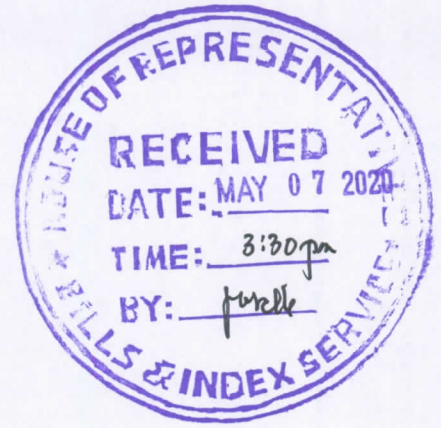




Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Eighteenth Congress
First Regular Session



HOUSE RESOLUTION NO. 846

Introduced by Representative Michael T. Defensor

RESOLUTION

CALLING ON THE APPROPRIATE HOUSE COMMITTEES TO INVESTIGATE AND FILE CRIMINAL CASES AS WARRANTED AGAINST THE COMMISSIONERS AND OFFICERS OF THE NATIONAL TELECOMMUNICATIONS COMMISSION AND THE SOLICITOR GENERAL AND SUCH OTHER OFFICIALS AND INDIVIDUALS FOR PERJURY AND FOR VIOLATION OF THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES AND THE ANTI-GRAFT AND CORRUPT PRACTICES ACT AND OTHER APPLICABLE LAWS

WHEREAS, on 26 February 2020, the Department of Justice (DOJ) through its Secretary Menardo Guevara wrote the National Telecommunications Commission (NTC) to respond to the latter's query on the issue of the date of expiry of the legislative franchise of ABS-CBN and the propriety of granting a Provisional Authority to ABS-CBN should the matter of its franchise renewal application be still pending with Congress upon such expiry.

WHEREAS, the DOJ's legal opinion was that there is an *"established practice to allow a franchisee to continue its operations pending the renewal of its franchise"* and that *"it is imperative that the same treatment be extended to all entities seeking the renewal of their franchises which are about to expire"* such as ABS-CBN.

WHEREAS, the DOJ further recognized that *"Congress has the power to authorize the NTC to grant a provisional authority"* and the *"implied power to authorize ABS CBN to continue its operations pending final action on the renewal of the Franchise, as Congress has done for other franchisees in previous similar situations."*

WHEREAS, on the same date on 26 February 2020, the House of Representatives through its Speaker and Chairperson of the Committee on Legislative Franchises wrote the NTC informing it that the Committee *"has started deliberating on ABS-CBN Corporation's (ABS-CBN) application for renewal of franchise"* and directing the NTC to *"grant ABS-CBN Corporation (and its subsidiaries and affiliates) 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."*

WHEREAS, the House of Representatives' directive to the NTC was prompted by the Committee on Legislative Franchises' sincere desire to hold fair, impartial and thorough deliberations on ABS-CBN's franchise renewal application in light of the reported issues and opposition raised against said application.

WHEREAS, at the time of the House of Representative's letter to the NTC, the House has been acting on other pressing matters such as ensuring success of the government's response amid the outbreak of the then called "novel coronavirus" in more than 20 countries already in February 2020 to put in place the necessary measures, mechanisms and protocols to prevent the spread of the coronavirus.

WHEREAS, on 04 March 2020, the Senate passed Resolution no. 344 authorizing the NTC to grant a Provisional Authority to ABS-CBN and its subsidiaries to operate until such time Congress passes the franchise bills.

