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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

2020 MAY -7 PM 3:16

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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PETITION FOR CERTIORARI AND PROHIBITION
(With Urgent Applications for the Issuance of a
a Temporary Restraining Order and/or
a Writ of Preliminary Injunction)

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

I.

NATURE AND TIMELINESS OF THE PETITION

1. This is a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Court. It seeks to nullify and set aside the 5 May 2020 Order of the National Telecommunications Commission ("NTC") in NTC Adm. Case No. 2020-008, entitled *National Telecommunications Commission v. ABS-CBN Corporation*, insofar as it ordered ABS-CBN to "immediately CEASE and DESIST from operating... radio and television stations" identified by the NTC (the "Cease and Desist Order" or "CDO").

1.1. A duplicate original of the 5 May 2020 Order is attached to the original copy of this Petition as **Annex "A"**. Photocopies thereof are attached to the other copies.

2. ABS-CBN received a copy of the 5 May 2020 Order of the NTC on the same day. Under Rule 65, ABS-CBN has sixty (60) days from 5 May 2020 to file a petition for *certiorari* and/or prohibition. This Petition is thus timely filed.

II. PARTIES

3. Petitioner ABS-CBN is a broadcast media corporation duly organized and existing under the laws of the Philippines, with principal office at the 4th Floor ELJ Communication Center, E. Lopez Drive, Quezon City. It may be served with summons, orders and other processes of this Honorable Court through the undersigned counsel at its address stated below.

4. Respondent NTC is a governmental office created under Executive Order No. 546. It may be served with summons, orders and other processes of this Honorable Court at its office address at NTC Building, BIR Road, 1104 Quezon City.

III. STATEMENT OF MATERIAL FACTS

5. On 30 March 1995, ABS-CBN was granted a legislative franchise to "construct, operate and maintain, for commercial purposes and in the public interest, television and radio broadcasting stations in and throughout the Philippines" under Republic Act ("RA") No. 7966. The franchise was valid for a term of twenty-five years from the law's effectivity on 4 May 1995, or until 4 May 2020.

Bills for the Renewal of ABS-CBN's Franchise

6. As early as 2014, bills for the renewal of ABS-CBN's franchise had been filed by several lawmakers. In the 16th Congress, House Bill ("HB") No. 4997 entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (Formerly ABS-CBN Broadcasting Corporation) Under Republic Act No. 7966 Or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines, and for Other Purposes' For Twenty-Five (25) Years from the Effectivity

Of This Act” was filed by Representative (“Rep.”) Giorgidi B. Aggabao before the House of Representatives (the “House”).¹

7. In the 17th Congress, in November 2018, a similar bill was filed before the House by Rep. Micaela S. Violago, namely, HB No. 4349.²

8. In the current (or 18th) Congress, there are eleven bills, seeking the renewal of ABS-CBN’s franchise, which are currently pending with the House Committee on Legislative Franchises, namely:

- a. HB No. 676, filed by Rep. Micaela S. Violago on 1 July 2019;³
- b. HB No. 3521, filed by Rep. Rose Marie J. Arenas on 6 August 2019;⁴
- c. HB No. 3713, filed by Rep. Joy Myra S. Tambunting on 8 August 2019;⁵

¹ A copy of House Bill No. 4997 is publicly-available at the House of Representative’s official website; see http://congress.gov.ph/legisdocs/basic_16/HB04997.pdf (last accessed on 6 May 2020).

² A copy of House Bill No. 4349 is publicly-available at the House of Representative’s official website; see http://congress.gov.ph/legisdocs/basic_17/HB04349.pdf (last accessed on 6 May 2020).

³ Entitled “An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or ‘An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes’ for Twenty-Five (25) Years from the Effectivity of this Act”. A copy of House Bill No. 676 is publicly-available at the House of Representative’s official website; see http://congress.gov.ph/legisdocs/basic_18/HB00676.pdf (last accessed on 6 May 2020).

⁴ Entitled “An Act Renewing the Franchise Granted to ABS-CBN Corporation under Republic Act No. 7966 Otherwise Known as ‘An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes’ for Twenty-Five (25) Years from the Effectivity of this Act”. A copy of House Bill No. 3521 is publicly-available at the House of Representative’s official website; see http://congress.gov.ph/legisdocs/basic_18/HB03521.pdf (last accessed on 6 May 2020).

⁵ Entitled “An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or ‘An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes’ for Twenty-Five (25) Years from the Effectivity of this Act”. A copy of House Bill No. 3713 is publicly-available at the House of Representative’s official website; see http://congress.gov.ph/legisdocs/basic_18/HB03713.pdf (last accessed on 6 May 2020).

- d. HB No. 3947, filed by. Rep. Sol Aragonés on 14 August 2019;⁶
- e. HB No. 4305, filed by. Rep. Vilma Santos-Recto on 2 September 2019;⁷
- f. HB No. 5608, filed by. Reps. Aurelio D. Gonzales, Jr., Johnny T. Pimentel and Paulino Salvador C. Leachon on 25 November 2019;⁸
- g. HB No. 5705, filed by. Rep. Rufus B. Rodriguez on 9 December 2019;⁹
- h. HB No. 5753, filed by. Rep. Josephine Ramirez-Sato on 9 December 2019;¹⁰

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- ⁶ Entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes' for Twenty-Five (25) Years from the Effectivity of this Act". A copy of House Bill No. 3497 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB03947.pdf (last accessed on 6 May 2020).
 - ⁷ Entitled "An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to ABS-CBN Corporation under Republic Act No. 7966, Entitled 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines', and for Other Purposes". A copy of House Bill No. 4305 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB04305.pdf (last accessed on 6 May 2020).
 - ⁸ Entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes' for Twenty-Five (25) Years from the Effectivity of this Act". A copy of House Bill No. 5608 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB05608.pdf (last accessed on 6 May 2020).
 - ⁹ Entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes' for Twenty-Five (25) Years from the Effectivity of this Act". A copy of House Bill No. 5705 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB05705.pdf (last accessed on 6 May 2020).
 - ¹⁰ Entitled "An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to ABS-CBN Broadcasting Corporation, Presently Known as ABS-CBN Corporation, under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes'". A copy of House Bill No. 5753 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB05753.pdf (last accessed on 6 May 2020).

- i. HB No. 6052, filed by. Reps. Carlos Isagani T. Zarate, Ferdinand R. Gaité, Eufemia C. Cullamat, France L. Castro and Sarah Jane I. Elago on 27 January 2020;¹¹
- j. HB No. 6138, filed by. Rep. Mark O. Go on 30 January 2020;¹² and
- k. HB No. 6293, filed by Rep. Loren Legarda on 13 February 2020.¹³

9. In addition to these Bills, three Resolutions were filed in relation to the renewal or extension of ABS-CBN's franchise:

- a. House Resolution ("HR") No. 639, which urges the House Committee on Legislative Franchises to report, without delay, the pending franchise Bills of ABS-CBN for plenary action;¹⁴
- b. House Joint Resolution ("HJR") No. 28, which seeks the extension of the franchise of ABS-CBN until the end of the 18th Congress, or until 30 June 2022, to

¹¹ Entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes' for Twenty-Five (25) Years from the Effectivity of this Act". A copy of House Bill No. 6052 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB06052.pdf (last accessed on 6 May 2020).

¹² Entitled "An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes'". A copy of House Bill No. 6138 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB06138.pdf (last accessed on 6 May 2020).

¹³ Entitled "An Act Renewing the Franchise Granted to ABS-CBN Corporation (formerly ABS-CBN Broadcasting Corporation) under Republic Act No. 7966 or 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes' for Twenty-Five (25) Years from the Effectivity of this Act". A copy of House Bill No. 6293 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HB06293.pdf (last accessed on 6 May 2020).

¹⁴ Authored by Reps. Edcel Lagman, Micaela Violago, Jose Christopher Belmonte, Joy Tambunting, Johnny Pimentel, Emmanuel Billones, France Castro, Carlos Zarate, Eufemia Cullamat, Ferdinand Gaité, and Arlene Brosas, and filed on 6 January 2020. A copy of House Resolution No. 639 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HR00639.pdf (last accessed on 6 May 2020).

give Congress additional time to review and assess the franchise Bills;¹⁵ and

- c. HJR No. 29, which seeks to extend the franchise of ABS-CBN until 4 May 2021, to give Congress enough time to thoroughly study and debate on the pending franchise Bills.¹⁶

10. Two Bills seeking the renewal of ABS-CBN's franchise have been introduced before the Senate in the present Congress:

- a. Senate Bill ("SB") No. 981, filed by Senators Ralph Recto, Leila de Lima and Emmanuel Pacquiao on 28 August 2019;¹⁷
- b. SB No. 1403, filed by Senator Ramon Bong Revilla on 5 March 2020.¹⁸

11. Another Bill (SB No. 1374) was separately filed by Senator Revilla on 26 February 2020, seeking the amendment of Section 1 of RA No. 7966 to extend the term of the franchise of ABS-CBN until 31 December 2020, while Congress is still deliberating on the issue of franchise renewal.¹⁹

¹⁵ Authored by Rep. Raul del Mar and filed on 18 February 2020. A copy of House Joint Resolution No. 28 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HJR0028.pdf (last accessed on 6 May 2020).

¹⁶ Authored by Rep. Rufus Rodriguez and filed on 26 February 2020. A copy of House Joint Resolution No. 29 is publicly-available at the House of Representative's official website; see http://congress.gov.ph/legisdocs/basic_18/HJR0029.pdf (last accessed on 6 May 2020).

¹⁷ Entitled "An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to ABS-CBN Broadcasting Corporation, Presently Known as ABS-CBN Corporation, under Republic Act No. 7966, Entitled 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes'". A copy of Senate Bill No. 981 is publicly-available at the Senate's official website; see <http://senate.gov.ph/lisdata/3138928283!.pdf> (last accessed on 6 May 2020).

¹⁸ Entitled "An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to ABS-CBN Broadcasting Corporation, Presently Known as ABS-CBN Corporation, under Republic Act No. 7966, Entitled 'An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Establish, Operate, and Maintain Broadcasting Stations in the Philippines and for Other Purposes'". A copy of Senate Bill No. 1403 is publicly-available at the Senate's official website; see <http://senate.gov.ph/lisdata/3249929369!.pdf> (last accessed on 6 May 2020).

¹⁹ Entitled "An Act Amending Section 1 of Republic Act No. 7966 to Extend the Term of the Franchise of ABS-CBN Corporation Until 31 December 2020". A copy of Senate Bill No. 1374 is publicly-available at the Senate's official website; see <http://senate.gov.ph/lisdata/3240129258!.pdf> (last accessed on 6 May 2020).

12. These Bills are currently pending before the Senate Committee on Rules.

Proceedings Before the House and Senate

13. On 24 February 2020, the Senate Committee on Public Services called a hearing to “look into, in aid of legislation, the operations of ABS-CBN Corporation to determine compliance with the terms and conditions of its franchise under Republic Act No. 7966.”²⁰ During this hearing, Respondent NTC’s Commissioner, Gamaliel Cordoba, admitted *under oath* that the NTC has not withdrawn any Provisional Authority under similar circumstances and declared that in the case of ABS-CBN, it will issue a Provisional Authority if so advised by the Department of Justice (“DOJ”):

SEN. PANGILINAN. Madam Chairperson, just that last question and it can be answered by a “yes” or “no.” Have you withdrawn provisional authority to operate in the past?

