The CA underscored the fact that NTC failed to act upon Atlocom's motion for extension for more than three years, and concluded that because of NTC's inordinate delay or refusal to renew the PA granted to Atlocom, the latter was deprived of its right to use the frequencies "granted to it by" the PA. The CA thus held:

In deciding whether to grant an injunction, a court must consider established principles of equity and all the circumstances of the test for issuing an injunction is whether the facts show a necessity for the intervention of equity in order to protect rights cognizable in equity. Here, there are factual and legal justification for issuance of the writ of injunction. To reiterate to the point of being pedantic, petitioner's right to its frequencies is covered by a provisional authority. The provisional authority was withdrawn by MC No. 06-08-2005 without the Respondent NTC acting on petitioner's plea for previous extensions. The propriety for the issuance of MC No. 06-08-2005 is placed in issue on the ground of fairness. Petitioner as the rightful grantee thereof has the right, in the meantime, to enjoin its implementation.

We are not unaware of Our Resolution promulgated on August 12, 2011 denying petitioner's plea for the ancillary remedy of both prohibitory and/or mandatory injunction. Indeed, as of said date, the denial of petitioner's prayer is appropriate. We have now the complete facts of the case and, as the legal consequence of Our declaration that the RTC committed grave abuse of discretion in issuing the assailed orders, We consider it proper to enjoin the Respondent NTC from implementing Memorandum Circular No. 06-08-2005, but insofar

> as the frequencies ranging from 2572-2596 Mhz are involved and for its Co-Respondent LBNI from using the aforestated frequencies. This is not to preempt the RTC of whatever judgment it may thereafter issue with respect to the merits of the case before it but is issued in order to maintain the status quo in view of petitioner's claim of a breach of due process and a continuing violation of its right over the aforestated frequencies.[22]

The CA explained that since it is only through a frequency that Atlocom can provide adequate broadcast service to the public, the withdrawal of frequency assignment without observance of due process defeats its legislative grant and reduces Atlocom to a mere repository of transmitters and equipment devoid of any purpose or value. It cited the following provisions of R.A. No. 8605:

> SEC. 3. Prior Approval of the National Telecommunications Commission. - The grantee shall secure from the National Telecommunications Commission, hereinafter referred to as the Commission, the appropriate permits and licenses for the construction and operation of its stations, transmitters or facilities and shall not use any frequency in the radio and television spectrum without having been authorized by the Commission. The Commission, however, shall not unreasonably withhold or delay the grant of any such authority.
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> SEC. 6. Right of Government. x x x
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> The radio spectrum is a finite resource that is a part of the national patrimony and the use thereof is a privilege conferred upon the grantee by the State and may be withdrawn anytime, after due process. (Italics supplied)

On the withdrawal of the frequencies previously identified for Atlocom, the CA insisted that NTC did not observe due process, viz.:

> x x x While it is true that there was a publication of a Notice of Public Hearing on June 21, 2005 before the issuance of Memorandum Circular No. 06-08-2005 on August 23, 2005, the fact is, the publication or notice was a general one and was not meant to dispose of petitioner's previous requests for an extension of its provisional authority and/or application for permit to purchase equipment. The order which dealt with these requests was the Order dated December 23, 2008, which was issued almost four (4) years after the filing of the first request on April 5, 2004 and almost three (3) years from the issuance of Memorandum Circular No. 06-08-2005. Withal and subject to whatever proof it may submit to the RTC regarding the delay, the Respondent NTC should have first acted on petitioner's requests for extension before setting for public hearing the re-allocation of the frequencies.[23]

We do not concur with the CA in holding that NTC's inaction or delay on Atlocom's application for extension of PA had violated the latter's right to due process because it resulted in depriving Atlocom of the use of frequencies which were re-allocated through the issuance of MC 06-08-2005. Such declaration rather conveys an inaccurate picture of the regulatory process for public broadcasting and telecommunications services.

