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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
GTE Telephone Operating Companies Tariff F.C.C. No. 1	)	Transmittal Nos. 873, 874 893, 909, 918
	)	CC Docket No. 94-81
Video Channel Service in Cerritos, California	)	

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COMMENTS OF GTE ON SUPPLEMENTAL APPLICATION FOR REVIEW AND PETITION FOR EXPEDITED CONSIDERATION

The GTE Telephone Operating Companies, on behalf of GTE California Incorporated and GTE Service Corporation

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SUMMARY

GTE California Incorporated and GTE Service Corporation join with Apollo CableVision, Inc. in requesting that the Commission issue a definitive ruling on whether GTECA's video transport service in Cerritos, California is indeed subject to the Commission's Title II jurisdiction. It is now incumbent upon the Commission to definitively state that Title II jurisdiction has been asserted, that GTECA's video transport service in Cerritos constitutes common carriage, and that GTECA was compelled by statute and the Commission's Rules to tariff the service upon waiver expiration.

Apollo has underpinned its state court action upon its erroneous argument that the Cerritos transport network constitutes "private carriage." Despite nearly thirty years of Commission precedent affirming the common carriage treatment of video channel service, the state court (at Apollo's insistence) appears poised to ignore the Bureau's rejection of the private carriage argument. Therefore, only timely action by the Commission will alleviate the substantial prejudice GTECA and Service Corp. are suffering at the hands of Apollo's erroneous assertion.

The Commission has quite explicitly assumed and exercised its Title II jurisdiction over the Cerritos network time and time again, initially by granting GTECA Section 214 authority to provide video signal transport to Apollo and Service Corp., and then by issuing order after order since that time requiring GTECA to comply with the statutory provisions of the Act and the Commission's implementing regulations. Accordingly, GTECA's tariffs appropriately reflect the Commission's prior assertion of Title II jurisdiction over GTECA's video transport service in Cerritos. Apollo simply

cannot substantiate its claim that the tariffs impart some economic injury on its operations. There is no reason why Apollo and Service Corp. cannot continue provision of their video service offerings to Cerritos subscribers pursuant to the conditions of the existing tariffs.

Before the
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Washington, DC 20554

In the Matter of	)	
GTE TELEPHONE OPERATING COMPANIES	)	Transmittal Nos. 873, 874
Tariff F.C.C. No. 1	)	893, 909, 918
	)	CC Docket No. 94-81
Video Channel Service in Cerritos,	)	
California	)	
	)	

COMMENTS OF GTE
ON SUPPLEMENTAL APPLICATION FOR REVIEW
AND PETITION FOR EXPEDITED CONSIDERATION

The GTE Telephone Operating Companies, on behalf of GTE California Incorporated (GTECA) and GTE Service Corporation (Service Corp.), pursuant to Section 1.115(d) of the Commission's Rules,[1] respectfully submit these Comments on the Supplemental Application for Review and Petition for Expedited Consideration (Supplemental Application) filed by Apollo CableVision, Inc. (Apollo) in the above-captioned proceeding. Although Apollo's Supplemental Application is replete with erroneous assertions and is legally and factually misleading in a number of respects, GTECA and Service Corp. join with Apollo in requesting that the Commission issue a definitive ruling on whether GTECA's video transport service in Cerritos, California is indeed subject to the Commission's Title II jurisdiction and, as such, the parties were required to come into compliance with the Act and the Commission's Rules when the waiver expired in July, 1994.

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[1] 47 U.S.C. § 1.115(d).

I. INTRODUCTION

On August 1, 1994, Apollo sought Commission review of a Common Carrier Bureau ruling that permitted GTECA's tariffs for video channel service in Cerritos to become effective, subject to an ongoing investigation. In that Application, Apollo requested the Commission make a final determination as to whether the video transport service provided by GTECA to Apollo constitutes private, versus common, carriage. On February 8, 1995, GTECA filed a Motion for Declaratory Ruling requesting that the Commission declare that Apollo's requested relief for damages in state court action[2] violates the rate regulation provisions of Title II of the Act. In this Supplemental Application, Apollo extends its earlier request for a finding of private carriage with respect to GTECA's video transport service provided to Service Corp. and pleads for immediate Commission action. For the reasons stated herein, GTECA and Service Corp. support Apollo's request for immediate Commission action on these matters.

II. A TIMELY RULING BY THE COMMISSION ON THE COMMON CARRIAGE ISSUE IN THIS PROCEEDING IS WARRANTED.

Apollo is correct that neither GTECA nor Service Corp. opposed its earlier Application for Review.[3] Indeed, GTECA and Service Corp. now join Apollo in requesting that the question presented by Apollo's applications be laid to rest once and for all, for GTECA and Service Corp. have been substantially prejudiced by Apollo's repeated assertions in the state court action that GTECA was not required to come into compliance with the Act and the Commission's Rules by tariffing its service once the

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[2] *Apollo CableVision, Inc. v. GTE California Incorporated, et al.*, No. CIV 142800 (Cal. Super. Ct., Ventura Cnty.).

