

BEFORE THE PUBLIC UTILITIES COMMISSION

In the matter of the Public
Utilities Commission Act 1990
(No. 26 of 1990)

- and -

The collection of Zonal Charges by
the Guyana Telephone and
Telegraph Company Limited for
international calls which
originated from exchanges outside
of Georgetown.

PAMADATH J. MENON, A.A.	-	Chairman
HUGH GEORGE	-	Member
JOHN WILLEMS, A.A.	-	Member
ERROL HANOMAN	-	Member
A.M.B. SANKIES	-	Member

REPRESENTATION

Guyana Telephone and Telegraph Company Limited	-	By Mr. Joseph Saunders Attorney-at-Law
Consumers Advisory Bureau	-	By Mr. Dennison Smith
Guyana Consumers Association	-	By Mrs. L. Ferdinand, Attorney-at-Law

Mr Peter Britton, Senior Counsel, was in attendance to assist
the Public Utilities Commission.

The Guyana Telecommunication Corporation ("G.T.C.") was levying a zonal charge in respect of international calls made from exchanges outside of Georgetown. After the Guyana Telephone and Telegraph Company Limited ("the Company") succeeded to the operations of G.T.C., the Company continued the levy of the zonal charges and in fact increased the zonal charges from 88 cents per minute to \$1.75 per minute with effect from 1st January, 1992. The levy of the zonal charges was discontinued by the Company with effect from 3rd March, 1994.

2. By Order dated 12th May, 1995, this Commission held that the zonal charges should not have been levied on the customers by the Company. The Company was therefore directed to refund the sums collected by it as zonal charges to the subscribers in accordance with section 46(2) of the Public Utilities Commission Act 1990 (No. 26 of 1990) ("the Act"). The procedure for the refund was also set out in the Order.

3. After the above decision the Company wrote two letters to this Commission, the first dated 19th May, 1995 and the second dated 18th July, 1995.

4. Two matters were raised by the Company by the above letters -

(i) the Company objected to the method of refund of the zonal charges, collected without authority, in the manner directed by the Order of this Commission. The Company suggested two alternative procedures - one, the total amount identified be deposited by the Company in a fund approved by the Commission for any purpose deemed by the Commission to be beneficial to the communities affected, or, two, the amount be refunded using the same principle as now approved by the Commission in relation to retro-revenue recovery;

(ii) the costs (\$100,000 = in total) allowed to the consumers groups were "unreasonable".

These matters were heard by the Commission on the 24th January, the 14th, 21st and 28th February and 11th April, 1995 at Bidco Training Centre, Anira and Peter Rose Streets, Georgetown.

5. The Company is effectively seeking a review of the earlier Order of this Commission. We are of the view that the Order of this Commission in respect of the procedure for the refund of the zonal charges collected without authority is in accordance with section 46(2) of the Act and the alternative proposals made by the Company are contrary to the provisions of that section. We also do not find any merit in the objection to the costs awarded to the consumers groups.

6. Accordingly we hold that there is no substance in the matters raised by the Company in the two letters dated 19th May, 1995 and 18th July, 1995, and the requests made by those letters are rejected. The Consumers Advisory Bureau and the Guyana Consumers Association are each awarded \$10,000,00/= as costs of these proceedings, which shall be paid to them within one month of the date of this Order.

Dated this *14th* day of August, 1995

By Order of the Commission

.....
PAMADATH J. MENON, A.A.

[Signature]
- Chairman

[Signature]
.....
HUGH GEORGE

- Member

John Willems
.....
JOHN WILLEMS, A.A.

- Member

Errol Hanoman
.....
ERROL HANOMAN

- Member

A.M.B. Sankies
.....
A.M.B. SANKIES.

- Member

PUBLIC UTILITIES COMMISSION

In the matter of zonal charges collected by the Guyana Telephone and Telegraph Company Limited, (the Company) from consumers during the period 20th May 1991 to 3rd March 1994.

DECISION

INTRODUCTION

The Public Utilities Commission, in response to an application made by the Company on 15th April 1991 and a subsequent review of the decision made in respect of the 1991 application, which was requested by the Company in a letter dated August 20th, 1993, approved increased rates for international calls to 87 countries with effect from 20th May 1991.

In support of its initial application for the increased rates and the subsequent request for a review, the Company supplied information on the rates which they stated were being charged for various international destinations but this information did not include zonal charges i.e. an additional charge of initially \$.88 per minute subsequently increased by the Company to \$1.75 per minute, which was levied on international calls which originated from outside of the Georgetown exchange.

By letter dated 11th January 1994 which is set out in full below, the Company stated as follows:

"Dear Mr Tyndall
Chairman,

ZONAL CHARGES

During our recent review of International Rates our attention was drawn to the fact that G.T.&T. has been applying a Zonal Charge for all International Calls which originate from exchanges outside of Georgetown.

This is a charge which was inherited from G.T.C. and through oversight was not included in the Company's submission to the Commission when the application for a rate adjustment was made in 1991.