MR. CORDOBA. Wala pa po, Your Honor.

SEN. PANGILINAN. Okay. Thank you.

THE CHAIRPERSON (SEN. POE). Senator Recto is recognized.

SEN. RECTO. Thank you, Madam Chair.

Just a very brief question. What is the predisposition of the NTC, assuming Congress fails to act on the franchise by March 11 or May 4, will you give ABS a provisional authority to operate?

MR. CORDOBA. Yes. Can I answer? Yes. Sir, based on the advice of the Department of Justice, then we will be able to do that, subject to the resolution that both Houses of Congress will issue.²¹

²⁰ Senate Resolution No. 322, filed on 12 February 2020 by Senator Grace Poe, a copy of which is publicly-available at the Senate’s official website; see <http://senate.gov.ph/lisdata/32333291861.pdf> (last accessed on 6 May 2020).

²¹ Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, pp. 47-48, attached hereto as Annex “E”.

14. Commissioner Cordoba further recognized that the NTC has not closed any broadcast company in the past due to an expired franchise, pending the renewal of said franchise:

SEN. RECTO. No, assuming there is no resolution? Because in the past, Congress did not pass any resolution. The Executive did give provisional authority to operate.

MR. CORDOBA. Your Honor, in the past, we did not issue any provisional authority after the franchises have expired.

SEN. RECTO. Yes. But did you close them down?

MR. CORDOBA. No, Your Honor.

SEN. RECTO. You did not.

MR. CORDOBA. Yes, Your Honor.

SEN. RECTO. In effect, you allowed them to operate?

MR. CORDOBA. Yes, Your Honor.²²

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MR. CORDOBA. Actually, Your Honor, wala po kaming in-issue na provisional authority sa CBCP. It just continued on, Your Honor. So based on the original ano po nila iyon, license po.

SEN. BINAY. Which pwede rin sa ABS?

MR. CORDOBA. Yes, Your Honors.²³

15. On 10 March 2020, the House Committee on Legislative Franchises began proceedings on and conducted a preliminary hearing of the House Bills for the renewal or grant

²² Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p. 48, attached hereto as Annex "E".

²³ Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p. 60, attached hereto as Annex "E".

of ABS-CBN's franchise.²⁴ It also directed all interested parties to submit their position papers for or against the franchise's renewal.²⁵ During this hearing, NTC Commissioner Cordoba, declared (presumably) under oath that the NTC "will follow the advice of the DOJ and let ABS-CBN continue their operations based on equity."²⁶

Congressional calls for the issuance of a Provisional Authority

16. Pending their deliberations on the foregoing Bills, both the House and the Senate have called for the issuance by Respondent NTC of a Provisional Authority in favor of ABS-CBN, as promised by Commissioner Cordoba.

17. On 26 February 2020, the House Committee on Legislative Franchises sent the NTC a letter "enjoin[ing] the NTC to grant ABS-CBN Corporation a provisional authority to operate effective May 4, 2020 until such time that the House of Representatives/Congress has made a decision on its application". The letter was signed by the Committee's Chairperson, Franz E. Alvarez, with conforme of Speaker Alan Peter S. Cayetano.²⁷

18. House Speaker Cayetano has also publicly said that he will coordinate with Respondent NTC to allow ABS-CBN to continue operations, saying, "Meron po tayong ugnayan sa NTC na gagawin na habang naghi-hearing kami o habang pending sa amin, hindi magsasara. So, is it important? Yes. But is it urgent?"²⁸

²⁴ "House to finally tackle ABS-CBN franchise renewal bills on March 10, 4 March 2020", Manila Bulletin, available at <https://news.mb.com.ph/2020/03/04/house-to-finally-tackle-abs-cbn-franchise-renewal-bills-on-march-10/> (last accessed 6 May 2020).

²⁵ See the 26 February 2020 Letter of the House Committee on Legislative Franchises addressed to NTC Commissioner Hon. Gamaliel A. Cordoba (attached hereto as Annex "B"; see also "House panel asks pro, anti ABS-CBN franchise renewal to submit position papers", Inquirer.net, available at <https://newsinfo.inquirer.net/1232561/house-panel-asks-pro-anti-abs-cbn-franchise-renewal-to-submit-position-papers#ixzz6G5Ka86ro> (last accessed 8 March 2020)

²⁶ "NTC to issue provisional authority to ABS-CBN pending franchise renewal bid". See: <https://www.cnnphilippines.com/news/2020/3/10/NTC-ABS-CBN-franchise-renewal.html> (last accessed on 6 May 2020).

²⁷ See the 26 February 2020 Letter of the House Committee on Legislative Franchises addressed to NTC Commissioner Hon. Gamaliel A. Cordoba (attached hereto as Annex "B").

²⁸ "Cayetano vows ABS-CBN won't close while House tackles franchise renewal". See : <https://newsinfo.inquirer.net/1231423/cayetano-to-work-with-ntc-to-ensure-abs-cbn-wont-close-as-house-hears-franchise> (last accessed on 6 May 2020), underscoring supplied.

19. He earlier declared that ABS-CBN may operate while Bills seeking to renew its franchise are still pending in Congress: *"Hindi ganoon ka-urgent. Bakit? Kasi hanggang March 2022, pwedeng mag-operate. Definitely, before March 2022, possibly in May if we have cooler heads... Chairman Albano agrees; Senate President agrees. I looked at the legal basis, parang habang hindi nade-deny [ang pending bills, hindi magsasara], kaya sana, 'yun rin ang isipin niyo."*²⁹

20. On 4 March 2020, the Senate adopted Resolution No. 40, "expressing the sense of the Senate that ABS-CBN Corporation, its subsidiaries and/or affiliates, ABS-CBN Convergence, Inc., Sky Cable Corporation and Amcara Broadcasting Network, Inc., should continue to operate pending final determination of the renewal of its franchise by the 18th Congress."³⁰ It was an adoption of Senate Concurrent Resolution No. 6, which was earlier filed by Senator Franklin M. Drilon,³¹ taking into consideration Concurrent Resolution Nos. 7³² and 8,³³ and Proposed Resolution No. 344.³⁴

21. Senate President Vicente Sotto III and Rep. Tonypet Albano, the House Committee on Legislative Franchises' Vice-Chairman, similarly expressed their opinion that ABS-CBN may continue to operate as long as there are franchise renewal Bills

²⁹ "Cayetano: ABS-CBN may operate until 2022 even if franchise expires in March". See <https://www.gmanetwork.com/news/news/nation/726006/house-to-let-abs-cbn-franchise-expire-before-discussing-renewal-cayetano/story/> (last accessed on 6 May 2020), underscoring supplied.

³⁰ See http://senate.gov.ph/lis/pdf_sys.aspx?congress=18&type=adopted_res (last accessed on 6 May 2020) and <https://www.senate.gov.ph/lisdata/3250129372!.pdf> (last accessed on 6 May 2020).

³¹ Entitled "Concurrent Resolution Expressing the Sense of The Congress that ABS-CBN Corporation Should Continue to Operate Pending Final Determination of the Renewal of its Franchise by the 18th Congress." A copy of Concurrent Resolution No. 6 is publicly-available at the Senate's official website; see <http://senate.gov.ph/lisdata/3238829245!.pdf> (last accessed on 6 May 2020).

³² Entitled "Concurrent Resolution Expressing the Sense of The Congress to Allow ABS-CBN Corporation to Operate Pending Final Determination of the Renewal of its Franchise by the 18th Congress Through the Issuance of the Appropriate Provisional Authority by the National Telecommunications Commission"

³³ Entitled "Concurrent Resolution Expressing the Sense of The Congress to Allow ABS-CBN Corporation and Sky Cable Corporation to Operate Pending Final Determination of the Renewal of Their Respective Franchises by the 18th Congress Through the Issuance of the Appropriate Provisional Authority by the National Telecommunications Commission". Concurrent Resolution Nos. 7 and 8 were introduced by Senators Manuel M. Lapid, Sherwin Gatchalian, Joel Villanueva, Maria Lourdes Nancy S. Binay, Juan Miguel F. Zubiri, Sonny Angara, Ralph G. Recto, Grace Poe, and Emmanuel D. Pacquiao.

³⁴ Introduced by Senators Pia S. Cayetano, Ronald Dela Rosa, Christopher Lawrence Go, Imee R. Marcos, Ramon Bong Revilla, Jr., Francis Tolentino, Cynthia A. Villar, Juan Miguel F. Zubiri, Emmanuel D. Pacquiao, Sonny Angara, Joel Villanueva, Win Gatchalian and Maria Lourdes Nancy S. Binay. A copy of P.S. Res. No. 344 is publicly-available at the Senate's official website; see <http://senate.gov.ph/lisdata/3245929312!.pdf> (last accessed on 6 May 2020).

pending before the House. Sen. Sotto said: “*Even provisional authority is not necessary because as long as there is a pending franchise, or pending bill for extension of franchise, they are deemed extended. Ganun ‘yun...They can still operate. If it is not approved until March 2022, that is the only time that it is terminated. As long as there’s a pending bill [for franchise renewal], it is deemed extended. It has happened so many times in other franchises.*”³⁵

22. Rep. Albano expressed his agreement with the sentiments of Sen. Sotto: “*Senate President Sotto and I have already explained so many times that ABS-CBN may actually legally continue to operate under its existing franchise until that is formally terminated or until the end of the 18th Congress...*”³⁶

The DOJ’s Guidance

23. For its part, the DOJ—through Justice Secretary Menardo Guevarra, the President’s alter ego—issued on 26 February 2020 a “guidance” to the NTC, on the issue of whether ABS-CBN may continue to operate until the end of the current 18th Congress, while its franchise renewal bill is still pending.³⁷ This was in response to NTC’s request for legal advice from its lawyer, the DOJ Secretary:

MR. CORDOBA. xxx But just to let you know, Your Honors, the reason why ito pong particular franchise na ito why we have to **ask for guidance from the Department of Justice at humingi po ng advice sa kanila as our lawyer** is that in those franchises ay wala naman pong objections na mabibigat. But in this case, there is even a petition for *quo warranto* filed by the SolGen. **So, we deemed it as prudent po na humingi ng advice from our lawyer, that is the Secretary of Justice.**

THE CHAIRPERSON (SEN. POE). So, in this case, you’ll wait for Congress to tell you to grant the permit to operate?

³⁵ “ABS-CBN will not be shut – senators” See: <https://www.manilatimes.net/2020/02/13/news/headlines/abs-cbn-will-not-be-shut-senators/685533/> (last accessed on 6 May 2020).

³⁶ *Id.*

³⁷ A copy of the DOJ’s 26 February 2020 guidance to the NTC is attached hereto as Annex “C”.

MR. CORDOBA. Based on the discussions with the Secretary of Justice ay parang ganoon po ang aming magiging position.

