IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, S.R..……...CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….…...ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE

Orange Liberia, Inc., by and thru its Chief Executive Officer, Mamadou Coulibaly of the City of Monrovia, Liberia…… …….. Appellant	)	
Versus	)	APPEAL
Liberia Telecommunications Authority (LTA) by and thru its Chairman, Ivan G. Brown, or any of its Commissioners, all of the City of Monrovia, Montserrado County Liberia……..Appellee	)	
GROWING OUT OF THE CASE:	)	
Orange Liberia, Inc., by and thru its Chief Executive Officer, Mamadou Coulibaly of the City of Monrovia, Liberia…… …….. Petitioner	)	
Versus	)	PETITION FOR JUDICIAL REVIEW
Liberia Telecommunications Authority (LTA) by and thru its Chairman, Ivan G. Brown, or any of its Commissioners, all of the City of Monrovia, Montserrado County Liberia……...Respondent	)	

Heard: July 1, 2020 Decided: September 3, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

An Act of the Legislature creating the Liberia Telecommunications Authority, the appellee in these proceedings, was passed and published in 2007 (The Telecom Act of 2007). This Act delegates to and empowers the appellee, *among other things*, to make regulations and rules and promulgate orders respecting any matter or thing, including orders to compel a person to comply with or implement the purposes of the Telecom Act of 2007, a regulation, rule or license. Upon publication, by the

appellee, such orders shall have the same legal force as a rule. In the exercise of such powers as aforementioned, the appellee's determination of fact is binding and conclusive. The Telecom Act of 2007 provides that the appellee shall conduct a process of public consultation appropriate to the circumstances and take account of the result of such consultation in the final exercise of its authority prior to issuing any order or exercising any authority under the Act that is likely to have any substantial impact on network operators, service providers, and any other market participant or the general public. *Part III, Section 11 of the Act/2007.*

In pursuit of its functions indicated above, the appellee caused the publication of a Notice of Public Consultation and a Consultation Document on the 26th day of November 2018 in launching a formal period of public consultation regarding requests made separately by service providers for the appellee to intervene in addressing alleged anti-competitive practices in the mobile voice and data markets. Before the publication of the Notice of Public Consultation and Consultation Document, the appellee set into motion briefings with stakeholders, including Orange Liberia Limited, the appellant.

Inputs and comments gathered from these briefings as per the certified records before this Court show that the appellant initially expressed concerns about the concept of rebalancing the price structure affecting voice calls and data services with the view to improve stability in the markets. The appellant observed that the reduction in the telecommunication market value by more than 33% between 2014 and 2017 was due to a combination of other facts, apart from a price war between service providers. More importantly, the appellant noted in its inputs during the consultation that the "concept of unlimited, three day free calls" is at the core of its marketing strategy and if stopped, would destabilize the company and create a significant risk on its leadership of the market, operations, revenues, and taxes, besides affecting a vast number of its customers. The appellant, therefore, argued that it would find it challenging to comply with a price floor. The appellant also observed that the schedule for feedback on the consultation document was extremely short.

In response to these concerns, the appellee agreed that a combination of economic and other factors might have contributed to the telecommunications market's destabilization. However, the appellee noted that to rebalance the price structure

and stabilize the telecommunications market, as the regulator, it could only act on those factors within its direct control, such as the service providers' cost price. The appellee further noted that it understands the marketing gimmick of "unlimited calls" to be customers' unlimited minutes or megabytes at a defined cost within a specified period. Therefore, the appellee suggested that the service providers apply a cap to all such unlimited offers "under a price floor, and that 'unlimited marketing offers' may continue as long as the appropriate caps are applied to ensure compliance with the price floors." The appellee accepted that the service providers needed additional time for more extensive consultation on the price floor and other regulatory interventions proposed by stakeholders for sector value restoration. Therefore, the appellee extended the consultation period deadline from the 15th day of January 2019 to the 20th day of February 2019.

On the 25th day of February 2019, the appellee caused the publication of its Order captioned LTA Services and a Regulatory Fee on Telecommunication Goods and Services. Part II, Section 2.1 of the said Order, sets forth the price floor for on-net voice at US$0.0156 per minute, and Section 2.3 sets the floor for data services at US$0.0218 per megabyte. The Order also provides that after it comes into force on the 15th day of April 2019, and on the sixth month anniversary of the Order, there shall be automatically imposed a surcharge on the on-net voice of US$0.008 per minute, and on the data services a surcharge of US$0.0065 for each megabyte. *Part IV, Sections 4.1 and 4.2, respectively*. It is worth noting that Section 4.3 of the Order provides that "*the surcharges subject of this Subpart shall go into immediate effect on the specified date with no additional notice or order required, subject only to any determination arising from a review and analysis of market indicators that may be pursuant to Sections 5.1 and 5.2 in the sole discretion of the LTA."*

