

BEFORE THE PUBLIC UTILITIES COMMISSION

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

- and -

**In the matter of settling a new
Expansion Plan for
telecommunications in Guyana to
be implemented by the Guyana
Telephone and Telegraph
Company Limited.**

PAMADATH J. MENON, A.A.	-	Chairman
HUGH GEORGE	-	Member
JOHN WILLEMS, A.A.	-	Member
CHANDRABALLI BISHESWAR	-	Member
BADRIE PERSAUD	-	Member

REPRESENTATION -

Guyana Telephone and Telegraph Company Limited	-	Mr. Thomas Minnich, General Manager, Mr. Keith Massiah, O.R., S.C., Counsel, Mr. Joseph Sanders, Attorney-at-Law, Counsel.
Guyana Consumers Association	-	Mr Patrick Dyal, A.A., President.

This matter was heard by the Commission on the 8th September and 10th and 11th October, 1997.

DECISION

The Guyana Telephone and Telegraph Company Limited (GT&T) operates in Guyana by virtue of a Licence dated 19th December, 1990, granted to it by the then Minister of Communications and Works under section 7 of the Telecommunications Act 1990 (No. 28 of 1990). The Licence is subject to-

- (i) the Telecommunications Act 1990, (No. 28 of 1990);
- (ii) the Public Utilities Commission Act 1990 (No. 26 of 1990);
- (iii) the Agreement entered into between the Government of Guyana and Atlantic Tele-Network Inc. on 18th June, 1990, as amended, (hereinafter referred to as the "Acquisition Agreement").

Subject to the above, the Agreement is also subject to the Conditions set out in Schedule 1 of the Licence.

2. So far as the Licence relates to public telephone, radio telephone (except private radio telephone systems which do not interconnect with the Licensee's network) and pay station telephone services, national and international voice and data transmission, the Licence is an exclusive Licence for a period of 20 years and is renewable at the option of the Licensee for a further period of 20 years on an exclusive basis. The Licence is an exclusive Licence for a period of ten years in respect of telefax, telex and telegraph service and telefax network service, renewable for a further period of ten years at the option of the Licensee on a non-exclusive basis. There are certain other activities covered by the Licence, but it is not necessary to refer to them here.

3. GT&T was incorporated pursuant to the Acquisition Agreement and Atlantic Tele-Network Inc. (ATN) acquired 80% of the shares in GT&T in January, 1991.

4. Paragraph 5.1 of the Acquisition Agreement contemplated the preparation and finalization, in consultation with the Government, of an Expansion and Service Improvement Plan, to be implemented within a period of 3 years. The Plan was to have included, as one of its elements,

connection of at least 20,000 additional subscriber lines to the existing number of lines estimated at 21,000, within three years of the date of closing of the Acquisition Agreement.

5. We are not dealing with the Expansion and Service Improvement Plan referred to above. That Plan was to lay down the targets to be achieved within a period of 3 years. That would have been grossly inadequate to meet the needs of the people of Guyana. Clearly, even if the Expansion and Service Improvement Plan agreed to under the Acquisition Agreement had been fully implemented it would not have satisfied a substantial part of the demand for telecommunication services in Guyana.

6. Condition 26 of the Licence granted to GT&T specifically contemplated a second and subsequent expansion and service improvement plans after the expiry of the period of the Expansion and Service Improvement Plan agreed to under the Acquisition Agreement.

7. This Commission received a large number of complaints from all over Guyana in respect of the non-provision of telephone services by GT&T and the inadequacy of the telecommunication service provided by GT&T. Apart from the question of provision of service, there was the question of upgrading the telecommunications system, and providing to the people of Guyana services which a modern telecommunications system should provide.

8. Public hearings in regard to these complaints were held on 15th May, 20th June, 27th July, 31st July and 6th September of 1995. In the course of the hearing into some of the above complaints, on 20th June, 1995, the Chairman of this Commission raised the question of a new expansion and development programme. At the hearing on 31st July, 1995, Mr Paul Singer, Deputy General Manager of GT&T, stated that a new expansion and development programme was ready and as soon as it was approved by the Board of Directors of GT&T, it would be submitted to the Commission.

9. GT&T did not submit an expansion and development plan, as promised, up to 11th October, 1995. So this Commission stated in its Decision No. 1995/7 of that date (Exhibit C - 11), in paras. 96 and 97 -

“96. In view of the failure of GT&T to submit an Expansion and Development Plan, the Commission will have to develop one. This will be justified in view of the widespread complaints about the absence of adequate and satisfactory telecommunications services in Guyana, the obligation of GT&T, under the licence granted to it, to provide universal service to persons in Guyana and the powers of the Commission under the Act.

