

**ERDULFO C. BOISER, DOING BUSINESS UNDER THE NAME AND
STYLE OF PREMIERE AUTOMATIC TELEPHONE NETWORK,
PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION,
DIRECTOR DANILO SY, J...**

G.R. NO. 76592. January 13, 1989

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-76592/>

PARAS, J.:

This is a Petition for Certiorari and Prohibition with preliminary injunction and restraining order to enjoin the National Telecommunications Commission (NTC, for brevity) from further proceeding in the execution of its decision rendered on August 29, 1986 and to nullify the aforementioned decision in Administrative Case No. 82-123. Petitioner alleges that the same was rendered without due process of law and with grave abuse of discretion tantamount to excess of jurisdiction.

Petitioner, doing business under the name of Premiere Automatic Telephone Network, operates and maintains a telephone system in the City of Tagbilaran and the entire province of Bohol since the year 1965 up to the present. Sometime in 1965, petitioner Boiser and Philippine Long Distance Telephone Co., (PLDT, for brevity) entered into a covenant designated as "Interconnecting Agreement", providing among other things that:

"Par. II - PLDT hereby agrees to provide, install, maintain and operate at its own expense the necessary radio equipment at the Tagbilaran station and to obtain in the name of PLDT all government permits necessary to operate said station in accordance with the laws of the Republic of the Philippines.

"Par. IV - PLDT shall have absolute control over the frequencies assigned by the government and may use them for any station and/or stations which may be operated in the future provided, however, that the same does not interfere with the carrying out of the terms and conditions of their Agreement. It is further mutually agreed that PLDT may at its own expense provide and install facilities in the PLDT's radio telephone station located in Mr. Boiser's central office at Tagbilaran, Bohol to provide facilities, for relay or for connecting service to other terminating points in the Philippines or overseas as conditions may require." (p. 4, Rollo)

Pursuant to the aforequoted provisions, PLDT then obtained for petitioner from NTC Radio Control Board License No. 9779 and the call sign "DYL 201".

Sometime on February 27, 1979, the circuit of petitioner's company connecting Mandawe City and Tagbilaran City was ordered disconnected by PLDT, causing damage and prejudice to petitioner's numerous telephone users and subscribers. Such incident prompted petitioner to file a civil case against PLDT before the Court of First Instance (now the Regional Trial Court) of Cebu, appealed to the Court of Appeals and elevated to Us (docketed as G.R. No. 61438) wherein We promulgated a decision* restraining permanently PLDT from disconnecting the circuit connection from Mandawe City and Tagbilaran City, the pertinent portion of which reads as follows:

"The basic policies for the telephone industry embodied in Presidential Decree No. 217 are premised in the principle that telephone service is a crucial element in the conduct of business activity, efficient telephone

services contribute directly to national development, and telephone services must be made available at reasonable cost to as many subscribers as possible. Both law and considerations call for the issuance of the prayed for writs.

"WHEREFORE, the petition for writs of certiorari and prohibition is GRANTED. The questioned resolution of the Court of Appeals is SET ASIDE and our restraining order issued on August 25, 1982 made PERMANENT. The Intermediate Appellate Court is directed to dismiss the petition in CA-G.R. No. 14554.

"SO ORDERED." (p. 5, Rollo)

Sometime after the "Interconnecting Agreement," petitioner's License No. 9779 to operate obtained by PLDT for petitioner pursuant to their agreement expired. Notwithstanding such expiration, PLDT continued to operate. Consequently, by reason of such violation by PLDT, Administrative Case No. 82-123 was instituted before the NTC. Petitioner Boiser moved to intervene by filing a motion with the NTC in so far as the said Administrative case involved License No. 9779. Respondent NTC denied said Motion for Intervention and his Motion for Reconsideration. Said ruling of the NTC was appealed to the then Intermediate Appellate Court (IAC) now the Court of Appeals (CA) which ruled that NTC did not abuse its discretion in denying petitioner's motion to intervene on the ground that the latter's operation is not covered by a certificate of public convenience and necessity and is actually illegal. Petitioner elevated said Appellate Court's decision to Us on April 12, 1984 thru a petition for review docketed as G.R. No. 67110 seeking to declare as null and void the IAC decision and to direct the NTC to allow petitioner to intervene. On July 24, 1984, this Court dismissed the petition for lack of merit. Petitioner's motion for reconsideration of said dismissal was likewise denied by this Court on September 11, 1985 for lack of merit and also declared said denial as final.