This Zonal Charge is applied at the rate of G\$1.75 per minute, and we are at present seeking to determine the amount collected through these charges and would submit the information as soon as it is available.

We sincerely apologise for this oversight and seek your guidance in this matter.

Yours sincerely,
C.F.A. Hordatt
General Manager."

In subsequent correspondence between the Commission and the Company, the following transpired:

- (a) The Company at the Commission's request supplied listings of zonal charges purporting to have been applied to consumers international calls during the period 20th May 1991 to March 3rd 1994.

- (b) In supplying the information requested, the Company wrote the Commission as follows in a letter dated 26th July, 1994 which is reproduced in full below.

"Dear Mr Naraine:

ZONAL CHARGES

I refer to your letter on the above matter dated 20th July 1994 and wish to restate that these Charges were in place in the period prior to the change from G.T.C. to G.T.&T., therefore G.T.&T. was entitled to bill those charges.

G.T.&T. however inadvertently increased those charges from \$0.88 to \$1.75 per minute on International Calls which originate from exchanges outside of Georgetown on 1 January 1992 when increased rates were permitted.

G.T.&T. did not expect that the PUC would have found interest in the Zonal Charges for the period 20 May 1991 to 31 December 1991, I must however advise that Staff have been directed to provide this information as early as possible.

Yours sincerely,
C.F.A. Hordatt
General Manager."

HEARING

In keeping with Notices of Public Hearing, the first of which was issued on 12th January, 1995, hearings were held on the matter

on the 24th January, the 14th, 21st and 28th February and 11th April, 1995 at Bidco Training Centre, Anira and Peter Rose Streets, Georgetown. The purpose of the hearing was to arrive at a decision as to whether the zonal charges had been properly levied on consumers having regard to all the circumstances.

PARTIES PRESENT:

The Company was during the course of the hearings represented by Mr Clarence Hordatt, General Manager, Mr Geoffrey Statia, Treasurer, Mr Joseph Saunders, Attorney-at-Law - Counsel, and Mrs Avril Trotman-Moore, Attorney-at-Law - Counsel.

The Guyana Consumers Association and the Consumers Advisory Bureau were represented by Mrs Sheila Holder, Secretary, Guyana Consumer's Association, Miss Eileen Cox, Director Consumers Advisory Bureau and Mr Dennison Smith, Consultant to both organisations.

There was no request from other parties, organisations or individuals, to participate in the proceedings.

EVIDENCE

The written evidence considered at the hearing comprised letters from the Company including the two letters re-produced herein of 11th January 1994 and 26th July 1994 together with

a letter dated 30th March 1995, supplying "print outs... for the months of January 1991 and March, April and May 1992 in which the Company stated that it" will be observed that the un-authorized increased charge of \$1.75¢ (sic) (i.e. an additional .87¢ (sic) on the original .88¢ (sic) was made as from May 1992." In respect of the three figures just mentioned, it is obvious that the Company meant \$1.75, \$.87 and \$.88. Bills to customers for February 1994 were also supplied which showed that "the zonal charge was added to the international charge (for bills outside of the Georgetown 'Zone') and is shown as a single line item as this was the standard method of billing."

The first letter from the Company of 11th January 1994 seems to indicate that at least initially they regarded the zonal charge as part of the international rates which should have been submitted to the Commission, in that they speak of applying a zonal charge for all international calls which originate from exchanges outside of Georgetown, they stated that through oversight it was not included in the Company's submission to the Commission when the application for a rate adjustment was made in 1991 and apologized for the oversight.

The evidence further indicated that the Guyana Telephone Corporation (GTC) which provided telephone service to Guyana before

its operations were taken over by the Company, levied a charge of \$.88 per minute in respect of all international calls which originated from outside of the Georgetown exchange. It was a standard charge which did not vary from exchange to exchange.

After the take over of operations the Company continued to apply the charge at the rate of \$.88 per minute up to 30th December 1991 and then increased the charge to \$1.75 per minute with effect from 1st January 1992 to 3rd March 1994.

The Company did not supply information on zonal charges when applying for a rate increase for international destinations and therefore zonal charges were not approved by the Commission as a component of the international rate tariff. Since such charges had not been approved by the Commission, they were not included in the international rate Tariffs as required under Section 39(1) to be filed with the Commission and in the copies of such Tariffs which the Company kept open for public inspection. In Billings supplied by the Company to customers in respect of international calls, zonal charges were included in the cost of international calls and were not shown separately in any way. The charges were not included in the billings in the line called "meter charges" where the cost of local calls are normally indicated.

Notwithstanding the evidence set out above, the company represented during the hearing that they did not submit information

on Zonal Charges in respect of an increase in international rates because they considered these charges to be local calls and as such did not fall within the ambit of the application. With regard to this statement however it should be noted that the Company initially applied for increases in both local and international rates and during the course of the investigations relating to the application withdrew their request for an increase in local rates. However no information on zonal charges was included in the section of the application dealing with local rates.