97. In developing an Expansion and Development Programme the Commission will consider any expansion and development programme submitted by GT&T within fifteen days from the date of this Order.”

10. Order No. (5) of the Commission in para. 107 of the above mentioned decision stated -

“(5) In view of the failure of GT&T to submit a new Expansion and Development Plan to the Commission, widespread complaints about the absence of adequate and satisfactory telecommunications services in Guyana and the obligations of GT&T under the licence granted to it, the Commission proposes to develop a new expansion and development plan. In developing a new expansion and development programme, the Commission will consider any expansion and development programme submitted by GT&T within fifteen days from the date of this Order.”

11. In para. 108 (iv) of the above-mentioned decision, this Commission stated -

“The matter is posted to 23rd October, 1995, to hear arguments on procedure to establish a new Expansion and Development Programme”.

12. Out of the various matters decided by the above-mentioned decision, the Order relating to a new Expansion and Development Programme was one of those challenged by GT&T in the High Court (Motion No. 4491 of 1995).

13. In disposing of the matter, the High Court held, by its decision dated 13th January, 1997, in Motion No. 4491 of 1995 -

“Upon a proper construction of those paragraphs of sections 27 and 28 of the Act, earlier referred to, I cannot agree with Mr Fitzpatrick, that the PUC was without statutory authority to order an expansion and development programme. That it has the authority to do so seems to be met by the language of section 27(1) in the words “shall by order determine and prescribe the adequate or reasonable service to be provided by the utility including all such extensions.

To prescribe a service that is both adequate and reasonable may require expansion and development of an existing service and such expansion and development could reasonably be said to be allowed by any ‘extensions’, which the PUC is permitted to prescribe.” (Page 17 of the judgment).

14. The High Court, however, held that the Commission fell into an error which touches upon the natural justice issue and, more pointedly, it was a procedural error which affected the jurisdiction of this Commission. The High Court held -

“As I have noted already there was no hearing on the issue and any finding therefore by the PUC relating to the inadequacy of GT&T’s service was in breach of this requirement.”

The learned Judge obviously missed paragraphs 92 to 95 of the Order of this Commission dated 11th October, 1995. But that is not of particular importance to these proceedings.

15. Over seven months' before the judgment of the High Court, referred to above, GT&T had submitted to this Commission a three year Plan on 31st May, 1996. This was in accordance with their promise made at the public hearings in regard to the complaints made by a large number of people about non-provision of telephones, referred to earlier in this Order. The three year Plan showed that in 1996, in Georgetown itself there were 18,969 held orders, or requests for telephones not met. The total of the held orders through out Guyana, according to GT&T's Three year Plan was 37,889.

16. Condition 1.1 of the Licence (Exhibit C-9) granted to GT&T states -

"CONDITION 1: Universal Provision of Telecommunication Services

1.1 The Licensee shall provide to every person who requests the provision of such services at any place in Guyana -

- (a) voice telephony services;
- (b) telegram services; and
- (c) other telecommunication services, consisting in the conveyance of Messages, agreed or required to be provided by the Licensee under the Agreement,

by means of the Applicable Systems, except to the extent that the Director is satisfied that any reasonable demand is or is to be met by other means and that accordingly it would not be reasonable in the circumstances to require the Licensee to provide the services requested; and the Licensee shall ensure that Applicable Systems are installed, kept installed and run for those purposes."

17. The above mentioned condition is an obligation cast on GT&T in return for the monopoly, practically for 40 years, granted to it.

18. On 27th October, 1995 GT&T submitted to this Commission a report prepared by Mr. Malcolm Stillion for GT&T and dated March, 1995. According to Appendix 9 of this Report (Exhibit C-4), as on 1st March, 1995, the waiting list for telephones for Georgetown only was 14,298. However by May, 1996, when GT&T submitted to this Commission, its three year Plan 1996 - 1998 (Exhibit C-1) the waiting list for Georgetown had gone up to 18,969. According to Exhibit C-4 Stillion Report, by the end of 1997 there should have been 102,126 working telephones in the country. However, as per the weekly reports submitted by GT&T to this Commission, as on 28th October, 1997, there were only 53,442 working telephone lines in the country. (This does not include 1,571 mobile cellular telephones).

19. The Stillion Report contemplated that there would be an increase by 19,776 working telephones in the year 1996. This works out to about 380 connections per week. As a matter of fact it is seen from weekly reports (Exhibit C-6 series) submitted by GT&T to this Commission, in the week ending 11th January, 1997, GT&T provided 357 telephone connections.