Under existing laws and regulations, it is clear that a frequency assignment is not automatically included in the PA granted by the NTC to an applicant for a CPC. Thus, the Order dated October 8, 2003 expressly provided that the PA granted to Atlocom, valid for 18 months, is subject to several conditions, foremost of which is the assignment of frequency by the Frequency Management Division (FMD).

While Atlocom presented a Certification[24] dated October 22, 2003 issued by Alvin N. Blanco, Chief of NTC's Broadcast Division, stating that certain frequencies were "identified" for Atlocom's MMDS (Metro Manila) covering 2572-2596 frequency bands, there is no document evidencing that these frequencies were actually assigned to Atlocom by the FMD. There is likewise nothing in the records to suggest that NTC "unreasonably" withheld or delayed authority to use such frequencies identified for Atlocom.

Atlocom blamed NTC's three-year delay in resolving the motion for extension of PA for its inability to use the

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frequencies identified for its MMDS, as these were eventually re-allocated in 2005 under MC 06-08-2005. But as Atlocom was fully aware, Section 6 of R.A. No. 8605 provides that the Government may at anytime withdraw the frequency after due process. Records showed that a notice was duly published and a public hearing was actually conducted on July 12, 2005 by NTC on the proposed Memo Circular: Frequency Band Allocations for Broadcast Wireless Access. Said event was attended by representatives of the different broadcasting and telecommunication companies, including Atlocom.[25] The position papers and feedback submitted by various companies in connection with the proposed memorandum circular on wireless broadband access were all presented as evidence in the RTC.[26] We have held that the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side.[27] The requirements of due process were thus satisfied by the NTC in the re-allocation of frequency.

Contrary to the CA's pronouncement, the re-allocation of frequency cannot be conditioned on resolution of any pending request for extension of PA previously granted. Even entities with unexpired PA cannot claim a vested right on a specific frequency assignment. This proceeds from the nature of its franchise which is not solely for commercial purposes but one imbued with public interest. As earlier quoted, Atlocom's franchise (R.A. No. 8605) declared the use of radio spectrum as a mere privilege conferred upon the grantee by the State that may be withdrawn anytime provided that due process is observed. It further emphasized that the radio spectrum is a finite resource and its use and distribution should be aligned with existing laws and policies.

R.A. No. 7925 likewise recognizes the vital role of telecommunications to national development and security and provides that the radio frequency shall be managed and directed to serve the public interest. Being a limited resource, the law mandates a periodic review of frequency allocation.

> SEC. 4. Declaration of National Policy. - Telecommunications is essential to the economic development, integrity and security of the Philippines, and as such shall be developed and administered as to safeguard, enrich and strengthen the economic, cultural, social and political fabric of the Philippines. The growth and development of telecommunications services shall be pursued in accordance with the following policies:
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> c) The radio frequency spectrum is a scarce public resource that shall be administered in the public interest and in accordance with international agreements and conventions to which the Philippines is a party and granted to the best qualified. The government shall allocate the spectrum to service providers who will use it efficiently and effectively to meet public demand for telecommunications service and may avail of new and cost effective technologies in the use of methods for its utilization;
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> x x x x x x x x x
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> SEC. 15. Radio Frequency Spectrum. - The radio frequency spectrum allocation and assignment shall be subject to periodic review. The use thereof shall be subject to reasonable spectrum user fees. Where demand for specific frequencies exceed availability, the Commission shall hold open tenders for the same and ensure wider access to this limited resource.

As a grantee of PA, Atlocom can only invoke the condition in MC 06-08-2005 that "[t]he transfer of previously authorized persons or entities operating radio stations within the above listed radio frequency bands shall be governed by Rule 603 of MC 3-3-96."[28] Said rule states:

> 603. TRANSFER OF AFFECTED AUTHORIZED RADIO FREQUENCY USER
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> a. The commission shall allocate available radio frequencies for assignment to those affected by the reallocation as a result of the review of the radio spectrum pursuant to Rule 601.

b. The cost of the transfer to new radio frequencies of affected authorized users shall be borne by the new assignees to the radio frequency channel/band where the radio frequencies of the previously authorized users fall within.

