

1/97

Re: Application by Guyana Telephone and Telegraph Company Ltd

Ruling

The Guyana Telephone and Telegraph Company Ltd. (GT&T) on the 31st December, 1997 filed an application to the Public Utilities Commission (PUC) seeking increases from 4400 per cent and downwards in the case of local telephone calls and services, to nearly 600 per cent and downwards in the case of outbound international calls. The application was made under the provisions of Section 41(1) and (2) of the PUC Act. No. 26 of 1990. Section 41(1) of the Act provides as follows:-

“Where a public utility is desirous of changing any rate or rates being charged by it for any service provided by it, the public utility shall give thirty days notice to the Commission and file with that notice a tariff stating the new rate or rates”.

All the formalities were complied with and a hearing scheduled which concluded with the PUC making an Order on the 27th January, 1998. It set **temporary rates** after considering the submissions made on behalf of GT&T and the two Consumer Groups at a public hearing, and “bearing in mind that GT&T is entitled to a minimum of 15% rate of return on investment”.

The PUC subsequently varied the Order on the 27th March 1998 and ordered a reduction of the rates. This was reportedly done as a result of protests by the consumers.

When the matter was resumed evidence was given by Mr. Godfrey Statia and Ms. Sonita Jagan on behalf of GT&T. During the cross-examination of Ms. Jagan, counsel for the Consumer Group submitted that the Order made by the Commission had no legal basis since GT&T is not entitled to a rate of return of 15%. He contends that there is no agreement between the Government and GT&T as contemplated by Section 33 of the 1990 PUC Act; and the Commission in fixing rates "bearing in mind that GT&T is entitled to a minimum of 15% rate of return on investment" took extraneous matters into account:

Section 32 of the PUC Act, 1990 provides as follows:-

- (1) every rate made, demanded or received by any public utility, from persons making use of the service provided by it, shall be fair and reasonable and in conformity with such rules as the Commission may from time to time prescribe.
- (2) In determining the rate a public utility may charge for any service provided by it, the Commission shall have regard to consumer interest and investor interest and to the rate of return obtained in other enterprises having commensurate risks.

Indeed, if GT&T comes under the purview of Section 32 only, the PUC ought not to take into account any entitlement to 15% rate of return on investment which seems to be a consideration under the provisions of Section 33, which prescribes that

“where the Government and a public utility have entered into an agreement specifying (a) the rate of return the public utility is entitled to in respect of the capital invested or dedicated for providing any service; or (b) the principles on the basis of which such rate of return is to be determined, the Commission shall give effect to such agreement in determining the rate a public utility is entitled to demand or receive from any consumer or class of consumers or generally from all consumers in relation to the service”.

So, the question for determination by this Commission is whether:-

- (a) there is any agreement between the Government of Guyana and GT&T, and
- (b) if there is, whether it specifies the rate of return it is entitled to in respect of capital invested or dedicated for providing any service.

It is admitted by all parties and it cannot be denied that GT&T is a public utility within the meaning of the Public Utilities Act. The **1990 Act** defines “public utility” as any person who owns or provides the conveyance or transmission of messages or communications by telephone, telegraphy or wireless telegraphy (**Section 4(1)(b)**); and the **Act of 1999, No. 10 of 1999**, provides that a “public utility” means any person who or

which owns facilities used to provide or provides the following services – “the conveyance or transmission of oral, written, digital or any other form of messages or communications by telephone, wireless telephony, telegraphy or wireless telegraphy, satellites, cable television, telecom services providers, pay telephone service providers, telecom resellers, internet and other telecom network service providers, radio common carriers, or cellular mobile providers or any other method of transmission, currently offered to the public or offered as common carriage in the future” – **Section 4(1)(b)**.

In 1990 there was in this country a Company known as and called the Guyana Telecommunication Corporation (GTC), a public corporation wholly owned by the Government and established by the Guyana Telecommunication Corporation Order No. 11 of 1967 made under Section 46 of the Public Corporations Act, Chapter 19:05 of the Laws of Guyana, and continued under the Public Corporations Act 1988, Act No. 21 of 1988.

On 18th June 1990 the Government of Guyana entered into an agreement with Atlantic Tele-network (Inc.) (ATN), a private limited company whereby in consideration for the payment of a sum of money by ATN, the Government agreed to transfer to ATN and ATN agreed to purchase from the Government shares representing 80% of the issued share capital of GT&T, a private limited company which shall be incorporated by the Government and shall take over the business and assets and liabilities of GTC; and the Government represented and warranted that it shall incorporate GT&T as a private limited company to provide, subject to the laws of Guyana and such International

Telecommunications Conventions and any regulations made there under, as are for the time being in force in Guyana, internal and external telecommunication services and to promote the economic development of the telecommunication services; and that the Government shall dissolve GTC and transfer to GT&T all the assets and liabilities to a certain limit. And by Section 5 of that Agreement ATN covenanted and undertook that after 80% of the equity in GT&T is acquired by it, GT&T will comply with the covenants therein set out and ATN covenanted and undertook such compliance.

The Government further covenanted and undertook to grant to GT&T a licence under the Post and Telegraph Act, Chapter 47:01 or any legislation enacted to replace it, to carry on operations to provide certain services; the licence will be for a period of twenty years and it shall be an exclusive licence renewable at the option of GT&T for a further period of twenty years. The agreement further provided that GT&T shall be entitled to minimum rate of return of 15% on capital dedicated to public use. The revenue requirements shall be calculated on a rate of return methodology to be mutually agreed to by the Government and ATN prior to the establishment of a regulatory body or any other agency charged with the responsibility of regulating the rate of return for GT&T. And unless and until such mutual agreement is reached between the Government and ATN the revenue requirement shall be calculated on the basis of GT&T's entire property, plant and equipment pursuant to a rate of return methodology consistent with the practices and procedures of the United States of America Federal Communications Commission. (See Clause 6.9 of Agreement of the 18th January, 1990)

GT&T was duly registered as a Limited Liability Company and on the 19th December, 1990 the Government of Guyana, by the Minister of Communications and Works, in exercise of the powers conferred on him by Section 7 of the Telecommunications Act 1990, granted to it an exclusive licence for a period of 20 years and at the option of the Licensee shall be renewable on an exclusive basis for a further period of 20 years to provide telecommunication services and systems.

In view of all that is set out above, the Commission finds no merit in the submission of Counsel that GT&T is not entitled to a rate of return of 15%. The Commission is satisfied that there is an agreement between the Government and ^{AT&T} GT&T (as a public utility) that the agreement has set out the rate of return to which GT&T is entitled, and that the provision of Section 33 of the PUC Act must be taken into account in the determination of the fixing of rates. The Commission finds that the Order made on the 27th January 1998 was properly made and accordingly sought not now to be challenged.



This 15th day of December, 2000.

K. Persaud

Prem Persaud C.C.H. – Chairman

J. F. Willems

John Willems A.A. – Member

Hugh K. George

Hugh George – Member

Ch. Bishwar

Chandrabali Bishwar – Member

B. Persaud

Badrie Persaud – Member