



Office of the Solicitor General
134 Amorsolo St., Legaspi Village, Makati City

April 30, 2020

COMMISSIONER GAMALIEL CORDOBA, and
DEPUTY COMMISSIONERS DELILAH F. DELES,
and **EDGARDO V. CABARIOS**
National Telecommunications Commission
BIR Road, Diliman, Quezon City

Dear Com. Cordoba and Dep. Com. Deles and Cabarios:

This pertains to the status of the two legislative franchises currently being enjoyed by ABS-CBN Corporation and its affiliates or subsidiaries, as follows:

<i>Franchisee</i>	<i>Nature of Franchise</i>	<i>Enabling law/s</i>	<i>Date of Approval</i>	<i>Date legislative franchise was published</i>	<i>Date of Effectivity</i>	<i>Date of franchise expiry</i>
ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation)	Broadcasting franchise	R.A. 7966	March 30, 1995	Published in <i>Malaya</i> and the <i>Manila Times</i> on April 19, 1995. ¹	May 4, 1995	May 4, 2020
ABS-CBN Convergence Inc. (formerly Multi-Media Telephony, Inc.)	Telecommunications Franchise	R.A. 7908, as amended by R.A. 8332	February 23, 1995	Published in <i>Malaya</i> and the <i>Manila Times</i> on March 2, 1995. ²	March 17, 1995	March 17, 2020

¹ Also published in the *Official Gazette*, Vol. 91, No. 29, p. 4593, July 17, 1995.

² Also published in the *Official Gazette*, Vol. 91 No. 20 p. 3031, May 8, 1995. R.A. 8332, the amendatory law, was published in the *Manila Chronicle* and *Manila Standard* on July 9, 1997; also published in the *Official Gazette*, Vol. 93 No. 40, p. 6338, October 6, 1997.

To enable ABS-CBN Corporation to operate its broadcasting franchise, the National Telecommunications Commission (NTC) issued in its favor the corresponding Certificates of Public Convenience and Provisional Authorities (CPCNs/PAs). The last PA issued was on May 14, 2019, under NTC Case No. 87-006, which granted ABS-CBN Corporation a provisional authority for the use of digital terrestrial television broadcast predicated upon its congressional franchise under R.A. 7966. The PA's validity or effectivity expressly reads:

Finally, **this P.A. shall be valid until the effectivity of its Congressional Franchise under R.A. 7966** from date hereof, and may be subject to amendment, alteration, suspension, revocation or cancellation when public welfare, morals or national security so requires or when grantee operates beyond its authorization.³

Meanwhile, ABS-CBN Convergence Inc. has been allowed to operate its telecommunications franchise obtained from Multi-Media Telephony, Inc. under a number of CPCNs and PAs.⁴ Its legislative franchise expired last March 17, 2020 as judicially admitted in its Comment *Ad Cautelam* in SC G.R. No. 251358 (*Republic of the Philippines rep. by Solicitor General Jose C. Calida v. ABS CBN Corp. and ABS CBN Convergence, Inc.*).

On March 5, 2020, Atty. Larry Gadon filed a petition before the Supreme Court questioning the letter of Speaker Alan Peter Cayetano and Rep. Franz Alvarez to the NTC to grant ABS-CBN Corporation and its affiliates or subsidiaries PAs. In light of said case and the Commissioner Cordoba's recent pronouncements⁵ that NTC will issue a PA to ABS-CBN Corporation after the expiration of the latter's franchise, the OSG, as the statutory counsel of the NTC,⁶

³ Emphasis added.

⁴ CPCN to procure, install and maintain Internet Protocol (IP) Access Node in NTC Case No. 98-212 issued on April 23, 2002; Provisional Authority to procure, install, operate and maintain a nationwide internet network in NTC Case No. 98-146 issued on February 8, 1999; Provisional Authority to construct, install, operate and maintain Local Exchange Service (LEC) in NTC Case No. 99-206 issued on April 23, 2002; Provisional Authority to install, operate and maintain a nationwide broadband network in NTC Case No. 98-103 issued on February 1, 2001.

