

BEFORE THE PUBLIC UTILITIES COMMISSION

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

- and -

**In the matter of the Order dated
27th January, 1998, made by the
Public Utilities Commission fixing
temporary rates for services
provided by the Guyana Telephone
and Telegraph Company Limited**

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

REPRESENTATION -

The Guyana Telephone and Telegraph Company Limited	-	Mr Rex Mc Kay, S.C. Mr Keith Massiah, S.C. Mr Deryck Jagan, S.C. Mr Godfrey Statia, Deputy General Manager Mr H. William Humphrey, ATN Vice-President, Guyana.
The Guyana Consumers' Advisory Bureau	-	Ms Eileen Cox, Chairperson
The Guyana Consumers' Association	-	Mr Patrick Dial, President

DECISION

Introductory -

On 31st December, 1997, the Guyana Telephone and Telegraph Company Limited (GT&T) submitted to the Public Utilities Commission Tariff Notice No. 1-97, under section 41(1) and (2) of the Public Utilities Commission Act 1990 (No. 26 of 1990) (the Act) for an upward revision of the rates being charged by it for the services provided by it. Thereupon this Commission by notice dated 6th January, 1998, entered upon a hearing to determine whether the rates sought by the Tariff Notice are fair and reasonable.

2. The Commission, having considered all relevant facts, was of the opinion that public interest required the fixing of temporary rates pending a final decision on the Tariff Notice submitted by GT&T and, therefore, proceeded to fix temporary rates, under section 43(1) of the Act, by its Decision dated 27th January, 1998. The temporary rates fixed by the above Decision of this Commission are, as stated therein, to be effective until a final decision in the proceedings relating to Tariff Notice No. 1 - 1997 submitted by GT&T, unless modified or terminated sooner by this Commission. The above-mentioned decision is hereafter referred to as temporary rates Order.

3. There were several objections in the media by those who use telephone facilities, about the temporary rates. This Commission, being sensitive to consumer concerns, felt that we should consider the complaints. Notices dated 13th February, 1998, were therefore issued to GT&T, the Consumers Advisory Bureau, the Guyana Consumers Association and the Private Sector Commission about a public hearing scheduled for 26th February, 1998, in respect of the following matter, namely:-

“Complaints or suggestions in regard to the temporary rates fixed by the PUC by its Order dated 27th January, 1998, in respect of different services provided or proposed to be provided by the Guyana Telephone and Telegraph Company Limited.”

The notice was published also in three issues of the major newspapers and on the Notice Board at the headquarters of this Commission.

4. This Commission did not receive any complaints or suggestions from the Consumers Advisory Bureau or the Guyana Consumers Association. It has, however, received suggestions from the

Private Sector Commission.

5. However, besides the Private Sector Commission, twelve individuals submitted their complaints or suggestions. A list of these persons are at Annexure I. Among these, 5 persons made their presentations personally at the public hearing. Their names are listed at Annexure II - Part A. The two Consumers organisations as well as certain other persons, who did not submit their complaints or suggestions in writing, were allowed to make oral presentations. Their names are listed in Annexure II - Part B. At the close of the hearing on the 26th February, 1998, GT&T requested for time to submit their response to the complaints and submissions in writing. GT&T submitted its responses in writing. The public hearing was continued on 23rd March, 1998, to hear submissions in respect of those responses as well as any further submissions by interested persons. The complaints and suggestions received by this Commission were forwarded to GT&T.

6. The Commission has carefully considered the written complaints and suggestions by consumers and their organisations, the responses by GT&T and the oral submissions made at the public hearings.

7. The main purpose of these proceedings was to examine whether any changes were required to be made in the temporary rates fixed by the Decision of this Commission dated 27th January, 1998. But before we deal with the various issues we would like to record the disadvantage the Commission suffers from because of the unexplained failure of individuals and organisations to submit informed presentations.