With the finality of this Court's resolution disallowing petitioner to intervene in the administrative complaint against PLDT, NTC rendered a decision dated August 29, 1986, the dispositive portion of which reads:

"In view thereof, and after evaluation of the documents presented both oral and documentary, the Commission finds respondent Philippine Long Distance Telephone Company, liable for not having a radio station license since 1979 and for using an unauthorized frequency. Therefore, a penalty of fine in the amount of FIVE THOUSAND PESOS (P5,000.00) is hereby imposed payable within thirty (30) days from receipt of this Decision.

"The Director, Region VII, NTC, Mandawe City, is hereby directed to confiscate the equipment subject of this Administrative Case for failure to obtain the necessary permit for its radio station and for using an unauthorized frequency.

"ENTERED August 29, 1986.

"Quezon City, Philippines.

RAOUL V. VICTORIANO

Deputy Commissioner

ROSAURO V. SIBAL

Acting Commissioner"

(pp. 3-4, NTC Decision in Administrative Case No. 82-123; p. 52, Rollo)

The instant petition now seeks to declare as null and void the aforesaid NTC decision of August 29, 1986, contending that respondent NTC acted with grave abuse of discretion in declaring PLDT liable for operating radio station without a license and using unauthorized radio frequency, and in directing public respondent Regional Director to confiscate the PLDT equipment used in the aforesaid violations.

Petitioner's contention does not merit our consideration.

The real issue of the case at bar boils down to whether or not petitioner has any cause of action against public respondent NTC. It was the explicit ruling of the appellate court in AC--G.R. No. 01101 which We affirmed and declared final in G.R. No. 67110 that petitioner has no legal interest whatsoever as would entitle him to intervene in NTC Administrative Case No. 82-123, anchored on its finding that petitioner does not hold a certificate of public convenience and necessity to operate a telephone system in Tagbilaran:

"We take note of the fact that in petitioner's memorandum filed with this Court, he does not deny the claim of respondents that he had not obtained the corresponding certificate of public convenience and public necessity within a period of sixty (60) days from the approval of the congressional franchise on August 4, 1969. By the express provision of Section 8 of said Congressional Franchise of Republic Act No. 6113, said failure resulted in said franchise becoming null and void. x x x

Administrative Case No. 82-123 merely relates to violations of PLDT of the provisions of Act No. 3846 in its using an unauthorized frequency and operating a radio station with an expired radio station license. The violations consists of PLDT's continued use of 70-100 MME, a radio van which, as early as 1976, had been disallowed to be used by telephone and telegraph companies because its use interfered with television viewing. That PLDT had failed to discontinue the use of said frequency is a fact that PLDT cannot deny.

"Considering that the motion for intervention is always addressed to the sound discretion of the court and that where intervenor's interest can properly be protected in a separate proceeding, we find and so hold that respondent NTC did not abuse its discretion in denying petitioner's motion to intervene in Administrative Case No. 82-123, especially when it appears that petitioner has not shown that its continued operation of a telephone system in Tagbilaran City and the Province of Bohol is covered by a proper certificate of convenience and public necessity and as a matter of fact, it would appear that it does not have said certificate and its operation, therefore, is actually illegal. The courts cannot step in to abet petitioner's continued illegal operation for he who comes to court must come with clean hands.

"IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED, with costs against petitioner." (pp. 2-4, IAC Decision dated November 7, 1983 in AC-G.R. No. 01101 entitled Rodolfo Boiser, et al. vs. NTC, et. al. for Certiorari; Emphasis supplied; pp. 53-54, Rollo).