⁵ See Glee Jalea, CNN Philippines, *NTC to issue provisional authority to ABS-CBN pending franchise renewal bid*, available at <https://www.cnnphilippines.com/news/2020/3/10/NTC-ABS-CBN-franchise-renewal.html> (last accessed March 30, 2020); Franco Luna (Philstar.com), *NTC to issue provisional authority to ABS-CBN*, available at <https://www.philstar.com/headlines/2020/03/10/1999673/ntc-issue-provisional-authority-abs-cbn> (last accessed March 30, 2020); and Christia Marie Ramos, *Senate hands ABS-CBN reso on provisional authority to NTC*, available at <https://newsinfo.inquirer.net/1240105/senate-hands-abs-reso-to-ntc-story> (last accessed March 30, 2020).

⁶ Executive Order No. 282, Book IV, Title III, Chapter 12, Section 35:

SECTION 35. Powers and Functions.—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:...

deems it necessary to advise the Commission of the applicable laws, rules and jurisprudence as regards the status, effects and possible course of action brought about by the absence or non-renewal of the foregoing franchises.

Under the Constitution, only Congress, via a duly enacted law or statute, can grant a franchise.

The power of Congress to grant rights, privileges and concessions under certain or restricted terms and conditions is provided in Sections 10 and 11, Article XII of the Constitution.⁷

Further, the need for an enabling law granting a broadcasting franchise prior to actual operation is expressly provided in Section 1 of R.A. 3846,⁸ viz:

Section 1. No person, firm, company, association or corporation shall construct, install, establish, or operate a radio station within the Philippine Islands **without having first obtained a franchise therefor from the Philippine Legislature**; Provided however, That no franchise from the Legislature shall be necessary for the construction, installation, establishment or operation of a broadcasting station, an amateur station, an experimental station, a training station, a station on board a mobile vessel, train, or aircraft, or a private station in a place without any means of communication.⁹

See also Philippine Consumers Foundation, inc. v. National Telecommunications Commission et al., G.R. No. L-63318, August 18, 1984.

⁷ Constitution, Article XII:

SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

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

⁸ An Act Providing for the Regulation of Radio Stations and Radio Communications in the Philippine Islands, and For Other Purposes.

⁹ Emphasis added.

To recall, the franchising authority was retained by then President Ferdinand Marcos “as repository of legislative power under Martial Law.”¹⁰ A franchise, “a privilege emanating from the sovereign power of the State,” is granted by the legislative body and is subject to regulation by the State itself by virtue of its police power through its administrative agencies.¹¹

The legislative power to grant franchise to certain public utilities may be delegated to administrative agencies through an enacted law, such as in the case of the *Philippine Ports Authority and the Civil Aeronautics Board*,¹² among others.

As of this writing, no such law delegating the power to grant franchises to broadcasting entities to any administrative agency has been passed. The House of Representatives - Committee on Legislative Franchises Letter dated February 26, 2020 and Senate Resolution No. 344¹³ both urging the NTC to issue a PA to ABS-CBN Corporation and its subsidiaries or affiliates are erroneous and not binding. As thoroughly discussed by the Honorable Supreme Court in *Ang Nars Partylist, et al. v. The Executive Secretary, et al.*,¹⁴ a Concurrent Resolution is defined under the Senate Rules of Procedure as one “used for matters affecting the operations of both houses and must be passed in the same form by both of them. However, they are not referred to the President for his signature and they do not have the force of law. Concurrent resolutions are used to fix the time of adjournment of a Congress and to express the “sense of Congress” on an issue.” In short, the Letter dated February 26, 2020 and Senate Resolution No. 344 merely express the sentiment of the committee and the Senate. Hence, these issuances cannot amend the current law requiring a congressional franchise for the operation of broadcasting networks. As held by the Supreme Court, a resolution, not being a separate law itself, cannot amend or repeal prior laws.¹⁵

Consequently, as long as the law remains unchanged, only Congress can grant, through a law, a franchise to operate a television station.