[3] Supplemental Application, at ii.

waiver expired. This is a contention that the state court appears willing to entertain, despite the fact that the Commission has primary jurisdiction over the issue, and only a clear directive from the Commission at this time will lay the matter to rest.

Because Apollo continues to in part underpin its state court action upon its erroneous "private carriage" argument, GTECA previously requested that the Commission clearly declare that (1) the Commission has asserted Title II jurisdiction over GTECA's Cerritos video network, and (2) that upon expiration of the waiver, GTECA's provision of video signal transport to Apollo and Service Corp. could only continue pursuant to a lawfully filed tariff.[4] While these propositions are self-evident to GTECA as a common carrier providing video transport service -- based upon nearly thirty years of Commission precedent[5] -- the state court (at Apollo's insistence) appears poised to ignore the Bureau's rejection of the private carriage argument. Therefore,

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[4] Reply of GTE California Incorporated to Apollo's Opposition to Motion for Declaratory Ruling, March 15, 1995, at 3; *see also* Supplemental Rebuttal of GTE, September 21, 1995, at 2-4. Quite unbelievably, Apollo has even asserted that the Commission does not have Title II jurisdiction over GTECA's Cerritos video network. [Apollo's] Opposition to GTE Motion for Declaratory Ruling, February 23, 1995, at 9. *But see GTE California Incorporated v. Apollo CableVision, Inc., et al.*, No. CV 94-2689-SVW (EEx) (C.D.Cal.), Defendant's [Apollo's] Reply to Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction, July 25, 1994, at 9 ("The FCC asserted Title II jurisdiction July 17, 1989. Cerritos Order, 4 FCC Rcd 5693.").

[5] *See, e.g., In re Commission Order Dated April 6, 1966 Requiring Common Carriers to File Tariffs with Commission for Local Distribution Channels Furnished for Use in CATV Systems*, 4 FCC 2d 257 (1966); *In re General Telephone Co. of California*, 13 FCC 2d 448 (1968); *In re United Video, Inc.*, 49 FCC 2d 878 (1974), *recon. denied*, 55 FCC 2d 516 (1975); *In re Public Broadcasting Service*, 39 Rad.Reg. (P&F) 1516 (1977); *In re Midwestern Relay Co.*, 59 FCC 2d 477, *recon. denied*, 69 FCC 2d 409 (1978), *aff'd sub nom. American Broadcasting Co. v. F.C.C.*, 643 F.2d 818 (D.C.Cir. 1980); *In re Ohio Bell Tel. Co.*, 1 FCC Rcd 942 (Com.Car.Bur. 1986); *In re Pacific Bell Tel. Co.*, 60 Rad.Reg.2d (P&F) 1175 (Com.Car.Bur. 1986); *In re C & P Telephone Co.*, 57 Rad.Reg.2d (P&F) 1003 (Com.Car.Bur. 1985).

only timely action by the Commission will alleviate the substantial prejudice GTECA and Service Corp. are suffering at the hands of Apollo's erroneous assertion.[6]

The extend to which GTECA and Service Corp. are prejudiced by Apollo's repeated rejection of the Commission's exercise of Title II jurisdiction over GTECA's video transport in Cerritos, and Apollo's erroneous assertion that the parties could have simply ignored the requirements of the Act and the Commission's Rules upon waiver expiration, is amply demonstrated by Apollo's averments in the ongoing judicial proceedings. For example, Apollo has told the state court that:

> "Defendant GTE[CA] voluntarily filed tariffs with the Federal Communications Commission, which tariffs materially alter the contractual arrangement between Apollo and defendants [GTECA and Service Corp. ..."[7]
>
> "It may be that all future cable service provided [in] the City of Cerritos will be pursuant to FCC tariff. But that is by no means certain."[8]
>
> "The validity of the terms of the tariffs under investigation depends upon the contractual rights held by the parties when the tariffs were filed."[9]
>
> "Transmittal no. 909 would be rendered moot if the State Court found that in October, 1993, Apollo validly exercised its right to and therefore owned the right

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[6] The timeliness of Commission action is of major import since the parties are now entering the final phases of discovery in the state court action, a mandatory settlement conference has been set for December 18, 1995 and trial is scheduled for January 22, 1996. Despite this pre-trial preparation, definitive Commission action on the issues posed by Apollo's Application for Review and GTECA's Motion for Declaratory Ruling remains outstanding.

