

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL TELEPHONE
AND TELEGRAPH CORPORATION,
INDIVIDUALLY, and AS TRUSTEE

Claim No. CU -2615

Decision No. CU 5013

Under the International Claims Settlement
Act of 1949, as amended

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, in the amount of \$61,089,234.00, was presented by INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, based upon asserted losses resulting from the nationalization of the Cuban Telephone Company and properties of its subsidiaries as well as debts of nationalized enterprises. Subsequently separate claims were opened for five United States subsidiaries of the INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION for their losses which originally had been included in this claim. The remainder now represented by this claim amounts to \$57,306,561.00.

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 INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, hereafter referred to as ITT, was organized under the laws of the State of Maryland. An officer of claimant corporation has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States and on August 6, 1960, 7.319% of the shares of ITT stock outstanding was held by or for the account of aliens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim as originally filed was for \$61,089,234.00 as follows:

Nationalization of Cuban Telephone Company (hereinafter called "Cutelco")	\$ 53,309,525.00
Nationalization of Equipos Telefonicos Standard de Cuba	1,042,000.00
Expropriation of Havana and Santiago Properties of All American Cables & Radio, Inc.	254,235.00
Loss of Obligations Owed to ITT and Subsidiaries	6,475,960.00
Loss of Cuban Patents	<u>7,514.00</u>
	\$ 61,089,234.00

Inasmuch as Section 505(a) of the Act provides, inter alia, that a claim under Section 503(a) of the Act based upon an ownership interest in a corporation which is a national of the United States shall not be considered, five of the ITT subsidiaries which are nationals of the United States subsequently filed separate claims for their losses, Claim Nos. CU-8290 through CU-8294. Consequently, this claim is for the following losses:

A.	Nationalization of Cutelco	\$ 53,309,525.00
B.	Obligations owed by Cutelco	3,347,022.00
C.	Obligations owed to the Kellogg Division of ITT by Equipos	642,500.00
D.	Loss of Patent Rights	<u>7,514.00</u>
	Total	\$ 57,306,561.00

Nationalization of Cutelco

Claimant, which as above noted is a United States corporation, owned on August 6, 1960, the date of its nationalization, 258,685 shares of the common stock out of 482,805 shares of the total outstanding capital stock of Cutelco. Claimant's asserted losses in this connection now total somewhat less than the above figure computed by the Commission of \$57,306,561.00, i.e., \$56,656,547.00.

The record establishes that Cuban Telephone Company (Cutelco) was organized under the laws of the State of Delaware in 1908 and that it is no longer in good standing, having been declared inoperative and void by the Secretary of State for the State of Delaware. Accordingly, the Commission holds that claimant may file a claim based upon its ownership interest in the enterprise.

Evidence presented to the Commission reveals that Cutelco was granted a concession to establish a telephone system in Cuba which concession was later incorporated into a contract between Cutelco and the Cuban Government for providing telephone service throughout the Republic of Cuba. On March 14, 1957 a new concession agreement was entered into which required a large expansion of telephone facilities and an increased investment of nearly \$66,000,000.00. By March 1, 1959 Cutelco had 171,434 telephones installed

and operating with 4,929 employees and \$17,298,000.00 worth of construction work in progress and materials on hand. Telephone service was conducted from 162 central offices interconnected by a distribution system having approximately 326,463 miles of wire in underground cable, 159,109 miles in aerial cable, 31,900 miles of open wire and 3,795 miles of pole lines.

On August 6, 1960, the Government of Cuba announced its Resolution No. 1, pursuant to Law 851 of July 6, 1960, which listed as nationalized the Cuban Telephone Company and its affiliated enterprises. Accordingly, the Commission finds that its property in Cuba was nationalized on August 6, 1960 by the Government of Cuba.

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.

Evidence available to the Commission includes an appraisal of the tangible property of Cutelco, balance sheets as of December 31, 1957, 1958 and 1959, and a balance sheet as of May 31, 1960 using adjusted values for assets on the basis of the appraisal.