¹⁰ *Associated Communications & Wireless Services - United Broadcasting Networks v. NTC*, G.R. No. 144109, February 17, 2003. See also P.D. No. 576-A and the 1973 Constitution, Art. XIV, Sec. 5.

¹¹ *Id.* See also *RCPI v. NTC and Kayumanggi Radio Network*, G.R. No. L-68729, May 29, 1987.

¹² See *Philippine Airlines, Inc. v. Civil Aeronautics Board*, G.R. No. 119528, March 26, 1997.

¹³ Expressing the Sense of the Senate Authorizing the National Telecommunications Commission (NTC) to Issue a Provisional Authority To ABS-CBN Corporation, Its Subsidiaries And/Or Affiliates ABS-CBN Convergence, Inc., Sky Cable Corporation, And Amcara Broadcasting Network, Inc., under such Terms and Conditions as the NTC may Deem Necessary, Until Congress' Final Disposition of the Franchise Renewal Bills.

¹⁴ G.R. No. 215746, October 8, 2019.

¹⁵ *Id.*

The duration of broadcasting and telecommunications operations may only last during the effectivity of the corresponding franchise.

Congress, through R.A. 7966, granted the ABS-CBN Corporation a franchise to construct, operate, and maintain, for commercial purposes and in the public interest, television and radio broadcasting stations in and throughout the Philippines.¹⁶ The 25-year broadcasting franchise of ABS-CBN Corporation will expire on May 4, 2020 as R.A. 7966 was published on April 19, 1995.

In like manner, the telecommunications franchise granted by Congress *via* R.A. 7908,¹⁷ as amended, to Multi-Media Telephony, Inc. now enjoyed by ABS-CBN Convergence Inc., has a fixed 25-year duration which ended last March 17, 2020. Consequently, and pursuant to Section 16¹⁸ of R.A. 7925,¹⁹ any and all CPCNs and PAs granted to ABS-CBN Convergence Inc. are now without effect.

It is only after the grant of legislative franchise that the NTC may issue CPCN or PA to operate.

The Supreme Court, interpreting the applicable laws on the matter, has unequivocally held a congressional franchise as indispensable prior to actual start of broadcast operations. In *Associated Communications & Wireless Services - United*

¹⁶ R.A. 7966:

Sec. 6. *Term of Franchise.* — This franchise shall be for a term of twenty-five (25) years from the date of effectivity of this Act.

¹⁷ R.A. 7908, as amended:

Sec. 7. *Term of Franchise.*— This franchise shall be for a term of twenty-five (25) years from the date of effectivity of this Act, unless sooner revoked or cancelled. This franchise shall be deemed ipso facto revoked, in the event the grantee fails to comply with any of the following conditions:

- (a) Commence operations within three (3) years from the approval of its permit by the National Telecommunications Commission;
- (b) Operate continuously for two (2) years; and
- (c) Commence operations within five (5) years from the effectivity of this Act.

¹⁸ Section 16. *Franchise.* - No person shall commence or conduct the business of being a public telecommunications entity without first obtaining a franchise.

The Commission, in granting a Certificate of Public Convenience and Necessity (CPCN), may impose such conditions as to duration and termination of the privilege, concession, or standard or technical aspects of the equipment, rates, or service, not contrary to the terms of the franchise. In no case, however, shall the CPCN be shorter than five (5) years, nor longer than the life of the franchise. A CPCN expiring at the same time as the franchise shall be deemed to have been renewed for the same term if the franchise itself is also renewed or extended...

¹⁹ An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services.