20. The General Manager of GT&T had earlier told the Chairman of this Commission that he would furnish to us information as to the number of access lines that could be installed in one year. But later he backed out of this promise. By his letter dated 23rd April, 1997 Exhibit C-10, he stated -

“As to the number of lines we should install, it was my understanding that the meeting was off the record and unofficial. It would be imprudent then for this office to give the number of access lines which, in my opinion, can be installed in one year in an official document such as this.”

21. Exhibit C-1 Three Year Plan 1996-1998 submitted by GT&T contemplated an increase in the number of telephone lines by 18,954 during a three period ending by the end of 1998. This has to be considered against Exhibit C-4 Stillion Report, commissioned by GT&T, which contemplated an increase of telephone lines in 1996 only by 19,776.

22. We engaged the Georgetown Consulting Group, Inc. of Connecticut, United States of America, a telecommunications consulting group of considerable experience, to evaluate the Three Year Plan 1996-1998 submitted by GT&T. In their report (Exhibit C-2) at pages 10 and 11, they stated -

“Given the requirements of Section 1.1 of the Licence granted to GT&T (universal provision of telecommunication services, summarized on Exhibit C), we recommend that the following standards be implemented by the PUC for the Expansion Program for the period 1996 through 1998:

1. GT&T be directed to eliminate the 37,889 backlog of held orders by the end of 1998. Based upon a level of 47,845 lines in services as of August 1996, plus the lines added to the network under the proposed plan. This would represent 97,366 lines in service by the end of 1998. This would utilize the excess capacity of the available switching, but would require additions to some central offices and a substantial amount of outside plant.
2. GT&T be further required to meet some fraction of the additional demand identified for telephone service above the 97,366 lines stated in item 1 above as identified in the demand study undertaken by GT&T which has identified a demand of approximately 125,679 lines in these average areas. This is approximately 29,000 lines in addition to the minimum identified in item 1. While we are aware that Section 1.1 of the licence agreement gives the PUC the authority to require that the entire identified demand of 125,679 lines be given service, the PUC may want to moderate this

requirement and permit GT&T to phase in the approximately 29,000 additional lines more gradually. In the event that PUC believes this to be appropriate, we would recommend that the following be given consideration:

- * The PUC in considering a phase in of the additional 29,000 lines above the minimum 97,366 lines recommended as a minimum, might want to consider requiring approximately 1/3 to 1/2 of the additional 29,000 lines to be installed by 1998. In the event that the Commission chooses 1/3 of the additional lines, the result would be approximately 104,000 installed by 1998. In the event that the Commission chooses 50% of the additional lines, the result would be a total of approximately 111,000 lines by 1998.

- * In determining the priorities of how service should be established, the PUC should give priority to held orders, and, in addition, should give priority to communities that show a strong demand for telephone service. To accomplish this later goal, the PUC should publicize through whatever means are appropriate that it wishes to obtain feedback from all of the population regarding the desire for telephone service. Those communities that provide credible evidence that a substantial number of the population would install telephone service should be given high priority in meeting their demands.”

There is a foot note to the reference to 125,679 lines to in item 2 above. The foot note is as follows -

“These are households with an identifiable demand for lines. Not all households will install lines. However, this would be made up by demand for lines by business, government and other classes of customers.”

23. Exhibit C-2 Evaluation Report by the Georgetown Consulting Group, Inc. was forwarded by this Commission to the General Manager, GT&T, and along with his letter dated 25th February, 1997, he forwarded to this Commission, what he termed to be his “staffs’ comments”. The letter and comments are Exhibit C-7. However, in Exhibit C-10 letter dated 23rd April, 1997, addressed to the Chairman of this Commission, the General Manager of GT&T stated -

“There seems to be some misunderstanding, perhaps on my part, in that the letter from Mr. Nurse dated February 6, 1997, per GT&T’s comments on the evaluation prepared by the GCG, did not indicate that the response should be official from my office and approved by the Board of Directors. I therefore asked certain members of my executive and technical staff to forward to my office their comments and opinions of the report. I then forwarded those comments to Mr. Nurse thinking they would be further used to evaluate the GCG report. Apparently this was a misunderstanding of what Mr. Nurse was actually requesting.

Accordingly, I shall prepare an official reply to the GCG Report and submit it to the GT&T Board of Directors for their approval at the next meeting scheduled for May 23, 1997.”

24. An official reply to Exhibit C-2 Evaluation Report has not up to this day been submitted to this Commission by the General Manager of GT&T, as promised.