Nowhere in the records of NTC Case No. 82-123 or AC-G.R. No. 01101 or G.R. No. 67110, can We find any matter or solid ground which validly affects him as an interested party and for which he can appropriately be aggrieved thereby.

Petitioner by filing the present petition has sought to revive the same cause which has already been adjudicated with finality by the Intermediate Appellate Court and this Court. We have always frowned on such practice of repeated litigations of identical parties and issues already decided with finality by this Court under the doctrine of *res judicata*. Furthermore, the doctrine of the "Law of the Case" which states that whatever has once been irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the Court.

Petitioner may argue that whereas he was seeking the nullity of an NTC order denying his intervention in the case

while here he is seeking the nullity of the decision finding PLDT liable. Petitioner would then be again in error. Settled jurisprudence dictates that the stamp of finality rendered by the doctrine of *res judicata* does not only include every matter which was offered and received to sustain or defeat the claim but any other admissible matter which might have been offered in evidence for that purpose and of all matters that could have been adjudicated in that case (*Zansibarian Residents Association v. Municipality of Makati*, 135 SCRA 235, 1985). Moreover, the bottom line in all these issues raised then and now is the absence of any legal interest on the part of petitioner in the administrative complaint that is addressed solely to the violations of PLDT.

Finally, the other issue of whether or not NTC acted with grave abuse of discretion in its decision holding PLDT liable and ordering confiscation of its equipment, shall be discussed if only to respond to some erroneous and spurious claims of petitioner. PLDT admitted the findings that it did continue to operate its radio station under an expired license and that it used the prohibited radio frequency even after it was banned. What else was there for NTC to do but hold PLDT liable with penalty and direct the confiscation of PLDT's equipment used in the violations? It was, in fact, incumbent upon NTC to do so under the law and its rules.

Furthermore, petitioner's claim of interest in the administrative case against PLDT is negated by the enumeration of facts supported by documentary evidence submitted in G.R. No. 67110 before this Court, to wit:

“(1) The municipal franchise granted to petitioner on February 2, 1961 to install and operate a telephone system in Tagbilaran, which was to serve as basis for his application for a certificate of public convenience and necessity before the then Public Service Commission (PSC), was withdrawn by the Tagbilaran Municipal Council after six (6) months.

“(2) Petitioner's application before the PSC for the approval of his franchise and the issuance of the certificate of public convenience and necessity was dismissed by the PSC on October 4, 1961.

“(3) Petitioner's petition dated October 16, 1961 before the PSC for a second order of hearing failed to disclose that his municipal franchise had been withdrawn;

“(4) The provisional authority granted on April 15, 1964 by the PSC for petitioner to operate a telephone system was good only for six months and the same expired without any extension;

“(5) The PSC dismissed on September 1, 1965 petitioner's application for a certificate of public convenience and necessity;

“(6) The congressional franchise of August 4, 1969 under R.A. 6113 granted to petitioner was conditioned upon his securing a certificate of public convenience and necessity, which he failed when the PSC denied his application therefor.” (pp. 61-62, Rollo)

The foregoing enumerations are a reiteration of the facts made by public respondent and substantiated by documentary evidence submitted in G.R. No. 67110 before this Court. These facts negate petitioner's claim of any legal interest that may be prejudiced by the finding of violations against PLDT. Petitioner's illegal operation of a telephone system for more than seventeen (17) years now cannot and will never become a basis to intervene in the case, much less, to seek the nullity of any order or decision therein.

Likewise, petitioner's full ventilation of his cause before the IAC in AC-G.R. No. 01101 wherein oral and documentary evidence were adduced, and before this Court in G.R. No. 671101, nullifies his deceptive insistence of lack of due process.

WHEREFORE, premises considered, petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*]Penned by Justice Hugo E. Gutierrez, Jr., concurred in by Justices Claudio Teehankee, Ameurfina A. Melencio-Herrera, Efren I. Plana, Conrado M. Vasquez and Lorenzo Relova.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.