BEFORE THE PUBLIC UTILITIES COMMISSION

***Order No. 1/2015*.**

In the Matter of an Application by the
Guyana Telephone & Telegraph Company Limited
for New Rates and the Variation of Current Rates

Before: Justice Prem Persaud, CCH,……..Chairman.
Mr. Badrie Persaud…….Commissioner.
Mr. Maurice Solomon…….Commissioner.
With: Mr. Vidiahar I. Persaud……..Secretary.
Mr. Moorsalene Sankar…….. Financial Analyst.

***GT&T*.**

Mr. Ronald Burch-Smith…… Attorney-at-law.
Mr. Mark Waldron…….. Attorney-at-law.
Mr. Gene Evelyn…… Director, Rate Making.
Mr. John Audet……. .Vice President – ATN.
Mr. Delreo Newman……Consultant.
Mr. Martin Chung……Financial Analyst.

The Guyana Consumers' Association.

Mr. Patrick Dial…….. Chairman.
Mr. Leonard Craig…….. Consumer Advocate.

National Frequency Management Unit

Mr. Valmikki Singh…….. Chief Executive Officer.

DECISION.

The Guyana Telephone and Telegraph Company Limited herein after referred to as GT&T, has applied to the Public Utilities Commission (referred to as the Commission) under the provision of Section 41 of the Public Utilities Commission Act, No. 10 of 1999 herein referred to as the Act for:

a) An increase in rates for some services provided by it;
b) A net reduction in outbound rates;
c) The setting of a tariff for certain services currently provided and for which no tariff has been approved; and
d) A change in the methodology in which some services are billed.

In terms of the provisions of the PUC Act we suspended the rates applied for a period of six months to facilitate the hearing. Having regard to the nature of the application we would not have been able to conclude the matter within a reasonably short period of time.

The object or reason for the application is to give effect to a minimum of 15% return on capital dedicated to public use. "***Capital dedicated to public use***" means capital infrastructure used or applied in the provision of the services for which the public or the consumers of the service pay. The 15% return is provided for under the terms of the licence which provides that GT&T shall be entitled to a minimum rate of return of 15% on capital dedicated to public use. The revenue requirement shall be calculated on the basis of GT&T's entire properties, plant and equipment.

The hearing of the application was open to the public and the Guyana Consumers' Association (GCA) and Mr. Leonard Craig (consumer advocate) offered comments. Mr. Valmikki Singh, Chief Executive Officer of the National Frequency Management Unit also contributed to the discussion on the qualities of the "spectrum" which came in for consideration, when it was raised by GT&T which claimed it was necessary [the spectrum that is] in providing land line services in certain areas. Incidentally, GT&T has the monopoly to provide land line services throughout the country to persons who request same. But we shall return to this issue later, within this judgment.

The application by GT&T claims that it suffered a deficit of $738 million and it will need that extra amount to maintain its 15%.

The GT&T's application is supported by a CAM or a **COST ALLOCATION METHODOLGY** which was developed by an overseas company, and based on year 2011. We find this rather interesting, because over the years prior to 2011 and subsequently we had been requesting that GT&T provide a CAM and separate the financials—for the land line and other services over which the PUC does not exercise its jurisdiction. This is provided for in terms of Article 20 of the Licence issued to the company – GT&T. We were invariably told by GT&T that the finances were commingled and separate accounts were not available.

The application before the Commission is not a complex affair—we have to determine whether the company is getting a minimum of 15% which must be calculated on the plant, machinery, etc., of the company. We are told that these represent all that the company uses in the generation of revenues. It is clear therefore that all the revenues must be taken into consideration, and that total must be factorized to obtain the 15% rate of return.

We have to view the matter objectively and not be influenced or swayed by emotion and emotive speeches.

As hinted earlier we have not had the benefit of separate financial statements. The company's business can be compartmentalized into two—two aspects of the business—one, a regulated and the other non regulated. All the revenues and expenses are merged so we do not get a true picture what its costs, say, for the regulated sector to function. We do not have an idea what machinery and plant, and what percentage of them is used for the non regulated sectors. The GT&T has the overall figures and must know what their expenses are.