The transcribed records reveal that after the publication of the appellee's Order on the 25th day of February 2019, the appellant, through its counsel, continued to engage the appellee by numerous letters outlining the appellant's objections to the Order. These communications were followed by a directive from the Chairman of House of Representatives' Committee on Post and Telecommunications for the appellee to submit on or before the 10th day of April 2019 documents comprising (1) Report and receipts of surcharge revenue paid to the Government of Liberia, (2) Outline of issues posing threats to the survivability of the telecommunication operators/service providers and (3) receipts for payments made into GOL's revenue

envelope for the period under review, for the Committee's perusal and deliberation. This Court observes that the internal memorandum from the Chairman of the House's Committee on Post and Telecommunications instructed the Clerk of the House of Representatives to, in addition to the above, order the appellee to provisionally cut off the imposition of an additional surcharge on all local calls until the Committee and the Board of Commissioners (BoC) hold a consultative meeting. However, the Clerk's letter to the appellee dated the 5th day of April 2019 referenced by the appellant in its petition for judicial review, did not include any such order.

On the 15th day of April 2019, the same being the date enunciated in the Order as the effective date, the appellant proceeded to the Civil Law Court, Sixth Judicial Circuit for Montserrado County, Republic of Liberia and filed its sixteen count petition for judicial review. For brevity, we quote the substantive allegations of law and facts as are contained in the appellant's petition to wit:

> "7. The petitioner's reaction and comment to the draft regulation were that the draft license fee regulations should be revisited to exclude current valid licenses, and they should be limited only to entities applying for new licenses or renewal of existing licenses. Petitioner's reaction is an accurate statement of the law that the application of the proposed regulations to existing licenses would amount to a unilateral and illegal abrogation of the terms and conditions of the petitioner's pre-existing valid and unexpired licenses. Copy of petitioner's the 14th day of October 2014 reaction is attached as Exhibit "P/5.
> 8. Petitioner says that while still not agreeable to the implementation of floors prices on the services it provides and in discussion with the respondent, the latter elected to place an additional fee on its services by imposing surcharges for on-net minute and megabyte thereby exacerbating the problem affecting the consultation process and clearly without regard to the several reservations petitioner made in numerous letters, petitioner hereto attaches these letters, marked as petitioner's Exhibit P/5 in bulk, that in very certain terms, state petitioner's concerns and demands for discussion to resolve the difficulty,[but to no avail].
> 9. Petitioner most respectfully informs Your Honor that in the wake of its reservations and demands for appropriate engagements as a major and current taxpayer with no breach of its obligations to the Government of Liberia, respondent issued out its regulation captioned LTA ORDER: 0016-02-25-19 'Establishing Price Floors for On-Net Voice and Data Services and a Regulatory Fee on Telecommunication Goods & Services' dated the 25th day of February 2019 along with an 'ANNEX' to said Order dated the 20th day of February 2019, insisting that same shall take effect on the 15th day of April 2019. Attached

and marked as petitioner's Exhibit P/6 [in] bulk are the two instruments forming cogent parts of this petition.

10. That as a result of respondent's issuance of the Order and Annex to said Order and its insistence that it will not negotiate further, in petitioner not agreeable to the surcharges specifically and yet contending the imposition of floor prices, petitioner caused its lawyer, Public Interest Law Office to communicate its reservation to respondent and to provide to the respondent the reasons for said protests; and upon receipt of the communication from petitioner's lawyer, respondent['s] lawyer contacted petitioner ['s] lawyer to discuss the matter and determine a way forward, promising to respond to the letter from petitioner's lawyer promptly. As it turned out, the respondent failed to honor its promise but elected to pursue a different course of action, same being as contained in the remaining counts below.

11. That this action of the respondent being public interest matter as it affects the common people of Liberia who also have extensive communication needs, the Honorable [House] of Representatives through its Committee on Post & Telecommunication cited respondent to a meeting and meanwhile instructed it to 'provisionally cut off imposing additional surcharge on all local calls until the Committee and the Board of Commissions (BoC) hold a consultative meeting'. Petitioner is aware that up to today's date, the meeting has not been had, and therefore on the strength of the instruction of the House's Committee with oversight of respondent, the surcharge imposition ought to be suspended. Attached are the Committee's letter, the correspondence from the Clerk of the House to the respondent, and petitioner counsel's letters to respondent registering petitioner's protest, marked as petitioner's Exhibit P/7 in bulk and forming parts of this petition.

12. Petitioner contends that its reservation and protests about the surcharges and floor prices that respondent is now putting into effect is tenable and quite justified as not only did respondent issue an Order and Annex but also a 'Report on the Public Consultation on Establishment of Price Floors for On-Net and Data Services and Regulatory Fee on Telecommunication Goods and Services' dated the 20th day of February 2019, though only served petitioner about a week ago, petitioner attacks the veracity of the information and conclusions on the report as the report does not reflect realities and comments made by petitioner on the one hand, and on the other, contains statements that suggest withholding information from petitioner or bias on the part of respondent against petitioner. The petitioner most respectfully calls Your Honor's attention to the letter written by its lawyer in laying out petitioner's reaction to the report, specifically petitioner's observation/comment on count 4, found on page 2 of the letter. Attached are the report and letter aforesaid marked as petitioner[‘s] Exhibit P/8 in bulk, also being integral parts of this petition.