c. When the transfer to a new set of radio frequencies would require additional radio links, the cost of these links shall also be taken into consideration.

d. The manner and the cost of the transfer shall be negotiated in good faith between the affected authorized users and the assignees within 90 days from receipt of notice of relocation.

e. The Commission shall extend all the necessary assistance to all affected authorized users and shall mandate settlement if the parties fail to come to an agreement within 90 days from receipt of notice of relocation or when warranted under the circumstances.

f. Other means/mode of transmission comparable in quality to the existing facility shall be taken into consideration in the negotiation for the transfer.

g. Transfer of radio frequency assignment shall only take effect upon activation of service by relocated party using its newly assigned or relocated frequency as agreed or mandated.

Considering that Atlocom has not even launched its MMDS network nor constructed radio stations, it is doubtful whether Atlocom can exercise the foregoing rights of an affected frequency user. Neither can Atlocom attribute its non-operational state to the delayed action on its motion for extension of PA. Among the conditions of its PA is the commencement of the construction and installation of its station within six months from issuance of the order granting it the provisional authority and its complete three months thereafter. Perusal of the motion for extension reveals that Atlocom at the time was still in the process of identifying and finalizing arrangements with its potential investors for the establishment of a nationwide MMDS network coverage.

Based on its evaluation, the NTC found that: (1) Atlocom filed an application for Permit to Purchase MMDS transmitter on February 9, 2005, but no permit of any kind was issued to it; (2) In the clarificatory hearing held on September 4, 2006, concerns were raised regarding reports of foreign equity on Atlocom's capital structure and status of band allocated for MMDS within the 2.5-2.7 Ghz band; and (3) On June 21, 2008, Atlocom is requesting for an allocation of a Digital Terrestrial TV frequency (Ch 14-20 & Ch 21-51) in replacement for their MMDS frequency, but the NTC thru FMD denied such request because the proposed frequency band for DTT service is not yet approved/allocated. With the re-allocation of MMDS frequency bands for the Broadband Wireless Access under MC 06-8-2005, and the aforesaid findings, the NTC en banc decided not to grant the extension sought by Atlocom.

A right to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.[29] An injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse, and which may never arise, or to restrain an act which does not give rise to a cause of action.[30]

From the evidence on record, no clear, actual and existing right to the subject frequencies or to the extension of PA had been shown by Atlocom. Accordingly, no grave abuse of discretion was committed by the RTC in denying Atlocom's application for a writ of preliminary injunction to restrain the implementation of MC 06-08-2005 insofar as the use of the re-allocated frequencies claimed by Atlocom. The CA thus seriously erred in reversing the RTC and holding that Atlocom was entitled to injunctive relief due to alleged violation of its right by the NTC.

A writ of preliminary injunction being an extraordinary event, one deemed as a strong arm of equity or a

transcendent remedy, it must be granted only in the face of actual and existing substantial rights. In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.[31]

Pursuant to Section 6,[32] Rule 58 of the 1997 Rules of Civil Procedure, a preliminary injunction may be dissolved if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court on condition that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. Two conditions must concur: first, the court, in the exercise of its discretion, finds that the continuance of the injunction would cause great damage to the defendant, while the plaintiff can be fully compensated for such damages as he may suffer; second, the defendant files a counterbond.[33]

In denying LBNI's offer to file counterbond, the CA relied on the Affidavit[34] executed by Rene Rosales, Atlocom's technical consultant, to refute the earlier Affidavit[35] submitted by LBNI, which was executed by its Director for Network Engineering, Edwin C. Mabitazan. Mabitazan stated that the injunction issued by the CA will result in reducing LBNI's usable bandwidth from 40 Mhz to only 15 Mhz, which is inadequate to serve LBNI's thousands of subscribers. Mabitazan's opinion should have been given more weight in view of his intimate knowledge of LBNI's operations and technical requirements. Moreover, it should be stressed that LBNI's business projections were based on its existing technical capability which stands to be greatly diminished once the frequency bands re-assigned to it will be reduced as a result of the CA's injunction order. The possibility of irreparable damage is indeed present, not only in terms of financial losses -the total investment by LBNI has already reached billions of pesos - but on the reputation of LBNI as a new player in the telecommunications industry for reliability and dependability of its services. In contrast, whatever damage Atlocom stands to suffer should the injunction be dissolved, can be fully compensated considering that it has not constructed stations nor launched any network service. No single document was submitted by Atlocom to show it had actually complied with the conditions of its PA and invested in the establishment of MMDS network, which never materialized.