Broadcasting Networks v. NTC,²⁰ the Supreme Court upheld the NTC's acts of recalling the Channel 25 frequency and ordering the petitioner to cease broadcasting operations due to its failure to obtain a legislative franchise and explained as follows:

Even prior to E.O. No. 546, the NTCs precursor, i.e., the Board of Communications, already had the function of issuing CPC under the Integrated Reorganization Plan. The CPC was required by the Board at the same time that P.D. No. 576-A required a franchise to operate radio and television stations. The function of the NTC to issue CPC under E.O. No. 546 is thus nothing new and exists alongside the requirement of a congressional franchise under P.D. No. 576-A. There is no conflict between E.O. No. 546 and P.D. No. 576-A; **Section 15 of the former does not dispense with the franchise requirement in the latter.** We adhere to the cardinal rule in statutory construction that statutes *in pare materia*, although in apparent conflict, or containing apparent inconsistencies, should, as far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each. The ruling of this Court in *Crusaders Broadcasting System, Inc. v. National Telecommunications Commission*, buttresses the interpretation that **the requirement of a congressional franchise for the operation of radio and television stations exists alongside the requirement of a CPC.** In that case, we held that under E.O. No. 546, the regulation of radio communications is a function assigned to and performed by the NTC and at the same time recognized the requirement of a congressional franchise for the operation of a radio station under Act No. 3846. **We did not interpret E.O. No. 546 to have repealed the congressional franchise requirement under Act No. 3846 as these two laws are not inconsistent and can both be given effect.** Likewise, in *Radio Communication of the Philippines, Inc. v. National Telecommunications Commission*, we recognized the **necessity of both a congressional franchise under Act No. 3846 and a CPC under E.O. No. 546 to operate a radio communications system.**²¹

Clearly, the twin requirement of congressional franchise and administrative permit/authority before an entity may start its broadcasting or telecommunications operations is pursuant to law and upheld repeatedly by the Supreme Court.

Notably, in *GMA Network, Inc. v. National Telecommunications Commission*,²² the Supreme Court sustained NTC's clarification that a PA **"refers to an authority given to an entity qualified to**

²⁰ G.R. No. 144109, February 17, 2003.

²¹ Emphases added; citations omitted.

²² G.R. No. 196112, February 26, 2014. See also the later case of *GMA Network, Inc. v. National Telecommunications Commission* which dealt with GMA Network Inc.'s failure to renew the PAs of some of its broadcasting stations, G.R. Nos. 192128 & 192135-36, September 13, 2017.

operate a public utility for a limited period during the pendency of its application for, or before the issuance of its Certificate of Public Convenience (CPC). It has a general scope because it is akin to a provisional CPC in that it gives a public utility provider power to operate as such and be bound by the laws and rules governing public utilities, pending the issuance of its actual CPC."²³

As may be gleaned from NTC's clarification, a PA is an authority given pending the approval of the CPC.²⁴ An application for CPC, however, typically comes after securing a franchise from Congress. Hence, logically speaking, a PA, as previously described by the NTC, should only be issued once a congressional franchise has been granted and an application for CPC is pending before the NTC for approval.

Applying these to the present situation, upon the expiration of ABS-CBN Corporation's legislative franchise on May 4, 2020, the NTC cannot issue a PA to ABS-CBN Corporation to continue its broadcasting operations. The same may be said of ABS-CBN Convergence Inc. anent its telecommunications operations as its franchise has expired.

Equity can neither replace a congressional franchise nor apply where there is no legal vacuum.

Having established the prior requirement of a legislative franchise before the issuance of any permit or authorization, the members of the Commission are further advised that equity cannot be used to replace or otherwise dispense a law expressly granting a franchise.

Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.²⁵ It is available only in cases where there is an absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the

²³ Emphasis retained.

²⁴ On a related note, this is the same definition of "Provisional Authority" under the Implementing Rules of R.A. 7925.

²⁵ *Reyes v. Lim*, G.R. No. 1434241, August 11, 2013.

law. All abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions.²⁶

Even courts are bound by positive law over equity. It has been repeated time and again that where the statutory norm speaks unequivocally, there is nothing for the courts to do except to apply it. The law, leaving no doubt as to the scope of its operation, must be obeyed.²⁷

No amount of linguistic hermeneutics can support a claim that there is a so-called "gap" in the prevailing law and jurisprudence on the status of the operations of a franchise when Congress has yet to act on its renewal. No less than the Constitution requires a prior franchise from Congress. Hence, when there is no renewal, the franchise expires by operation of law. The franchise ceases to exist and the entity can no longer continue its operations as a public utility.