Lack of Understanding -

8. Some of the complainants displayed considerable lack of information on relevant facts, for example, that the Commission receives on a regular basis returns containing relevant data in respect of GT&T's operations, that it has put in place arrangements for the monitoring of GT&T's operations and that apart from its own officers and members, with specialized skills, it also takes assistance from outside consultants. There seems to be no awareness of the various measures taken by this Commission to require GT&T to implement an expansion programme or of the fact that temporary rates are fixed pending a full investigation into matters relevant to a decision on the Tariff Notice.

9. Mr Patrick Dial, making his presentation on behalf of both the Consumers' Advisory Bureau and the Guyana Consumers' Association, on 26th February, 1998, stated -

“We are concerned that revenues generated by GT&T's regulated service are being diverted to GT&T's audiotext business. There appears to be no clear justification for such action. We are concerned also that costs associated with GT&T's audiotext operations are being shifted to GT&T's ordinary telephone service.”

However, no evidence was produced by him to support the statement that revenues from the regulated business of GT&T are diverted to its audiotext business or that the costs associated with GT&T's audiotext operations are being shifted to its ordinary telephone business. On the other hand, returns periodically furnished by GT&T to this Commission prima facie indicated that there was an operating surplus in the audiotext business of GT&T, which was utilised, while fixing the temporary rates, to subsidise the ordinary telephone business.

10. Ms Eileen Cox, in her presentation referred to Condition 18 of the Licence granted to GT&T and stated that unfair cross-subsidising is prohibited by that Condition. It should, however, be noted that such subsidy is prohibited only in specific circumstances and whether it is unfair or not is to be ascertained with reference to facts.

11. Another question raised is that audiotext business of GT&T is not a business regulated by the Act. It is not clear to us how this argument is relevant to the present proceedings. Besides, Mr Dial who raised this question conceded that he does not know about the technical structure of the audiotext operations of GT&T. When it was pointed out to him that this need not have been so because this Commission had always offered to share with the two Consumers' organisations relevant information we received from GT&T, and on several occasions in the past we had actually done so also, he promised to make use of the information available with us. However, he did not make use of the offer. He repeated the same argument about the audiotext business being unregulated business at the public hearing of the Commission on the 23rd March, 1998, without any additional enlightening facts.

12. According to our understanding, on the basis of information we have, the technical structure of the audiotext service of GT&T is the following. If any person calls from outside Guyana, say New York, a specified telephone number in Georgetown, it will activate equipment installed in the Georgetown exchange of GT&T and a message stored in that equipment would be relayed to the caller from the Georgetown exchange. The recorded message is conveyed from the Georgetown exchange of Guyana to the caller in New York. It is voice transmission from Guyana and is covered by para. 1 (a) of the Licence granted to GT&T. However, we are willing to further investigate the matter if we are convinced that it is a relevant matter. In this connection I may quote the following passage from the presentation of Mr Dial on 26th February, 1998 -

“The consumers are of the view that the earnings attributed to GT&T's audiotext business are a part of GT&T's regulated earnings. It is extremely important that the revenues generated by the utility's regulated business be accurately recorded in its revenue accounts.”

His problem, apparently, is only in respect of the expenditure relating to the provision of audiotext services.

13. Both Ms Eileen Cox and Mr Patrick Dial, stated at the hearing on 26th February, 1998, that they had no suggestions in regard to the modification of any specific aspects of the temporary rates

Order, but that GT&T should be asked to submit a new tariff application and that the Order of the Commission should be withdrawn. However, at the public hearing on 23rd March, 1998, Mr Dial dealt with three specific suggestions, namely, relief in respect of higher rental for additional telephones, late payment fee and some relief to pensioners.

