

ORIGINAL

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
MANILA

*EN BANC*

ABS-CBN CORPORATION,  
*Petitioner,*

G.R. No. 252119

*-versus-*

For: Certiorari and  
Prohibition with Urgent  
Applications for the  
Issuance of a Temporary  
Restraining Order and/or  
a Writ of Preliminary  
Injunction

NATIONAL  
TELECOMMUNICATIONS  
COMMISSION,

*Respondent.*

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**URGENT REITERATIVE MOTION FOR THE  
ISSUANCE OF A TEMPORARY RESTRAINING ORDER  
AND/OR A WRIT OF PRELIMINARY INJUNCTION**

Petitioner ABS-CBN Corporation (“ABS-CBN”), by counsel,  
respectfully states:

1. On 7 May 2020, ABS-CBN filed this Petition for Certiorari and Prohibition with urgent applications for the issuance of a Temporary Restraining Order (“TRO”) and/or a Writ of Preliminary Injunction against the directive of the National Telecommunications Commission (“NTC”) in its Order of 5 May 2020 in NTC Adm. Case No. 2020-008 for ABS-CBN to “immediately CEASE and DESIST from operating...radio and television stations” identified by the NTC (the “Cease and Desist Order” or “CDO”).

2. ABS-CBN seeks to invalidate the Cease and Desist Order on the ground, among others, that it was issued in contravention of the intent and desire of Congress to allow the continued broadcasting operation of the company pending the renewal of its franchise. This Honorable Court may take judicial notice of the following recent events which highlight the intent and desire of Congress for ABS-CBN to be on air during the pendency of the renewal of its legislative franchise:

2.1. On 13 May 2020, House Bill No. 6732 was filed before the House of Representatives seeking to grant ABS-CBN a franchise to construct, install, operate, and maintain television and radio broadcasting stations in the Philippines until 31 October 2020. The limited period is intended to “give both the House of Representatives and the Senate [time] to hear the issues being raised for and against the renewal, and assess, with complete impartiality and fairness, whether or not the network shall be granted a franchise for another 25 years”.<sup>1</sup>

2.2. The measure was approved on second reading by the House of Representatives convened into the “Committee of the Whole”.<sup>2</sup>

3. However, even as Members of the Senate have expressed their willingness to act swiftly on the measure passed by the House of Representatives,<sup>3</sup> it will still take time before House Bill No. 6732 is passed into law. After approval by both Houses of Congress, the law will still have to be approved by the President and published in the Official Gazette or a newspaper of general circulation to take effect. Moreover, ABS-CBN will, thereafter, have to seek and obtain from the NTC the necessary permits to operate. This may take some weeks, if not months.

4. In the meantime, ABS-CBN, its employees, various stakeholders, and the general public will continue to suffer grave and irreparable injury as a result of the Cease and Desist Order issued by the NTC.

5. In past cases, this Honorable Court has found irreparable damage where “[t]he end result would be a tremendous loss and even a closure of [the movant’s] business”<sup>4</sup> and where there is no assurance that the movant can recover

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<sup>1</sup> Explanatory Note, House Bill 6732.

<sup>2</sup> “House approves bill granting provisional franchise to ABS-CBN”, Ben Rosario, 13 May 2020, Manila Bulletin, Available at: <https://news.mb.com.ph/2020/05/13/house-approves-bill-granting-provisional-franchise-to-abs-cbn/> (last accessed on 15 May 2020); “BREAKING: House convenes into Committee of the Whole to tackle ABS-CBN franchise”, Neil Arwin Mercado, 13 May 2020, Philippine Daily Inquirer, Available at: <https://newsinfo.inquirer.net/1274360/breaking-house-convenes-into-committee-of-the-whole-to-tackle-abs-cbn-franchise> (last accessed on 15 May 2020).

<sup>3</sup> “Senators hopeful of soon passing temporary franchise for ABS-CBN”, Vanne Elaine Terrazola, 13 May 2020, Manila Bulletin, Available at: <https://news.mb.com.ph/2020/05/13/senators-hopeful-of-soon-passing-temporary-franchise-for-abs-cbn/> (last accessed on 15 May 2020).