In gross abuse of discretion, the CA brushed aside evidence presented by LBNI in support of its offer to file counter-bond, stating that these were submitted only after the appellate court had rendered its decision granting Atlocom's prayer for preliminary injunction. The CA failed to consider the fact that it was Atlocom which misled the courts and the NTC in claiming that the subject frequencies had been assigned to it. The matter was raised by NTC and LBNI only in their motions for reconsideration because it was only at that time when their inquiry from FMD disclosed that said office had not actually granted a frequency assignment to Atlocom. Thus, NTC in its Supplemental Motion for Reconsideration, submitted a Certification[36] dated August 2, 2012 issued by the FMD Chief, Pricilla F. Demition, together with attached documents, setting forth the same facts relative to Atlocom's non-operational state. Atlocom countered that said evidence was just an afterthought because the absence of frequency assignment was not mentioned by Engr. Demition when she testified before the RTC on January 14, 2009 during the hearing on the application for writ of preliminary injunction. Atlocom, however, never disputed the findings of the FMD.

The pertinent portions of the FMD Certification are herein reproduced:

> - In a memo addressed to the Chief, Broadcast Services Division dated January 10, 2006 (copy attached as Annex "B"); signed by then Deputy Commissioner Jorge V. Sarmiento, an inquiry was made to the Broadcast Services Division (BSD) regarding the status of usage of the frequency assignments granted to broadcast companies for MMDS use and to provide information thru the FMD of the latest related information to include

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among others permits/licenses issued to their favor; such information was needed in view of the re-allocation of the band in use for BWA (MC No. 06-08-2005);

- In a memo dated January 12, 2006 (copy attached as Annex "C") in compliance to the January 10, 2006 Memo, BSD's report shows under the column Latest Permits/License issued, that the latest permit or license issued for ATLOCOM was only its PA dated 10.08.03;

- In a memo addressed to the Records Verification Committee dated 06 September 2006 (copy attached as Annex "D") signed by then Commissioner Ronald Olivar Solis, citing a memo dated 21 September 2005 from then DOTC Secretary Leonardo R. Mendoza and Office Order No. 71-08-2006, the Records Verification Committee was directed to verify the status of several radio frequency bands therein listed, and to submit its report to include, among others, SUF payments, latest permits, and licenses issued and photocopies of the same;

- The Records Verification Committee reported in a memo dated 08 September 2006 (copy attached as Annex "E"), that with respect to Atlocom Wireless System, Inc., no record on file was found as to station location, frequency, license/permit no., radio station license or permit to purchase and possess;

- In a memo addressed to the Acting Chief BSD dated 07 January 2008 by then FMD Acting Chief Engr. Joselito C. Leynes (copy attached as Annex "F") [w]ith reference to the 03 January 2008 indorsement letter from BSD (copy attached as Annex "G) regarding the request of Atlocom Wireless System, Inc. for an allocation of a Digital Television (DTT) frequency (copy attached as Annex "H"), the BSD was informed of the following for guidance:
"that the proposed frequency band from Channel 14-20 and Channel 21-51 is not yet been finally allocated/approved for the purpose of DTT operation. Further, in the event that said frequency band re-allocation is approved, only broadcasting company with existing TV station/s and/or authority to operate is entitled for application/issuance of a DTT frequency channel."