THE CHAIRPERSON (SEN. POE). Pero kung hindi sila nagsalita, wala namang opinion, hindi naman nila sinabing huwag ninyong ibigay iyong extension, puwede pa rin namang mag-operate, in your case? O ipapa-cancel na ninyo?

MR. CORDOBA. I guess, Your Honors, **I will have to defer to the opinion of the Secretary of Justice dahil sila po naman ang magdedefend sa amin kung sakali pong may kaso.**³⁸ (Emphasis supplied)

24. Secretary Guevarra then opined, among others, that:

- a. There is an “established practice” or “equitable practice” to allow a broadcast company to continue its operations despite an expired franchise, pending the renewal of its franchise. It is imperative that the same treatment be extended to all similarly-situated entities, consistent with the basic principles of fairness and justice.
- b. The plenary power of Congress includes the auxiliary power to define and preserve the rights of the franchise applicant pending final determination on the renewal of the franchise.
- c. The NTC may provisionally authorize an entity to operate.

NTC Memorandum Order dated 16 March 2020 (Implementation of Enhanced Community Quarantine over Entire Luzon Island Including Metro Manila)

25. A global health crisis emerged in the first quarter of 2020,³⁹ such that, on 11 March 2020, the World Health Organization declared a novel coronavirus disease (“Covid-19”)

³⁸ Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, pp. 51-52, attached hereto as Annex “E”.

³⁹ “WHO Director-General’s statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)”, World Health Organization, 30 January 2020, available at [https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-(2019-ncov)) (last accessed on 6 May 2020).

outbreak as a global pandemic.⁴⁰ President Rodrigo Duterte declared a State of Public Health Emergency throughout the Philippines⁴¹ and eventually placed the entire country under a State of Calamity and the island of Luzon under an “Enhanced Community Quarantine” (“ECQ”).⁴² Pursuant thereto, regular work in the Executive Department (i.e., including the NTC) was suspended.⁴³

26. On 16 March 2020, Respondent NTC, due to the mandated suspension of regular work during the ECQ, issued a Memorandum Order declaring that: “All subsisting permits, permits necessary to operate and maintain broadcast and pay TV facilities nationwide expiring within the quarantine period shall automatically be renewed and shall continue to be valid sixty (60) days after the end of the government-imposed quarantine period. Thereafter, these stations shall be given sixty (60) days to file for the renewal of their permits/licenses without penalties or surcharges.”⁴⁴ ABS-CBN considered this Memorandum Order as applicable to it since its franchise (and provisional authority) was set to expire on 4 May 2020.

The Office of the Solicitor General’s (“OSG”) “Warning” to the NTC

27. On 3 May 2020, Solicitor General Jose Calida, through a press release, “warned the [NTC] against granting ABS-CBN provisional authority to operate while the approval of its franchise is pending in Congress.”⁴⁵ He acknowledged that this matter involves the power of Congress to grant franchises under the Constitution, thus:

“Calida stressed that the Constitution gives Congress the exclusive power to grant franchises to public

⁴⁰ “WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020”, World Health Organization, 11 March 2020, available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last accessed on 6 May 2020).

⁴¹ Declaring a State of Public Health Emergency throughout the Philippines, Proclamation No. 922, 8 March 2020.

⁴² Declaring a State of Calamity throughout the Philippines Due to Corona Virus Disease 2019, Proclamation No. 929, 16 March 2020.

⁴³ Community Quarantine over the Entire Luzon and Further Guidelines for the Management of the Coronavirus Disease (Covid-19) Situation, Memorandum from the Office of the President’s Executive Secretary, 16 March 2020.

⁴⁴ A copy of NTC Memorandum Order dated 16 March 2020 is attached hereto as **Annex “D”**.

⁴⁵ “Calida warns NTC vs granting provisional authority to ABS-CBN”. See: <https://newsinfo.inquirer.net/1268851/calida-warns-ntc-vs-granting-provisional-authority-to-abs-cbn#ixzz6LbxoHS6N> (last accessed on 6 May 2020).

utilities, such as broadcasting companies, in order to operate in the country.

Although this legislative power may be delegated to administrative agencies through a law, at present, there is no such law giving the NTC or any other agency the power to grant franchises to broadcasting entities. xxx

The NTC cannot issue a PA when the broadcast company has no valid and existing legislative franchise.”

28. He further declared that “the NTC commissioners could risk subjecting themselves to prosecution under the country’s anti-graft and corruption laws should they issue the ‘unlawful’ [provisional authorities] to ABS-CBN in the absence of a franchise.”⁴⁶

29. Secretary Guevarra countered the OSG’s statement, reiterating that ABS-CBN can continue operating while its franchise renewal is ongoing in Congress:⁴⁷

“The Department of Justice (DOJ) stands by its position that there is sufficient equitable basis to allow broadcast entities to continue operating while the bills for the renewal of their franchise remain pending with Congress xxx

In several similar situations in the past, Congress allowed the status quo, without urging the NTC to issue a temporary or provisional permit, in consideration of the equities of the situation.

The case of Associated Communications does not apply because in that case, the company did not even have an original franchise to begin with. In the present case, the subject company had already been granted a franchise and a license to operate, albeit subject to further deliberations for its renewal xxx”⁴⁸

30. Several lawmakers also disagreed with Solicitor General Calida’s statements, including House Committee on

⁴⁶ *Id.*

⁴⁷ “Guevarra counters Calida: ABS-CBN can operate while franchise renewal ongoing”. See: <https://www.rappler.com/nation/259864-guevarra-counters-calida-abs-cbn-can-operate-franchise-renewal-ongoing> (last accessed on 6 May 2020).

⁴⁸ *Id.*

Legislative Franchises Chairperson Franz Alvarez, who said that “[w]ith the legal opinion of the Department of Justice and the authority given by the House of Representatives, there is no reason for ABS-CBN to discontinue or stop their operations.”⁴⁹ Senator Sonny Angara noted that Solicitor General Calida’s warning to the NTC appears “to be in conflict” with DOJ Secretary Guevarra’s earlier opinion that the Commission could issue ABS-CBN a provisional authority.⁵⁰ On Secretary Guevarra’s opinion, he remarked, “Congress has expressed the same opinion and it has support in past legislative and executive practice.”⁵¹

31. Senator Juan Miguel Zubiri also expressed his view that it would be “highly irregular” to shut down a major network during the Covid-19 pandemic, when information dissemination is crucial.⁵² Rep. Joey Salceda even warned that based on a study, the closure of ABS-CBN will have a “direct impact” on the state of the coronavirus crisis in the country. He said: “We have an entire model, essentially this thing will cost us 2,600 more infections. In short, it has a direct impact on something that we’re trying to deal with so it is an existential threat to the country.... COVID-19 is an existential threat and the NTC behavior essentially is aggravating this threat to our national health and national security.”⁵³ He explained that the model was based on the time Filipinos spend watching television, how many people get their information through television channels, and the market share of ABS-CBN, among others.⁵⁴

⁴⁹ “Lawmakers assert authority over ABS-CBN franchise”. See: <https://newsinfo.inquirer.net/1269645/lawmakers-assert-authority-over-abs-cbn-franchise> (last accessed on 6 May 2020).

⁵⁰ “NTC can allow ABS-CBN to operate despite Calida warning – senators”. See <https://newsinfo.inquirer.net/1269570/senators-on-calida-warning-to-ntc> (last accessed on 7 May 2020).

⁵¹ *Id.*

⁵² “Sen. Zubiri says NTC may issue permit to ABS-CBN”. See: https://news.mb.com.ph/2020/05/04/sen-zubiri-says-ntc-may-issue-permit-to-abs-cbn/?_cf_chl_jschl_tk=__ce601bb1bdb008326271d4db4882b019d13f8e27-1588721174-0-ATdEZ2iqwc0luYgFIoDi4ZjY74mqgj23rkLaUdp_NnKoUhDOJolPc2y88-n8WlIglJOx9IxbkSIbGOcBCH2OCj--HowVgguUtKnO40_KTALKJstUPImIX5Uc5BkNzINBaLRUezAERXnkMapkY9iSaziJluDkOodM8OwWkaKftODrKOWUxJ67dGODpoO9tkGYx-i-etni8UR_9atr6BBG9e3FJ8j5JiEHBMwWGFte376SXXKFC_hGtlwEC6CGO3_LcXDikAluMC88UlwMYvK9EZS2FXOO1SdUr6njfJHAsR8UtEsOeKDH1c2uraAH4hr3gMvixANpWSAuyipqZgYaeo-culs_T8un5U8yDArc1d6i0 (last accessed on 6 May 2020).

⁵³ “ABS-CBN shutdown to add 2,600 COVID-19 cases — Salceda”. See <https://newsinfo.inquirer.net/1270541/abs-cbn-shutdown-to-add-2600-covid-19-cases-salceda#ixzz6LgLVJ6zU> (last accessed on 7 May 2020).

⁵⁴ *Id.*

NTC's Issuance of the assailed CDO

32. Despite the foregoing, on 5 May 2020, Respondent NTC issued its Order directing ABS-CBN to “immediately **CEASE and DESIST** from operating [its] radio and television stations.” It was based solely on the supposed “expiration of RA 7966”. No other ground was raised.

33. ABS-CBN received the Order on 5 May 2020. In the evening of that day, the radio and television stations identified in the Order went off-air.

34. The 5 May 2020 Order also directed ABS-CBN to “**SHOW CAUSE...** why the [mentioned] frequencies assigned to it should not be recalled for lack of the necessary Congressional Franchise as required by law.” This portion of the Order is not being assailed in this Petition.

**IV.
STATEMENT OF ISSUE**

Whether or not the NTC committed
grave abuse of discretion amounting to
lack or excess of jurisdiction
in issuing the CDO.

**V.
ARGUMENTS**

- A. Direct resort to this Honorable Court is necessary and justified given the urgency and transcendental importance of the subject matter, and the grave and irreparable repercussions on public interest brought about by the issuance of the CDO.**
- B. There is no plain, speedy and adequate remedy available to ABS-CBN other than a petition for *certiorari* and/or prohibition under Rule 65 of the Rules of Court.**
- C. Congress has plenary power to grant and renew legislative franchises. Instead of Issuing a CDO, the NTC**

should have deferred to Congress and allowed ABS-CBN to continue operating its television and radio stations.

- D. The CDO deviated from past practice and violated ABS-CBN's right to equal protection of the laws.
- E. The NTC violated ABS-CBN's right to due process by issuing the CDO without notice and hearing, and by ignoring the serious and irreparable damage that the CDO will inflict on ABS-CBN and thousands of its employees. The CDO also violates the right of the public to information and is necessarily a curtailment of the freedom of speech and of the press. Strong public interest and equity demand that ABS-CBN be allowed to continue its operations.

VI. DISCUSSION

- A. Direct resort to this Honorable Court is necessary and justified given the urgency and transcendental importance of the subject matter, and the grave and irreparable repercussions on public interest brought about by the issuance of the CDO.