WHEREAS, on 10 March 2020, the NTC, through its Commissioner Gamaliel Cordoba, during the Hearing of the House Committee on Legislative Franchises, and citing the said Senate Resolution, the Letter to it by the DOJ, including the letter from the House of Representatives, categorically declared under oath and assured that *"the NTC will follow the latest advice of the DOJ and let ABS-CBN continue operations based on equity" until "Congress' final disposition of the franchise renewal bills."*

WHEREAS, on 16 March 2020, in view of the President's declaration of the Enhanced Community Quarantine due to the COVID-19 pandemic, NTC further issued its Memorandum Order no. 01-03-2020 unequivocally stating that *"(a)ll subsisting permits, permits necessary to operate and maintain telecommunications facilities nationwide, shall automatically be renewed and shall continue to be valid sixty (60) days after the end of the government imposed quarantine period."*

WHEREAS, before its Recess on 11 March 2020, the House of Representatives had already sought and secured a consensus among the Senate, the Department of Justice, and the NTC on how to proceed with the franchise hearings; and the commitments given by the Commissioners and Officers of NTC were clear and unconditional— the NTC will allow ABS-CBN to continue broadcasting until the renewal application is decided upon.

WHEREAS, verily, on the basis of the foregoing positive and categorical representations of the NTC, the House of Representatives, the Senate, the Filipino people and ABS-CBN were made to believe that the NTC shall issue its Provisional Authority to ABS-CBN as Congress duly acts on the franchise renewal application of ABS-CBN.

WHEREAS, there was in fact no real Recess for the House of Representatives due to the COVID-19 pandemic as, pursuant to its mandate and recognizing the urgency of the situation, the House in a historic virtual Special Session passed the Bayanihan to Heal as One Act in 17 hours on 23 March 2020.

WHEREAS, even during said Recess, the House of Representatives formally created the Defeat COVID-19 Committee to serve as an advisory and coordinating body to the national government to ensure the success of the Bayanihan Law.

WHEREAS, for the duration of its Recess, the Members of the House of Representatives through the Defeat COVID-19 Committee (DCC) and its four (4) Sub-Committees have been conducting numerous meetings and consultations, including five (5) official TWG hearings of the DCC Economic, Health, Social Amelioration and Peace and Order Sub-Committees, respectively, to formulate and submit legislative recommendations to the Executive's Inter-Agency Task Force on Emerging Infectious Diseases to fight the COVID-19 pandemic and curtail its adverse effects on the Filipino people.

WHEREAS, such vital work for the House of Representatives was expected to continue to the official resumption of its Session on 04 May 2020 to help the country address all the difficulties resulting from the COVID-19 pandemic, such as the deliberations on the economic stimulus, social amelioration and health bills to help the country recover from the adverse effects of the pandemic.

WHEREAS, on 03 May 2020, Solicitor General Jose Calida openly threatened the NTC with legal action should it issue any provisional authority to ABS-CBN Corporation and its affiliate, ABS-CBN Convergence, Inc., in the absence of a franchise from Congress.

WHEREAS, the Solicitor General in fact officially wrote NTC through a letter dated 30 April 2020, directly influencing the Commission to stop ABS-CBN's broadcast operations instead of issuing a Provisional Authority as it had previously promised before the House of Representatives, the Senate and the Filipino people.

*"With an expired franchise and a failure to renew the franchise, **the NTC should, instead of entertaining the thought of issuing a PA (Provisional Authority), with or without hearing, issue a show cause or recall order requiring ABS-CBN Corporation to explain why the broadcasting frequency assigned to it should not be recalled or otherwise forfeited.***

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*At the same time, **the NTC should issue a cease and desist order against ABS-CBN Corporation from continuing its broadcasting operations***"

WHEREAS, the Solicitor General, in the same letter to NTC, and without authority, openly discredited as allegedly "*erroneous and not binding*" the legal positions taken by the Department of Justice, the Senate and the House of Representatives on the NTC's issuance of a provisional authority to ABS-CBN pending Congress' deliberations on the franchise renewal application.

WHEREAS, on 05 May 2020, the NTC in fact issued its Cease and Desist Order directed at ABS-CBN containing almost *in toto* the text of the letter to it of the Solicitor General

*"IN VIEW THEREOF, upon receipt of this Order, **ABS-CBN CORPORATION is directed to immediately CEASE and DESIST from operating the following radio and television stations:***

X X X

ABS-CBN CORPORATION is also hereby directed to SHOW CAUSE in writing within ten (10) days from receipt of this Order why the abovementioned frequencies assigned to it should not be recalled for lack of the necessary Congressional Franchise as required by law."

