

of Transmittal 873 is pending, in order to prevent disruption of cable service.³⁷ Because we find that such an indefinite extension would not be consistent with the D.C. Circuit's mandate in NCTA v. FCC, we must deny this request.

C. Transmittal 873: Service to Apollo

20. In this section, we address issues raised by petitioners with respect to Transmittal 873. The petitioners also raised many of these issues with respect to Transmittal 874. Because we determined above that Transmittal 874 should be rejected as patently unlawful, however, we do not need to reach any of the other issues raised with respect to that filing.³⁸

1. Transfer of Assets

21. Pleadings. In establishing its new common carrier channel service, GTECA plans to move \$ 5.9 million in investment from non-regulated to regulated accounts. This investment has been used to provide service pursuant to the telephone-cable cross-ownership waiver to date.³⁹ GTECA also intends to establish new subaccounts in Parts 32 and 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64, for video channel service.⁴⁰ MCI opposes the transfer of any Cerritos investment in coaxial cable from unregulated to regulated accounts because such a transfer would cause this investment to be recovered from ratepayers rather than shareholders. According to MCI, ratepayers are harmed because this additional investment and expense will either reduce GTECA's sharing obligations, or increase the amount by which GTECA could increase rates if it were eligible to make a lower end adjustment.⁴¹ MCI also claims that GTECA has not complied with the affiliate transaction rules, Section 32.27 of the Commission's Rules, 47 C.F.R. § 32.27, by showing that the transferred investment is the lower of either net book cost or fair market value. According to MCI, GTECA incorrectly assumes

³⁷ City Petition at 26-28.

³⁸ Specifically, we do not reach the issues of whether GTECA has adequately shown that Transmittal 874 would not enable Service Corp. to cross-subsidize competitive video programming services with other noncompetitive services. See Apollo Petition at 20-24, City Petition at 18-19. We also do 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. See MCI Petition at 2-3. Finally, we need not determine whether Transmittal 874 would have resulted in wasteful duplication of facilities. See Apollo Petition at 5-6, 25-26; City Petition at 16-18.

³⁹ Transmittal 873, D&J at 7-8.

⁴⁰ Id.

⁴¹ MCI Petition at 8.

that book value is essentially equal to fair market value in this case.⁴²

22. In response, GTECA asserts that no ratepayers will be harmed if it transfers these assets to regulated accounts. GTECA states that it plans to transfer investment on an adjusted net book basis, and that this investment will be directly assignable to the interstate jurisdiction.⁴³ GTECA argues that the transfer of all cable investment to regulated accounts is reasonable, because GTECA's customers for this service will use 100 percent of the network.⁴⁴ GTECA maintains that the transfer of these assets will not affect its price cap sharing obligation, because services priced on an individual case basis (ICB) are not incorporated into price cap indices.⁴⁵ GTECA claims that assuming that contract charges are equal to market value is reasonable and complies with Section 32.27 of the Commission's Rules.⁴⁶

23. On June 13, 1994, as part of its implementation of its proposed video channel service, GTECA requested a waiver of the Commission's Rules to transfer investment from nonregulated to regulated use because GTECA proposes to replace the contractual video transport agreements governing use of broadband facilities in Cerritos with a tariff for video channel service.⁴⁷ GTECA states that the investment in coaxial cable and related facilities currently used for video transport in Cerritos are the only facilities in that community suitable for provision of video channel service.⁴⁸ Therefore, GTECA asks permission to use this plant capacity, which is currently classified as nonregulated, for regulated operations.⁴⁹ Further, GTECA states that the needed capacity does not otherwise currently exist in Cerritos nor could

⁴² Id. at 9.

⁴³ GTECA Opposition at 20.

⁴⁴ Id. at 21.

⁴⁵ Id.

⁴⁶ Id. at 23-24.

⁴⁷ GTECA Waiver Petition at 3. Specifically, GTECA seeks waiver of Sections 32.23(b), 32.27(b), 64.901, and 64.902 of the Commission's Rules, 47 C.F.R. §§ 32.23(b), 32.27(b), 64.901, 64.902. Apollo submitted an opposition to GTECA's waiver request to the Bureau one day late, on June 30, 1994. Motions for extension of time are not routinely granted. See Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a). Because it appears that no party will be prejudiced by Apollo's delay, however, we will consider Apollo's opposition when considering the issue regarding GTECA's waiver request designated for investigation below.

⁴⁸ GTECA Waiver Petition at 3.

⁴⁹ Id. at 4.

such capacity be obtained without investment in entirely new facilities.⁵⁰ Apollo opposes this request.

