PUBLIC UTILITIES COMMISSION

APPLICATION

OF

THE GUYANA TELEPHONE AND TELEGRAPH LTD

FOR RATE INCREASES

DECISION

NOVEMBER 12, 1991
GEORGETOWN, GUYANA.

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PUBLIC UTILITIES COMMISSION

APPLICATION BY THE GUYANA TELEPHONE AND TELEGRAPH COMPANY LIMITED TO INCREASE RATE AND CHARGES FOR ITS TELEPHONE, TELEGRAPH AND TELEX, SERVICES

D E C I S I O N

THE APPLICATION

In a letter dated 15 April, 1991 as amended by a letter dated 3 May, 1991, the Guyana Telephone and Telegraph Company Ltd (GT&T or the Company) gave notice, under section 41 (1) of the Public Utilities Commission Act 1990, of its desire to change the rates for its service, with effect from May 20, 1991. The rates to be changed are set out in a schedule to the original letter in the following four categories:

1) Telex rates effective April 15, 1989

2) Telephone collection rates (International)

3) Telegraph collection rates

4) Direct exchange line rental, mileage and metered unit charges, excluding external and internal removals and conversions.

- PMBX and PABX installation rental and conversion charges.

In its April 15 letter, the Company requested that all four categories of rates be multiplied by a factor of 2.84 to determine the proposed new charges. This was later amended by the letter of 3 May to provide that each local rate (item 4 above) be multiplied by a factor of 2.11 and each international rate (items (1) (2) and (3)) be multiplied by a factor of 2.84. In a further letter dated 19 September, 1991, the Company withdrew its application for domestic rate increases, thus leaving only the international rates to be considered by the Commission.

THE HEARING

In accordance with section 41(3) of the PUC Act, and pursuant to a notice of hearing dated 6 May, 1991, a public hearing was convened at the Bidco Management Training Institute, 66 Anira and Peter Rose Streets, Georgetown, on May 10, 1991 and continued on 13 May, 15 June, 25 and 26 July, 2, 9, 14, 15, 17, 18, 21 and 22

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October, 1991. With the exception of the sittings held on 2, 9, 14, 15, 18, 21 and 22 October, at the Tower Hotel, 74-75 Main Street, South Cummingsburg, Georgetown, Guyana, all hearings after 10 May were held at the Bidco Management Training Institute.

The hearings were conducted by the full Commission comprising:

Mr Joseph A. Tyndall, CCH	-	Chairman
Mr Hugh George	-	Commissioner
Mr Errol Hanoman	-	Commissioner
Mr Melvyn Sankies	-	Commissioner
Mr John Willems, A.A.	-	Commissioner

Mr Peter Britton, SC, in association with Mrs. Deborah Backer, appeared as legal adviser to the Commission and Lynch Associates Ltd appeared as financial advisers.

THE COMPANY

The Guyana Telephone and Telegraph Company Ltd, a company incorporated under the Companies Act, Chapter 89:01 of the Laws of Guyana has its registered offices at Brickdam, Georgetown, Guyana. The Company provides domestic and international telecommunication service and, except for local telegraph service provided by Guyana Post Office Corporation, is the sole provider of telecommunication service in Guyana.

Under the terms of its licence, GT&T has an exclusive permission for a period of twenty years, renewable at the option of the licensee on an exclusive basis for a further period of five years, to undertake the following services:

(a) 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;

(b) sale of advertising in any directories of telephone subscribers; and

(c) switched or non-switched private line service supported by facilities constructed over public right of way;

GT&T also has an exclusive licence for a period of ten years, renewable at the option of the licensee for a period of ten years

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at a time on a non-exclusive basis for a further period agreed to between the Government and the licensee, to provide the following services:

- supply of terminal and customer premises equipment;
- telefax, telex and telegraph service and telefax network service, without prejudice to the right of any other person to undertake any of the following operations:

    i) sale of telefax or teleprinter machines;

    ii) maintenance of telefax and teleprinter equipment;

    iii) operation of any facility for the sending and receiving of telefax copies or teleprinter messages;

Finally, GT&T has been granted a non-exclusive licence for a period of twenty years to provide cellular radio telephone service in Guyana.

On January 28, 1991, Atlantic Tele-Network Inc. ATN, a holding Company with its headquarters in St Thomas, US Virgin Islands, acquired eighty percent of the common stock of GT&T from the Government of Guyana. The remaining twenty percent was retained by the Government.

Apart from GT&T, ATN has the following subsidiaries:

1) Virgin Islands Telephone Company (VITELCO) which provides telephone service in the US Virgin Islands.

2) Vitelcom Cellular Inc. (VITELCOM CELLULAR) which provides cellular telephone service in the US Virgin Islands to marine and land-based subscribers.

3) Maritime Cellular Tele-Network Inc (MCN) which resells cellular telephone service to merchant and cruise ships along the east and west coast of North and South America as well as in the far East.

4) CALLS which resells long distance service in the US Virgin Islands.

5) VITELCOM Inc. which sells and leases telecommunications equipment in the US Virgin Islands.

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6) Puerto Rico Telecom (PRT) a long distance telephone company in San Juan Puerto Rico.

THE COMPANY'S WITNESSES

The Company presented the testimony of the following witnesses:

Mr. James E. Kean, Director of the Board, and General Manager of GT&T and Executive Vice-President for Operations of ATN.

Mr Michael Welch, Consultant to GT&T.

Ms Jennifer Grainger, Finance Manager of GT&T

Mr. W.A.H.L. Parris, C.C.H., formerly Deputy Prime Minister of Planning and Development of the Government of Guyana.

Mr. Joseph Sander, and Mr Albert Sheen, appeared as Counsel for the Company in association with Mr. John Raynor as adviser.

OTHER WITNESSES

The following witnesses presented testimony at the request of the Commission:

1) Mr Lawrence Williams, Supervisor of the Foreign Exchange Department of the Bank of Guyana.

2) Mr Edward Downer, Director appointed by the Government of Guyana on the Board of GT&T.

3) Mr Patrick Persaud, Director appointed by the Government of Guyana to the Board of GT&T.

4) Mr. Jeffrey Prosser, Chairman of the Board of GT&T, Chairman of the Board and Co-Chief Executive Officer and Secretary of ATN.

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5) Mr. Ron Sanders[1], Director and Assistant Secretary of the Board of GT&T and International Relations Consultant to ATN.

THE ISSUE OF SUBPOENAS FOR THE ATTENDANCE OF WITNESSES

On Friday, 4 October, 1991, the Commission issued subpoenas on six executives of GT&T requiring them to appear on 9 October, 1991 along with certain listed documents which the Company had failed to furnish in response to three Orders issued by the Commission on 24 May, 12 June and 1 August, 1991, respectively. The officials subpoenaed were:

Mr. Jeffrey J. Prosser, Chairman of the Board of GT&T

Mr. Ron Sanders, Director and Assistant Secretary of GT&T

Mr. James J. Heying[2], Chief Financial Officer and Treasurer of ATN and VITELCO.

Mr. Cornell Williams[3], Assistant Finance Controller of VITELCO.

Mr James E. Kean, Director, Assistant Secretary and General Manager of GT&T.

---

[1] In his evidence, Mr. Sanders claimed that he was not employed by ATN but only held the position of International Relations Consultant. However, at a press conference on 29 January, 1991 announcing ATN's acquisition of 80% of GT&T's shares, Mr. Jeffrey Prosser stated that Mr. Sanders had been appointed by ATN as Vice-President for International Relations. Also in a letter dated 4 August, 1991 addressed to Mr. N. Gravesande, Permanent Secretary, Ministry of Trade, Tourism and Industry, the letter-head had indicated that he held the position of Vice-President International Relations, Mr. Sanders also signed the letter in this capacity.

[2] According to testimony given on behalf of the Company, Mr. Heying functioned as the highest authority for the financial management of GT&T. Mr Heying was not an officer of the Company but documents presented showed him signing as its Chief Financial Officer.

[3] Mr Cornell Williams, according to testimony on behalf of the Company, was second in command of the financial management of GT&T, even though he was not an official of the Company.

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Ms. Jennifer Grainger, Financial Manager of GT&T.

The subpoenas were served at the Company's Head Office. At the hearing on Wednesday 9 October, Mr. Sanders, Counsel for the Company, submitted that the subpoenas were not served on the persons of the officials and hence were not properly served. Subpoenas were subsequently issued on the following four witnesses:

Mr. Jeffrey Prosser

Mr. James E. Kean

Ms. Jennifer Grainger

Mr. Ron Sanders

By letter dated 9 October, 1991, the Company requested the Commission to subpoena the following persons:

i) Mr. Winston Murray, C.C.H., Deputy Prime Minister for Trade, Tourism and Industry.

ii) Mr. Winston King, Chairman, Guyana National Resources Agency.

iii) Mr. Nigel Gravesande, Permanent Secretary, Ministry of Trade, Tourism and Industry.

iv) Mr. Patrick Persaud, Director appointed by the Government of Guyana to the Board of GT&T.

v) Mr. Edward Downer, Director appointed by the Government of Guyana to the Board of GT&T.

vi) Mr. W.A.H.L Parris, C.C.H., former Deputy Prime Minister for Planning.

By letter dated 10 October, 1991, the Company subsequently asked that the subpoena on Mr. Winston Murray be withdrawn. The Company also indicated, at the hearing held on 14 October, that it would no longer need the following witnesses: Mr. Nigel Gravesande, Mr. Patrick Persaud and Mr. Edward Downer. On 14 October, 1991, the Solicitor General wrote the Commission indicating that Mr Winston King had left the country on October 12 on official business and had asked that he be excused from the meeting of October 15. He also indicated that Mr. King would be willing to appear on his return to the country later in the month. The Company had no objections.

The Commission acceded to the Company's wishes, that they no longer required to call Messrs Gravesande, Persaud and Downer as witnesses but decided, on its own behalf, to call Messrs Persaud

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and Downer from whom the Commission wished to obtain testimony on certain matters. Mr. Parris was therefore the only one of the witnesses subpoenaed who gave evidence on the Company's behalf.

THE EVIDENCE

Reasons for the Rate Increases

The provisions governing rate increases by public utilities, during the first three years following the commencement of the Public Utilities Act, are set out in Section 38 of the Act, as shown in Annex 1 hereto. The PUC Act came into operation on October 1, 1990 and, therefore, the three year period will expire on September 30, 1993.

Introducing the Company's case, Mr. Sanders, Counsel for the applicant, stated that certain events outlined in the PUC Act had occurred and that these events justified an increase in the current rates. He further submitted that it was the Commission's duty to determine that the proposed rates were fair and reasonable. The intention of the PUC Act was "to legislate an agreement which had been negotiated between ATN and the Government of Guyana" in June 1990. The essence of the agreement was contained in section 38 of the Act and its purpose was to stabilise telephone rates for three years. Section 38 of the Act set out the four events that could automatically trigger a rate increase. Mr. Sanders pointed out that there was a fifth event that was provided for in the First Addendum to the Purchase Agreement, but that that event was not relevant to the Company's case.

All five events, Mr. Sanders explained, had the common characteristic of being out of the control of the Company. Two of the events were relevant to the rate proposals. The first event, (Section 38 (2) (a) of the Act) provided for rate increases in the event of a substantial increase in the value of the US dollar in terms of the Guyana dollar. The increase was determined by relating the average of the highest rate at which the US dollar was sold during a six month period to the highest rate during the thirty day period immediately preceding the commencement of the Act on October 1, 1990, that is, during the month of September, 1990. According to Mr. Sanders, the first of the six month periods for determining the average of the new rates began on October 1, 1990 and ran to the end of March. This was followed by two other six month periods beginning November and December, respectively, which he described as a rolling six month period.

Mr Sanders submitted that the highest average rate for the US dollar during these three periods were G$68.04, G$81.79 and G$94.92, respectively. These rates were compared to a rate of G$45.00 which he claimed prevailed immediately before the commencement of the Act. He submitted that there was a substantial

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increase in the value of the US dollar which amply justified the proposed rate increases. He drew attention to paragraph 5 of the First Addendum in which the Government of Guyana had agreed that the telephone rates in effect on closing day (January 28, 1991) "shall be deemed to be fair and reasonable".

Continuing his statement, Mr. Sanders said that the second event (Section 38(2) (b)) provided for an increase in the event "of a change in long distance charges payable to foreign correspondents". The result of the devaluation of the Guyana dollar was that the telephone company had to collect more Guyana dollars to pay in hard currencies to foreign correspondents, charges or payments which were expenses that GT&T had to meet. Mr. Sanders further submitted that the charges payable to foreign correspondents (section 38 (2) (b)) could be affected by a change in the exchange rate of the US dollar (section 38 (2) (a)) but that such change could also be triggered independently of a substantial movement, since it did not have to await the expiry of the six month period. He contended that there could be a 38 (2) (b) situation a week after the commencement of the Act but, for 38 (2) (a), a period of six months had to elapse.

Mr. Kean presented charts in support of his testimony. The first chart gave the exchange rate of the US dollar for the four six month periods starting September, 1990. It also showed the average rate of increase for each period, these being 21%, 51.2%, 81.8% and 110.9%, respectively.