35. While ABS-CBN is cognizant of the general policy on hierarchy of courts, there are compelling reasons which justify the direct invocation of this Honorable Court's jurisdiction. In its Resolution in Rama v. Moises, G.R. No. 197146, 8 August 2017, the Honorable Court *En Banc* declared:

The policy on the hierarchy of courts is not to be regarded as an iron-clad rule. In *The Diocese of Bacolod v. Commission on Elections* and *Querubin v. Commission on Elections*, the Court has enumerated the various specific instances when direct resort to the Court may be allowed, to wit: (a) **when there are genuine issues of constitutionality that must be addressed at the most immediate time;** (b) when

the **issues involved are of transcendental importance**; (c) **cases of first impression**; (d) when the constitutional issues raised are best decided by this Court; (e) when the **time element** presented in this case cannot be ignored; (f) **when the petition reviews the act of a constitutional organ**; (g) when there is **no other plain, speedy, and adequate remedy** in the ordinary course of law; (h) when **public welfare and the advancement of public policy** so dictates, or when demanded by the **broader interest of justice**; (i) when the orders complained of are patent nullities; and (j) when appeal is considered as clearly an inappropriate remedy. [Citations omitted; Emphasis supplied]

36. Several recognized exceptions to the doctrine of hierarchy of courts are present.

Exceptions to the Doctrine of Hierarchy of Courts

- (a) Transcendental Importance/Violation of Constitutional Rights

37. In The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728, 21 January 2015, this Honorable Court recognized that issues of transcendental importance involving a threat to fundamental constitutional rights are exceptions to the doctrine of hierarchy of courts. In that case, the Court took action in the face of an *imminent* threat to the paramount right of freedom of speech and freedom of expression.

38. Here, many local and even international sectors have viewed the closure of ABS-CBN as an attack on the **freedom of speech and of the press**; and that such attack is not merely imminent—it has begun and is continuing. ABS-CBN had no choice but to do as Respondent NTC directed—shut down the stations enumerated in the CDO. Moreover, as will be discussed, the NTC violated ABS-CBN's **right to due process and equal protection of the law** when it issued the CDO. The severe effects of the Order on ABS-CBN, its employees, and the general public, render this an issue of transcendental importance.

- (b) Case of First Impression

39. The Petition is also a case of first impression. No jurisprudence exists on the issue of whether the NTC may validly issue a CDO against a broadcasting company, in contravention of the intent and desire of Congress to allow the continued broadcasting operation of the company pending the renewal of its franchise.

40. Substantial answers to the issue must be provided through jurisprudence, not only for the benefit of ABS-CBN, but of other franchise holders who may face the same predicament. In Government of the United States of America v. Purganan, G.R. No. 148571, 24 September 2002, this Honorable Court emphasized the need to settle matters of first impression in the interest of justice and for the guidance of the lower courts. A final resolution on the matter is particularly important given that even the top lawyers of the Government – the Secretary of Justice and the Solicitor General – have taken completely opposite positions.

(c) Powers of the Legislature are Implicated

41. Cases involving the powers or actions of constitutional organs are likewise exempt from the doctrine of hierarchy of courts. This is in recognition of this Honorable Court's power and obligation of judicial review, to ensure that an act of government is done in consonance with the authorities and rights allocated to it by the Constitution and by statute. In Angara v. Electoral Commission, G.R. No. 45081, 15 July 1936, this Honorable Court declared:

“The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial

supremacy" which properly is the power of judicial review under the Constitution."

42. Here, the plenary power of the legislature under the Constitution to grant and renew a franchise—along with the auxiliary powers concomitant thereto—is at the heart of the controversy. The Solicitor General's objection to the continued operation of ABS-CBN is likewise premised on the powers of Congress under the Constitution, as shown in his 3 May 2020 press statement. The boundaries of this legislative authority must be construed in relation to the NTC's power to issue Certificates of Public Convenience and Necessity or Provisional Authorities, to determine if grave abuse of discretion attended the issuance of the CDO. Resolving this controversy is, therefore, a proper exercise of this Honorable Court's judicial power.

(d) Exigency of Relief

43. The exigency of the reliefs sought in this Petition also justifies the direct invocation of this Honorable Court's jurisdiction. The CDO has caused severe and continuing irreparable injury to ABS-CBN, its employees, and the public. If the hierarchy of courts is strictly obeyed, the Petition would have to be filed before the Court of Appeals. After due proceedings and the Petition's resolution by the Court of Appeals, the aggrieved party will thereafter surely elevate the matter to this Honorable Court. While these proceedings are pending, the damage and prejudice caused to ABS-CBN and other stakeholders might very well become irreversible.

44. The urgent need for relief will be further discussed below.

(e) Public welfare and the advancement of public policy

45. The crux of the Petition – whether the CDO was issued with grave abuse of discretion, and the corollary issue of whether ABS-CBN should be allowed to continue operations under the present circumstances – are questions that implicate public welfare and the advancement of public policy.

46. The CDO affects not only ABS-CBN or its employees, but also the Government and the public, given the loss of a significant source of tax revenue as well as the closure of one of the leading providers of news and entertainment. These roles

are vital, particularly at the moment, when the country is faced with a pandemic.

Pure Questions of Law

47. The Petition also meets a fundamental requisite to qualify for an exception from the doctrine of hierarchy of courts – it only seeks a resolution of questions of law.

48. In Gios-Samar, Inc. v. Department of Transportation and Communications, G.R. No. 217158, 12 March 2019, this Honorable Court declared that “direct recourse to this Court is proper only to seek resolution of questions of law”. It clarified that the *raison d’être* behind the doctrine of hierarchy of courts is to prevent questions of fact from being brought directly before the Court, as it is not a trier of facts.

49. ABS-CBN has not breached this underlying principle. This Petition only seeks the resolution of legal questions. Further, the facts referred to in the Petition do not require this Court to receive and evaluate evidence. Rather, all these factual allegations pertain to official acts of the legislative and executive departments of the Philippines, and are of public record or public knowledge. This Honorable Court may thus take judicial notice of these matters without need of evidence.

50. It must be emphasized that rules of procedure are mere tools designed to serve the ends of justice, and not barriers that should stand in the way of attaining the same. Roque, Jr. v. Commission on Elections, G.R. No. 188456, 10 September 2009. Rigid adherence to the technicalities of procedure is thus not necessary, if the result is merely to frustrate the ends of justice.

B. There is no plain, speedy and adequate remedy available to ABS-CBN other than a petition for certiorari and/or prohibition under Rule 65 of the Rules of Court.

51. Sections 1 and 2 of Rule 65 provide that in the absence of any “plain, speedy and adequate remedy”, an aggrieved party may avail itself of the extraordinary remedy of *certiorari* and/or prohibition. There is no such other “plain,

speedy and adequate remedy" available to ABS-CBN in this case.

52. As a rule, one must first file a motion for reconsideration with the tribunal/agency concerned before proceeding to file a petition for *certiorari*/prohibition with proper court. However, the exceptions to this rule are settled:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon by the lower court;
- (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner**, or the subject matter of the action is perishable;
- (d) **where, under the circumstances, a motion for reconsideration would be useless;**
- (e) **where petitioner was deprived of due process and there is extreme urgency for relief;**
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) **where the proceedings in the lower court are a nullity for lack of due process;**
- (h) **where the proceedings were ex parte or in which the petitioner had no opportunity to object; and**
- (i) **where the issue raised is one purely of law or where public interest is involved.**⁵⁵

53. Related to this is the rule on exhaustion of administrative remedies, which enjoins a party seeking the intervention of a court to first avail himself of all the means afforded by administrative processes. The exceptions to this rule are as follows:

- (a) where there is estoppel on the part of the party invoking the doctrine;
- (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction;

⁵⁵ Republic v. Gollayan, G.R. No. 196558 (Notice), August 28, 2019.

- (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;
- (d) where the amount involved is relatively so small as to make the rule impractical and oppressive;
- (e) **where the question involved is purely legal and will ultimately have to be decided by the courts of justice;**
- (f) **where judicial intervention is urgent;**
- (g) **where the application of the doctrine may cause great and irreparable damage;**
- (h) **where the controverted acts violate due process;**
- (i) where the issue of non-exhaustion of administrative remedies has been rendered moot;
- (j) **where there is no other plain, speedy and adequate remedy;**
- (k) **where strong public interest is involved; and**
- (l) in quo warranto proceedings.⁵⁶

54. This Petition does not violate any of these rules. It falls under several of the abovementioned exceptions. As will be discussed in this Petition, the CDO was issued *ex parte* and in violation of ABS-CBN's right to due process. Strong public interest requires its immediate lifting.

55. There is also an urgent need for judicial intervention to prevent grave and irreparable damage to ABS-CBN, its employees and the public. As the CDO is immediately executory, ABS-CBN had no choice but to promptly stop operating the 75 radio and television stations enumerated in the Order. It would be impossible to secure a speedy reconsideration from the NTC, considering that the NTC itself stated that, "[it] shall schedule the case for hearing *at the earliest time after* the Enhanced Community Quarantine is lifted by the Government."⁵⁷ There is no certitude that the Enhanced Community Quarantine will indeed be lifted on 15 May 2020.

56. A motion for reconsideration would also be useless under the circumstances. There had already been numerous

⁵⁶ Don Mariano Transit Corp. v. Land Transportation Franchising and Regulatory Board, G.R. No. 215605 (Notice), January 12, 2015.

⁵⁷ <https://newsinfo.inquirer.net/1270074/ntc-issues-cease-and-desist-order-vs-abs-cbn>, underscoring ours.

public exhortations—both official and informal—from the House of Representatives, the House Committee on Legislative Franchises, the Senate, and various congressmen and senators in their individual capacities, for the NTC to allow ABS-CBN's continued operations pending Congress's determination whether to renew ABS-CBN's franchise. The Executive Department, through the DOJ guidance, expressed the same position.⁵⁸ NTC Commissioner Cordoba even declared during the 10 March 2020 hearing of the House Committee that the NTC "will follow the advice of the DOJ and let ABS-CBN continue their operations based on equity."⁵⁹ Yet the NTC still issued the assailed Order directing ABS-CBN to immediately cease and desist from operating its broadcast stations. In fact, it was the "Complainant" in the proceedings *a quo*. The Order comes two days after Solicitor General Calida issued a warning that "the NTC commissioners risk subjecting themselves to prosecution under the Anti-Graft and Corrupt Practices Act should they issue the unlawful PAs to ABS-CBN Corporation and ABS-CBN Convergence in the absence of franchise."⁶⁰ Given these circumstances, it is highly unlikely that the NTC would grant a motion for reconsideration, much less grant it quickly.

57. Finally, the issues raised in this Petition are pure questions of law. There is no need to examine the probative value of evidence to determine whether the NTC gravely abused its discretion in issuing the CDO.

C. Congress has plenary power to grant and renew legislative franchises. Instead of issuing a CDO, the NTC should have deferred to Congress and allowed

⁵⁸ See 26 February 2020 letter of the Department of Justice, attached hereto as **Annex "C"**.

⁵⁹ "NTC to issue provisional authority to ABS-CBN pending franchise renewal bid". See: <https://www.cnnphilippines.com/news/2020/3/10/NTC-ABS-CBN-franchise-renewal.html> (last accessed on 6 May 2020).

