

BEFORE THE PUBLIC UTILITIES COMMISSION

Order No. 3 of 2017

**In the Matter of a Complaint
against Guyana Telephone &
Telegraph Co. Ltd by U-Mobile
(Cellular) Inc - Digicel.**

Before: Justice Prem Persaud, CCH Chairman
Mr. Maurice Solomon Commissioner
Ms. Dela Britton Commissioner
Mr. Rajendra Bisessar Commissioner

With: Mr. Vidiahar I. Persaud Secretary/Legal Officer
Mr. Moorsalene Sankar Financial Analyst

Guyana Telephone & Telegraph Co. Ltd:

Mr. Mark Reynolds Attorney-at-Law
Mr. Justin Nedd Chief Executive Officer
Mr. Gene Evelyn Consultant, Regulatory and Legal Affairs

U-Mobile (Cellular) Inc:

Mr. Kelvin Kelly Chief Executive Officer
Mr. Gregory Dean Regional Chief Executive Officer
Mr. Stephen Fraser Attorney-at-Law
Ms. Latoya Hobbs-Nurse Attorney-at-Law

The Guyana Consumers' Association:

Mr. Patrick Dial Chairman

On the 22nd February 2017 the Guyana Telephone and Telegraph Co. Ltd (GT&T) advertised a promotion identified as “*Get More Pay Less*” in the print media. The gist of the promotion is that the company offered a bundled package, comprising three services to consumers. The promotion was for varying durations and each plan was individually priced. Consumers, therefore, had the option of choosing a plan best suited to their individual needs.

The offers are:

Plans	\$ Cost	Minutes	Data	Text
Daily +	449	15	200 MB	30
3 Days	749	25	500 MB	50
Weekly	1,449	40	1,000MB	80
Monthly	3,499	100	3,000MB	200
Monthly+	5,199	150	4,200MB	250

The minutes offered in the promotion could be used in a number of ways including calls to the United States and Canada.

On the date the promotion was offered - February 22, 2017 – Digicel wrote the Commission objecting to the international outbound component of the promotion as being anti-competitive.

The grounds of the objection are:

- That the promotion promises to provide all of GT&T's customers with minutes that could be utilized to make calls to the USA and Canada.
- That if all of the minutes provided for in the promotion were used exclusively to make calls to the United States of America and to Canada then the effective rates of such calls would be significantly below the PUC approved retail rates to these two destinations.
- It is anti-competitive since GT&T which still holds a monopoly in the market for international services in Guyana is providing Digicel with a wholesale rate which is considerably in excess of the highest possible retail rate its customers would pay.

In light of the above Digicel appealed to the Commission to have GT&T suspend or terminate the promotion and any further promotion until the hearing and determination of the complaint.

As an alternative Digicel requested that the Commission makes an Order forthwith that all present and future promotions concerning international rates, be extended by GT&T to Digicel and to be offered as part of their bundled minutes to their customers.

Digicel complaint was sent to GT&T for a response.

In its response, GT&T relied on Section 6.2 of the Government of Guyana/ Atlantic Tele Network Agreement claiming legitimacy of its actions. It stated that "the license granted GTT in respect of the services referred to in sub-paragraphs (a), (b) and (c) of Section 6.1, during the period of the license issued to GTT, no other company, nor Government, shall provide any services to which the license relates. GTT has a legitimate expectation that it should be allowed to enjoy this right and that Government and the regulatory agencies will enforce it. As such, GTT will continue to insist on evenhanded treatment in the sector and the consistent application of the rule of law".

The Commission submitted a copy of GT&T's response to Digicel.

We initiated a hearing on 21st March, 2017 to determine the complaint.

At the hearing Digicel continued to urge that customers are likely to utilize all of the minutes in the bundled promotion to make calls to the United States of America or Canada and in so doing the cost per minute will be substantially below the PUC set rates.

GT&T submitted that the promotion in question is beneficial to its consumers and can hardly be deemed discriminatory to Digicel's consumers.

To ascertain the veracity of Digicel's assumptions, we requested that GT&T submit to the Commission on a monthly basis:

1. The number of subscribers to the bundled plan; and
2. The distribution of minutes of usage that must include both local and international minutes.

GT&T has complied with the Commission's directive. The Commission has received from the company the latest three months of the bundled plans and minutes of use.

Digicel was also requested to provide information to the Commission showing the impact, if any, that GT&T's promotion may have on the outbound segment of its business. Unfortunately, Digicel failed to respond to that request.

Having reviewed all of the information available to the Commission, we concluded that the promotion does not appear to be anti-competitive and Digicel is not at a disadvantage as a result of the promotion.

The data supplied by GT&T indicated that approximately 96% of the minutes of use were made to the local networks and 4% were used to satisfy international services. Further, we are of the opinion that there was no significant switching by Digicel's consumers to GT&T's network to take advantage of the promotion.

Lastly we are of the opinion that the foregoing trend over the just concluded three months is likely to continue into the immediate future.

The Commission makes the following Order:-

ORDER

That the promotion which commenced on February 22, 2017 shall run for six months, and shall be concluded no later than August 22, 2017. The Commission should be advised as soon as this promotion ceases.

Dated this 15th day of June 2017.

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Prem Persaud – Chairman. CCH

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Maurice Solomon – Commissioner.

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(Ms) Dela Britton – Commissioner.

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Rajendra Bissessar – Commissioner.