The second chart presented dealt with long distance charges payable to foreign correspondents in January and March 1991. It contained columns showing revenue billed to local subscribers for outgoing overseas calls, amounts payable to foreign correspondents for completing these calls, the exchange rates applicable to the transactions and contributions to operating revenues after payment to the foreign correspondents. In January 1991, the contribution to operating costs was shown as G$2.8m while in March, it was minus G$37,795,000. Mr. Kean stated that the amount paid by local subscribers for calls to the USA was G$39.81, or approximately 31 US cents per minute, compared to a payment to foreign correspondents of 85 US cents per minute, after devaluation.

Asked whether the rates set out in the agreements with foreign correspondents had changed, Mr. Sanders responded as follows:

> "......... there is a rate which is chargeable by the foreign correspondent. That rate, as I understand it, or those rates, have not changed .... the other rate is the rate that GT&T has to charge its subscribers and we are seeking a change in that rate because the charges have changed"

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Mr. Sanders further stated that "section 38 (2) (b) has nothing to do with accounting rates, has nothing to do with overseas tariffs".

Mr. Welch explained that at the previous devaluation, the GTC was given permission to implement changes in the collection charges (the charges paid by telephone subscribers) to ensure that the company would be able to provide more Guyana dollars to meet the agreed payments to AT&T and other correspondents.

Lawfully Sold

Mr. Kean stated that the words "lawfully sold," in the context used, could only mean the rate historically applicable to GT&T. Embedded in the existing costs of GT&T was the 45:1 US/Guyana dollar exchange rate and that was the rate that should be used to determine whether there had been a substantial increase in the value of the US dollar. Otherwise, he contended, the provisions would make no sense. The language of the Act was taken verbatim from the purchase agreement, hence the Act had to be taken in the context of that agreement. This view was later supported by Mr. Sanders who pointed out that the words "lawfully sold" also appeared in the purchase agreement and, therefore, had to be read as lawfully sold to GT&T. The point was further developed by Mr. Raynor in the following words:

> "the Act incorporates provisions in the agreement between ATN and the Government. That agreement itself stems from an earlier agreement in December of 1989 that had the same provisions. When that December 1989 agreement was reached, there was no cambio, there was no other lawful rate other than the exchange rate, and we had the same exclusions that we had here. So what we did was to take the December 1989 agreement which formed the basis for the June agreement, which became our final contract.
>
> The whole purpose of the negotiations was, the Government was insisting on maintaining the flat rates. So when they sold the Company, rates were immediately increased. We were willing to take the gamble on flat rates for three years and still agree to a tremendous investment, provided that if certain elements outside our control occurred we could adjust rates, as we put it, maintain the same flat rates.
>
> What we were looking for was maintaining the same purchasing power that GT&T was earning. And that was the purpose for those exclusions. Every single one of them provides things outside our control, and they really reflect things agreed to on December 11, 1989,

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before these cambios and before a lot of things that had been discussed here were even law".

Mr Sanders submitted in evidence information from the Bank of Guyana headed "Changes in the Guyana Dollar Exchange Rate, January 1st, 1990 to present" - May 10 signed by the Supervisor of the Banking Division of the Bank of Guyana, Mr. James Padmore, pointing out that those rates were used by GT&T in making their presentation.

Mr. Britton, Legal Adviser to the Commission, invited by the Commission to comment on points of law, stated that of all the documents referred to as governing the operations of the telephone company, only the PUC Act was relevant to the interpretation of the words "lawfully sold". Since no attempt was made to interpret these words, it was necessary to resort to the normal canons of interpretation. First, it must be determined whether, in their ordinary meaning, the words would give a sensible interpretation or whether the dictionary meaning would offend or lead to absurdity. The interpretation may lead to hardship but that was another matter. If lawfully sold was intended to refer only to GT&T, the framers would have said so. The framers of the Act must be deemed to know not only of the existence of the purchase agreement but of all other pertinent documents as well.

The whole ambit of the PUC Act, Mr. Britton continued, was the public utilities, not a particular public utility. The framers must be deemed to know also of the existence of the cambios and the legislation which governed these operations. From the moment legislation was introduced providing for the operation of cambios, foreign exchange was lawfully sold through them. All that was meant by "lawfully sold" was "without giving offence to the law", "without any breach of the criminal law".

Mr. Sanders responded that Mr. Britton was not entirely correct. Mr. Britton had argued that the legislators would have known of the existence of the Agreement and he (Mr. Sanders) would therefore assume that they would have intended to give effect to it. He pointed to disparities between the PUC Act and the Purchase Agreement with respect to the six month period for the computation of the new rate for the US dollar. Whereas, the PUC Act specified that the period should start "immediately after the commencement of the Act" the purchase agreement specified "after closing". Mr. Sanders asked the rhetorical questions: "Has the draftsman given effect to the agreement? Did he know of the existence of the agreement?" He also pointed out that while the first Addendum to the Purchase Agreement mentioned a fifth event that could trigger a rate increase, the PUC Act, assented to by the President eleven days later, mentioned only four. He again questioned the draftsman's knowledge of the existence of the purchase agreement as well as of the First Addendum.

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Mr. Sanders stated that Section 38 (2) of the PUC Act, in referring to section 4 (1) (b) of the Act, restricted the application of that section to public utilities that provide telecommunication service of which GT&T was the only one operating in Guyana. He referred once again to the 1990 Budget Speech of the Minister of Finance to show that the GT&T was restricted to the exchange rate of G$45.00 to the US dollar until the Budget Speech of February 20, 1991. He submitted that the words "lawfully sold" were ambiguous and, in the circumstances, it was necessary to look to the intention of the legislature. Since the PUC Act followed the purchase agreement, it had to be assumed that the legislative intention was to give effect to that agreement.

Mr. Britton, in a final comment on the point, stated that speeches of the Minister of Finance could not over-ride an Act of Parliament.

Average for a period of Six Months

Mr. Kean referred to the information provided by the Bank of Guyana which had been previously submitted in connection with the exchange rate of the US dollar. The document showed periodic changes in the rate of the US dollar and Mr. Kean explained that the rate on the date nearest the end of the month was used in the Company's computation of the average rate over the six month periods. Mr Kean pointed out that the figure was not an average of the highest daily rates and that GT&T did not ask the Bank for a computation of the averages but simply for changes in the exchange rate. He felt that any difference in the methods of computation would be "minimal".

Mr. Kean explained further that the Act did not indicate whether the average was daily or whether it was an average computed, as the Company had done, by simply picking a time of the month and using the rate for that day. The rates provided in the document were used in the belief that any deviation would be minimal. Mr. Kean stated, in conclusion, that they would have no objections using the daily rates.

Average over the period of thirty days immediately before the commencement of the Act

Mr. Kean submitted that the highest rate during the thirty day period (September 1990) was G$45. to US$1. He further submitted that lawful rates during the period could only mean the rate that was applicable to GT&T simply because the whole context of the Purchase Agreement was an arrangement to protect GT&T from an increase in its costs. To go to the cambio rate was "to pull the provision completely out of context and make it applicable to a case to which it was never intended to apply". Mr. Sanders added

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availing themselves of the highest rates on their foreign exchange receipts. For GT&T, the rate was pegged at G$45. to US$1.

Mr. Williams explained that the rate used for GT&T's transactions with the Central Bank in October 1990 was G$45. to US$1. The rate was the same up to January 4, 1991. He was not familiar with GT&T's transactions with the Central Bank after January 20, 1991 but he was aware that the Bank itself prepared financial statements and had US dollar foreign currency accounts. The rate used by the Bank for these accounts were G$45. to US$1. It was correct that the rate applied to GT&T in the Budget Speech referred to by the Company was forty-five Guyana dollars to one US dollar.

Agreements with Foreign Correspondents

Mr. Kean disclosed that GT&T had nine foreign correspondents with seven of which it had agreements that were "more or less formal". For the remaining two, the arrangements were evidenced by information provided on their transactions with GT&T. Copies of the related documents were tendered.

Mr. Sanders questioned the relevance of an examination of these documents, contending that the Commission's task was to determine whether an increase in rates was justified and whether the rate being sought by GT&T was fair and reasonable. He considered it factual that there had been a substantial increase as stipulated in the Act and that there had been a change in the long distance charges in fulfillment of section 38(2) (b) of the PUC Act. All that the Commission had to do, he contended, was to decide whether the increases proposed were fair and reasonable. The First Addendum to the Agreement had stated very clearly that the rates obtaining at the time of closing were fair and reasonable. Mr. Sanders reiterated that the agreements with foreign correspondents were not relevant to the issue under discussion. What was relevant was the factual situation that the legal tender in Guyana was the Guyana dollar and that more Guyana dollars were required to pay the foreign correspondents.

Both Mr. Kean and Mr. Sanders contended that there was no relation between the rates payable to foreign correspondents and rates payable by local subscribers for international calls.

Mr. Kean said that the basic agreement with AT&T was concluded in November 1, 1978 and the rates currently in force were agreed on May 2, 1984 and set out in a rate schedule attached to a letter issued on the same day. The rates were as follows:

January 1, 1985	US$2.10	per min.
January 1, 1986	US$1.90	- do -

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January 1, 1987 US$1.70 - do -

divided equally between the two parties.

Both Mr. Kean and Mr. Welch stated that the 1987 rates were still in effect.

For Teleglobe, Mr Kean submitted copies of three telexes exchanged with GTC evidencing an agreement reached on April 6, 1990 on an accounting rate of 0.80 SDR per minute, shared equally between the two parties.

For British Telecom, Mr. Kean submitted a copy of a telex dated 16/8/88 setting out the following rates:

Operator IDD full rate	IDD cheap rate
0.70	0.60 per min.
0.70	0.60
1.40 SDR's	1.20 SDR's

effective 1st June, 1987.

At a subsequent hearing, the Company submitted a telex from British Telecom adding a rate for Collect and Credit Card Service of 2.00 SDR's per minute and for Collect and Credit Card Surcharge (4.00 SDR's per minute), both split 50:50.

In paragraph 3 of the message, GTC, The predecessor company, informed British Telecom as follows:

> "Please note, however, that Guyana does not issue credit cards and would prefer if this could be excluded from the proposal".

Mr. Kean said that the agreement represented the existing situation.

For Antigua, GT&T submitted in evidence a telex from Cable and Wireless PLC London, dated 19 December, 1984 to GTC proposing the following rates:

From Antigua	TAR	ANT	GUY
P/P surcharge	1.48	0.74	0.84
Class/Min	0.74	0.37	0.37
IDD/MIN	0.62	0.31	0.31
From Guyana			
Unclass	0.98	0.49	0.49

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GTC responded by telex on 23 January, 1985 accepting the offer. Mr. Welch recognised the charges of 74¢, 37¢ and 31¢ as being currently in force.

For Barbados GT&T submitted in evidence two telexes both sent by GTC to Barbados External Telecommunications. The first dated 16 May, 1987 proposed the following rates for traffic between the two countries:

Guyana	0.31	US dollars
Barbados	0.31	US dollars
Total rate	0.62	US dollars

The second telex which was difficult to read referred to what appeared to be a classified service with the following rates:

Guyana	0.37	US dollars
Barbados	0.37	US dollars
Total Rate	0.74	US dollars

There was nothing to indicate that these proposals were accepted. In answer to questions, Mr. Kean said that the proposals represented the existing rates and Mr. Welch stated that the document was complete.

For Trinidad and Tobago, GT&T submitted in evidence a letter from Textel dated 17 June, 1987 in response to a letter from GTC, dated May 8, 1987 making the following counter- proposals:

	Classified	122	IDD
Guyana	0.37		0.31
T&T	0.37		0.31
Total	0.74 US dollars		0.62 US dollars

with a personal surcharge of $1.48 USD per call to be divided equally.

The letter further stated that "collect call service already existed between the two countries and your earliest comments/agreement will be most appreciated".

Mr. Welch stated the rates were currently in force.

Again, there was nothing to indicate that these rates were accepted but Mr. Kean also stated that these rates currently applied. There was also no information on charges for collect call service between the two countries.

For the Federal Republic of Germany, Mr. Kean tendered a letter dated 8 August, 1989, accepting a proposal submitted by Postcenta Darmstadt for the following rates:

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Outgoing -	Guyana only
Guyana	0.78
USA (AT&T)	0.44
Germany	0.78
	2.00 SDR's

effective date July 1, 1989.

Information on the rates for calls from Germany was not supplied.

Mr. Welch stated that the document fully outlined GT&T's arrangement with Germany.

For Brazil, GT&T submitted a statement of accounts with EMBRATEL for the month of January 1991 showing the total amount owed to EMBRATEL and a rate per minute of 3.805 gold francs. The information which was prepared by GTC related to outgoing calls only and was unsigned. There is no indication that this information was prepared for submission to Embratel.

For Suriname, a similar statement of Account with Latel Surinam for the month of January 1991 was tendered. Again, the information which was prepared by GTC was on outgoing calls only and was unsigned. As in the case of Brazil, the statement showed the total amount owed TO Latel Surinam and an average rate of 1.607 gold francs per minute. There was nothing to indicate whether this document was prepared for internal use or for submission to Suriname.

