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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
GTE Telephone Operating Companies)	Transmittal Nos. 873, 874, 893
)	
Revisions to Tariff F.C.C. No. 1)	CC Docket No. 94-81

To: Chief, Common Carrier Bureau

**REPLY BRIEF OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.
AND THE CALIFORNIA CABLE TELEVISION ASSOCIATION**

The National Cable Television Association, Inc. ("NCTA") and the California Cable Television Association ("CCTA"), by their attorneys, hereby submit their reply brief in response to the Bureau's July 14, 1994 Order in the above-captioned proceeding. Order, DA 94-784, rel. July 14, 1994 ("Order"). The Order sought briefing on whether the January 5, 1994 stay of the FCC's Remand Order¹ issued by the United States Court of Appeals for the Ninth Circuit continues, until judicial review is complete, the Section 214 authorization previously granted to the General Telephone Company of California ("GTECA") permitting it to provide cable service in Cerritos, California or whether that Section 214 authorization terminated on July 18, 1994.²

¹ General Telephone Company of California, 8 FCC Rcd. 8178 (1993) ("Remand Order").

² GTECA is currently providing service in Cerritos pursuant to a new temporary Section 214 authorization granted sua sponte by the Common Carrier Bureau to avoid a lapse in authority to provide service during the course of the FCC's investigation of GTECA's tariff. Order at ¶¶ 2, 12, 53.

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As we demonstrated in our initial brief, the Ninth Circuit's Stay Order had no effect on the Commission's time-limited Section 214 grant and, as a result, that authorization expired on July 17, 1994. The Court's Stay Order -- which merely held in abeyance effectuation of the Remand Order's mandate that the waiver and Section 214 authorization be immediately rescinded -- returned GTECA to its original position of having authority to operate only until July 17, 1994.³

GTECA's response to the Commission's legal inquiry is half-hearted, at best.⁴ In essence, GTECA makes three arguments -- one which has already been rejected by the Commission, one which supports the NCTA/CCTA argument, and one which is otherwise without merit.

First, GTECA argues that its Section 214 authority has not expired because -- regardless of the effect of the Court's stay -- it had received permanent Section 214 authority in 1989 when the Commission waived the telco/cable cross-ownership rules to permit it to construct and operate the Cerritos facilities.⁵ However, even GTECA concedes that the Commission has already rejected this argument -- and with good

³ Order at ¶ 34. As requested by the Commission, this Reply Brief addresses the effect of the Ninth Circuit's January 5, 1994 Stay Order on the Section 214 authorization granted to GTECA in 1989. We do not address the effect of the Court's recent September 7, 1994 order, staying the Order in the above-captioned proceeding "insofar as it rejects Transmittal 874." It is important to note, however, that the latter Stay Order was premised upon GTECA's representation that it was operating under the temporary Section 214 authority and waiver issued by the Common Carrier Bureau in the July 14, 1994 Order and not pursuant to the Section 214 authority previously granted which is the subject of the legal issue we address herein. See Petitioner's Reply in Support of Motion for a Stay Pending Judicial Review, No. 93-70924, filed September 6, 1994, at 7 n. 8.

⁴ Direct Case of GTE, CC Docket No. 94-81, filed August 15, 1994 at 20-24 ("GTE Direct Case").

⁵ GTE Direct Case at 20-21.

reason.⁶ Accordingly, GTECA's contention that it received permanent Section 214 authority in 1989 must be rejected once again.

Second, GTECA argues that the Ninth Circuit's Stay Order "maintains the status quo pending appeal," and it observes that "[t]he status quo is universally defined as the last uncontested status which preceded the pending controversy."⁷ This formulation, however, is of no help to GTECA since, as we explained in our initial brief, the "last uncontested status" here was one in which GTECA had a time-limited Section 214 grant which would expire in July, 1994. It is that "status" to which this case returned after the effectiveness of the Remand Order -- which would have shortened the time-limited authorization -- was stayed. Therefore, GTECA is simply wrong in contending that "[i]n the Cerritos Appeal, the 'last uncontested status', due to the Stay, is that GTECA operates facilities pursuant to a proper Section 214 operating authority over which it engages in speech activities."⁸

Third, GTECA argues that the Ninth Circuit must have intended that its Stay Order extended GTECA's operating authority beyond July, 1994 because GTECA's motion papers requested such relief.⁹ At the same time, GTECA notes that the Commission took the view (and told the Court) that GTECA's Section 214 authority was to expire in July, 1994.¹⁰ From this, GTECA reasons that when it issued its Stay Order "the Court was well aware of the Commission's view that GTECA's Section 214 authority would shortly

⁶ Id. See Order at ¶11.

⁷ Id. at 21-22, quoting Mississippi Power and Light Co. v. United Gas Pipe Line Co., 609 F. Supp. 333, 343 (S.D. Miss. 1984).

⁸ GTE Direct Case at 22.

⁹ Id. at 22-23.

¹⁰ Id.

expire."¹¹ GTECA argues that because the "Court did not consider it necessary to accelerate the briefing schedule or take any other action to ensure that it would render its judgment prior to July 17, 1994," then the Court must have intended its stay to extend GTECA's Section 214 authority beyond July 1994.¹²

In fact, rather than support GTECA's view that the Court must have intended its stay to affect the expiration date of the Section 214 authority, the facts, as described, could just as well support the view that the Court knew that its order would not affect the ultimate expiration date and chose not to address that issue. We agree with GTECA that "courts do not issue meaningless orders,"¹³ but, in this case, the Stay Order was not meaningless. It permitted GTECA to get the full benefit of the time-limited Section 214 grant and waiver that it obtained in 1989. If the stay had not been issued, GTECA, pursuant to the Remand Order, would have had to terminate operations before the July, 1994 expiration date of the Section 214 authorization.

In any event, the simple fact is that the Stay Order, at best, returned GTECA to the status quo ante - ante the Remand Order, which required it to cease operations upon the July 17, 1994 expiration of its waiver and associated Section 214 grant, unless it requested and obtained additional operating authority. GTECA did not do so and only operates now on a temporary grant of authority.

¹¹ Id.

¹² Id. at 23.

¹³ Id. at 22.

CONCLUSION

For the reasons stated above and in our initial brief, the Court's January 5, 1994 Stay Order had no effect on GTECA's original Section 214 authorization which expired on July 17, 1994 and is no longer in effect.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Leslie Heath, do hereby certify that on this 15th day of September, 1994, copies of the foregoing "**Reply Brief of the National Cable Television Association, Inc. and the California Cable Television Association**" were delivered by first-class, postage pre-paid mail to the following parties:

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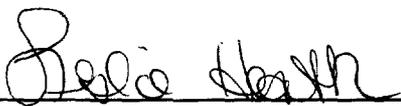
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