WHEREAS, under the doctrine of estoppel, the representations of the NTC through its Commissioners and Officers is rendered conclusive upon it, and cannot be denied or disproved as against the entire Filipino people who has relied thereon. Thus, a party may not go back on his own acts and representations to the prejudice of the other party who relied on them:

*"Art. 1431. Through estoppel an **admission or representation** is rendered **conclusive** upon the **person making it**, and **cannot be denied or disproved** as against the person relying thereon."*

WHEREAS, similarly, Section 2, Rule 131 of the Rules of Court provides that whenever "a party has, by his own declaration, act or omission, intentionally, **deliberately led**

another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

WHEREAS, the power of Congress to legislate is complete, full, and plenary, and a legislative franchise is a law and by deciding whether to grant or deny a franchise, it is passing a law and making policy.

WHEREAS, verily, the orchestrated conduct of the NTC Commissioners and its Officers and the Solicitor General directly subverts the plenary authority of the House of Representatives and, by maliciously breaking the NTC's commitment made under oath, constitutes the criminal acts of perjury and violations of the Code of Conduct and Ethical Standards for Public Officials and Employees and the Anti-Graft and Corrupt Practices Act.

WHEREAS, such contemptuous and criminal acts utterly disrespect not only the Committee on Legislative Franchises but the entire House of Representatives including the Senate, and such brazen and calculated conduct, reeking of an outright conspiracy, has led to the ambush of the House even taking the Senate by surprise.

WHEREAS, the unconstitutional meddling of the Solicitor General resulting in the NTC being unduly influenced and pressured to go against its categorical declarations under oath— supported by the clear legal opinion of the DOJ and the valid exercise of legislative authority by both the House of Representatives and the Senate— is an outright disgrace and an affront to the entire Congress and the DOJ.

WHEREAS, such conduct of the Commissioners and Officers of the NTC and the Solicitor General, other than directly undermining the constitutional prerogative of Congress, has resulted in the ceasing of operations of ABS-CBN at a very crucial time of the Enhanced Community Quarantine amid the COVID-19 pandemic where the dissemination of vital information to the public is paramount in order to keep the public safe and curb the adverse effects of the virus.

WHEREAS, under the Revised Penal Code, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; and conspiracy can also be proven based on the idea of "unity of purpose" and acts leading to a common design.

WHEREAS, the concerted actions of the Commissioners and Officers of the NTC and the Solicitor General show their despicable agreement, showing unity of purpose and common design to commit illegal acts designed to subvert the authority of Congress, by lying and reneging on a sworn commitment made before the House of Representatives.

WHEREAS, the actions of the NTC Commissioners and its Officers in conspiracy with the Solicitor General constitutes perjury under Article 183 of the Revised Penal Code whereby a "person, who knowingly makes untruthful statements" and "shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires."

WHEREAS, the actions of the NTC Commissioners and its Officers in conspiracy with the Solicitor General violate the *Code of Conduct and Ethical Standards for Public Officials and Employees*, requiring every public official and employee to observe standards of personal conduct in the discharge and execution of official duties such as "commitment to public interest," "professionalism," "justness and sincerity" and that they "refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."

WHEREAS, the actions of the NTC Commissioners and its Officers in conspiracy with the Solicitor General constitute a violation of Republic Act no. 3019 or the **Anti-Graft and Corrupt Practices Act**, to wit:

"Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) **Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter**, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

X X X

(e) **Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.** This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

WHEREFORE, BE IT HEREBY RESOLVED BY THE HOUSE OF REPRESENTATIVES to call on the appropriate House Committees to investigate and file criminal cases as warranted against the Commissioners and Officers of the National Telecommunications Commission and the Solicitor General and such other officials and individuals for Perjury and for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees and the Anti-Graft and Corrupt Practices Act and other applicable laws.

Adopted,


MICHAEL T. DEFENSOR