Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
7th Floor, EDPC Building, BSP Complex
Roxas Boulevard, Manila

BAYAN TELECOMMUNICATIONS, INC. (formerly known as ICC Telecoms), EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., EXTELCOM, DIGITEL, GLOBE TELECOMS, PT&T, and SMART COMMUNICATIONS, INC., all represented by TELECOMS INFRA-STRUCTURE CORPORATION OF THE PHILIPPINES (TELICPHIL),
Petitioners-Appellants,

CBAA CASE NO. L-42

- versus -

THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE CITY OF BATANGAS,
Appellee,

- and -

THE CITY TREASURER OF THE CITY OF BATANGAS,
Respondent-Appellee.
x - x

R E S O L U T I O N

On January 24, 2007 this Board rendered a Decision in the above-entitled case dismissing the Appeal for lack of merit. Not satisfied, and alleging that it received a copy of said Decision on May 25, 2007, Petitioners-Appellants filed their Petition for Reconsideration via registered mail on June 12, 2007 and received by this Board on June 20, 2007. Petitioners-Appellants based their Petition on the following ground:

> *THE SUPREME COURT HAS DECLARED THAT REAL ESTATE PROPERTY USED BY BAYAN TELECOMMUNICATIONS INCORPORATED IN THE OPERATION OF ITS FRANCHISE IS EXEMPT FROM REAL ESTATE TAXES. ACCORDINGLY, TELICPHIL AS MERE AGENT OF BAYAN TELECOMMUNICATIONS INCORPORATED AND OTHER CO-OWNERS OF NATIONAL DIGITAL TRANSMISSION NETWORK, WHO ARE LIKEWISE EXEMPT FROM REAL ESTATE TAXES, IS (sic) NOT OBLIGED TO PAY THE REAL ESTATE TAXES DEMANDED BY THE APPELLEES.*

Petitioners-Appellants pray that the said “Decision of this Honorable Board dated January 24, 2007, be reversed and set aside and in lieu thereof, the City Treasurer of Batangas City be ordered to refund the real estate taxes paid by

TELICPHIL, acting as agent of the co-owners of the National Digital Transmission Network." Petitioners-Appellants' arguments follow:

> "Pending the Resolution of Petitioner-Appellants Appeal, the Supreme Court, in *The City Government of Quezon City, and the City Treasurer of Quezon City, Dr. Victor B. Endriga vs. Bayan Telecommunications Incorporated,* G.R. No. 162015, dated March 6, 2006, ruled that real estate properties used by Bayan Telecommunications Incorporated in the operation of its franchise, is (sic) exempt from real estate taxes. The Supreme Court held that:
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> > 'As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by its enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. The more decisive question turns on whether Congress actually did exempt Bayantel's properties at all by virtue of Section 11 of Rep. Act No. 7633.
> >
> > 'Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase *"exclusive of this franchise"* which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation a an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise.'
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> "This ruling was reiterated in the case of *Digitel Telecommunications Philippines, Incorporated vs. Province of Pangasinan, represented by Ramon A. Crisostomo, Pangasinan Provincial Treasurer,* G.R. No. 152534 promulgated on February 23, 2007, where the Supreme Court held that:
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> > 'Succinctly put, had the Congress of the Philippines intended to tax each and every real property of petitioner DIGITEL, regardless of whether or not it is used in the business or operation of its franchise, it would not have incorporated a qualifying phrase, which such manifestation admittedly is. And, to our minds, "the issue in this case no longer dwells on whether Congress has the power to exempt" petitioner DIGITEL's properties from realty taxes by its enactment of Republic Act No. 7678 which contains the phrase *"exclusive of this franchise,"* in the face of the mandate of the Local Government Code. The more pertinent issue to consider is whether or not, by passing Republic Act No. 7678, Congress intended to exempt petitioner DIGITEL's real properties actually, directly and exclusively used by the grantee in its franchise.
> >
> > 'The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code has already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:
> >
> > 'The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to

> once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.
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> 'In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of it franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."

