

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION AND EASTERN TELE-COMMUNICATIONS PHILIPPINES, INC. RESPONDENTS.

G.R. No. 94374. February 21, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 27 August 1992, the Court, speaking through Gutierrez, Jr., J., by a split vote, [1] rendered a Decision granting the Petition for Certiorari filed by Philippine Long Distance Telephone Company ("PLDT") and set aside the Decision and Order dated, respectively, 14 November 1989 and 16 July 1990, of the National Telecommunications Commission ("NTC"). That Decision of the NTC had granted the application of private respondent Eastern Telecommunications Philippines, Inc. ("Eastern") for a Certificate of Public Convenience and Necessity ("CPCN") and to construct, maintain and operate an International Gateway Facility ("IGF").

On 16 September 1992, Eastern filed its Motion for Reconsideration. The Solicitor-General too filed on 19 September 1992 a Motion for Reconsideration on behalf of public respondent NTC. A Consolidated Opposition to these Motions was submitted by PLDT on 14 December 1992. Both Eastern and the Solicitor-General filed Replies on 22 January 1993 and 19 February 1993, respectively. Finally, a Consolidated Rejoinder was sent in by PLDT on 26 May 1993.

The parties were heard on oral argument on the Motions for Reconsideration and related pleadings in Baguio City on 26 April 1994. Thereupon, the Motions were submitted for resolution.

To make crystal clear what the Court is now holding in granting the Motions for Reconsideration, for the guidance of our courts, administrative agencies and the general public, and in the hope that the basic issues with which the Court has grappled in the present case may finally be laid at rest, those issues are canvassed once again below.

Private respondent Eastern filed, on 16 July 1987, with the NTC an application for a CPCN, to construct, maintain and operate an IGF, which is estimated to cost US\$5 Million. Eastern is a 60% Filipino owned corporation [2] organized under Philippine law and holder of a legislative franchise under R.A. No. 808, as amended by R.A. No. 5002, in relation to P.D. No. 489 granting it the right and privilege to:

"x x x land, construct, maintain and operate telecommunication systems by cable, or any other means now known to science or which in the future may be developed for the reception and transmission of messages between any point in the Philippines to points exterior thereto, including airplanes, airships or vessels even though such airplanes, airships or vessels may be located within territorial limits of the Philippines."
(Underscoring supplied)

Eastern is successor to Eastern Extension Australasia and China Telegraph Company, a British company which had been in the Philippines since the Spanish colonial period. Together with other companies, Eastern invested in

the Philippines US\$25 Million in submarine cable and related facilities, and installed, owns, maintains and operates submarine cables between the Philippines and Hongkong-Japan, the Philippines and Taiwan, and the Philippines and Singapore.

We turn first to the scope of the franchise authority of Eastern. The contention of PLDT is that an IGF is inherently part of "a telephone system" since it is "useful only for a telephone system." Thus, PLDT contends that in effect Eastern is asking for a CPCN to establish a telephone system. But Eastern has no franchise to establish a telephone system. Hence, PLDT continues, Eastern cannot be granted the CPCN it seeks.

The IGF facility which NTC authorized Eastern to install and operate, is described in the following technical terms, in the NTC decision of 14 November 1989:

"A. System Components

The international gateway shall consist of the international switching maintenance center (ISMC), international transmission center (ITMC), international network maintenance management center (INMC), and traffic operations center (TOC). The ISMC shall provide the switching operations including the maintenance thereof. The ITMC shall provide for the international links and the maintenance of the international circuits. The INMC shall see to it that traffic [is] routed via the best route possible. The management of the entire network is undertaken by the INMC. The traffic operations center shall be where the positions are situated. The TOC shall among others provide for operator-assisted international calls.