<sup>4</sup> Republic v. Principalia Management and Personnel Consultants, Incorporated, G.R. No. 167639, 19 April 2006.

the losses arising from the act sought to be enjoined.<sup>5</sup> Every day that it is off the air, ABS-CBN is losing about Php 30 to 35 million mainly in advertising revenues. If this severe financial hemorrhage is not stopped, ABS-CBN may be constrained to eventually let go of workers, reduce salaries and benefits, and substantially cut down on costs and expenses.

6. This Honorable Court has also held that “in assessing whether to issue a preliminary injunction, the courts must sensitively assess all the equities of the situation, **including the public interest.**”<sup>6</sup> Hence, a writ of preliminary injunction and temporary restraining order may be issued when the act sought to be enjoined causes or may cause grave and irreparable injury to the public,<sup>7</sup> as in this case.

6.1. The implementation of the Cease and Desist Order endangers the livelihood not only of ABS-CBN’s 11,000 employees and their families, but also of its talents, content creators, security guards, canteen helpers, drivers, utility personnel and all those employed in the industries associated with its operation.<sup>8</sup>

6.2. The multibillion-peso advertising industry is particularly at risk as companies spend less on advertising when they cannot reach their audience.<sup>9</sup> The advertising industry “has historically invested up to 75 percent of its P151-billion business into TV.”<sup>10</sup> Needless to say, ABS-CBN is a major free-tv/radio platform on which numerous advertisements are aired everyday.

6.3. “[ABS-CBN] is also among the country’s largest taxpayers, having contributed up to P70.5 billion to the government between 2003 and 2020. Without the significant revenue stream the television network provides, [the] government would be hard-pressed to find funding

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<sup>5</sup> See Trinidad v. Moya, G.R. No. L-16886, 30 April 1965.

<sup>6</sup> Ermita v. Aldecoa-Delorino, G.R. No. 177130, 7 June 2011.

<sup>7</sup> See Boiser v. Court of Appeals, G.R. No. L-61438, 24 June 1983.

<sup>8</sup> See Transcript of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p. 146, Annex “E” of the Petition.

<sup>9</sup> “Blank TV screens: ABS-CBN’s fall spells losses for billion-peso ad industry”, Miguel R. Camus, 7 May 2020, Philippine Daily Inquirer, Available at: <https://business.inquirer.net/296754/blank-tv-screens-abs-cbns-fall-spells-losses-for-billion-peso-ad-industry> (last accessed on 15 May 2020).

<sup>10</sup> Explanatory Note of Senate Bill No. 1521, “An Act Granting the ABS-CBN Broadcasting Corporation a Provisional Franchise to Construct, Install, Operate, and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes”. Available at <https://www.senate.gov.ph/lisdata/32729295911.pdf> (last accessed on 16 May 2020).

for basic services like education, healthcare, and security.”<sup>11</sup> ABS-CBN’s shutdown means a significant reduction of income not only for ABS-CBN, but also for the industries associated with its operation, thereby further reducing tax revenues of the government.

6.4. The implementation of the Cease and Desist Order also deprives the public of a leading source of news and entertainment, impairing their constitutional right to information on matters of public concern.<sup>12</sup> Such grave and irreparable injury persists even if ABS-CBN’s programs may be accessed through its cable news channel and digital platforms, as a huge majority of the population still rely on radio and free television. In its 2013 Functional Literacy, Education and Mass Media Survey, the Philippine Statistics Authority found that 78.4% of households have television sets, while 40.5% have radio.<sup>13</sup> Television is still the most popular form of mass media with 65% of Filipinos aged 10 to 64 years old watching television everyday, while 26.3% percent listen to radio.<sup>14</sup> In contrast, only 16% of Filipinos 10 to 64 years old surf the internet for social interaction everyday, while 13.9% access the internet to do research work or study.<sup>15</sup>

6.5. More recently, in 2017, the Department of Information and Communications Technology released the National Broadband Plan which shows that only 28.3% of households and 40.7% of individuals in the Philippines have internet.<sup>16</sup>

6.6. Access to cable and satellite television is also very limited. A survey conducted by Kantar Media Research Philippines, a leading multinational audience

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<sup>11</sup> Explanatory Note of Senate Bill No. 1521, “An Act Granting the ABS-CBN Broadcasting Corporation a Provisional Franchise to Construct, Install, Operate, and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes”. Available at <https://www.senate.gov.ph/lisdata/32729295911.pdf> (last accessed on 16 May 2020).