Respondent-Appellee, in opposing Petitioners-Appellants' Motion for Reconsideration, submit that:

> "1. The decision rendered by the First Division of the Supreme Court in the case of RCPI v. Provincial Assessor of South Cotabato, et al., G.R. No. 144486, April 13, 2005 is more in consonance with justice, fair play, intent and letter of the law;
>
> "2. The decision rendered by the Second Division of the Supreme Court in The City Government of Quezon City, et al. v. Bayan Telecommunications Inc., GR No. 162015, March 6, 2006, is vague and prejudicial/derogatory to the interests of local government units such as the Respondents-Appellees City of Batangas."

As argument, Respondent-Appellee quoted portions of the Decision of the Supreme Court's First Division in *RCPI v. Provincial Assessor of South Cotabato*, supra, thus:

> "As found by the appellate court, RCPI's radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. Section 14 of RA 2036, as amended by RA 4054, states that "[i]n consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, **the grantee shall pay the same taxes as are now or may hereafter be required by law** from individuals, co-partnerships, private, public or quasi-public associations, corporations or joint stock companies, **on real estate, buildings** and other personal property x x x." **The clear language of Section 14 states that RCPI shall pay the real estate tax.**
>
> "The "in lieu of all taxes" clause in Section 14 of RA 2036, as amended by RA 4054, cannot exempt RCPI from the real estate tax because **the same Section 14 expressly states** that RCPI **"shall pay the same taxes** x x x **on real estate, buildings** x x x." The "in lieu of all taxes" clause in the third sentence of Section 14 cannot negate the first sentence of the same Section 14, which imposes the real estate tax on RCPI. The Court must give effect to both provisions of the same Section 14. This means that the real estate tax is an exception to the "in lieu of all taxes" clause.
>
> "Subsequent legislations have radically amended the "in lieu of all taxes" clause in franchises of public utilities. As RCPI correctly observes, the Local Government Code of 1991 **"withdraw all the tax exemptions existing at the time of its passage – including that of RCPI's"** with respect to local taxes like the real property tax. Also, Republic Act No. 7716 ("RA 7716") abolished the franchise tax on telecommunications companies effective 1 January 1996. To replace the franchise tax, RA 7716 imposed a 10 percent value-added-tax on telecommunications companies under Section 102 of the National Internal Revenue Code. The present state of the

law on the "in lieu of all taxes" clause in franchises of telecommunications companies was summarized as follows:

"The existing legislative policy is clearly against the revival of the "in lieu of all taxes" clause in franchises of telecommunications companies. After the VAT on telecommunications companies took effect on January 1, 1996, Congress *never* again included the "in lieu of all taxes" clause in any telecommunications franchises it subsequently approved. Also, from September 2000 to July 2001, all the fourteen telecommunications franchises approved by Congress uniformly and expressly state that the franchise shall be subject to all taxes under the National Internal Revenue Code, except the specific tax. The following is substantially the uniform tax provisions in these fourteen franchises:

> 'Tax Provisions – The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees, or charges and other impositions under the National Internal Revenue Code of 1997, as amended, and other applicable laws: Provided, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under any relevant law: Provided, further, That all rights, privileges, benefits and exemptions accorded to existing and future telecommunications entities shall likewise be extended to the grantee.'

"Thus, after the imposition of the VAT on telecommunications companies, Congress refused to grant any tax exemption to telecommunications companies that sought new franchises from Congress, except the exemption from specific tax. More importantly, the uniform tax provision in these new franchises expressly states that the franchise shall pay not only all taxes, except specific tax, under the National Internal Revenue Code, but also all taxes under "other applicable laws." One of the ***"other applicable laws"*** is the Local Government Code of 1991, which empowers local governments to impose a franchise tax on telecommunications companies. This, to reiterate, is the existing legislative policy.

"RCPI cannot also invoke the equality of treatment clause under Section 23 of Republic Act No. 7925. The franchises of Smart, Islacom, TeleTech, Bell, Major *Telecoms, Island Country, and IslaTel,* ***all expressly declare that the franchisee*** **shall pay the real estate tax,** using words similar to Section 14 of RA 2036, as amended. The provisions of these telecommunications franchises imposing the real estate tax on franchises only **confirm** that RCPI is subject to the real estate tax. *Otherwise RCPI will stick out* like a sore thumb, being the only telecommunications company exempt from the real estate tax, in mockery of the spirit of equality of treatment that RCPI is invoking, not to mention the violation of the constitutional rule on uniformity of taxation. (underscoring supplied for emphasis).