24. Discussion. Under Section 32.23 of the Commission's Rules, LECs are required to make forecasts of investment for nonregulated activities on a three year basis, and must obtain a waiver to shift investment from non-regulated to regulated accounts in a way inconsistent with this forecast.⁵¹ With respect to GTE's waiver request, we note that in the Joint Cost Order, the Commission was concerned that (1) costs associated with an investment be allocated between regulated and nonregulated operations on the basis of projected relative use and not on the actual relative use; and (2) costs actually being incurred for the benefit of the nonregulated operation not be borne by the regulated operation because the carrier underestimated the projected nonregulated use.⁵² It is not clear from the face of GTECA's waiver request whether GTECA has made reasonable projections of relative regulated and nonregulated use, or whether the proposed transfer might result in regulated customers bearing unregulated costs. Because the issues raised by GTECA's proposed investment transfer are interrelated with the other issues raised by Transmittal 873, we include the issues raised by GTECA's waiver petition among the issues designated for investigation in this proceeding.

2. Apollo Contract

25. Pleadings. Currently, GTECA's provision of cable transmission service to Apollo is governed by contractual agreements established shortly after the Commission granted GTECA waiver of the cross-ownership rule and Section 214 authority. Apollo argues that GTECA proposes in Transmittal 873 to modify the terms of the contractual arrangement unilaterally through a tariff filing, in violation of the Sierra-Mobile doctrine. Apollo explains that the Sierra-Mobile doctrine was established by the Supreme Court in two companion cases in 1956, which held that carriers are prohibited under the Natural Gas Act and the Federal Power Act from abrogating or modifying contract provisions by filing tariffs.⁵³

26. Apollo also maintains that the Commission requires carriers to show "substantial cause" before it will permit those carriers to revise tariffs in the middle of a long-term

⁵⁰ Id.

⁵¹ See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298, 1320 (para. 169 and n.284) (1987) (Joint Cost Order).

⁵² Joint Cost Order, 2 FCC Rcd at 1320 (paras. 169-170).

⁵³ Apollo Petition at 8-9, citing United Gas Co. v. Mobile Gas Corp., 350 U.S. 332, 339 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956); MCI v. FCC, 712 F.2d 517, 535 n.27 (D.C. Cir. 1983); Bell of Pennsylvania v. FCC, 503 F.2d 1250, 1282 (3d Cir. 1974), cert. denied 423 U.S. 886 (1975) See also City Petition at 20.

agreement.⁵⁴ According to Apollo, its contractual arrangement with GTECA was intended to be in effect until 2006, and GTECA has made no showing of substantial cause that would justify abrogation of the terms of the contract.⁵⁵ Apollo argues that the policy reasons for the substantial cause test are more compelling with respect to contract services than they are for tariffed services.⁵⁶

27. In addition, Apollo maintains that many of the tariff provisions are different from current contract provisions. Specifically, Apollo states that since it would no longer be responsible for maintaining and repairing the Cerritos cable facilities, providing cable converter boxes to subscribers, or billing and collecting charges for cable services from subscribers, it would no longer receive revenue from GTECA for performing these services.⁵⁷ Similarly, the City maintains that several provisions of the franchise agreements with Apollo and GTECA are not reflected in the tariffs.⁵⁸

28. In reply, GTECA argues that the Sierra-Mobile doctrine does not apply here. GTECA asserts that the governing case is Armour Packing v. United States,⁵⁹ which states that a properly filed tariff, rather than a contract, establishes the legal rate for common carrier services provided to an end user customer.⁶⁰ According to GTECA, the Sierra-Mobile doctrine is applicable only to carrier-to-carrier contracts. GTECA further argues that Sierra-Mobile is not applicable because it is not acting "unilaterally," but rather is acting to comply with Commission rules.⁶¹ GTECA also argues that the RCA substantial cause test is not applicable because it is acting to comply with Commission rules, not based upon its own business needs or

⁵⁴ Apollo Petition at 9-10, citing, e.g., RCA American, 86 FCC 2d 1197 (1981); Showtime Networks, Inc. v. FCC, 932 F.2d 1 (D.C. Cir. 1991) (substantial cause test applied to tariffed cable services).

⁵⁵ Apollo Petition at 10-11

⁵⁶ Id. at 10.

⁵⁷ Id. at 11-13.

⁵⁸ City Petition at 21-23, Att. A (City of Cerritos Ordinance No. 659, granting cable franchise to Apollo), Att. B (City of Cerritos Ordinance No. 658, granting cable franchise to GTECA).

⁵⁹ Armour Packing v. United States, 209 U.S. 56 (1908).

⁶⁰ GTECA Opposition at 11-12.