13. That while petitioner's protest and the most recent letter from its lawyers are pending unresolved and in the face of the suspension ordered by the House's Committee on Post & Telecommunications respondent has commenced enforcing its Order and has, in fact, threatened to penalize petitioner for what it has termed as being non-

compliant, as seen from the attached instrument being an email communication from the Chairman of respondent corporation/authority, Mr. Ivan G. Brown dated the 15th day of April 2019 and marked as petitioner['s] Exhibit P/9, though clearly petitioner is acting appropriately relying on the authority of the House Committee and its instruction to the respondent to halt any action until further consideration by said Committee, petitioner says that this additional action on the part of the respondent is unjust and intended to subject petitioner to wrong rule, which petitioner is unwilling to undergo; hence, the petition for judicial review.

14. Petitioner contends that despite the regulatory authority vested in respondent over the telecommunications sector and its authority to issue regulations in exercise of said authority, the respondent cannot determine and impose a surcharge as same is not within its regulatory authority since in fact and indeed the Honorable Legislature with the approval of the President of the Republic; corrected what they saw as a problem when they removed through the 'Act to Repeal Section 1165 (Mobile Telephone Usage) and to Amend Section 1021(B) (2) of the Revenue Code as Amended 2016' which Act was approved on the 13th day of July 2017 and published by authority of the Ministry of Foreign Affairs on the 29th day of August 2017.

15. Petitioner contends further that the Act aforesaid comes after a similar matter involving Cellcom, and the respondent was heard by the Liberian Judiciary in which the former challenged the latter's authority to issue surcharge. Although then the Court found that respondent could do so at the time, the problem created by the respondent's action burdened the public and the Government of Liberia, in upholding the rule of law pursued the course of repealing and amending relevant provisions of the laws of Liberia to avoid a repeat of this unwarranted difficulty on the people of Liberia as well as business. That petition for judicial review case, captioned Cellcom Telecommunication, by and thru its Chief Executive Officers, Avishall Marziano, of the City of Monrovia, Liberia as petitioner versus Liberia Telecommunications Authority, by and thru its Chairperson, Angelique Weeks, or any of its Commissioners, all of the City of Monrovia, Liberia as the respondent was determined by this Honorable Court in 2015, thus arousing the attention of the government that caused the passage subsequently of the Act aforesaid. With this new law, the respondent cannot exercise any authority or take any action legally to impose and implement surcharges. Attached and marked as petitioner's Exhibit P/10 is the Act of the Legislature to attest to this allegation and to form a cogent part of this petition.

16. The respondent has taken affirmative actions to effect the Order and now proceeding to hold petitioner as violative of its Order and the laws of Liberia, the filing of this petition for judicial review against this public entity is appropriate and in line with the law and thus, petitioner contends that it has the right to so file."

The appellant prayed the lower court in its petition to order the immediate suspension of the enforcement of the appellee’s Order, subject of the petition for judicial review, determine that the petition filed is tenable in law, order the appellee to scrap its Order as if it was never issued, and rule that the appellee is

legally prohibited from unilaterally abrogating the laws of Liberia by imposing surcharges and price floors on services in the telecommunications sector.

In the returns to the appellant's petition in the court below, the appellee filed a 23-count traversal abridged in substance as follows:

> "7. That as to count six (6) of the petitioner's petition, the respondent denies the allegations that it rejected the proposal from the petitioner for the postponement of the deadline for consultations. To the contrary, respondent avers that it informed the petitioner that the consultation process involves several stakeholders; hence, the respondent could not arbitrarily postpone the deadline as requested. However, the respondent advised the petitioner to convey its request for extension through the consultation process, which advice the petitioner accepted and complied with. Respondent draws the court's attention to reference #3 of petitioner's comment and respondent's reply in the report of public consultation. Attached and marked as Exhibit 'R/2' in bulk is the respondent's response to the petitioner dated the 6th day of December 2018 and the respondent's report of public consultation to form part of this returns.
> 8. Further as to count [seven] (7) hereinabove, respondent says further that in consideration of petitioner's request for postponement of the deadline for consultations and respondent's own determination that additional time was necessary, the consultation process was extended by the respondent up to the 20th day of February 2019, during which time petitioner made several presentations to respondent's Board of Commissioners on the price floor and surcharges and further submitted [that] the February 19, 2019 letter agreeing with respondent on the implementation of the price floor and regulatory fee. The 19th day of February 2019 letter is attached and marked as Exhibit "R/3 to form a cogent part of this returns.
> 9. That as to count seven (7) of the petitioner's petition, respondent avers that the entire count is unrelated and has no relevance to the case at bar. However, the respondent submits that Section 5.1 of the petitioner's license states: 'The licensee shall comply with all applicable laws of the Republic of Liberia, the Act, Regulations, Rules, and Orders of the LTA as may be prescribed by the Act from time to time". Section 5.2 of the petitioner's license further states, "the LTA shall promulgate, modify and amend Regulations, Rules and Orders as prescribed by the Act to reflect new technologies, changes in the market; changes in government policies; and International Telecommunication Union (ITU) policies". Respondent further submits that petitioner is acting in bad faith when it accepts certain provisions of its license and attempts to reject other provisions under the selfsame license. The action herein is not the abrogation and/or termination of petitioner's license, but rather, full implementation of the license proffered by petitioner. Your Honor and this Court are requested to take judicial notice of petitioner's Universal Telecommunications License (UTL) attached as petitioner's Exhibit "P/3" in bulk.

