



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

NOW TELECOM COMPANY, G.R. No. 260434
INC.,

Petitioner, Present:

- versus -

GESMUNDO, J., *Chairperson,*
 HERNANDO,
 ZALAMEDA,
 ROSARIO, and
 MARQUEZ, JJ.

NATIONAL TELECOMMUNICATIONS COMMISSION,

Promulgated:

JAN 31 2024

Respondent. *mabulo*

X ----- X

DECISION

ZALAMEDA, J.:

This case involves the Petition for Review on *Certiorari*¹ (Petition) filed by petitioner NOW Telecom Company, Inc. (NOW Telecom) assailing the Decision² (assailed Decision) and the Resolution³ (assailed Resolution) of the Court of Appeals (CA), which affirmed the Order⁴ of the Regional Trial Court (RTC).

¹ *Rollo*, pp. 17–73.

² *Id.* at 83–120. The May 24, 2021 Decision in CA-G.R. SP No. 158237 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Remedios A. Salazar-Fernando and Pedro B. Gonzales of the First Division, Court of Appeals, Manila.

³ *Id.* at 154–156. The April 12, 2022 Resolution in CA-G.R. SP No. 158237 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Remedios A. Salazar-Fernando and Pedro B. Gonzales of the First Division, Court of Appeals, Manila.

⁴ *Id.* at 1197–1206. The November 5, 2018 Order in Civil Case No. R-MNL-18-11722-CV was penned by Presiding Judge Dinnah C. Aguila-Topacio of Branch 42, Regional Trial Court, Manila.

In the said Order, the RTC denied NOW Telecom's application for the issuance of a writ of preliminary injunction (WPI) against respondent National Telecommunications Commission (NTC) to restrain the implementation of certain provisions of NTC Memorandum Circular (M.C.) No. 09-09-2018 entitled, "Rules and Regulations on the Selection Process for a New Major Player in the Philippine Telecommunications Market" (subject Circular).

Antecedents

On January 8, 2018, the Department of Information and Communications Technology (DICT) issued Memorandum Order (M.O.) No. 001, series of 2018, entitled, "Policy Guidelines for the Entry of a New Major Player in the Public Telecommunications Market," in compliance with the directive of then President Rodrigo R. Duterte (President Duterte) to fast-track the entry of a new major player (NMP) to compete in the Philippine telecommunications market.

The said memorandum order provides that the NMP applicant must (1) possess a valid congressional telecommunications franchise, and the NTC shall issue the appropriate licenses/authorities to the winner after the bid; (2) not be a subsidiary, affiliate, or have any corporate or financial interest with the Globe Group or PLDT Group of Companies; and (3) have a written and binding commitment from a foreign joint venture company, if applicable.⁵ It also provides that the applicant must have the highest committed investment for the first five years, and such commitment must be secured with a performance bond.⁶ The NMP shall be assigned radio frequency bands that are available for assignment.⁷ The NTC was directed to promulgate the memorandum circular containing the Terms of Reference (TOR) for the selection and assignment of radio frequencies for the purpose.⁸

On April 6, 2018, former President Duterte issued Administrative Order (A.O.) No. 11, series of 2018, creating an Oversight Committee to assist the NTC in formulating the TOR, oversee its compliance, ensure timely implementation, and exercise such incidental powers as may be necessary.⁹

⁵ DICT M.O. No. 001, Series of 2018, sec. 1.

⁶ DICT M.O. No. 001, Series of 2018, sec. 2.

⁷ DICT M.O. No. 001, Series of 2018, sec. 3.

⁸ DICT M.O. No. 001, Series of 2018, sec. 4.

⁹ *Rollo*, p. 576.



After the conduct of public hearing, and pursuant to the foregoing, the NTC promulgated the subject Circular on September 20, 2018.¹⁰ The Oversight Committee and the NTC decided that the best way to select the NMP was through a public, open, and competitive selection process.¹¹

Thereafter, the DICT and the NTC published the timeline for the implementation of the subject Circular.¹² The timeline stated that the said Circular shall take effect on October 6, 2018; the Invitation to Bid shall be published on October 7, 2018; the issuance of the selection documents shall be on October 8, 2018; and the submission and opening of bids shall be on November 7, 2018.¹³

