

Mr. Speaker:

I rise to introduce a Bill for an Act to amend the Belize Telecommunications Act (No.16 of 2002), to clarify and expand certain provisions relating to the assumption of control over telecommunications by the Government in the public interest; and to provide for matters connected therewith or incidental thereto.

With your permission, Mr. Speaker, I will say a few words in explanation of the Bill.

As Honourable Members know, the Court of Appeal delivered its judgment in the Telemedia nationalization matter on Friday, June 24, 2011. To our chagrin, the Court declared unconstitutional the law we had passed on August 25, 2009 to assume control over telecommunications in the public interest. This was on the ground that it was inconsistent in certain respects with section 17 of the Constitution relating to protection of property. The Court also declared the Order made by the Minister of Public Utilities under the said Act to be unconstitutional for the same reasons.

Mr. Speaker, with due respect to the Court of Appeal we do not agree with its decision. We are therefore filing an appeal to the Caribbean Court of Justice.

Meantime, though, the former owners of Telemedia have gone on a campaign that has terrorized workers, upset the citizenry, and sought to cripple the operations of the company. This was on the basis that the judgment of the Court of Appeal entitled them to the immediate re-assumption of control, notwithstanding clear legal authority to the contrary. Government's position of resistance to this has now been vindicated by the legal system, even though it was vilified by the appellants and their fellow travelers.

But the confusion and chaos sowed in just a few days, made clear that Government could waste no time in settling this matter once and for all. This is not about personalities, it is about principles: principles of public welfare, principles of cultural advance, principles of national security; principles that make clear that in all the circumstances control of telecommunications, via the dominant provider, must be in the hands of Government. We have therefore come to the House today to fix the law, to

clarify and expand certain provisions that the Court of Appeal said were inadequate.

I hasten to add, Mr. Speaker, that by proposing to amend the Act we passed in August of 2009 we are in no way giving up our right to challenge the findings of the Court of Appeal. We still believe that the Law was in substantial compliance with the Constitution, and will thus maintain our recourse to the CCJ.

As for the clauses of this new Bill, Mr. Speaker, the amendments we are making today are fully consonant with the requirements according to the Court of Appeal. Of particular note is the new section 71, which deals with the payment of compensation. The Bill both details the scheme for satisfying compensation awards, and reinforces the right to enforcement. Access to court for the purpose of establishing a claimant's interest in acquired property as well as his entitlement to compensation, have been amplified in the new section 63. Altogether, the amendments proposed appear to us to satisfy every concern expressed by the judgment.

Therefore, Mr. Speaker, as soon as the Bill is passed we intend to re-acquire the same property that was taken in August 2009. This will reassure all Belize that the Government is in full control because we would have done everything legally necessary to retain ownership of Belize Telemedia Limited.

I want to point out here, Mr. Speaker, that the Court of Appeal completely accepted the position that the state has every right to acquire private property in the public interest, for a public purpose. There was never any issue joined over this, and how could there be? After all, such a proposition is self-evident. It is a right of democratic nation states that has been both recognized and practiced since antiquity. And it is enshrined in the Belize Constitution. For the Constitution doesn't protect against deprivation of private property. It protects against arbitrary deprivation of private property: deprivation that is not done properly for a public purpose; or that is done under a law or in a manner that fails to assure proper access to the courts or proper provisions for the payment of reasonable compensation within a reasonable time.

I lay stress on what I've already said should be self-evident, only because of the position taken by some private sector entities and especially the Belize Chamber of Commerce. They act as though Government's acquisitions are in and of themselves aberrant, that this is deviant behavior. Nothing could be farther from the truth; and that kind of declaration reveals the Chamber Executive to be wearing the worst sort of ideological blinders. The slightest degree of reflection, or the sketchiest amount of research, would have shown them that public acquisition of private property is today a commonplace tool of statecraft and government practice.

Of course, the pre-requisite is that this type of acquisition be carried out in strict compliance with the Constitutional markers. And that is where, according to the Court of Appeal, we went wrong. Our objective of nationalizing BTL in the public interest was fine. But the procedural steps by which we carried this out were flawed.

That distinction is critical for today's exercise. The decision to nationalize was both legitimate and imperative when we first took it. And nothing has changed in that regard. If anything, last week's threats to workers and the efforts to injure the economy and disrupt the provision of an essential

service, show that the circumstances demanding nationalization have become even more exigent. So it is entirely right and proper that we correct the mis-steps and do over what the national interest required on August 25, 2009, and still requires now.