Statutory mandate to the Commission -

14. We would like to point out that we are bound by certain statutory mandates. Under section 32(2) of the Act, this Commission, in determining the rates a public utility may charge for any service provided by it, has to take into account not only consumers interest but also investor interest and the rate of return obtained in other enterprises having commensurate risks. We are also required to have regard to the provision of safe and adequate service at reasonable cost and to assuring the financial integrity of the enterprise, that is, GT&T. Besides, under section 33 of the Act we are obliged to give effect to the agreement dated 18th June, 1990, (Acquisition Agreement) entered into between the then Government of Guyana and the Atlantic Tele-Network Inc. (ATN), guaranteeing a minimum rate of return of 15% on capital dedicated to public use.

Rate base, revenue requirement and revenues -

15. For applying the rate of return agreed to between the then Government and ATN as per the Acquisition Agreement, we have to examine the following matters -

- (i) the rate base on the basis of which the rate of return is to be calculated;
- (ii) the revenues that GT&T should receive to achieve a minimum 15% rate of return; and
- (iii) the revenues GT&T is actually receiving.

16. On the basis of the presentations made to the Commission at its public hearings on 26th February and 23rd March, 1998, and additional information furnished by GT&T to this Commission we revisited the above matters. For the present purposes we have to go on the basis of prima facie evidence. Of course, before settling permanent rates further and detailed investigations will be conducted in regard to these matters.

17. While making the temporary rates order we had proceeded on the basis of an average rate base of G\$16,292,557,000. This was reported by the Financial Analyst of this Commission in Exhibit C-I report. Subsequently, at his request GT&T furnished to this Commission details of accounts receivable (Exhibit C-8) which is one of the components of the rate base. From these particulars it is seen that the accounts receivable includes certain items which normally should not form part of the rate base. As re-computed by the Financial Analyst, the average rate base for the test year is

16,185,671,000. On this rate base the revenue requirement to achieve a 15% rate of return will be G\$2,417,850,650. As earlier reported by him it was estimated by him as G\$2,443,984,000. It may also be mentioned here that an objection has been raised that the accounts receivable is at a high level. GT&T has its explanation in regard to this. However, this will have to be further investigated.

18. According to information furnished by GT&T, if the financial performance of GT&T remained throughout the test year at the same level as in February, 1998, it would achieve a rate of return of 12.28%. However, this was without taking into account the additional revenue of G\$42,134,000 which GT&T is expected to receive during the test year on account of increased rental per telephone line in excess of 2 residential lines and 4 business lines. (See Exhibit C-9).

19. Besides, February, 1998, was the first month after the steep increases in local rates and subscribers had not got over the initial shock of the increase. Secondly, the seasonal trends in revenues from telephone operations will have to be taken into account. It has also to be noted that, having regard to human nature, increase in revenues or fall in revenues would not be in direct proportion to the increase or reduction in rates for telephone services. This is based on our experience when we reduced the rates in October, 1995. The reduction in rates not only did not adversely affect the rate of return, but in fact, according to data furnished by GT&T, based on GT&T's method of calculation, the rate of return on average operating assets went up from 17.42% in 1995 and to 18.66% in 1996. (See Exhibit C-4). These figures were arrived at, as admitted by Mr G. Statia, Deputy General Manager of GT&T in his evidence on 23rd March, 1998, without adding back interest on capital borrowed. If the interest was added back, the rate of return should have been higher.

20. In this context the relevancy of the capacity of the subscriber to pay has to be pointed out. We quote from the presentation of Mr Raymond Roopnauth, the General Manager of GT&T at the public hearing on the 26th January, 1998 -

“We are discussing what is an affordable rate to the consumer. We ourselves would be concerned if we were asked for a rate for a service which is outside the consumers who will be able to afford it and discover that we were paying for a service that nobody wanted
..... And we are also concerned that the rates are affordable to the consumer”.

21. In the light of the above we have decided to reduce modestly the rates for local calls. These changes and certain other reliefs to consumers are discussed in the following paragraphs.