The appraisal gives the following values for Cutelco's tangible assets as of May 31, 1960:

<u>Property</u>	<u>Replacement Cost</u>
Land and Land Improvements	\$ 3,327,227.00
Buildings	9,532,547.00
Central Office Equipment	49,607,446.00
Station Telephone Apparatus	7,886,615.00

<u>Property</u>	<u>Replacement Cost</u>
Station Installation	\$ 6,171,542.00
Special Station Equipment	394,886.00
Private Branch Exchanges	3,983,128.00
Booths and Special Fittings	121,683.00
Exchange Pole Lines	4,623,501.00
Exchange Aerial Cable	8,406,356.00
Exchange Aerial Wire	1,125,007.00
Exchange Conduit	10,070,888.00
Exchange Underground Cable	17,924,710.00
Exchange Submarine Cable	3,932.00
Exchange Right of Way	137,402.00
Toll Pole Lines	13,201,854.00
Toll Aerial Cable	118,207.00
Toll Aerial Wire	9,451,958.00
Toll Conduit	301,982.00
Toll Underground Cable	1,005,482.00
Toll Submarine Cable	22,125.00
Toll Right of Way	457,395.00
Furniture & Office Equipment	1,150,373.00
Shop Equipment	46,027.00
Storeroom Equipment	65,802.00
Transportation Equipment	994,717.00
General Tools	663,275.00
Construction Work in Progress	<u>8,010,097.00</u>
Total Plant	\$158,716,164.00
Depreciation to be deducted	<u>34,347,466.00</u>
Total Replacement Cost Less Depreciation	\$124,368,698.00

The May 31, 1960 balance sheet, including the appraised valuations and certain other adjustments explained below, is as follows:

<u>ASSETS</u>		
Plant, Property & Equipment	\$158,716,164.00	
Reserve for Depreciation	<u>34,347,467.00</u>	\$124,368,697.00
Construction Materials		2,214,185.00
Current Assets		
Cash	\$ 230,580.00	
Accounts Receivable	3,346,747.00	
Material & Supplies	<u>3,051,201.00</u>	6,628,528.00
Receivables from Cuban Federal, Provincial and Municipal Governments		1,117,026.00
Deferred Charges		<u>1,095,938.00</u>
Total		<u>\$135,424,374.00</u>

the Commission finds had a value of \$9,175,622.50, consisting of the par value plus \$395,122.50 for unpaid dividends. Thus, the loss sustained by the common stockholders for their equity in the net worth amounted to \$72,682,250.50 and the loss per share for each of the 395,000 shares of common stock outstanding on August 6, 1960 was \$184.0057.

The Commission concludes that claimant, as a holder of 258,685 shares of common stock of Cutelco, sustained a loss as a result of the taking of the assets of that Company by the Government of Cuba on August 6, 1960 in the amount of \$47,599,514.50 within the meaning of Title V of the Act.

Debts Owed by Cutelco

Claimant asserts a claim herein also for the amount of \$3,347,022.00 for obligations owed it by Cutelco.

The statute precludes the assertion of unsecured claims against a United States corporation. However, Cutelco, being defunct, is no longer in that category. It would obviously be inequitable to deprive creditors of their remedy where the debtor is a corporation organized in the United States but is no longer in existence. Inasmuch as Cutelco's assets have been nationalized and are being used by the Government of Cuba, creditors should be entitled to file claims herein and the Commission so holds.

The obligations claimed are as follows:

Billed Receivables		\$ 583,077.00
Amounts Due, Unbilled		640,498.00
Underbilling due to clerical errors		234,545.00
Engineering Charges Unbilled		69,316.00
Obsolete & Excess Inventory Scrapped		
Existing orders	\$ 69,686.00	
Inventories stocked	610,000.00	
Canceled orders for Parts	<u>112,067.00</u>	791,753.00
1959 Management Service Contract		900,000.00
Payment of Salaries, Expenses, etc. for Cutelco Employees		102,833.00
Compensation to Former Cutelco Employees for Loss of Personal Effects		<u>25,000.00</u>
	Total	\$3,347,022.00

Claimant has submitted copies of its accounting records, inter-office memoranda and copies of agreements with Cutelco regarding management services.

On the basis of the evidence of record, the Commission holds that claimant

sustained a loss in the amount of \$2,427,436.00 for debts owed by Cutelco on August 6, 1960 for materials, engineering charges and management services as a result of the nationalization of the assets of Cutelco.

A finding of loss for the obsolete and excess inventory as a result of the nationalization of Cutelco's assets is not warranted by evidence of record. A portion of the inventory resulted from the cancellation of a contract by Cutelco because of nondelivery of the contracted items due to a strike at the factory; some inventory was added because of expected orders from the company in Cuba; and an indeterminate amount was sold as scrap by claimant. Accordingly, this portion of the claim is denied.