On October 8, 2018, NOW Telecom filed before the RTC a Complaint for Injunction¹⁴ with application for an *ex-parte* temporary restraining order (TRO), 20-day TRO, and/or WPI against the NTC.¹⁵

In the said Complaint, NOW Telecom challenged the following provisions of the subject Circular as void for being excessive, confiscatory, and violative of due process:

- (1) Section 6.2(j), which requires bidders to post a Participation Security with a face value of PHP 700,000,000.00 equivalent to 0.5% of the minimum Capital and Operational Expenditure at the end of the Commitment Period;
- (2) Section 11, which requires the NMP to post a Performance Security in the amount of 10% of the remaining Capital and Operational Expenditure; and
- (3) Section 8, which provides for a non-refundable filing fee of PHP 10,000,000.00 for appeal to the NTC *En Banc* against the decisions of the Selection Committee.¹⁶

NOW Telecom likewise challenged Section 10.1 of the subject Circular, which requires the submission of the Business and Roll-out plans after the NMP is determined, as circumventing the prohibition on substantial variation in bids and contracts.¹⁷ It also assailed Section 3, which provides for the covered and contingent radio frequencies to be assigned to the NMP, for violating its alleged vested right to be allocated radio frequencies as

¹⁰ *Id.* at 579-560.

¹¹ *Id.* at 86.

¹² *Id.*

¹³ *Id.* at 580.

¹⁴ *Id.* at 86.

¹⁵ *Id.*

¹⁶ *Id.* at 86-87.

¹⁷ *Id.* at 601-602.

holder of a legislative and administrative franchise to operate a telecommunications facility.¹⁸

Hence, NOW Telecom prayed that the NTC be enjoined from enforcing the aforementioned provisions of the subject Circular. It further prayed for the issuance of TRO and WPI pending the resolution of the Complaint.¹⁹

In support of its prayer for TRO and WPI, NOW Telecom argued that (1) it has a clear legal right considering its legislative and administrative franchise; (2) it is entitled to the relief sought, i.e., enjoining the NTC from enforcing the vague, oppressive, and confiscatory provisions of the Subject Circular; and (3) it has established the extreme urgency on account of the timeline provided by the NTC. NOW Telecom further argued that the selection process for the NMP is not an infrastructure project that is covered by the prohibition against injunctions under Republic Act No. 8975.²⁰

The NTC opposed NOW Telecom's prayer for injunctive writs. Thereafter, the RTC conducted summary hearing on the application for TRO.²¹

In its Order²² dated October 12, 2018, the RTC denied NOW Telecom's prayer for TRO. The RTC then directed the parties to submit their respective memoranda on the propriety of the issuance of a WPI.²³

Ruling of the RTC

In its Order²⁴ dated November 5, 2018, the RTC denied NOW Telecom's prayer for the issuance of a WPI, the dispositive portion of which reads:

WHEREFORE, the prayer for issuance of writ of preliminary injunction is hereby **DENIED**.

¹⁸ *Id.* at 606-617.

¹⁹ *Id.* at 69-71.

²⁰ Republic Act No. 8975 (2000), An Act to Ensure the Expedious Implementation and Completion of the Government Infrastructure Projects by Prohibiting Lower Courts From Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes.

²¹ *Rollo*, pp. 617-624.

²² *Id.* at 90-91.

²³ *Id.*

²⁴ *Id.* at 1197-1206.

Plaintiff is hereby given notice that all evidence adduced by it during the hearings for TRO and preliminary injunction are hereby deemed reproduced and adopted as part of its main evidence.

As stated in the Order dated 26 October 2018, Defendant NTC is hereby given until 16 November 2018 (until the close of office hours) to file its Answer.

SO ORDERED.²⁵

The RTC ruled that NOW Telecom has no clear or vested right over the radio frequencies it sought to possess. The grant of a legislative franchise and cellular mobile telecommunications system (CMTS) license does not bestow upon NOW Telecom a vested right over specific radio frequencies. The RTC found that NOW Telecom, at the time of the hearing of the writ, has yet to meet the financial yardstick necessary for it to participate in the selection process. Hence, its alleged right *in esse* to be protected from the alleged unjust and confiscatory provisions of the Subject Circular is far from clear.²⁶

On November 7, 2018, NOW Telecom filed before the CA a Petition for *Certiorari* with an Extremely Urgent Prayer for Issuance of an *Ex-Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction²⁷ challenging the RTC's Order. The petition was docketed as CA-G.R. S.P. No. 158237.