"It is elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted."

In *Radio Communications of the Philippines Inc. (RCPI) vs. Provincial Assessor of South Cotabato, et al.,* supra, the First Division of the Supreme Court discussed about how the "in lieu of all taxes" clause in the tax provisions of RCPI's franchise cannot negate the first sentence of the same tax provisions which imposes the real estate tax on RCPI.

We agree. But we would like to point out, if we may, that the phrase "all taxes" contemplated by the "in lieu of all taxes" clause in the tax provisions of franchises of telecommunications companies refers to franchise and other taxes that local government units may try to impose on the franchise – a personal property – or earnings thereof. It has nothing to do with realty taxes which are imposed on real properties.

On the other hand, the Second and Third Divisions of the Supreme Court, in *The City Government of Quezon City, et al. vs. Bayan Telecommunications Incorporated,* supra, and in *Digitel Communications Philippines, Incorporated vs. Province of Batangas, et al.,* supra, respectively, discussed the **"meaning"** of the phrase ***"exclusive of*** this franchise."

While the First, Second and Third Divisions of the Supreme Court are co-equal, it seems that each Division does not necessarily share the opinion(s) of any of the other Divisions – although the Third Division seems to have noticed and adopted the opinion of the Second Division as far as the phrase "exclusive of this franchise" is concerned.

However, all three said Divisions missed, or failed to notice, the true meaning of the phrase ***"exclusive of".***

Webster's Third International Dictionary of the English Language Unabridged (1966 ed., p. 793) defines the term **"exclusive of"** as a preposition meaning **"<u>not taking into account: excluding from consideration</u>** (there were four of us ***exclusive of*** the guide; ***exclusive of*** artillery)"

"Webster's New World Dictionary, Warner Books Paperback Edition (1990), and Webster's New World Pocket Dictionary, Third Edition (1997), both define ***"exclusive of"*** as ***"not including".***

Reader's Digest Encyclopedic Dictionary, First Edition (1994), classifies ***"exclusive of"*** as a quasi-adverb meaning ***"not including, not counting".***

In the example given in Webster's Third International Dictionary, it is quite apparent that the preposition ***"exclusive of"*** simply means ***"not***

including" or ***"excluding"***, that is, "there were four of us ***not including –*** or ***excluding*** – the guide."

In both *The City Government of Quezon City et al. vs. Bayan Telecommunications Incorporated,* supra, and *Digitel Telecommunications Philippines, Incorporated vs. Province of Pangasinan, et al.,* supra, the Supreme Court ruled that the phrase *"exclusive of this franchise"* means that "all of the franchisees' (Bayantel's and Digitel's) properties that are actually, directly and exclusively used in the pursuit of its franchise" are exempt from realty taxes. The Court practically changed the law by **substituting** the words ***"exclusive of"*** with the phrase ***"NOT actually, directly and exclusively used in".***

The tax provision of Rep. Act No. 3259 (Bayantel's franchise, approved on June 17, 1961), embodied in Section 14 thereof, reads:

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of*** the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (b) The grantee ***shall further pay*** to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and a half per centum of all gross receipts from the business transacted under this franchise by the said grantee." (Emphasis supplied).

On July 20, 1992, a few months after the Local Government Code of 1991 (LGC) took effect, Congress enacted Rep. Act No. 7633, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) containing the following tax provision:

> "SEC. 11. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, ***exclusive of*** this franchise, as other persons or corporations are now or hereafter may be required by law to pay. ***In addition thereto,*** the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunication businesses transacted under this franchise by the grantee, its successors or assigns and the said percentages shall be in lieu of all taxes on this franchise or earnings thereof. Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code x x x." (Emphasis supplied)

On the other hand, the tax provision of Rep. Act No. 7678 (DIGITEL's franchise approved on February 17, 1994), embodied in Section 5 thereof, states:

> "SECTION 5. – Tax Provisions. – The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property ***exclusive of*** this franchise as other persons or corporations are now or hereafter may be required by law to pay. ***In addition thereto,*** the grantee shall pay to the Bureau of Internal Revenue each year, within thirty(30) days after the audit and approval of the accounts, franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunication business transacted under this franchise by the grantee: Provided, That the grantee shall continue to be liable for income tax payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the later enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto x x x." (Emphasis supplied)