⁶¹ GTECA Opposition at 14.

objectives.⁶²

29. GTECA further argues that the terms of the contract permit either GTECA or Apollo to terminate the installation agreement at any time.⁶³ GTECA contends that carriers usually provide maintenance, installation, and repair services in conjunction with common carrier services.⁶⁴ GTECA also denies that Apollo will be harmed by its assumption of maintenance functions. Although GTECA concedes that Apollo will lose revenue as a result of this, GTECA asserts that Apollo will also avoid the costs associated with maintenance and installation.⁶⁵ GTECA further denies that the tariff would alter the decoder box agreement with Apollo, and also notes that decoders are unregulated and thus the costs of these decoders are not recovered in the tariffed rate.⁶⁶

30. Discussion. First, it is not clear from the record before us whether and to what extent the terms and conditions of Transmittal 873 are different from the terms and conditions established by the contractual arrangement between GTECA and Apollo. Second, the Commission has never applied the substantial cause test to a long-term carrier-customer contract such as that before us now. Similarly, it is not clear whether or how the Sierra-Mobile line of cases or the Armour Packing case apply to the GTECA-Apollo contracts. If we conclude either that the substantial cause test should be extended to this case, or that the Sierra-Mobile doctrine is applicable here, then the rates, terms, and conditions in Transmittal 873 cannot be lawful. Therefore, these legal issues must be resolved before we can find that Transmittal 873 is not unlawful. Accordingly, we direct GTECA, and invite other participants in this tariff proceeding, to submit briefs addressing these legal issues.

3. Common Carriage

31. Pleadings. Apollo also argues that GTECA's service is a private, not a common carrier, service and, therefore, tariffs offering a private service are not lawful. Apollo asserts that the nature of the service rather than the identity of the carrier determines whether the service is a common carrier or private carrier service.⁶⁷ Apollo contends that, under the terms of both the contract and the tariff, the offering would be limited to two customers rather than

⁶² Id. at 14 n.17.

⁶³ Id. at 15.

⁶⁴ Id. at 15-16.

⁶⁵ Id. at 16.

⁶⁶ Id. at 17.

⁶⁷ Apollo Petition at 14-15, citing Southwestern Bell v. FCC, 19 F.3d 1476 (D.C. Cir. 1994) (Dark Fiber Remand Order): cited in City Petition at 20-21.

held out generally to the public.⁶⁸ Apollo contends that GTECA's reliance on past Commission precedent authorizing common carrier channel service to justify the tariffs filed here is misplaced because the services at issue in that precedent were provided to all cable companies indiscriminately.⁶⁹

32. GTECA responds that the Commission has found in the past that video channel service is a common carrier service properly offered pursuant to tariff.⁷⁰ GTECA also argues that there is nothing that prohibits LECs from filing individually negotiated rates in tariffs.⁷¹ On July 12, 1994, GTOC filed Transmittal No. 893, to remove language from Transmittal No. 873 limiting the offering to one customer, and to make the offering generally available.

33. Discussion. We have reviewed Transmittal 873 and the revision to that Transmittal filed by GTECA, as well as all associated pleadings. We conclude that, as revised, GTECA's tariff is not so patently unlawful as to warrant rejection, and that an investigation of this issue is not warranted at this time. Accordingly we will not designate this as an issue for investigation.

V. LEGAL ISSUES FOR RESOLUTION

34. As discussed above, there are a number of legal issues which GTECA and commenting parties should brief to aid us in reaching a legal conclusion on these issues. These issues are set forth below:

Issue 1. Does the Court of Appeals' stay of the Remand Order continue the Section 214 authorization in effect until judicial review is complete, or does the authorization terminate on July 18, 1994?

Issue 2. Is it lawful for GTECA to supersede the Apollo contracts with the tariff filing in Transmittal No. 873?

⁶⁸ Apollo Petition at 15-16.

⁶⁹ Id. at 16-18.

⁷⁰ GTECA Opposition at 9-11, citing Ohio Bell Telephone Co., 1 FCC Rcd 942 (Com.Car.Bur. 1986); Pacific Bell Telephone Co. 60 Rad.Reg.2d 1175 (Com.Car.Bur. 1986); C&P Telephone Co., 60 Rad.Reg.2d 1003 (Com.Car.Bur. 1985); Commission Order, Dated April 6, 1966, Requiring Common Carriers To File Tariffs With Commission for Local Distribution Channels for Use in CATV Systems, 4 FCC 2d 257 (1966); General Telephone Company of California, Docket No. 17333, 13 FCC 2d 448 (1968).

⁷¹ GTECA Opposition at 10. GTECA interprets the Dark Fiber Remand Order as finding that the Commission did not justify its conclusion that dark fiber is a common carrier service, rather than that ICB rates may not be filed in tariffs.