B. System Capability

1. The proposed ITMC shall be equipped to accommodate terminating circuits as well as transit facilities. It shall have the capability to interface with domestic broadband transmission and switching networks operated by other carriers either the analog or digital levels. It will also provide cost effective manner of terminating/processing and cross connecting digital capacities. It is designed to support transmission standards for ISDN channels.
2. The proposed ISMC shall be fully ISDN compatible switching system that will carry both broadband and voice band message, data and information switching. It will support various international telephone signalling equipments, i.e., C5, C6, C7 as well as transparent circuit switching and data/records signalling protocols. It can also provide manual switching capability both for voice and non-voice services. It will also be equipped to act as a tandem switch providing the international switching interface to domestic service carriers.
3. The INMC shall be equipped with the latest in network management technology that can perform automatic rerouting of circuits and quick mapping of capacities while ensuring a minimum degree of interruption.
4. The proposed gateway shall initially be capable of switching international telephone traffic to countries where applicant has international correspondents." [3]

In its original decision, the Court, adopting PLDT's theory, said that "the gateway facility is part of a telephone system and that Eastern wants to engage in combined international and substantially extensive domestic telephone system without any legislative authority." [4] We reject PLDT's theory and now reconsider the Court's original holding upon the grounds set out below.

What is clear from the foregoing technical description by the NTC is that an IGF comprises equipment which makes possible the interfacing or interconnection between (1) a domestic telecommunication system, like that of PLDT, and (2) the cables or other equipment for transmitting electronically messages from points within the Philippines to points outside the Philippines, as well as messages originating from points outside to points inside the Philippines. The IGF constitutes a telecommunications exchange that in effect connects PLDT's subscribers or users with the subscribers and users of telecommunications systems located in different parts of the outside world.

The IGF is not in itself a telephone or telecommunication system but it is not, in any case, necessary to try to determine what constitutes a telephone system.

In the first place, the existing legislative franchise of Eastern authorizes it to land, construct, maintain and operate "telecommunications systems" for the purpose of effecting "the reception and transmission of messages between any point in the Philippines to points exterior [to the Philippines]." "Telecommunication" is, in itself, a comprehensive term. Etymologically (tele [from the Greek] + communication), [5] it means simply communication over distance, making no limiting reference to the means or mode of such communication. In the second place, the legislative franchise of Eastern itself expressly elaborates that the "telecommunication systems" which Eastern may install, maintain and operate may be "by cable or any other means now known to science or which in the future may be developed." It is very difficult to craft language more comprehensive in scope than the foregoing phrase. Clearly, the species of method or the particular modality of reception and transmission of messages across the territorial boundaries of the Philippines, was of secondary importance to the legislative authority which granted the franchise. In the third place, there is no basis at all in Eastern's legislative franchise for a supposed distinction (which PLDT tries very hard to suggest) between voice and non-voice transmissions or messages and for a supposed limitation upon Eastern to transmit and receive only non-voice messages. The statute simply does not distinguish between voice or oral and data or non-voice messages or transmissions: the statutory text speaks simply of "messages." There is a basic and well-known scientific reason why the statute makes no such distinction. Voice messages do not travel via wires (cables whether submarine or underground or aerial) or any other media qua voice (i.e., as sound waves); voice transmissions, exactly like data (or non-voice) messages, travel in the form of electronic impulses through cables (or any other media) and are simply converted at the point of reception or destination into other forms visually or audibly perceptible by human beings. [6]

Fourthly, PLDT's own legislative franchise provides no support for the selective reading that PLDT would have the Court place upon the word "telephone system." [7] The portion of PLDT's legislative franchise defining the scope of PLDT's franchise authority does not even use the word "telephone" (except in referring to PLDT by name) nor the phrase "telephone system;" instead the oft-repeated and operative term is "telecommunications." It is not by accident that PLDT, advertises itself in the broadcast media as a telecommunications company rather than as a telephone company. [8] Even the original 1928 legislative franchise of PLDT did not limit a "telephone company" to the transmission and reception of voice or oral messages. [9]

Fifthly, and perhaps most importantly, Eastern in its application was not asking for authority to install and operate a domestic telephone or other telecommunications system, understood as a system for carrying messages from one point in the Philippines to another point also in the Philippines. Eastern was merely asking for authority to install and operate an international gateway facility, which would mediate between the domestic telephone system of PLDT and the transmitting and carrying facilities of Eastern. The gateway facility will permit messages originating from a person using PLDT's domestic telephone system to enter the transmitting and carrying facilities of Eastern, and as well allow messages incoming from abroad through Eastern's carrying facilities to enter PLDT's domestic system.