According to the Company Zonal Charges were being levied by the Guyana Telecommunication Corporation on the date on which the operations of that Corporation were taken over by the Company and hence the Company was entitled to continue to collect those charges in view of the provisions contained in the First Addendum to the Agreement between the Atlantic Tele-Network Inc. and the Government of Guyana entered into on 18th June 1990.

In further support of their argument, the Company referred to para 5 of the First Addendum in which it is stated that "rates charged for services on the date of closing shall be deemed to be fair and reasonable".

The Company has conceded that the increase with effect from 1st January 1992 from \$0.88 to \$1.75 i.e. the excess amount of \$.87 should not have been charged.

New international tariffs in respect of 87 destinations were approved by the Commission with effect from 20th May 1991, and therefore from that date, the Company was legally entitled to charge only the rates approved by the Commission in respect of those 87 destinations.

The argument that the Company was entitled to charge \$.88 being a rate, inherited from GTC, and also deemed to be fair and reasonable, cannot stand in the situation where new increased rates have been approved, unless the zonal charge is regarded as outside of the international rate structure. The old "fair and reasonable" rates were increased and the new increased rates should therefore not be judged by the provisions of paragraph 5 of the First Addendum of the agreement.

In the light of the evidence supplied the Commission has arrived at the view that the zonal charge was regarded by the Company as part of their international rate structure and was treated as such in their billing to customers. Approval for levying

zonal charges should have been applied for when the Company requested an increase in international rates. As already stated the Company has conceded that the increase from \$.88 to \$1.75 should not have been made.

In summary therefore the position is as follows with regard to the destinations set out at (a) & (b) immediately below.

- (a) The 87 destinations for which increased rates were approved by the Public Utilities Commission with effect from 20th May 1991.

All Zonal charges i.e. the \$.88 levied from 20th May, 1991 to 31st December 1991 and the \$1.75 levied from 1st December 1992 to 3rd March 1994 are no longer chargeable in view of the decision of the Commission increasing the rates retroactive to 20th May 1991 in respect of these 87 destinations.

- (b) All other destinations apart from the destination mentioned at (a) above.

The \$.87 charged with effect from 1st December 1992 to 3rd March 1994 should not have been so levied.

In these circumstances the Commission considers that the provisions of Section 46(2) of the Public Utilities Commission Act 1990 (No. 26 of 1990) should be applied in dealing with the amounts

which should not have been levied by the Company. This section reads as follows:-

- "(2) Where, consequent on an order finally determining the rate that a public utility is entitled to demand and receive for any service provided by it, any consumer becomes entitled to receive any sum from the public utility, it shall be adjusted towards any sum likely to become due to the public utility from the consumer for reasonable future period, to be determined by the Commission taking the interests of the public utility and the consumer into consideration, or paid in cash to the consumer if before the expiry of the aforesaid period he ceases to be a consumer in relation to the public utility."

ORDER

Accordingly, the Commission orders as follows -

- (1) The levy of zonal charges on customers as set out in the second paragraph herein immediately above should not have been levied by the Company. The company shall comply with the provisions of Section 46(2) in respect of zonal charges so levied.
- (2) The action ordered at (1) above shall only be taken after the Company has submitted information on the total amount in question subdivided by exchanges in the format set out in Appendix I in respect of the 87

countries for which increased rates were approved and for all other destinations and such information has been verified to the Commission's satisfaction. The information requested herein is to be submitted to the Commission within one month of the date of this order. If the Company considers this period of time allotted for completion to be inadequate, they should within one week of the date of this order request additional time, specifying the additional period being requested and their reasons for the request.

- (3) After verification the Company shall send to each consumer from whom zonal charges were collected a notice and statement informing him of the amount of credit or refund to which he is entitled, the reasons for the credit or refund and the procedure under which the credit or refund would be made. There would be no objection to such notification etc. being done, if convenient to the company, in a usual monthly billing to a person who is a current consumer and also if convenient, the credit, or part thereof could also be included at the same time.

- (4) As further provided by Section 46(2) of the Act the Company shall pay the amount due in cash to the consumer if before the expiry of a reasonable future period determined for the crediting of amounts due, he ceases to be a consumer in relation to the Public Utility.
- (5) The Company shall submit a monthly report to the Commission which shall indicate by exchanges the total amount credited or paid in cash each month to consumers. The monthly report shall be discontinued after full refund either in credit or in cash has been made to all consumers.
- (6) The Guyana Consumers Association and the Consumers Advisory Bureau shall be paid by the Company costs at \$50,000 each and the payment shall be made within one month of the date of this order.

Dated at Georgetown, Guyana
this 12th day of May, 1995

Pamadath J. Menon
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Pamadath J. Menon, A.A. - Chairman

Hugh George
.....
Hugh George - Member

~~*J. W. Willems*~~
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~~John Willems, A.A.~~ - Member

Errol Hanoman
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Errol Hanoman - Member

A.M.F. Sankies
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A.M.F. Sankies - Member