ORDER NO 7/2001

BEFORE THE PUBLIC UTILITIES COMMISSION

In the matter of the Public Utilities Commission Act 1999 (No. 10 of 1999)

- and -

In the matter of Tariff Notice 1-97 submitted by the Guyana Telephone and Telegraph Company Limited.

MR. PREM PERSAUD, C.C.H	-	CHAIRMAN
MR. HUGH K. GEORGE	-	MEMBER
MR. JOHN L. WILLEMS, A.A.	-	MEMBER
MR. BADRIE PERSAUD	-	MEMBER

REPRESENTATION-

The Guyana Telephone and Telegraph Company Limited	-	Mr. Miles S. Fitzpatrick, S.C. Mr. Keith Massiah, S.C., Attorneys-at-Law. Mr. Derek Jagan,S.C., Attorney-at-Law.
The Consumers' Advisory Bureau	-	Ms. Eileen Cox, A.A. - Chairman
The Guyana Consumers' Association	-	Mr. Patrick Dial - President Mr. Stephen Fraser, Attorney-at-Law

On June 18, 1990, Atlantic TeleNetwork (ATN) and the Government of Guyana entered into a Purchase Agreement (Agreement) that transferred 80% ownership in Guyana Telephone and Telegraph Company Limited (GT&T) to ATN. Subsequent to the agreement, the Public Utilities Commission of Guyana (PUC) was established as the regulatory body required in the agreement:

Specifically:

> The government covenants and undertakes to establish an independent statutory authority (hereinafter referred to as the "Authority") to regulate the operations of companies or other persons engaged in providing telecommunication services and operating in Guyana and with view to securing compliance with relevant laws of Guyana and to protecting the interests of persons making use of such services (hereinafter referred to as subscribers).§ 6.7
>
> Without prejudice to the generality of the foregoing, the Authority will be empowered to determine questions as to the reasonableness of rates charged by GT&T for services rendered by it and <u>the decision of the Authority will be binding on GT&T</u>. § 6.8

The Agreement specifically highlighted the methodology and rate of return by which this Commission may regulate GT&T.

> ....GT&T shall be entitled to a minimum rate of return of 15% on <u>capital dedicated to public use</u>. The revenue requirement shall be calculated on a rate of return methodology to be mutually agreed by the Government and ATN prior to the establishment of a Regulatory Body or any other agency charged with the responsibility of regulating the rate of return for GT&T. Unless and until such mutual agreement is reached between the Government and ATN, the revenue requirement shall be calculated on the basis of GT&T's entire property plant and equipment pursuant to a rate of return methodology consistent with the practices and procedures of the United States of America Federal Communication Commission. § 6.9b

The PUC Act establishing the Commission was passed and later amended. Section 33 of the PUC Act 1990 as amended states specifically:

Where the Government and a public utility have entered into an agreement specifying-

(a) the rate of return the public utility is entitled to in respect of the capital invested or dedicated to providing any service; or

(b) the principles on the basis of which such rate of return is to be determined, the Commission shall give effect to such agreement in determining the rate a public utility is entitled to demand or receive from any consumer or class of consumers or generally from all consumers in relation to the service.

The PUCs responsibilities with respect to the regulation of GT&T are contained in Section 32 of the PUC Act of 1990 as amended which states specifically:

(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 rates as the Commission may from time to time prescribe.

(2) In determining the rate a public utility may charge for any service provided by it, the Commission shall have regard to consumer interest and investor interest and to the rate of return obtained in other enterprises having commensurate risks, <u>provision of safe and adequate service at reasonable costs, and to assuring the financial integrity of the enterprise</u>.

We note that it is a well-established regulatory principle that the burden of proof is that of the utility and not of the PUC and its Staff.