We believe and so hold that there is ample legal authority on the part of Eastern to install, maintain and operate the IGF that it seeks.

From another point of view, it is important to note the conclusion reached in the 15-page decision of the NTC:

"After careful consideration of all the evidence submitted in this case, pro and con, the Commission is convinced that applicant is legally, technically and financially capable to install, operate and maintain an international digital gateway facilities incorporating transmission, switching and traffic operations facilities. The Commission is also convinced that while there may be complexities involved in interconnection and in

having three (3) operators of an international digital gateway, it finds out that another system is technically and economically feasible. The Commission is fully convinced that the advantages of installing, operating and maintaining another gateway by another carrier outweighs the disadvantages and that ultimately, public interest will be served and the growth, development and expansion of telecommunications services in the country will be accelerated. For lack of merit, the opposition of PLDT is hereby OVERRULED." [10] (Underscoring supplied)

Thus, the NTC did not only address the legal capability of, or franchise authority vested in Eastern; [11] it also explicitly considered the technical requirements of the IGF and acknowledged the technical and financial ability of Eastern to install, maintain and operate the facility. [12]

In attacking the NTC decision, what PLDT was apparently really trying to say was that the NTC had failed to indicate the necessity or desirability of another international digital gateway facility, considering that PLDT itself already owns and operates three (3) IGFs. Implicitly, PLDT's contention appears to be that to grant Eastern's application for another facility would be to approve an unnecessary duplication of facilities. The NTC addressed this broad contention in the following manner:

"As testified to by the applicant, the establishment by it of a new international digital gateway will complement existing as well as planned switching and transmission to provide continuity and security of international service in the event of major facility failure. It will use the latest digital technology and incorporate the most modern very large scale integrated (VLSI) circuit technology which will result in a significant reduction in per termination installed capital costs. This will result in more efficient and less expensive switching, operational and maintenance costs thru benefiting both national carriers and telephone subscribers in the Philippines.

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Applicant strongly advances that the Philippines will be the direct and principal beneficiary of [Eastern's] proposed gateway since the existing facilities will be enhanced and the role of the Philippines as a major telecommunica-tions center for international traffic will be maintained. Since applicant is technically and financially capable of constructing, maintaining and operating international gateway; that its proposed gateway facility is technically and operationally feasible, and that PLDT by its acts and conduct appears to have [the] intention to take over the business of [Eastern], it is imperative to the stability and survival of [Eastern] as an international telecommunications carrier; that it be able to establish and operate its own international gateway." [13] (Underscoring supplied)

Moreover, in its 16 July 1990 Order, the NTC said:

"As to the allegation that the decision did not consider PLDT's evidence, the same is inaccurate. The brief prepared by the Technical and Financial Staff of this Commission and the discussions held by the staff with the then Commissioner which were the basis of the conclusion/decision took into consideration the volumes of evidence presented by all parties. It also took into consideration the fact that with PLDT's cut-over of its Makati gateway facility it will have a total of 4575 international switch termination. The combined capacity of the new international gateway operators, namely Philcom and ETPI will only amount to 33% of PLDT's capacity. It is the Commission's position that in the event, therefore, that any of PLDT's gateway facilities become inoperative, relief can be provided by the gateway facilities of Philcom and the applicant. The possibility that any two of the gateway operator's facilities would fail at the same time is very remote." [14] (Underscoring supplied)

The above quoted NTC order makes clear that, while PLDT complains strenuously about having to compete with Eastern and Philippine Global Communications (the other two international gateway operators granted authority by the NTC at the time this case began), in fact NTC is very protective of PLDT. For the approved combined capacity of the gateway facilities of Philcom and Eastern will amount to only one-third (1/3) of PLDT's existing

gateway capacity. PLDT was obviously not satisfied with two-thirds (2/3) of the international end of telecommunications business.