10. Further to Count 9 above, the respondent submits that petitioner has been deceptive in this matter when, in a letter dated the 15th day of April 2019, petitioner assured respondent that 'Orange Liberia is in full compliance of the floor price and regulatory fee, therefore Part V of the LTA 0016-02-25-19 does not apply to them', while at the same time and on the same the 15th day of April 2019, petitioner filed this petition for judicial review claiming in Count 12 that petitioner is not in compliance with the Price Floors Order 'relying on the authority of the House Committee and its instruction to the respondent to halt any action until further consideration by the Committee.' This deliberate misinformation demonstrates the [depth] of petitioner's bad faith in this challenge for which Your Honor ought to dismiss the entire action. Petitioner's the 15th day of April 2019 letter is attached and marked as respondent's Exhibit 'R/4' to form part of this returns.

11. That as to count eight (8) of petitioner's petition, respondent says that the promulgation of LTA Order 0016-02-25-19 was done in line with its mandate, which is expressly stated in Part III, Section 11 (1)(r) of the Telecommunications Act of 2007 and other provisions of the Act authorizing the respondent to make orders respecting any matter or thing within the jurisdiction of the LTA under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a Regulation, Rule or License, and upon publication by the LTA, such Order shall have the same legal force as a rule.

12. Still traversing count eight (8) of the petitioner's petition, respondent says it does not have to wait for a licensee (like petitioner herein) to agree with every provision of its proposed order, rule or regulation before exercising its regulatory authority to promulgate such order, rule or regulation. Respondent says that while it is encouraged to conduct public consultations prior to issuing any order, rule or regulation or any other exercise of its authority that is likely to have any substantial impact on network operators, service providers, and other market participants or the general public, respondent retains final decision-making authority as the independent regulator. Section 5.4 of the Guidelines for Consultation Process to Develop Regulations adopted and published in 2009 states 'Notwithstanding the interest of the LTA in obtaining comment on the draft Regulations, the LTA shall retain final decision-making authority with respect to the Regulations and amendments thereto'. Hence, the assertion made by petitioner insinuating that it must agree to provisions of a draft order, rule, or regulation before respondent exercises its regulatory authority is baseless and unfounded and must be dismissed along with the entire petition for judicial review. Attached and marked as Exhibit 'R/5' in bulk is the Guidelines for Consultation Process to Develop Regulations to form part of this returns.

13. That as to count nine (9) of the petitioner's petition, respondent avers that it was fully engaged with the petitioner and all other stakeholders during the consultation process leading to the promulgation of LTA Order: 0016-0225-19 Establishing Price Floors for On-net Voice and Data Services and A Regulatory Fee on Telecommunications Goods and Services to the extent that petitioner agreed through its the 19th day of February 2019 letter to implement price floors and a regulatory fee. Respondent says reservations and

comments on proposed orders, rules, and regulations are normal undertakings in the consultation process considered by respondent in finalizing draft instruments. By arguing that the respondent ought to accept its reservations and concerns, the petitioner seems to be seeking preferential treatment in the promulgation of rules, orders, and regulations or the overall exercise of regulatory authority by the respondent. The court is requested to take judicial notice of petitioner's the 19th day of February 2019 letter as contained in respondent Exhibit 'R/3.

14. And also, as to counts 12 and 13 above, the respondent maintains and says that the petitioner is hereby estopped to repudiate its own action after having participated in the promulgation exercise, made proposals and concerns thereto. The petitioner cannot now change its provision after having participated actively in the consultation process leading to the promulgation of the challenged Order. Hence, the petition is a fit subject for dismissal. Respondent so prays.

15. As to count ten (10) of petitioner's petition, respondent incorporate[s] count seven, eight, nine, ten, eleven and twelve (7, 8,9, 10, 11 &12) of its returns and avers further that respondent has the statutory authority to regulate the telecommunications sector including making rules, orders and regulations on matters affecting the telecommunications sector or any component thereof. Respondent further denies the allegation that it failed to honor its promise by responding to the petitioner's letter. Respondent says it informed the petitioner that its letter was under review by the respondent. However, the respondent emphasizes that it does not negotiate or consult on published rules, orders, or regulations beyond the consultation process. The petitioner's admitted attempt to negotiate the published Order is the worst demonstration of bad faith aimed at undermining the regulatory environment for which this petition is dismissible. Respondent so prays.

16. Further as to count [fifteen] (15) above, the respondent submits and says that petitioner's assertion in count ten (10) of its petition stating that as the result of respondent's issuance of the Order and Annex to said Order, and its insistence that it will not 'negotiate' further constitutes an admission that petitioner participated in the stakeholders' consultation process. By now attempting to circumvent the outcome of the well-conducted consultation process through this frivolous suit, the respondent submits that this Act on the part of the petitioner is an admission consistent with Section 25.5, page 200 of the 1LCL Revised.

