

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Waiver of the)
Benchmark Settlement Rate)
For Guyana)

IB Docket No. 96-261

To The Commission

EX PARTE FILING

FURTHER COMMENTS OF JOSEPH A. TYNDALL

The primary objective of this presentation, submitted jointly with the Guyana Consumers Advisory Bureau and the Guyana Consumers Association is to deal with a number of factual misrepresentations in ATN's Response Comments in so far as these are applicable to the Comments submitted on behalf of the "Consumers."

Let me begin by saying that I do not intend to respond to the characterizations presented in ATN's Response. ATN has asserted that:

- (i) the pre-1992 Government of Guyana was a "destructive communist regime;"¹
 - (ii) the "new [post-1992] Government was comprised of individuals who opposed foreign investment in Guyana's economy as well as the GT&T privatization,"²
- and

¹ ATN's Response Comments, page 1.

² Ibid. page 2.

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- (iii) “the Guyana consumer filing in opposition to the waiver petition was made by groups and individuals who have consistently sought to impede privatization and foreign investment while thwarting meaningful rate re-balancing in Guyana.”³

Even if these characterizations were true, I do not see their relevance or propriety in the context of the petition and will not engage this kind of argument. The issues to be addressed are the facts, not the organizations and individuals opposing the petition, much less the Government of Guyana, which is not even involved in the matter. As I shall show, ATN has either misrepresented the facts or avoided them altogether.

ATN has alleged that for years the “Guyana Public Utilities Commission (GPUC) enforced a brutal subsidization policy so that local line rates were 24 cents per month (\$0.24/month) for residential subscribers and 60 cents per month (\$0.60/month) for business customers.”⁴ **The statement is false.** The rates in question were in force when ATN signed the agreement to purchase GT&T (the Purchase Agreement or Agreement) on June 18, 1990. One of the terms of the Agreement was that “GT&T will not increase subscriber rates in operation on the date of this Agreement for a period of three years,” subject to the occurrence of certain events, one of which was a substantial depreciation of the exchange rate of the Guyana dollar.⁵ Six months after the signing of the Agreement, ATN proposed a number of amendments, which led to the signing of an Addendum (First Addendum to Agreement). The Addendum included a provision stating that the “rates charged for services on the date of closing [of the Purchase Agreement] shall be deemed to be fair and reasonable.”⁶

When ATN signed the Agreement, it was fully aware that the revenues from GT&T’s international services were used to subsidize domestic rates. ATN deliberately sought to make assurance doubly sure that the structure would not be disturbed for the three year moratorium period. In 1990, GT&T was a highly profitable telephone company and its

³ Ibid., page 14.

⁴ Ibid., Summary, page i.

⁵ The provision was incorporated in section 38(1) of the PUC Act.

⁶ Addendum to Agreement, section 5.

domestic services contributed only about 4% of its total revenue.⁷ GT&T could have afforded to eliminate all charges on its domestic services, without significantly reducing its profitability.

On February 20 1991, the Guyana dollar was steeply devalued and GT&T applied for an increase in its rates. Late in the proceedings, GT&T decided to withdraw its request for approval of an increase in its domestic rates. The withdrawn rates included the line rental charges of which ATN has complained so sharply in its Response. GT&T's decision followed a request from the GPUC for information pertaining to its cost of service. GT&T had refused to provide the information and had withdrawn its domestic rates, in the mistaken belief that it would have avoided the need to provide the information.⁸

When the three year moratorium came to an end, (January 28,1994), GT&T showed no interest in having its rates increased or re-balanced. The reason for its indifference is not hard to find. GT&T had begun to exploit the international phone sex business and a request for approval of increased rates would have triggered an investigation into the conduct of the business, including the sources and uses of the reported revenue. This was an event that GT&T did not seem particularly anxious to confront.

After its entry into the phone sex business, GT&T experienced a steep increase in its international revenue. On its own motion, the GPUC called a hearing to determine whether GT&T's rates should not be reduced to eliminate any supernormal profit. GT&T countered by submitting proposals for increasing the rates for international calls. It is important to highlight the fact that the application did not cover domestic rates, which included line rental rates, even though GT&T described these rates as being brutally subsidized.

On October 11, 1995 the GPUC made an order rejecting GT&T's application and reducing the rates for 87 of the 207 countries for which GT&T had proposed increased

⁷ ATN's IPO Prospectus, dated November 14, 1991, at page.. 27.

⁸ Concerned that GT&T's refusal would set a bad precedent, the GPUC had it prosecuted for violating the PUC Act. GT&T was found guilty and fined by the court.

rates. The GPUC order reducing the rates was vacated by the Guyana High Court, after GT&T obtained an injunction forbidding the GPUC from reducing the rates. On December 31, 1997, GT&T submitted another application to the GPUC for approval to increase both its domestic and its international rates. The first hearing was held on January 28, 1998, when the GPUC decided to approve temporary increases. These are the increases to which ATN referred in its Response Comments, when it alluded to “modest increases in these [line rental] rates” in 1998.⁹ Most unfortunately, for a number of reasons, including legal action by GT&T against the GPUC, which interrupted progress, the hearings have not yet been concluded. The GPUC might have contributed to the delay, but this does not justify the allegation that the GPUC was enforcing “a brutally subsidized policy.” The subsidized rates reflected a deliberate choice of GT&T.

In light of all that has been said, ATN’s complaint that the PUC was enforcing a brutal subsidization policy is most unreasonable and unfair. In retrospect, GT&T’s unwillingness to rebalance the rates in 1991 appears to have been influenced by ATN’s plans to exploit the international phone sex business. Within months of acquiring GT&T, ATN had become a founding member of the International Telemedia Associates, Inc.. The high above cost accounting rates underlying the high collecting charges for GT&T’s international calls offered a generous opportunity for the sharing of settlement revenue with audiotext partners. As explained in the Comments submitted on behalf of the Guyana Consumers, without adding value to GT&T’s international telephone operations, in terms of a premium rate charge to be collected from overseas callers of its phone sex numbers, GT&T was treating the entire amount of the settlement revenue generated by these calls, as audiotext earnings.

ATN has sought to dismiss the relevance of the audiotext issue, claiming that the volume of audiotext calls has declined in significance. However, this does not erase the past record of misallocation and misuse of its settlement revenues. There is overwhelming evidence that GT&T has abused the privilege of a high settlement rate to divert revenue to organizations and individuals, which its management could not identify to the

⁹ ATN’s Reply Comments, page 9.

satisfaction of the GPUC. Yet, ATN is now seeking a waiver to enable it to maintain this privilege, without any assurance that settlement revenues would not be diverted or mismanaged in the future. The demonstrated inability of GT&T's management to exercise effective control of the utility's finances does not leave much room for hope.

AT&T has stated in its Response Comments that, since 1991, GT&T had received \$272 million in net settlement revenues from U.S. carriers.¹⁰ ATN's submissions to the FTC, including Mr Fucella's¹¹ affidavit, confirm the fact that no U.S. company has been making any payments to GT&T as earnings derived from GT&T's audiotext service. The payments transferred were for call termination services provided to these carriers under accounting rate agreement filed with the Commission. The agreement says nothing about audiotext payments. Yet, year after year, GT&T has been informing the SEC, in its 10K and 10Q reports, that the telephone companies were transferring revenues which had to be garnered from charges for its audiotext services. **Both declarations cannot be true. If it is assumed that Mr Fucella told "the truth and nothing but the truth" in the affidavit submitted to the FTC, it follows that what ATN has declared to the SEC is absolutely false. This must be a matter of serious concern.**

ATN is asking the Commission to believe that it has been using the settlement revenues for network expansion and universal service. The evidence shows that a major portion of the settlement revenue earned over the past nine years was reclassified as audiotext revenue and most of this revenue was siphoned off to organizations and individuals in a manner that gives just cause for concern. **ATN has studiously avoided this issue and is probably expecting that it would be ignored by the Commission.**

To support this finding, we turn to the sworn testimony of one of GT&T's officials at a hearing before the GPUC. It should be explained that, contrary to what GT&T has suggested, the Commission is not being asked to adjudicate on matters pending before the GPUC, but simply to take due notice of testimony that has been given under oath. The

¹⁰ See Comments of AT&T and Affiliates, page 22, footnote 60.

¹¹ Mr Fucella, an ATN official, was in charge of audiotext services.

Consumers are prepared to accept the opinion of the Commission regarding the weight of this testimony

Annex 1 presents copies of ten pages selected from the transcript of the 1997 rate case hearing held on August 12, 1998. In testimony under oath, Ms Batson, a GT&T witness, provides information on how payments were made to Beylen Telecom, the largest audiotext company associated with GT&T. (The relevant parts of Ms Batson's testimony have been sidelined for ease of reference).

Actually, there are two Beylen companies - Beylen Telecom and Beylen Inc. With respect to payments to Beylen Telecom, Ms Batson testified that she received instructions from an individual whom she could identify only as Umalie. Although she often receives telephone calls from Umalie concerning payments, she was unable to tell the GPUC in which country Umalie was located, whether in the Cayman Islands or the U.S.A.¹² She has never made a telephone call to Umalie and did not know her telephone number. Payment instructions were issued by fax, with nothing to indicate the identity or location of the person who issued the instructions, not even a fax or telephone number¹³.

Besides payments to Beylen Inc., Beylen Telecom issued instructions for regular payments to other organizations, including MCCT, Triple 7 Telecoms, El Telecommunications and, in the words of a GPUC official, to a "standard set of people," including Coleen Harrison and Charlotte Jansen.¹⁴

Ms Batson's description fairly represents the manner in which payments were being made to organizations and individuals outside of Guyana.

ATN's diversion of settlement revenue paid by U.S. carriers raises two important questions:

¹² Transcript of Hearing dated August 12, 1998 pp. 23, 24, 30 and 31 (See Annex 1, pp. 5, 6, 9 and 10).

¹³ Ibid., p. 26 (See Annex 1, p. 8).

¹⁴ Ibid., p. 9 and 10 (See Annex 1, pp. 1 and 2)

- Does GT&T's use of the \$272 million in net settlement revenue payments from U.S. carriers engender any confidence about future use?
- How much of the reclassified settlement revenue has gone to network development and universal service?

In relation to the second question, the evidence suggests that very little was left that for investment purposes. This will emerge from the following considerations.

GT&T pays more than 50% of the reclassified revenues to persons associated with the audiotext business. It pays out 6.67%¹⁵ of the reclassified revenues as consulting fees to ATN in connection with the audiotext service. This payment is in addition to the 6% advisory fees paid on its gross revenue, which includes the revenue redirected to the audiotext business. So, on the reclassified revenues, GT&T pays a total of 12.67% in advisory and consulting fees, which brings the total fees paid to almost 72.67% percent of the reclassified revenues. On top of the fees, one should add expenses incurred in hosting and operating the audiotext business, including the expenses associated with the use of infrastructure facilities specially created for the audiotext business. Finally, some discount would be appropriate for the leakages resulting from the inefficient management of GT&T's finances. It should not be surprising if very little is left, after the deduction of tax from the residual revenue.

The fact that GT&T appears to be paying out well in excess of 73% of the gross settlement revenue ascribed to the audiotext business clearly suggests that the benchmark rate is well above the marginal cost of terminating calls for U.S. carriers. This contradicts GT&T's claim, made in a letter to the Commission dated January 11, 1993, "that the existing accounting rate of \$1.70/minute is not in excess of costs."¹⁶ Indeed, GT&T admitted, in the same letter, that it had informed AT&T that "an accounting rate of \$2.64/minute was cost oriented," a most perplexing statement, in light of GT&T's arrangement to divert well over 60% of the settlement rate to its audiotext business.

¹⁵ Transcript of Hearing held on November 18, 1998, at pp. 43 and 44 (See Annex 2, sidelined testimony)

¹⁶ See letter from Mr Clarence Hordatt, General Manager of GT&T, dated January 11, 1993, CC Docket No. 90-337 (Phase II) at Annex 3.

ATN has steered clear of the revelations in the Response Comments of the Guyana Consumers pertaining to the management of GT&T's finances. The comments are based on the sworn testimony of GT&T's staff. ATN has not denied GT&T's use of signature machines bearing the names of ATN officials, who have no official position in GT&T, to issue payment authorizations and sign checks on behalf of GT&T. Also, ATN has denied the sworn testimony of GT&T's officials that instructions to make large payments to individuals and organizations, of whom GT&T's management appears to know very little, were being written on plain paper, without the name, signature, office, address, telephone or fax number of the authorizing person. Is it in the public interest to demand high telephone rates from U.S. callers to support these practices?

The Consumers are resigned to the fact that it is up to the Commission to accept or reject the evidence presented of GT&T's misuse of its settlement revenue and its general mismanagement of its financial operations. Unless this evidence is rejected, the Commission will have to decide whether it is in the public interest to require U.S. consumers to bear the burden of very high charges for calls to Guyana in order to provide excess revenues to a company that has a record of diverting and misusing the settlement revenues received from U.S. carriers, over the past nine years.

The Consumers have taken ATN at its word that GT&T needs the excess revenue for investing in "network expansion and universal service." It is for this reason that the Consumers have proposed that GT&T should enter into a firm and irreversible commitment to reserve the revenue directly attributable to the difference between the benchmark rate of US\$0.23 per minute and the current settlement rate of US\$0.85 per minute for the proposed development. It is rather disappointing that GT&T has not even commented on this proposal as a possible alternative to an outright rejection of its request for a waiver. GT&T would have nothing to lose from this arrangement and the Guyana Consumers would have something to gain. The funds reserved and invested, as proposed, would add to shareholder value, while satisfying the demand for telephone services to an increasing degree.

Even if a waiver is denied, GT&T's pessimism regarding the impact on its revenue is hardly justified. There are over 250,000 expatriate Guyanese living in the United States who, on average, are far better off than the estimated 800,000 persons living in Guyana, which has a telephone density of only 8%. This situation accounts for the far greater volume of calls from the U.S.A. to Guyana than vice versa and for the high net settlement revenue earned by GT&T.

The reduction in the subscriber rates for calls to Guyana, if the waiver is denied, is almost certain to result in an increase in the volume of calls. However, with respect to calls from Guyana, because of the declared intention of the Government to reduce or phase out the subsidy on domestic rates under telecommunications reform, the reduction in subscriber rates for calls to the U.S.A would not be as steep as for calls from Guyana. This would contain the increase in the volume of calls from Guyana. The dynamic effects of the reduction in the settlement rate should minimize GT&T's revenue loss. Added to this is the fact that the access difficulties being experienced by persons attempting to call Guyana, an unfortunate consequence of the disagreement between GT&T and AT&T over the implementation of the benchmark rate, should fade away, with the denial of a waiver. This should lead to an increase in the volume of calls to Guyana. and should further offset the decline in settlement revenue.

Since 1991, GT&T has increased the number of access lines from 20,000 to 71,738 at the end of 2000. For the additional 51,738 lines, GT&T invested \$140 million or \$2,706 per line. Most of the lines were added in urban areas, which accounted for 85% of the total number of lines installed. GT&T's per line investment cost appears to be way out of line with investment costs in other developing countries. In 1995, Alan Cane reported a figure of \$1,500 per access line in a Financial Times article.¹⁷ In the same year, Peter Waldman reported a figure of \$1,000 per line for India in the Wall Street Journal.¹⁸ In the absence of a review or investigation of GT&T's investment expenditure, which is a

¹⁷ Alan Cane, Demand on a grand scale, Financial Times, May 9, 1995

¹⁸ Peter Waldman, India seeks to open huge phone market, Wall Street Journal, July 27, 1995.

normal process in rate-of-return regulation, one can only speculate as to the reasons for GT&T's high per line cost.

A possible reason is sheer waste due to inefficient control of GT&T's expenditures. There is abundant evidence that this may be so in the sworn testimony of GT&T's officials. The domination of GT&T's management by ATN, a relationship that is prohibited in public utility regulation, is overwhelmingly responsible for this situation.

Another reason is that infrastructure investment was concentrated mostly on switching and transmission and this was not matched by an optimal utilization of the capacity created in terms of the distribution facilities and the number of access lines provided. Investment in switching and transmission is the easiest and speediest way to increase the value of the rate base and justify the need for higher rates. This situation, whether or not it is the result of deliberate action, is most propitious for GT&T, with the possibility of a settlement rate reduction and the consequential need for increasing its rates. Increasing the number of access lines would lead to competition for switching and international circuit capacity for GT&T's audiotext service. GT&T would have an incentive to restrict the expansion of access lines to leave maximum room for its audiotext service. In these circumstances, the audiotext service would be responsible for retarding the expansion of telephone service.

A third reason could be excessive costs of capital goods procured through ATN, in circumstances where ATN exercises full control over the decisions of GT&T's management. Although there is no statistical evidence to test these assumptions, the circumstantial evidence points rigidly in all three directions.

Guyana is a member of the Caribbean Community (CARICOM), a regional group of fourteen countries. As the shown in the table below,¹⁹ Guyana is the only CARICOM country that has not made any reduction in its settlement rate since January 1, 1997, the date when the Benchmark decision became effective. In fact, Guyana is the only

¹⁹ Haiti is a provisional member of CARICOM.

CARICOM country that has not reduced its settlement rate, since 1987. The progressive reduction of the rate does not seem to have retarded the development of telecommunications in other CARICOM countries.

SETTLEMENT RATES BETWEEN THE U.S.A. AND CARIBBEAN COMMUNITY COUNTRIES

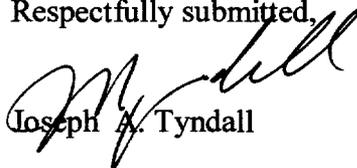
Counties	01/01/87	01/01/97	09/01/01	01/01/01 Rate
Antigua & Barbuda	0.80	\$0.46	\$0.19	\$0.19
Bahamas	\$0.35/0.15	\$0.30/0.15	\$0.15	\$0.15
Barbados	\$0.80	\$0.53	\$0.19	\$0.19
Belize	\$1.00	\$0.60	\$0.19	\$0.19
Dominica	\$0.75	\$0.46	\$0.19	\$0.19
Grenada	\$0.75	\$0.46	\$0.19	\$0.19
Guyana	\$0.85	\$0.85	\$0.85	\$0.23
Jamaica	\$0.88	\$0.63	\$0.19	\$0.19
Montserrat	\$0.75	\$0.46	\$0.19	\$0.19
St Kitts and Nevis	\$0.80	\$0.46	\$0.19	\$0.19
St. Lucia	\$0.75	\$0.46	\$0.19	\$0.19
St. Vincent	\$0.75	\$0.46	\$0.19	\$0.19
Suriname	\$1.25	\$1.08/0.98	\$0.50	\$0.19
Trinidad & Tobago	\$0.83	\$0.58	\$0.19	\$0.19
Haiti	\$0.73	\$0.60	\$0.50	\$0.19

Source: FCC, IMTS Accounting Rates of the United States of America, 1985 - 2001.

ATN has pleaded that “[T]he Commission should not be neutral when it comes to U.S. investment in incumbent operators in less-developed countries; it should do whatever it can to help such investments succeed in order to promote the U.S. public interest.”²⁰ Even more directly, ATN has asked the Commission to grant a waiver to help it in its negotiations with the Government of Guyana with respect to the liberalization of the telecommunications sector.²¹ ATN is pleading that, regardless of the merits of its case, the Commission should grant a waiver simply because GT&T is a U.S. investment. This is an appeal to unvarnished chauvinism. Is this a policy that other countries should adopt with respect to the investments of their nationals in telephone companies or industry in general? And would such a policy be in the best interest of U.S. investments in foreign countries, including the countries of the European Community? (It is interesting to note that ATN is recommending that this policy be applied exclusively to less-developed countries) GT&T has swung from the *argumentum ad hominem* to the *argumentum ad misericordiam*.

I respectfully submit that ATN’s petition has no merit. The FCC should reject the petition, unless, as a compromise, ATN and GT&T agree to reserve the excess revenue directly attributable to the difference between the benchmark rate of \$0.23/minute and the current settlement rate for Guyana of \$0.85/minute for use solely in connection with network expansion and universal service.

Respectfully submitted,



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October 8, 2001

²⁰ ATN’s Response Comments, page 3.

²¹ Ibid. page 14.

ANNEX 1

**Extracts from Transcript of Hearing of the Guyana Public Utilities
Commission**

Held on

August 12, 1998

- Mrs Ganpatsingh : Does Beylen have a standard set of people that they ask you to pay, or does it vary every month?
- Miss Batson : Most of the time they are standard. Occasionally you may have a strange payee.
- Mrs Ganpatsingh : What are the normal ones that you know about? The regular ones - companies or individuals or whoever.
- Miss Batson : That would be Beylen Telecoms, Beylen Inc., El Communications, Charlotte Jansen, MCCT.
- Mrs Ganpatsingh : What about Coleen Harrison?
- Miss Batson : And Coleen Harrison, yes.
- Mrs Ganpatsingh : So there is a Charlotte Jansen and there is a Co Harrison.
- Miss Batson : Yes. Coleen Harrison and Charlotte Yansen.
- Mrs Ganpatsingh : Do you know any of these ...
- Miss Batson : No, no.
- Mrs Ganpatsingh : What do you do next? You have got the fax. It's time to pay, the due date has arrived.
- Miss Batson : I prepare the letters of transfer, these are the wire transfer letters with the relevant bank information, and I send that by fax to our bank in New York and the payment is effected therefore.
- Mrs Ganpatsingh : Do you take that letter to be checked by anyone?
- Miss Batson : No, I don't.
- Mrs Ganpatsingh : So you don't have to go to anyone with that letter plus your invoices.
- Miss Batson : No.
- Mrs Ganpatsingh : Nothing, just you send the faxes. What's next in the procedure?
- Miss Batson : After those faxes go through. I will get an acknowledgement report saying, yes it was transmitted to our bank, and I would then prepare individual payment vouchers and attach the wire transfer letter and the invoice. Then I would number those on a wire log I keep in front of each file for ^{each} month or two months, depending on how many persons we have in one file.

Mr Wilson : So the only reason that the payments were made is because it came from Miss Jagan? 2

Miss Batson : Yes, and I would assume from Audiotext to her.

Mr Wilson : O.K.

Chairman : You give me those documents - instructions for payment. Documents given to Chairman
That is a copy of a fax message. Is it?

Miss Batson : Yes, it is.

Chairman : From whom?

Miss Batson : This is part of Beylen's payment.

Chairman : So why do you say it is Beylen?

Miss Batson : Pardon me?

Chairman : Why do you say it is Beylen?

Miss Batson : Because Beylen would ask us to pay Triple 7 Telecoms.

Chairman : It doesn't have the name of Beylen. Does it have from whom it comes?

Miss Batson : No.

Chairman : I know it came to Sonita, but it doesn't show from whom it came. Does it have the fax number of the fax from which it was sent?

Miss Batson : No.

Chairman : Normally if I send a message from my fax, the receiver would know from which fax it came. Do you have any idea about how this could be managed - to send a fax without indicating the fax machine through which it was sent, the number of the fax machine through which it was sent?

Miss Batson : I don't know.

Chairman : You don't know.

Miss Batson : No.

Chairman : Please give it to me. Document returned to Chairman

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OF THE ORIGINAL


Chairman : What is this - Triple 7 Telecoms?

Miss Batson : That is one of the persons Beylen would ask us to make payments to.

Chairman : Why do you say that it is from Beylen - from the handwriting?

Miss Batson : Pardon me?

Chairman : Why do you say this is from Beylen - from the handwriting?

Miss Batson : Because I am familiar with the payee.

Chairman : Triple 7. You get instructions only from Beylen to pay Triple 7.

Miss Batson : That's right.

Chairman : You don't know what this Triple 7 is, where it is? You have got the account number and the bank's name. /Chairman peruses document/ Who has signed that document?

Miss Batson : ~~James Hinds and~~ Jimmy Kean.

Chairman : James Hinds?

Miss Batson : Yes.

Chairman : And ...?

Miss Batson : Jim Kean.

Chairman : James Hinds is not the gentleman we ...

Miss Batson : No, these were original approved signatories, and we only had those changes here.

Chairman : The approved signatories are officers of GT&T?

Miss Batson : Yes.

Chairman : They are still there?

Miss Batson : No, they're not.

Chairman : What position they held?

Miss Batson : ~~James Kean~~ was the General Manager of GT&T.

Chairman : ~~James Hinds~~?

Miss Batson : Kean.

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OF THE ORIGINAL

[Signature]

Chairman : Kean was General Manager, I know.

Miss Batson : And James Hinds was Finance Controller, I think, of ATN.

Document shown to Miss Batson

Chairman : That amount went to whom? The \$1m was transferred to whom?

Miss Batson : I would have to check in this month to see ...

Chairman : There is a name - GT&T.

Miss Batson : Yes, but I would have to refer to my wire transfer file to tell you who this payment was made to.

Chairman : Who is the addressee? The document shows to whom it is to go.

Miss Batson : It said it was sent to City Bank.

Chairman : Pardon?

Miss Batson : This is saying it was sent to City Bank, the payment was made to City Bank.

Chairman : City Bank made it to whom? It has been transferred from ...

Miss Batson : From Banko Popular to City Bank.

Chairman : For whose benefit?

Miss Batson : I would have to check my wire transfer file.

Chairman : Can I see it once again? Document given to Chairman Wire transfer sent to City Bank, New York. Is this GT&T Box No. 6100, St Thomas, US Virgin Islands? What is this company? Is it the person who sends the instructions, or is it the beneficiary?

Miss Batson : City Bank is the beneficiary. It was sent to City Bank for somebody.

Chairman : City Bank, and then an account number is here. The 'prepared by' and 'approved', all that is here. Is this account in the name of GT&T, Box No. 6100, St Thomas, US Virgin Islands?

Miss Batson : I am not hearing what you are asking me.

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OF THE ORIGINAL

[Signature]

Chairman : This is a debit advice.

Miss Batson : Yes, it is.

Chairman : There is an account number here.

Miss Batson : Yes.

Chairman : There is the name of a company here - GT&T.

Miss Batson : Yes, but I think the address is incorrect.

Chairman : Pardon?

Miss Batson : The address is incorrect.

Chairman : That is what you assume. This account number is in the name of GT&T, Box 6100, isn't it? St Thomas

Miss Batson : It should be in the name of GT&T.

Chairman : The account is in the name of GT&T at Box No. 6100, St Thomas, US Virgin Islands.

Miss Batson : No, I don't think the address is correct.

Chairman : We will come to that conclusion, but that is what is written here. We will examine your conclusion, but as per this document the account appears to be in the name of GT&T, Box No. 6100, St Thomas, US Virgin Islands.

It could be a correct name. GT&T may have an office in St Thomas. Nothing prohibits, because the ATH's office is in St Thomas, isn't it?

Miss Batson : Yes.

Chairman : What is this? That is an instruction to transfer funds from the account of Beylen Communications Inc To which account?

Miss Batson : No, we are making the transfer to these two account

Chairman : You are transferring to which account?

Miss Batson : To Beylen Telecoms account and to Beylen Inc.'s account.

Chairman : Who sent the instructions?

Miss Batson : Umalie.

Chairman : You have dealt with her?

- Miss Batson : Pardon me?
- Chairman : Have you had dealings with this lady?
- Miss Batson : On the telephone, yes.
- Chairman : On the telephone. You used to check with her to confirm that the instructions were sent by her?
- Miss Batson : She would normally call.
- Chairman : She talks before she sends the fax or after she sends the fax, or she checks to see whether you received it?
- Miss Batson : Sometimes she calls before to say she is sending a fax, sometimes she would call after she has sent it to ensure that we have received these things.
- Chairman : What is the amount there?
- Miss Batson : The one for Beylen Telecommunications is \$1,460,625.46.
- Chairman : That is dated what day, the instruction?
- Miss Batson : 25th September, 1997.
- Chairman : And you once again see this. Document shown to Miss Batson That is 26th September. The amount corresponds to the amount transferred to Beylen Telecommunications.
- Miss Batson : Telecommunications, yes.
- Chairman : Have you got any explanation? What does it mean? I don't know. You got an instruction to transfer some money, \$1,460,000 etc., to Beylen Telecommunications.
- Miss Batson : Yes.
- Chairman : And the second document is a debit advice ...
- Miss Batson : Yes, Sir.
- Chairman : ... that the money was transferred to GT&T's account...
- Miss Batson : No, it was not transferred to GT&T's account.
- Chairman : What is a debit advice?

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OF THE ORIGINAL

Miss Batson : It was transferred to City Bank, New York, from GT&T's account.

Chairman : So GT&T was having an account in St Thomas?

Miss Batson : No, this document is from Banko Popular and that's in New York.

Chairman : Banko Popular is in New York?

Miss Batson : Yes. The one we deal with is in New York.

Chairman : Pardon?

Miss Batson : The one we deal with is in New York.

Chairman : Not in Antigua.

Miss Batson : No, Sir. Document shown to Miss Batson

Chairman : That money was transferred to whom?

Miss Batson : To Lloyd's Bank.

Chairman : No, for whose benefit?

Miss Batson : Here again I would have to check my wire file to find the payee.

Chairman : You have to check. Document shown to Miss Batson That document is for what? Is it an instruction to pay?

Miss Batson : Yes, it is.

Chairman : To whom?

Miss Batson : To MCCT.

Chairman : What is that company?

Miss Batson : Pardon me?

Chairman : Who sent the instruction?

Miss Batson : This would be one of Beylen's instructions too.

Chairman : Why do you say it is?

Miss Batson : Because I am familiar.

Chairman : Familiar with what? The paper? The writing?

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[Handwritten signature]

Miss Batson : With making payments to MCCT.

Chairman : Pardon?

Miss Batson : I am familiar with making payments to ...

Chairman : You get instructions from Beylen only to pay to this company. What is it? MCCT.

Miss Batson : Yes.

Chairman : That is why you said the instruction must have come from Beylen. There is nothing on the document which indicates from whom the instructions came.

Miss Batson : No, Sir.

Chairman : Is a fax number there?

Miss Batson : No, Sir.

Chairman : In that document also it is not possible to say from whom the instructions came.

Miss Batson : No, Sir.

Chairman : When you get any instructions, it does not on the face of it show from whom it came. Do you check up? When you get an instruction to pay a sum of money, to transfer a sum of money to a particular account, do you verify from whom the instruction came?

Miss Batson : No, Sir.

Chairman : And it isn't possible because it doesn't have a fax number, telephone number, nothing.

Miss Batson : No, Sir.

Chairman : You say that you guessed it is from Beylen. If at any time you leave this Company, nobody would be able to find out why you acted upon these instructions, or from whom the instructions came. Even if you continue, there is a certain age when you will leave the employment of GT&T, and after that nobody will be able to know why this payment has been made.

Miss Batson : I don't think that is accurate.

Chairman : Why?

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[Signature]

- Chairman : You showed her all of that.
- Miss Batson : Yes, Sir.
- Mr. Jagan : You see, Mr Chairman, with respect, the question that you were asking her about those documents for the last 15 or 20 minutes, with the greatest respect, should not have been asked, because all those explanations that you were seeking your people had during the day and they ought to have told you. Maybe you are not aware of it and that is why you are asking those questions. Because if you are aware of those invoices that your members of the Commission had seen during the day, then there would have been no necessity for you to ask the witness all those questions - about explaining how some of the documents were not signed and if she knew whether payments had been made, where it came from and so on, because those things were already seen during the day.
- Mr Massiah : And very willingly given up, volunteered by GT&T.
- Chairman : I only want to say this: If the people who are here go with the wrong impression, it will not be from my questions but from your interventions.
- Mr Jagan : Oh no, no, but because of our interventions the members of the public would know that if we were not intervening, persons would not know what was happening, because no one would have known what was happening if we were not intervening.
- Chairman : Have you ever talked to anyone in Baylen Telecommunications?
- Miss Batson : Yes, Umalie.
- Chairman : Pardon?
- Miss Batson : Umalie.
- Chairman : Who?
- Miss Batson : Umalie.
- Chairman : On which number?
- Miss Batson : She called me.
- Chairman : Oh, she called you.
- Miss Batson : Yes.

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[Handwritten Signature]

Miss Batson : No, I can't say.

Chairman : Whether in the United States or in the Cayman Islands or where, you can't say.

Miss Batson : No, I wouldn't be able to say, Sir.

Chairman : You have never telephoned her.

Miss Batson : No, I don't think so.

Chairman : You have not telephoned anybody in Beylen Telecommunications anyway, you on your own.

Miss Batson : No, Sir, I haven't.

Chairman : And you have not sent any fax message to anybody in Beylen Telecommunications.

Miss Batson : No, Sir, I have not.

Chairman : Thank you. [Enquires of Members of the Commission whether they would like to ask questions. They decline.] Alright, thank you.

Mr Nurse, Sunita Jagan.

Mr Massiah : You put your witness through a gruelling cross-examination.

Chairman : Gruelling? I was asking her quite smoothly about certain things.

Mr Massiah : Quite gruelling. Sounds as if we are cross-examining people in a law court. Sir, you know, I was wondering since yesterday whether - perhaps you're doing it - whether we ought not to be marking those documents.

Chairman : I marked them.

Mr Massiah : They're marked.

Chairman : I marked them C1(a) to C1(k). I've got it.

Mr Massiah : No, I was thinking not only of those to which you personally directed Miss Batson's attention. I'm dealing with all the other documents. You put a number of them to her.

Chairman : I promise to send you copies of all those documents during the course of this week, and of course we are at the mercy of Mrs Marks for the transcript.

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ANNEX 2

**Extracts from Transcript of Hearing of the Guyana Public Utilities
Commission**

Held on

November 18, 1998

- Chairman : Alright. The witness may say what he knows, why this amount is being paid, what he knows. If he doesn't know, he can say he doesn't know why the 6.67% is being paid. If he knows, he has to answer the question.
- Mr Statia : In addition to what both Mr Roopnauth and Miss Jagan said earlier, what I know for sure is that ATN actively goes out in the world at large and seeks audiotext business on behalf of GT&T.
- Mr Hughes : Which is marketing.
- Mr Statia : And it is business that we would not have gotten, in the first place, and the 6.67% of the gross revenues attained for that business which we would not have gotten in the first place, as far as I am concerned is small and infinitesimal ...
- Mr Hughes : Oh yes. Your views ...
- Mr Statia : Let me finish, please. You asked me for my views. Let me finish. You asked me what services were they performing. Let me finish, please. As far as I am concerned, for the work they have done and the revenues that GT&T has earned, that fee is small in comparison.
- Mr Hughes : O.K., Sir. So the sum of ~~US~~\$845,675,000 in 1995 was a reasonable sum to spend for marketing of audiotext.
- Mr Statia : ~~That's the figure you have here, Sir - \$845,675,000.~~ ...
- Mr Hughes : That's the figure you have here, Sir - \$845,675,000.
- [Document shown to Mr Statia]
- Mr Statia : In 1995 the consulting fees were US\$5.9m, yes it was.
- Mr Hughes : So you're saying that in 1995, US\$5.5m ...
- Mr Statia : US\$5.9.
- Mr Hughes : US\$5.9m was a reasonable sum to pay for the marketing of audiotext revenues?
- Mr Statia : Yes, Sir, because if you divide the US\$5.9m by the 6.67% it is in excess of US\$100,000,000 that GT&T would not have gotten in revenues. When you look at \$6m versus \$100m, I'm sure that you know the figures.

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Mr Hughes : So audiotext - 6.67%, loan guarantee - 3%. Can you tell us what constitutes the remaining sums, the remaining services, sorry, provided by ATN to GT&T?

Mr Statia : What are you talking about?

Mr Hughes : O.K. You've got Audiotext Consulting Fees.

Mr Statia : Yes.

Mr Hughes : That's one set of services.

Mr Statia : I think Legal and Professional Fees are included there.

Mr Hughes : Legal and Professional Fees?

Mr Statia : Yes.

Mr Hughes : Loan Guarantee.

Mr Statia : Yes.

Mr Hughes : Is there anything else?

Mr Statia : I think Legal and Professional.

Mr Hughes : No, I've mentioned that already.

Mr Statia : I cannot recall, but as I advised before, a list...

Mr Hughes : The other one is Home/Office Expenses.

Mr Statia : ... a list of all of those services that have been provided by ATN, they are in the advisory contracts.

Mr Hughes : ~~Are you aware of whether any contract exists between the audiotext user in the United States of America and any of these audiotext companies?~~

Mr Statia : Audiotext user ...

Mr Hughes : If you pick up the phone in the US ...

Mr Statia : Whom are you calling the audiotext user?

Mr Hughes : The person in the United States who picks up to dial the Guyana audiotext number.

Mr Statia : As far as I am aware, No.

Mr Hughes : ~~So there is no contract between the user of the audiotext service in the US and the audiotext company?~~

ANNEX 3

**Letter from the General Manager of Guyana Telephone and Telegraph
Ltd to the Secretary of the FCC, dated January 11, 1993**

Guyana Telephone & Telegraph, Ltd.
P.O. Box 10628 • Brickdam, Georgetown • Guyana, S.A.

DUPLICATE
FILE ✓

RECEIVED

JAN 11 1993

January 11, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 90-337 (Phase II)

Dear Ms. Searcy:

On behalf of Guyana Telephone & Telegraph Co. Ltd. ("GT&T"), I am responding to AT&T's letter to the FCC dated January 4, 1993 concerning AT&T's accounting rate negotiations with foreign carriers. Unfortunately, AT&T has justified the inclusion of Guyana on AT&T's selected list of "egregious" countries based upon misrepresentations and half-truths concerning the actions and proposals of GT&T. I am writing in hopes of ensuring an accurate record in this matter.

First, contrary to AT&T's statement, GT&T has never issued a proposal or counter-proposal that the current accounting rate be increased to U.S. \$2.64/minute. Rather, GT&T informed AT&T on several occasions of GT&T's analysis that an accounting rate of \$2.64/minute was cost-oriented in GT&T's particular circumstances at the time. Our purpose was merely to confirm that the existing accounting rate of \$1.70/minute is not in excess of costs. It is our understanding that the FCC, like GT&T, desires cost-oriented accounting rates. Nevertheless, AT&T continues to demand that GT&T lower the accounting rate without regard to cost in order to increase AT&T's profitability.

Second, AT&T neglected to mention that GT&T charges Guyanese consumers far less for calls to the U.S. than AT&T charges U.S. consumers for calls to Guyana. GT&T's charge during all time periods is approximately 104 Guyana dollars, which translates into approximately \$0.83/minute at the current rate of exchange. By contrast, AT&T's charge for the initial

Ms. Donna R. Searcy
January 11, 1993
Page 2

minute during the standard daytime period is \$2.99, more than three times as high. GT&T has inquired whether AT&T would commit to lowering its collection rate for calls to Guyana if GT&T were to agree to lower the accounting rate. AT&T has responded that it will not make any such commitment.

Third, AT&T's claim that GT&T discriminates against the U.S. as regards the accounting rate is baseless. GT&T does have a lower rate for calls to its neighboring country Trinidad & Tobago, but such calls use a lower cost and lower quality technology. AT&T declined to mention that GT&T has a higher accounting rate with the United Kingdom than with the U.S. (and GT&T is a net debtor as regards the United Kingdom). Indeed, it may be relevant to note that AT&T maintains a lower accounting rate with Guyana than with many other countries. Is GT&T to infer that AT&T is discriminating against Guyana?

Fourth, I would note that there is virtually no U.S. balance of payments problem with respect to Guyana. GT&T is 80% owned by the U.S. company Atlantic Tele-Network, Inc. ("ATN") so that settlement payments are, for all practical purposes, being made from one U.S. company to another. And such settlement payments are being used to fund GT&T's extensive capital improvements program, which has involved purchases of U.S.-manufactured telecommunications equipment totalling more than \$20 million. Further, the FCC should be aware that ATN's infusion of equity into GT&T has been guaranteed by the U.S. agency OPIC. AT&T has shown no sensitivity to these and other legitimate interests of the U.S. and Guyana in its accounting rate negotiations.

Fifth, I feel obliged to note that AT&T threatened GT&T some months ago with being included on the "egregious" list if GT&T did not capitulate to AT&T's demands for reductions in an already below-cost accounting rate. Therefore, we were not surprised to learn that AT&T carried out that threat in its report. However, we were disappointed that AT&T did not show greater care and accuracy in explaining the circumstances of its accounting rate negotiations with GT&T.

Ms. Donna R. Searcy
January 11, 1993
Page 3

I hope this letter helps to set the record straight on
this matter.

Very truly yours,

Clarence Hordatt

Clarence Hordatt
General Manager

cc: Ms. Cheryl A. Tritt (FCC)
Ms. Diane J. Cornell (FCC)
Mr. Gerald P. Vaughan (FCC)
Ms. Elaine R. McHale (AT&T)