Mr. Welch said that the rates shown in the statements were the rates for traffic between Guyana and the two countries, Suriname and Brazil. He also stated that the arrangements with the two countries were made at a government to government level but that he did not know whether the government of Guyana had any written agreements. He was not aware that there was any adjustment, subsequent to 1987, in the accounting rates for traffic between Guyana and the USA. The current rate was the same as appeared in the documents provided to the Commission (US$1.70 per minute). With regard to Canada, Mr. Welch also stated that the documents submitted fully represented the Agreement with Teleglobe. Asked whether the copies of telexes exchanged with British Telecom represented the full agreement, Mr Welch responded it represented the understanding with British Telecoms and seemed to be the full Agreement.

Mr. Sanders said that he himself was surprised at the scantiness of the information relating to foreign correspondents and asked Mr. Welch to explain why that was so. Mr. Welch replied that before, the Government of Guyana had nationalised the telecommunication service, Cable and Wireless, the previous owners, was responsible for international operations and GTC had no relations with other administrations and no information whatever on

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international agreements. The only agreement that he had ever seen since the take over of the operations by the Government of Guyana was the agreement with AT&T signed in 1978. For all other correspondents, all that would happen in connection with rate adjustments was that telexes would be exchanged. He was not in a position to say whether all the documents were transferred to GT&T with the change of ownership in January of the current year.

GT&T's Response to the Commission's Request for Information

The Commission decided at the hearing held on 13 May, 1991, to conduct a study of the financial operations of the Company in order to verify the information submitted with the Company's application and to obtain the financial and other information necessary for the consideration of a rate increase. Accordingly, the Commission issued an Order dated 24 May, 1991 requesting the Company to provide the information listed in an attachment to the Order and notifying the Company that Lynch Associates Ltd, Financial and Management Consultants, had been appointed to carry out the study.

An important objective of the study was to determine the structure of the Company's costs in terms of domestic and foreign inputs in order to provide a basis for establishing a coefficient for estimating the impact of the US dollar rate increase on the operating costs of the Company.

Following disclosures by Lynch Associates Ltd of the failure of the Company to provide access to certain books and other documents essential to the cost verification process, the Commission issued a second Order on June 12, 1991 requiring the Company to furnish the documents.

At the hearing on 15 June, 1991, Lynch Associates reported that while most of the information pertinent to the Company's revenues had been received, difficulties had been experienced with respect to expenditure information.

The main difficulties pertained to the following:

(a) The incompleteness of the information supplied (The omission of significant domestic expenditure items will bias the ratio of foreign to domestic inputs towards the foreign component and this will result in a greater increase in the Guyana dollar cost of operations than would otherwise be the case when calculating the impact of the devaluation).

(b) The lack of documents supporting the transactions underlying the accounting aggregates.

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(c) The fact that many important company records that are indispensable to the verification process were kept in the US Virgin Islands and were not available for inspection.

(d) The inability of local officials to provide explanations in connection with the accounting information submitted by the Company. (The reason given was that the operations concerned matters that were dealt with or were the responsibility of officials operating out of the US Virgin Islands. Despite requests, these officials were not made available to give the assistance required.)

Mr. Kean, GT&T's General Manager, undertook during the hearing to provide the outstanding information in ten working days, that is, by 26 June, 1991. The Commission decided to extend the time to July 1st, 1991.

When the hearing convened on July 25, the Company had still not submitted all the information requested.

In a written report to the Commission dated 22 July, 1991, Lynch Associates wrote as follows:

> "On the 8 July, at a meeting with the General Manager, the latter was informed, inter alia, of the need for the team to have access to the Company's General Ledger as well as a list of the General Ledger accounts and their balances (i.e. trial balance) for the months January to April, 1991. This would assist in speedier verification of the General Ledger items.
>
> As a result of failure to gain access to the General Ledger, and in the absence of complete submission of data requested, the team terminated the verification exercise on 17 July, 1991.
>
> In view of the foregoing, the team is unable to complete its assignment and, in addition, the status of verification work does not provide the team with a basis for advising the PUC on the reasonableness of the data presented to the Commission.
>
> If an opinion is to be expressed and guidance provided, there needs to be a firm basis for so doing. This must be based on an examination of the books, records etc of GT&T and the application of normal accounting/verification techniques used in such circumstances as related to the present assignment."

Mr. Sanders asked for two to three weeks to furnish the outstanding information. The Commission decided to extend the period to four weeks (up to 23 August), indicating that that was the last extension that was being granted in view of the six month deadline set by the PUC Act for the Commission's decision. This

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decision was followed by an Order requesting the Company to furnish all the outstanding information by the agreed date.

At the conclusion of the hearing on October 2, it was evident from the report of Lynch Associates Ltd that there were still significant gaps in the information furnished by the Commission. Lynch Associates also reported continuing difficulties in their attempts to gain access to documents. The Commission therefore decided to subpoena a number of officials of GT&T and ATN who had some responsibility for the information still outstanding, requiring them to appear at the hearing on October 9 bringing with them the specified information.

At the hearing on October 14, the Company presented a set of information in response to the subpoenas. While this was clearly a substantial response, in terms of the amount of documentation provided, it fell short of what was requested in that many important documents were omitted and, in numerous cases, the originals, duplicates or properly certified copies were not furnished, as required.

The information requested fell into two broad areas:

(1) General information on the local and foreign operations of GT&T, including information on its organisation and management, its basic systems for local and international telecommunications, its procedures for billing customers, and arrangements for effecting settlements with foreign correspondents.

(2) Income and expenditure information for the months of January to April, 1991, with relevant supporting documentation, the expenditure information identifying, as far as possible, local and foreign input costs.

COMMISSION'S ANALYSIS

Reasons for the Rate Increase

The Company has proposed the rate increases in order to offset the increase in the Guyana dollar costs of its operations attributable to the increase in the exchange rate of the US dollar. The Guyana dollar was devalued on February 20, 1991 and this triggered the first two of the five events set out in section 38(2) of the PUC Act which would justify a rate increase. The first event was a substantial increase in the rate of exchange of the US dollar in terms of the Guyana dollar. The second was a change in the long distance charges payable to foreign correspondents.

The Company contended that the first event, section 38 (2) (a), affected both the domestic and the international rates. It

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contended, however, that the second event section 38 (2) (b) could be triggered even though the substantial increase condition set out in 38 (2) (a) was not fulfilled or the six month waiting period had not elapsed. This argument calls for careful consideration.

It is important to point out that the concern of the Commission is with the increase in the Guyana dollar costs of the Company's operations and the rate increase which this justifies. In so far as international calls are concerned, an increase in the Guyana dollar costs of the company can be triggered by (i) an increase in the accounting rates agreed between the GT&T and its foreign correspondent, and (ii) an increase in the exchange rate of the US dollar. Mr. Sanders submitted that the event provided for in section 38(2) (b), i.e., an increase in the charges payable to foreign correspondents, had nothing to do with accounting rates. This was a rather strange position to take since it seems obvious that if, in agreement with a foreign correspondent, the accounting rate is increased, the cost of foreign calls in Guyana dollars will also increase, leaving aside any offsetting cost movements. In fact, section 38 (2) (b) seems to be specifically aimed at this situation.

The Company contended that while the second event is triggered by an increase in the exchange rate of the US dollar, this change cannot be determined on the basis of the procedures set out in section 38 (2) (a). This position leads to two obvious difficulties. In the first place, it implies that two different concepts or procedures for determining an exchange rate change or devaluation are contemplated in the same section of the Act even though only one such method appears to have been explicitly stated. Secondly, it will mean that two different concepts or procedures will have to be applied in estimating the impact of devaluation on the Company's costs.

The problem will be clearly seen in relation to the elements of cost in the collection or subscriber charge. The collection charge for an international call comprises basically the accounting rate component or the rate payable to foreign correspondents and the domestic cost component. If the Company's argument is accepted, the increase in the costs associated with the accounting rate component will be determined by applying one concept while the increase in the cost of other foreign inputs as well as locally sourced inputs will be determined by applying one that is entirely different concept. This is clearly untenable. The accounting rate component of cost is no different from other imported items of cost in so far as the transmission of the devaluation impact is concerned and the same measure of devaluation must be applied in both cases. The same concept must also be used in relation to domestically sourced inputs.

It is not necessary to consider, in the present circumstances, whether the second event, the increase in charges payable to

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foreign correspondents, can be triggered only by a change in the accounting rates agreed between the Company and its foreign correspondents, since this event is not a factor in the current rate case. What is beyond dispute is that an important element of the Company's cost (the accounting rate element) has increased and that this has come about as a result of an increase in the exchange rate of the US dollar. The rise in the exchange rate of the US dollar has also affected the Guyana dollar costs of other imported inputs and the same method of calculation must be used in all cases to measure the impact of devaluation on the Company's cost.

According to section 38 (2) (a), an increase in tariffs is justified -

1. if there is an increase in the exchange rate of the US dollar in terms of the Guyana dollars; and

2. if the increase is substantial.

What is substantial has not been defined, but procedures have been laid down in section 38(2) (a) of the Act for measuring changes in the value of the US dollar. These procedures represent a radical departure from the method normally used by economists for measuring such changes. In the normal method, the old exchange rate is the rate that prevails immediately prior to the exchange rate adjustment, generally, the rate at the close of the previous business day. This rate is used as the base rate against which the rate change is measured. The new rate is simply the rate prevailing on the day the rate change has occurred or on the day in relation to which the charge is being measured.

In the special procedures set out in the Act, the base rate is the highest rate at which the United States dollar was lawfully sold during an arbitrarily selected period - the thirty day period immediately preceding the commencement of the Act. The new rate is not simply the exchange rate on the day that the change has occurred but the average, for a period of six months, of the highest rate at which United States dollar was lawfully sold in Guyana. This special formula is a clear indication of a deliberate purpose on the part of the legislature and its rejection of the conventional procedure of the economist. Needless to say, the interpretation of section 38(2) (a) of the Act was a major concern of the company.

The Company's concerns relate to three basic elements:

i) lawfully sold

ii) the average for a period of six months of the highest rate at which the United States dollar is lawfully sold in Guyana

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iii) the highest rate at which United States dollar was lawfully sold in Guyana during a period of thirty days immediately preceding the commencement of the Act.

Lawfully Sold

The Company contended that "lawfully sold" in the context in which it is used could only refer to the rates historically applicable to GT&T. The Guyana/US dollar rate of 45:1 was historically embedded in the costs of GT&T and it would make no sense to use any other rate to calculate the exchange rate movement. The Company also argued that the provision had passed down from the purchase agreement which was signed in June 1990 and had its origins in the earlier 1989 proposal. At the time the provision was conceived, no cambios were in operation. The Company also presented information, signed by the supervisor of the banking department of the Bank of Guyana, on "Changes in the Guyana Dollar Exchange Rate, January 1, 1990 to May 10, 1991" and pointed out that these rates were used by GT&T in making their presentation to the Commission. Finally, the Company alluded to the reference in section 4(1) (b) in section 38, claiming that this reference, limited the application of section 38 (2)(a), and the concept of lawfully sold, to public utilities that provide telecommunication service. And since there was only one such public utility, the Guyana Telephone and Telegraph Company, section 38 (2) (a) applied to that Company and no other. To round off its argument, the Company (Mr. Sanders) claimed that "lawfully sold" was ambiguous, hence it was necessary to look to the intention of the legislature for its meaning.

First, we shall examine the Company's arguments. The act does not say "lawfully sold to GT&T" and it would be unreasonable to so extend the application in this way. Moreover, the fact that there is in existence only one telecommunication company does not, as a matter of logic, limit the generality of "lawfully sold". "Lawfully sold" refers to the members of a class, in this case, public utilities providing telecommunications service, and it is valid for that class, regardless of the number of its members even if there is none. In fact, the Purchase Agreement assumes the possibility of other telecommunications companies.

Paragraph 6.2 of the Purchase Agreement provides for the granting of a non-exclusive license to GT&T to provide cellular radio telephone service. The possibility was and is still open for the establishment of a radio cellular telephone service by other companies to which the provision would have applied. The fact that no other company has taken up the opportunity during the interval between the signature of the Purchase Agreement and the coming into operation of the Act, does not destroy the generality of the words "lawfully sold." But the fact is that the Post Office Corporation

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is also a public utility currently providing telecommunication (telegraph) service within Guyana.

Finally, the Company's case is undermined by Condition 24 (1) (a) of the Licence under which it operates, which, in reference to the issue of an exchange rate increase, reads as follows:

> "in the event of a substantial increase in the average for a period of six months of the highest rate at which the United States dollar is lawfully sold in Guyana, over the average, for a period of one month immediately before such closing, of the highest rate at which the United States dollar is lawfully sold in Guyana by any person licensed by the Government under any written law to sell the same".

"Any person licensed by the Government" obviously includes dealers operating cambios under the Dealers in Foreign Currency (Licensing) Act, 1990. There is clearly no ambiguity in the meaning of "lawfully sold" either in its dictionary meaning or in the context in which it is used, as contended by Mr. Britton.

