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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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GTE Telephone Operating Companies)	Transmittal Nos. 909, 918
Revisions to Tariff F.C.C. No. 1)	CC Docket No. 94-81
)	

ORDER

Adopted: September 15, 1995; Released: September 15, 1995

By the Chief, Tariff Division, 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 the rates, terms, and conditions governing GTECA's provision of video channel service to Apollo CableVision, Inc. (Apollo), a cable company providing cable television service in Cerritos, California. On that same day, GTECA also filed Transmittal No. 874 to provide video channel service to an affiliated company, GTE Service Corporation (Service Corp.). Prior to that time, GTECA had been providing video channel service to both Apollo and Service Corp. on a trial basis under a five-year authorization granted in 1988, pursuant to Section 214 of the Communications Act of 1934 as amended (Act).¹ That authorization permitted GTECA to construct and operate the facilities necessary to provide video channel service. The Commission also had granted GTECA a five-year waiver of the cable-telephone cross-ownership bar² so that it could provide video programming to end users in Cerritos. GTECA stated that it submitted Transmittal 874 to enable Service Corp. to continue providing cable service to Cerritos subscribers after the waiver expired on July 17, 1994.³

¹ General Telephone Company of California, 4 FCC Rcd 5693, 5700-01 (paras. 50-61) (1989) (Waiver Review Order).

² 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.

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

2. On July 14, 1994, the Common Carrier Bureau (Bureau) suspended Transmittal 873, and initiated an investigation into various issues raised by this tariff filing.⁴ In the same Order, the Bureau found that Transmittal 874 violated the Act and the Commission's rules that prohibit telephone common carriers from providing video programming directly to end users in their telephone service territory, and, accordingly, rejected Transmittal 874.⁵ GTOC was granted a 60-day period to comply with the telephone-cable cross-ownership restriction, so as to avoid any abrupt termination of cable programming service provided by Service Corp. to subscribers in Cerritos.⁶

3. 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."⁷ 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. Thus, the revisions introduced in Transmittals 909 and 874 were identical. The Bureau concluded that Transmittal 909 raised substantial questions of lawfulness, suspended the tariff for one day, imposed an accounting order, and included Transmittal 909 in the pending investigation of Transmittal 873.⁸

4. In GTE v. FCC, the Court of Appeals held that GTECA's Section 214 authority for Transmittal 909 expired with the expiration of the cross-ownership waiver.⁹ GTECA subsequently filed a petition for rehearing before the Court of Appeals, and that petition was denied on May 19, 1995.¹⁰ Accordingly, the Bureau found that "it is now indisputable that GTECA does not have Section 214 authority for the facilities it uses to provide the service for which it has filed the tariff revisions covered in Transmittal 909."¹¹ The Bureau also granted

⁴ GTE Telephone Operating Companies, CC Docket No. 94-81, 9 FCC Rcd 3613 (Com.Car.Bur. 1994) (Cerritos Tariff Order) (applications for review pending).

⁵ Id. at 3615 (para. 16). See 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.

⁶ Cerritos Tariff Order, 9 FCC Rcd at 3615 (para. 18).

⁷ GTE California, Inc. v. FCC, No. 93-70924 (9th Cir., filed Sept. 7, 1994).

⁸ GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 909, CC Docket No. 94-81, 9 FCC Rcd 5229 (Com.Car.Bur., 1994) (Transmittal 909 Suspension Order) at para. 3; citing Cerritos Tariff Order, 9 FCC Rcd at 3615 n.38.

⁹ GTE California, Inc. v. FCC, 39 F.3d 940, 944-45 (9th Cir. 1994) (GTE v. FCC).

¹⁰ GTE California, Inc. v. FCC, No. 93-70924 (9th Cir., filed May 19, 1995).

¹¹ GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 909, 918, CC Docket No. 94-81, DA 95-1679 (Com. Car. Bur., released July 28, 1995),

GTECA temporary Section 214 authority, and directed GTECA either to apply for Section 214 authority within 15 days of the release date of this Order, or to notify us within that period that it intends to remove from its tariff the service it introduced in Transmittal 909 and to do so within 60 days of the release date of this Order.¹²

5. GTECA elected to apply for permanent Section 214 authority. Subsequently, the Bureau designated one issue for investigation pertaining to Transmittal 909, and established a pleading cycle for the supplemental pleading addressing that issue.¹³ GTECA's supplemental direct case was due on August 28, 1995. Supplemental comments were due on September 11, and supplemental replies were scheduled to be filed on September 18.

6. On September 14, 1995, GTECA filed a motion for extension of time to file its supplemental reply. GTECA notes that Apollo included a detailed analysis prepared by a consultant hired by Apollo, and claims that the personnel needed to review this analysis are out of the office this week on previously scheduled assignments.¹⁴ GTECA claims that an extension of one week would not unreasonably delay consideration of this matter.

7. We have reviewed GTECA's motion. It is the policy of the Commission that motions for extension of time shall not be routinely granted.¹⁵ Nevertheless, we find that the record on the issue designated for investigation in the Cerritos Supplemental Designation Order might not be developed adequately unless the GTECA staff with the necessary expertise are given an opportunity to review the detailed economic analysis submitted by Apollo. We therefore extend the deadlines previously established in this investigation.

8. We conclude, however, that GTECA has not justified extending its filing date to September 25, 1995. As a result of the time required by the Court of Appeals to resolve the issues raised by GTECA's petition for rehearing of GTE v. FCC, there has already been some delay in this proceeding. Accordingly, we would prefer to resolve this proceeding as quickly as possible.

at para. 4.

¹² Id. at paras. 4-5.

¹³ GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 909, 918, CC Docket No. 94-81, DA 95-1796 (Com. Car. Bur., released August 14, 1995).

¹⁴ GTECA Motion at 1-2.

¹⁵ Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).

9. Accordingly, IT IS ORDERED that supplemental replies to the supplemental oppositions in the captioned proceeding SHALL BE FILED no later than September 21, 1995.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise

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Chief, Tariff Division
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