Tariff for Local Services -

22. The revised rates for local calls shall be as stated in Annexure IV. In no case any additional surcharge to cover domestic satellite charges has been retained and an across the board reduction of 20% effected in the rates for inter-exchange calls. Within the same exchange a local call will now cost 20 cents per minute during 6 A.M. to 6 P.M. and 10 cents per minute during 6 P.M. to 6 A.M.

However, it is hereby clarified that domestic satellite charges incurred by GT&T for providing local telephone service will be included as an operating expense in determining whether GT&T is receiving a minimum 15% rate of return on investment.

23. In the case of residential lines, monthly rental for the first two main lines is reduced to G\$250 each and the installation charge for the first two main lines is reduced to G\$500 each. In the case of business lines, monthly rental for the first four main lines is reduced to G\$1,000 each and the installation charge for the first four main lines is reduced to G\$1,500 each.

24. GT&T has agreed to provide, toll free lines to Internet Service Providers. This Commission welcomes this measure. This will enable customers to access Internet free of domestic telephone charges.

25. We have received suggestions for the provision of free or subsidised telephone service to various categories of people, like the elderly and the pensioners, the handicapped and the schools. This requires further discussion since the category of persons entitled to the subsidy, means test, extent of subsidy, how the subsidy should be funded, etc. have to be determined. Interested persons and organisations are requested to hold discussions with GT&T and submit a scheme or schemes to this Commission.

26. GT&T has offered to drop the proposal for a late payment fee as specified in Annexure 2(d) of the temporary rates Order. We accept the offer and order accordingly subject to the condition that a telephone service shall not be disconnected before the expiry of 40 days from the date of the bill.

27. A suggestion was made that the details of each local call should be indicated in the bill issued to each subscriber. GT&T has, by its letter dated 12th March, 1998, addressed to the Chairman of this Commission, informed this Commission that it is already having discussions with Nortel to acquire the software and equipment needed to achieve this particular feature and the exercise is expected to be completed during the latter half of 1998. GT&T is hereby directed to expedite the matter.

28. The changes in the temporary rates specified in paras. 22, 24 and 26 shall be effective from 1st April 1998, and the change in the temporary rates referred to in para. 23 shall be effective from 1st May, 1998. This is as agreed to by GT&T.

International Toll Collection Rates -

29. Exhibit V.b - Schedule 2 of Tariff Notice 1-97 submitted by GT&T gave the Proposed Collection Rates, including surcharges and consumption tax, for international calls, both land line and cellular. Both the land line and cellular rates had four elements. The headings of the relevant columns were -

Collection Rate	Retro Rev Surcharge	Surcharge re:1995/7	10% Tax	Total Rate
------------------------	--------------------------------	--------------------------------	--------------------	-------------------

These proposed rates were discussed between the Financial Analyst of this Commission, Mr L. McCaskey, and Mr G. Statia, Deputy General Manager of GT&T before the temporary rates Order was made by this Commission. The International Toll Collection Rates fixed by this Commission in the light of the discussions between Mr McCaskey and Mr Statia, are stated in Annexure I of that Order. The only surcharge GT&T was allowed to collect by that Order in respect of calls through land line telephones was the surcharge mentioned in Note - 1 of Annexure I of that Order. This Note reads

“In addition to the collection rates referred to above, in respect of calls to the 83 countries mentioned below GT&T shall be entitled to collect from subscribers a temporary surcharge to collect the arrears due to it pursuant to the Orders of this Commission dated 12th November, 1991, and 31st October, 1994, calculated at the rate of 11% of the peak period rate on a minute-across-the board basis. The surcharge shall cease as soon as all the arrears due to GT&T pursuant to the aforesaid Orders have been collected by GT&T”.

No surcharges were allowed in respect of calls through cellular telephones.

Note 2 of that Annexure stated -

“The surcharge collected under Note 1 as well as the consumption tax collected by GT&T from subscribers in accordance with law shall be separately shown by GT&T in the Bill issued by it to subscribers.”