<u>The average for a period of six months</u>

According to Mr. Sanders, the first six month period began on October 1, 1990, the day on which the Act came into operation. In fact, he viewed the situation in terms of a "rolling six months period", starting October 1 and following on at the beginning of each succeeding month. Mr. Sanders argued that the "highest average rate" could be computed for each six month period and, then when related to the highest rate during the month of September (the thirty day period immediately before the commencement of the Act), this rate could justify a tariff increase. As no claim has been made on this basis, there is no need to consider the validity of this contention.

The Company's proposal was submitted by letter dated April 15, 1990 with a request that the increases be made effective from May 20, 1991. At the end of March, a period of six months had elapsed since the commencement of the Agreement. This period was therefore used for the purposes of the proposals.

The company computed the average on the basis of the exchange rate of the US dollar published weekly by the Bank of Guyana. Prior to June 1990, this rate was announced by the Bank of Guyana as the official rate on the basis of which the commercial banks were required to conduct their foreign transactions. After June 1990, the rate was calculated as the weighted average of the rates at which currency was sold by the five commercial banks and the five largest cambios. It was contended that the official rate applied to the operations of GT&T. But as Mr. Williams pointed

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out, these rates were not necessarily the highest rates at which the US dollar was sold.

Aside from the question of "lawfully sold", the company was not averse to the use of the highest daily rates in computing the average over the six months period, Mr. Kean taking the view that any differences in the results of the two methods would be minimal.

To help in the computation of the average rate, Mr. Williams presented a table showing the highest daily rates at which the US dollar was sold over the period October 1, 1990 to March 31, 1991. The rates covered the transactions of both authorised dealers under the Exchange Control Act (the five commercial banks) as well as individuals and companies (Cambio operators) licensed to conduct foreign exchange business under the Dealers in Foreign Currency (Licensing) Act, 1990. On the basis of this information, the highest of the highest daily rates for the US dollar for the period was G$105.82.

In calculating the movement for the exchange rate in relation to section 38 (2) (b) - the increase in charges payable to foreign correspondents - the Company ignored the formula set out in section 38 (2) (a). It compared the rate of the US dollar on the day its application for a rate increase was made (G$128.00 to US$1.00) with the "lawful rate of G$45.00 to US$1.00 which obtained both prior to the February 20 devaluation and during a period of thirty days immediately preceding the commencement of the PUC Act". The figure arrived at was an increase of 184 percent. The Company proposed that the collection charges for international telephone, telex and telegraph services be increased by this percentage.

<u>The average rate at which the US dollar was lawfully sold in Guyana during the thrity day period immediately preceding the commencement of the Act.</u>

Adhering to the view that the rate at which the US dollar was lawfully sold could only mean the rate applicable to GT&T, the Company gave, as the highest rate applicable for the month of September, the rate of forty-five Guyana dollars to one US dollar, the rate that it claimed was applicable in its transactions with the Bank of Guyana. However, according to information presented by the Bank of Guyana, the highest rate at which the US dollar was lawfully sold, on the basis of the transactions of all authorised and licensed dealers in the month of September, was G$91.00.

<u>Agreements with foreign correspondent</u>

The current Agreements with foreign correspondents are the most reliable source of information on the accounting rates which constitute one of the elements of cost in the collection charge.

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The agreements are also important as a means of verifying the accounting rates compiled by the Company and submitted with its application of April 15. The Company reported that it had agreements with nine foreign correspondents, namely,

AT&T (USA)

Teleglobe Canada

British Telecom (UK)

Antigua

Barbados

Trinidad & Tobago

Federal Republic of Germany

Brazil

Suriname

We begin with a review of the arrangement with these nine correspondents listed above.

The accounting rates for AT&T, Teleglobe, British Telecom and Antigua have been confirmed by documents submitted to the Commission.

For Barbados, all that the Commission has received from the Company were two telexes from GTC, the predecessor of GT&T, to B.E.T. Barbados one, dated 16 March,1987, proposing a rate of US$0.62 for telephone calls between Barbados and Guyana, divided equally between the two administrations, and the other, largely indecipherable, which appears to be dated 11 August, 1987, expressing a wish to upgrade to classified service at a rate of US$0.74 per minute, also divided equally. There was no indication that the proposals were accepted by Barbados.

For Trinidad and Tobago, a letter dated 17 June, 1987 was submitted showing Textel making a counter offer to a previous offer made by GTC (May 8, 1987). Again, there was no indication that the counter offer was accepted.

For the Federal Republic of Germany the Company presented a letter dated 21 August, 1989 indicating GTC's acceptance of a proposal by Postcenta Darmstadtin respect of calls from Guyana.

For Brazil and Suriname, the Company submitted unsigned photocopies of statements of accounts purportedly for telephone calls to the respective countries. There is no indication whether

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the information was prepared for submission to the foreign correspondents or whether it was for internal purposes. It is noteworthy that, while the information presented is purportedly for outgoing calls, the heading of the form shows that it is for traffic in the opposite direction. This can only add to the confusion. A rate per minute of 3.805 gold francs was shown for Brazil and 1.607 gold francs for Suriname, but there was no way of determining whether these rates were simply statistical averages in relation to a structure of multiple rates or whether they were the accounting rates actually agreed between the administrations concerned.

The accounting rate information submitted by the Company reveals many discrepancies. For example, while there is evidence of three categories of accounting rates for the United Kingdom, the documentation submitted by GT&T shows only one category for the USA (US$1.70 per minute) and one for Canada (the unified rate of 0.80 SDR's per minute). There is no information on cheap rates or collect and credit card rates for traffic with these countries. Yet, the schedule of accounting rates submitted by the Company with its application of April 15 shows four accounting rates for Canada and two for the USA.

Verifiable information on the accounting rate is absolutely necessary for determining the dollar amounts by which the component of cost attributable to this factor should be increased. The problem is compounded by the fact that rate increases have to be fixed, not only for the nine countries in respect of which information has been submitted, but for all the destinations listed in the schedule of rates submitted by the Company - 169 destinations in respect of international telexes, 181 in respect of international telephone calls, and 238 in respect of international telegrams.

The Commission cannot increase rates other than those for which proposals have been made. Theare rates are set out in the schedule to the Company's application. But that schedule shows only a single collection charge or rate for each destination. The Company has adopted a single collection charge for each country destination even where multiple accounting rates are given. This is clearly shown in its compilation of the accounting rates and collection charges submitted with its application of April 15. It is important for the Commission to know the exact accounting rate component of these charges, whether it is a simple arithmetical average, or a weighted average where multiple accounting rates apply, or the highest, the lowest or an intermediate rate. While a single collection rate is administratively convenient to the Company, it is not necessarily the best solution for the subscriber. This issue will have to be addressed at the end of the three year stand-still period.

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The schedule shows a per minute rate as well as a three minute minimum charge. There is no evidence of any minimum three minute call period in any of the documents showing the accounting rates with foreign correspondents. It is unfair to the consumer that the Company should make a minimum three minute charge for overseas calls when it is being billed on a per minute basis by its foreign correspondents.

Apart from the communications with foreign correspondents, the only other information on the accounting rates is that presented as Appendix 1 of Section C (Reasons for the change in Rates), attached to the Company's letter of April 15. The information covers 88 countries for 66 of which there were two or more rates. It shows the accounting rates before and after devaluation as well as the current collection charges. No independent means of verifying these charges have been provided, apart from the correspondence referred to above. And, as it has been shown above, even this information is far from adequate in respect of some of the countries concerned.

Lynch Associates Ltd attempted to verify the existing accounting rates on the basis of the revenue collection information presented by foreign correspondents. But this approach did not prove successful. One difficulty lies in the fact that the returns show the total number of call minutes, the total amount of the related revenues and a rate which could conceivably represent no more than a simple average rate and not the actual accounting rate since there could be more than one such rate. What is needed, is not an arithmetical average but, if they do exist, the exact accounting rate for the various categories of calls. It is reasonable to assume that GT&T must have compiled the accounting rate information from records other than the returns from corespondents and, these should have been made available to the Commission. Even if the records are missing from its files, GT&T could easily have obtained the information from its foreign correspondents, including information from transit administrations for countries with which it has no direct relations. It bears repeating that the burden of proof is on the public utility.

The Commission can properly reject all unverified, accounting rates. It has decided, however, on an approach that will enable the company to adjust for the accounting rate, subject to satisfactory verification of such rates by the Commission before the new collection charges are implemented. The Company will be allowed to adjust each collection charge by an amount, in Guyana dollars, corresponding to the percentage increase by which the accounting rate component should be adjusted, ignoring for the time being the other elements of cost.

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Information submitted by the Company

We begin with general comments and observations on the information provided by the Company. This will be followed by special sections on two areas of major concern to the Commission - the payment of advisory fees and the making of loans and advances to ATN.

General comments

The basis for the examination conducted by Lynch Associates was the expenditure statements submitted by the Company. The Company submitted three statements in response to the Commission's request for details of expenditure. The first was for January to March, 1991, and the second and third, for January to April, 1991. A summary of these statements is presented below.

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GUYANA TELECOMMUNICATIONS CORPORATION

DETAILS OF EXPENDITURE (JANUARY TO APRIL, 1991)

G$ 000's

EXPENDITURE	First Submission January to March		Second Submission January to April		Third Submission January to April	
	Foreign	Total	Foreign	Total	Foreign	Total
EMPLOYMENT COST:						
1. Salary & Wages		8,250.	-	15,420.	7,725.	15,451.
2. Meal Allowances		2,565.	-	938.	469.	938.
3. Vehicle Allowances			-	1,204.	602.	1,204.
4. Travelling and			3.			
Substances		1,830.	-	1,794.	897.	1,793.
5. Staff Welfare		153.	-	218.	104.	208.
6. N.I.S. and Medical		272.	-	480.	249.	498.
7. Pension and Gratuity		-	-	251.	63.	125.
8. Training		175.	8,931.	48.	24.	49.
9. Professional Fees		-	-	9,915.	5,608.	5,608.
10. Other Employment Costs		85.		484.	233.	467
			8,934.			
TOTAL EMPLOYMENT COST		13,330.		30,752.	15,974.	26,341.
OUT PAYMENTS:						
			188,105.			
11. Foreign out payments		105,172.	5,293.	188,105.	189,262.	189,262.
12. Space segment rental		36,924.		5,293.	5,293.	5,293.
			193,398.			
TOTAL OUT PAYMENTS		142,096.		193,398.	194,555.	194,555.
MAINTENANCE AND REPAIRS						
			-			
13. Fuel and Lubricant		1,124.	-	1,546.	-	1,550.
14. Electricity		618.	22,390.	2,243.	-	3,243.
15. Transportation		2,563.	7,250.	28,254.	-	5,864.
16. Other R & M	2,447.	6,837.		8,056.	10,283.	17,139.
			29,640.			
TOTAL R & M	2,447.	11,142.		40,099.	10,283.	27,796.
			55,681.			
17. Interst Expense			-	59,575.	55,682.	55,682.
18. Security			3,991.	1,725.	-	1,724.
19. Insurance			38,115.	5,096.	3,791.	3,991.
20. Advisory Fees			-	38,115.	38,115.	38,115.
21. Mng Consultant cost			-	-	3,452.	3,452.
22. Travel Foreign			-	-	18,085.	18,085.
23. Taxes			-	-	127,230.	147,942.
24. Depreciation			5,495.	-	9,100.	13,000.
25. Other				13,689.	12,362.	17,660.
TOTAL OTHER EXPENSES	2,447.	-	103,283.	118,200.	267,817.	299,651.
TOTAL EXPENDITURE		166,568.	335,254.	382,449.	448,629.	548,343.

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The statements show a number of discrepancies, particularly between the second and third. For the purposes of verification, Lynch Associates concentrated on the third. A comparison of the third statement with information in the General Ledger revealed discrepancies in seven of the twenty five items. In terms of aggregate value, this was not of major significance, amounting to G$6.27m out of a General Ledger total of G$555.07, as against the Company's submission of G$548.3.

Of major importance, however, was the verification of the reliability of the data submitted. This required that the Company submit invoices, contracts, agreements, receipts etc, where appropriate, and that it provide full access to knowledgeable staff, whenever any explanation was needed.

Lynch Associates reported that the Company showed a marked reluctance to provide supporting information. Even after three orders and subpoenas requesting such information, the Company fell short of what was requested, thus greatly inhibiting the verification process. Moreover, because the two most senior officials namely Messrs Heying and Williams who are responsible for the Company's accounting and financial operations were located in the U.S. Virgin Islands, often, no one was present to provide explanations needed.

Of great concern to the Commission, are the numerous payments by GT&T on invoices in the name of either ATN or VITELCO, without any documentary evidence establishing that the goods or services paid for by GT&T were, in fact, for the benefit of GT&T. The Company stated, in explanation, that such third party transactions were necessary because GT&T did not have a good enough credit rating to facilitate direct purchase arrangements. Even if this is assumed to be so, third party transactions could be conducted in a more transparent and business-like manner.