25. At the public hearing on 8th September, 1997, in regard to the Expansion Plan 1996-1998 submitted by GT&T and the evaluation of the same by the Georgetown Consulting Group, Inc., Mr. Joseph Sanders, Attorney-at-Law, representing GT&T in regard to these matters, argued that the document known as Acapulco Declaration (Exhibit C-3), which this Commission had indicated that it would like to use in the proceedings, should not be given any weight as a binding document. He stated that it was simply a declaration of intent and if it is not met there is no penalty against any Government or any organisation concerned.

26. We accept the submissions made by Mr. Sanders in this regard and do not intend to rely upon the Acapulco Declaration.

27. At the public hearings in regard to Exhibit C-1 Expansion Plan 1996-1998 and its evaluation by the Georgetown Consulting Group, Inc., the main thrust of GT&T has been that the Expansion Plan has to be supported by rates. If the position of GT&T is that this Commission should grant it rates high enough to finance the Expansion Plan from the revenues, we must make it clear that we do not agree to that position. On the other hand, if the position of GT&T is that the Commission should fix the rates so as to give it a fair return on its investment, we would agree without any hesitation.

28. We are willing to grant GT&T rates for its services which will give it a minimum fifteen per cent rate of return on its investment, including investment made for implementing the Expansion Plan settled by this Order. We are willing to have a periodic review of the rates for the purpose of ensuring the above objective.

29. We cannot undertake a review on the rates at this stage because we do not have before us the estimates of the cost for implementing the expansion plan, the projected increase in revenues if the plan is implemented and the revenues required to support a minimum fifteen per cent rate of return on investment. We are willing to look into these aspects, provided that there are no impediments.

30. After a careful review of the evidence produced and the arguments addressed in this matter, we are of the view that GT&T should be directed to achieve the targets set for the years 1995, 1996 and 1997 in Exhibit C-4 report by Mr Malcolm Stillion by the end of the years 1998, 1999 and 2000 respectively. That is, by the end of the year 1998 there should be 69,278 telephone lines, by the end of the year 1999 there should be 89,054 telephone lines and by the end of the year 2000 there should be 102,126 telephone lines. The targets set above would not include mobile cellular telephones. According to Exhibit C-4 Stillion Report 135,677 telephone lines would be required to meet the projectd demand by the end of the year 2000.

31. The exchanges in the different regions of Guyana, the number of connections to be provided from each exchange for the relevant years and the technology to be employed would be as set out in Exhibit C-4 Stillion Report. If any change is desired in this regard by GT&T they can apply to this Commission within thirty days from the date of this Order and the Commission would give a decision on the request after taking into account all relevant matters.

32. By our Order dated 1st October, 1996 (Exhibit C-5) this Commission held -

- “(1) As per the letter of GT&T dated 3 September, 1996, while the switch capacity of GT&T was 54,470, the access lines in service as on 24th August, 1996, were only 47,845. The unallocated lines numbering 6,625 existing in the different exchanges, less the lines allocated between 24th August, 1996, and the date of this Order, should be allocated and connected to the applicants for telephone connections, before the expiry of 31st December, 1996.
- (2) While GT&T claims that there are only 54,470 access lines, according to the Annual Report for 1995, submitted by ATN, which owns 80% of GT&T, to SEC, GT&T had, as at 31 December, 1995, 62,773 recorded subscriber access lines. We accept the figure as stated in ATN's Annual Report as correct. The difference between the figures as given by GT&T and ATN is 8,303 recorded access lines. These lines should be allocated and connected to applicants for telephone connections before the end of 31 March, 1997. In case some of these lines have been converted for use for audiotext services, they would have to be restored for allotment to applicants for telephones in Guyana.”

(The abbreviation “SEC” is a reference to Securities and Exchange Commission, Washington).

33. This Order has not been fully complied with by GT&T, though over one year has passed since it was made. If the Order was complied with there should have been at least 62,773 telephone lines allotted to subscribers by 31st March, 1997, while as per the weekly report dated 28th October, 1997, submitted by GT&T to this Commission, there are only 53,442 telephone lines in service on that date. The short fall is 9,331 telephone lines. In addition to the targets required to be achieved under paragraph 30 above, the above mentioned 9,331 lines should be allocated and connected to applicants for telephones, before the end of the year 1998.

34. We have to express our dismay that though in Exhibit C-1 Three Year Plan 1996-1998, submitted on 31st May, 1996, GT&T promised to add 6,000- 6,500 telephone lines per year over a period of three years, in 1997, up to 28th October total line increase has been only 3,429.