Neither can the Commission rely on the advice rendered by the Department of Justice in its letter-guidance dated February 26, 2020 sent upon request by the NTC for a formal Opinion. The said advice or guidance and the circumstances surrounding its issuance are not at all unprecedented.

In *Associated Communications & Wireless Services – United Broadcasting Network, Inc.*,²⁸ petitioner Associated Communications & Wireless Services – United Broadcasting Network, Inc., "bank[ed] on DOJ Opinion No. 98, Series of 1991 which states that under E.O. No. 546, the NTC may issue a permit or authorization for the operation of radio and television broadcasting systems without a prior franchise issued by Congress." The petitioner argued that "the opinion is binding and conclusive upon the NTC as the NTC itself requested the advisory from the Secretary of Justice who is the legal adviser of government." Petitioner, finally, claimed that "it was precisely because of the above DOJ Opinion No. 98²⁹ that the NTC did not previously require a congressional franchise in all of its applications for permits with the NTC."

²⁶ *Mangahas v. CA*, G.R. No. 173375, September 25, 2008.

²⁷ *Gonzaga, et al., v. Court of Appeals*, G.R. No. L-27455, June 28, 1973; *People v. Mapa*, L-22301, August 30, 1967; *Pacific Oxygen & Acetylene Co. v. Central Bank*, L-21881, March 1, 1968; *Dequito v. Lopez*, L-27757, March 28, 1968; *Padilla v. City of Pasay*, L-24039, June 29, 1968; among others.

²⁸ *Supra*.

²⁹ DOJ Opinion No. 98: National Telecommunication Commissions (NTC's) power to issue permits to radio and tv broadcast stations with no legislative franchise dated June 20, 1991.

The Supreme Court rejected the DOJ Opinion, as follows:

Petitioner, however, cannot rely on DOJ Opinion No. 98 as this opinion is merely persuasive and not necessarily controlling. As shown above, **the opinion is erroneous insofar as it holds that E.O. No. 546 dispenses with the requirement of a congressional franchise to operate radio and television stations.** The case of *Albano v. Reyes*-cited in the DOJ opinion, which allegedly makes it binding upon the NTC, does not lend support to petitioner's cause....

Our ruling in *Albano* that a congressional franchise is not required before "each and every public utility may operate" should be viewed in its proper light. **Where there is a law such as P.D. No. 576-A which requires a franchise for the operation of radio and television stations, that law must be followed until subsequently repealed.** As we have earlier shown, however, there is nothing in the subsequent E.O. No. 546 which evinces an intent to dispense with the franchise requirement. xxxx.³⁰

Based on *Associated Communications & Wireless Services – United Broadcasting Network, Inc.*,³¹ the DOJ letter-guidance is not binding upon the NTC.

No single member of the NTC can bind the entire Commission. The NTC can only act collegially.

Through E.O. 546, the "NTC stepped 'into the shoes' of the Board of Communications."³² The NTC, pursuant to E.O. 546, and like the defunct Board, is organized collegially, as follows:

Sec. 16. *Organization of the Commission.* The Commission shall be composed of a Commissioner and two Deputy Commissioners, preferably one of whom shall be a lawyer and another an economist. The Commissioner and Deputy Commissioners shall be of unquestioned integrity, proven competence, and recognized as experts in their fields, related, as much as possible, to communications...

Under its 2006 NTC Rules of Practice and Procedure, the Commission's decisions, judgments and orders as regards authorizations, among others, are "decided by the Commission *en*

³⁰ *Id.*, (emphases added) (citations omitted).

³¹ *Supra.*

³² *RCPI v. NTC and Alegre*, G.R. No. 93237, November 6, 1992.

banc."³³ Even all forms of provisional relief and authorization by an applicant are to be decided by the Commission *en banc*.³⁴

Notwithstanding any public pronouncement or action made by any member of the Commission, regardless of the form and occasion, therefore, such does not bind any future collegial action of the NTC in an appropriate case or application.