<sup>12</sup> Section 7, Article III, 1987 Constitution.

<sup>13</sup> Philippine Statistics Authority, 2013 Functional Literacy, Education and Mass Media Survey Final Report, p. 19. Available at: <https://psa.gov.ph/sites/default/files/2013%20FLEMMS%20Final%20Report.pdf> (last accessed on 15 May 2020).

<sup>14</sup> Id., p. 42.

<sup>15</sup> Id.

<sup>16</sup> Department of Information and Communications Technology (2017), “National Broadband Plan: Building Infostructures for a Digital Nation”, p. iii, citing “The State of Broadband: Broadband Catalyzing Sustainable Development (2016), UN Broadband Commission. Accessed from <https://dict.gov.ph/wp-content/uploads/2017/09/2017.08.09-National-Broadband-Plan.pdf> on 15 May 2020.

measurement provider, shows that only 9% of households in the country have cable television subscriptions while 18% have access to satellite television.<sup>17</sup> The government's own data as of 2017 is that only 18% of Filipino viewers watch through cable or satellite television.<sup>18</sup>

6.7. In another survey conducted by Kantar, from 1 January to 14 March 2020, ABS-CBN reached 99% of households in the Philippines.<sup>19</sup> A separate Pulse Asia Survey shows that more than 70% of all Filipinos tuned in to ABS-CBN in 2019.<sup>20</sup>

6.8. In some areas, ABS-CBN operates one of the very few (if not the only) available television and radio stations. For instance, ABS-CBN's Channel 34 DTTB Station is **one of only two** TV/DTTB Stations in Nueva Vizcaya, while its D-11-ZZ Channel 2 (in) and Channel 11 (out) TV Station is **one of only three** TV stations in Mountain Province.<sup>21</sup>

6.9. With ABS-CBN's unparalleled reach, it is imperative that ABS-CBN be on air to give timely and reliable information to the public, especially in light of the current public health emergency and the natural calamities that regularly threaten the country, such as typhoons, earthquakes and floods.

6.10. The implementation of the Cease and Desist Order likewise impairs the capacity of ABS-CBN to ask for donations nationwide and therefore its ability to provide relief to those in need, to the prejudice of thousands of would-be beneficiaries. In fact, ABS-CBN has raised over

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<sup>17</sup> Kantar's TV Establishment Survey 2019 (TV Ownership and Home Broadband Subscription), a summary of which is attached hereto as **Annex "A"**.

<sup>18</sup> Department of Information and Communications Technology (2017), "Framework of the Digital Terrestrial Television Broadcasting (DTTB) Migration Plan. Bringing New Dimensions to the Broadcasting Experience of Filipinos", p. 11. Available at [https://dict.gov.ph/wp-content/uploads/2017/10/PHL-Framework-for-the-DTTB-Migration-Plan\\_V1-3-1.pdf](https://dict.gov.ph/wp-content/uploads/2017/10/PHL-Framework-for-the-DTTB-Migration-Plan_V1-3-1.pdf) (last accessed on 15 May 2020).

<sup>19</sup> Kantar's TV Audience Measurement from 1 January to 14 March 2020, a summary of which is attached hereto as **Annex "B"**.

<sup>20</sup> See Transcript of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p. 61, Annex "E" of the Petition.

<sup>21</sup> See List of TV Broadcast Stations from the National Telecommunications Commission. Available at <https://www.foi.gov.ph/requests/aglzfmVmb2kctcGhyHQsSB0NvbnRlbnQiEE5UQy03NzI5MTU1ODc4MDYm> (last accessed on 15 May 2020).