In comes the consultant with the CAM model. As the term suggests the model opines how the costs should be allocated. But does it tell us how much should be allocated to the respective sectors? Does it provide how much should go to salaries, allowance, etc, for the workers within the sectors? How can we be certain that expenses for one of the services are not inflated, and the actual cost to run the service not properly reflected?

We are told that at October 2014 GT&T was making 10% rate of return. We do not know how much of that is from each sector. The GT&T tells us that anything earned in excess of 15% is permissible—even if they earn 40-50%. They rely on the agreement to demand their pound of flesh—a minimum of 15% on capital dedicated to public use. But concomitantly there is another aspect to that agreement. Section 32(2) of the Act provides that 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, provision of safe and adequate service at reasonable costs and to assuring the financial integrity of the enterprise.

The question arises. How can citizens pay for a service when it is not made available to them? The agreement in which GT&T relies to extract their minimum 15%, dated 18th June 1990 provides that GTT establish facilities permitting telephone service along the entire coast from Crabwood Creek to Suddie and in the interior at several locations within three years.

Many persons are not the recipients of the telephone service. The GT&T explains they are awaiting the grant or release of spectrum to provide the service.

The GT&T has been in operation, by way of monopoly, for the past 24 years and yet cannot fulfill that obligation which they undertake when the agreement was signed. There was no condition for the provision of spectrum—and being a monopoly for the land line service they choose to ignore the requests of potential consumers, blaming it on “spectrum”. They must be blissfully aware that no other entity or company can enter the market to offer the land line service. This is where one aspect of the Commission’s responsibility kicks in—to protect the interest of consumers. We do not feel inclined to abandon that aspect of our duty.

On the question of the SPECTUM. It is a national asset and only the Government can decide, on the question of policy, how it should be distributed or shared. GT&T has been granted the 3.5 GHz spectrum which it makes use of in its wireless deployment of the telephone service in certain areas, eg. the Essequibo, which was used for the WLL service. This is a substitute for the usual “copper” service used in certain areas. It is contended that the areas served by this wireless technology (WLL) has witnessed a degradation of the service. GT&T’s complaint is that the 3.5 GHz spectrum is not efficient, has limitations and the amount is insufficient for the new technologies which have been proposed. It is also urged that the geo-terrain and population density, together with costs, are considerations making wireless the better option for such areas as the Essequibo, as opposed to the copper.

The National Frequency Management Unit (NFMU) explained that GT&T awarded to airspan a WiMax networks provider in 2007 a US$4.5M contract to upgrade its network and that they never consulted with it (NFMU) as to whether there are new spectrum requirements. But GT&T's response is that it is not a true WiMax system. The Frequency Management Unit opines that this new service utilizes approximately three (3) times the amount of spectrum as opposed to what the previous WLL network was licensed to utilize. And further, contrary to what GT&T is urging, NFMU is insisting that at least one hundred and sixty five (165) WiMAX 3.5 GHz networks are operating without issue in seventy four (74) countries, and that therefore the argument that the WiMAX 3.5 GHz band is problematic cannot be sustained. If the spectrum, vegetation, rainfall and terrain were so bad with the old system (WLL) why spend so much money and seek to provide guarantees when the same problems would befall the new network, as the propagation characteristics will remain the same, irrespective of technology used.

In its application GT&T is seeking to reduce the rates for the outbound traffic which competes with the other provider; and they are seeking increases in several aspects of the land line service. There is the perception that they wish to get the land line to pay increases if ordered by the Commission, to offset the loss by the reduction of the outbound traffic, to compete with the other provider which offers the outbound service. It this is so, and the Commission acquiesces, then the interests of the consumers will fade into insignificance. This ought not to be and the Commission must be alert to ensure that the scale is evenly balanced.

In its application GT&T at paragraph 6, page 5, indicated that a new telecommunication law is likely to be approved by the Parliament, and that it understands that technological, regulatory and other changes in the international telecoms environment since 1990 might necessitate that its licence be negotiated and modified, and indeed, it offered that ATN/GT&T and the Government of Guyana are engaged in such negotiations in light of the prospective legislation. If there is such a likelihood occurring would it be proper or worth the effort to invoke the provisions of the current agreement!!