VI. FACTUAL ISSUES DESIGNATED FOR INVESTIGATION

35. The following are the issues raised by Transmittal 873 that we designate for investigation:

Issue 1. Is GTECA's transfer of investment from unregulated to regulated accounts reasonable?

In order to fully investigate the petition for waiver of the Commission's rules to transfer investment from unregulated to regulated accounts, we direct GTECA to provide the following information in its direct case:

- The original cost and the associated accumulated depreciation of the plant being transferred. by Part 32 account
- The depreciated baseline cost of the transferred plant, as of the date of transfer.
- The date the plant was placed in service.
- The net book value of the transferred plant, specified as depreciated cost minus deferred tax liabilities, as of the date of transfer.
- The estimated fair market value of the plant as of the date of the proposed transfer.
- The cost pools in GTE's Part 64 cost allocation manual to which the plant is to be transferred

Parties are invited to comment on the information provided by GTECA in its direct case and in its petition for waiver. During the pendency of this investigation, we also require GTECA to keep accurate account of the costs associated with this service separate from other costs.

Issue 2. Are the rates and terms proposed in Transmittal 873 reasonable?

GTECA bases its rates in Transmittal 873 on the lease charges contained in the Apollo contract; and those charges were calculated to be equal to half of the total construction costs, to be collected over a 15 year period plus interest at a rate of 18.9 percent.⁷² GTECA also

⁷² GTECA Opposition at 22-23. The rates were based on half the construction costs because GTECA assumed both Apollo and Service Corp would be using half the channels available in the Cerritos network. Id.

states that, because Transmittal 873 is priced on an individual case basis, the service will not be incorporated into its price cap indexes.⁷³ Parties are directed to discuss whether such a rate computation is reasonable. For example, the Commission limited a price cap carrier's cost of money factor in a new service cost justification to 11.25 percent, and the Commission prescribed a rate of return of 11.25 percent for LECs not subject to price caps.

Parties are also directed to discuss the extent to which the terms and conditions of Transmittal 873 are inconsistent with the contractual arrangement with Apollo.

Issue 3. Under Transmittal 873, will the relationship between GTECA and Apollo be exclusively a "carrier-user" relationship, apart from the effect of Robak's role in the construction, as required by Section 63.54 of the Commission's Rules?

After Transmittal 873 takes effect, it appears that GTECA plans to continue to provide to Apollo the use of cable converter boxes, the boxes necessary to convert cable signals into a format that can be displayed on subscribers' television sets, on a non-regulated basis. Also, it appears that GTECA plans to continue to sub-lease space from Apollo at the location where Apollo receives satellite signals for distribution over the cable network. Thus, there is a substantial question whether these relationships violate the telephone-cable cross-ownership rule.

Section 63.54(c) of the Commission's rules, the telephone-cable cross-ownership rule, bars any financial or business relationship between a common carrier and a video programming provider except a carrier-user relationship. In NITCO, the Commission explained that the carrier-user relationship exception of Section 63.54 contemplates transactions that entail a general offer to provide on an indiscriminate basis substantially the same service or services to any and all similarly situated companies or members of the public.⁷⁴ The Commission found that seven separate relationships between a telephone company and a cable company, including the lease of space, exceeded the carrier-user relationship and, therefore, violated Section 63.54.⁷⁵

GTECA shall explain in its direct case why its lease of space and provision of converter boxes on a non-common carrier basis are consistent with Section 63.54 of the Commission's Rules. In the alternative, GTECA may make alternative arrangements with Apollo to terminate these relationships with Apollo.

⁷³ GTECA Opposition at 21.

⁷⁴ CCI Cablevision v. Northwestern Indiana Telephone Company, Inc., 3 FCC Rcd 3096, 3097 (para. 8) (1988), aff'd, 872 F.2d 465 (D.C. Cir. 1989), cert. denied, 493 U.S. 1035 (1990) (NITCO).

⁷⁵ Id.

VII. PROCEDURAL MATTERS

A. Filing Schedules

36. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth in this Order shall apply. We require GTOC to file a direct case addressing each issue designated above no later than **August 15, 1994**. Moreover, the direct case must supply all information upon which GTOC relies to support its position. Pleadings responding to the direct case may be filed no later than **September 15, 1994**, and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." GTOC may file a "Rebuttal" to oppositions or comments no later than **September 30, 1994**.

37. Parties briefing any or all of the legal issues for which we solicited further discussion must file those briefs on or before **August 15, 1994**. Parties may address all the legal issues in the same brief, and may address these issues in the same pleadings filed in the investigation discussed above. Comments on these briefs may be filed on or before **September 15, 1994**, and reply comments may be filed on or before **September 30, 1994**.

38. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, International Transcription Service, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Also, one copy must be delivered to the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation.

39. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

B. Ex Parte Requirements

40. Ex parte contacts (i.e., written or oral communications which address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until the commencement of the Sunshine Agenda period. The Sunshine Agenda period terminates when a final order is released and the final order itself is issued. Written ex parte contacts and memoranda summarizing oral ex parte contacts must be filed on the day of the presentation with the Secretary and Commission

employees receiving each presentation. For other requirements, see generally Section 1.1200 et seq. of the Commission's Rules, 47 C.F.R. §§ 1.1200 et seq.

VIII. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED that the petitions to reject or suspend and investigate GTE Telephone Operating Companies Tariff F.C.C. No. 1, Transmittal Nos. 873 and 874, filed by MCI Telecommunications Corporation; National Cable Television Association, Inc.; Apollo CableVision; and the City of Cerritos, California ARE GRANTED, to the extent indicated above, and are otherwise DENIED.

42. IT IS FURTHER ORDERED that, pursuant to Section 533(b) of the Communications Act, 47 U.S.C. § 613(b), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, GTE Telephone Operating Companies Tariff F.C.C. No. 1, Transmittal No. 874, IS REJECTED.

43. IT IS FURTHER ORDERED that the GTE Telephone Operating Companies SHALL FILE tariff revisions, within ten days of the release date of this Order, to become effective on one day's notice, to remove the unlawful portions of the tariff.

44. IT IS FURTHER 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, GTE Telephone Operating Companies, Transmittal No. 873, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal, and any future tariff revisions modifying that transmittal, IS INSTITUTED.

45. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL FILE tariff revisions reflecting this suspension no later than ten days from the release date of this order. GTE Telephone Operating Companies are directed to file a supplement to its tariff, to be effective on one day's notice, in order to advance the effective date of Transmittal No. 873 to July 17, 1994, and then suspend the same for one day until July 18, 1994.

46. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL FILE a brief addressing each of the legal issues discussed in Section V of this Order. Other parties participating in this investigation may file a brief addressing each of the legal issues discussed in Section V of this Order.

47. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, that the issues set forth in Section VI of this Order ARE DESIGNATED FOR INVESTIGATION.

48. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL BE a party to this proceeding.

49. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL INCLUDE a response to each item of information requested in this Order.

50. 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 earnings, costs, and returns associated with the rates that are the subject of this investigation.

51. IT IS FURTHER ORDERED that GTE SHALL COME INTO COMPLIANCE with the telephone company-cable television cross-ownership restrictions of Sections 63.54 and 63.55 of the Commission's Rules, 47 C.F.R. §§ 63.54, 63.55, and Section 533(b) of the Communications Act, 47 U.S.C. § 613(b) within 60 days from the date this decision is released.

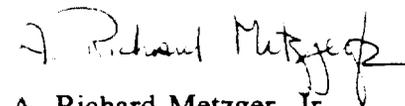
52. IT IS FURTHER ORDERED that pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, GTE Telephone Operating Companies ARE GRANTED a limited waiver of Sections 63.54 and 63.55 of the Commission's Rules, to expire 60 days after the release date of this Order, for the purpose of coming into compliance with the telephone company-cable television cross-ownership rules.

53. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 214 of the Communications Act, 47 U.S.C. §§ 154(i), 214, GTE Telephone Operating Companies ARE GRANTED interim authority to provide the service described in its Transmittal No. 873, during the pendency of this investigation.

54. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 214 of the Communications Act, 47 U.S.C. §§ 154(i), 214, GTE Telephone Operating Companies ARE GRANTED interim authority to provide the video channel service to GTE Service Corporation, to expire 60 days after the release date of this Order.

55. For purposes of compliance with this Order, we waive Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59. GTE Telephone Operating Companies should cite the "DA" number of this Order as the authority for these filings

FEDERAL COMMUNICATIONS COMMISSION



A. Richard Metzger, Jr.
Acting Chief,
Common Carrier Bureau

LEASE AGREEMENT

This Lease Agreement is entered into this _____ day of January, 1987, between General Telephone Company of California ("Owner") and Apollo Cablevision, Inc. Lessee

Recitals

This Lease Agreement is entered into with reference to the following agreed facts:

A. Owner and T. L. Robak, Inc., Lessee's parent corporation, have entered into negotiations for the construction of an underground electrical signal transmission facility (the "System") to be constructed in the City of Cerritos, California. A portion of the System (the "Coaxial Facilities") has been designed to transmit cable television ("CATV") signals to Lessee's customers in the City of Cerritos via coaxial cable.