Upon the expiry of any franchise, the NTC may issue cease and desist/recall orders.

With an expired franchise and a failure to renew the franchise, the NTC should, instead of entertaining the thought of issuing a PA, with or without hearing, issue a show cause or recall order requiring ABS-CBN Corporation to explain why the broadcasting frequency assigned to it should not be recalled or otherwise forfeited. At the same time, the NTC should issue a cease and desist order against ABS-CBN Corporation from continuing its broadcasting operations. This is in consonance with Commonwealth Act No. 146 (the *Public Service Act*), as amended, which grants the power to then Public Service Commission, now NTC, to enforce, even without a prior hearing, compliance with any standard, rule or regulation, to wit:

Section 17. *Proceedings of Commission without previous hearing.* - The Commission shall have power without previous hearing, subject to established limitations and exception and saving provisions to the contrary:

(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate, and proper service as the public interest may require and warrant; **to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, and to prohibit or prevent any public service as herein defined from operating without having first secured a certificate of public convenience or public necessity and convenience**, as the case may be and require existing public services to pay the fees provided for in this Act for the issuance of the proper certificate of public convenience or certificate of public necessity and convenience, as the case may be, under the penalty, in the discretion by the Commission, of the revocation and cancellation of any acquired rights.

³³ 2006 NTC Rules of Practice and Procedure, Rule 11, Sec. 3 in relation to Rule 12, Sections 1 and 4.

³⁴ *Id.*, at Rule 12, Section 3.

The issuance of recall and cease and desist orders likewise finds support in the 2006 NTC Rules of Practice and Procedure, Rule 10, Sections 4 and 5, viz:

Section 4. Issuance of Show Cause Order Complaints. – The Commission may, based on the report of the appropriate department/division/unit or any employee/personnel deputized by the Commission, the sworn statement of any offended party, or *motu proprio*, issue a show cause order which shall contain a statement of the particulars and matters which the Commission is inquiring and may call upon the respondent to appear and submit a verified answer to the complaint at a place and time therein stated and explain why no judgment or action shall be taken against the respondent. Pending hearing and final consideration of the case, the Commission may, in the interest of public service, welfare and security of the State and/or where the respondent does not have any authority from the Commission to install, operate and maintain the service/facility, upon motion or *motu proprio* issue a cease and desist order to a respondent.

Section 5. Summary Hearing. – Whenever applicable, the Commission may, conduct a summary proceeding and issue an order directing the parties to appear before the Commission within seventy two (72) hours from his receipt of a copy of the order. Within 15 days from receipt of the order, the Commission shall also require the parties to submit a verified memorandum or position papers together with all the evidence and the affidavits of their witnesses. The Commission shall also set a conference on the case for the purpose of clarifying some issues or issue a cease and desist order at the discretion of the Commission, in cases if the continued acts of the public utility operator shall cause serious detriment to the public interest and the security of the state and in cases of willful or unreasonable refusal by an operator to comply with an order, rule or regulation of the Commission, or any provisions of the Public Service Act, as amended, Executive Order No. 546, Republic Act No. 7925, Memorandum Circulars, and other relevant laws.

Equally important is the judicial precedent on this power of the NTC. In *Associated Communications & Wireless Services - United Broadcasting Networks*,³⁵ the NTC issued both a recall order and a cease and desist order against the petitioner when it failed to renew its franchise which actions, according to the Supreme Court, were both valid and compliant to administrative due process:

Likewise, the NTC's denial of petitioner's application for renewal of its temporary permit to operate Channel 25 and recall of its Channel 25 frequency in its January 13, 1999 decision were not unreasonable, unfair, oppressive, whimsical and confiscatory so as to offend petitioner's right to due process. In *Crusaders Broadcasting System, Inc. v. National Telecommunications Commission*, the Court

³⁵ *Supra*.

ruled that although a particular ground for suspending operations of the broadcasting company was not reflected in the show cause order, the NTC could nevertheless raise said ground if any basis therefore was gleaned during the administrative proceedings. In the instant case, the lack of congressional franchise as ground for denial of petitioners application for renewal of temporary permit and recall of its Channel 25 frequency was raised not only during the administrative proceedings against it, but was even stated in the February 26, 1998 show cause order, *viz*:

IN VIEW THEREOF, respondents are hereby directed to show cause in writing within ten (10) days from receipt of this order why their assigned frequency, more specifically Channel 25 in the UHF Band, should not be recalled for lack of the necessary Congressional Franchise as required by Section 1, Act No. 3846, as amended.