No other surcharge, including the surcharge referred to under the heading “Surcharge re: 1995/7” in Exhibit V-b-Schedule 2 of Tariff Notice 1-97 was permitted to be collected by GT&T by this Commission.

30. Para. 11(a) of the temporary rates Order reads -

“The outbound international toll collection rates shall be as stated in Annexure - 1. In addition to toll collection charges, in respect of calls to 83 countries mentioned in Note - 1 to that Annexure, GT&T shall be entitled to recover a surcharge at the rate mentioned in that Note and for the purpose mentioned therein.”

31. The only statutory provision that authorises the collection of what is generally referred to as a surcharge is section 46(1) of the Act. It is really a temporary rate increase and the permission of this Commission is required to recover it.

32. However, contrary to the temporary rates Order, when GT&T published a notice of the new rates, pursuant to para. 15 of that Order, a new item was added with the heading “GT&T Surcharge” in addition to the surcharge approved by this Commission in respect of 83 countries. (Notice

published in Stabroek News of 31st January, 1998, Exhibit C-10). The amounts of the GT&T Surcharge stated in the above-mentioned notice is the same as the surcharge proposed by GT&T under the heading "Surcharge re:1995/7" in Exhibit Vb.Schedule 2 in Tariff Notice 1-97, and which was not allowed by this Commission.

33. By her complaint dated 24th February, 1998, Glenna Toney has raised objection to what is called "GT&T Surcharge" being imposed by GT&T. By letter dated 20th March, 1998, GT&T has responded to the complaint of Toney as follows -

"Ms Toney's contribution dealt with the aspect of the GT&T's surcharge. The revenue recovery has been challenged by the Consumers' Associations before the courts and has been put down for hearing after the Judge refused to grant the injunction requested".

34. Nothing has been brought to our notice as taking away the jurisdiction of this Commission to decide whether a charge being levied by GT&T in respect of telephone calls is with legal authority or not. What is described as a "GT&T Surcharge" in the advertisement by GT&T referred to above is a charge payable with reference to telephone calls and is imposed and collected by GT&T without the approval of this Commission and we are of the view that it is being imposed and levied and collected without legal authority, in contravention of sections 40(1) and 46(1) of the Act. GT&T is hereby directed to stop collecting the aforesaid surcharge with immediate effect.

35. The surcharge is collected not from the persons who made the telephone calls on account of which GT&T is alleged to have lost revenues. On the other hand it is collected from persons who makes calls from telephones in the future, even where they may not had a telephone at the relevant time. So it is not based on contract. The levy of the surcharge can therefore be based only on a statutory provision. The only relevant statutory provision in this regard is section 46(1) of the Act. In our view GT&T cannot, therefore, collect a surcharge from telephone subscribers without complying with that provision.

Private Sector Commission -

36. The Private Sector Commission of Guyana had, by its letter dated 25th February, 1998, made certain recommendations. Though this was received late, we examined the proposals. The general discussion in the document unfortunately suffers from the same defect as in several other cases, namely, that they are not based on ascertained facts. The specific suggestions made by the Private Sector Commission in respect of the modification of the temporary rates order are two -

- (i) The Private Sector Commission and GT&T had agreed on certain modifications to the miscellaneous charges provided in the temporary rates Order in Annexure 2(d). GT&T has not implemented the same.

We have no knowledge of any private arrangements between the Private

Sector Commission and GT&T. We do not appreciate any such arrangements. They have no legal validity.

- (ii) They do not want the elderly, pensioners and schools to pay for telephone services. This has been discussed in para. 25 above.

37. No representative of the Private Sector Commission participated at the public hearing. On 26th February, 1998. However, we received from that body a letter on the date of that hearing seeking that another day may be fixed for their appearance. But they did not appear at the hearing on 23rd March, 1998, also.

Complaint as regards natural justice -

38. The two consumers groups raised the question of contravention of principles of natural justice. Since the Consumers' Advisory Bureau has filed an appeal against the temporary rates Order in the Court of Appeal on this ground, we do not propose to deal with the question in this Order.