II PROCEDURAL HISTORY

On December 31, 1997 The Guyana Telephone and Telegraph Company Limited applied for a change of rates through Tariff Notice 1-97. These changes in rates were based upon GT&T's opinion that the rates currently in effect were insufficient to earn the 15% return stipulated in the Agreement. This return calculation was based entirely upon forecasted earnings and rate base for the calendar year 1998. The Company's December 31 filing was based upon a fully forecasted test year.

Information developed in discovery issued in that filing revealed that the Company's December 1997 filing presumed certain regulatory treatments of items such as return of and on excess costs over book value (goodwill), a rate allowance for unsubstantiated increases in depreciation rates, a return on working capital without appropriate studies, etc. The Commission by order dated January 6, 1998 suspended this filing.

After a hearing that took place on January 26th 1998, Order #1/98 was issued by the Commission establishing temporary rates for the services for which GT&T applied for rate changes. This Order was later amended by Order #2/98 reducing the temporary rates for telephone rentals and installations (both residential and business) and for local calls. When Orders #1/1998 and #2/1998 were issued and established temporary rates for GT&T, the Company was advised that the Commission would set permanent rates only after a thorough investigation of the Company's operations was completed. Before this process could be completed and permanent rates established in that docket, the Commission in proceedings filed by GT&T was restrained by Order Nisi No. 13-M issued by the High Court dated January 20, 1999. Therefore, the rates currently effective are the interim rates from that filing.

On October 27, 1998, GT&T filed an amendment to Tariff Notice 1/97. This amended filing was predicated on the following:

1. That there has been a 13% depreciation in the value of the Guyana dollar against the US dollar since the initial filing.

2. That AT&T has unilaterally decided to reduce the accounting rate agreed between itself and GT&T from June 1998, and

3. A 67% decrease in audiotext revenues.

The Commission by order dated November 09, 1998 suspended this filing and again by order dated February 19, 1999. The suspension letter indicates that the expiration of the suspension period will be three months effective from February 24th.

We wish to advert attention to two important aspects which found their way in the public domain by means of letters and releases to the press.

And also we must make reference to GT&T's submissions before us and presented by Mr. Godfrey Statia, their consultant, who mentioned that the matter before the Commission was pending for nearly four years.

(a) The delay in the hearing and determination of the matter was because of both GT&T and the Consumers Association approaching the High Court to seek redress for what each thought were irregularities committed by the Commission.

GT&T was also successful in persuading a Judge of the High Court to grant an order of injunction which prevented the previous Chairman from sitting in any matter involving GT&T.

After GT&T's matters before the Courts were dealt with the Commission continued to hear the application in September 2000. It continued until December 2000 when the Consumer Associations took their turn to the High Court challenging the Commission's ruling that GT&T was entitled to 15% rate of return.

The matter was discontinued in June 2001 and the Commission re-convened the hearing.

(b) GT&T's application before the Commission was for rate increases, and not for the rebalancing of the rates. Everyone seems to be looking forward to and expects the Commission to rebalance rates when in January 2002 the accounting rates for overseas calls will be reduced.

It is now not unknown that GT&T had petitioned the FCC to waive its benchmark order with respect to the reduction of the international accounting rates so far as it related to GT&T for five years.

When the FCC rejected their application in November 2001, there arose the urgency by GT&T to have the application before us expedited, and the concept of rebalancing became a priority.

We only mention these details to clarify the position that the Commission did not neglect to do its duty and was only hamstrung by the activities of both GT&T and the Consumer Associations in the Courts.

GT&T made reference to an order of the FCC and sought increases based on reduction in international settlement rates from 85 cents to 65 cents per minute. But they never negotiated new rates with their international carrier. That resulted in severe difficulty due to lines restriction from the USA when AT&T refused to continue its services unless GT&T agreed to a reduction. The FCC had suggested that rates be reduced on a gradual scale until January 2002; but regrettably Guyana did not benefit by this move. But settlement rates in the Caribbean were gradually reduced over the years since the FCC's order.

The position in Guyana is that the international settlement rates will take a sudden dive from 85 cents to 23 cents; and at that stage the question of rate rebalancing may have to be considered.