17. As to count eleven (11) of petitioner's petition, respondent incorporates count five (5) of its returns and avers further that it is not aware of any authority – whether statutory or otherwise – upon which anyone may instruct a stay of implementation of a published rule, Order or regulation besides the Court acting in judicial review as the present case represents. Respondent says the burden of proof is on the petitioner to prove the existence of such authority to stay the implementation of the Price Floors Order as averred in petitioner's petition. However, the respondent has over the period availed itself to the various committees of the National Legislature, and other statutory bodies for consultation and will remain continually engaged with them in regulating the sector.

18. As to count twelve (12) of petitioner's petition, respondent incorporates count six (6) of its returns and avers further that the letter referenced by the petitioner is moot and has no legal effect on LTA Order: 0016-02-25-19 because the said letter was sent after the Order had been published on the 25th day of February 2019. The Court is requested to take judicial notice of the date of the letter and the date the Order was published. Attached and marked as Exhibit 'R/6' is the record of publication from the LTA's website. Respondent further submits that petitioner is making false representation to Your Honor and this Honorable Court to the effect that petitioner has the right to 'negotiate' respondent's published rules, orders, and regulation until petitioner is satisfied with each and every provision thereof. Petitioner having failed to state any legal reliance, respondent prays Your Honor to set aside and dismiss this entire cause of action in that it lacks a legal basis.

19. That as to count thirteen (13) of petitioner's petition, respondent avers that without stating the reliance for the purported 'suspension order', petitioner is seeking non-existing cover for its disrespect to respondent's regulatory authority and is violating the terms and conditions of its operating license. Respondent maintains that the Telecommunication Act of 2007 does not provide for respondent's action to be approved or disapproved by any authority other than the Court in a judicial review, which the present case seeks to achieve. Hence, the petitioner's reference to the purported 'suspension order' is without a basis in law and, therefore, dismissible. Respondent so prays.

20. That as to counts fourteen, fifteen and sixteen (14, 15, & 16) of petitioner's petition, respondent avers that the petitioner's allegation that respondent has no authority to impose surcharge because the Honorable Legislature removed said authority when it enacted the 'Act to Repeal Section 1165 (Mobile Telephone Usage) and to Amend Section 1021 (B) (2) of the Revenue Code as Amended 2016' is misleading. The amendment referred to by petitioner is the Revenue Code and not the Telecommunication Act of 2007, which empowers respondent to independently regulate the telecommunications sector.

21. Respondent submits further that the repealed provision is related to Excise Tax, which is squarely within the authority of the Liberia Revenue Authority (LRA) while the surcharge being imposed by the LTA through LTA Order: 0016-02-25-19 is a regulatory surcharge which is within the regulatory authority of the respondent.

22. Further to counts 19, 20 and 21 above and still traversing counts 14, 15 and 16 of petitioner's petition, the respondent submits that further to the case cited in count fifteen (15) of petitioner's petition, respondent says also that in the case, National Association of Telecom Consumers ('NATELCO') versus Liberia Telecommunications Authority, in which respondent's authority was challenged on the grounds that the levying of regulatory surcharges was not under the authority of the LTA, this very Court held that: 'the levying of this fee which is under contention is a statutory mandate enshrined in the Telecommunications Act 2007'. The Court further opined that 'the levying of the regulatory surcharges was done in keeping with the law'. Respondent prays that while the holdings of this Court may not qualify for precedent under our law, consistency in the interpretation

> of our laws is key to reducing unmeritorious litigations. Attached and marked as Exhibit 'R/7' is the ruling in the NATELCO vs. LTA case to form a cogent part of this returns. Respondent, therefore, prays Your Honor and this Court to hold as you did in the NATELCO case and the case cited in Count 15 of the petition and dismiss the entire petition for lacking basis in law, respondent so prays."

Further to the allegations of law and facts as are contained in the returns, the appellee prayed the lower court to deny and dismiss the petitioner's petition for judicial review of its published Order and order enforcement of the said published Order, and adjudge the cost of the proceedings against the appellant. After the exchange of pleadings, the case progressed to oral and final arguments, pro et con; after that, the trial court rendered its final ruling. The trial court held that the appellant had not alleged sufficient legal grounds for the granting of its petition for judicial review, and therefore ruled denying the said petition, sustained the returns of the appellee, ordered the stay on the implementation of the challenged Order 0016-02-25-19 lifted and ruled the costs of the proceedings against the appellant. We quote an excerpt of the trial judge's final ruling as follows:

> "This Court says that as a regulatory authority, the respondent does not have to obtain the full agreement of all service providers and stakeholders before it can promulgate an order, rule, or regulation. What the Act mandates are that respondent should conduct a public consultation before the promulgation and publication of such Order, rule, or regulation. Section 5.4 of the Guidelines for Consultation Process to Develop Regulations (2009) states that the respondent shall retain final-decision authority with respect to the promulgation of regulations and amendment thereto. We note from the records that the respondent engaged all the stakeholders in the telecommunications sector and got their comments and inputs before promulgating the Order. Their comments and inputs were taken into consideration [before] promulgating the challenged Order.
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> In both its pleadings and oral arguments before this court, the petitioner contended that the respondent does not have the authority to impose surcharges on telecommunication goods and services and that only the Liberia Revenue Authority has that authority. The petitioner relied on the Act to Repeal Section 1165 and amended Section 1021 (b) (2) of the Revenue Code, amended 2016. We note that the referenced Act does not reference nor revoke the respondent's authority to establish tariffs and surcharges on telecommunications goods and services. Petitioner's reliance on that amendment to the Revenue Code is misplaced.
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> It is settled law that an administrative agency's findings as to the facts which are supported by substantial evidence, growing out of a hearing complying with the requirements of due process of law are binding and conclusive, and may not be disturbed, set aside, or substituted by the court's own judgment. The Management of Liberia Katopas Fishing Company vs. Meyers and Orellana, 37 LLR 850 (1995). It is

> also settled law that courts cannot and will not annul, reserve, set aside or disturb the action of an administrative agency which is within its jurisdiction or not beyond its power or authority, and which is not contrary to law, illegal, which has a reasonable basis and is not arbitrary or capricious. The Liberia Institute of Certified Public Accountants of Liberia vs. The Ministry of Finance, 38 LLR 657 (1998). We hold that the challenged Order was promulgated in conformity with the Telecommunication Act 2007 and that the said Order does not violate any provision of the Revenue Code."

From this final ruling of the trial court, the appellant interposed exceptions and announced an appeal to this Court of last resort. The appellant has assigned nineteen errors in its bill of exceptions which can be summarized as follows:

(1) That trial judge imputed the word "surcharge" in the title of the challenged Order;

(2) That the trial court's holding on the sole issue raised in its ruling failed to address several other legal issues raised by the appellant;

(3) That the trial judge ignored the appellant's constitutional challenge to the imposition of a surcharge or tax by the appellee, and erroneously held that the appellee's publication of the challenged Order was consistent with the Telecommunications Act of 2007;

(4) That the trial judge ignored the discrepancy in the dates of the challenged Order and the annex to it, the former coming five days after the latter, a cardinal point;

(5) That the trial judge ignored the appellant's exhibit P/8 which contained the appellant's reaction to the wrong consultation report released by the appellee;

(6) That the trial judge erred when he denied the appellant's submission to file its reply to the appellee's returns under Chapter 16, Section 16.5 of the Civil Procedure Law Revised Code at the commencement of oral argument; and

(7) That the trial judge ignored the legislative intent behind the passage of the 2017 Act, repealing and amending certain portions of the Revenue Code as Amended 2016.

From a careful scrutiny of the parties' pleadings and the records on appeal, and after giving due consideration to the parties' arguments, we identify the following three issues as being dispositive of this appeal:

1. Whether a surcharge is exclusively an additional tax, such as to preclude the appellee from levying the same under the authority of the Telecommunications Act 2007?

2. Does the Revenue Code as Amended 2016 that repeal and amend certain provisions of the Tax Law extend to and affect the Telecommunication Act 2007?
3. Whether the trial judge erred when he ruled that the appellant's petition for judicial review failed to allege sufficient legal grounds?

The appellant has argued that a surcharge is a tax, the imposition of which is an exclusive grant to the Legislature under Article 34(d) of the Liberian Constitution (1986). The appellant has also argued that the Legislature is barred under such textually committed provisions of the Constitution to delegate that authority to an administrative agency, a government parastatal, a branch, or any government organ. On the other hand, the appellee has argued that as the regulator, it has the authority to impose fees or surcharges under the Telecom Act of 2007; to regulate the telecommunications sector to include making rules, orders and regulations on matters affecting the telecommunications sector or any component thereof expressly given under Part III, Section 11 of the Telecom Act of 2007; and to compel a person to comply with or implement the orders, rules or regulations in consequence of the exercise of the authority so granted under the Telecom Act of 2007.

Our appreciation of the parties' respective contentions leads us to search the meaning of the word “surcharge," which appears to have heightened the controversy between the parties. The authoritative *Black’s Law Dictionary Ninth Edition* defines a surcharge as an additional tax, charge, or cost usually one that is excessive. This Court takes cognizance of the use of the conjunction "or" in the definition to indicate a function of alternative; that is to say, a surcharge by definition functions either as an additional tax, an additional cost, or an additional charge. The independence assigned to each part of the meaning considers the context of using the word "surcharge" to promote legislative intent. The law in vogue in this jurisdiction states that words and phrases must be construed in their contexts and given their usually accepted meaning to the approved usage of the language unless the construction is inconsistent with the Legislature's intent or another purpose is expressly indicated. *General Construction Law Revised Code:15.18.0.*

Furthermore, our search and analysis reveal the existence of a synonymic word “surtax,", which according to the authoritative *Black’s Law Dictionary Ninth*