⁶⁰ OSG warns NTC against issuing provisional permits to operate to ABS-CBN, its subsidiary, Rey Panaligan, Manila Bulletin, available at https://news.mb.com.ph/2020/05/03/osg-warns-ntc-against-issuing-provisional-permits-to-operate-to-abs-cbn-its-subsidiary/?_cf_chl_jschl_tk_=285d909db648f3c7d74f3e76712e323872c5eac7-1588739754-0-AVgk3IdtzHKmHvl7o9rntGmkWLLhhRzKbppuj3n8YHWRc2VznIVRL-bYd7Egv4Ude8uJ8VSvHjGsdAKxfJSeWCYU2u3HqRK3OaNMa347aUvZDEZRVnt6PY1fs9jWOREm3Bxg3s1wZVsZfHnLOTrgSccDi81Enaitu4sFntYld-MUbpVDv9iBouCc445vPOX82d_HocJitX65Kbq9XdlzKkxdCY7hmciPj4mRKwA8bSU-GM-O2E2onhHYGgpa-N4PGzSdb1v6LpER-74dyU9F90_jG0GmAQpxqkEhFMzkiJaUwRlaN2dS3Ka_iDad_kiC9sCivxHJztLN19luxi_MLFM3MnHm8kcZ9XeXOZknofON1N-5KKXIv9YIjms0A2WcT9tBT7P20kSdzBiiN_2Ay8ScY (last accessed on 6 May 2020).

ABS-CBN to continue operating its television and radio stations.

58. Congress has exclusive plenary power to grant and renew a franchise under Section 11, Article XII of the Constitution. The House has designated its Committee on Legislative Franchises to deal with “[a]ll matters directly and principally relating to the grant, amendment, extension or revocation of franchises.”⁶¹ With respect to the Senate, the “grant or amendment of legislative franchises” is assigned to the Senate Committee on Public Services.⁶²

59. In Chavez v. National Housing Authority, G.R. No. 164527, August 15, 2007, citing Angara v. Electoral Commission, G.R. No. 45081, July 15, 1936, this Honorable Court declared that “when a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred by necessary implication.” It further ruled in Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48 (Resolution), that “the power of Congress does not end with the finished task of legislation. Concomitant with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed.”

60. Hence, the plenary power of Congress to grant or renew a franchise necessarily includes the corollary power to define and preserve rights and obligations pending its final determination of the matter.

61. There are eleven House Bills and two Senate Bills seeking the renewal of ABS-CBN’s franchise which are pending before the present Congress. There is no question that only Congress has the power to determine whether to renew ABS-CBN’s franchise. Corollary to that power, Congress has the authority to determine ABS-CBN’s rights and obligations until such time that Congress has legislated on the renewal (or non-renewal) of ABS-CBN’s franchise.

62. To dispel any doubt on the matter, the House Committee on Legislative Franchises, in a letter dated 26 February 2020, invoked the House’s “exclusive original

⁶¹ Rules of the House of Representatives.

⁶² Rules of the Senate, pp. 23-24, see:

<http://senate.gov.ph/about/RULES%20JANUARY%202020.pdf> (last accessed on 7 May 2020).

jurisdiction and authority to act on franchise applications” and expressly **“enjoin(ed) [the NTC] to grant ABS-CBN Corporation a provisional authority to operate effective May 4, 2020 until such time that the House of Representatives/Congress has a made a decision on its application.”**⁶³ To enjoin means to “to direct or impose by authoritative order or with urgent admonition”.⁶⁴ A provisional authority is an order granting a temporary permit to operate a particular public utility service immediately issued *during the pendency* of an application for a certificate of public convenience *or a franchise* for that service on the main ground of urgent public need.⁶⁵

62.1. The Committee confined the NTC’s discretion on the provisional authorities to the “terms and conditions [the NTC may] deem appropriate to protect public interest consistent with applicable laws, rules, and regulations.”

62.2. This letter bore the conformity of House Speaker Cayetano.

63. For its part, the Senate adopted Senate Resolution No. 40, **“expressing [its] sense... that ABS-CBN Corporation, its subsidiaries and/or affiliates, ABS-CBN Convergence, Inc., Sky Cable Corporation and Amcara Broadcasting Network, Inc., should continue to operate pending final determination of the renewal of its franchise by the 18th Congress.”**

64. The Executive Department shared the position of the House Committee and the Senate. In the DOJ’s Guidance, Secretary Guevarra stated in part that the plenary power of Congress includes the auxiliary power to define and preserve the rights of the franchise applicant pending final determination of its renewal.

65. During the 10 March 2020 hearing of the House Committee, **NTC Commissioner Cordoba himself declared, (presumably) under oath, that the NTC “will follow the**

⁶³ The Committee likewise “enjoin(ed) [the NTC] to grant ABS-CBN Corporation’s subsidiaries and/or affiliates, whose franchise applications are pending deliberation with the Committee on Legislative Franchises, the same provisional authority.”

⁶⁴ See: <https://www.merriam-webster.com/dictionary/enjoin> (last accessed on 7 May 2020).

⁶⁵ *Javellana v. La Paz Ice Plant & Storage Co., Inc.*, G.R. No. 45577, 30 October 1937.

advice of the DOJ and let ABS-CBN continue their operations based on equity.”⁶⁶

66. Yet on 5 May 2020, instead of issuing a Provisional Authority, the NTC, in bad faith, issued a CDO against ABS-CBN. It did the exact opposite of what it was expressly enjoined to do, and it maliciously reneged on the representations Commissioner Cordoba made to the House Committee. This is grave abuse of discretion amounting to lack of jurisdiction.

67. This Honorable Court, in Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 08, 2016, held that **“the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker’s action with grave abuse of discretion.”** Here, the NTC disregarded the pendency of the Bills for the renewal of ABS-CBN’s franchise, the letter of the House Committee on Legislative Franchises enjoining it to issue a provisional authority to ABS-CBN after 4 May 2020, and the sense of the Senate as expressed in Senate Resolution No. 40. The NTC’s failure to consider all these factors amounts to a capricious and whimsical exercise of discretion in the issuance of the CDO. The NTC merely relied on the supposedly expired legislative franchise of ABS-CBN without regard to the attendant circumstances.

68. Worse, the NTC explicitly represented to Congress on 10 March 2020 that it would heed the DOJ’s advice and allow ABS-CBN’s continued operation pending the renewal of its franchise. When the country was declared to be in a state of national emergency, and Luzon placed in Enhanced Community Quarantine, the NTC even issued a memorandum order proclaiming “[a]ll subsisting permits, permits necessary to operate and maintain broadcast and pay TV facilities nationwide expiring within the quarantine period... automatically... renewed” for another sixty days after the end of the government-imposed quarantine period. From 10 March 2020 to 4 May 2020, it kept silent particularly with respect to ABS-CBN. Suddenly, and contrary to its express representations, the NTC ordered ABS-CBN on 5 May 2020 to immediately cease and desist from operating the radio and television stations enumerated in the Order. The NTC’s bad

⁶⁶ “NTC to issue provisional authority to ABS-CBN pending franchise renewal bid”. See: <https://www.cnnphilippines.com/news/2020/3/10/NTC-ABS-CBN-franchise-renewal.html> (last accessed on 6 May 2020).

faith, malice and underhandedness are simply shocking and abhorrent.

D. The CDO violated ABS-CBN's right to equal protection of the laws and deviated from past practice.

69. Under Section 1, Article III of the Constitution, no person shall be denied the equal protection of the laws. Every unfair discrimination, unreasonable classification, or hostility from the Government offends the requirements of justice and fair play. While arbitrariness in general is violative of the due process clause, an unwarranted partiality or prejudice is offensive to equal protection.⁶⁷ For a classification to be reasonable, it must rest on substantial distinctions.⁶⁸

70. This Honorable Court explained that “[t]he purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or **by its improper execution through the state's duly constituted authorities.** xxx The equal protection clause is aimed at **all official state actions**, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, **through whatever agency or whatever guise is taken.**”⁶⁹

71. It has been the settled practice of the NTC to allow broadcasting entities to continue operating pending Congress's action on the renewal or extension of their franchises. For instance, the following entities were **not** prevented by the NTC from operating despite the expiry of term of their original franchises:

1. Vanguard Radio Network

⁶⁷ The Philippine Judges Association v. Hon. Pardo, G.R. No. 105371, 11 November 1993.

⁶⁸ The other requisites are: (a) it is germane to the purpose of the law; (b) it is not limited to existing conditions only; and (c) it applies equally to all members of the same class. (Biraogo v. Philippine Truth Commission of 2010, G.R. Nos. 192935 & 193036, 7 December 2010)

⁶⁹ Biraogo v. Philippine Truth Commission of 2010, G.R. Nos. 192935 & 193036, 7 December 2010. (Emphasis supplied).

Date of expiration of franchise: 13 June 2017⁷⁰

Extension: RA No. 11111, which extended the franchise for 25 years, was approved on 30 October 2018.⁷¹

2. Catholic Bishops Conference of the Philippines (Catholic Media Network)

Date of expiration of franchise: 4 August 2017

Extension: H.B. 8155 transmitted to the President on 22 March 2019 and lapsed into law on 22 April 2019.

3. Iglesia ni Cristo (Church of Christ)

Date of expiration of franchise: 10 February 2019

Extension: RA No. 11219, which extended the franchise for 25 years, was approved on 14 February 2019.

4. Innove Communications (previously Isla Communications Company, Inc.)

Date of expiration of franchise: 6 May 2017

⁷⁰ R.A. 7529

SECTION 6. 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. In the event the grantee fails to operate continuously for two (2) years, this franchise shall be deemed ipso facto revoked.

Effectivity Clause. — This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation in the Philippines.

Law approved on May 22, 1992

Published in Malaya and the Philippine Times Journal on May 29, 1992. Published in the Official Gazette, Vol. 88 No. 28 page 4512 on July 13, 1992.

⁷¹ SECTION 6. Term of Franchise. — This franchise shall be in effect for a period of twenty-five (25) years from the approval of this Act, unless sooner revoked and cancelled. This franchise shall be deemed ipso facto revoked in the event the grantee fails to operate continuously for two (2) years.

SECTION 19. Effectivity. — This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved: October 30, 2018.

Extension: RA No. 11151, which extended the franchise for 25 years, was approved on 14 December 2018.

5. Smart Communications, Inc. (formerly Smart Information Technologies, Inc.)

Date of expiration of franchise: April 2017

Extension: 19 May 2017, which is the 15th day after the publication of RA No. 10926 in The Philippine Star on 4 May 2017

72. NTC Commissioner Cordoba himself admitted that the NTC has previously allowed legislative franchise holders to continue operations notwithstanding the expiry of their franchises. Thus, during the Senate Committee on Public Services' Hearing last 24 February 2020, Commissioner Cordoba stated *under oath*:

“MR. CORDOBA. Your Honor, in the past, we did not issue any provisional authority after the franchises have expired.

SEN. RECTO. Yes. But did you close them down?

MR. CORDOBA. No, Your Honor.

