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Timeshare industry, GEBE clash over electricity rates

PHILIPSBURG—The Maarten Timeshare Association (SMTA) is accusing water and electricity company GEBE of imposing a fictitious electricity surcharge on resorts in St. Maarten, forcing the island's timeshare industry to the verge of recession. But, according to GEBE's Managing Director Julius Lambert, not only are GEBE's rates very realistic, the SMTA also spoke too soon because reductions are on the way. "And if these reductions are not enough, then I would recommend that they

St. look at their operations, because GEBE's rates are the lowest in the region," Lambert told *The Daily Herald* in reaction to statements by SMTA President Jules James. James said in an exclusive interview on Monday that the timeshare industry, "the bedrock of our stay-over tourism," was suffering and that, according to recent estimates, the island was actually losing ground with a loss of some US \$10 million of eco

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Bandits rob supermarket

PHILIPSBURG—Police are hunting for two bandits who robbed Four Star Supermarket of US \$600 on November 12, using a handgun.

The two men made their getaway in a green Mitsubishi. Authorities are asking for the general public's assistance in helping them bring the criminals to justice.

Police spokesman Inspector Geronimo Juliet told *The Daily Herald* yesterday that the two suspects had been described as being about 16 and 18 years old.

One of the two wore a green

IN BRIEF

Philipsburg DEPARTMENT REOPENED

The renovated Haemodialysis Department at St. Maarten Medical Center (SMMC) was officially reopened Tuesday and dedicated to "the people of St. Maarten." Page .

Belvedere TENANTS UNHAPPY

Tenants of the 156 Belvedere duplexes are dissatisfied with the November 19 deadline they have been given to sign contracts if they wish to purchase the units in which they reside. Page .

St. Peters HONOURING LOCAL HEROES

Seven residents of the St. Peters/Marigot Hill area will be honoured by the St. Peters Community Council (SPCC) on Sunday, November 28. Page .



Lt. Governor Hyden Gittens delivers his speech as St. Eustatius's new flag joins those of the Netherlands Antilles, the Netherlands, and the United States on the flagpole. It was a historic occasion as the people of St. Eustatius celebrated Statia Day 2004. See story on page 6.

TeEm loses appeal case, owes ECC over NAf. 6M

PHILIPSBURG--Court proceedings concerning a NAf. 20 million claim local telephone company TelEm said it had against East Caribbean Cellular (ECC) ended on a costly note for the plaintiff late last month. TelEm's claim was not only declared null and void, the company will have to pay ECC, represented by Attorney-at-Law Roeland Zwanikken, well over NAf. 6 million in refund of payment made on the claim plus interest plus cost plus court charges.

Initially it seemed that TelEm had a case, be it for far less than NAf. 20 million. In proceedings initiated before the Court of First Instance almost five years

ago TelEm obtained a favourable ruling in 2002 on its claim that ECC should pay it the so-called fixed fees (vastrecht) on lines made available by TelEm. The Court's calculations, however, differed substantially from those of TelEm. ECC was told to pay TelEm NAf. 5 million, which it did. It also started appeal proceedings.

These proceedings turned out quite promising for ECC when the Court said in a pro-visionary ruling in August last year it saw

no evidence that the two companies had ever officially agreed on payment of the fixed fees. The Court, nevertheless, allowed TelEm more time to present irrefutable evidence that such an agreement had been made.

As TelEm failed to do so, the Court, ruling in appeal on October 29, annulled the earlier ruling of the Court in First Instance, rejected TelEm's claims and ordered the telephone company to pay costs and court charges for a total of NAf. 105,020.50. The rul

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TeEm/ECC

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ing implies that TelEm will have to return the NAf. 4.5 million plus interest as well as all wrongly collected fees since 1999.

The essence

The essence of the case reflects the pioneer environment of the introduction of cellular telephones on the island. In April 1990 ECC was granted a licence by federal decree to start and operate a "cellular" radio telephone system in St. Maarten, as well to offer its services to Saba, Statia, and vessels on the seas of the Windward Islands.

The licence stipulated that ECC should link its operation to TelEm's phone operation and provide TelEm monthly with data of users, as well as with the total air time cellular to land and air time cellular to cellular.

The federal decree could only be implemented after an official contract was concluded in writing containing agreement on tariffs to be paid by ECC to TelEm for local calls and Land-sRadio for international calls. It was, moreover, stipulated that ECC would have to pay a monthly nine per cent surcharge on all air time charges it billed its customers.

Such a contract was drawn up and signed on December 16, 1990. ECC agreed to pay the regular telephone rates for using the telephone communication infrastructure and the nine per cent of the total collected air time charges mentioned above.

This arrangement was replaced in 1998 by a new "inter-connection agreement" with a different tariff structure. This arrangement, formalised by federal decree, was implemented retroactive to January 1, 1996.

The NAf. 20 million claim concerned the period 1990 to 1998.