Moreover, respondent is hereby directed to cease and desist from operating DWQH-TV, unless subsequently authorized by the Commission.³⁶

There are penal sanctions for the issuance of CPCNs and PAs without an existing legislative franchise.

To iterate, the OSG deems it necessary to advise the Commission of the applicable laws, rules and jurisprudence as regards the status, effects and possible course of action brought about by the absence or non-renewal of the foregoing franchises, as its statutory counsel.³⁷ Thus, the OSG cautions the Commission against issuing a provisional authority to ABS-CBN Corporation and ABS-CBN Convergence, lest it exposes itself to possible penal sanctions.

Relevantly, Sections 3 (e) and (j) of Republic Act No. 3019 (R.A. No. 3019), otherwise known as the Anti-Graft and Corrupt Practices Act, provide for these unlawful acts of public officers:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision

³⁶ *Id.*, (citations omitted). Similarly, the cease and desist power was used by the NTC and affirmed by the Supreme Court in *RCPI v. NTC and Kayumanggi Radio Network*, *supra*.

³⁷ *Id.*, Note 6.

shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

Congress, *via* a law and not mere resolution, has the exclusive constitutional and sovereign power to grant a franchise which expressly limits the period for any franchisee to operate. Thus, NTC's grant of a provisional authority to ABS-CBN Corporation and/or ABS-CBN Convergence without a legislative franchise is tantamount to knowingly granting a permit to a private entity without it being qualified or legally entitled.

Finally, it must be pointed out to this Commission that ABS-CBN Corporation's Chairman and controlling stockholder Eugenio L. Lopez III was only recognized as a Filipino citizen pursuant to Section 1 (3), Article IV³⁸ of the 1935 Constitution as per Recognition Order (RO) No. 00-051 dated April 25, 2001 issued by the Bureau of Immigration (BI) and as affirmed by the Secretary of Justice Hernando P. Perez via his Indorsement dated August 6, 2001. In the BI-RO No. 00-051, it is stated that Mr. Lopez's Identification Certificate shall indicate prominently the date of affirmation of the Department of Justice, which is August 6, 2001. Clearly, when ABS-CBN Corporation's franchise was approved on March 30, 1995, through Republic Act No. 7966, Mr. Lopez, in strict terms, was an American citizen, another violation of our nationalization laws.

Despite being recognized as a Filipino in 2001, Mr. Lopez continued to use his American passport as shown by the List of Travel Records dated March 3, 2020 issued by the BI, with Control No. 20034520. His actuations patently belie his recognition and acceptance of the authority of the Philippines and cast doubt on his true faith and allegiance.

In sum, the NTC may only issue a permit or authority, provisional or otherwise, pursuant to said congressional franchise – and never based on equity. Moreover, only the NTC, acting

³⁸ 1935 Constitution, Article IV:

Section 1. The following are citizens of the Philippines: xxx 3. Those whose fathers are citizens of the Philippines.

collegially, can issue such permits and authorities after congress has granted a franchise. In the absence of a congressional franchise, the NTC, pursuant to law, and its own rules and supported further by judicial precedents, has merely the power to issue a cease and desist/recall order against any operator or entity that wishes to operate or use any State-owned frequency. Issuing anything other than a cease and desist and recall order subjects the NTC to legal sanctions for violations of the law, its own rules, and the Supreme Court Decisions which form part of the law of the land.

Please be guided accordingly.

Very truly yours,



JOSE C. CALIDA
Solicitor General



RENAN E. RAMOS
Assistant Solicitor General




MARISSA B. DELA CRUZ-GALANDINES
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