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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms Magalie Salas,
Secretary, FCC

Dear Ms Salas,

OPPOSITION - ATTN WARNER
REQUEST - RB 96-261

No. of Copies rec'd 014
List ABCDE

I should be grateful if you could be good enough to substitute the enclosed documents (sent in original and four copies) for the documents originally submitted on September 10.

I discovered, after submitting the documents, the following flaws:

- 1) I left out a footnote reference (footnote 38) at the bottom of page 24
- 2) I hastily made a correction in ink on the train while rushing to make the deadline.
- 3) I left out the cover page

which identifies Annex 4. This could lead to some confusion which I wish to avoid. I have also printed instead of writing in the number of the Annexes. Unlike, as with the original submissions, I have ~~not~~ have assembled the documents in proper order, attaching the Annexes to the COMMENTS.

As stated previously, these replacement documents include an original which is clearly identifiable by quality of printing, and four copies.

I apologise most sincerely for the inconvenience. I trust that it is not too late to replace the documents.

I came down yesterday morning but the office was closed.

I am writing this note in the Reference Room on the Courtyard level

Sincerely

Joseph

JOSEPH A. TYNDALL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
SEP 12 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
International Settlement Rate Benchmarks)

Opposition of the Consumer Advisory)
Bureau and Joseph A. Tyndall to the)
Petition for Waiver of the Benchmark)
Rate for Guyana.)

IB Docket No. 96-261

To the Commission:

Opposition of the Guyana Consumers Advisory Bureau, the Guyana
Consumers Association and Joseph A. Tyndall¹

INTRODUCTION

This motion is submitted on my own behalf and on behalf of the Guyana Consumers Advisory Bureau and the Guyana Consumers Association, two bodies representing telephone subscribers in Guyana. I have an interest in the matter, as a telephone subscriber, both in Guyana as well as in the U.S.A. Hereinafter, the three parties will be referred to, collectively, as the "Consumers"

¹ Former Chairman of the Guyana Public Utilities Commission now residing in the U.S.A..

The Consumers respectfully oppose the July 6, 2001 Petition of the Atlantic Tele-
Network Inc. (“ATN”) for a waiver of the benchmark settlement rate for Guyana, subject
to the condition set out in the following paragraph.

ATN has sought to justify its request on the ground that “a waiver is necessary to ensure
that network expansion and universal service are not unduly disrupted by the
implementation of the benchmark rates.”² The Consumers are fully supportive of plans to
expand GT&T’s network and to increase the availability of telephone services to the
Guyanese public, especially in light of the decision of the Government of Guyana
(“GOG”) to open the telecommunications sector to full competition. Accordingly, the
Consumers will agree to the removal of their opposition, subject to the following
condition:

The Guyana Telephone and Telegraph Ltd (“GT&T”), ATN’s Guyana subsidiary,
should first enter into a binding agreement with the GOG and/or the Guyana
Public Utilities Commission (“PUC”), to use the excess settlement revenues
corresponding to the difference between the existing settlement rate and the
benchmark settlement rate solely for “network expansion and universal service.”

This condition would ask no more of GT&T than what ATN has promised. GT&T
should, therefore, have no hesitation in signing such an agreement. Further, GT&T
should have no difficulty committing the revenues to “network expansion and
infrastructure investment,” since as ATN has repeatedly stated in its reports to the U.S.
Security and Exchange Commission, that the costs associated with settlement revenues
earned from calls made from the U.S.A. is minimal. For example, ATN’s 10K report for
the year 2000, contains the following statement:

“The different classes of international traffic described in the above table³
produces significantly different profit margins for GT&T. In the case of regular

² Page 1 of Petition

³ The classes of traffic described are: In bound paid and audiotext traffic, and outbound traffic.

inbound traffic and outbound collect traffic, GT&T receives a “settlement rate” payment from the foreign telecommunications carrier generally equal to one-half of the applicable “accounting rate” (e.g., in the case of traffic from the United States, a payment of 85 cents per minute), and GT&T has no significant expenses associated with such traffic except for earth station and satellite system costs which are applicable to all of GT&T’s international traffic.”⁴

The Consumers have very good reasons for requiring that ATN’s promise should take the form of a binding agreement. ATN has stated that, its “petition is based on record evidence that a waiver will allow GT&T to continue existing network expansion and universal service programs in Guyana rather than on unverifiable promises to implement new programs for the future”. ATN goes on to explain that “because past uses of settlement revenues provide the most reliable indicator of future uses, the Commission can be confident that grant of the requested waiver will serve the public interest.”⁵

The Consumers concern are twofold: First, the Consumers will show, contrary to what ATN has claimed, the “record evidence” clearly demonstrates that “past uses of settlement revenues” by GT&T cannot provide a reliable indicator that the excess revenues earned if a waiver is granted would be committed to “network expansion and universal service.” Documentary evidence from ATN, as well as sworn testimony of ATN and GT&T officials, will show that a major proportion of the settlement revenues earned by GT&T since 1993 has been used for purposes unrelated to “network expansion and universal service.” These alienated revenues have been paid out to organizations and individuals with no connection whatever to the services that GT&T is licensed to provide. In the case of one of the organizations, consistently the greatest beneficiary from the diverted revenues⁶, the Guyana Public Utilities Commission (“PUC”) tried unsuccessfully in 1998 to verify its identity and the location of its headquarters⁷. The

⁴ Page 3 of 10K report for the year 2000.

⁵ Page 4 of Petition

⁶ Beylen Tele-Com Ltd

⁷

telephone number of the organization that GT&T obtained from the PUC was reported as by Commioaaion as being out of order, when dialed.

Second, the Consumers will show that he settlement revenues have been further depleted by the failure of GT&T's management to exercise effective control over the utility's finances. While the FCC may not be concerned with the way that GT&T's operations are managed, it seems reasonable to expect that, in considering a waiver, the FCC will not ignore clear and unimpeachable evidence that GT&T is being deprived, by highly questionable management practices, of a considerable share of the settlement revenues that ATN is seeking to preserve. A good example of such questionable practices is the system whereby large payments are made, (some to payees unknown to GT&T's management) on unsigned and undated instructions that are written on plain pieces of paper, with no address or telephone number stated, and by checks endorsed by check signing machines that have been embossed with the signatures of ATN officials. These and other questionable financial practices have been exposed in sworn testimony given by GT&T's officials in a rate case before the PUC.

If the waiver is granted without the condition proposed by the Consumers, both Guyanese and U.S. callers (including Guyanese resident in the U.S.A.) will be forced to continue paying high rates for calls from one country to the other, while rates for other countries in the Caribbean, including those against whom the FCC has enforced the benchmark rates, have been trending downwards, in response to the lowering of the settlement rates. To require U.S. and Guyanese callers to continue bearing the burden of high rates, in circumstances where this would result in the unjust enrichment of individuals and organisations, especially those with no links to GT&T's authorised business, cannot be considered to be in the public interest, either for Guyana or the U.S.A.

As to ATN's claims with regard to "network expansion and universal service", the Consumers will show that the achievements have been overstated. The Consumers will show that, from as far back as 1992, just a year after GT&T was acquired by ATN, GT&T's operating focus began to be shifted from its licensed telephone business to the

provision of unlicensed international dial-a-porn services, and that this has hampered the achievement of a balanced development of GT&T's network facilities and slowed the progress towards universal service. Moreover, with a management that has been unable to exercise effective control of GT&T's finances, GT&T was deprived of its capacity to finance its capital programs from internally generated resources and prudently incurred debt. A decision to grant a waiver, in circumstances that would enable GT&T to maintain its focus on the provision of dial-a-porn services to the U.S.A., would not serve the best interest of the Guyanese public.

THE DIVERSION OF GT&T'S SETTLEMENT REVENUES TO ITS AUDIOTEXT BUSINESS

An essential consideration in the grant of a waiver of the benchmark rate is the use of the settlement revenues for critical network development and infrastructure projects. In the "White Paper" submitted by ATN as Appendix B to its Petition, the point was made that "developing countries that plan to use settlement revenues for other purposes will not qualify for a waiver of the benchmark rules." The Consumers are in total agreement with this stipulation. The Consumers will show that ATN and GT&T have failed egregiously to satisfy this requirement in the past in that a major share of its settlement revenues was diverted away from GT&T to organizations and individuals with no connection whatever to the legitimate business of GT&T. There can be no assurance that such revenue diversions will not continue in the future. The root of the problem lies in GT&T's involvement in the international audiotext business. Understanding the problem requires a thorough analysis of GT&T's audiotext connection.

GT&T's audiotext service is predominantly, if not exclusively, an international dial-a-porn business. In its 10K and 10Q reports to the Securities and Exchange Commission ("SEC"), ATN has been declaring for some time that the provision of audiotext services provides a major share of GT&T's settlement revenues. Yet, ATN has made no mention of this service in its petition for a waiver. Without full disclosure by ATN of past uses of

settlement revenues received from U.S. carriers, the FCC could have no confidence that granting the requested waiver will serve the public interest.

There is some evidence to support the view that a major, if not the real objective, of ATN in seeking a waiver of the benchmark rate is to enable it to maintain as long as possible revenue flows attributed to audiotext services. In its 10K report to the SEC for the year 1998, ATN stated what appears to be the obvious:

“Any significant reduction in the settlement rate also might make it difficult for GT&T to continue to attract audiotext traffic from the United States on a profitable basis”⁸

Why is there a positive correlation between the fortunes of the audiotext business and the reduction in the settlement rate? The answer to this question will become clear later. The statement suggests that ATN’s determination to preserve the audiotext business was a powerful motivation for its refusal to agree to AT&T’s proposal to progressively reduce the settlement rate to the benchmark level, and the consequential difficulties experienced by persons trying to make telephone calls to Guyana. In other words, persons trying to call Guyana from the U.S.A. became hostages in the dispute between AT&T and GT&T in connection with the implementation of the benchmark rate.

It is important to mention that GT&T’s licence does not authorize it to engage in the provision of audiotext services. Comments on this issue are presented at Annex.

To fully understand the implications of the audiotext business for the waiver request, we must examine how GT&T became involved in the business in the first place and the nature of the involvement.

⁸ See under “FCC matters.”

The Development of GT&T's Audiotext Business

In a speech delivered in Georgetown on November 23, 1998, Mr Cornelius Prior Jnr, Chief Executive Offices and Chairman of the Board of ATN, said that GT&T's audiotext business "was started in my office when a man from Seattle came down all the way to see what it was that existed in the country of Guyana. He had heard that there was a high accounting rate and that it might be a good place to start Audiotext. We spent six months with reviewing the FCC, and our U.S. and Guyana lawyers advised on whether or not the Audiotext business was a reasonable way to go."

GT&T, originally a wholly owned corporation of the Government of Guyana (GOG), was privatised on January 28, 1991, when ATN acquired an eighty percent ownership. GT&T was made a founding member of International Telemedia Associates Inc. ("ITA"), a company incorporated in Atlanta, Georgia on May 6, 1991, less than five months after it was acquired by ATN. ITA's focus was on the exploitation of the new opportunities for the provision of international audiotext services,⁹ which, at the time, appeared to be primarily a dial-a-porn service. This early decision was a clear signal that ATN was more concerned to turn GT&T into a dial-a-porn money making machine, targeting primarily the U.S. market instead of focusing on "network expansion and universal service." In his speech referred to above, Mr Prior referred to the dial-a-porn service as a "bonanza" and a "cash cow."

Developments in GT&T's dial-a-porn involvement proceeded rapidly after it joined in the founding of ITA. By November 1993, seven contracts were signed with audiotext providers. Four of the contracts were signed by Mr Prior, in his capacity as Secretary of the Board of GT&T and three by Mr James Kean, as its Assistant Secretary. At the time, Mr Prior was President, Co-Chief Executive Officer and Director (Principal Executive Officer) of ATN and Mr Kean, Executive Vice President for Operations of the ATN

⁹ See incorporation documents submitted to the FTC in connection with its Pay-Per-Call Review conducted from 1997 to 1999..

Neither was a member of GT&T's management and their authority to sign operating agreement on behalf of GT&T is not clear¹⁰.

GT&T's management apparently played no part in the introduction of the services. There is no record in the minutes of GT&T's Board indicating that the arrangements were considered and approved by the Board.¹¹ In fact, the service was started as a clandestine operation, with the PUC, the GOG (a twenty percent shareholder in GT&T) and the Guyanese public kept entirely in the dark. Why, if the audiotext service was run for the benefit of GT&T and the Guyanese public, was it launched as a clandestine operation?

The audiotext business began as a live inter-active phone sex service operated out of Georgetown for which young Guyanese women were selected and trained. At the same time, a passive service was started with equipment installed in GT&T's Georgetown central office building. Following vigorous protests by the Guyana Council of Churches and private individuals, the service was discontinued but the passive service continues to operate to this day out of GT&T's Georgetown central office.

At first, GT&T's management disclaimed any knowledge of the operations, which were managed by staff posted from ATN's Virgin Islands Headquarters. The audiotext equipment was reported to be secluded in a part of the premises barred from Guyanese technical staff¹². By April 1995, GT&T had earned the dubious distinction of being one of the top three providers of international dial-a-porn services to the U.S.A.¹³

From the above account, it would seem that the audiotext business is, in reality, an ATN operation run out of GT&T's offices, primarily for the benefit of organizations and

¹⁰ There was no indication that such authority was granted by the Board.

¹¹ From 1991 to 1994, Mr Joseph A. Tyndall, one of the parties submitting these comments was Chairman of the Guyana PUC. By order of the Commission, GT&T was required to submit to the Commission copies of all meetings of ATN Board. There was no mention of audiotext services in these minutes.

¹² When in XXX 1993, the Deputy Commissioner of Police visited GT&T's Georgetown central office to investigate complaints about a phone sex service being operated from the premises, he was informed by GT&T's management that there was no audiotext equipment on the premises.

¹³ Information disclosed at a meeting of the FCC International Bureau. See press release captioned International Bureau to crack down on international Dial-a-Porn, April 3, 1995.

individuals having no association with the authorized services of GT&T. Mr Prior lends support to this belief when he revealed in his speech referred to above, that “audiotext had essentially been managed by ATN, ever since that meeting in my office in St Thomas in 1991.”

The Diversion of GT&T’s Settlement Revenues.

The great paradox is that GT&T does not earn any revenues from the provision of audiotext services. What GT&T does is to attribute a share of the settlement revenues from certain sources, mainly the U.S.A., to its audiotext business. The settlement rate was fixed by agreement with AT&T, since January 1987 and there has been no change in the rate since then which still stands at 85 cents per minute or a half of the accounting rate of \$1.70 per minute.

GT&T has adopted this strange practice of attributing settlement revenues paid by foreign carriers to the audiotext business, even though it has made no arrangements with the carriers for a charge to be added to the settlement rate to cover the cost of audiotext services. Also, information provided in ATN’s documents shows quite clearly that GT&T has not entered into any agreement with U.S. and other foreign carriers for the collection of charges for audiotext services or for the transfer of revenues from this source. Yet in its 10K and 10Q reports to the Securities and Exchange Commission (SEC), ATN consistently reports audiotext revenues earned by GT&T, beginning in the year 1992. In its 10K report for the financial year 1998, ATN made the following statement:

“In the case of audiotext traffic, GT&T receives a payment from the foreign carrier equal to one-half of the applicable accounting rate, and GT&T pays a fee or commission to the audiotext traffic provider at rates which are negotiated from time to time and are typically more than a half of the amount received by GT&T from the foreign carrier”.

The statement has been very carefully worded. It does not say that half of the accounting rate is paid to GT&T by the foreign carrier, as revenue from audiotext services. In the context of the accounting rate agreements with the foreign carriers, such action could be challenged on the ground of impropriety. Instead, the statement says that the equivalent of half of the accounting rate is paid "in the case of audiotext traffic." This could be interpreted by the general reader to mean that the revenue comes from genuine audiotext sources and is only coincidentally equivalent to half of the accounting rate. Considering the fact that GT&T earns no revenues from the provision of audiotext services, this is a strange statement with serious implications for U.S. international carriers.

When one penetrates the verbal confusion, what the statement actually says is that for audiotext services, the entire settlement rate (one half of the accounting rate) is credited to the audiotext business. If this is true, GT&T would be earning nothing for the international telephone call that was made in order to access the audiotext service in Guyana. The telephone call would be free to the foreign carrier concerned, in the sense that it attracted no settlement rate charge that is payable to GT&T. If this is carried through to GT&T's accounts, GT&T's management would be under-reporting the settlement revenues that are legally due from foreign carriers, pursuant to the accounting rate agreements.. This does not appear to be so for GT&T's accounts, and it may not be so for ATN's consolidated accounts either, but this cannot be verified from the available information. But there remains the question of the accuracy of the reporting of audiotext revenues in ATN's 10K and 10Q reports to the SEC.

Another implication of the statement is that, it could be read as implying that U.S carriers, such as AT&T, Sprint and MCI/WorldCom, are actively involved in GT&T's audiotext service and have been cooperating in the alienation of GT&T's settlement revenues from the accounting rate agreements and attributing the payments to GT&T's unrelated audiotext business. But, at the April 5, 1995 meeting of the FCC International Bureau, all the U.S. carriers present, including AT&T, MCI and Sprint Sprint, denied any

involvement in the international dial-a-porn business.¹⁴ The three carriers, as well as other U.S. international carriers participating in the FTC Pay-Per Call Rule Review meetings held between 1997 and 1999, also denied any such involvement.

In light of the above, is the recording of audiotext revenues an accounting fiction? Would it be in the public interest to grant a waiver, without the assurance that the excess revenues are fully accounted for and that it would be used to fund “network expansion and universal service” and would not be siphoned off by dubious attribution or accounting practices to individuals and organizations with no connection to GT&T’s licensed telephone business? The condition proposed by the Consumers will ensure that that the revenues are not diverted to purposes other than the funding of network expansion and infrastructure investment

The aim of the meeting held by the International Bureau on April 3, 1995, was to enlist the assistance of U.S. local and long distance carriers “to develop a formula to dismantle the financial mechanisms that make these dial-a-porn schemes work¹⁵. Would the grant of a waiver, without the condition proposed by the Consumers with regard to the use of the excess settlement revenues be consistent with this objective.

ATN Contradicts itself in contending before the FTC that no revenues are earned from charges for GT&T’s audiotext service

Contradicting ATN’s reporting of audiotext revenues to the SEC is the unimpeachable evidence of ATN itself. The evidence is drawn from documents submitted by ATN to the FTC in connection with the Pay-Per-Call Rule Review referred to earlier. In one of the documents presented, ATN was joined by Islands Telephone Company Ltd,¹⁶ the first audiotext company to sign an agreement with GT&T.

¹⁴ Joseph A. Tyndall, one of the two parties submitting these comments was present at the meeting.

¹⁵ See Press Release op..cit

These documents establish beyond any shadow of a doubt that no revenues are generated from charges paid by audiotext callers.

The evidence will be drawn from two of the documents filed by ATN, a letter dated May 12, 1997, and a document entitled Comments of Atlantic Tele-Network Inc., dated March 10, 1999. The following have been excerpted from the documents:

“ . . .in the IDD audiotext configuration, the end-user subscriber does not pay any charge greater than, or in addition to, the U.S. carrier’s IDD collection rate for transmission of the call”¹⁷.

...

“All IDD audiotext calls are at the same standard tariffed rates as all other telephone calls to that destination”¹⁸ ...”

In these two statements, ATN asserts unambiguously that the person calling GT&T’s audiotext services pays the same charge as if making a personal or business call to Guyana. The caller pays his telephone company for a normal telephone call and no part of this payment is due, payable and paid to GT&T. What then is the source of the reported audiotext revenues?

The following comments make the points even clearer:

“international audiotext services do not impose charges upon consumers above and beyond the regular long distance charge for the phone access to the service”¹⁹.”

...

“The total cost for traditional pay-per-call services is based on two components: (1) the regular long distance charges for the phone call to access the service; and

¹⁶ Atlantic Telephone Company had started a live interactive international dial-a-porn service in early months of 1992, employing young Guyanese women specially trained for the purpose. The operations were discontinued, following a public outcry and action by the Government of Guyana.

¹⁷ Letter dated May 12, 1999, page 2..

¹⁸ *ibid.*, at page 4

¹⁹ Comments of Atlantic Tele-Network Inc. dated March 10, at page 7.

(2) the additional charges for the service itself. By contrast, **the total cost for international audiotext services is based on only one component: the regular international long distance charges for the international phone call to access the service.**²⁰ [Emphasis added]

...

“[I]nternational audiotext services can only be accessed by dialing a standard international direct dial (“IDD”) number beginning with the prefix “011”, the regular long distance charges for which a consumer knows are neither negligible nor free. However, **there are no additional charges for the international audiotext services.** Indeed, international audiotext providers are technically incapable of charging consumers additional amounts for their services. The calls are originated and carried by U.S. international carriers as standard “011” IDD calls, and the rates in those carrier’s FCC-filed tariffs are the rates that apply to that call (and to any other non-audiotext call to the same country)²¹”. [Emphasis added].

“Callers are billed the exact same FCC-tariffed rate for the call that they would be billed for any non-audiotext IDD call to the same destination²²”.

“...international audiotext services are provided by companies that do not set, or have any influence over, the rates charged to callers for using their services. As noted above, those rates are set by the callers’ presubscribed U.S. international long distance carriers – in most cases carriers such as AT&T, MCI World/Com and Sprint – in tariffs filed with the FCC. . . International audiotext providers cannot impose multiple charges on consumers, cannot assess charges for services that appear to the consumer to be toll-free charges, or in any other way manipulate or change the rates that are charged for their services. Further, they have absolutely no control over the billing of those services, which is

²⁰ *ibid.*, at page 7.

²¹ *ibid.*, at page 8.

²² *ibid.*, at page 8.

controlled by the U.S. international carriers. Therefore, international audiotext providers can manipulate neither the rates nor the billing process to the detriment of consumers.”²³ [Emphasis added]

“As noted above, a consumer who dials an international audiotext IDD number is making a standard international switched telephone call, and the rate that consumer pays is the exact same rate that a consumer would pay for making a non-audiotext IDD call to the same country. **No U.S. carrier has sought to impose a higher charge for international audiotext calls, and indeed any such attempt undoubtedly would constitute unreasonable discrimination in violation of Section 202(a) of the Communications Act**²⁴.” [Emphasis added].

ATN’s position that GT&T cannot and does not impose a charge for audiotext services was supported by a sworn affidavit submitted on its behalf by Mr Lawrence Fucella, a Vice President of the Company. From 1994 to 1998,, Mr Fucella was Special Projects Director with responsibility for managing GT&T’s audiotext operations and its relationship with foreign telecommunications administrations. Mr Fucella was also posted to GT&T in Georgetown, from 1993 to 1994, first as assistant finance controller and later as finance controller. His posting to GT&T followed the introduction of the audiotext service.

How could GT&T report audiotext revenues to the S.E.C., when, by its own admission to the FTC no one pays it for the consumption of its audiotext services? *Ex nihilo, nihil fit* – from nothing, nothing comes.

²³ *ibid.* at page 10.

²⁴ *ibid.*, page 10.

GT&T's Chief Executive Officer testifies that no revenues are earned from audiotext charges

Under cross-examination by Mr Nigel Hughes, counsel for the Consumers, Ms Sonita Jagan, CEO of GT&T, admitted that the audiotext call "is considered a normal international long distance call." In other words, GT&T does not earn any audiotext revenues from incoming calls. Ms Jagan reinforces her answer in a response to Mr Nigel Hughes, Attorney-at-Law, counsel for the consumers²⁵:

Mr Hughes: The person who calls a number in Guyana for one of these services is not actually paying any higher rate than a normal caller calling Guyana. Is that correct?

Miss Jagan: That is correct.

In spite of this admission by its CEO, GT&T prepares periodic reports of audiotext earnings on the basis of which it pays audiotext providers and meets other audiotext expenditures. In sworn testimony before the PUC, a member of GT&T's management has reported that statements of audiotext revenues are compiled within GT&T²⁶ and payments of fees to audiotext providers are made on the basis of these statements. No payments or statements pertaining to audiotext revenue transfers are submitted by foreign telephone companies.

The testimony of GT&T's management directly and emphatically contradicts the statement in ATN's 1998 10K report (referred to above) that "in the case of audiotext traffic, GT&T receives a payment from the foreign carrier equal to one-half of the applicable accounting rate.'

²⁵ See transcript of hearing on November 10, 1998 at page 38..

²⁶ Testimony of Mr Etwaroo, Director of Information Systems in transcript of hearing on August 11, 1998.

The Impact of the Audiotext Services on Telecommunications Development

Originally, the fee payable to audiotext to the audiotext suppliers for service to the U.S.A was 40 cents per minute payable out of the settlement rate of 85 cents per minute. According to ATN the fee has since risen then to more than one-half of the settlement rate. Dr Fritz W. Ringling, a consultant engaged by GT&T to assist in rate case proceedings before the PUC, reported that payments to ISPs in 1992 were approximately 55%, but rose to an estimated 67% in 1996.²⁷ Dr Ringling further pointed out that:

“The increase in GT&T pay-outs correlates with the decline in accounting rates and increasing marketing costs for services by the IPs as they compete against the proliferation of text and alternatives provided on the internet”.²⁸

It should not be forgotten that the audiotext providers, quite inappropriately referred to by Dr Rinfling as ISPs, generate no revenues additional to what is paid by foreign telecommunications carriers for normal call termination services. The increase in pay-outs when revenues to which the audiotext providers have no legitimate claim only serves to highlight the absurdity of GT&T’s attribution practice.

The fee does not cover other costs incurred by GT&T in connection with the operations, including capital expenditures incurred specifically to accommodate the service. ATN has claimed in its 10K reports to the SEC that GT&T was utilizing excess capacity. There is abundant evidence to show that the excess capacity was deliberately created for the audiotext business. Dr Ringling supported this view:

²⁷ Fitz W. Ringling, Financial Analysis of Guyana Telephone and Telegraph, August 4, 1998, page 25.

²⁸ *ibid*, page 25

“We believe that the high volume of audiotext traffic did in all likelihood precipitated an expansion of the international facilities beyond the requirement associated with the normal conduct of business. The inclusion of the expanded international assets in the rate base caused its expansion beyond what was required for regular international traffic.”²⁹

In addition to utilizing an expanded international communication infrastructure, accommodation is required on the GT&T’s Georgetown exchange for the thousands of audiotext numbers that were allotted to the ISPs for callers to dial to access the service..

Unlike the revenues attributed to the audiotext service attributed audiotext revenue, which has only a notional existence, the pay-outs to audiotext providers and other expenditures are real and a burden on GT&T. As far as could be ascertained, no independent study has ever been undertaken to determine the full cost of providing the service.

ATN has claimed that in the ten-year period, 1991 to 2000, about \$140 million was invested in GT&T. This figure is highly questionable. If the figure is accepted, it would be reasonable to assume that a lot of money was wasted. As stated in ATN’s IPO Prospectus, dated November 14, 1991, when GT&T was acquired, “there were 20,000 access lines (of which at that time, and throughout 1990, in excess of 4000 lines were non-operational”³⁰. At the end of 2000, there were 71,738 lines, including wireless local loop (3,600), and fixed cellular, an addition of 51,738. With an investment of \$140 million, the investment cost per line installed would amount to \$2,706. When it is considered that 85% of the lines are in urban areas and that WLL and fixed cellular connections are included, the cost would seem to be way out of line. In 1995, the average investment cost per line in developing counties was estimated at \$1,500 and the cost has been going down, with technological improvements, not up.

²⁹ *ibid*, page 19.

³⁰ See page 27. In its 10K report for 1992, the number of non-working lines at the time of acquisition was reduced to 7,000.

But there are reasons to believe that the total investment figure is far lower than \$140 million. The figure of \$140 million could be lowered by adjusting for the \$47.4 million in advisory fees paid on gross revenues of US\$790.6 million, over the period 1991 to 2000.

The table below provides information on GT&T's revenues and advisory fees. The revenue figures are taken from ATN's 10K reports up to 1997 after which, ATN ceased to report separate revenue figures for GT&T. The annual revenue figures after 1997 are drawn from GT&T's financial statements.

GT&T's Reported Audiotext and non-audiotext Services

U.S.\$ millions

Year	Total	Audiotext	Non-audiotext
1991	34.9	-	24.9
1882	38.0	3.0	36.0
1993	45.1	10.4	34.7
1994	78.2	39.2	39.0
1995	131.0	91.0	40.0
1996	148.0	106.0	42.0
1997	118.0	62.0	56.0
1998	71.0	n.a	n.a
1999	73.9	n.a	n.a
2000	62.4	n.a	n.a
TOTAL	790.6		

The table shows a steep decline in gross revenues in 1998 compared to 1997. While this may be attributable, at least partly, to the decline in inbound call minutes, it leaves the question of the difference between the consolidated gross revenues of ATN of \$95.0 million reported in ATN's 10K report for the year 1998 and the gross revenues earned by GT&T. On January 1998, following the split-up of ATN, the new scaled down ATN was left with only GT&T, with all other subsidiaries going to Emerging Communications Inc.. Effective June 2, 1998, ATN "acquired a seventy-five percent interest in Digicom, a Haitian corporation principally engaged in dispatch radio mobile communications and paging for \$1.7 million cash and a commitment to issue in the future 15,873 shares of ATN stock. Also, in July 17, 1998, ATN acquired a 30% interest in Bermuda Digital Communications a PCS competitor in Bermuda, for \$1.0 million. On this new investment of less than \$3.0 million for just six months of the year, and on other holding company sources, ATN was able to generate revenues of \$24 million, reflecting the

difference between its gross consolidated income, as presented in its 10K report for 1998, and the gross revenues of GT&T, as recorded in the latter's financial statements. This is an extraordinary achievement by any measure.

The advisory fee, which was fixed at six percent of gross annual revenues, under a management services contract signed on the same day that GT&T was acquired, is absolutely indefensible. Under the contract, shown at Annex 1, the fee is additional to the payment of all expenses incurred in the provision of the services, including ATN overheads. It is payable even if no services are provided in any given year. Under rate of return regulation, a fundamental requirement is that all costs incurred by a public utility must be for value received and be reasonable and justified. The Guyana Public Utilities Act stipulates this requirement. The PUC has tried to enforce compliance, but the matter was appealed to the High Court by GT&T, where it has been languishing for a number of years.

The advisory services contract was the subject of an exchange of letters in the Guyana press between a Lewis A. Stern, an attorney representing ATN and Joseph A. Tyndall, the presenter of this submission. The letters appear at Annex 2.

Under the Advisory contract, ATN has a major role in the procurement of goods and services for GT&T. In the absence of an arm's length relationship between GT&T and ATN, the possibility of excessive transfer pricing cannot be ruled out.

Any attempt to adjust the investment figure on the basis of the available information is out of the question. It is sufficient to show the extremely high per line investment cost and the possibility of excessive transfer prices, in the absence of effective regulatory control. Public utility regulation in Guyana is, at present, extremely weak. The GOG is taking steps under a telecommunications reform project funded by the Inter-American Development Bank (IDB) to improve the situation.

No one has ever attempted to assess the full cost of the audiotext service combined with the loss of momentum with respect to infrastructure development and service expansion. There are clear indications that the shift of the company's focus to the provision of international dial-a-porn services has had a negative impact on telecommunications development in Guyana, especially in the long term.

The GOG was concerned with the shift of GT&T's focus away from its authorized business to the provision of international dial-a-porn services. This concern was conveyed in a press release issued by the Embassy of Guyana in Washington D.C on September 26, 1996. The release states that:

“the Government [of Guyana] is concerned that GT&T is departing from the stated objective of its licence to operate the business of providing telephone facilities to the people of Guyana, and is, in fact, making its business mainly one that provides audiotext services to customers outside Guyana”

Noting that in 1995 and 1996, revenues attributed to audiotext service were 51.6 percent and 63.9 percent of total revenues, respectively, the release went on to say that “[w]hile audiotext revenues of GT&T are rapidly rising, the company's investment in providing telephone service seems to be declining” The release alluded to GOG's request that GT&T terminate the service. The full text of the release is at Annex 3.

The Management of GT&T's finances

The public interest would not be served if the FCC grants a waiver only to see when the waiver ends that the revenues are squandered by ineffective management control and expenditure decisions that do not advance the objectives of “network expansion and universal service.” GT&T's past performance offers little confidence in this connection.

There is much evidence that the management of the public utility does not appear to have much control over the utility's expenditures. This was a matter of concern from the very first year of ATN's control. Not much seems to have changed since then.

In its 1991 Decision, the PUC wrote the following:

“The Commission was surprised to discover that the control of the accounting and financial operations of GT&T has been effectively removed to the U.S. Virgin Islands [where ATN has its headquarters]. According to Mr Kean, its General Manager, the executive in charge of the financial operations of the Company [GT&T] is Mr James E. Heying, Chief Financial Officer of ATN and the second in command is Mr Cornell Williams, Assistant Controller of VITELCO, a Virgin Islands subsidiary of ATN,. Ms Jennifer Grainger who earlier this year was appointed with great fanfare as Financial Manager of GT&T seems to be excluded from important financial policies, decisions and transactions of the company, judging from her inability to respond to questions on these matters from Lynch Associates [the Commission's consultants]. The fact that the more important books and records of the Company are held in the U. S. 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 PUC 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 be allowed to continue without seriously jeopardising the meaningfulness of the regulatory process”³¹

³¹ See Decision dated November 12, 1991, page 42.

In the 1991 rate case, the PUC uncovered numerous payments by GT&T for which there were no satisfactory explanations. In one case, the use of a private jet by ATN, VITELCO and GT&T, for which VITELCO (ATN's Virgin Islands telephone subsidiary) was billed, was paid for by GT&T. In another case, GT&T paid the travel expenses of Mr Jeffrey Prosser, Chairman of ATN as well as of an ATN executive, even though the travel occurred before GT&T was acquired by ATN. The latter was explained as an "innocent charge", but it proved to be a sign of things to come.

It seemed to be *deja vu* in the 1997 rate case,³² when in testimony before the PUC, Mr Godfrey Statia, Deputy General Manager of GT&T, testified that GT&T had paid for the personal use of a private jet by a Mr Peter Knobel³³. Mr Statia explained that the payment was deducted from moneys owed to Mr Knobel, apparently as a consultant. The Commission had previously queried the payment of a sum of US\$655,000 to a Peter and Patrice Knobel for services provided without a written contract.

Mr Peter Knobel was, apparently, the President of Gemini Tele-Com Ltd and Beylen Tele-Com Ltd, two of GT&T's audiotext providers³⁴. The payment of the US\$655,000 consultancy fee to the Knobels was examined by the PUC, alongside a payment of \$21.7 million to Beylen Tele-Com Inc.

Senior executives of GT&T have been unable to provide adequate justification for major items of expenditures, including large payments to consultants and other individuals. In many instances, the management could not provide any meaningful information on the transactions involved or the service provided.

³² Hearings were opened in January 1997, and have not yet been completed

³³ See Staff Report 3/99 at Annex 1, p. 20..

³⁴ GT&T signed agreements with the two companies on December 1, 1992. Mr Cornelius Prior, then gPresident of ATN and Secretary to the Board of GT&T, signed for GT&T, and Mr Peter Knobel for the two audiotext providers.

Most surprisingly, GT&T's management was unable to furnish the name of the President of Beylen Tele-Com³⁵, even though the contract with Beylen was signed by its President Mr Peter Knobel³⁶.

It was disclosed in testimony that signature stamps of two of ATN's officials, Mr James Kean, Executive Vice President for Operations and Mr James J. Heying, Chief Operating Officer and Vice President³⁷ were used on letters authorizing payments to the Bank of New York, the Banco Popular and other banks and for the signing of checks drawn on these banks.³⁸

In reviewing the testimony of GT&T's witnesses, the PUC Staff Report 3/99 found as follows:

“Based upon evidence given in the deposition of GT&T Senior management personnel, it appears that senior management of GT&T lack fundamental and significant controls that would be expected of officers responsible for serving the public³⁹”.

The comments are set out in a special section of the Report (reproduced in the Annex 4 entitled; “Additional Findings.”

Conclusion

In light of everything said in this submission, the Consumers oppose ATN's petition for a waiver of the settlement rate for Guyana, unless GT&T enters into a binding agreement with the government of Guyana to use the excess settlement revenues, corresponding to the difference between the existing settlement rate and the benchmark settlement rate,. solely for “network expansion and universal service.”

³⁵ See transcript of hearing held on August 12., 1998, page33..

³⁶ Mr Knobel was referred to by the PUC Chairman as a “phantom gentleman.” Transcript of hearing on August, 1998, page 85.

³⁷ From January 1, 1998, the two Officers moved to Emerging Communications Inc. after the split-up of the original ATN Inc.

³⁸ See transcript of hearing of August 12, 1998, pages 19 to 22

This should not be seen as a willingness or decision on the part of the Consumers to relent their concerns about GT&T's management. The Consumers hope that with the introduction of competition and the strengthening of the PUC under the telecommunications reform project funded by the IDB, the incremental revenues earned as a result of the benchmark waiver would be efficiently used for the expansion of the telecommunications infrastructure and the advancement of the objective of universal service.


Joseph A. Tyndall

Beltsville, MD, 20705

U.S.A.

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Telephone: 301 595 1943

Fax: 301 595 1943

E-mail: jbtyndall@attglobal.net

³⁹ Staff Report No. 3/99 of March , 1999, reproduced at Annex 4.