

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)	
)	
GTE Telephone Operating Companies)	Transmittal No. 909
)	
Revisions to Tariff F.C.C. No. 1)	CC Docket No. 94-81
)	
)	

ORDER

Adopted: September 9, 1994; Released: September 9, 1994

By the Deputy Chief (Policy), Common Carrier Bureau:

1. On April 22, 1994, GTE Telephone Operating Companies (GTOC), on behalf of the General Telephone Company of California (GTECA), filed Transmittal No. 873 to establish video channel service for Apollo CableVision, Inc. (Apollo), a cable company providing cable service in Cerritos, California. On that same day, GTECA also filed Transmittal No. 874 to provide this same service to an affiliated company, GTE Service Corporation (Service Corp.). Prior to that time, GTECA had been providing video channel service to Service Corp. pursuant to a five year waiver of the cable-telephone cross-ownership ban¹ and Section 214 authorization granted in 1988.² GTE stated that it submitted Transmittal 874 to enable Service Corp. to continue providing cable service to Cerritos subscribers after the waiver and Section 214 authorization expired on July 17, 1994.³

2. On July 14, 1994, the Common Carrier Bureau (Bureau) suspended Transmittal 873,

¹ Section 613(b)(1) of the Cable Act of 1984, 47 U.S.C. § 533(b)(1); Section 63.54 of the Commission's Rules, 47 C.F.R. § 63.54.

² General Telephone Company of California, 4 FCC Rcd 5693, 5700-01 (paras. 50-61) (1989) (Waiver Review Order).

³ Transmittal No. 874, Description and Justification (D&J) at 1.

and initiated an investigation into various issues raised by this tariff filing. In the same Order, we found that Transmittal 874 violates the Communications Act and the Commission's rules, and accordingly, we rejected Transmittal 874.⁴ We ordered GTE to comply with the telephone-cable cross-ownership restriction within 60 days, so as to avoid any abrupt termination of cable programming service provided by GTE to subscribers in Cerritos.⁵ On September 7, 1994, the United States Court of Appeals for the Ninth Circuit stayed the Cerritos Tariff Order "insofar as it rejects Transmittal 874." On September 9, 1994, GTOC filed Transmittal No. 909 to add to its tariff the material it removed in response to the rejection of Transmittal 874.

3. This transmittal is scheduled to take effect on September 12, 1994. Because we rejected Transmittal 874 as patently unlawful in the Cerritos Tariff Order, we did not reach several issues raised by the parties filing petitions to reject or suspend and investigate that filing. Specifically, we did not reach the issue of whether GTECA has adequately shown that Transmittal 874 would not result in unreasonably low anticompetitive prices for video programming services. We also did not decide whether the monthly charges to Service Corp. under Transmittal 874 would be unequal to Apollo's lump-sum payment for service under Transmittal 873, and thus unreasonably discriminatory.⁶ Because Transmittal 909 is substantially similar to Transmittal 874, these issues are also raised by Transmittal 909. Thus, we conclude that Transmittal 909 raises substantial questions of lawfulness which warrant investigation. We will designate specific issues for investigation in a future Order, and include those issues in the pending investigation of Transmittal 873.

4. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the GTE Telephone Operating Companies, Transmittal No. 909, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal, and any future tariff revisions modifying that transmittal, IS INSTITUTED.

5. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL FILE tariff revisions reflecting this suspension no later than three days from the release date of this order.

6. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), GTE Telephone Operating Companies shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

7. For these purposes, GTE Telephone Operating Companies should cite Special

⁴ GTE Telephone Operating Companies, CC Docket No. 94-81, DA 94-784 (released July 14, 1994) (para. 16) (Cerritos Tariff Order).

⁵ Id. at para. 18.

⁶ See Cerritos Tariff Order, para. 20 n.38.

Permission No. 94-1050 as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz

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