The NTC filed its Comment²⁸ dated February 4, 2019. NOW Telecom then filed a Reply²⁹ dated February 26, 2019.

Ruling of the CA

In the assailed Decision, the CA denied NOW Telecom's petition for *certiorari* and affirmed the RTC's Order. The dispositive portion of which reads:

WHEREFORE, the Petition is **DENIED**. The *Order* dated 5 November 2018 of the Regional Trial Court, Branch 42, Manila in Civil Case No. R-MNL-18-11722-CV, is **AFFIRMED**.

SO ORDERED.³⁰

²⁵ *Id.* at 1206.

²⁶ *Id.*

²⁷ *Id.* at 1207-1323.

²⁸ *Id.* at 1329-1359.

²⁹ *Id.* at 1365-1401.

³⁰ *Id.* at 119.

The CA held that NOW Telecom failed to show a clear and unmistakable right for the issuance of an injunctive relief. NOW Telecom likewise failed to show grave and irreparable injury. As a mere prospective bidder at the time of its application for WPI, NOW Telecom did not possess an actual or existing right over the frequencies that would be assigned to the NMP. Hence, it could not sustain any injury.³¹

According to the CA, Republic Act No. 8975 expressly prohibits any court, except the Supreme Court, from issuing any injunction to restrain, prohibit, or compel the government from bidding or awarding a contract or project of the National Government, among others.³²

In the assailed Resolution³³ dated April 12, 2022, the CA denied NOW Telecom's motion for reconsideration.

Hence, this Petition.

Issue

The core issue for resolution in this case is the propriety of the denial of NOW Telecom's application for injunctive relief.

NOW Telecom argues, among others, that: (1) the grant of a legislative franchise gives a demandable right to be assigned sufficient radio frequencies; (2) the NTC cannot frustrate the exercise of congressional power by unreasonably withholding radio frequencies from a holder of a legislative franchise. It has the legal obligation to facilitate the operation of a legislative franchisee by assigning it with sufficient frequencies; (3) Republic Act No. 8975 is inapplicable in this case, and injunction is proper to address the NTC's illegal acts; and (4) the NTC cannot frustrate the will of Congress by discriminating against legislative franchisees.

The NTC, in its Comment³⁴ dated December 28, 2022, through the Office of the Solicitor General (OSG), asserts, among others, that (1) NOW Telecom's application for a WPI is legally prohibited by Republic Act No. 8975; (2) the WPI would constitute a prejudgment of the main case without the benefit of a full-blown trial; and (3) NOW Telecom miserably failed to prove any of the requisites for the issuance of a WPI, asserting that

³¹ *Id.* at 109.

³² *Id.* at 116-117.

³³ *Id.* at 154-156.

³⁴ *Id.* at 1431-1494.



legislative franchise does not give NOW Telecom a demandable legal right *in esse* to a specific radio frequency, NOW Telecom does not have a right that was violated by the subject Circular, and there is no damage in this case; and (4) the NTC did not frustrate the will of Congress in issuing the Subject Circular.

Ruling of the Court

The Petition is denied.

NOW Telecom's application for injunctive relief has been rendered moot and academic

At the outset, it is worth noting that, during the pendency of this case, Mindanao Islamic Telephone Company, Inc. (MISLATEL) was selected as the NMP by virtue of the subject Circular, and was accordingly issued a Certificate of Public Convenience and Necessity (CPCN).³⁵

It is an established rule that injunction will not issue to restrain the performance of an act already done, or to prevent events that have already happened.³⁶ When the act sought to be prevented by injunction has already been performed or completed, "nothing more can be enjoined or restrained; a writ of injunction then becomes moot and academic, and the court, by mere issuance of the writ, can no longer stop or undo the act. To do so would violate the sole purpose of a prohibitive injunction, that is, to preserve the *status quo*."³⁷

In this case, the act sought to be restrained by NOW Telecom has already been done. The actual implementation of the selection process of the NMP pursuant to the subject Circular, and the resulting assignment of the allocated radio frequencies for the NMP to MISLATEL have rendered NOW Telecom's prayer for injunctive relief moot and academic. Accordingly, NOW Telecom's application for WPI should be denied.

³⁵ *Id.* at 99.

³⁶ *Go v. Looyuko*, 563 Phil. 36, 68 (2007) [Per J. Velasco, Jr., Second Division].