The Guyana Consumers Association [GCA] in its memorandum contends that it will be a contradiction for the Commission to allow rates manifesting monopoly profits to be injected into the new liberalized structure since such action would negate liberalization. It went on to contend that liberalization is being introduced to have market forces shaping rates and any action which is taken to preempt or otherwise circumvent this is unacceptable. Defined rates ought not to be set in a competitive environment. GCA added further that the landline acts as a conduit facilitating other services provided by the Company, and demanded that an equitable proportion of the income derived from the services being credited to the landline revenues. If this were done in a measured way it will have facilitated the landline service to be more profitable.

Further, it added, that GT&T's attempt to link rate increases by Guyana Water Inc. and Guyana Power & Light Inc., cannot be compared as proper. The GWI and GPL are traditional loss

making entities that depend on the Government subsidies, but despite this, they are both offering rate reliefs to many aged consumers/pensioners, but GT&T which has always been a profit making entity ought to consider doing likewise!

The consumer body further contends that GT&T should have had in place segment accounting when there could have been disaggregation of revenues and expenditures. Years ago when GT&T was requested to implement a CAM model they refused. If that were done, GT&T would not now have to resort to assumptions and spurious arguments to boost its claim.

GT&T in response contended that once a rate filing is initiated in terms of the PUC Act the Commission is required to address it and is not permitted to suspend the hearing or to instruct the company to withdraw its application.

Mr. Leonard Craig, a consumer advocate, has advanced, among other things that GT&T's landline software has multiple modules not yet activated, and that about eight thousand (8000) citizens have applied for the landline service and have not yet received it. If features which some of the assets have were accessed then GT&T could have been earning additional income. GT&T, however, responds that activation of all inactive models would generate only an insignificant income. Even so, such activation would enhance services to consumers.

Incidentally, as if in response to Craig's observation, GT&T stated that it is seeking on average a 40% increase on existing services and is also hoping to activate in the market a number of dormant modules. These modules are assets of GT&T and may be included in the rate base of the Company.

The GT&T submitted a schedule in which it is suggesting 'deep cuts' in the Commission's previously approved outbound rates. They are also seeking increased rates to four peak destinations and 21 cases of increased rates to off-peak destinations. The Commission's staff has a difficulty in determining the incremental flow to GT&T if the proposed rates become operative. But GT&T is suggesting that with the new rates outbound revenues will still continue to fall.

This reflects the speculative nature of this application. The consultant who produced the CAM seems to be taking into consideration what is happening worldwide and seeks to impose on us those alleged costs, etc., without viewing objectively the circumstances of the Guyana situation.

According to the agreement GT&T shall be entitled to a minimum. An **entitlement** is not a **guarantee** that must ensure the company gets its 15% irrespective of how the company carries on its business. We referred earlier to the provisions of **Section 32 of the Act** which mandates what the Commission shall have regard to, and what we shall take into account in determining the rate GT&T may charge for any service provided by it to consumers.

It strikes us that GTT is proceeding with its application on the basis that it has a "guarantee", come hell or high water, to collect their "no less than 15%". We want to disabuse the minds of GTT's officials that this is not so, and the Commission must take into consideration the five provisos, if we may refer to the conditions as such. If the return is to be guaranteed then there could be no protection of the consumers' interests, and the utility company would be given its return regardless of say, negligence, inefficiency or even fraud.

It is not denied, but it was reluctantly admitted by GT&T's specialist overseas auditor that the company had been in receipt of over 15% for many years.

As we were approaching the end of this hearing GT&T's Director of Rates issued a Draft Closing Statement which makes a rather interesting study. He condescended to urge that "GT&T is prepared to limit its rate requests to one based on its right under its current operating licence". It makes us wonder whether he has forgotten that all rights are associated with responsibilities. He sought to guide us that it is necessary and sufficient for GT&T to establish to our satisfaction that "its revenue requirement" falls short of what is required for the company to earn its agreed rate of return on the total capital dedicated to the provision of services. He cited five considerations, two of which we will repeat, namely, (a) to be fair and balanced and protect the interest of both consumers and operator, and (b) ascertain that all of the capital items in the rate base are "used and useful".

He did not elaborate but must have meant that the interests of the consumers are associated with their getting a proper service at reasonable cost, and that capital items "to be used and useful" suggests that the items must be properly used for the purpose intended and from which the consumers will get the true and proper benefit. It is not unknown that thousands of citizens who request and require the land line service do not get it, and we are not certain about what are used and if useful when millions of US dollars are expended by the company without a business plan in place!

The Director speaks of pre-paid wire line service, the offering of bundled wire line service and the scope for the introduction of an access deficit charge. The Company has not sought to introduce any of these services and speaking of them in this application is an exercise in futility. If it was intended to embellish the application it has failed.

We note the failure of the company to provide a universal landline service consistent with the undertaking in the agreement – the said agreement on which it consistently relies to get "its 15%". We are not certain of the financial implication if all the unserved consumers were supplied with the service: We urge that the company take steps to fulfill the expectation of all potential consumers in the shortest possible time.

When the agreement was signed in 1990 there was not any mention of **spectrum.** The company was very pleased with the view, which was not challenged, that it could cross-subsidize the

services, and in the process ignore to some extent the provision of a proper land line service. It now complains that the rates for the land line service was not cost based and was subsidized by the other services. But no attempt was made to bring the rates in line with the actual cost. The company was enjoying a virtual monopoly with the telecommunication business.

And in its application GT&T has specifically referred to cross subsidies "as permitted by the agreement" from which they were collecting substantial revenues from international services "to keep rates for local services and domestic calling low". This cross-subsidy has been ongoing from 1990 to the present and continuing. By what amount is the land line subsidized over the years?

A few years ago GT&T spent US$30 million to establish an underwater cable from Suriname. We had requested particulars of this transaction and were told that it had no business plan for that enterprise!!! GT&T also told us that the cable will not form part of the asset base in any tariff filing, that it does not plan to operate the cable system as any type of common carriage, and as such the cable system is not subject to the Commission's approval or authority pursuant to Section 28 of the PUC Act. GT&T has, however, incorporated a wholly owned subsidiary in the British Virgin Island and has transferred that subsidiary - its part of the submarine cable and the Americas II cable. This is really an investment by GT&T. The business of the subsidiary is to sell bandwidth to service providers, and GT&T has been that company's only purchaser of bandwidth in 2011. Bandwidth is an essential component in the lucrative internet business and in which GT&T is prominently involved. We are not aware that GT&T has been earning any interest on the funds expended in the creation and functioning of the subsidiary.

A utility company may have little incentive to minimize its own expenses while remitting funds to an overseas enterprise, be it parent or lateral subsidiary, which may result in significant increased profit to that entity with no regulatory limit on its permissible earnings There must be dealings with affiliates at arm's length. This Commission does not have the practicability to regulate transactions with affiliates which may involve the examination of their books and records. This can be very critical in tracing the bona fides of an affiliated transaction. The subsidiary does not come under our jurisdiction/purview thus making it impossible to review/examine its books, account papers or records kept by them.

The Commission in monitoring the operations of Utility Companies under our purview has long held the view that GT&T appears to inflate the cost of its capital acquisitions. This will increase the asset base of the Company resulting in higher profits to which it is not entitled. If this is so then the depreciation figures stated in the financial statement would be overstated. We are also concerned about the valuation of the Company's assets and its reluctance to respond to our requests for the acquisition costs of assets for specific periods. We also have a difficulty reconciling the company's test year data and investigations must be conducted seeking explanations on the computation of property, plant and equipment, and working capital.

In view of all we have set out we have difficulty in arriving at a decision favourable to GT&T or to any of the orders it now seeks, and in the circumstances we dismiss the application.

The Commission wishes to inform that in view of doubts relating to the true value of GT&T's asset base it may consider having a investigation carried out in this regard.

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Prem Persaud, Chairman.

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Badrie Persaud, Commissioner.

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Maurice Solomon, Commissioner.

Dated this 13th day of March, 2015.