

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

IN THE MATTER OF THE CLAIM OF

RCA COMMUNICATIONS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3055

Decision No. CU6092

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 RCA COMMUNICATIONS, INC. for \$919,518.13 based upon the asserted ownership and loss of its wholly-owned subsidiary in Cuba, and debts due to claimant.

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.

The record shows that claimant was organized under the laws of Delaware and that it is a wholly-owned subsidiary of Radio Corporation of America also a Delaware corporation with less than 4% of the outstanding voting stock owned by persons who were not United States nationals. (See Claim of Radio Corporation of America, Claim No. CU-2291.) The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for \$435,129.92 representing its investment in Cuba Transatlantic Radio Corporation, and \$484,388.21, representing a receivable due from Cuba Transatlantic Radio Corporation, written off on August 10, 1966.

The evidence establishes and the Commission finds that Cuba Transatlantic Radio Corporation (CTRC), a Cuban corporation, was a wholly-owned subsidiary of claimant.

Since CTRC 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.)

Subsidiary

Claimant asserts that it does not have the laws or decrees of the Cuban Government which resulted in the loss of effective control of CTRC. It states that at the end of 1959 the Cuban Government began adopting measures

such as dictating the number of persons to be hired by CTRC and the use of such personnel, and restricting the types and destinations of communication services handled by CTRC all of which resulted in drastically changing CTRC from a profitable to an unprofitable enterprise. The asserted change from the profitable character of CTRC which obtained from 1950 to 1959 and its unprofitable character after 1959 is supported by an affidavit by claimant's Vice President and Controller; by extracts from the books and accounts of CTRC; and by a copy of CTRC's balance sheet and accountant's report for the years ending December 31, 1961 and December 31, 1962.

The record establishes that complete control of CTRC by the Government of Cuba was effected on September 5, 1963 when claimant was advised by CTRC that it was instructed by the Cuban Government that all CTRC financial statements and other reports should be forwarded to the Cuban Administration. Claimant states that since that date no payments have been made by CTRC against the balance owing to claimant for forwarding telegraphic traffic from Cuba over RCA's facilities and facilities of forwarding carriers.

The record clearly establishes that claimant was by gradual steps completely deprived of control of CTRC, its subsidiary, which nevertheless was required to continue operations despite progressively increased deficits. Under these circumstances the Commission has held that the actions of the Government of Cuba constitute a constructive taking resulting in a loss within the meaning of Title V of the Act. (See Claim of Garcia & Diaz, Inc., Claim No. CU-0940; Claim of Julius J. Shepard, Claim No. CU-0407, Amended Proposed Decision.)

The Commission notes that the Government of Cuba, beginning in 1959, enacted laws which regulated the employment and discharge of employees and restricted the flow of currency out of Cuba. Based on the evidence of record the Commission finds, in the absence of evidence to the contrary, that the constructive taking of CTRC was effected on January 1, 1960, and that claimant, as a result, suffered a loss within the meaning of Title V of the Act.

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.

As stated above, the record includes a copy of CTRC's balance sheet and accountant's report for the years ending December 31, 1961 and December 31, 1962. Because of the measures of control instituted by the Government of Cuba which changed CTRC from a profitable to an unprofitable enterprise beginning in 1960, claimant contends that the amount of loss should be measured by the going concern value of CTRC based either on the average 10 years net profit for the years 1950 through 1959 or on the average 5 years net profit for the period 1955 through 1959. Claimant also suggests that in accordance with accepted rates of return for public utilities the profits should be capitalized at figures between 6.5% and 8.5%.

The net certified profits of CTRC for the 10 years, 1950 through 1959, are given as follows:

	<u>Net Profit</u>	
	<u>Before</u> <u>Amortization*</u>	<u>After</u> <u>Amortization*</u>
1950	28,543	16,043
1951	44,528	32,028
1952	35,715	23,215
1953	29,070	16,570

	<u>Before Amortization*</u>	<u>After Amortization*</u>
1954	30,943	18,443
1955	40,021	27,521
1956	44,639	32,139
1957	70,232	57,732
1958	86,157	73,657
1959	<u>33,190</u>	<u>20,690</u>
	443,038	318,038
10 year average	44,304	31,804
5 year average (1955-1959)	54,848	42,348

*Amortization of the value of the franchise to operate in Cuba.

Claimant asserts that its investment in CTRC was in the amount of \$435,129.92 and that this sum was asserted and allowed by the United States Internal Revenue Service as an income tax deduction in 1963.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings, after amortization for the 5-year period, 1955-1959, at 10% to arrive at the going concern value of CTRC. Accordingly, the value of CTRC on January 1, 1960, the date of loss, was \$423,480.00.

Debts

Claimant asserts that as of August 10, 1966 the amount due from CTRC which could not be collected was \$484,388.21. The Commission finds from information as to the books of CTRC that as of January 1, 1960 CTRC owed claimant \$92,262.00. In this regard the Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses 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 further finds that after the constructive taking of CTRC on January 1, 1960, CTRC continued to operate as an agent of the Cuban Government. Thereafter the overall balance due claimant increased to \$505,239.00 at the end of March, 1965. However, about this time claimant states that RCA Global Communications, Inc. began accepting only collect

traffic from Cuba, making collection where possible from addressees in the United States, with the result that the total amount of receivables was reduced to \$484,388.21 as of August 10, 1966.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

In view of the above the Commission finds (and see Claim of Richard G. Milk and Julia C. Milk, Claim No. CU-0923, 1967 FCSC Ann. Rep. 63) that claimant suffered a loss in the amount of \$92,262.00, the debt owed by its subsidiary as of January 1, 1960, and \$392,126.21, the debt accrued and due from the Cuban Government (see Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68) at the time of write-off.

Accordingly, the Commission concludes that claimant sustained a loss in the aggregate amount of \$907,868.21 within the scope of Title V of the Act, resulting from the actions of the Government of Cuba.

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>
January 1, 1960	\$515,742.00
August 10, 1966	<u>392,126.21</u>
	\$907,868.21

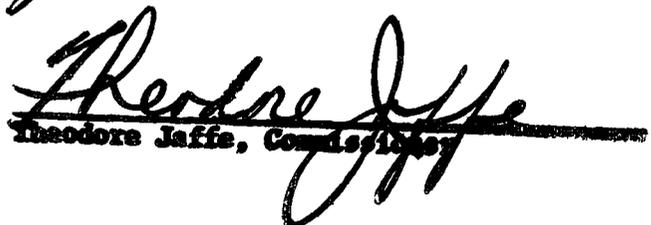
CERTIFICATION OF LOSS

The Commission certifies that RCA COMMUNICATIONS, INC. 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 Nine Hundred Seven Thousand Eight Hundred Sixty-eight Dollars and Twenty-one Cents (\$907,868.21) 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

MAR 3 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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 (1970).)