³⁷ *Co, Sr. v. The Philippine Canine Club, Inc.*, 759 Phil. 134, 143 (2015) [Per J. Brion, Second Division].

Lower courts cannot issue an injunctive writ against the selection of NMP

Section 3 of Republic Act No. 8975 prohibits lower courts from issuing a TRO or WPI against the government for the conduct of the bidding or awarding of contract or project of the National Government, thus:

SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.* - **No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:**

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.³⁸

³⁸ Emphasis supplied.

Section 2(a) of Republic Act No. 8975 defines national government projects as follows:

(a) **“National government projects”** shall refer to **all current and future national government infrastructure**, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, **and other related and necessary activities**, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.³⁹

Jurisprudence provides that the phrase “other related and necessary activities” refers to activities related to a government infrastructure, engineering works, service contracts, and projects under the BOT Law.⁴⁰

Telecommunications is a national government infrastructure. In A.O. No. 11, s. 2018, former President Duterte recognized telecommunications as “an essential infrastructure to a country’s economic development and competitiveness.” Moreover, Section 2(e) of Republic Act No. 11659⁴¹ considers telecommunications as critical infrastructure, thus:

(e) **Critical Infrastructure** refers to **any public service** which owns, uses, or operates systems and assets, whether physical or virtual, so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security, **including telecommunications and other such vital services as may be declared by the President of the Philippines;**⁴²

In this case, NOW Telecom seeks to restrain certain provisions of the subject Circular pertaining to the selection process for the NMP in the telecommunications market, including “the public bidding for 220MHz of frequencies . . .”⁴³

Applying the definition under Section 2(a) of Republic Act No. 8975, the selection process for the NMP is a related and necessary activity for telecommunications, which is a national government infrastructure. As such, the entry of the NMP to the telecommunications market is a national government project under Republic Act No. 8975. The selection process for

³⁹ Emphasis supplied.

⁴⁰ *Department of Foreign Affairs v. Falcon*, 644 Phil. 105, 142 (2010) [Per J. Leonardo-De Castro, First Division].

⁴¹ Republic Act No. 11659 (2022), An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended.

⁴² Emphasis and underscoring supplied.

⁴³ *Rollo*, p. 56.

the NMP is essentially a bidding and awarding of a national government project, which includes the assignment of the allocated radio frequencies for the NMP to effectively compete against the current dominant players in the telecommunications market. Thus, the subject Circular, which pertains to the selection process for the NMP, cannot be subject to injunctive relief by the lower courts, in accordance with Section 3 of Republic Act No. 8975.

Consequently, the CA correctly ruled that the implementation of the subject Circular involved an essential telecommunications infrastructure project. As such, NOW Telecom cannot enjoin the implementation of the bidding process for the selection of the NMP by a lower court's WPI.

In any case, even if the prohibition under Republic Act No. 8975 does not apply, an injunctive writ will not issue in this case considering that NOW Telecom failed to establish the requisites for its issuance.

NOW Telecom failed to prove the presence of the requisites for the issuance of an injunctive relief

Rule 58, Section 3 of the Rules of Court provides that preliminary injunction may be granted when it is established that:

- (1) 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;
- (2) The commission, continuance, or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (3) A party, court, agency, or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence provides the following essential requisites for the grant of a writ of preliminary injunction: (1) the applicant must have a clear and unmistakable right to be protected, that is, a right *in esse*; (2) there is a material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) no other



ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.⁴⁴

None of these requisites is present in this case.

First, NOW Telecom failed to establish that it has a clear and unmistakable right to be protected in this case. Before a WPI may be issued, the applicant must establish the existence of the right to be protected. This right must be actual, clear, and existing, not mere contingent, abstract, or future.⁴⁵ NOW Telecom failed to show the existence of such right.

As correctly held by the CA, the grant of a legislative franchise to operate telecommunications services in NOW Telecom's favor does not necessarily carry with it a right over particular radio frequencies. Neither does NOW Telecom's franchise state that it is entitled to specific radio frequencies.

NOW Telecom's use of radio frequencies is only a privilege, not a right, and is subject to compliance with the relevant laws, rules, and regulations.