The claim

TelEm presented ECC with a bill of NAf. 20,835,000 on June 11, 1999, for failure to pay fixed charges on the 10,000 lines made available to the cellular company during those initial eight years.

The bill came as a most unpleasant surprise, in particular as TelEm had never in all the preceding years forwarded a bill concerning those charges to ECC.

The cellular company, denying that payment of such charges had ever been a condition agreed upon, refused to pay up and was then taken to court by TelEm.

In the first round of court proceedings TelEm came out on top, but for considerably less than 20 million. The Court of First Instance took as its point of departure that the fixed charges (vastrecht) should be considered as included in the "regular telephone rates" ECC had agreed to pay. But the Court rejected the calculation of TelEm. As ECC had never used the full 10,000 lines, the Court downgraded the claim to NAf. 4.5 million. ECC was ordered to pay the amount, never mind whether it would appeal.

The appeal

ECC disagreed on the principal argument and filed for appeal. Lawyers for ECC (Zwanikken & Snow) argued that the fixed fees charged by TelEm to customers related to special services rendered, such as the installation of a line, equipping customers with a telephone, a number and regular billing, mentioned in the telephone guide, and

access to its information service.

None of these services is provided to ECC cellular subscribers by TelEm. None of ECC's customers uses the TelEm infrastructure more than any other caller from outside, the lawyers argued.

The Appeals Court concurred and noted that there was no reason to interpret the conditions of the original agreement to include the payment of fixed fees as charged customers by TelEm. It noted that the agreed upon payment of "regular telephone rates" applied to cost of calls. Those costs were billed by TelEm and paid by ECC.

The fixed fees charged to customers of TelEm do not concern ECC. Including the fixed fees in the "regular telephone rates" would, moreover, be in stark variance with international custom.

The verdict

The Court consequently sided with ECC, but nevertheless kept the door slightly ajar for TelEm by providing the company the opportunity to present conclusive evidence that payment of the fixed fees was expressly agreed on in 1990. The Court made it crystal clear that only hard "concrete" evidence would suffice.

Three of the main players involved in the 1990 contract negotiations declared in a written disposition that no such agreement on payment of fixed fees had been made. The dispositions referred to were made by R. Bernadina, at the time Director of LandsRadio and TelEm; J.L. Buncamper, at the time Head of LandsRadio Windward Islands; and J.D. de Canha of the Bureau of Telecommunications & Post.

Other testimony and expert reports did not yield the requested hard evidence, the Court concluded in its final ruling two weeks ago.

East Caribbean Cellular is part of the Innovative Communication Corporation Group of Companies, a diversified telecommunications and media company with major holdings in the US Virgin Islands, throughout the Caribbean and in France.



Commissioner Louie Laveist (left) receives a copy of the youth analysis study from FAJ board President Eric van de Hoeve. Also in photo is FAJ Windward Islands Coordinator and board member Agnes Brooks.

FAJ presents youth study report to Laveist

PHILIPSBURG — Antillean the trip are board member Herald. Federation for Youth Care Linelle Ersilia and Mr. Ot- Brooks, who is also St. Maarten FAJ chapter president, is a part of the delegation. FAJ Board President Eric van de Hoeve presented a and is on his farewell visit. The study was carried out on all five islands earlier this year to ascertain what the youth problems are and how to tackle them. It also includes activities that can be used to remedy or tackle the problems, FAJ Windward Islands representative Agnes Brooks told The Daily Herald.

Community council to honour 'local heroes' for fourth year

PHILIPSBURG — Seven 30pm. ticularly St. Peters/Marigot residents of the St. Peters/ SPCC President Rolando Hill residents, is invited. Marigot Hill areas will be Tobias said plans were un- Baker and agriculturist honoured by the St. Peters derway in preparation for the Gaston Scot, agriculturalist Community Council (SPCC) event, which he said would Godwin Richardson, Teach during its fourth annual also include a big surprise for er Gloreen Richardson and Honouring of Our Local residents and attendees. Neville Lake were among Heroes and Heroines cer- The Honouring of Our those honoured during past emony, which will be held Local Heroes and Heroines events. at Rupert I. Maynard Youth event is one of the main Entertainment and snacks Community Centre on Sun- items on the council's annual will be provided. day, November 28, from 5: calendar and the public, par-

Taxi drivers complain to FCCA of slow business

PHILIPSBURG — St. Cruise and Cargo Facilities. that "business was not good" Maarten Taxi Services SMTS President Denis for their members presently. (SMTS) has asked the Richardson told The Daily "Even when two and Florida Caribbean Cruise Herald Monday that he and three ships are in port, our Association (FCCA) to look SMTS Secretary Clyde Hook members are complaining into the possibility of increas had informed three FCCA that nothing is happening. ing business for its members operation executives during Things are slow and they are operating at Dr. A.C. Wathey a conference call Monday not getting any business," Richardson said. He said the association had urged FCCA to "look into the matter" and see whether "more business" could be given to their members. "They (FCCA) promised to look into the situation," said Richardson in a telephone comment.