In determining the issues at hand, we consider all that was urged by the parties. We have included the Revenues and Expenditures from the Cellular Operations in this

Filing, as GT&T themselves have done. The Cellular Operations is making well over twenty percent (20%) rate of return.

<u>Calculation of Rate of Return</u>

We made the following adjustments in calculating the average rate base:

(a) We eliminated the Franchise Asset from the test year;

(b) We allowed the sum of G$1 billion for working capital;

(c) We removed the debt service related to the requirements of GT&T's loan; as hereunder:-

Franchise Assets:

Franchise Asset (the excess purchase price over the book value), also known as goodwill, is not one of the items permitted in the practice and procedures of the FCC (Part 65). For this reason the item was removed from the rate base.

Working Capital

GT&T had submitted a lead-lag study, in response to the Staff Report of April 1999. Their study indicated that a working capital of G$3.4 billion was required. A review of the results of the study indicates that the largest single driver of the requirement is international calls and the audiotext business. If the lag or revenue for these services is reduced, the requirement for working capital would be significantly reduced. It would then seem likely that with the decrease in international accounting rates for US calls,, there will be a reduction in the revenue and therefore in the requirement for working capital.

Given the above, an allowance of G$1 billion dollars is reasonable at this time, and further adjustments could be made at another Rate Case Hearing.

Debt Service Reserve

The FCC rules for determining rate base does not provide for this item. Interest is earned on the balances throughout the year. It is inappropriate for the ratepayer to be required to pay an additional 15% on this balance, since the shareholders already benefits from interest income.

Valuation of Assets

In March 1999 GT&T submitted the December 1998 unaudited results. The balance sheet appears to reflect the increase in the valuation of the US dollars versus the Guyana dollars, without the PUC's approval. No adjustment was made to reverse this increase in calculating the rate base.

Depreciation

The depreciation rates for fixed assets were changed by GT&T without PUC's approval. This is not the norm before the FCC or US state-level regulatory commissions. The depreciation expense was accepted for determining the proposed rates. The Commission expects that GT&T will seek its approval for any change in depreciation rates.

Income/Expenditure Calculation

Advisory Fees paid to the parent company ATN, is disallowed as an expense. GT&T pays the advisory fees without record of services, invoices and without arms length dealings. Since this is a transaction with an affiliate, the inclusion of this expense for ratemaking purposes is not consistent with FCC practice and procedures. Affiliate transactions in which a carrier receives substantially all of a service from an affiliate which are not also provided to non-affiliated entities are to be recorded at cost, as per 24 CFR 32.27(d).

An analysis of GT&T's accounts for the year 2000 shows that they earned a rate of return of eighteen per cent (18%). For the first nine months of 2001 they also earned in excess of fifteen (15%) per cent, the minimum return they are allowed under the Government of Guyana/ATN Agreement.

GT&T's update to their filing took into account the Settlement Rates for US Administration being reduced to US$0.65. If this had happened GT&T would still have earned a minimum of fifteen per cent (15%) rate of return at the present collection rates.

At present it is very difficult to forecast the impact on GT&T's rate of return given the pending decrease in international settlement charges.

Having regard to all the above the Commission finds that:-

GT&T 's rate of return is not less than the minimum to which they are entitled at the present, **and the Commission hereby orders that**

The current tariff be now confirmed as permanent with effect from the 27th March 1998.

We attach hereto two schedules showing our calculations of rate base and revenue based on GT&T's figures submitted to the Commission.