35. We also direct GT&T to provide facilities for call diversion, call waiting, reminder call and three way calling. If these are presently available they should immediately be made available to subscribers who request for them immediately. Those of the above facilities which are not available

presently should be made available before the end of the year 1998.

36. Some of the recommendations made by Mr Malcolm Stillion at pages 15 to 19 of Exhibit C-4 Report should already have been implemented by GT&T. We direct that the other recommendations at pages 15 to 19 of that report should be implemented before the end of 1998.

37. We also direct GT&T to provide Debit Card platforms and Data/Internet Platforms to serve all urban and commercial centres, which are not presently serviced by such platforms, before the end of the year 1998.

38. We are willing to grant, if GT&T applies for the same, rates for new services implemented by it or proposed to be provided shortly.

39. In the present situation of scarcity of telephone facilities particularly, we would like to discourage subscribers having multiple telephone facilities. We propose to do this by revising telephone rentals and by requiring GT&T to provide to subscribers PBX and PABX systems on rental if they request the same. GT&T is directed to provide to this Commission proposals in this regard.

40. Having regard to the fact that many of these new services are new to Guyanese, it would not be sufficient to make available these services, but GT&T should also engage in aggressive sales of these services to make their introduction a success.

ORDER

41. In the light of the above discussions and findings this Commission makes the following Orders

- (i) GT&T is hereby directed to achieve the targets set for the years 1995, 1996 and 1997 in Exhibit C-4 report by Mr Malcolm Stillion, by the end of the years 1998, 1999 and 2000 respectively. That is, by the end of the year 1998 there should be 69,278 telephone lines, by the end of the year 1999 there should be 89,054 telephone lines and by the end of the year 2000 there should be 102,126 telephone lines. The targets set above would not include mobile cellular telephones.
- (ii) The exchanges in the different regions of Guyana, the number of connections to be provided from each exchange for the years 1998, 1999 and 2000 and the technology to be employed shall be as set out in Exhibit C-4 Stillion Report. If any change is desired in this regard by GT&T they can apply to this Commission within thirty days from the date of this Order and the Commission will give its decision on the request after taking into account all relevant matters.

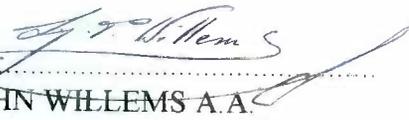
- (iii) In addition to the targets required to be achieved under Order (i) above, GT&T shall allocate and connect to applicants for telephones, the 9,331 telephone lines, referred to in para. 33 above, before the end of the year 1998.
- (iv) GT&T shall provide to subscribers, who request for them, facilities for call diversion, call waiting, reminder call and three way callings. Those of the above mentioned facilities which are available presently should be provided immediately to subscribers who request for them and those of the above facilities which are not presently available should be made available by the end of the year 1998.
- (v) Those of the recommendations of Mr Malcolm Stillion at pages 15 to 19 of Exhibit C-4 Report, which have not already been implemented by GT&T, should be implemented before the end of the year 1998.
- (vi) GT&T shall provide, before the end of the year 1998, Debt Card platforms and Data/Internet platforms to serve all urban and commercial centres, which are not presently serviced by such platforms, before the end of the year 1998.
- (vii) GT&T is directed to provide to this Commission as early as it can, detailed estimates of cost for the implementation of the directions in Orders (i) to (vi) above, the projected increase in revenues when the above mentioned directions are implemented and the revenues required to support a minimum fifteen per cent rate of return on investment.
- (viii) Contracts for the works for implementing the directions in Orders (i) to (vi) shall be given after following proper tender procedures and all transactions between GT&T and ATN, which holds 80% shares in GT&T, or any subsidiary of ATN shall be at arms length.
- (ix) If GT&T proposes to issue stocks or to borrow to finance the implementation of the directions contained in Orders (i) to (vi), they are directed to comply with section 47 of the Public Utilities Commission Act 1990 (No. 26 of 1990).
- (x) GT&T shall submit to this Commission quarterly reports regarding the progress made by it on implementing the directions given by Orders (i) to (vi) above.

42. GT&T is directed to pay to the Consumers Advisory Bureau Limited twenty-five thousand dollars towards their costs in regard to these proceedings, within thirty days from the date of this Order.

Dated this 29th Day of October, 1997.


PAMADATH J. MENON, A.A. - Chairman


HUGH GEORGE - Member


JOHN WILLEMS A.A. - Member


CHANDRABALLI BISHESWAR - Member

(Away from Georgetown)
BADRIE PERSAUD - Member