- A Memo addressed to the Chief, Frequency Management Division dated 27 July 2012 (copy attached as Annex "I") Chief, BSD in connection with the "certification" issued to Atlocom Wireless System, Inc. clarifies the following:

"that the frequencies stated in the subject certification were simply identified as candidate frequencies for the MMDS service under NTC Case No. 98-158, subject to final frequency assignment by the Frequency Management Division (FMD) of this Commission." and

"Furthermore inasmuch as frequency assignments covering the band 2500-2700 Mhz are issued by the Frequency Management Division (FMD), the undersigned is of the view that the determination of the assignment of the subject frequencies to Atlocom Wireless, or to any other entity, can best be certified by the Frequency Management Division (FMD)"

- As per NTC Office Order No. 59-07-2003 dated July 30, 2003 (copy attached as Annex "J), all requests, applications requiring clearance and/or new radio frequency assignments, except for frequencies that have been pre-allocated and/or decentralized, shall be cleared with the Office of the Commissioner thru the Frequency Management Division:

"Henceforth, except for frequencies that have been pre-allocated and/or decentralized, all requests applications requiring clearance and/or new radio frequency assignment shall be cleared with the Office of the Commissioner thru the Frequency Management Division."

- No records/documents were however found at the Frequency Management Division showing frequency assignment clearance for the use of ATLOCOM's MMDS system. (Emphasis supplied)

In light of all the foregoing established facts, we hold that the CA gravely abused its discretion when it issued a writ of preliminary injunction against the implementation of MC 06-08-2005 in the absence of a clear legal right on the part of Atlocom, and subsequently denying LBNFs offer to file counter-bond despite compliance with the requisites provided in Section 6 of Rule 58. However, with our ruling that the writ of preliminary injunction was improperly issued, hence, null and void, the matter of allowing LBNI to post a counter-bond has been rendered moot.

A final note. In its Memorandum,[37] Atlocom argues that LBNI is part of mass media and its franchise violates Article XVI, Section 11 (1) of the Constitution[38] because it is not wholly-owned by Filipino citizens.[39]

Unless properly raised and the very lis mota of the case, we do not pass upon constitutional issues. The resolution of the constitutional issues must be absolutely necessary for the determination of the case.[40] In the spirit of deference to the acts of other constitutional departments and organs, issues before this Court should address only the narrowest issues necessary to determine whether the reliefs prayed for can be granted. As in this case, reliefs can be determined on procedural issues.

The main issue presented in this case is the validity of Atlocom's application for a writ of preliminary injunction against the NTC. This issue can be resolved without passing upon the constitutionality of LBNI's franchise. The resolution of the issue on LBNI's eligibility thus has no bearing on whether Atlocom has the right to be granted a frequency allocation for Broadband Wireless Access by the NTC. The constitutional issue raised by the respondent may be raised and resolved in proper cases when necessary in the future.

WHEREFORE, the petitions are GRANTED. The Decision dated June 29, 2012 and Resolution dated February 18, 2013 of the Court of Appeals in CA-G.R. SP No. 119868 are REVERSED and SET ASIDE.

Consequently, the writ of preliminary injunction issued in said case, if any, is hereby declared NULL and VOID.

The Orders dated December 9, 2010 and March 21, 2011 of the Regional Trial Court of Quezon City, Branch 95 in Q-09-65566 are hereby REINSTATED and UPHELD.

The Temporary Restraining Order issued by this Court on April 30, 2013 is hereby made PERMANENT.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Peralta, Bersamin, Perez, Mendoza, and Leonen, JJ., concur.

Carpio, Del Castillo, Perlas-Bernabe, and Jardeleza, JJ., no part.

Velasco, Jr., Brion, and Reyes, JJ., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 30, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on July 28, 2015 at 8:25 a.m.

Very truly yours,
(SGD.)

FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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[1] Rollo (G.R. No. 205875), pp. 42-57. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor concurring.

[2] Id. at 59-64. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rosalinda Asuncion-Vicente and Apolinario D. Bruselas Jr. concurring.

[3] Id. at 113-119. Penned by Presiding Judge Henri Jean Paul B. Inting.