A case in point is the purchase of computer equipment from Zeos International of the U.S.A. The invoice was made out in the name of VITELCO and endorsed by US Customs with the following words:

> These commodities licensed by US Government for ultimate destination Virgin Islands and diversion contrary to US Law is strictly prohibited.

The Commission noted with concern that only an uncertified copy of the invoice was provided, the original, no doubt, for some unexplained reason, remaining within the VITELCO system.

The mere presence of a Zeos computer in the head office of GT&T cannot, by itself, establish that the equipment actually acquired was received. This should not be regarded as questioning

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the integrity of any one involved, but as a comment on the manner in which the Company conducts its business.

GT&T is a company established under the laws of Guyana and it is separate and distinct from its parent company and its other affiliates. The Commission cannot accept a situation where the Company's financial transactions lack clarity and transparency due to the fact that they are mixed and interwoven with those of the other companies, irrespective of whether there is an affiliate relationship. There must be clear boundaries between the accounting and financial operations of GT&T and those of other companies. This is an absolutely necessary condition, if the Commission is to be in a position to warrant that, in appearance as well as in fact, costs unrelated to service provided by GT&T are not, unwittingly or otherwise, passed on to Guyanese consumers.

Also of great concern to the Commission, are the numerous payments made by GT&T to individuals and companies with which GT&T has no proven business relationship. Listed below are some of these transactions:

	US$
Aero Records	20,000
US Sprint	437,000
Maritime Cellular	70,525
Badillo Baatchi Prosser & Prosser	195,025
	25,000
Florida Aircraft	27,562
Alberta Energy	100,000
Linda Pearce	20,000
American Express (for Jeffrey Prosser)	64,827
VITELCO	1,000,000

Maritime Cellular is a subsidiary of ATN which, according to Company sources, sells cellular telephone services along the east and west coast of North and South America as well as in the far east. US Sprint is a long distance telephone Company with operations on the US mainland as well as in the US Virgin Islands. It is most unlikely that GT&T could be doing business with any of these two companies.

The Company has said, in explanation, that these payments were, in reality, advances to ATN on whose instructions the transfers were made. But the Company had also explained that the loans were surplus funds sent to ATN for the purpose of investment on behalf of GT&T. This discrepancy and other issues pertaining to loans and advances to ATN will be considered later in this report.

Brief comments will now be made on selected aspects of the information submitted.

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Cash Flows

The following table shows the percentage of cash flows through the two Banco Popular accounts that remained unverified, due to the failure of GT&T to submit supporting information or to the inadequacy of the information supplied:

YEAR (1991	OUTFLOWS	INFLOWS	AMOUNT (US$)
MARCH	-	23.8%	(804,151)
APRIL	37.8%	-	675,054
MAY	67.9%	-	556,528
JUNE	69.5%	-	348,029

The Company failed to provide the necessary duplicate Bank documents and written instructions to support these cash flows. The information was necessary, inter alia, to fill the gaps in the expenditure data provided by the Company.

Advances to ATN

Included in the total cash outflows of US$7.2m from the two Banco Popular Accounts for the period March to July, 1991, are advances by GT&T to Atlantic Tele-Network of US$4.9m or 67.8% of the total outflows or roughly three months of the Company's gross revenues. The Company explained that these advances were, in fact, surplus funds that were channelled to ATN to be invested on behalf of GT&T on better terms than were available in Guyana.

The Company failed to provide -

(i) duplicate bank documents for eleven of the thirty five advances, thereby inhibiting verification of advances totalling US$1.1m.

(ii) document authorising any of the thirty-five individual advances made to ATN.

(iii) any evidence of the nature of the investment for which the advances were effected.

(iv) any information relating to the actual rate of interest paid or accrued on the advances. (There was no evidence of interest payments or accruals in the Company's General Ledger)

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(v) any satisfactory explanation as to why a number of these advances, totalling US$1.98m, were made to third parties.

Purchase of foreign currency and remittance to Banco Popular accounts

During the period February to April, 1991, GT&T spent approximately G$421m (US$3.045m) in the purchase of foreign currency. These purchases were effected largely with local funds inherited from GTC and standing in deposit and current accounts with the local banks.

The Company, as in the case of the advances considered above, failed to provide -

(i) evidence of any written authorisation or approval for the use of the funds to purchase foreign currency and for the remittance of the purchases to overseas banks.

(ii) any evidence of having sought the approval of the Board of Directors for these transactions.

Funds were also used to open the two accounts with the Swiss American Bank in Antigua. In this regard, the Commission was concerned that despite a request for a full disclosure by the Company of all bank accounts by Order of June 12, 1991, repeated in the Order of 1st August, 1991, it was only after Lynch Associates came upon a reference to this bank in the General Ledger that the Company disclosed the existence of these two accounts. Asked to explain the reason for opening two accounts with a bank in Antigua, two of the Company's witnesses explained that the Company had accumulated sterling receipts which were easier to convert into US dollars at a Bank in a British Commonwealth country, an explanation which the Commission found difficult to understand.

Expenditures

As indicated above, the reluctance of the Company to respond fully to the PUC's request for information resulted in a number of significant expenditures not being verified by Lynch Associates. These relate particularly to foreign expenditures and the more significant categories are shown hereunder:

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Category of Expenditure	Submitted by GT&T		Not Verified		Not Verified	
	Foreign G$m	Total G$m	Foreign G$m	Total G$m	Foreign %	Total %
1. Professional Fees	5.6	5.6	5.6	5.6	100	100
2. Other R and M	10.3	17.1	10.3	17.1	100	100
3. Interest Expenses	55.7	55.7	3.2	3.2	5.7	5.7
4. Advisory Fees	38.1	38.1	38.1	38.1	100	100
5. Consultancy Costs	3.5	3.5	3.5	3.5	100	100
6. Travel - Foreign	18.1	18.1	10.0	10.0	55.2	55.2
7. Other	12.4	17.7	12.4	17.7	100	100
TOTAL	143.7	155.8	83.1	95.2	57	61.1

The main reasons for the unsatisfactory verification of these categories or expenditure are given below:

Professional Fees. No letters of engagement or contracts were provided, the nature of the service was not given and in some cases, reasons for charging to GT&T were not clear.

Other Repairs and Maintenance. 49% of this expenditure is related to repairs and maintenance but only a small portion (G$65,862) has been identified as foreign. In relation to the remaining 51%, all except an amount of $G4.7m for "freight", for which supporting information was not provided, is of a local nature. It was therefore not possible to verify any significant part of this expenditure as foreign.

Interest Expenses. No information was provided to assist in the verification of an amount of $G3.2m which was paid in January, 1991. It was necessary to ascertain whether the payment was made prior to 28 January, 1991, the date on which the Company was sold.

Advisory Fees. These fees are computed as 6% of gross total operating revenues for the month and are remitted to ATN free of withholding tax. In spite of the existence of an Advisory Agreement, Lynch Associates were unable to obtain adequate

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information or explanations from the Company to determine the appropriateness of this charge.

Management consultancy Costs. These are wholly foreign costs which are not supported by adequate explanation or documents justifying the charge to GT&T. The Company has since withdrawn one of these charges - a payment to John Tai Oy Young, amounting to US$9,000.

Foreign Travel. The arrangements for travel by chartered jet are unnecessarily complex and costly. In the first instance, during the period under review, charges for use of the jet by ATN, VITELCO and GT&T were invoiced to VITELCO but paid by GT&T. According to GT&T the jet was used to move both passenger and freight. However, this is not indicated on the invoices presented. Further, GT&T has not been able to provide details of its use of the jet for either passenger or freight. In one instance, the Company was charged 50% for passenger traffic, 25% for freight and 25% was placed in a General Ledger account for which no information was provided.

There are other amounts paid by GT&T for which there has been no adequate explanation. In one case, the Company acknowledged as an innocent charge on amount of US$8,259.60 paid in respect of travel expenses incurred by Messrs R. Sanders and J. Prosser in December, 1990 and January, 1991 respectively, prior to the sale of GT&T.

Of the total amount of G$18.1m Lynch Associates was unable to verify G$10.1m.

Other Costs. Included in this charge is an amount of G$9.3m for "Amortization of Franchise" which, as the Company pointed out, represented the cost of purchased goodwill, explained as the licence to operate the telephone service as a monopoly. The Commission was left unconvinced as regards the justification of the charge. Further Lynch Associates was unable to verify the balance of other costs amounting to G$8.4m.

Other Issues

Taxes ($147.942m). The Company has submitted that $127.23m of this charge represented a foreign element. However, the charge is rejected as not being an item of cost, thus being irrelevant to the purposes of the investigation.

Depreciation (&13.0m) - The Company has failed to provide satisfactory information to justify this charge and for its allocation as a foreign cost.

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Loans and Advances to GT&T

ATN and GT&T signed an Agreement on 28 January, 1991 providing for inter-company loan transactions between GT&T on the one hand, and ATN and its subsidiaries on the other. The Agreement also makes reference to loans to GT&T. This seems to be little more than a cosmetic consideration.

The Agreement sets just two conditions governing the loans made by GT&T. For loans in excess of G$30m, promissory notes will be executed in favour of the lender. Nothing is said about loans of G$30m or less. Interest is payable in accordance with the prime rate as published by the Bank of Guyana.

The only reference in the agreement to loans to GT&T is in paragraph 3 which states that "whenever the lender is ATN or any of its subsidiaries other than GT&T, the governing law and jurisdiction shall be that of the US Virgin Islands"

A number of observations can be made about these arrangements:

(1) The Agreement was not approved by the Board of Directors.

This seems to be in conflict with paragraph 7:4 of the Purchase Agreement which states, on the subject of Board Meetings, that "all decisions in respect of matters pertaining to GT&T and its business shall be discussed and decided at the meetings of the Board of Directors."

2. None of the loans and advances made was referred to or approved by the Board of Directors. Mr. Patrick Persaud, one of the directors appointed by the Government of Guyana to the Board of GT&T testified that at the September meeting of the Board, the Chairman, asked whether he wished to submit the loans to the Board for covering approval, had given a negative reply.

(3) The loans were all unsecured

(4) The promissory notes did not bear the required revenue stamps.

(5) Whereas the loans have all been made in US dollars transferred from the GT&T's accounts with Banco Popular, the promissory notes provide for repayment in Guyana dollars.

(6) Neither the Agreement nor the promissory notes make any provisions for the devaluation of the Guyana dollar. Without a clear maintenance of value provision, GT&T is fully exposed to the risk of devaluation, if, upon such

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an event, repayment is effected in accordance with the promissory notes.

(7) There is no evidence in the records of GT&T that interest was received on loans repaid so far or that interest has accrued on loans outstanding.

Both Mr. Prosser and Mr. Kean have contended that the loans are, in fact, a special arrangement by GT&T to transfer surplus funds held by GT&T for investment by ATN on better interest terms than are available in Guyana. But the Company was unable to provide any documents evidencing this intention or any information on the investments to which the funds were applied. The fact of the matter is that no such intention has been expressed in the loan agreement and all the funds transferred have either gone directly to ATN or, apparently, to a number of its subsidiaries as is the clear objective of the loan agreement.

Asked to provide information on the loans to which the transfers were applied, Mr. Kean explained that the loans to ATN were, in fact, investments on which GT&T was guaranteed a better return by ATN than they would have obtained from any investments in Guyana. Mr. Kean said that he was not so much concerned with the way ATN deployed these resources as with the fact that GT&T was guaranteed a good return and that ATN had the financial strength to guarantee repayment.

Of great concern to the Commission was the manner in which these arrangements were pursued by the General Manager of GT&T. For the months of March to July, loans and advances totalled US$4.9m representing roughly 68 percent of the total inflows into the two accounts with Banco Popular and almost three months of GT&T's total operating revenues. Despite the magnitude of these outflows, the General Manager did not see it fit to bring the matter to the Board of Directors of which he is a member. The Agreement was also signed by Mr. Kean without ever being brought to the attention of the Board of Directors. The fact that these arrangements were entered into on the 29th of January, 1991, one day after the conclusion of the Purchase Agreement, lends itself to the conclusion that the stage was being set and the vehicle being prepared for the diversion of funds in the form of loans and advances to ATN and its affiliates, the clear and expressed intention of the inter company loan agreement.

Mr. Kean, the General Manager of GT&T and a member of its Board of Directors, was at all material times the Vice President of ATN as well as a member of its Board of Directors. This dual capacity is not unusual in modern business practice although it has serious implications for the decision making integrity of a regulated agency. The dual capacity imposes a higher duty of care on the executive when he is called upon to make a decision which concerns or impinges on the interest of both companies. He has at

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all times to bear in mind that he is agent of both companies, ATN and GT&T, rather than a trustee, and that, as an agent, he stands in a fiduciary relationship with respect to both companies and, as such, must act in the best interest of both.

Whenever a person has a fiduciary relationship with any other person or company, he is in duty bound to act in such a manner that his decisions are not in any regard tainted with apparent self interest or by an unbalanced concern for the interest of one or the other of the two companies.

The Commission proposes in the near future to make appropriate rules governing the company's relations with affiliated interests.

