

## THIRD DIVISION

[ G.R. No. 127937, July 28, 1999 ]

**NATIONAL TELECOMMUNICATIONS COMMISSION, PETITIONER,  
VS. HONORABLE COURT OF APPEALS AND PHILIPPINE LONG  
DISTANCE TELEPHONE COMPANY, RESPONDENTS.**

### D E C I S I O N

**PURISIMA, J.:**

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking to modify the October 30, 1996 **Decision**<sup>[1]</sup> and the January 27, 1997 **Resolution**<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> in CA-G.R. SP No. 34063.

The antecedent facts that matter can be culled as follows:

Sometime in 1988, the National Telecommunications Commission (*NTC*) served on the Philippine Long Distance Telephone Company (*PLDT*) the following assessment notices and demands for payment:

"1. the amount of P7,495,161.00 as supervision and regulation fee under Section 40 (e) of the PSA for the said year, 1988, computed at P0.50 per P100.00 of the Protestant's (*PLDT*) outstanding capital stock as at December 31, 1987 which then consisted of Serial Preferred Stock amounting to P1,277,934,390.00 (Billion) and Common Stock of P221,097,785 (Million) or a total of P1,499,032,175.00 (Billion).

2. the amount of P9.0 Million as permit fee under Section 40 (f) of the PSA for the approval of the protestant's increase of its authorized capital stock from P2.7 Billion to P4.5 Billion; and

3. the amounts of P12,261,600.00 and P33,472,030.00 as permit fees under Section 40 (g) of the PSA in connection with the Commission's decisions in *NTC* Cases Nos. 86-13 and 87-008 respectively, approving the Protestant's equity participation in the Fiber Optic Interpacific Cable systems and X-5 Service Improvement and Expansion Program."<sup>[4]</sup>

In its two letter-protests<sup>[5]</sup> dated February 23, 1988 and July 14, 1988, and position papers<sup>[6]</sup> dated November 8, 1990 and March 12, 1991, respectively, the *PLDT* challenged the aforesaid assessments, theorizing *inter alia* that:

"(a) The assessments were being made **to raise revenues** and not as mere reimbursements for ctual regulatory expenses in violation of the doctrine in *PLDT vs. PSC*, 66 SCRA 341 <sup>[1975]</sup>;

(b) The assessment under Section 40 (e) should only have been on the

basis of the **par values** of private respondent's outstanding capital stock;

(c) Petitioner has no authority to compel private respondent's payment of the assessed fees under Section 40 (f) for the increase of its authorized capital stock since petitioner did not render any supervisory or regulatory activity and incurred no expenses in relation thereto.

x x x"<sup>[7]</sup>

On September 29, 1993, the NTC rendered a Decision<sup>[8]</sup> in NTC Case No. 90-223, denying the protest of PLDT and disposing thus:

*"FOR ALL THE FOREGOING, finding PLDT's protest to be without merit, the Commission has no alternative but to uphold the law and DENIES the protest of PLDT. Unless otherwise restrained by a competent court of law, the Common Carrier Authorization Department (CCAD) is hereby directed to update its assessments and collections on PLDT and all public telecommunications carriers for the payment of the fees in accordance with the provisions of Section 40 (e) (f) and (g) of the Revised NTC Schedule of Fees and Charges.*

*This decision takes effect immediately.*

*SO ORDERED."*

On October 22, 1993, PLDT interposed a **Motion for Reconsideration**,<sup>[9]</sup> which was denied by NTC in an **Order**<sup>[10]</sup> issued on May 3, 1994.

On May 12, 1994, PLDT appealed the aforesaid Decision to the Court of Appeals, which came out with its questioned Decision of October 30, 1996, modifying the disposition of NTC as follows:

*"WHEREFORE, the assailed decision and order of the respondent Commission dated September 29, 1993 and May 03, 1994, respectively, in NTC Case No. 90-223 are hereby MODIFIED. The Commission is ordered to recompute its assessments and demands for payment from petitioner PLDT as follows:*

*A. For annual supervision and regulation fees (SRF) under Section 40 (e) of the Public Service Act, as amended, they should be computed at fifty centavos for each one hundred pesos or fraction thereof of the par value of the capital stock subscribed or paid excluding stock dividends, premiums or capital in excess of par.*

*B. For permit fees for the approval of petitioner's increase of authorized capital stock under Section 40 (f) of the same Act, they should be computed at fifty for each one hundred pesos or fraction thereof, regardless of any regulatory service or expense incurred by respondent."*

On November 20, 1996, NTC moved for partial reconsideration of the abovementioned Decision, with respect to the basis of the assessment under Section