[4] AN ACT GRANTING THE ATLOCOM WIRELESS SYSTEM, INC., A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN A COMMERCIAL CABLE TELEVISION SYSTEM IN THE PHILIPPINES. Approved on March 26, 1998.

[5] Rollo (G.R. No. 208916), pp. 101-107.

[6] Id. at 105.

[7] Rollo (G.R. No. 205875), pp. 818-819.

[8]Id. at 820.

[9] Id. at 825.

[10] Id. at 821-824.

[11] Id. at 184-185.

[12] Id. at 72-74.

[13] Id. at 75-92.

[14] Id. at 817.

[15] Id. at 177-180. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Josefina Guevara-Salonga and Franchilo N. Diamante concurring.

[16] Id. at 54-55.

[17] Urbanes, Jr. v. Court of Appeals, 407 Phil. 856, 866 (2001).

[18] Sy v. Autobus Transport Systems, Inc., G.R. No. 176898, December 3, 2012, 686 SCRA 707, 717-718, citing City Government of Butuan v. Consolidated Broadcasting System, Inc., 651 Phil. 37, 54 (2010).

[19] The Incorporators of Mindanao Institute, Inc. v. The United Church of Christ in the Philippines, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 647.

[20] Id. at 648-649.

[21] Sy v. Autobus Transport Systems, Inc., supra note 18, at 721-722.

[22] Rollo (G.R. 205875), pp. 53-54.

[23] Id. at 50.

[24] Supra note 14.

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[25] Rollo (G.R. No. 208916), pp. 109-114; rollo (G.R. No. 205875), pp. 181-183.

[26] CA rollo, pp. 387-394, 406-481.

[27] Republic of the Philippines v. Express Telecommunication Co., Inc., 424 Phil. 372, 396 (2002), citing National Semiconductor (HK) Distribution, Ltd. v. NLRC, 353 Phil. 551, 558 (1998).

[28] Rollo (G.R. No. 205875), p. 185.

[29] City Government of Butuan v. Consolidated Broadcasting System, Inc., supra note 18, at 55.

[30] Thunder Security and Investigation Agency/Lasala v. NFA (Region I), et al., 670 Phil. 351, 361 (2011).

[31] Overseas Workers Welfare Administration v. Chavez, 551 Phil. 890, 915 (2007), citing Tayag v. Lacson, G.R. No. 134971, March 25, 2004, 426 SCRA 282, 298-299.

[32] SEC. 6. Grounds for objection to, or for motion of dissolution of, injunction or restraining order. - The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

[33] Sps. Yap v. International Exchange Bank, 573 Phil. 515, 529 (2008).

[34] Rollo (G.R. No. 205875), pp. 282-285.

[35] Id. at 190-192.

[36] CA rollo, pp. 841-853 (with attachments).

[37] See rollo, pp. 760, 782-789. The issue raised by Atlocom reads:

BEING CONTINOUSLY ENGAGED, ALBEIT UNLAWFULLY, IN BROADCASTING BUSINESS IN VIOLATION OF ITS CURRENT FRANCHISE, R.A. NO. 10183, PETITIONER IS CONSIDERED A MASS MEDIA COMPANY. THUS, FOR HAVING SUBSTANTIAL FOREIGN EQUITY, IT GROSSLY CONTRAVENED SECTION 11, ARTICLE XVI OF THE CONSTITUTION.

[38] The provision reads:

Section 11. (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.

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.

[39] See rollo, p. 783.

[40] See People v. Vera, 65 Phil. 56 (1937); See also Laurel v. Garcia, G.R. No. 92013, July 25, 1990, 187 SCRA 797; Sotto v. Commission on Elections, 11 Phil. 516 (1946); Alvarez v. PICOP Resources, 538 Phil. 348 (2006); General v. Urro, 662 Phil. 132 (2011); Garcia v. Executive Secretary, 602 Phil. 64 (2009); Liban v. Gordon, 654

Phil. 680 (2011).

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