This Bill that I am introducing therefore fixes the defects in the original law and does so with retrospective effect. But there will then be the Order that the Minister will have to make under the law. The first time around, as the Court of Appeal acknowledged, there was nothing wrong with the public purposes that the Minister set out as the bases for his acquisition Order. But the Court was not satisfied that the evidence the Minister adduced as justification for triggering those public purposes, was sufficiently compelling. Even if the Court was right, there was always an overwhelming number of reasons in existence that could prove the public purposes. It was just that, according to the Judges, the Minister did not select the right ones. I am certain that, in making his new Order, the public purpose choices of the Minister now will be rooted in circumstances and references of a nature that will still the doubts of even the most censorious of courts.

So, Mr. Speaker, we have reloaded and are ready to go. And what we are doing is the essence of compliance with the rule of law. We don't agree with the Court of Appeal but we are bound by it. We therefore act now in accordance with those Court of Appeal dictates.

This is, of course, in the proper, irresistible tradition of our democracy. But there are those that say that this very fixing of matters in order to implement the Court of Appeal decision is a negation of the rule of law. What we are really to do, by their reasoning, is simply to give back BTL to the former majority owners and be done with it.

These are the same people that also charged us with violation of the rule of law when, after the position became clear as a bell, we refused-in the absence of the required enforcement court order-to allow Dean Boyce to last week take control of Telemedia. And these are the same people that have neglected now to apologize or even acknowledge they were wrong. This is so even though the Registrar of the Court of Appeal has confirmed in writing to Boyce's attorney that a consequential relief order subsequent to the decision of June 24, should, as we said all along, have been sought in new proceedings before the Supreme Court.

But these people are a combination of the misguided and the malicious. There is no hope for the very plentiful political opportunists among them. But I would urge the others, the ones that have merely been carried away by what they mistakenly believe to be correct neo-liberal orthodoxy, to recant. I repeat that even the most cursory survey of global practice and law shows their position to be ill-informed. To hold on to it now is to run the risk of being accused of anti-nationalism, and no true blooded Belizean can want that. And so I make clear again that governments are expected to correct a state of affairs found to be wrong by a court decision. And the Belize Constitution allows laws to be passed with retroactive effect. This is therefore what we are doing today and it is meet and right so to do.

When this Bill is passed and the consequential acquisition Order made, neither the sky nor the investment climate will fall. But this Administration would have complied with the overarching requirement of its mandate: to protect and promote at all times and in all circumstances and no matter what the cost, the national interests of Belize. The national interests of Belize: words simple and straightforward, but importing the highest possible duty, the most solemn commitment, the most ineffable trust.

Allow me to close, Mr. Speaker, on a more general note. I wish to declare that we in the UDP believe that the restoration of Government control over utilities- water, electricity and telecommunications-is an expression of perhaps the most dominant public purpose there can be. These utilities fall into a special category. And consistent with Government's charge to safeguard the nation, utilities ought not to be the subject of unbridled privatization. I emphasize the word unbridled. Nothing is wrong with a partnership with the private sector, local and foreign, regarding the utilities. But Government should always keep majority ownership. In an ideal world Government would have enough money to operate utilities simply on a break-even basis. That is, consumers would pay only the actual cost of delivering the utility service and not a service provider's profit. That, unfortunately, is not possible. Particularly with BEL there is a need for capital injection that could well come from the private sector. And a private sector partner must be allowed a reasonable rate of return. But Government should, with both BEL and BTL, be in the position of dominant partner in order to ensure that the interests of the consumer are always looked after.

Now this is a position long held by the UDP. That is why when we first privatized BTA, we drafted Articles of Association to preserve Government majority control. But succeeding PUP Administrations swept away those protections, and the operatic saga of BTL thereafter was the result.

We need to prevent this from happening again. So we declare today that we intend to Constitutionally entrench Government's majority ownership of utilities so that no future Administration would be able to upset that ownership.

History, today with BTL and a few weeks ago with BEL, is splendidly on the move. No one should be allowed ever again to thwart this march of progress and this triumph of democracy. So we will introduce, as soon as practicable, a Constitutional amendment Bill to enshrine the gains of the people. After the relevant consultations and assuming the support of the electorate, we will pass it into law. And we will thus complete what will no doubt be seen as the best work of this first term of the United Democratic Party Government.

Mr Speaker, I thank you.