Advisory Services

Article 6:10 of the Purchase Agreement provides that:

> Where GT&T has engaged ATN or any of its subsidiaries to render any management services, GT&T shall pay fees in foreign currency in such amounts as the Board of Directors of GT&T shall approve and the repatriation of such fees to the United States of America shall not be subject to currency restrictions, withholding taxes, or any other taxation by the Government.

On 28th January 1991, the very day on which GT&T was transferred to ATN as the majority shareholder, an Advisory Contract was signed between ATN and GT&T under which ATN agreed to provide a range of management services to GT&T. The Contract was approved by the Directors of GT&T by resolution contained in a Unanimous Written Consent signed on January 28, 1991. The copy submitted to the Commission which was an uncertified document (a certified copy was requested) faxed from the Law Firm, Fried Frank Harris in New York, was signed by Mr. Jeffrey Prosser on behalf of ATN and Mr. James Keen on behalf of GT&T.

Under the Contract, GT&T pays ATN a monthly fee of six percent of total operating revenues and, in addition, reimburses ATN, or its associate, where appropriate, for the salaries and expenses of any of its employees (including the usual overheads chargeable in such cases) and for any materials used by such employees, in cases where such employees are supplied to GT&T and where it is necessary to send or maintain employees of ATN either in Guyana or elsewhere, outside of the location where they are habitually employed.

GT&T also reimburses ATN or its affiliates for any fees and expenses of all attorneys, accountants, or other professionals as may be engaged by ATN or any of its affiliates to perform specific services for GT&T.

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The main issues arising in connection with the Advisory Contract are:

(i) The justification of the six percent management fee, and the general consistency of the arrangements with paragraph 6:10 of the Purchase Agreement (quoted at the beginning of this section).

(ii) The question of arms-length relations with affiliates.

The Company has defended the six-percent management fee on the grounds that it is in keeping with an understanding with the Government of Guyana. It has claimed that the fee was included in an earlier version of the Purchase Agreement but was left out of the current Agreement because it was felt that it was more appropriate for the Board of Directors of GT&T to decide on the matter.

The Commission could not accept the mere recitation of the history of the matter as of relevance to the interpretation of paragraph 6:10 of the Purchase Agreement and disregarded all such evidence.

The Commission is of the view that the agreement quite clearly contemplates that GT&T is likely to need management services from time to time for which it may wish to enter into contracts of service with third parties. The agreement does not in any way limit such contracts to ATN or its affiliates but simply provides that if, for any particular service need, GT&T decides to engage ATN or any of its affiliates, it must refer the matter to the Board of Directors which shall approve the terms of engagement as well as the amount of fees that should be paid. Approval of the fees to be paid implies that the Board shall endeavour to ensure that the payments are commensurate with the nature and extent of the service to be provided. All this is in keeping with what is normally regarded as sound business practice. The Advisory Contract, on the other hand, clearly limits the provision of management services to ATN and its affiliates. The Commission's view is that this is inconsistent with the spirit and intention of paragraph 6:10 of the Purchase Agreement.

The six percent fee bears no relation to service actually rendered. It is due and payable even if no service is provided in any particular month. Moreover, all expenses associated with the provision of ATN's personnel (including overheads), whether on a part-time or full-time basis, and all fees and expenses of attorneys, accountants or professionals engaged by ATN or any of its affiliates to perform specific services for GT&T are fully reimbursed by GT&T. The question to be answered is what is the six percent really for?

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In answering this question, Mr. Kean drew attention to the fact that the management services agreement was a condition precedent to the signing of the Equipment Financing Agreement between ATN and Northern Telecoms International Finance (NTIF) 28 January, 1991 for the financing of equipment for GT&T's Expansion and Service Improvement Plan. The Agreement with NTIF also covers the financing of the new digital switch installed earlier this year in the amount of US$10.5 million. Clause 7:2(e) of this Agreement reads as follows:

> "GT&T and the guarantor shall have entered into an Agreement (the "Advisory Agreement") satisfactory to the Agent, pursuant to which the guarantor will provide management services to GT&T and GT&T will pay to the guarantor management fees equal to at least six percent (6%) of the aggregate quarterly consolidated gross income of GT&T and the GT&T Subsidiaries".

The guarantor and the agent referred to above are ATN and Northern Telecom International Finance, respectively.

Two points should be noted about this arrangement. Firstly, the agreement must be satisfactory to NTIF; and, secondly, the fee must be at least six percent. It would appear that these terms were dictated by NTIF and it would be reasonable to ask what is the interest of NTIF in the matter.

It is difficult to see any link between the Advisory Agreement and the Equipment Financing Agreement. Pressed, on another occasion, to justify the six percent advisory fees, Mr. Kean replied that the objective was to improve the cash flow of the company but he did not go on to say which company. It certainly cannot be the cash flow of GT&T since quite the opposite is the case. It can therefore only be the cash flow of the recipient, that is ATN. But why should it be necessary to increase the cash flow of ATN in relation to the Equipment Financing Agreement?

GT&T's repayment obligation under the Equipment Financing Agreement is guaranteed by an escrow account arrangement with the Bank of New York which provides for the deposit of all international receipts of GT&T into that account and for the balances to be maintained at a level sufficient to guarantee that GT&T's payments to NTIF can be met. Moreover, the NTIF loan has been collateralised by debentures issued by GT&T to NTIF.

It was confirmed in testimony on behalf of the Company that ATN has also obtained a loan from NTIF for the financing of the purchase of GT&T. It was explained, however, that this arrangement had nothing to do with the Equipment Financing Agreement.

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Why the Advisory Agreement should be a pre-condition for the conclusion of the Equipment Financing Agreement on terms acceptable to NTIF, remains shrouded in a fog of obscurity.

Of great concern to the Commission is the fact that the execution of the Advisory Agreement and the transactions conducted under it were not done on an arms length basis. Under Section 35(i) of the PUC Act, the Commission has the responsibility to ensure that any expenditure incurred by the public utility is a fair and reasonable cost for the purposes of rates. One way to increase the possibility that expenditures incurred are fair and reasonable is to ensure that all procurement is conducted on an arms-length basis. Arrangements not conducted on such terms are the legitimate concern of the Commission and no such expenditure can be approved for the purpose of rate fixing, unless the Commission is satisfied that the charges are fair and reasonable and are what would normally obtain in an open competitive situation. Costs, whether for capital or current account, will affect the rates paid by subscribers and the Commission must be in a position to assure consumers that, in terms of Section 32(i) of the PUC Act, the rates payable are fair and reasonable having regard to the Company's costs.

Condition 51(4) of the Licence granted to GT&T states that:

> "The Licencee shall ensure that all transactions between the Licensee and any of its Associates are carried out at arms-length and to the best advantage of the Licensee. Records relating to each such transaction shall be maintained by the Licensee at least for a period of five years and made available to the Director or any person authorised in writing by the Director, at the request of the Director."

The Company drew attention to Condition 51 (6) which reads:

> "For the purposes of this Condition a person is an Associate of the Licensee if it, being a body of persons, is a Subsidiary of, or another body corporate controlled by it".

While Condition 51:6 appears to limit the term "Associate", for the purposes of the Licence, to subsidiaries or bodies corporate controlled by GT&T, it does not in any way preclude the Commission from requiring an arms-length relationship in dealings between GT&T and ATN and any of the other affiliates of the latter.

The Company has argued that such a relationship among affiliates is normal business practice and mentioned, in particular, the inter-company arrangements among telephone companies in the U.S.A. This may be so for unregulated operations but regulatory authorities in the U.S.A. are known to prescribe special rules for the regulation of relations with affiliated, interests. This subject is dealt with in the Pennsylvania Public

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Utility Code, Chapter 21, from which the following extract is taken:

Section 2101(a). Approval of contracts with affiliated interests

> "General rule. - No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval."

The Commission can find little justification for the six percent advisory fee. This conclusion is reinforced by the clause in the Equipment Financing Agreement requiring ATN to sign an advisory contract with GT&T as a pre-condition for concluding the Agreement, on terms satisfactory to NTIF, as well as by the admission of Mr. Kean that the purpose of the six percent fee is to improve the cash flow of the "company".

The Commission considers it necessary to undertake, in the near future, a special investigation into the Advisory Contract arrangements and unless satisfactory evidence can be given to justify the six percent management fee as bringing meaningful benefits to GT&T, commensurate with the payments made, the Commission will have no alternative but to regard such payments as a gratuitous cash flow to ATN to be set off against future profits for all rate fixing purposes. The Commission will also consider whether the agreement should be terminated or modified as necessary, to ensure that arrangements for advisory services are conducted on an arms length basis.

Finally, the Commission proposes to establish general rules to govern the relations between GT&T and affiliates, in keeping with the necessities of the PUC Act.

Liquidity of the Company

The Commission viewed with some concern the decline in certain important financial indicators of the Company, during the period 31 January, 1991 to 31 May, 1991. The period saw a reduction in the total cash balances, as stated in the Balance Sheet, from G$457.9m to G$199.3m at the end of the period, while the local cash stock declined from G$451.2m at 31st January, 1991 to G$14.1m at 31st

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May, 1991. There was a steep decline in the Company's liquidity ratio over the same period from 2.32 to 1.19 stemming largely from a 14% reduction in liquid assets and a 69 percent increase in current liabilities. At the same time, long term liabilities rose by 90% during this period.

From July, 1991 the Company began to experience over-draft problems on one of its accounts at the Banco Popular. In the month of July, the account went into overdraft on six occasions. At the end of July, the two Banco Popular accounts, into which deposits totalling US$7.4m were made during the period March to July, 1991, had a combined balance totalling only US$86,224. at the end of August 1991.

The Company said that the reduced liquidity reflected a deliberate effort on their part to manage their balances at a lower level. The Commission was gravely concerned over the steepness and rapidity of the fall and hoped that there was no built in trend, particularly in view of the rapid rise in the Company's short term liabilities and the decline in its short term assets. The Committee also noted with concern that while GT&T was experiencing overdraft problems, it had loans outstanding to ATN of over US$3.5m.

General Management of the Company

The Commission cannot conclude this section without some comments on the general management of the Company. As a public utility operating as a private monopoly, GT&T has a privilege which sets it apart from the normal business operations. Its monopoly rights protect it from the inroads of competition and it has no fear of going out of business as a result of pressures from any competitor. Under the terms of its agreement with the Government of Guyana, GT&T is guaranteed a fifteen percent rate of return. For these special privileges which are under-written by its subscribers, GT&T must show some reciprocal obligation.

At the minimum, the Company, is expected to conduct its business prudently and efficiently with the interest of its subscribers always in mind. It is expected to show a transparent accountability in terms of its obligations under the laws of the country. The Commission was surprised to discover that the control of the accounting and financial operations of GT&T has been effectively removed to the US Virgin Islands. According to Mr Kean, its General Manager, the executive in charge of the financial operations of the Company is Mr James E. Heying, Chief Financial Officer of ATN and the second in command is Mr. Cornell Williams, Assistant Controller of VITELCO. Ms. Jennifer Grainger, who earlier this year was appointed with great fanfare as Financial Manager of GT&T seems to be excluded altogether from, important financial policies, decisions and transactions. of the company,

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judging from her inability to respond to questions on these matters from Lynch Associates. The fact that the more important books and records of the Company are held in the US Virgin Islands makes it more difficult for the local staff to operate with any significant understanding of what is going on in important areas of the financial operations of the Company. This has presented very serious problems for the PUC in its efforts to have access to records and to receive necessary explanations and information for the discharge of its responsibilities under the Act. By virtually transferring its finance department to the US Virgin Islands, GT&T has seriously limited its ability to cooperate effectively with the Commission as required by the PUC Act, thus destroying the assumptions underlying the functioning of the Commission. This situation cannot continue without seriously jeopardizing the meaningfulness of the regulatory process.

Another matter of some concern to the Commission is that, judging from the manpower policies of the Company, there seems to be no clear policy for the participation of Guyanese personnel at the higher echelons of its management structure. Failure to recognise the desirability of such a policy and to adopt meaningful policies for its implementation can lead to instability in the management of the Company. This can adversely affect its ability "to provide a service to the public that in all respects are safe, adequate, efficient, reasonable and non discriminatory", as required by the Act, a matter of legitimate concern to the Commission.

Any investor serious about being a good corporate citizen ought to recognise the importance of not ignoring the expectation that their investment activities will offer expanding opportunities for meaningful participation of local personnel. All good corporate citizens recognise that it is in their own self interest to be responsive to the reasonable aspirations of the people of the host country.

DETERMINING THE RATE INCREASE

We begin this part of our report with a consideration of the elements of cost that make up the subscriber charge.

The rates in which the increases have been proposed are the telephone, telex and telegraph rates listed in the schedule to the Company's application. These are the rates payable by the subscribers and are referred to in the industry as the collection charges. The Company's request is for these rates to be increased by 184 per cent.

One component of the collection charge is the accounting rate which is the rate payable to the foreign correspondent or telephone company in the destination country to compensate it for the cost of

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completing the call. The accounting rate is fixed by negotiations between the local company and the foreign correspondent and is set out in an agreement, or in an exchange of correspondence, between the two correspondents or administrations. In addition to the accounting rate, the collection charge includes the cost of using the local network facilities, as well as the local facilities dedicated to the transmission and reception of international calls. It should normally include also the cost, where applicable, for the use of satellite facilities. Over and above all this, there is an element of profit. For the purpose of rate fixing, it would be convenient to consider the element of profit as a part of the domestic cost of operations.