Section 7 of Republic Act No. 10972⁴⁶ expressly provides that "[t]he radio spectrum is a finite resource that is part of the national patrimony and **the use thereof is a privilege** conferred upon the grantee by the State and may be withdrawn at any time after due process."⁴⁷

In *Liberty Broadcasting Network, Inc. v. Atlocom Wireless System, Inc.*⁴⁸ (*Liberty Broadcasting Network*), the Court held that "**[e]ven entities with unexpired PA cannot claim a vested right on a specific frequency assignment.** This proceeds from the **nature of its franchise which is not solely for commercial purposes but one imbued with public interest.** As earlier quoted, Atlocom's franchise (Republic Act No. 8605) declared the use of radio spectrum as a mere privilege conferred upon the grantee by the State that may be withdrawn anytime provided that due process is observed. It further emphasized that the radio spectrum is a finite resource and its use

⁴⁴ *City Government of Caloocan v. Carmel Development, Inc.*, G.R. No. 240255, January 25, 2023 [Per J. Hernando, First Division].

⁴⁵ *Id.*

⁴⁶ Republic Act No. 10972 (2018), An Act Renewing for Another Twenty-Five (25) Years the Franchise Granted to Infocom Communications Network, Inc. (presently known as Now Telecom Company, Inc.) under Republic Act No. 7301, Entitled "An Act Granting Infocom Communications Network, Inc. (ICNI), a Franchise to Construct, Establish, Operate and Maintain Mobile Radio Systems such as radio, Paging Systems, Cellular Phone Systems, Personal Communication Network (PCN), and Trunked radio Systems Within and Without the Philippines for a Period of Twenty-Five (25) Years, and for Other Purposes", as Amended by Republic Act No. 7940 (2017).

⁴⁷ Emphasis and underscoring supplied.

⁴⁸ 762 Phil. 210 (2015) [Per J. Villarama, Jr., *En Banc*].

and distribution should be aligned with existing laws and policies.”⁴⁹

Moreover, Section 1 of Republic Act No. 7940⁵⁰ provides that NOW Telecom’s franchise is “[s]ubject to the provisions of the Constitution and applicable laws, rules and regulations of the [NTC].” Section 1 of Republic Act No. 10972 similarly provides that it is “[s]ubject to the provisions of the Philippine Constitution and applicable laws, rules and regulations.”

Republic Act No. 7925, otherwise known as the “Public Telecommunications Policy Act of the Philippines,” has given the NTC the authority and responsibility to allocate and assign the radio frequencies and facilitate the entry of qualified service providers through administrative process.⁵¹

NOW Telecom’s own franchise recognizes that the NTC shall authorize NOW Telecom’s use of frequency in the radio spectrum, and the NTC has the power and authority to regulate and impose conditions relative to the construction and operation of NOW Telecom’s telecommunications system, thus:

SEC. 3. *Authority of the National Telecommunications Commission.* – **The grantee shall secure from the National Telecommunications Commission (NTC) a Certificate of Public Convenience and Necessity or the appropriate permits and licenses for the construction, installation and operation of its telecommunications systems or facilities.** In issuing the certificate, **the NTC shall have the power to impose such conditions relative to the construction, operation, maintenance, or service level of the telecommunications system.** The NTC shall have **the authority to regulate the construction and operation of its telecommunications system.** **The grantee shall not use any frequency in the radio spectrum without authorization from the NTC.** Such certificate shall state the areas covered and the date the grantee shall commence the service. The NTC, however, shall not unreasonably withhold or delay the grant of such authority, permit or license.⁵²

The assignment for the use of radio frequency involves an exercise of quasi-judicial power or the power of an administrative agency to determine questions of fact to which a legislative policy applies, pursuant to the standards laid down under the law.⁵³ In particular, it involves the

⁴⁹ *Id.* at 223. Emphasis and underscoring supplied.

⁵⁰ Republic Act No. 7940 (1995), An Act Amending Republic Act Numbered Seven Thousand Three Hundred One, Entitled, ‘An Act Granting Satellite Paging Systems Philippines, Inc., a Franchise to Construct, Establish, Operate and Maintain Radio Paging Systems and Trunked Radio Systems within the Philippines for a Period of TwentyOFive (25) Years, and for Other Purposes,’ by Further Expanding the Nature and Scope of Its Franchise, and for Other Purposes.

⁵¹ Republic Act No. 7925 (1995), sec. 5(a).

⁵² Emphasis and underscoring supplied.