Php 237 million for COVID response<sup>22</sup> and it intends to raise more, but the CDO has curtailed its capacity to do so.

6.11. The implementation of the Cease and Desist Order also reduces competition in the broadcast industry to the detriment of the public. As explained by Commissioner Johannes Bernabe of the Philippine Competition Commission during the 24 February 2020 hearing of the Senate Committee on Public Service, competition keeps the cost of services low, in this case, the cost of advertising services,<sup>23</sup> upon which other industries depend. Advertising companies in the country have, in fact, expressed alarm over the abrupt shutdown of ABS-CBN as it has the widest reach, especially in provincial areas, among the broadcasting companies.<sup>24</sup>

6.12. While the Cease and Desist Order is in effect, millions of avid Filipino fans, who watch ABS-CBN entertainment shows and programs daily, are deprived of this source of leisure and enjoyment. Under the extended quarantine conditions, Filipinos are literally in prison within their homes and are unable to go out. Such difficult constraint will surely add emotional and mental stress that is detrimental to their well-being.<sup>25</sup>

6.13. Finally, the implementation of the Cease and Desist Order impacts negatively on the freedom of speech and of the press which are intended to promote free exchange of ideas.<sup>26</sup> Such objective is necessarily defeated when the public's leading source of information is prevented from operating.

7. In view of the foregoing, ABS-CBN respectfully reiterates its prayer for the issuance of a writ of preliminary

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<sup>22</sup> "ABS-CBN's 'Pantawid ng Pag-ibig' concert raises P237 M". See <https://entertainment.inquirer.net/369187/fwd-abs-cbns-concert-from-home-raises-nearly-p237-million> (last accessed on 15 May 2020).

<sup>23</sup> Transcript of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, pp. 142-144, Annex "E" of the Petition.

<sup>24</sup> CNN Philippines, 7 May 2020, "ABS-CBN shutdown alarms advertising firms". Available at: <https://cnnphilippines.com/news/2020/5/7/abs-cbn-shutdown-alarms-advertising-firms.html> (last accessed on 15 May 2020).

<sup>25</sup> See "Depression on the rise due to ECQ", Bum D. Tenorio, Jr., 29 April 2020, The Philippine Star. Available at <https://www.philstar.com/headlines/2020/04/29/2010543/depression-rise-due-ecq> (last accessed 16 May 2020).

<sup>26</sup> *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, 21 January 2015; *Soriano v. Laguardia*, G.R. No. 164785, 29 April 2009.

injunction to restrain the NTC from implementing the CDO while the instant Petition is pending.

8. ABS-CBN also prays for the **immediate** issuance of a **TRO** to arrest the grave injustice and irreparable injury that ABS-CBN, its 11,000 employees, various stakeholders and the general public have begun to suffer.

### **RELIEF**

WHEREFORE, it is respectfully prayed that:

1. A Temporary Restraining Order be immediately issued restraining Respondent National Telecommunications Commission and all other persons acting under its direction, control or supervision, from implementing the Cease and Desist Order dated 5 May 2020 in NTC Adm. Case No. 2020-008 or performing similar acts; and

2. After proceedings held, a Writ of Preliminary Injunction be issued restraining Respondent National Telecommunications Commission and all other persons acting under its direction, control or supervision from implementing the aforesaid Cease and Desist Order or performing similar acts.

Other reliefs, just and equitable under the premises, are likewise prayed for.

Respectfully submitted.

Makati City for the City of Manila, 18 May 2020.

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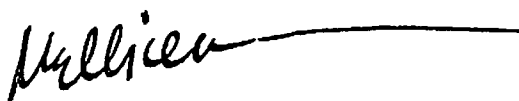
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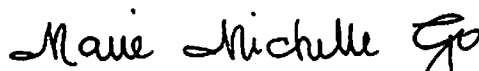
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**Copy Furnished:**

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**EXPLANATION**

A copy of this *Motion* will be served by courier due to the constraints imposed by the Enhanced Community Quarantine currently in effect in Metro Manila. An extra copy of this *Motion* will also be personally served on the NTC.

**JAYSON C. AGUILAR**