



Judicial Review and the Regulatory Process: for Better or Worse

Judith Smith, Legal Counsel
Bahamas Public Utilities Commission
OOCUR Conference
September 16th – 19th, 2003
Hilton Hotel - Port of Spain, Trinidad



INTRODUCTION

- COMMERCIAL & ECONOMIC EFFICACY
- JUDICIAL REVIEW
- INTENTION OF PARLIAMENT TO RESTRICT CHALLENGES?
- CAN THE COURT BE OUSTED?
- FOR BETTER OR WORSE?



The Framework

- Legislative
- Section 7 (1) –
 - point of law and questions of law
 - refusal to grant an individual licence
 - determination of Dominant
 - modification of licence 12(4)(d)
 - revoke a licence
 - impose a fine



Bahamas General Communications Limited

- Complaint – not successful applicant in a tender process
- Legal challenge - must establish one of these grounds: Irrationality, illegality, impropriety
- Section 7(1) should have been complete answer



SECTION 7(2)

- Any person aggrieved by a decision referred to in subsection (1) may appeal to the court on a point of law, on the ground that the decision was unreasonable in the light of information available to the Commission at the time it made its decision or on the ground that it was unreasonable for the Commission to make a decision without ascertaining further information.



ANALYSIS

- ┌ Section 7 (1) –
 - point of law and questions of law
 - refusal to grant an individual licence
 - determination of Dominant
 - modification of licence 12(4)(d)
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- ┌ SECTION 7(2)
 - Any person aggrieved by a decision referred to in subsection (1) may appeal to the court on a point of law, on the ground that the decision was unreasonable in the light of information available to the Commission at the time it made its decision or on the ground that it was unreasonable for the Commission to make a decision without ascertaining further information.



RECOMMENDATION

- ADJOURN EX PARTE APPLICATION TO ENABLE THE PROPOSED RESPONDENT TO BE REPRESENTED



ADJOURNMENT

- BGC case – dismissed for failure to give full and frank disclosure
- Cable Bahamas case – dismissed premature and wrong action



CONCLUSION

- Private law actions
- Public law actions
- Supervisory jurisdiction of the Courts of law
- Saving of judicial time and resources
- Meeting commercial and economic expectancies



Public Utilities Commission

Thank you

**comments can be sent to
jsmith@pucbahamas.gov.bs**