⁵³ *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 809 Phil. 897, 918 (2017) [Per J.

determination of questions of fact as to who is the “best qualified” service provider, and who “can efficiently and effectively meet public demand.”⁵⁴

Consistent with the foregoing, the NTC promulgated various rules and regulations for the allocation and assignment of radio frequencies, such as the Subject Circular. NOW Telecom must comply with these rules and regulations. It cannot simply claim any right over the subject allocated frequency bands by virtue of its legislative franchise.

In this case, NOW Telecom failed to show that it has complied with the provisions of the subject Circular in order for it to be entitled to the allocated radio frequencies for the NMP.

As pointed out by the CA, NOW Telecom was a mere prospective bidder at the time of its application for the issuance of a WPI.⁵⁵ In fact, NOW Telecom admitted that when the Complaint was filed, it has yet to form a consortium to qualify under the Subject Circular as a participant with a combined or aggregate capital of PHP 10 billion.⁵⁶ There was even no showing that NOW Telecom participated in the selection process to prove that it is the best qualified to become the NMP.

Neither did NOW Telecom show any clear and unmistakable right that must be protected from the implementation of the subject Circular. While it indeed has constitutionally protected rights, NOW Telecom failed to substantiate its claims that such rights were violated by the challenged provisions of the subject Circular.

The promulgation of the subject Circular was made by virtue of the NTC’s power and authority under the law to allocate and assign the radio frequencies and facilitate the entry of qualified service providers through administrative process. Moreover, as aptly observed by the CA, the provisions of the subject Circular, particularly those imposing the Participation Security, Performance Security, and Appeal Fee “were not made out of thin air.”⁵⁷ These impositions, although “excessive”, “discriminatory”, and “anti-competitive” to the mind of NOW Telecom, were proper to ensure that “only those with legal qualifications as well as financial and technical capabilities are allowed to participate and vie for the privilege to be the NMP.”⁵⁸

Clearly, NOW Telecom has no vested right over the allocated radio

Mendoza, Special Second Division].

⁵⁴ Republic Act No. 7925 (1995), sec. 4(c).

⁵⁵ *Rollo*, p. 109.

⁵⁶ *Id.* at 117.

⁵⁷ *Id.* at 111.

⁵⁸ *Id.* at 114.

frequencies for the NMP, or any clear, actual, and existing right to be protected against the implementation of the subject Circular.

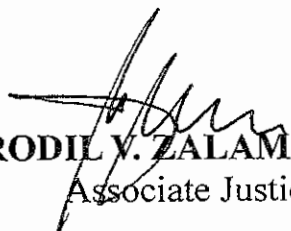
Consequently, there could not be any material or substantial invasion of a right that does not exist.

In the same manner, since it has no vested right over the allocated frequencies for the NMP, and it failed to show a clear, actual, and existing right that must be protected from the challenged provisions of the subject Circular, NOW Telecom could not sustain any legal injury by reason of the implementation of the said Circular which it seeks to enjoin.

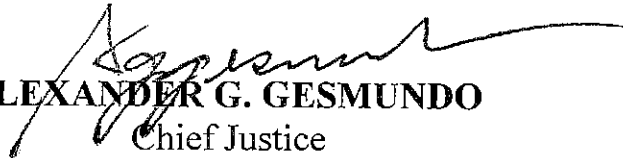
Considering all the foregoing, the CA did not commit any reversible error in the assailed Decision and Resolution. The CA properly upheld the RTC's denial of NOW Telecom's application for WPI.

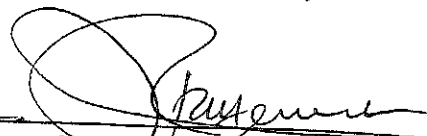
ACCORDINGLY, the Petition for Review on *Certiorari* filed by petitioner NOW Telecom Company, Inc., is hereby **DENIED**. The Decision dated May 24, 2021 and the Resolution dated April 12, 2022 of the Court of Appeals in CA-G.R. SP No. 158237 are **AFFIRMED**.

SO ORDERED.



RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

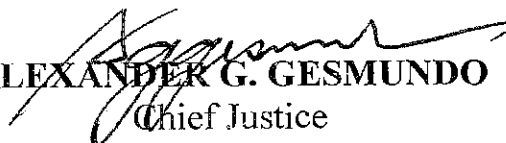

RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice