

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL STANDARD  
ELECTRIC CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-8292

Decision No. CU -6001

Appeal and objections from a Proposed Decision entered January 6, 1971; oral hearing requested.

Oral argument May 19, 1971 by Stanley L. Temko, Esq.

FINAL DECISION

Under date of January 6, 1971 the Commission issued a Proposed Decision on this claim certifying losses of the claimant for debts in the amount of \$2,221,440.45, and denying so much of the claim as was based on the value of its ownership interest in Equipos Telefonicos Standard de Cuba (Equipos). Equipos was found to have been nationalized by the Government of Cuba on August 6, 1960.

The Proposed Decision held that the balance sheet for Equipos for the year ending December 31, 1959 reflected capital and surplus of \$197,231.91 but there were accounts receivable due from International Telephone and Telegraph Corporation (claimant's parent) and subsidiaries of ITT in the amount of \$364,082.49. These items were not within the jurisdiction of the Republic of Cuba, and deduction of these assets left a deficit of \$166,850.58.

Upon consideration of the entire record and in light of counsel's clarification, the Commission now finds that the most equitable basis of valuation is to determine the going concern value. Accordingly, using the net earnings of Equipos for the first 9 months of 1959, projected for the entire year, and capitalizing this figure at 10 per cent, the Commission finds a going concern value of Equipos in the amount of \$1,042,000. It does not appear, however,

that quick assets were available to be added to this result as they are seen to have been consumed in certifying certain debts due to the claimant.

Claimant's total losses are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock Interest in Equipos	August 6, 1960	\$1,042,000.00
Debts owed by Equipos	August 6, 1960	680,883.00
Debts owed by Cutelco	August 6, 1960	1,509,745.00
Debts owed by others:		
Ferrocarriles	April 8, 1960	1,218.67
Consolidated Railroads	October 13, 1960	5,303.49
L. Sosa y Cia Obra Pia	March 2, 1961	2,505.00
Debts owed claimant's subsidiary by:		
Cutelco	August 6, 1960	14,641.76
Equipos	August 6, 1960	<u>7,143.53</u>
	Total	\$3,263,440.45

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
April 8, 1960	\$ 1,218.67
August 6, 1960	3,254,413.29
October 13, 1960	5,303.49
March 2, 1961	<u>2,505.00</u>
Total	\$3,263,440.45

Accordingly, the Certification of Loss, as restated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

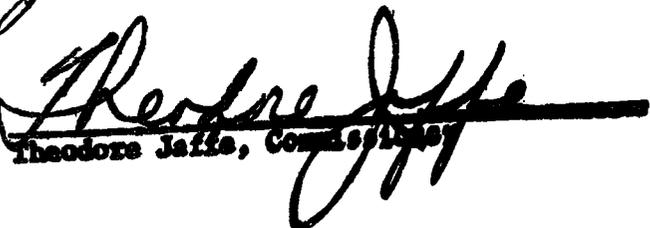
CERTIFICATION OF LOSS

The Commission certifies that INTERNATIONAL STANDARD ELECTRIC CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Million Two Hundred Sixty-Three Thousand Four Hundred Forty Dollars and Forty-Five Cents (\$3,263,440.45) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Final  
Decision of the Commission

**JUL 14 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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Counsel for claimant:

Covington & Burling  
By Stanley L. Temko, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by INTERNATIONAL STANDARD ELECTRIC CORPORATION for \$3,424,388.00 based upon the asserted losses resulting from the nationalization of its subsidiary and from debts owed by its subsidiary and other nationalized enterprises.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government, of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Evidence available to the Commission establishes that claimant was organized in Delaware and that at all pertinent times 100% of the outstanding capital stock of the claimant has been owned by International Telephone and Telegraph Corporation, a United States national (see Claim of International Telephone and Telegraph Corporation, Individually, and as Trustee, Claim No. CU-2615). The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant describes its losses as follows:

Nationalization of Equipos Telefonicos Standard de Cuba (hereinafter called "Equipos")		\$1,042,000.00
Debts due claimant from:		
Cuban Telephone Company (hereinafter called "Cutelco")	\$1,586,499.00	
Equipos	693,820.00	
Other nationalized companies	<u>81,447.00</u>	2,361,766.00

Debts due claimant's subsidiary in Argentina by:		
Cutelco	\$14,271.00	
Equipos	<u>6,351.00</u>	<u>20,622.00</u>
Total		\$3,424,388.00

Equipos

Claimant asserts a claim herein based on the nationalization of Equipos. The record establishes that Equipos was incorporated in Cuba in 1957 as a wholly-owned subsidiary of claimant, and was engaged in the manufacture of telephonic equipment for Cutelco pursuant to a 1957 concession agreement with Cutelco.

On August 6, 1960 the Government of Cuba announced its Resolution No. 1 pursuant to Law 851 of July 6, 1960 which listed Cutelco as nationalized, resulting in its nationalization of Equipos as an affiliate of Cutelco. Accordingly, the Commission finds that Equipos was nationalized by the Government of Cuba on August 6, 1960.

Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from

the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes copies of balance sheets and analyses for Equipos for the years ending December 31, 1958 and 1959. It also includes an affidavit by a certified public accountant which gives the following monthly sales and net income of Equipos for the year 1959:

<u>Month</u>	<u>Sales</u>	<u>Net Income</u>
January	\$ 65,599	\$ 1,401
February	132,649	8,740
March	189,275	8,416
April	196,490	7,035
May	226,198	10,111
June	402,639	24,127
July	286,072	6,789
August	108,754	5,223
September	181,263	6,310
October	77,810	95
November	178,360	737
December	<u>174,211</u>	<u>(32,647)</u>
Totals	<u>\$2,219,320</u>	<u>\$46,337</u>

Claimant has selected the net earnings of Equipos for the first 9 months of 1959 which total \$78,152.00 as the basis for arriving at the going concern value of Equipos. On this basis the net earnings projected for the entire year of 1959 would be approximately \$104,200.00 and capitalizing this figure at 10% would result in \$1,042,000.00, the amount claimed. It is noted, however, that the 9 months having the largest net income in 1959 were selected and that the actual net earnings for the entire year of 1959 was only \$46,337.00. Claimant states that after September 1959 material and parts were in such short supply that normal production could not be maintained; that the gross sales of Equipos for 1959 were more than twice its sales for 1958; and that it had a reliable and expanding market in its orders from Cutelco.

However, upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown on the balance sheet of Equipos for the year ending December 31, 1959, which reflects the following:

ASSETS

Current Assets		
Cash	\$496,356.54	
Receivables		
ITT & Subsidiaries	364,082.49	
Other Receivables - Net	8,937.02	
Inventories	<u>606,618.95</u>	
Total Current Assets		\$1,475,995.00
Deferred Receivables, Special		
Deposits, etc.		2,620.00
Deferred Charges		20,278.56
Plant, Property, Equipment and		
Intangibles	\$639,546.69	
Less - Reserve for		
Depreciation	<u>17,388.06</u>	
Net Plant		<u>622,158.63</u>
TOTAL ASSETS		<u>\$2,121,052.19</u>

LIABILITIES AND CAPITAL

Current Liabilities		
Bank Borrowings	\$150,000.00	
Other current Liabilities	101,275.67	
Payables		
ISEC	621,818.03	
ISEC Subsidiaries	266,703.72	
ITT & Subsidiaries	<u>576,531.55</u>	
Total Current Liabilities		\$1,716,328.97
Long Term Debt		207,491.31
Surplus (Including Legal Statutory, etc. Reserves)		47,231.91
Capital Stock - Common		<u>150,000.00</u>
TOTAL LIABILITIES AND CAPITAL		<u>\$2,121,052.19</u>

This balance sheet indicates that the net worth of Equipos was the capital stock issued and outstanding (\$150,000.00) plus the earned surplus (\$47,231.91) or \$197,231.91 (the Cuban peso having been held on a par with the United States dollar). However, the balance sheet discloses that there were accounts receivable from ITT and subsidiaries of \$364,082.49. Since these items were owned by United States corporations and were not within the jurisdiction of Cuba, they must be deducted from \$197,231.91 leaving a deficit of \$166,850.58. Accordingly, the Commission concludes that claimant has not suffered a loss based upon the net worth of Equipos resulting from its nationalization by the Government of Cuba.

However, based upon copies of claimant's accounting records and other supporting documents, the Commission finds that Equipos was indebted to claimant in the aggregate amount of \$680,883.00 as follows:

Argentine shipment	\$496,353.00
Regular shipments	78,209.00
Charges for Reserve and Development, and other services	35,950.00
Salary and other payments to Equipos employees	4,101.00
Dividends declared but not paid	<u>66,270.00</u>
Total	\$680,883.00

The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act (see Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore concludes that claimant suffered a loss in the amount of \$680,883.00 within the meaning of the Act as a result of the nationalization of Equipos by the Government of Cuba on August 6, 1960.

Cutelco

A portion of this claim is based on debts due claimant and its subsidiaries by Cutelco.

The Commission has held that a claim based upon debts of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615, supra.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960.

Based upon the evidence of record including copies of claimant's accounting records and other supporting documents, the Commission finds that Cutelco and its subsidiaries were indebted to claimant as follows:

Merchandise from U.S.	\$ 376,714.00
Other merchandise	448,547.00
Argentine shipment	631,171.00
Mix and Genest carrier equipment	<u>53,313.00</u>
Total	\$1,509,745.00

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$1,509,745.00 within the meaning of the Act as a result of the taking of the assets of Cutelco by the Government of Cuba, on August 6, 1960.

Other Debts Owed Claimant

Claimant asserts that the following companies also had been furnished goods and services for which payment had not been made:

Cuban Electric Company	\$72,420.00
Consolidated Railroads	5,303.00
Ferrocarriles Occidentales de Cuba	1,219.00
L. Sosa y Cia Obra Pia	<u>2,505.00</u>
	\$81,447.00

1. Cuban Electric Company

The record shows that Cuban Electric Company qualified as a United States national (Claim No. CU-2578). Pursuant to Section 505(a) of the Act, a debt due from Cuban Electric Company cannot be considered unless it was a charge on nationalized property. Claimant has neither asserted nor submitted evidence to establish that the indebtedness of Cuban Electric Company was a charge upon property which was nationalized or otherwise taken by the Government of Cuba. Accordingly, the Commission has no authority to consider this item of claim and it is therefore denied. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

2. Consolidated Railroads of Cuba

The record establishes that Consolidated Railroads of Cuba, a Cuban corporation, owed claimant \$5,303.49 and evidence available to the Commission establishes that Consolidated was nationalized by the Government of Cuba on October 13, 1960 pursuant to Law 890.

The Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act (see Kramer, Marx, Greenlee and Backus, supra).

On the basis of the foregoing the Commission finds that Consolidated owed claimant debts in the total amount of \$5,303.49 and concludes that claimant suffered a loss in this amount on October 13, 1960.

### 3. Ferrocarriles Occidentales de Cuba

The record also establishes that Ferrocarriles Occidentales de Cuba, a Cuban corporation hereinafter called Ferrocarriles, owed claimant \$1,218.67. Ferrocarriles was expropriated by the Government of Cuba on April 8, 1960, by publication in the Cuban Official Gazette on that date.

On the basis of the Commission's holdings referred to above, the Commission finds that Ferrocarriles owed claimant \$1,218.67 and concludes that claimant suffered a loss in this amount on April 8, 1960.

### 4. L. Sosa y Cia Obra Pia

The record also establishes that L. Sosa y Cia Obra Pia, a Cuban corporation hereinafter called Sosa, owed claimant \$2,505.00 as a result of goods or services shipped or rendered under claimant's invoice numbers 46577 and 45870 of January 31, 1961. Claimant states that it has not received any of the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned

property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that the aforesaid sum of \$2,505.00 was lost as a result of intervention by the Government of Cuba, and in the absence of evidence to the contrary, such loss occurred on March 2, 1961, thirty days after date of invoices.

#### Debts Owed Claimant's Subsidiaries

Based on the evidence of record the Commission finds that claimant owned 99.99% of the capital stock of Compania Standard Electric Argentina, an Argentine company, from January 1, 1959 to the date of filing; and that Cutelco and Equipos owed this Argentine company \$14,643.22 and \$7,144.24, respectively, as of August 6, 1960 when Cutelco and Equipos were taken by the Government of Cuba.

The Commission has held that under these circumstances claimant was the indirect owner of the debts due its wholly-owned subsidiaries, and that under the provisions of Section 502(3) of the Act these debts constitute property covered by the Act. (See Claim of Avon Products, Inc., Claim No. CU-0772, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35; and Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, 1967 FCSC Ann. Rep. 52.) Accordingly, the Commission concludes that as of August 6, 1960 claimant suffered losses in the amounts of \$14,641.76 and \$7,143.53, respectively, which represent its indirect ownership interests in the debts due Compania Standard Electric Argentina by Cutelco and Equipos.

#### Summary

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Debts owed by Equipos	August 6, 1960	\$ 680,883.00
Debts owed by Cutelco	August 6, 1960	1,509,745.00
Debts owed by others:		
Ferrocarriles	April 8, 1960	1,218.67
Consolidated Railroads	October 13, 1960	5,303.49
L. Sosa y Cia Obra Pia	March 2, 1961	2,505.00
Debts owed claimant's subsidiary by:		
Cutelco	August 6, 1960	14,641.76
Equipos	August 6, 1960	<u>7,143.53</u>
	Total	\$2,221,440.45

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
April 8, 1960	\$ 1,218.67
August 6, 1960	2,212,413.29
October 13, 1960	5,303.49
March 2, 1961	<u>2,505.00</u>
Total	\$2,221,440.45

CERTIFICATION OF LOSS

The Commission certifies that INTERNATIONAL STANDARD ELECTRIC CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Two Hundred Twenty-one Thousand Four Hundred Forty Dollars and Forty-five Cents (\$2,221,440.45) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

JAN 8 1971

  
Leo S. GORMAN, Chairman

  
Theodore Jaffe, Counsel

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)