In jurisprudence, a franchise as a right and privilege is regarded as property, separate and distinct from the property which the corporation itself may acquire. (Fletcher's Cyclopedia of the Law of Private Corporation, Vol. 6A, pages 427-428, citing Horn Silver Min. Co. vs. New York, 143 U.S. 305 36 L. Ed. 164 12 Sup. Ct.-403; City of Campbell vs. Arkansas-Missouri Power Co., 55F (2d) 560, as cited in the City Government of Batangas vs. Republic Telephone Company, Inc., CA-G.R. CV No. 21897, January 21, 1992.)

The word "franchise" in tax provisions of telecommunications companies refers to the "right" granted by Congress to a grantee, which right is an intangible personal property, so that, the phrase "personal property exclusive of this franchise" should mean "personal property, **not including** (or **excluding**) the franchise itself". The franchise, as a personal property, was to **be excluded from or not to be included with**, the other personal properties on which the grantee, its successors or assigns, shall be "liable to pay the same taxes. . . as other persons or corporations are now or hereafter may be required by law to pay" because, before January 1, 1996, the effectivity of Republic Act No. 7716 (which abolished the franchise tax imposed on telecommunications companies and, in its place, imposed a ten percent (10%) Value-Added-Tax (VAT), the ***franchise tax*** percentage "shall be ***in lieu of all taxes on this franchise or earnings thereof."***

The Second and Third Divisions of the Supreme Court, however, may have treated or considered the said word "franchise" not as a right or intangible personal property, but as the "process" or "operation" of the franchise. Otherwise,

how would the Court justify the big blind leap from ***"exclusive of, or not including*** this franchise: to ***"NOT actually, directly and exclusively used in*** this franchise."

In *The City Government of Quezon City, et al. vs. Bayan Telecommunications Incorporated,* supra, the Court said:

> "For sure, in Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao, this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:
>
> > 'Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy. The legal effect of the constitutional grant to local government units simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations. (Emphasis supplied.)'
>
> "As we see it, then, the issue in this case no longer dwells on whether Congress has the power to exempt Bayantel's properties from realty taxes by the enactment of Rep. Act No. 7633 which amended Bayantel's original franchise. The more decisive question turns on whether Congress actually did exempt Bayantel's properties by virtue of Section 11 of Rep. Act No. 7633.
>
> "Admittedly, Rep. Act No. 7633 was enacted subsequent to the LGC. Perfectly aware that the LGC has already withdrawn Bayantel's former exemption from realty taxes, Congress opted to pass Rep. Act No. 7633 using, under Section 11 thereof, exactly the same defining phrase *"exclusive of this franchise"* which was the basis for Bayantel's exemption from realty taxes prior to the LGC. In plain language, Section 11 of Rep. Act No. 7633 states that "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's (Bayantel's) properties that are actually, directly and exclusively used in the pursuit of its franchise."

In *Digitel Telecommunications Philippines, Incorporated vs. Province of Pangasinan, et al.,* supra, the Third Division of the Supreme Court said:

> "The fact that Republic Act No. 7678 was a later piece of legislation can be taken to mean that Congress, knowing fully well that the Local Government Code has already withdrawn exemptions from real property taxes, chose to restore such immunity even to a limited degree. Accordingly:
>
> "The Court views this subsequent piece of legislation as an express and real intention on the part of Congress to once again remove from the LGC's delegated taxing power, all of the franchisee's x x x properties that are actually, directly and exclusively used in the pursuit of its franchise.
>
> "In view of the unequivocal intent of Congress to exempt from real property tax those real properties actually, directly and exclusively used by petitioner DIGITEL in the pursuit of its franchise, respondent Province of Pangasinan can only levy real property tax on the remaining real properties of the grantee located within its territorial jurisdiction not part of the above-

> stated classification. Said exemption, however, merely applies from the time of the effectivity of petitioner DIGITEL's legislative franchise and not a moment sooner."