ORDER

39. In the light of the above discussions we make the following Orders:-

- (a) With effect from 1st April, 1998, rates for local calls shall be as stated in Annexure IV.
- (b) With effect from 1st May, 1998, in the case of residential lines, monthly rental for the first two main lines is reduced to G\$250.00 each and the installation charge for the first two main lines is reduced to G\$500.00 each and in the case of business lines monthly rental for the first four main lines is reduced to G\$1,000.00 each and the installation charge for the first four main lines is reduced to G\$1,500.00 each.
- (c) With effect from 1st April, 1998, the lines provided by GT&T to Internet Service Providers shall be toll free.
- (d) With effect from the 1st April, 1998, the late payment fee specified in Annexure 2(d) of the temporary rates Order of 27th January, 1998, is deleted.

However, no telephone service shall be disconnected on the ground of non-payment before the expiry of 40 days from the date of the bill.

- (e) GT&T shall be entitled to recover from subscribers in respect of outbound international calls only the toll collection rates and the surcharge, if any, approved by this Commission by the temporary rates Order dated 27th January, 1998, and levy and collection of any other surcharge shall be stopped immediately.
- (f) With immediate effect GT&T shall cease to recover from subscribers any amount mentioned in the advertisement with the heading "GT&T Outbound International Toll Collection Rates", published in the Stabroek News dated 31st January, 1998, as "GT&T Surcharge".
- (g) All amounts collected from subscribers by GT&T before the date of this Order by way of a surcharge on outbound international calls imposed by it without the approval of this Commission, shall be treated in the manner separately ordered by this Commission.
- (h) The temporary rates Order dated 27th January, 1998, made by this Commission, shall stand modified as provided in this paragraph.
- (i) GT&T is directed to publish a notice indicating the changes made by this Order in the above-mentioned temporary rates Order and modifying the notices published by it pursuant to that Order.

Conclusion -

40. We would like to thank the persons and organisations who submitted their written complaints and suggestions and participated in a meaningful manner in the public hearings.

Dated this 27th day of March, 1998.


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

- Chairman

.....
HUGH GEORGE

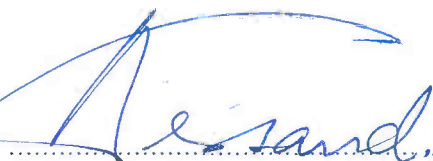
- Member


.....
JOHN WILLEMS, A.A.

- Member


.....
CHANDRABALLI BISHESWAR

- Member


.....
BADRIE PERSAUD

- Member

ANNEXURE I

NAMES OF PERSONS WHO SUBMITTED COMPLAINTS AND SUGGESTIONS

1. The Private Sector Commission of Guyana
2. Mr T.N.C. Srinivaasan - CFTC (Expert)
3. Mr M. Welch - Senior Lecturer (Telecoms/Electricity), University of Guyana.
4. Ms. Rita Persaud
5. Ms Cecilia Imhoff - Government Pensioners' Association of Guyana.
6. Mr Ron Persaud - C.E.O., Action Tyre Company
7. Mr Jhadoo N. Ganga
8. Mr C. Corlette
9. Mr J.A. Miranda
10. Mr Kowlesar Seeraj
11. Mr Wilfred Eleazer
12. Mr Thomas B. Singh
13. Ms Glenna Toney

ANNEXURE II

PART - A

Names of Persons who submitted Complaints and Suggestions and made Oral Presentations

1. Ms Cecelia Imhoff
2. Mr C. Corlette
3. Mr J.A. Miranda
4. Mr Thomas B. Singh
5. Mr T.N.C. Srinivaasan

PART - B

Names of Other Persons who made Oral Presentations

1. Ms E. Cox
2. Mr P. Dial
3. Mr Mansoor Nadir
4. Mr Charles Sugrim
5. Mr B. O'Chore
6. Mr Loris Richards