Edition quoted supra, means *an additional tax imposed on something being taxed or on the primary tax itself.* The word "surtax" is distinctive from the word “surcharge” in that the former functions to mean the imposition of additional tax as opposed to the common function given to the latter; that is to say, the word "surcharge" is common to the meaning of (1) additional tax, (2) additional charge, and (3) additional cost. This conclusion finds support in the Revenue Code of 2016 as discussed infra, wherein the word “surtax” is used to repeal the imposition of an additional tax on telephone call services. We notice that nowhere in the Liberian Tax Law referenced herein did the Legislature use the word “surcharge”. Therefore, it can be reasonably inferred that the imposition of the regulatory surcharges in the challenged appellee's Order cannot be said to mean tax imposition as the appellant has vehemently argued and urged this Court to believe. This Court holds that the word “surcharge” is not the exclusive function of the meaning of an additional tax. For all purposes and intent, the usage of the word in the context of the challenged Order cannot be construed to mean the imposition of a tax. Nothing precludes the appellee from using the word “surcharge” in its promulgated orders, rules, and regulations under the authority granted by the Telecom Act of 2007. Therefore, it is evident from the above analysis and discussion that the appellee did not invade the province of the Legislature by imposing the surcharges.

In answering the second question, it is our understanding that the appellant's contention is that the passage by the Legislature of the repeal and amendment of the Revenue Code 2016 extends to and affects the Telecom Act of 2007, to the extent of barring the appellee from the imposition of an additional tax on the usage of telephone services; that the appellant premised its argument on its understanding of a surcharge to mean a tax solely. It having been determined that a surcharge may be interpreted to mean an additional charge or fee other than an additional tax, certainly answers the question as to whether the Legislature intended to repeal and amend provisions of the Telecom Act of 2007 affecting the imposition of the regulatory surcharges on on-net voice calls and data services. We see no expressed or implied intent of the Legislature to do so. Recourse to the Act to Repeal Section 1165 and amend Section 1021 (B) (2) of the Revenue Code as Amended 2016, clearly shows that the repeal and amendment Act affects Part III, Section 1021, Services Tax Imposed and Part IV, Section 1165, Excise Tax. This Act clearly and exclusively effected the Revenue Code and in no way extended to the Telecom Act

of 2007. Nowhere in the said act is there any reference or inference to the Telecom Act of 2007. The appellant assertion therefore that this Act limited the appellee authority to imposed surcharge finds no support in the law.

The appellant's contention that the regulatory surcharges imposed under Part III of the contested appellee's Order are adverse to its business strategy, investment and, to a large extent, its customers, appears to be a factual concern which must not only be supported by evidence but cannot rise to the degree of reasonable inference that the repeal and amendment act affects the Telecom Act of 2007. The purposes of establishing the appellee are to address concerns such as the ones raised by the appellant. It is the appellee that has the requisite capacity, skills, and technologies to examine the appellant's concerns and decide what will best conduce to the purposes for which the Legislature enacted the Telecom Act of 2007. Presumably, that is why the appellee provided in the contested Order that "the regulatory surcharges are *subject only to any determination arising from a review and analysis of market indicators that may be pursuant to Sections 5.1 and 5.2 in the sole discretion of the LTA."* We hold that the repeal and amendment of the Revenue Code as Amended 2016 solely affects the Revenue Code as Amended 2011; and that the provisions of the repeal and amendment of the Revenue Code did not extend to the imposition of surcharges on on-net voice and data services by the appellee under the Telecom Act of 2007. The appellee had imposed additional regulatory fees to take effect six months after the coming into force of the published Order. The questions regarding the economic impact of the imposition of the surcharges demand evidentiary showings; the quantum of these showings or evidence is not properly before the Supreme Court for review. The Court shall further elaborate *infra*.

The appellant also argued that the trial judge ignored several legal contentions presented by the appellant in its petition for judicial review. Our review of the transcribed records reveals a single claim that primarily runs throughout the appellant's argument shaped differently. This contention is that a surcharge is a tax, and therefore not within the appellee's authority to impose. Other assertions such as the appellant's comments and observations not being reflected in the challenged Order, or that the consultation period was short of having given the appellant ample time to analyze proposed changes in the price of on-net voice calls and data services markets are allegations of facts that require evidentiary showing. These several factual allegations, being technical and need evidentiary support, fall

within the appellee's jurisdiction to determine thereon. The trial judge was therefore not in error when he held that it is settled law that an administrative agency's findings as to the facts which are supported by substantial evidence, growing out of a hearing complying with the requirements of due process of law are binding and conclusive, and may not be disturbed, set aside, or substituted by the court's judgment.

The appellee acting within its authority to promulgate rules, regulations, and orders respecting the telecommunications sector was within its jurisdiction granted under the Telecom Act of 2007. This Court can not annul, set aside, or disturb the Order duly and regularly published by the appellee within its jurisdiction or power or authority, and which is not contrary to law, illegal, which has a reasonable basis and is not arbitrary or capricious. *The Management of Liberia Katopas Fishing Company v. Meyers and Orellana, 37 LLR 850 (1995).”The Liberia Institute of Certified Public Accountants of Liberia v. The Ministry of Finance, 38 LLR 657 (1998).* We hold that the trial judge was not in error when he held that the appellant did not allege sufficient legal grounds for granting its petition for judicial review. We must add that questions arising from public policies on the imposition of price and their accompanying economic impacts are addressed to the judgment of the technical and political actors, hence not cognizable for judicial determination unless there is a clear showing of arbitrariness or that the administrative agency exceeded its jurisdiction touching on the imposition of price as required by law.