SEN. RECTO. You did not.

MR. CORDOBA. Yes, Your Honor.

SEN. RECTO. In effect, you allowed them to operate?

MR. CORDOBA. Yes, Your Honor.”⁷²

73. In the same hearing, Senator Grace Poe pointed out that during the Senate deliberations on the legislative franchises of both Smart Communications, Inc. and Innove Communications (previously Isla Communications Company, Inc.), there were discussions on whether the two companies could operate even without a franchise.⁷³ The discussions centered around the fact that it has been the practice of the NTC to allow entities with pending franchise applications to continue to operate while Congress deliberates on bills renewing their franchises **even if such franchises have already expired.**⁷⁴

⁷² Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p.48, attached hereto as Annex “E”.

74. NTC Deputy Commissioner Edgardo V. Cabarios admitted in an interview on 5 May 2020 that the NTC allowed such entities, such as the Catholic Bishops' Conference of the Philippines (CBCP), to operate, *upon being enjoined by Congress*:⁷⁵

“Interviewed over dzMM, the radio arm of ABS-CBN, NTC Deputy Commissioner Edgardo Cabarios was asked why other broadcast outfits were allowed to operate — like in the case of the Catholic Bishops' Conference of the Philippines (CBCP) — even if their franchises have already expired.

Cabarios said that when the franchises were being discussed and deliberated in Congress, the NTC was enjoined to recognize the network until the end of the Congress.

‘When these franchises were discussed and deliberated sa Congress, that Congress said that while the franchise renewal is being deliberated, eh i-recognize ‘yan until the end of the Congress, so we did not issue anything because of that,’ Cabarios said.”

75. Deputy Commissioner Cabarios also admitted that in his 40 years in the NTC, this is the first time that the NTC has issued a CDO against an entity under similar circumstances.⁷⁶

76. Deputy Commissioner Cabarios mentioned an “issue [on the] validity of the franchise” of ABS-CBN. Commissioner Cordoba similarly alluded to “objections” to ABS-CBN’s franchise during the 24 February 2020 hearing of the Senate Committee on Public Services, for which reason it sought the guidance of the DOJ:

“THE CHAIRPERSON (SEN. POE). ...in line with this, kasi you’ve granted a provisional permit to operate in the past. Now, there was clearly a letter from Congressman Teodoro to Senator Serge Osmena requesting that the permit to operate for PT&T

⁷⁵ NTC exec admits ABS-CBN shutdown order borne of ‘questions’ on its franchise validity, Gabriel Pabico Lalu, Philippine Daily Inquirer, 5 May 2020, available at <https://newsinfo.inquirer.net/1270212/ntc-deputy-head-admits-shutdown-order-borne-from-questions-on-franchises-validity> (last accessed 6 May 2020).

⁷⁶ NTC exec says cease order vs ABS-CBN a first, Miguel R. Camus, Philippine Daily Inquirer, 5 May 2020, available at <https://business.inquirer.net/296553/ntc-exec-says-cease-order-vs-abs-cbn-a-first> (last accessed 6 May 2020).

continue. But in the past, wala namang mga sulat sa inyo ang Kongreso, hindi ba? Mayroon bang sinabi sa inyo ang Kongreso na, "Please grant a provisional permit to operate for the CBCP, Subic Broadcast, Smart, Inove," wala naman? Mayroon ba kayong sulat na natanggap o directive from Congress?

MR. CORDOBA. Wala po, Your Honor. But during the deliberations, na-take up po sa amin yon, Your Honors. But just to let you know, Your Honors, **the reason why pong particular franchise na ito why we have to ask for guidance from the Department of Justice at humingi po ng advice sa kanila as our lawyer is that in those franchises as wala naman pong objections na mabibigat. But in this case, there is even a petition for quo warranto filed by the SolGen. So, we deemed it as prudent po na humingi ng advice from our lawyer, that is the Secretary of Justice.**"⁷⁷

77. The NTC's "lawyer", the Secretary of Justice or the DOJ, has precisely advised the NTC on this matter. In its "guidance", the DOJ stated in part that:

- a. There is an "established practice" or "equitable practice" to allow a franchisee to continue its operations pending the renewal of its franchise. This practice has benefited the Philippine Telegraph and Telephone Corporation, Smart Communications, Inc. and the Catholic Bishops Conference of the Philippines, Inc.
- b. It is imperative that the same treatment be extended to all entities seeking the renewal of their franchises which are about to expire, consistent with the basic principles of fairness and justice.**
- c. The NTC may provisionally authorize an entity to operate. NTC's Memorandum Circular ("MC") No. 08-09-95 defines a Provisional Authority as "an authority, for a limited period granted to a qualified applicant to operate and maintain a public telecommunications facility/service by the [NTC]." An applicant who has been previously granted a franchise by Congress could be considered a qualified applicant within the purview

⁷⁷ Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, pp.51-52, emphasis ours (attached hereto as Annex "E").

of the MC and could, accordingly, be issued a Provisional Authority to operate, subject to Congress's eventual disposition of the franchise renewal bill.

78. There is no reason why the same practice should not be applied to ABS-CBN. Similar to the CBCP's case, the House Committee issued the NTC a letter and "enjoin[ed]" it to issue a Provisional Authority in ABS-CBN's favor, while the Senate adopted a resolution "expressing the sense of the Senate that [ABS-CBN] should continue to operate pending final determination of the renewal of its franchise by the 18th Congress." After the OSG's 3 May 2020 "warning" to the NTC, House Committee on Legislative Franchises Chairperson Franz Alvarez stated that, "[w]ith the legal opinion of the Department of Justice and the authority given by the House of Representatives, there is no reason for ABS-CBN to discontinue or stop their operations."

78.1. On the other hand, the Executive Department, through the DOJ, sees no substantial distinction between ABS-CBN and other broadcasting entities which were previously allowed to continue their operations pending the renewal of their franchises. Secretary Guevarra even said "it is imperative that the same treatment be extended to all entities seeking the renewal of their franchises which are about to expire, consistent with the basic principles of fairness and justice." After the OSG announced its 3 May 2020 "warning" to the NTC, the DOJ reiterated its position and recognized ABS-CBN as an entity which "has already been granted a legislative franchise and has fully operated for many years, has applied for the renewal of its franchise long before the expiration thereof, but for reasons not attributable to said person or entity, the legislature has not yet acted on the renewal of said franchise."

79. The fact that the OSG has filed a petition for *quo warranto* before this Honorable Court does not create any real difference or distinction which would justify a different treatment. This Honorable Court may take judicial notice of the fact that it has not resolved the OSG's petition, and the OSG's allegations remain to be just mere allegations. The OSG's petition has become moot and academic since the main issue therein was whether ABS-CBN's then existing legislative franchise should be revoked for supposed violations. In fact, the NTC—which is the body regulating ABS-CBN—admitted it has never found ABS-CBN administratively liable for any wrongdoing. During the 24 February 2020 hearing of the

Senate Committee on Public Services, NTC Commissioner Cordoba made the following admission:

“SEN. RECTO. xxx

Now, mayroon bang penalty ang ABS-CBN with the NTC?

MR. CORDOBA. As of now, Your Honor, wala naman po.

SEN. RECTO. There is none?

MR. CORDOBA. No penalties, Your Honor.

SEN. RECTO. Okay. And here we are talking about the possibility of closing the station.”⁷⁸

E. The NTC violated ABS-CBN’s right to due process by issuing the Order without any prior notice or hearing and by ignoring the serious and irreparable damage that the CDO will inflict on ABS-CBN and thousands of its employees. The CDO also violates the right of the public to information and is a curtailment of the freedom of speech and of the press. Strong public interest and equity demand that ABS-CBN be allowed to continue its operations.

80. In GMA Network, Inc. v. National Telecommunications Commission,⁷⁹ this Honorable Court recognized the power of the NTC to issue a CDO as a provisional relief under the NTC Rules. However, the Court also prescribed certain requisites for its issuance. Where the CDO amounts to more than the preservation of the status quo, and directs the doing or undoing of acts, it is treated as a writ of preliminary injunction. The requirements for injunctive relief must be met:

⁷⁸ Transcript of the Hearing of the Joint Committee Hearing of the Senate Committees on Public Services, Economic Affairs, and Finance, 24 February 2020, p. 50 (attached hereto as Annex “E”).

⁷⁹ G.R. No. 181789, 3 February 2016.

“The above allegations confirm that the petitioner's prayer for the issuance of a cease and desist order is actually a prayer for the issuance of a preliminary injunction. Thus, the petitioner's entitlement to the issuance of a cease and desist order depends on its compliance with the requisites for the issuance of a preliminary injunction.

To be entitled to the injunctive writ, the petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.”

81. The CDO issued by the NTC against ABS-CBN is in the nature of a preliminary injunction because it directs an act to be done—“to immediately CEASE and DESIST from operating the [enumerated] radio and television stations.” It is not a status quo order because stopping operations would not be equivalent to maintaining the last, actual, peaceable and uncontested state of things prior to the controversy. Therefore, the CDO should have been issued upon notice and after hearing, and the requisites of a preliminary injunction must have been met.

82. The NTC must have complied with the procedural requirements under Rule 58, Section 5 of the Rules of Court as the CDO is in the nature of a preliminary injunction.⁸⁰ However, the NTC issued it without any prior notice or hearing, in violation of ABS-CBN's right to due process. A tribunal is ousted of its jurisdiction where there is a violation of the constitutional right to due process.⁸¹

83. Furthermore, the requisites for the proper grant of injunctive relief were not met. The right ostensibly sought to be protected by the CDO is the Government's right to regulate the use of frequencies, which is done through the issuance of legislative franchises and certificates of public convenience and necessity/provisional authorities by the NTC. This right is not threatened by the continued operation of ABS-CBN, as both Houses of Congress have already expressed their intent and desire for ABS-CBN to continue its operation while the renewal

⁸⁰ See Hon. Prado v. Hon. Veridiano II, G.R. No. 98118, 6 December 1991.

⁸¹ Apo Cements Corporation vs. Mingson Mining Industries Corporation, G.R. No. 206728, 12 November 2014.

of its legislative franchise is pending.⁸² The DOJ has also recognized in its 26 February 2020 guidance to the NTC that there is sufficient equitable basis for the continued operation of ABS-CBN:⁸³

“[O]ur existing laws on franchises do not provide for the status of operations of a radio and/or television franchise when Congress has not finally acted on a pending bill for its renewal. **There is thus a gap in the law.** There is nothing in our existing laws which declares that the franchisee can continue to operate pending the renewal of its franchise; neither is there anything in these laws which prohibits the franchisee from operating until Congress acts on the bill for the renewal of the franchise.

When there is a gap in the law, equity comes in to fill the gap in the law. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.⁸⁴ It is our hope that Congress will apply principles of equity in dealing with a situation where no fault or negligence may be attributed to entities seeking the renewal of their respective franchises.”⁸⁵ (Emphasis supplied)

84. The DOJ’s view bears the imprimatur of the President under the *alter ego* doctrine. Under the doctrine of qualified political agency, heads of the various executive departments, such as the Secretary of Justice, are the *alter egos* of the President.⁸⁶ Actions taken by them in the performance of their official duties are deemed the acts of the President unless the President himself disapproves such acts.