All calls made locally are routed from the caller's telephone to the central office switching equipment which serves the district in which the caller is located. In the case of a local call, the central office sets up the connection between the caller and the called party. If the called party is in another district, the call is routed to the central office in that district which transmits it to its ultimate destination.

In the case of an international call, the central office directs the call to the international transmission facility which, in turn, transmits it to its foreign destination or, to be more accurate, to the telephone company in the destination country for transmission to the person called.

In Guyana, the international transmission facilities comprise an earth station which communicates via a satellite and a tropospheric scatter communication system. These facilities are dedicated exclusively to international telecommunications. Calls routed through the earth station are transmitted via these international communications satellite. Originally, the international transmission facilities were operated by a separate company but the international and the domestic operations were merged to form a single corporation sometime after the Government of Guyana acquired these operations from Cable and Wireless Ltd of the United Kingdom.

It can be seen from the foregoing that the cost of an international telephone call from Guyana (the collection charge) comprises the following five basic elements:

1. The cost of using the local network facilities.

2. The accounting rate (the charge payable to foreign correspondent).

3. The cost of using the Company's international transmission facilities.

4. The cost of using the international satellite facility.

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5. Profit

The cost of operating the local network facility is shared jointly by domestic calls, international calls, both incoming and outgoing, and such other services as may be provided by the Company. The cost of using the international communication facilities - the earth station, the tropospheric scatter communication system and international satellite space - is shared by incoming and outgoing international calls and such other service as may be provided by the Company via these facilities.

The Company's proposal that the collection charge be increased by 184 percent requires that all five elements of cost be adjusted by this percentage. The Commission must ascertain, therefore, what the operating cost of the Company is and whether this cost is fairly allocated to the various services and rates concerned.

There should normally be no difficulty with respect to the accounting rate. It is very straight forward provided the necessary information is supplied. The accounting rates are expressed on a per minute basis in a foreign currency unit (US dollars, SDR's or gold francs) and the impact of an increase in this cost on the collection charge, whether as a result of devaluation or a change in the rate actually set by agreement between the two telephone administrations concerned, can be quite easily measured. For the other elements of cost, it is a different problem altogether. The Commission must verify that the network costs attributable to outgoing international calls are fair and reasonable. This requires that the overall network costs be validated that they be fairly allocated to domestic and foreign calls as well as to other services provided by the company. Finally, the Commission must verify that the increase in the attributable cost represents a justifiable response to the devaluation. Consideration has to be given, also, to the apportionment of the costs of using the international communications facilities, including the rental of satellite space, between outgoing and incoming international calls, the cost of other uses of these facilities, if any, as well as the rate of increase in these costs that will reflect the impact of the devaluation with reasonable accuracy.

It follows from the above that reasonably reliable information on the company's cost of operations, presented in a form that will facilitate the required analysis, is indispensable to the rate adjustment process. Needless to say, the burden of proof to show that the rate is fair and reasonable rests upon the public utility (section 44 of the PUC Act). It is the responsibility of the utility to provide the information necessary to establish the fairness and reasonableness of the rate proposals.

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Based on this breakdown of the collection charge, it is now possible to present the following formula to show the impact of devaluation on the collection charge.

CC	=	$a(NC_{oc}+TC_{oc}+P_{oc})+b(SR_{oc}+AR)$ where
CC	=	increase in the collection charge
NC_{oc}	=	the network cost attributable to outgoing international calls
TC_{oc}	=	the transmission cost attributable to outgoing international calls
P_{oc}	=	the quantum of profit attributable to outgoing international calls
SR_{oc}	=	satellite rental cost attributable to outgoing international calls
AR	=	the accounting rate or charge
a	=	co-efficient of increase in domestic input costs resulting from devaluation
b	=	co-efficient of increase in foreign input costs resulting from devaluation.

The highest degree of fairness in respect of new rates can be achieved if the various components of cost are segregated, along the lines indicated above. If this is not done, there is the likelihood that outgoing international calls will bear a more than fair share of the network and satellite rental cost. Of course, the reverse is also quite possible. If the aggregate of all costs that make up the collection charge, over and above the accounting rate element, is used for the purpose of the calculations, the Commission will not be in a position to guarantee the fairness of the results. This is not the best way for the Commission to proceed.

But the reality is that the Company has not provided such a breakdown of costs and the information presented does not admit of such allocations. The Company will, in the future, have to adopt a system of cost-based pricing. For this, there will have to be an appropriate decomposition of its costs. Cost-based pricing will inevitably lead to some degree of rate re-balancing. However, in view of the three year stand-still period, such re-balancing may not take place before October, 1983. This is not to say, however, that a system of cost allocation, to ensure fairness in respect of permissible increases during the stand-still period, will not be necessary.

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The first step in the allocation process will be to separate the domestic from the international operations. This will enable the latter to be costed on a stand-alone basis with only the access charge for using the domestic network facilities to be worked out by the two operating entities.

Despite the obvious disadvantages, in the absence of an appropriate and acceptable breakdown of costs, the Commission is prepared, as the second best solution, to work with an aggregate figure for all domestic costs. For this, the original model will have to be modified as follows:

$$CC = a(DC)+b(SR_{OC}+AR)$$

where DC is the total operating cost exclusive of satellite rental and accounting rate charges.

Without any information on the allocation of satellite rental costs to outgoing international calls, the Commission has to assume that this expense is included in the collection charge outside of the accounting rate element. The formula can therefore be re-arranged as follows:

$$CC = a(DC)+b(SR_{OC})+b(AR)$$

$$= a_1(DC+SR_{OC})+b(AR)$$

where a_1 is the weighted average of coefficients "a" and "b"

Such acceptance of the aggregate of the domestic and satellite rental costs is somewhat questionable but can be justified on the basis of paragraph 5 of the First Addendum to the Purchase Agreement which provides that:

> "Subject to the increase permitted during the period of three years agreed under section 5:9 of the Agreement, during the aforesaid period, rates charged for services on the date of closing shall be deemed to be fair and reasonable:

While not necessarily agreeing that the rates are, in reality, fair and reasonable, and, indeed, the wording of the Addendum does not necessarily imply that this is so, the Commission is prepared to accept this condition as a working hypothesis. The only values to be determined for the application of the formula is the value of "a_1" which is the coefficient of increase in the combined total domestic and satellite rental costs and "b" which is the coefficient of increase in the accounting rate element.

Coefficient "a_1" will depend upon the ratio of foreign inputs to domestic inputs in the Company's costs. Foreign inputs,

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including those procured locally, will normally bear the full impact of the devaluation. In other words, there will be a one to one effect, with an increase in the value of the US dollar resulting in a Guyana dollar increase in cost to the same degree. The impact of the devaluation will decline as the proportion of foreign content in the cost of local procurement decreases. At the lowest level, the Guyana dollar cost of inputs that do not incorporate any direct foreign content will be influenced by the rate of inflation. In these calculations, ad valorem taxes incorporated in the cost of foreign inputs will increase in step with the increase in the value of the US dollar.

In the absence of the data required for this exercise, the Commission is prepared, as a further concession, to work with a rough approximation of the ratio of foreign to domestic inputs, the former including foreign inputs procured locally. For this purpose, the Company was requested to provide cost information with a breakdown into foreign and domestic inputs for the months of January to April, 1991. It was the Commission's intention to use the rough measure of a weighted average of the two coefficients, one for foreign inputs the other for domestic inputs, for the purpose of determining the Guyana dollar increase in total costs.

It is important to be reminded that only cost increases resulting from the change in the rate of the US dollar can be taken into account for the purpose of deciding on a rate increase. The implication of section 38(2) of the PUC Act, is that all other costs must be absorbed by the Company. The application of the coefficients will tend to limit the adjustment to the exchange rate impact only, recognising, of course, that the method is not perfect.

As indicated above, the cost data supplied by the Company was not sufficiently reliable to permit the coefficients to be computed with any degree of confidence. Of necessity, therefore, the Commission is forced to abandon this effort and in consequence, the adjustment formula was reduced to the following

$$CC = b(AR)$$

This means that the, only increase in the collection charge that the Commission is in a position to allow is the equivalent of the increase in the accounting rate element.

The coefficient "b" has been computed by the Company as 1.84. The Commission is of the view that the Company's calculation is not in keeping with the procedures for determining the exchange rate increase of the US dollar, as presented in section 38(2)(a) of the PUC Act.

In calculating the rise in the exchange rate for the purpose of increasing domestic tariffs, the Company proceeded on the basis

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of Article 38(2)(a) of the Act. The only difference with the Commission in this respect relates to the meaning and application of "lawfully sold". The Company has interpreted "lawfully sold" to mean "lawfully sold to GT&T" and, on this basis, has arrived at an old rate of G$45.00 to US$1. as the rate for the month of September, 1991. The Commission, on the other hand, has interpreted the words to cover the transactions of all authorised and licensed dealers, thus arriving at a rate of G$91.00 to US1.00 for the same period.

The Commission is of the view that it is unacceptable to employ two different procedures in calculating the impact of devaluation on the cost of the Company. The accounting rate is a foreign cost as any other foreign input and it would be absurd to measure the impact of devaluation on the accounting rate element in one way and on other foreign costs in a different way. The Commission is of the view that the same procedure should be adopted for all costs and has followed that outlined in 38(2)(a), which the Company has accepted for the purposes of domestic rates, in calculating the impact of the devaluation in connection with the international rates.

Following these procedures, the old exchange rate, the highest rate, at which the US dollar was sold in September 1990, was G$91.00 and the average highest rate for the six month period October, 1991 to March, 1991 was G$105.82. This gives an increase of 16.2 percent and a coefficient of 0.162. This result is far below the coefficient of 1.84 worked out by the Company.

The Commission is concerned that a coefficient of 0.162 will result in an increase that is far below what can be considered a reasonable response to the real situation. It recognises that the rate of G$45.00 to US$1.00 was embedded in the Company's costs, in keeping with official restrictions on its foreign exchange transactions. In February 20, 1991, the Guyana dollar was devalued to G$101.75 to US$1 and, since then, the rate of exchange of the US dollar has stayed well above that rate. In recognition of these facts, the Commission decided to see if any possibility exists, within the framework of the PUC Act, of a solution that responds more fairly to the actual situation faced by the Company.

In this connection, the Commission referred to Article 32 of the Act.

> "32.(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 that the Commission may form time to time prescribe.
>
> (2) In determining the rate that a public utility may charge for any service provided by it, the Commission shall have regard to consumer interest and investor interest and to

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the rate of return obtained in other enterprises having commensurate risks."

The Commission has also referred to Article 26 (1) of the Act.

"26.(1) Every public utility shall maintain its property and equipment in such condition as to enable it to provide, and shall make every reasonable effort to provide service to the public in all respects safe, adequate, efficient, reasonable and non-discriminatory and shall make all such repairs, changes, alterations, substitution, extensions and improvements in or to such service as shall be necessary or proper for the accommodation and convenience of the public ......"

In reference to Article 32(1), the Commission feels that it would be less than fair and reasonable to grant the Company an increase that falls so far short of what is actually necessary to compensate for the cost increases. The Commission feels also, that the strict application of section 38(2)(a) is likely to weaken the Company's ability "to provide service to the public in all respects safe, adequate, efficient, reasonable..." as is the duty of the Company under section 26(1) of the Act.

The Commission is of the view that to follow section 38(2)(a), in its strict sense, would be inconsistent with its mandate, as expressed in section 32(2), to have regard to "consumer interest and investor interest" in determining charges for any service provided by it. Accordingly, the Commission has decided to apply a coefficient that is more in line with the actual rate of devaluation.

In establishing the percentage increase in the exchange rate of the US dollar, the Commission accepts as the starting rate, the official rate of G$45. to US$1 which was in effect on 19 February, 1991, the day before the devaluation of the Guyana dollar. This was the rate at which GT&T was required to conduct its foreign exchange transactions and which the Company claimed was embedded in its costs and reflected in its tariffs.

From 20 February, the official restrictions on the Company were removed and it was then free to buy US dollar from any authorised or licensed dealer. But the Bank of Guyana continued to compute an "official rate" and this rate was used by GT&T in estimating the increase in the exchange rate of the US dollar for the purposes of its international rate proposals. The Commission has decided to adopt this rate as a basis for its own calculations.

Since 20 February, the official rate rose from G$101.75 to G$128.00, during the week of April 12 to 18, and has since declined steadily to its current level of G$119. The average of these

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weekly rates would fairly reflect the impact of the devaluation on the Company's costs and would provide the basis for a new tariff that would respond justly and reasonably to the interest of both the Company and the Consumer.

The average of the weekly official rates from the week ending Friday, 22 February, 1991 to the week ending November 8, 1991 is 120.99 which, when related to the rate of G$45 on 19 February, gives an increase of 168.86 percent.