B. The purpose of this Lease Agreement is to set forth the terms and conditions under which Owner will lease to Lessee the bandwidth required by it to provide CATV service to Lessee's customers in the City of Cerritos.

NOW THEREFORE, the parties hereto do hereby agree as follows:

1. The Coaxial Facilities Capacity. The Owner agrees to lease and the Lessee agrees to rent from the Owner 275 MHz of bandwidth capacity for the use of Lessee in providing CATV service in the City of Cerritos. A description of where the Coaxial Facilities are installed to provide said capacity is shown on

Exhibit "A", attached hereto and by this reference incorporated herein.

Owner reserves the right to select the actual physical facilities used to carry Lessee's broadcast signals and replace or modify said facilities in its sole discretion, provided the bandwidth capacity and quality of transmission provided to Lessee is not impaired.

Lessee was aware, prior to seeking a CATV contract, and remains aware that lease of pole attachment and/or conduit space from Owner, for Lessee's own distribution facilities, at reasonable rates and without undue usage restrictions, was an available alternative to the instant Agreement.

2. Rent. The Lessee shall pay the Owner as rent for the use of said bandwidth capacity the monthly sum described in Exhibit "B", attached hereto and by this reference incorporated herein. A late payment charge equal to 1.5% per month, or the maximum rate allowed by law, whichever is less, will apply to each rental payment which is received by Owner more than five (5) days after the payment due date shown on Owner's monthly statements.

3. Term. This Lease Agreement shall commence as of the date indicated above and shall continue for a period of fifteen (15) years from the date Lessee receives the written notice of the availability of said bandwidth capacity (as set forth in paragraph 16 of that certain Construction Agreement between the Owner and T. L. Robak, Inc., dated the 22nd day of January, 1987, and by this reference incorporated herein), unless sooner terminated by the provisions of this Lease Agreement.

4. Use of Coaxial Facilities Capacity. The bandwidth capacity leased by Lessee hereunder shall be used and operated by Lessee pursuant to and in compliance with the provisions of that certain CATV Contract between Lessee and the City of Cerritos, and by this reference incorporated herein. Lessee's use and operation also shall comply with all applicable federal, state and local laws, rules and ordinances.

5. Option to Renew Lease. Owner hereby grants Lessee an option to renew this Lease coextensive with any extensions granted by the City of Cerritos to Lessee pursuant to the CATV Contract referred to in paragraph 4. at a rent to be agreed between the parties.

6. Title. The parties agree that the title to the System (including the Coaxial Facilities used to provide CATV service) lies exclusively in Owner and the Lessee has no rights or property interest therein other than the rights of a lessee pursuant to the terms of this Lease Agreement. The parties further agree, however, that the items of equipment described on Exhibit "C" which is attached hereto and by this reference incorporated herein, comprise certain elements of the CATV operating system that are owned by Lessee. Owner has no rights or property interest in such specified items.

7. Risk of Loss; Insurance; and Indemnity. The parties agree that all risk of loss or damage to the System (including the Coaxial Facilities) shall be borne by the Owner. The Lessee shall, however, furnish the Owner with general and

public liability insurance in amounts not less than \$2,000,000.00 for any one person, and \$2,000,000.00 per occurrence; property damage liability insurance of not less than \$2,000,000.00; and liability insurance to indemnify and hold Owner harmless from any loss, claim, liability or demand including attorneys' fees, arising out of Lessee's use of the bandwidth provided by Owner. Lessee shall provide Owner with certificates of said insurance naming Owner as loss payee as its interest may appear as to each of the foregoing insurance policies. The certificates shall further state that Owner shall be given at least thirty (30) days prior written notice of any proposed cancellation of said policies. Lessee shall also maintain workers' compensation insurance covering its employees as required by law for all work performed on the System, including the Coaxial Facilities pursuant to this Agreement. In addition, to the foregoing insurance contract obligations of Lessee, Lessee agrees that it shall indemnify and hold Owner harmless from any and all liability, claims, and demands whatsoever, including attorney's fees, as a result of the negligence or other wrongdoing on the part of any employee, agent, servant or representative of Lessee, in connection with the operation of the Coaxial Facilities.

8. Taxes, Licenses and Franchise Fees. The Lessee shall pay all license fees, taxes, and all other governmental charges, franchise fees, fines, or penalties arising out of Owner's provision of cable bandwidth to Lessee for the provision of CATV services in the City of Cerritos, California, except fines or penalties imposed as a result of Owner's conduct. Upon demand,

the Lessee shall reimburse the Owner for any such taxes, charges, fees, fines or penalties which the Owner may be compelled to pay on Lessee's behalf in connection with this Lease Agreement prior to the termination thereof. The parties further agree to cooperate with one another and furnish each other with any information reasonably required in connection with the parties' obligations under this paragraph.