Claimant also asserts the loss of a total amount of \$127,833.00 for payment of salaries, expenses and compensation for personal losses of Cutelco employees. No documentation has been submitted of the nationality or assignment of claim of the Cutelco employees to whom compensation was assertedly made. Therefore, this part of the claim must also be denied.

The Commission concludes that claimant sustained an additional loss in the amount of \$2,427,436.00 for debts owed as a result of the nationalization of the assets of Cutelco on August 6, 1960 within the meaning of Title V of the Act.

Debts of Equipos Telefonicos Standard de Cuba

A portion of the claim in the amount of \$624,500.00 is based upon certain debts owed to the Kellogg Division of claimant for electrical equipment shipped and services rendered to Equipos Telefonicos Standard de Cuba, a Cuban enterprise in Havana, Cuba. The record shows that

Equipos Telefonicos Standard de Cuba was nationalized by the Government of Cuba on August 6, 1960 by Resolution 1, pursuant to Law 851 of July 6, 1960.

The record contains a balance sheet of Equipos as of December 31, 1960, copies of the accounting records of the Kellogg Division of ITT, and affidavits of officials of ITT which reflect a debt owed to claimant by Equipos on August 6, 1960 of \$642,499.38 for electrical equipment and engineering services.

Based upon all the evidence of record, the Commission finds that ITT sustained a loss in the amount of \$642,499.38 within the meaning of Title V of the Act as a result of the nationalization of Equipos Telefonicos Standard de Cuba by the Government of Cuba on August 6, 1960.

Patents

Claim is also asserted for the loss of 34 patents valued at \$7,514.00. The record contains an affidavit by the Director of Licensing of ITT stating that there were 34 patents active in Cuba relating to telephone switching apparatus and equipment which cost an average of \$221.00 each for filing and other expenses. Claimant contends that the right to exploit these patents in Cuba through its subsidiaries has been lost through the actions of the Cuban Government in its nationalization of the Cuban Telephone Company and its associated companies on August 6, 1960. It has submitted no evidence, however, concerning the value of the said patents, or the right to exploit the same, and has confined its claim solely to its filing costs.

The Commission finds that ITT sustained a loss in the amount of \$7,514.00, the fair value of the above-mentioned patents, within the

meaning of Title V of the International Claims Settlement Act of 1949, as amended, as a result of the said nationalization on August 6, 1960.

Certification For Unclaimed Assets

As previously set forth, the total assets of Cutelco amounted to \$135,424,374.00 at the time they were nationalized by the Cuban Government. From the record, it is determined that claims, other than the instant claim, have been filed which involve the interests of other creditors, preferred stockholders and common stockholders in the amount of \$5,394,629.36. This amount with the total amount herein certified as lost by ITT through the nationalization of Cutelco's assets totals \$55,421,579.86, leaving a balance of the assets not claimed before this Commission in the amount of \$80,002,794.14.

Accordingly, a certification of loss in the amount of \$80,002,794.14 is made to ITT, in trust for the benefit of non-claimant shareholders and creditors of Cutelco. The distribution of such a trust is to be made in accordance with the laws of the State of Delaware and Title V of the International Claims Settlement Act of 1949, as amended, preference to be given to creditors, preferred stockholders and common stockholders in that order, and the qualifications as to nationality to be observed. The distribution is to be made on the same pro rata basis as employed in determining any payment made to successful claimants against the Government of Cuba.

Interest

The Commission has decided that in certification of losses 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.

CERTIFICATIONS OF LOSS

The Commission certifies that INTERNATIONAL TELEPHONE AND TELEGRAPH 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 Fifty Million Six Hundred Seventy-six Thousand Nine Hundred Sixty-three Dollars and Eighty-eight Cents (\$50,676,963.88) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement; and

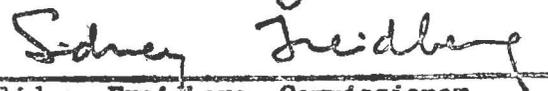
The Commission certifies that INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AS TRUSTEE for the benefit of non-claimant shareholders and creditors of Cutelco suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty Million Two Thousand Seven Hundred Ninety-four Dollars and Fourteen Cents (\$80,002,794.14) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

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

JUN 17 1970


S. Carlsoch, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)