The record shows that additional compelling considerations support the Decision and Order of the NTC which would make possible the establishment of alternative international gateway facilities — that is, non-PLDT-owned facilities. During the hearings before the NTC, it was brought out that PLDT had in the past suffered a major facility breakdown, resulting in the disruption of long distance telephone service between the Philippines and the outside world. On 9 November 1987, for instance, such a breakdown occurred with the result that 85% of the country's telecommunications to and from the outside world were out of commission for about 17 to 18 hours. Again, on 21 December 1987, a nationwide strike paralyzed PLDT operations, threatening the security and reliability of international communications between the Philippines and the rest of the world. [15] Undeniably, the availability of alternative gateway facilities when interconnected with existing local telephone networks (including but not limited to PLDT's own network and gateway), will substantially increase the reliability and continuity of international telecommunications service in the Philippines.

Still another consideration, fully reflected in the record of this case, supports the decision reached by the NTC. PLDT, in the words of the Solicitor General, "appear[ed] to have abused its monopoly over the country's only gateway facility to the detriment of public service." [16] In 1988, PLDT unilaterally stopped collect-call service from the Philippines to Hongkong in an attempt to pressure Cable Wireless Hongkong (the telephone administration in Hongkong) to appoint PLDT as its Philippine correspondent, to the prejudice, in particular, of families and friends of Philippine overseas workers in Hongkong who rely substantially on such service. The NTC had to order PLDT to restore the collect-call service through a Memorandum dated 13 April 1988. [17] This utilization of its monopoly position was delicately described as "business leverage" by PLDT First Vice President Ramon Santiago in his testimony during the hearings. [18]

The record also shows that PLDT exercised its power or "leverage" based on its gateway monopoly position to compel Eastern's telephone correspondents in Singapore and Taiwan to accede to dual correspondentships. [19]

It is important to recall that NTC, as the governmental agency charged with passing upon applications for Certificates of Public Convenience and Necessity (CPCNs) in the field of telecommunications, is authorized to determine what the specific operating and technical requirements of "public convenience and necessity" are in the field of telecommunications, subject of course to relevant limitations established by legislative enactments, if any. The NTC is also authorized to examine and assess the legal, technical and financial qualifications of an applicant for a CPCN and in doing so exercises the special capabilities and skills and institutional experience it has accumulated. Courts should not intervene in that administrative process, save upon a very clear showing of serious violation of law or of fraud, personal malice or wanton oppression. Courts have none of the technical and economic or financial competence which specialized administrative agencies have at their disposal, and in particular must be wary of intervening in matters which are at their core technical and economic in nature but disguised, more or less artfully, in the habiliments of a "question of legal interpretation."

We turn to the issue of interconnection between PLDT's domestic telephone system or network and Eastern's IGF. PLDT strenuously contends that interconnection is proper only between two (2) discrete telephone systems; this argument now makes clear why PLDT contended so ardently that Eastern was not a telephone system and therefore not entitled to apply for interconnection with PLDT's system and that NTC was not authorized to require such interconnection between PLDT and Eastern. PLDT went on to contend that interconnection with Eastern "was not directed to meet or satisfy a public need for it but rather, and exclusively, to allow [Eastern] to exploit PLDT's present telephone subscribers." [20]

In the first place, PLDT's contention collides frontally with Section 13 of PLDT's own legislative franchise. Section 13 of R.A. No. 7082 reads:

"SEC. 13 The National Telecommunications Commission is hereby authorized, after due notice and hearing, to order the grantee [PLDT] to allow interconnection of its facilities, for both local and international, with other duly authorized telecommunications operators and conversely of the former with the latter under such terms and conditions as the Commission may deem proper and reasonable in the interest of public good."
(Underscoring supplied)

Eastern is, as we have already concluded, a "duly authorized telecommunications operator," considering the comprehensive scope of the authority granted to it by its legislative franchise.