85. In this case, the President has not disapproved or revoked the DOJ’s “guidance”. Thus, it is binding on the NTC as an executive agency that falls under the control of the

⁸² See http://senate.gov.ph/lis/pdf_sys.aspx?congress=18&type=adopted_res (last accessed on 7 May 2020); Letter dated 26 February 2020 sent by the House Committee on Legislative Franchises, through its Chairperson, Rep. Franz E. Alvarez, with the conformity of Speaker Alan Peter S. Cayetano, Annex “B”.

⁸³ Letter dated 26 February 2020 of DOJ Secretary Menardo I. Guevarra to the NTC, Annex “C”.

⁸⁴ Citing *Reyes v. Lim*, G.R. No. 134241, 11 August 2003.

⁸⁵ *Id.*

⁸⁶ *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, G.R. No. 168613, 5 March 2013.

President.⁸⁷ Notably, NTC Commissioner Cordoba himself declared during the 10 March 2020 hearing of the House Committee on Legislative Franchises that the NTC “will **follow the advice of the DOJ** and let ABS-CBN continue their operations based on equity.”⁸⁸

86. There is also no urgent or paramount necessity for the issuance of the CDO. On the contrary, it is the closure of ABS-CBN that will cause serious and irreparable damage not only to ABS-CBN but, more importantly, to public interest.

87. ABS-CBN has more than 11,000 employees.⁸⁹ The closure of ABS-CBN will jeopardize the livelihood not only of such employees, but also of their families.

88. The closure of ABS-CBN will deprive the Government of a significant source of tax revenues. From 2016 to 2019 alone, ABS-CBN remitted to the Government income tax payments amounting to at least Php14.3 Billion.⁹⁰ This does not include withholding taxes remitted by ABS-CBN for its employees and talents.⁹¹

89. ABS-CBN is one of the largest networks in terms of coverage and audience. Commissioner Johannes Bernabe of the Philippine Competition Commission estimates ABS-CBN’s market share to be anywhere between 31 to 44%.⁹² The closure of ABS-CBN would, therefore, deprive the public of one of the leading sources of news and entertainment, and would impair the people’s constitutional right to information on matters of public concern.⁹³

90. The public needs the services of ABS-CBN now more than ever, as the country grapples with the effects of COVID-19. In this time of public health emergency, ABS-CBN plays a significant role in providing continued employment to thousands of employees and delivering valuable information and entertainment to millions of Filipinos locked down in their homes. ABS-CBN has also raised nearly PhP237 million for

⁸⁷ 1987 Constitution, Article VII, Section 17.

⁸⁸ “NTC to issue provisional authority to ABS-CBN pending franchise renewal bid”. See: <https://www.cnnphilippines.com/news/2020/3/10/NTC-ABS-CBN-franchise-renewal.html> (last accessed on 6 May 2020), emphasis ours.

⁸⁹ Transcript of the 24 February 2020 hearing of the Committee on Public Services Joint with the Committees on Economic Affairs and Finance, Annex “E”, pp. 78-79.

⁹⁰ Id., p. 74.

⁹¹ Id.

⁹² Id., p. 143.

⁹³ Article III, Section 7, 1987 Constitution.

COVID response⁹⁴ and each day that it is off the air limits its capacity to raise further assistance. To close ABS-CBN now when it is most needed would certainly be detrimental to the public. Even the President himself recognized this, through his Presidential Spokesperson Harry Roque, who thanked ABS-CBN for “for all the help that ABS-CBN has ... extended [or] the many things that ABS-CBN has done in connection with COVID-19.”⁹⁵

91. Moreover, ABS-CBN cannot be closed without “compromising” the “fundamental guarantees of freedom of speech and of the press:”

“Whenever the force of government or any of its political subdivisions bears upon to close down a private broadcasting station, the issue of free speech infringement cannot be minimized, no matter the legal justifications offered for the closure. In many respects, the present petitions offer a textbook example of how the constitutional guarantee of freedom of speech, expression and of the press may be unlawfully compromised. Tragically, the lower courts involved in this case failed to recognize or assert the fundamental dimensions, and it is our duty to reverse, and to affirm the Constitution and the most sacred rights it guarantees.” (Newsounds Broadcasting Network Inc. v. Dy, G.R. Nos. 170270 & 179411, 2 April 2009, emphasis ours)

92. The CDO against ABS-CBN necessarily amounts to the limitation if not curtailment of the freedom of speech and of the press with *prior restraint*.⁹⁶ To justify such curtailment, the

⁹⁴ “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 7 May 2020).

⁹⁵ “Duterte thanks ABS-CBN for help in time of COVID-19 pandemic”. See: <https://newsinfo.inquirer.net/1270590/duterte-thankful-for-abs-cbns-help-in-time-of-covid-19-pandemic-palace> (last accessed on 7 May 2020).

⁹⁶ In Chavez v. Gonzalez, G.R. No. 168338, 15 February 2008, this Honorable Court declared: “*Prior restraint* refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing

NTC must satisfy the **strict scrutiny test**. (See Divinagracia, Divinagracia v. Consolidated Broadcasting System, Inc., G.R. No. 162272, 7 April 2009; Newsounds Broadcasting Network Inc. v. Dy, *supra*.)

93. Under the strict scrutiny test, the NTC must prove: (a) an important or substantial government interest, which is **unrelated to the suppression of free expression**; (b) there is a **clear and present danger** that will bring about the substantive evils sought to be prevented; and (c) that government action must be narrowly tailored to achieve that interest, and that the same must be the **least restrictive means** for achieving that interest.

94. The CDO is woefully deficient in this regard. The NTC does not allege at all any important government interest or substantive evil which would justify *preventing* ABS-CBN from broadcasting, in defiance of the House Committee's directive, Senate Resolution No. 40, and the DOJ's guidance. The CDO constitutes an invalid prior restraint on freedom of expression and of the press.

95. This Honorable Court has recognized the issuance of a writ of preliminary injunction, in the absence of the prescribed requisites, as constituting grave abuse of discretion.⁹⁷ The NTC is guilty of such grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the CDO.

96. Finally, the existence of an impartial tribunal is a fundamental prerequisite upon which all other guarantees of due process rest.⁹⁸ "[A]ll the elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge."⁹⁹ The requirement of an impartial tribunal equally applies to quasi-judicial and administrative proceedings, "for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same."¹⁰⁰

and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts." (emphasis ours)

⁹⁷ Bank of the Philippine Islands vs. Hon. Hontanosas, Jr., G.R. No. 157163, 25 June 2014.

⁹⁸ See, e.g., Mateo v. Villaluz, G.R. Nos. L-34756-59, 31 March 1973; People v. Opida, G.R. No. L-46272, 13 June 1986.

⁹⁹ Heritage Hotel Manila v. NUWHRAIN-HHMSC, G.R. No. 178296, 12 January 2011.

¹⁰⁰ Garcia v. Molina, G.R. No. 157383, 10 August 2010

97. The CDO came **two days** after Solicitor General Calida issued a warning that “the NTC commissioners risk subjecting themselves to prosecution under the Anti-Graft and Corrupt Practices Act should they issue the unlawful PAs to ABS-CBN Corporation and ABS-CBN Convergence in the absence of franchise.”¹⁰¹ The NTC thus issued the CDO with a threat hanging over its head, made no less by the Government’s own lawyer, of prosecution for graft/corruption. Under such climate, the NTC’s impartiality is at best seriously suspect.

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

98. The foregoing are repleaded where relevant.

99. Section 3(a), Rule 58 of the Rules of Court provides that preliminary injunction may be granted when it is established, among others, “[t]hat the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually.” ABS-CBN is entitled to the reliefs prayed for, which include declaring the CDO null and void and restraining the NTC from implementing it.

100. The requirements for a preliminary injunction are as follows:

- (a) The applicant must have a clear and unmistakable right, that is a right in esse;

¹⁰¹ OSG warns NTC against issuing provisional permits to operate to ABS-CBN, its subsidiary, Rey Panaligan, Manila Bulletin, available at https://news.mb.com.ph/2020/05/03/osg-warns-ntc-against-issuing-provisional-permits-to-operate-to-abs-cbn-its-subsidiary/?_cf_chl_jschl_tk=__285d909db648f3c7d74f3e76712e323872c5eac7-1588739754-0-AVgk3ldtzHKmHvl7o9rntGmkWlLhhRzKbppuj3n8YHWrc2VznIVRL-bYd7Egy4Ude8uJ8VSvHjGsdAKxfJSeWCYu2u3HqRK3OaNMa347aUvZDEZRvnt6PY1fs9iWOREm3Bxg3s1wZVsZfHnLOTrgScDj81Enaitu4sFntYld-MUbpVDv9iBouCc445vPOX82d_HocJitX65Kbq9XdlzKlxdCY7hmciPi4mRKwA8bSU-GM-O2E2onhHYGgpg-N4PGzSdb1v6LpER-74dyU9F90_jG0GmAOpqxkEhFMzkiJaUwRlaN2dS3Ka_iDad_kiC9sCivxHJztLNI9luxiMLFM3MnHm8kcZ9XeXOZknofON1N-5KKXly9Ylms0A2WcT9tBT7P20kSdzBiiN_2Ay8ScY

(last accessed on 6 May 2020).

- (b) There is a material and substantial invasion of such right;
- (c) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (d) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.¹⁰²

The foregoing requisites are present.

101. There can be no dispute that ABS-CBN's right to due process, equal protection of the laws and freedom of speech is guaranteed. Pursuant to such right to due process, ABS-CBN cannot be ordered to cease and desist from operating except in accordance with the requirements provided by law. Its right to equal protection demands that it be accorded the same treatment as those similarly situated have enjoyed. As discussed in this Petition, the NTC materially and substantially invaded ABS-CBN's right. It did so even as both Houses of Congress had already expressed their intent and desire to ABS-CBN's operation to continue during the pendency of the renewal of its legislative franchise.

102. The subject Order directed ABS-CBN to "immediately" cease and desist from operating its radio and television stations. ABS-CBN was constrained to comply with the NTC's directive on the day it received the Order, and ABS-CBN's radio and television stations went off the air. There is, therefore, an urgent need for a writ of preliminary injunction to prevent grave and irreparable injury to ABS-CBN.

"An injury is considered irreparable if it is of such constant and frequent recurrence that **no fair and reasonable redress** can be had therefor in a court of law, or where there is **no standard by which their amount can be measured with reasonable accuracy**, that is, it is **not susceptible of mathematical computation**. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property

¹⁰² Marquez vs. Sanchez, G.R. No. 14849, 13 February 2007.

injured or when there exists no certain pecuniary standard for the measurement of damages.”¹⁰³

103. This Honorable Court has recognized in Borlongan v. Banco De Oro, G.R. No. 217617, 5 April 2017 that “a continuous violation of constitutional rights is by itself a grave and irreparable injury that this or any court cannot plausibly tolerate.” There is likewise no fair standard to measure with reasonable accuracy all the effort and investment poured in by ABS-CBN and its employees to ensure the delivery of quality services to the public, which were all put to naught by the NTC’s issuance of the CDO.