With due respect, the conclusions of the Second Division of the Supreme Court in *The City Government of Quezon City, et al., vs. Bayan Telecommunications Incorporated,* supra, and of the Third Division of the Court in *Digitel Telecommunications Philippines, Incorporated vs. Province of Pangasinan, et al.,* supra, are based on false premises. The matters of the inherent taxing power of the legislature, and/or the power of Congress to exempt certain persons, and/or the passage of Rep. Act No. 7633 (amending Bayantel's original franchise) after the effectivity of the LGC, and/or the enactment of 7678 (Digitel's franchise) subsequent to the LGC, and/or Section 23 of Rep. Act No. 7925, are all beside the point.

The "Tax Provisions" common to telecommunications franchises clearly provide that **"the grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property *exclusive of* this franchise as other persons or corporations are now or hereafter may be required by law to pay."** Unless the dictionaries cited herein are **WRONG** on the meaning of the preposition or quasi-adverb ***"EXCLUSIVE OF"***, the real properties of the telecommunications companies are liable to the payment of the realty tax; all their personal properties, ***with the exception of the franchise,*** are liable to payment of taxes **as other persons or corporations are now or hereafter may be required by law to pay**.

The tax provision of Rep. Act No. 3259 (Bayantel's franchise, approved on June 17, 1961), embodied in Section 14 thereof, reads:

> "SECTION 14. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, ***exclusive of*** the franchise, as other persons or corporations are now or hereafter may be required by law to pay. (b) the grantee ***shall further pay*** to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act, one and a half per centum of all gross receipts from the business transacted under this franchise by the said grantee." (Emphasis supplied).

Since Bayantel, as franchise grantee under Rep. Act No. 3259, was liable to pay the same taxes on all its real and personal properties, ***not including the franchise,*** as other persons or corporations are now or hereafter may be required by law to pay, the Local Government Code of 1991 (LGC) **could not have withdrawn any realty tax exemption** (of Bayantel **simply because such exemption did not exist in the first place**,

A few months after the Local Government Code of 1991 (LGC) took effect, Congress enacted Rep. Act No. 7633 on July 20, 1992, amending Bayantel's original franchise. The amendatory law (Rep. Act No. 7633) contained the following provision:

> "SEC. 11. The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, ***exclusive of*** this franchise, as other persons or corporations are now or hereafter may be required by law to pay. ***In addition thereto,*** the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunication businesses transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof. Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code x x x." (Emphasis supplied)

Section 11 of Rep. Act No. 7633 is a virtual reenactment of Section 14(a) of Rep. Act No. 3259 (the original franchise of Bayantel). As Section 14(a) of Rep. Act No. 3259 **did not confer to Bayantel any exemption from the realty tax,** Congress, by passing Rep. Act No. 7633, **could not have "restored" any realty tax exemption which was not, in the first place, granted under the original franchise of Bayantel.**

Digitel's franchise (Rep. Act No. 7678) was approved on February 17, 1994, more than two years after the LGC took effect. The tax provisions embodied in Section 5 of R.A. 7678 are similar to those embodied in Section 14(a) of Rep. Act No. 3259 and Section 11 of Rep. Act No. 7633 (Bayantel's original and amended franchises, respectively). Had R.A. 7678 exempted Digitel from realty taxes, it would have been a clear intention of Congress to override the last paragraph of Section 234 of the LGC which withdraw all exemptions

existing at the time the LGC took effect. As in the case of Bayantel, no such exemption was granted to Digitel. In fact, Congress emphatically provided under Section 5 of Rep. Act No. 7678 that, **with the exception of the franchise** (which is subject only to the franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunication business transacted under this franchise by the grantee), the grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property as other persons or corporations are now or hereafter may be required by law to pay.

In its 2nd Indorsement dated January 4, 1999, the Bureau of Local Government Finance (BLGF) opined that:

> "This Bureau finds the foregoing arguments of DIGITEL tenable considering the fact that, actually, even the Office of the President (OP) appears to share the same stand when OP, notwithstanding the subject January 21, 1992 Court of Appeals Decision re affirmed its position on the matter under a letter dated March 12, 1996, **which categorically declared that DIGITEL, too, shall be subject only to the following taxes, to wit:**
>
> 1. **Taxes on its real estate, buildings and personally property not used in connection with the conduct of its business under its franchise, as other persons or corporations are now or hereafter may be required to pay;** (Underscoring supplied)
>
> x x x
>
> It is likewise important to note hereon that, in adherence to the aforementioned March 12, 1996 pronouncement of the Office of the President, this Bureau, in its November 9, 1998 letter . . ., likewise maintained the same stand, which in effect expressed that **"the claim for exemption of that company from the payment of real property taxes on the real properties which are used in the operations of . . . (the company's) franchise is hereby deemed meritorious . . .'**
>
> In view thereof, the said Regional Director for Local Government Finance and the Provincial Assessor are hereby enjoined to implement the subject Opinions rendered by the Office of the President and the Department of Finance, thru the Bureau of Local Government Finance, on matters pertaining to the real property tax exemption covering real properties of DIGITEL which are used in the operation of its franchise.
>
> Be guided accordingly.
>
> ANGELINA M. MAGSINO
> Deputy Executive Director
> Officer-in-Charge"

The above-quoted opinion of the BLGF was adopted by the Regional Trial Court (RTC) of Quezon City, Branch 227, in its Civil Case No. Q-02-47292. The RTC decision in said case is the subject matter of *The City Government of Quezon City, et al., vs. Bayan Telecommunications Incorporated,* supra.

The same Opinion of the BLGF was declared by the Court of Appeals in the case of City of Batangas v. RETELCO, Inc., CA-G.R.-CV No. 21897, dated January 21, 1992, to be erroneous, thus:

> "Reliance is placed by the trial court in the Opinion No. 1818 dated September 1982 of the Office of the President which states that the phrase 'exclusive of this franchise' found in Section 7 of Republic Act 3662 'has been construed to mean as excluding real estate, buildings and personal property of Defendant RETELCO, Inc. directly used in the operation of its franchise, for which the latter is not subject to real estate taxes as other persons or corporations are now or hereafter may be required by law to pay.' We disagree. While administrative bodies may make opinions on the provisions of law, their opinions are, at most, persuasive and should not be given effect when they are erroneous. Administrative interpretations of law are not conclusive upon the courts (People v. Hernandez, 59 Phil. 272). (Underscoring supplied for emphasis)
>
> **"Here, it is Our well considered view that the opinion of the Office of the President is erroneous because it would render useless and ineffectual the clear import of Section 7 of Republic Act 3662 which holds RETELCO liable to pay real estate tax on its real estate, buildings and personal property, without distinction whether or not such property is directly used in the operation of its franchise.** It is a well settled rule in statutory construction that words used in the statute are there for some purpose and are not used needlessly. Corollarily, there is the rule that it is the interpretation of the statute which will give effect to all the words used therein which is favored, as against one which will render some of the words useless and ineffective."

The Supreme Court, in *PLDT vs. Davao, et al.* (G.R. No. 143867, August 22, 2001), also rejected BLGF's 2nd Indorsement dated January 4, 1999, thus:

> "To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. . . the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of Section 23 of R.A. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields." (Underscoring supplied)

The BLGF corrected its previous Opinions by issuing BLGF's MEMORANDUM CIRCULAR NO. 15-2004 dated October 25, 2004, addressed to "All Regional Directors for Local Government Finance; Provincial, City and Municipal Assessors and Treasures; and others Concerned" with "Reversal of the Real Property Tax Exemption Previously Granted to Globe Telecommunications (GLOBE fore brevity), in line with the Supreme Court (SC) Decision (G.R. No. 143867) dated August 22, 2001, and the Central Board of Assessment Appeals (CBAA) Decision (Case No. V-17) dated January 31, 2002.

It is quite ironic that, after correcting itself in view of the *en banc* Decision of the Supreme Court in *PLDT vs. Davao,* supra, the Second Division of the Supreme Court, in *The City Government of Quezon City, et al. vs. Bayan Telecommunications Philippines Incorporated vs. Province of Pangasinan,* supra, both reversed, ***sub silencio,*** (to borrow the phrase used by the Honorable Associated Justice Date O. Tinga in his Dissenting Opinion in *Manila International Airport Authority v. Court of Appeals, et al.,* G.R. No. 155650, July 20, 2006), the Supreme Court *en banc* ruling in *PLDT vs. Davao,* as far as said ruling concerned the realty tax.

WHEREFORE, premises considered, the instant Petition for Reconsideration is hereby DENIED.

SO ORDERED.

Manila, Philippines, July 27, 2007.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member