9. Assignment and Sublease. Subject to the provisions of the CATV Contract between Lessee and the City of Cerritos, and with the approval of Owner (which approval shall not be unreasonably withheld), the Lessee may assign and/or sublease all or any part of its interest under this Lease Agreement; provided, however, such assignments and/or sublease agreements shall not release Lessee from any of its obligations to the Owner hereunder. Subject to the provisions of the Franchise Agreement between Owner and the City of Cerritos, the parties further agree that the Owner may assign all or any part of its right, title and interest in and to the System. In such event, all the provisions of this Lease Agreement for the benefit of the Owner shall inure to the benefit of and may be exercised by or on behalf of the successor in interest of the Owner, and all rental payments due or to become due under this Agreement assigned to such successor in interest shall be paid directly to such successor in interest commencing on the first day of the month following Lessee's receipt of notification of such assignment.

10. Owner's Warranties. As to the cable bandwidth leased hereunder, the Owner warrants that:

(a) It is and will be the sole and absolute Owner of the Facilities used to provide said capacity;

(b) Subject to any necessary regulatory approvals, Owner has the right to lease the same to Lessee;

(c) The same is free of all encumbrances at the time this Lease Agreement commences;

(d) The Owner will keep the Coaxial Facilities used to provide said bandwidth free of all liens, security interests and encumbrances; and

(e) It will do nothing to disturb the Lessee's full right of possession and enjoyment thereof and exercise of all the Lessee's rights with respect thereto as provided by this Agreement.

11. Lessee's Default. Time is of the essence under this Agreement and any of the following events shall constitute default on the part of the Lessee hereunder:

(a) The failure of the Lessee to pay any installment of rental within thirty (30) days after the date on which the same shall become due;

(b) Any breach or failure of the Lessee to observe or perform any of its other obligations hereunder and the continuance of such default for sixty (60) days after notice in writing to Lessee of the existence of such default;

(c) The insolvency or bankruptcy of the Lessee or the making by the Lessee of an assignment for the benefit of creditors, or the consent of the Lessee to the appointment of a Trustee or Receiver, or the appointment without its consent of a

Trustee or Receiver for the Lessee or for a substantial part of its property;

(d) The institution by or against the Lessee of bankruptcy, reorganization, arrangement, or insolvency proceedings; or

(e) The termination of the CATV Contract between Lessee and the City of Cerritos, California.

12. Remedies. Upon the occurrence of any default by Lessee as specified in paragraph 11, the Owner may, at its option:

(a) Declare this Lease Agreement in default and thereupon the cable bandwidth leased to Lessee and all rights of the Lessee therein shall be surrendered to the Owner;

(b) By its agents, take possession of (i) the Coaxial Facilities, (ii) the bandwidth provided pursuant hereto, and (iii) the equipment that is attached to or part of the System, as identified in Exhibit "C" to this Agreement that is owned by Lessee and is used in the transport of the CATV signals. (Any equipment taken shall be subject to all relevant liabilities and, where appropriate, Owner shall compensate Lessee for Lessee's equity interest, if any, in said equipment.) For this purpose Owner may enter upon any premises of the Lessee without liability for suit, action, or other proceeding by the Lessee, so long as no breach of the peace results; or

(c) Subject to its duty to mitigate damages and to any necessary regulatory approvals, Owner may hold, use, sell, lease or otherwise dispose of the Coaxial Facilities and/or bandwidth provided to Lessee at Owner's discretion.

(d) If Lessee breaches this Lease and ceases using the leased cable bandwidth before the end of the Lease term, or if Lessee's right to possession is terminated by Owner because of Lessee's breach of this Lease, this Lease, at the option of Owner, shall terminate. On such termination, Owner may recover from Lessee:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and

(4) Any other amount necessary to compensate owner for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom.

(e) The "worth at the time of award" of the amount referred to in subparagraphs (1) and (2) of Section (d) hereinabove is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to in subparagraph (3) of Section (d) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

(f) Efforts by Owner to mitigate the damages caused by Lessee's breach of this Lease do not waive Owner's right to recover damages under this article

(g) Even though Lessee has breached this Lease and has ceased using the leased capacity, this Lease continues in effect so long as Owner does not terminate Lessee's right to possession; and Owner may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease.

13. Invalid Provision. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Agreement.

14. Construction. The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of California.

15. Complete Agreement. This Agreement and the exhibits attached hereto contain the entire understanding of the parties, and such understanding may not be modified or terminated except in writing signed by the parties.