104. ABS-CBN is losing 30 to 35 million every day that it is off the air. While its most immediate loss would be loss of advertising revenues, ABS-CBN risks incurring a lot more. Because of the CDO, ABS-CBN will not be able to service its debts, and this would constrain its creditors to require collateral for its loans. ABS-CBN has, in fact, already received a notice from a bank demanding such collateral. Its credit lines and letters of credit had already been adversely affected, thereby seriously hampering activities which require such financing. Even if the total potential financial impact of the foregoing may be estimated, the injury is still irreparable because ABS-CBN cannot recover its losses from the NTC.

105. Worse, the injury extends far beyond ABS-CBN, as the CDO also greatly affects the public. As discussed, the closure of ABS-CBN will result in the loss of livelihood of more than 11,000 employees and their families, at a time when thousands have become jobless due to the COVID-19 pandemic. It will also deprive the public of a leading source of news and entertainment, just when it is most needed to disseminate information about the pandemic and uplift the spirits of a nation that has been locked up for weeks. ABS-CBN has raised over Php 237 million for COVID response¹⁰⁴ and it intends to raise more, but the CDO has curtailed its capacity to raise further assistance.

106. No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. The filing of a motion for reconsideration is not an ordinary, speedy or adequate remedy, since the NTC has itself stated that, “[a]fter

¹⁰³ Philippine Airlines, Inc. vs. National Relations Commission, G.R. No. 120567, 20 March 1998; emphasis ours.

¹⁰⁴ “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 7 May 2020).

receipt of ABS-CBN's response, the NTC shall schedule the case for hearing at the earliest time after the Enhanced Community Quarantine is lifted by the Government."¹⁰⁵ As the lifting of the Enhanced Community Quarantine on 15 May 2020 has yet to be determined, there is no certainty that the NTC could act immediately on a motion for reconsideration, if one were to be filed by ABS-CBN.

107. ABS-CBN is thus entitled to the issuance of a Writ of Preliminary Injunction to restrain the NTC from implementing the CDO while this Petition is pending. Because ABS-CBN, its employees and the public are already suffering grave injustice and irreparable injury before the matter can be heard on notice, ABS-CBN also prays for the issuance of a temporary restraining order ("TRO") enjoining the implementation of the CDO.

108. Several lawmakers have likewise urged Congress to expedite the deliberations on the renewal of ABS-CBN's legislative franchise.¹⁰⁶ Since the action of Congress on the renewal of ABS-CBN's legislative franchise would be determinative of the issues in this case, it is only prudent to defer to Congress rather than pre-empt its exercise of its power.

109. ABS-CBN is willing to post the required bond to answer for damages that may be sustained by the respondent by reason of the issuance of the TRO and/or the writ of preliminary injunction should the Honorable Court finally decide that ABS-CBN was not entitled thereto.

RELIEF

WHEREFORE, it is respectfully prayed that:

1. Upon the filing of this Petition, a Temporary Restraining Order be issued restraining Respondent NTC 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;

¹⁰⁵ See the 5 May 2020 statement issued by the NTC, available at <https://boholislandnews.com/2020/05/06/ntc-orders-abs-cbn-to-shut-down/> (last accessed on 6 May 2020).

¹⁰⁶ Senators' plea to House on ABS-CBN's franchise: Make it happen, find your voice, Maila Ager, Philippine Daily Inquirer, available at <https://newsinfo.inquirer.net/1270746/senators-plea-to-house-on-abs-cbns-franchise-make-it-happen-find-your-voice> (last accessed on 6 May 2020); Solon eyes grant of provisional franchise to ABS-CBN until June 2022, Neil Arwin Mercado, available at <https://newsinfo.inquirer.net/1270653/solon-seeks-provisional-franchise-for-abs-cbn-until-june-2022> (last accessed 6 May 2020).

2. After proceedings held, a Writ of Preliminary Injunction be issued restraining Respondent NTC and all other persons acting under its direction, control or supervision from performing the act enumerated in par. 1 above, while this Petition is pending;
3. After further proceedings, judgment be rendered:
 - a. Annulling and setting aside the Cease and Desist Order dated 5 May 2020 in NTC Adm. Case No. 2020-008; and
 - b. Declaring the writ of preliminary injunction prayed for in par. 2 above permanent.

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

Makati City for the City of Manila, 7 May 2020.

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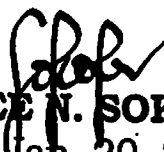
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Verification and Certification Against Forum Shopping follows...

Copy Furnished:

National Telecommunications Commission
Respondent
NTC Building, BIR Road
1104 Quezon City

EXPLANATION

A copy of this *Petition* 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 the *Petition* will also be served on the NTC.


DESIREE N. SOKOKEN

**VERIFICATION
and
CERTIFICATION AGAINST FORUM SHOPPING**

I, **CAESAR J. POBLADOR**, of legal age, Filipino, with address at 4/F ELJ Communications Center, Eugenio Lopez Drive, Quezon City, after having been sworn in accordance with law, hereby state that:

1. I am authorized to execute this Verification and Certification Against Forum Shopping as evidenced by the attached Secretary's Certificate dated 13 March 2020.

2. I was the Chief Legal Counsel and Head for Corporate Legal Affairs of ABS-CBN Corporation from February 2015 to 31 December 2019. As such, my duties and responsibilities included providing legal expertise and work to ensure that the various business activities and projects of the Corporation, including subsidiaries and affiliates, are compliant with the law and are covered by appropriate regulatory and other governmental permits, and that legal disputes involving the Corporation, including subsidiaries and affiliates, whether on pre-litigation issues or actually litigated ones, have adequate factual references to support the desired legal conclusion. For this purpose, I invariably familiarize myself with authentic records and first-hand account sources of the facts.

3. Among the matters that I handled as Chief Legal Counsel were the history, scope, and requirements of the legislative franchise of the Corporation, including those related to actions towards the renewal thereof.

4. I am presently a consultant of the Corporation and in that capacity, I have been assigned to continue providing legal assistance to the Corporation relating to its legislative franchise and its pursuit to renew it.

5. I have read the foregoing Petition for Certiorari and Prohibition with Urgent Applications for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction and I affirm that the factual allegations therein are true and correct based on my personal knowledge and on authentic documents that are kept by the Corporation and to which I have access. The factual allegations therein have evidentiary support.

6. The Petition is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

7. In compliance with the Order dated 5 May 2020 of the National Telecommunications Commission ("NTC") in Adm. Case No. 2020-008 subject of the instant Petition, the Corporation will submit a Verified Answer within 10 days from said date, to show cause why the NTC should not recall the frequencies assigned to the Corporation. However, the Corporation will not raise the same issues in the instant Petition in NTC Adm. Case No. 2020-008. I also certify that the Corporation has not commenced any other action involving the same issues in the instant Petition in the Court of Appeals or the different divisions thereof, or any other court, tribunal or agency, including the NTC. If I learn that a similar action or proceeding has been filed or is pending before the Court of Appeals or the different divisions thereof, or any other court, tribunal or agency, I will promptly inform this Honorable Court of the existence of such other action or proceeding within five (5) days from obtaining knowledge thereof.


Further, affiant says none.



CAESAR J. POBLADOR

SUBSCRIBED AND SWORN to before me this 7th day of May 2020, affiant exhibiting to me his Philippine Passport ID No. P0554255A, valid until 07 October 2021, as competent proof of his identity.

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Series of 2020.



AURELIA BEATRICE M. SANTOS
Commission No. 149
Notary Public for Quezon City
Until December 31, 2021
4/F, ELJ Communications Center
Eugenio Lopez Drive, Quezon City
Roll No. 62155

PTR No. 65382 J/01.21.2020/Pasig City
IBP No. 111522/01.21.2020/Quezon City
MCLE Compliance No. VI-0002199/04.24.2017

ABS-CBN CORPORATION
ABS-CBN Broadcast Center, Sgt. Esguerra Avenue corner Mother Ignacia Street, Quezon City

SECRETARY'S CERTIFICATE

I, **MARIFEL G. GAERLAN-CRUZ**, Filipino, of legal age, and with office address at the 4th Floor, Eugenio Lopez, Jr. Communications Center, Eugenio Lopez Drive, Quezon City, hereby certify that:

1. I am the duly elected and qualified Assistant Corporate Secretary of **ABS-CBN CORPORATION** (the "Corporation"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at **ABS-CBN Broadcast Center, Sgt. Esguerra Avenue corner Mother Ignacia Street, Quezon City**.

2. During the Regular Meeting of the Board of Directors of the Corporation held on 05 March 2020, at which meeting a quorum was present and acting throughout, the following resolutions were unanimously approved and adopted:

RESOLVED, That the Board of Directors of **ABS-CBN Corporation** (the "Corporation") authorize, as it hereby authorizes the lawyers of the Corporation's Legal Services Department, with full power of substitution, be, as he is hereby authorized to do or cause to be done, the following: prepare, execute and file on behalf of the Corporation any complaints, petitions, appeals, or other pleadings before Metropolitan or Municipal Trial Court, the Regional Trial Court, the Court of Appeals and/or the Supreme Court, or any other administrative agency of the government, as may be necessary, for the protection of the rights of the Corporation, including the execution of the necessary verification and/or certification of non-forum shopping, and to do and perform on behalf of the Corporation any act and deed relating to the said complaint, petition or appeal which the Corporation could legally do and perform, including any appeals or further legal proceedings;

RESOLVED, FURTHER, That said Attorney-in-Fact, or his duly-constituted substitute, is hereby, named, constituted and appointed the Corporation's true and lawful Attorney-in-Fact in connection with all court cases and/or legal proceedings and/or actions filed by or against the Corporation, with full and special power and authority to: represent the Corporation at the pre-trial conference or any other similar proceeding of any such case that may be filed by or against the Corporation, enter into an amicable settlement, submit to alternative modes of dispute resolution, and enter into stipulations or admissions of facts and of documents;

RESOLVED, FINALLY, That said Attorney-in-Fact be, as he is hereby given and granted, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, and that the Corporation ratifies and confirms all that said Attorney-in-Fact shall have lawfully done, do or cause to be done by virtue of and in relation to the powers mentioned herein.

3. The foregoing resolutions have not been revoked, modified nor superseded, and shall remain in full force and effect, and may be relied upon unless written notice to the contrary is issued by the Corporation.

me

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____ at Quezon City, Philippines.


MARIFEL G. GAERLAN-CRUZ
Assistant Corporate Secretary

MAR 13 2020

SUBSCRIBED AND SWORN to before me at Quezon City this ___ day of _____, affiant exhibiting to me her SSS No. 33-1496885-1.

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AURELIA BEATRICE M. SANTOS

Commission No. 149

Notary Public for Quezon City

Until December 31, 2021

4/F, ELJ Communications Center

Eugenio Lopez Drive, Quezon City

Roll No. 62155

PTR No. 453856/01.21.2020/Pasig City

IBP No. 111522/01.21.2020/Quezon City

MCLE Compliance No. VI-0002199/04.24.2017