In the second place, there is no physical or technical or economic basis for restricting the notion of inter-connection to the linking up of two (2) separate telephone systems. Section 13 of PLDT's own franchise makes clear that interconnection may, and in fact does, relate to connecting or linking up a telephone or other telecommunications system and a telecommunications facility for transmitting messages from the Philippines to points outside the Philippines and vice versa. The NTC found as a fact that interconnection can be physically and technically effected between a gateway facility operated by an international carrier and a telephone or other telecommunications system operated by another, local, carrier. [21] Eastern pointed out that its IGF can be and is in fact required to be interconnected not only with the PLDT domestic telephone system but also with other domestic telecommunications systems.

In the third place, PLDT, exhibiting extraordinary proprietary feelings in respect of people using its telephone system, managed to ignore that international calls from the outside world will be transmitted into the Philippines through Eastern's cable system and IGF and fed into PLDT's and other national domestic telephone systems. The number or frequency of calls originating from outside the Philippines as compared with the frequency of calls originating within the Philippines, does not appear in the record. Considering, however, among other things, the number of Filipinos living or working overseas in different continents, and the growing business and financial relations between Philippine enterprises and international companies, international calls from the outside world may well be at least as heavy in volume as, and might in fact be or become heavier than, those originating from the Philippines. In other words, there may be expected reciprocal flows in a higher aggregate volume of international traffic and more efficient service, at more moderate cost, should come about with the interconnection required by the NTC.

In *Philippine Long Distance Telephone Company v. National Telecommunications Company, et al.*, [22] PLDT made comparable argument in resisting an NTC interconnection order. In overruling these objections, the majority of the Court, speaking through Melencio-Herrera, J., said:

"x x x Such regulation of the use and ownership of telecommunications systems is in the exercise of the plenary police power of the State for the promotion of the general welfare. The 1987 Constitution recognizes the existence of that power when it provides:

'Sec. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands (Article XII).'

The interconnection which has been required of PLDT is a form of "intervention" with property rights dictated by "the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines, x x x to maximize the use of telecommunications facilities available, x x x in recognition of the vital

role of communications in nation building x x x and to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost" (DOTC Circular No. 90-248). Undoubtedly, the encompassing objective is the common good. The NTC, as the regulatory agency of the State, merely exercised its delegated authority to regulate the use of telecommunications networks when it decreed interconnection.

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Department of Transportation and Communication (DOTC) Circular No. 87-188, issued in 1987, also decrees:

‘12. All public communications carriers shall interconnect their facilities pursuant to comparatively efficient interconnection (CEI) as defined by the NTC in the interest of economic efficiency.’” [23] (Underscoring supplied)

We here reaffirm and underscore the continuing validity and vitality of the doctrine above set out: the requirement of interconnection between telecommunications carriers found in both legislation and administrative regulations constitutes a legitimate exercise of the plenary police power of the State for the securing of the general welfare.

It is important to note that Eastern, contrary to PLDT's egregious pleading, does not seek, nor has it been allowed by NTC, a "free ride" on PLDT's (domestic) telephone network. The IGF will be paid for by Eastern itself. Revenues derived from international calls originating from, or destined to, a subscriber in PLDT's telephone network are required to be shared by Eastern with PLDT in proportions to be negotiated and agreed upon between PLDT and Eastern with the approval of NTC. There is, in particular, no "appropriation" of property of the PLDT without payment of just or reasonable compensation.

It is also appropriate to note that at least one other non-PLDT IGF which has been approved by the NTC, the Philippine Global Communications Company, Inc. ("Philglobcom") gateway facility, has in fact been installed, interconnected with PLDT's domestic telephone network and is presently in operation. We must assume, therefore, that not only was interconnection found physically and technically feasible, but also that an economically acceptable sharing of revenues between PLDT on one hand and Philglobcom on the other, was in fact reached and is being implemented. There is no relevant distinction between the Philglobcom franchise authority and that of Eastern. [24]