16. Waiver of Default; Recovery of Costs of Suit. A waiver of default by Owner shall not be a waiver of any other or subsequent default. In the event either party hereto initiates an appropriate legal action to enforce the terms and provisions of this Lease Agreement, the prevailing party in such action may recover its costs of suit, including reasonable attorneys' fees.

17. Prepayment of Rental. The parties agree that the Lessee may, at any time during the term of this Lease, prepay in whole or in part the "Owner's Recoverable Construction Cost" (as specified on Exhibit "B") at its then present value. If the full unpaid balance is paid, Lessee shall have no further rental payments due under the terms of this Lease Agreement. If less than all of the Owner's Recoverable Construction Cost is prepaid pursuant to this provision, then the subsequent annual rental shall be redetermined pursuant to the formula set forth in Exhibit "B".

18. Testing of New Communications Technologies. Lessee is aware that GTE Service Corporation will be using a portion of the System for the purpose of testing new communications technologies. Lessee further understands that one of the test projects that GTE Service Corporation intends to undertake may involve the transmission of CATV signals over fiber optic cable. Lessee agrees to permit GTE Service Corporation from time to time to use its test bed facilities, including but not limited to fiber optic cable, to carry all or a portion of Lessee's CATV signals, provided Lessee receives adequate assurances from GTE Service Corporation that the CATV service provided by Lessee to its customers will not be disrupted thereby, and further provided that Lessee receives advance notice of any such test activity. Owner agrees to permit Lessee to observe and/or participate in such uses of fiber optic cable in its test bed facilities, provided Owner: (i) receives adequate assurances that such observation and/or participation of Lessee will not disrupt the test bed activities,

and (ii) is not in violation of any agreement between Owner (or any related entity of Owner) and any other party.

19. Assertion of Regulatory Jurisdiction. Lessee understands that the bandwidth capacity subject to this Agreement is provided on a non-common carrier basis, individually negotiated and tailored to meet the particular needs of Lessee and characterized by a long-term Lease with a customer expected to operate a stable business. Therefore, the service by Owner under the Agreement is not subject to regulation by the Public Utilities Commission of the State of California (CPUC) or the Title II authority of the Federal Communications Commission (FCC). If the CPUC should assert jurisdiction or the FCC claim Title II jurisdiction over the service provided by Owner, Lessee shall be subject to the rates, terms and conditions such agency may impose.

20. Express Contingencies. This Agreement is contingent upon the satisfactory completion of the construction of the System by T. L. Robak, Inc., the award of the CATV Contract in the City of Cerritos to Lessee, the award of a franchise agreement in the City of Cerritos to Owner and any necessary regulatory agency approvals.

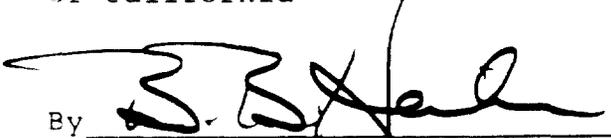
21. Increase in Bandwidth Capacity. Owner agrees that if bandwidth capacity in excess of 275 MHz should become available, Lessee, or its successor, is hereby granted a right of first refusal to the use of any such increase in capacity at such terms and subject to such provisions as are mutually agreed to by the parties.

22. Repair and Maintenance of the Coaxial Facilities.

If Owner fails to maintain and/or repair the Coaxial Facilities in a manner sufficient to meet the performance standards established by the Franchise Agreement between the City of Cerritos and Owner, then Lessee may undertake such work. All costs incurred by the Lessee shall be billed to the Owner by Lessee. Lessee shall, prior to performing any such work, give Owner reasonable notice of the work required and at least 10 days in which to complete such work; provided, however, that in the event immediate repair is required to restore CATV service or prevent impairment of the required quality of transmission of CATV signals, Lessee may undertake commencement of such work prior to giving such notice. Lessee will, however, provide such notice as soon as is reasonably practicable under the circumstances

IN WITNESS WHEREOF, this Lease Agreement is executed on the day and year indicated below.

OWNER
General Telephone Company
of California

By 

Dated: 1/22/, 1987

Attest:

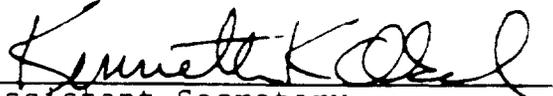

Assistant Secretary

EXHIBIT "A"

TO THE LEASE AGREEMENT OF THE
COAXIAL FACILITIES, CERRITOS, CALIFORNIA

Description of the Coaxial Facilities

The Coaxial Facilities leased to Apollo Cablevision, Inc. is composed of the following elements:

Table of Contents

Appendix "1"	Map of Coaxial Facilities
Appendix "2"	Description of Component Parts of Coaxial Facilities

[These Appendices are to be completed as the System design is generated and as the System is constructed.]