In adopting this approach, the Commission is not unmindful of the fact that its decision was influenced by the reality of the substantial upward movement of the United States dollar against the Guyana dollar and, in so doing, will not turn a blind eye on the equal reality of the situation, should there be a sustained improvement in the purchasing power of the Guyana dollar, so as to ensure just and reasonable charges to the consumer.

SUMMARY OF THE COMMISSIONS' FINDINGS

1. With reference to section 38(2) of the Public Utilities Commission Act,

    (a) "Lawfully sold" means lawfully sold by any person licensed by the Government under any written law to sell United States dollar as stated in condition 24.1(a) of the Licence granted to the Guyana Telephone and Telegraph Company Ltd to run telecommunications systems under section 7 of the Telecommunication Act 1990.

    (b) The six month period for the purposes of the Company's application is the period 1st October, 1990 to 30th March, 1991.

    (c) The thirty day period immediately preceding the commencement of the Act is the period 1st to 30th September, 1990.

    (d) The average of the highest rate at which the United States dollar is lawfully sold in Guyana during the six month period, 1st October, 1990 to 30th March, 1991, is G$105.82.

    (e) The highest rate at which the United States dollar was lawfully sold in Guyana during the thirty day period immediately preceding the commencement of the Act was G$91.00.

    (f) The increase in the rate of exchange of the United States dollar, as contemplated by section 38(2)(a) of the Act, is 16.2 percent.

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(g) The Commission accepts as substantial increase, the increase of 16.2 percent in the value of the United States dollar in terms of section 38(2)(a) of the Act.

2. The only accounting rates, that is, the rates payable to foreign correspondents, for which satisfactory evidence of verification has been supplied are the rates applicable to the United States (AT&T), Canada (Teleglobe), the United Kingdom (British Telecom PLC) and Antigua.

3. The failure of the Company to provide information satisfactory to the Commission for the purposes of its evaluation of the Company's rate proposals has considerably impeded the work of the Commission in this regard. In particular, the Company has failed

   (i) to provide adequate information to facilitate the application of the necessary procedures for the determination of the impact of the increase in the exchange rate of the United States dollar on the costs of the Company.

   (ii) to provide acceptable documentation, or any documentation whatever, in support of a significant proportion of its expenditure.

4. The Commission has noted with much concern the practice of the Company to accept for payment invoices made out in the name of two affiliated companies, ATN and VITELCO, in respect of which no documentary evidence has been provided to show that the goods or services to which the invoices relate have been received by GT&T.

5. The Commission also noted with much concern that payments have been made to individuals and companies with which GT&T has no proven business relations.

6. GT&T has entered into an Agreement with ATN providing for loans by GT&T to ATN and its affiliates without the approval of its Board of Directors, as required under paragraph 7.4 of the Agreement between the Government of Guyana and ATN for the sale of GT&T.

7. GT&T has made unsecured loans over a period of five months (February to July, 1991) amounting to US$4,938,353. or approximately 67.8% of all deposits into its two current accounts with the Banco Popular in Puerto Rico and to almost three months of its gross operating income, without the approval of its Board of Directors.

8. There is no evidence in the records of GT&T either that the Company has been credited with interest on loan repayments up

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to the end of July, 1991 or of accrued interest on loans outstanding at the end of the period.

9. GT&T has entered into an advisory contract with ATN under which GT&T pays a fee of six percent of gross revenues per month to ATN regardless of the amount of service provided during the month or whether any service whatever has been provided. This fee is in addition to full re-imbursement of all expenses (including the cost of overheads) for personnel provided and materials used in connection with such service.

10. The Commission has been unable to find any satisfactory justification for the six percent advisory fee in terms of benefit to GT&T.

11. The Company has explained that the advisory service agreement was a condition precedent to the conclusion of the Equipment Financing Agreement by ATN and Northern Telecom International Finance for the supply of equipment for GT&T's Expansion and Service Improvement Programme. A clause in the agreement provides that ATN enter into an Advisory Agreement satisfactory to NTIF for a fee of at least 6 percent of the aggregate quarterly consolidated gross income of GT&T and the GT&T subsidiaries. In the context of a special arrangement for the assignment of the net toll revenues of GT&T to guarantee loan repayment to NTIF, the Commission can find no justification for linking the Advisory Agreement, as well as the payment of the six percent advisory fee, to the Equipment Financing Agreement and, in particular, for the Advisory Agreement to be entered into as a condition precedent to the Financing Agreement.

12. It was also stated in evidence that the objective of the six percent fee was to improve the cash flow of the Company. GT&T cannot be this company since the arrangements will have the opposite effect on it. This therefore leads to the conclusion that the real objective is to increase the cash flow of ATN, for which the Commission can find no justification.

13. The Commission finds that the failure of GT&T to conduct its business with affiliated companies on an arms-length basis has brought seriously into question the conduct of its financial affairs.

    Of particular concern to the Commission, is the fact that the financial management of GT&T is in the hands of ATN with the officer in charge of GT&T's finances being the Chief Financial Officer of ATN and with the second in command being the Assistant Financial Controller of VITELCO, even though neither of these officials is in the employment of GT&T.

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In line with this arrangement, important books and records of GT&T are kept in the US Virgin Islands, thus denying the Commission ready access to these records in accordance with the provisions of the PUC Act, thereby seriously undermining the regulatory process.

As a result of the Company's failure to provide adequate information on its cost of operation, and the serious deficiencies in the information supplied, the Commission is left no alternative but to confine its increases to the accounting rate element of the subscriber or collection charge.

14. Finally, in considering the rate increase to be allowed to the Company, the Commission came to the conclusion that the strict application of section 38(2)(a) of the PUC Act will result in a revised tariff which is far below what can be considered a fair and reasonable response to the actual impact of the increase in the exchange rate of the US dollar on the Company's cost of operations.

The Commission has therefore considered it desirable to seek a solution within the framework of the PUC Act that takes into account what is just and reasonable in terms of Article 32 of the Act having regard to the imperatives of Article 26(1) with respect to the duty of the Company to provide service to the public, in all respects safe, adequate, efficient, reasonable and non discriminatory.

ORDER

Based upon the foregoing, the Commission orders as follows:

1. The rate for the domestic services as set out in (a) and (b) hereunder shall remain unchanged having regard to the Commission's acceptance of the Company's decision to withdraw its application with respect to the proposed increases for these services.

   (a) Direct exchange line rental, mileage and metered unit charges excluding external and internal removals and conversions.

   (b) PMBX and PABX installation, rental and conversion charges

2. The increases proposed by the Company in connection with the undermentioned rates for its international services are denied:

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(a) Telex rates effective April 25, 1989

(b) Telephone Collections Rates

(c) Telegraph Collection Rates

The rates for these services shall be increased with retroactive effect from 20 May, 1991 by an amount equivalent to an increase of 168.86 percent in the accounting rate component, in respect of each collection charge, subject to the procedures set out immediately below.

3. The Company shall file an amended schedule of rates in accordance with the following procedures:

For each of the three rate categories mentioned in (2) above, the Company shall present the following information to the Commission on or before December 2, 1991.

(a) The collection charges in effect on 30 September, 1990.

(b) The accounting charge component of each of these collection rates.

(c) The increase in the accounting rate component of each collection charge resulting from the application of the percentage increase approved at (2.) above.

(d) The amended rates reflecting the increases in the collection charges referred to at (a) above.

Upon approval of the new collection charges by the Commission, the company shall prepare and publish a revised tariff schedule.

The above information shall be presented in the form shown at Annex 11.

The Company shall present with the above information original documentary evidence, or such other evidence satisfactory to the Commission to facilitate verification of the accounting rates. In this regard, communication from a foreign correspondent confirming the current accounting rate for service terminating with that correspondent, or for service via that correspondent to any destination country with which the Company has no direct correspondent relations, will be accepted as satisfactory evidence. Faxed documents shall be followed by the original of the communication.

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(4) In accordance with section 46(1) of the Public Utilities Commission Act 1990, the Company shall submit to the Commission on or before the 16th December, 1991:

(a) the quantum of revenues to be recovered, being the sum which represents the difference between the gross income actually received during the period commencing May 20th, 1991 and ending 31St December, 1991 and the gross income which would have been received during the same period, if the increase now approved had been in effect.

(b) a proposal for the recovery of the sum determined at (a) above by implementing a temporary increase in the new rates over a period of not less than 30 months, commencing with the date that the new rates are to come into effect.

The temporary increase in the new rates shall be shown in the revised tariff schedules referred to at (3) above.

For the purpose of this section revenues received and revenues recovered shall be deemed to be revenues billed. The Company shall present to the Commission such information as may be necessary for the verification of the above amounts and for approval of the proposals for the revenues to be recovered.

(5) The Company shall submit monthly returns to the Commission within 15 days of the billing period, commencing with the first billing period following the implementation of the new rates, showing the amount of revenue recovered and the balance outstanding, until such time as the entire sum has been amortized. The information shall be provided in the form shown in Annex 111.

(6) With immediate effect subscribers shall be billed for international service on a per minute basis only and the Company shall discontinue billing on a minimum three minute basis. The duration of the call shall commence only when there is a response from the number called.

(7) All Loans and Advances which were made by the Company to ATN or its affiliates and evidenced by Promissory Notes, in particular the five Loans/Advances set out below, shall be repaid to the Company in full within a period of 90 days from the date of this Order with interest computed at the Bank of Guyana prime rate from the date of the Loan/Advance to the date of repayment in full.

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(a) 8th March, 1991 - $51,503,560.00

(b) 25th March, 1991 - $52,485,630.00

(c) 17th April, 1991 - $54,400,000.00

(d) 3rd May 1991 - $99,000,000.00

(e) 31st July, 1991 - $36,332,000.00

(8) All Loans and Advances made by the Company to ATN or its affiliates not evidenced by a Promissory Note shall be repaid within 60 days from the date of this Order with interest computed at the Bank of Guyana prime rate from the date of the Loan or Advance to the date of repayment in full.

(9) All future Loans or Advances which are made by the Company to ATN or any affiliate, irrespective of the sum so loaned or advanced, shall be submitted to and authorised by the Company's Board of Directors and sanctioned by the Commission.

(10) Minutes of all meetings of the Board of Directors and all papers of the Board shall be kept at the Company's headquarters in Georgetown, Guyana.

(11) A certified copy of the approved minutes of each meeting of the Board of Directors shall be submitted to the Commission within 7 days of its confirmation.

(12) All transactions conducted by or on behalf of the Company shall be conducted in the name of the Company.

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(13) All original documents pertaining to the Company's operations shall be kept in Guyana.

(14) All inter company transactions with affiliated companies and individuals shall be fully documented and reflected in the books of account.

Dated at Georgetown, Guyana, this 12th day of November, 1991.

JOSEPH TYNDALL, CCH - CHAIRMAN, PUBLIC UTILITIES COMMISSION

HUGH GEORGE - MEMBER

ERROL HANOMAN - MEMBER

A.M.B. SANKIES - MEMBER

JOHN WILLEM, AA - MEMBER

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ANNEX 1

PUBLIC UTILITIES COMMISSION ACT 1990

Change of Rate

38.(1) The rate being charged immediately before the commencement of this Act by any public utility for any service rendered by it shall not be increased after such commencement except in accordance with the provisions of this Act.

(2) Without prejudice to the provisions of subsections (1), the rate being charged, immediately before the commencement of this Act, by any public utility for any service referred to in section 4 (1) (b) shall not be increased, for a period of three years from such commencement except, and then only to the extent to which it is justified, on the occurrence of any of the following events:

(a) a substantial increase in the average for a period of six months of the highest rate at which United States dollar is lawfully sold in Guyana, over the highest rate at which United States dollar was lawfully sold in Guyana during a period of thirty days immediately preceding the commencement of this Act;

(b) a change in long distance charges payable to foreign correspondents;

(c) the costs of providing service to interior areas of Guyana specified in any expansion and service improvement plan, agreed to by the Government and the public utility, are proved to be substantially higher than as stated in that plan; or

(d) any natural disaster or other act of God leading to extensive destruction of plant and equipment;

Provided that the public utility has taken out and maintained full insurance coverage of loss to property, plant and equipment and business interruption, caused by such natural disaster or other act of God, and the sums paid by the insurer of insurers are not sufficient to meet the expenses of restoring the services provided by the public utility affected thereby, or to compensate the public utility for its loss of revenue arising from the business interruption as a result thereof.

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PUC REQUESTS AS PER ORDER DATED 12 JUNE 1991

Description	Tab
2. The Assumption Agreement between the Company and the Northern Telecom International Finance (NTIF) and NT (CALA)	1
3. The existing Supply Contract, with Amendments, between the Company, NTIF and NT (CALA)	2
4. The Loan Agreement pertaining to the Expansion Programme between the Company, Atlantic Tele-Network, NTIF and the Lenders	3
5. Copies of all agreements and other documentation governing the issue of debentures by the Company	4
6. Documents creating the Floating Legal Charge and the Assignment of the Toll Revenue of the Company	5
7. Escrow Agreement providing for the deposit of the toll revenues of the Company	6
8. All promissory notes in relation to the procurement and financing of the Company's imports	7

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