Through the interpretation it urges, PLDT in effect seeks to monopolize the external transmission and reception of telecommunications messages, i.e., the sending and receiving of such messages across the boundaries of the Philippines. The argument made by PLDT will result in local users of PLDT telephones having no choice but to go to PLDT even for the external portion of international telecommunications. Presumably, PLDT cannot object if its subscribers were to walk to offices or branches of Eastern and there make direct telephone calls to countries outside the Philippines. Yet PLDT, would prevent its own subscribers from using any IGF and facilities for transmission and reception of international messages, except those owned by PLDT. PLDT's view, in refusing interconnection, would logically compel a telecommunication company, wishing to install an international gateway facility (IGF) to duplicate (however wastefully) the already existing domestic telecommunications lines of PLDT, and to restrict an IGF operator to transmitting messages originating in land or domestic lines established by that operator itself. While protective of the monopolistic position and profitability of PLDT, such a narrow and restrictive view completely disregards the broader interests of the general public consisting of the users of telecommunications services. Such view must accordingly, and once again, be rejected and the inherent authority of the State to secure the interests of the general public in the conserving and efficient utilization of finite or scarce resources, sustained.

PLDT has no right to treat its subscribers as its proprietary assets to be "exploited" [25] by PLDT alone, rather than as customers to be served in the manner that a public utility is supposed to serve the public. Both local subscribers of PLDT or any other domestic telephone system, as well as callers from across the oceans, should be accorded a choice. The fundamental point is that customers' choice and free competition among carriers are essential if reasonable prices and efficient and satisfactory service are to be achieved and maintained and the public's rapidly growing needs adequately served, in the area of telecommunications, an area so vital to national social and economic development.

WHEREFORE, for all the foregoing, the Motions for Reconsideration of public and private respondents are hereby GRANTED and the Petition for Certiorari DISMISSED for failure to show any grave abuse of discretion or any act without or in excess of jurisdiction on the part of public respondent NTC. The decision of the NTC dated 14 November 1989 and its order dated 16 July 1990 are hereby declared VALID and EFFECTIVE. No pronouncement as to costs.

Padilla, Romero, Bellosillo, Quason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Narvasa, C.J. and Regalado, JJ., dissent and maintain my vote in the original decision.

Bidin, J., dissent and vote to deny the motion for reconsideration.

Davide, Jr., J., vote to deny in MR and to sustain the challenged decision to which he expressed his concurrence.

Melo, J., vote to deny the motion for the same reasons stated in the majority opinion of Justice Gutierrez.

Francisco, J., took no part in the deliberation.

[1] The vote was ten (10) to four (4), with one (1) vacancy in the Court.

[2] The shares registered in the name of Philippine citizens have been under sequestration by the Government since 1986. It is immaterial for present purposes whether the registered owners or the Philippine Government are finally held to be entitled to such shares of Eastern stock.

[3] Rollo, pp. 40-42.

[4] 213 SCRA at 31.

[5] Please see Webster's Third New International Dictionary of the English Language (Merriam-Webster; 1986), p. 2349.

[6] See "telephone," 21 Encyclopedia Britannica, pp. 774, 778 and 780 [1969 ed.]; 26 Encyclopedia Americana, pp. 374-375 [1954 ed.].

[7] Section 1 of PLDT's legislative franchise, Act No. 3436, as consolidated and last amended by R.A. No. 7082 [which lapsed into law without the President's signature on 3 August 1991]; reads as follows:

"Section 1. Subject to the provisions of the Constitution, the Philippine Long Distance Telephone Company (PLDT), its successors or assigns, and hereunder referred to as the grantee, is hereby granted the right, privilege, and authority to carry on the business of providing basic and enhanced telecommunications services in and between provinces, cities and municipalities in the Philippines and between the Philippines and other countries and territories and, for this purpose, to establish, operate, manage, lease, maintain and purchase telecommunications systems, including mobile, cellular and wired or wireless telecommunications systems, fiber optics, multichannel transmission distribution systems, satellite transmit and receive systems, and other telecommunications systems and their value-added services such as but not limited to transmission of voice, data, facsimile, control signals, audio and video, information service bureau and all other telecommunications systems technologies as are at present available or be made available through technical advances or

innovations in the future, or construct, acquire, lease and operate or manage transmitting and receiving stations and switching stations, both for local and international services, lines, cables or systems, as is or are, convenient or essential to efficiently carry out the purposes of this franchise: Provided, however, That the grantee, its successors or assigns shall not, without the permission of the National Telecommunications Commission or its legal successor first had, install, maintain, operate, purchase or lease such stations, lines, cables or systems." (Underscoring supplied)

"Sec. 3. The rates for the telecommunications services which are regulated under the law that the grantee shall offer to the public shall be subject to the approval of the National Telecommunications Commission or its legal successor. (Underscoring supplied)

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Sec. 7. All telecommunications lines and systems for telecommunications services owned, maintained, operated or managed by the grantee, its successors or assigns shall be operated and maintained at all times in a satisfactory manner, and it shall be the further duty of said grantee, its successors or assigns, whenever required to do so by the National Telecommunications Commission or its legal successor, to modify, improve and change such telecommunications systems in such manner and to such extent as the progress in science and improvements in the telecommunications services may make reasonable and proper.

(Underscoring supplied)

x x x x x x x x

[8] Note also the following Sections of PLDT's present franchise:

Sec. 12. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive on this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereof, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: Provided, x x x." (Underscoring supplied) (Section 12 thus makes clear that the "telephone business" is merely one form of "telecommunications business.")

[9] Section 1 of Act No. 3436, effective 28 November 1928, reads in relevant part as follows:

"Section 1. Subject to the conditions established in this Act and the provisions of Act Numbered Thirty-one hundred and eight, as amended, there is hereby granted to the 'Philippine Long Distance Telephone Company,' its successors or assigns, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate telephone systems covering the most feasible following routes: x x x. It being understood that the grantee is authorized to construct, operate and maintain such branch tributary lines within the provinces traversed to connect with the main lines, as the public interest may warrant. The grantee is authorized to carry on the business of the electrical transmission of messages, pictures, and signals in and between provinces and respective municipalities, and for the purpose of operating said telephone systems and transmitting impressions, messages, pictures, and signals by means of electricity, to construct telephone lines in and between said provinces and municipalities and to lay, place, operate and maintain telephone cables between the Philippine Islands and other countries. x x x" (Underscoring supplied)

[10] Rollo, pp. 45-46.

[11] Id., pp. 36, 38-39.

[12] Id., pp. 43-45.

[13] Id., pp. 37, 39-40.

[14] Id., p. 61.

[15] Id., p. 239.

[16] Id., pp. 239-240.

[17] TSN, 14 September 1988, pp. 84-85; Exhibit "N."

[18] Rollo, p. 240.

[19] Please see footnote 21 in the Dissenting Opinion appended to the original Decision of 27 August 1992; 213 SCRA at 46; this footnote is hereby incorporated herein by reference.

[20] Petition, Rollo, p. 21.

[21] Rollo, p. 43.

[22] 190 SCRA 717 (1990).

[23] 190 SCRA at 734-735.

[24] R.A. No. 4617, approved 19 June 1965, granted the following franchise authority to the RCA Communications Inc. (predecessor of Philglobcom):

"SECTION 1. There is hereby granted to the RCA Communications, Inc., hereinafter referred to as the grantee, the right and privilege of constructing, maintaining and operating communications systems by radio, wire, satellites, and other means now known to science or which in the future may be developed for the reception and transmission of messages between any point in the Philippines to points exterior thereto, including airplanes, airships or vessels, even though such airplanes, airships or vessels may be located within the territorial limits of the Philippines." (Underscoring supplied)

The relevant phrase used in R.A. No. 4617 is "communications systems." (See, e.g., Section 2, Section 3 and Section 17) Section 17 of R.A. No. 4617 reads as follows:

"Sec. 17. Nothing in this franchise shall be construed to authorize the grantee to engage in domestic communications service." (Underscoring supplied)

[25] The term used by PLDT in assailing Eastern's desire to participate in the international end of telecommunica-tions. See supra, note 20.

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