Dated this 19th day of December 2001

Prem Persaud C.C.H.	-	**Chairman**
Hugh George	-	**Member**
John Willems A.A.	-	**Member**
Badrie Persaud	-	**Member**

RATE ANALYSIS
GT&T Year 2000

	YEAR 2000 AVERAGE G$'000
CURRENT ASSETS	
Cash	4,348,962
Accounts Receivable	3,075,166
Materials and Supplies	857,145
Prepayments and other Current	83,589
Total Current Assets	8,362,195
Telephone Plant	24,399,088
Franchise Intangible	1,036,145
Less Accumulated Depreciation	-8,203,357
Net Telephone Plant	17,398,376
Uncolled authorised rate increase	215,720
Debt Issuance Costs	0
Other Assets	786,548
TOTAL ASSETS	26,596,172
CURRENT LIABILITIES	
Accounts Payable	779,024
Accrued Liabilities	669,202
Accrued Interest	6,617
Accrued Taxes	891,031
Advanced Payments and Customer Deposit	225,034
Current Portion of LTD	569,086
Total Current Liabilities	5,473,113
Long-Term Debt	1,016,318
Due to Affiliates	242,894
Deferred Taxes	3,358,331
Other Liabilitties	0
Total Liabilities	7,757,311
Stockholders' Equity	
Capital Stock	22,371,875
Retained Earnings	16,097,208
Cumm Cur	4,436,339
Total Stockholders' Equity	18,861,611
Total Liabilities and Stockholders' Equity	26,596,172

Schedule 1

ADJUSTED RATE BASE
GT&T - 2000

		G$'000
Telephone Plant (Net)		17,398,376
Less Franchise Intangible		-1,036,145
Adjusted Telephone Plant		16,362,231
Materials & Supplies		857,145
Prepayment		83,589
Other Assets	786,548	
Less Debt Service Res.	-702,000	
		84,548
Uncoll. Authorised Rate Increase		215,720
Working Captial		
Cash	4,348,962	
Acct. Rec'able	3,075,166	
Acct. Payable	-779,024	
Accured Liabilites	-675,819	
Accured Taxes	-891,031	
Total	5,078,254	
Working Capital Allowance		1,000,000
Customers' Deposit		-225,034
Deferred Income tax		-3,358,331
Adjusted Rate Base		15,019,868
15% of Rate Base		2,252,980

Schedule 2

INCOME STATEMENT GT&T	AVERAGE YEAR 2000 G$'000	Adjustment G$'000	YEAR 2000 WITH ADJU. G$'000
OPERATING REVENUES			
Local exchange service	2,110,270		2,110,270
Long-distance ntwk svc inbound	8,835,213		8,835,213
Long-distance ntwk svc outbound	2,609,717		2,609,717
Other revenues	450,947		450,947
Uncollectible revenues	-235,722		-235,722
Total operating revenues	13,783,243		13,783,243
OPERATING EXPENSES			
Long distance ntwk svc - out	3,664,380		3,664,380
Plant specific operations	976,515		976,515
Plant non-specific operations			
Depreciation and amortisation	2,038,308		2,038,308
Other	406,835		406,835
Customer operations	568,009		568,009
Corporate operations	872,827		872,827
Advisory fees	826,995	-826,995	0
(Gain) loss - foreign exchange	17,989		17,989
Taxes other than Income	150,397		150,397
Total operating expenses	9,522,255		8,695,260
OPERATING INCOME	4,261,008		5,087,983
NONOPERATING REVENUE	250,108		250,108
INCOME BEFORE INTEREST AND INCOME TAXES	4,511,116		5,338,091
INTEREST EXPENSE	253,184		253,184
INCOME BEFORE TAXES	4,257,932		5,084,907
INCOME TAXES	2,070,670		2,288,208
NET INCOME BEFORE EXTRAORDINARY ITEM	2,187,262		2,796,699
EXTRAORDINARY ITEM,NET OF TAX	0		0
NET INCOME	2,187,262		2,796,699

GT&T RATE OF RETURN AFTER ADJUSTMENTS

	G$'000
Net Income	2,796,699
Less Contr. Of NonOp. Income	-250,108
Plus Interest Expense	253,184
After Tax Return	2,799,775
Rate Base	15,019,868
Rate of Return	18.64%