This Court shall now proceed to address what it considers a strange practice before it. Counsellor Jallah A. Barbu filed on the 12th day of July 2019 a Notice of Voluntary Discontinuance upon obtaining the approval of Mr. Justice Yussif D. Kaba purporting to abate and terminate the appeal before this Court. However, and much to the surprise of this Court, Counsellor Barbu proceeded further to file a brief on the 15th day of January 2020, the same day the case was assigned for hearing, indicating the appellant's readiness to argue its side of the case. Upon inquiry from the Bench, Counsellor Barbu informed the Court that the Notice of Voluntary Discontinuance previously filed by him was conditional; and that the conditions not having been met by the appellee, the appellant has elected for a hearing of the appeal. Responding further to the Bench inquiry, the said Counsellor told the Court that he did not obtain the appellant's prior consent when he applied to withdraw the appeal. Predicated on the apparent inconsistent position of the

appellant's counsel, this Court ordered that the appellant write a letter clearly stating its position to the application filed on its behalf by Counsellor Barbu. We deem it necessary to reproduce the appellant's letter later received by this Court as follows:

> " July 2, 2020
> His Honor Francis S. Korkpor, Sr.
> Chief Justice
> Supreme Court of Liberia
> Republic of Liberia
> Dear Chief Justice Korkpor, Sr.:
> Kindly accept sentiments of highest esteem from the family of Orange Liberia, of which I am Chief Executive Officer and best wishes as you lead the administration of the Judicial Branch of Government and dispose justice for the people of Liberia.
> I write in regards of the argument of Orange Liberia's appeal argued before the Full Bench of Court yesterday, with specific reference to an earlier filing of a Notice of Voluntary Discontinuance filed by our Lawyer, Public interest Law Office through Cllr. Jallah A. Barbu. Our lawyer explained to me that the filing of the Notice was raised by the Bench and that it was important to establish whether we gave a final instruction to Cllr. Barbu to carry out such filing and that the Honorable Court instructed that we submit a formal communication in that regard.
> Mr. Chief Justice, I respectfully and honestly inform the Court that Orange Liberia did not give a final instruction to Cllr. Barbu to withdraw our appeal. We had discussed the matter in view of the assured negotiations that were ongoing between Lone Star MTN and Orange Liberia on the one hand and the Liberia Telecommunications Authority on the other, on the imposition of surcharge by LTA which our two institutions rejected. Coming quite close to a negotiated settlement and since LTA had requested us and convinced that there would be no reversion of the process, we advised Cllr. Barbu that there would be the necessity to, within a short period, to plea with the Honorable Supreme Court to allow us to settle the matter without further court process. However, we believe that may have taken our advance notice as a decision and in error, filed the Notice with the Honorable Court. Had we been informed Honorable Chief Justice we would have instructed him not to do so or at worst, to immediately retract the Notice.
> We express our utmost regret about this situation that arose out of a total misunderstanding in communication and progressed to a breach in communication, and at the writing of this letter, still hold to our honest information to the entire Supreme Court that we did not give any approval for filing such Notice.
> Sir, Orange Liberia expresses once again its appreciation for the Court's hearing of the argument in its appeal with assurances of our fullest regard for the Court and laws of Liberia.
> Respectfully Yours,
> Mamadou Coulibaly
> CEO"

We must categorically state that the rule governing the withdrawal of an appeal pending before the Supreme Court makes no provision for a conditional withdrawal contrary to Counsellor Barbu's insinuation. Part II, of the Supreme Court's Revised Rules, is clear, direct, and concise as follows:

> "Whenever the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk as agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon approval of the Chief Justice or any Justice of the Court, and to give to either party requesting it a certificate of withdrawal."

On the strict application of the above-quoted part of the revised rule, the appeal could have been deemed abated, terminated, and stricken from the Supreme Court's Docket. However, this Court has, over the years, called for the hearing of cases wherein a notice of withdrawal has been filed to ascertain whether the parties have given consent to their respective counsels to do so. It is now clear from the appellant's letter quoted supra that Counsellor Barbu did not obtain that consent that this Court has always required. Needless to mention that the Counsellor's conduct is a clear departure from practice before the Bench; we must emphasize our discountenance of any conduct of lawyers appearing before this Court of last resort, which behavior tends to mislead its final decision making that has far more significant implications to the party litigants. Hence, we give this strong warning to Counsellor Barbu and all lawyers appearing before this Court that such misconduct in the future shall warrant an appropriate penalty.

WHEREFORE AND IN VIEW OF THE FOREGOING, the trial court's final ruling is affirmed, and the appeal is dismissed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Jallah A. Barbu of the Public Interest Law Office appeared for appellant. Counsellors Jonathan T. Massaquoi of International Law Group and Osborn Diggs, In-house Counsel, appeared for the appellee.