[7] Second Amended and Supplemental Complaint, ¶ 21. *See also* ¶ 48 ("GTE Service Corporation specifically planned with GTE[CA], GTE[CA]'s course of conduct under which GTE[CA] voluntarily filed tariffs containing provisions contrary to their contract ...")

[8] Plaintiff's [Apollo's] Memorandum of Points and Authorities in Opposition to Defendant's [GTECA's] Motion for Judgment on the Pleadings or in the Alternative To Stay, December 8, 1994, at 4, *citing* Apollo's August 1, 1994 Application for Review.

[9] Plaintiff's [Apollo's] Memorandum of Points and Authorities in Opposition to Defendant's [GTECA's] Motion for Judgment on the Pleadings or in the Alternative To Stay, December 8, 1994, at 5.

to use the 275 Mhz of bandwidth covered by 909, before any transmittal was ever filed by GTECA."[10]

Similarly, before the federal district court, Apollo alleged that:

"... Apollo contended that a tariff was neither authorized nor required in that the GTECA - Apollo relationship did not involve a common carrier service."[11]

"Though Transmittal No. 873 has technically taken effect, for the purposes of this action, the FCC Order is not the agency's final administrative word. GTECA's declaratory relief action is premature and, as such, this court does not have subject matter jurisdiction."[12]

"[T]he FCC in its order initiated an investigation into the propriety of GTECA's attempt to abrogate its contracts by filing a tariff. The FCC is currently engaged in an affirmative act - its administrative investigation of Transmittal 873. Federal subject matter jurisdiction will not accrue until the FCC has completed its investigation and performed its final administrative work."[13]

"The controversy between GTECA [sic] is contingent on the FCC's completion of its investigation of the lawfulness of GTECA's tariff."[14]

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[10] Plaintiff's [Apollo's] Memorandum of Points and Authorities in Opposition to Defendant's [GTECA's] Motion for Judgment on the Pleadings or in the Alternative To Stay, December 8, 1994, at 6.

[11] *GTE California Incorporated v. Apollo CableVision, Inc., et al.*, No. CV 94-2689-SVW (EEx) (C.D.Cal.), Notice of Motion and Motion to Dismiss for Lack of Subject Matter Jurisdiction; Memorandum of Points and Authorities, June 13, 1994, at 10 *referencing* Apollo's August 1, 1994 Application for Review.

[12] *GTE California Incorporated v. Apollo CableVision, Inc., et al.*, No. CV 94-2689-SVW (EEx) (C.D.Cal.), Defendant's [Apollo's] Reply to Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction, July 25, 1994, at 5, *citing In re GTE Telephone Operating Companies*, 9 FCC Rcd 3613 (Com.Car.Bur. 1994), *application for review pending* (*Cerritos Tariff Order*).

[13] *GTE California Incorporated v. Apollo CableVision, Inc., et al.*, No. CV 94-2689-SVW (EEx) (C.D.Cal.), Defendant's [Apollo's] Reply to Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction, July 25, 1994, at 6.

[14] *GTE California Incorporated v. Apollo CableVision, Inc., et al.*, No. CV 94-2689-SVW (EEx) (C.D.Cal.), Defendant's [Apollo's] Reply to Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction, July 25, 1994, at 11.

Apollo has continued this theme in the court of appeals, similarly arguing that:

> "[N]either the FCC Common Carrier Bureau in 1988 nor the Federal Communications Commission in 1989 ever uttered any decisional wording even close to 'asserting Title II jurisdiction.' ... [N]either ruling referred to the future need to file tariffs of any sort."[15]

> "[N]o subsequent FCC decision directed the tariff filings GTE[CA] submitted in 1994."[16]

> "... GTECA's repeated claims that it had no choice but to file tariffs which would abrogate its contracts with Apollo are knowingly untrue. ... GTECA made a business choice to file tariffs with the FCC, there was and is no regulatory exclusion of other available alternatives."[17]

In light of these statements, which are prejudicial in the extreme, GTECA and Service Corp. believe that it is now incumbent upon the Commission to definitively state that Title II jurisdiction has been asserted, that GTECA's video transport service in Cerritos constitutes common carriage, and that GTECA was compelled by statute and the Commission's Rules to tariff the service upon waiver expiration.[18]

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[15] *GTE California Incorporated v. Apollo CableVision, Inc. et al.*, No. 94-56377 (9th Cir.), Apellee Apollo CableVision's Brief, February 24, 1995, at 10.

[16] *Id.*

[17] *GTE California Incorporated v. Apollo CableVision, Inc. et al.*, No. 94-56377 (9th Cir.), Apellee Apollo CableVision's Brief, February 24, 1995, at 11.

[18] While rejection of Apollo's private carriage argument might -- in normal circumstances -- be appropriate for the Bureau's order terminating the tariff investigation, Apollo's reliance upon this argument in the state court action makes this an unusual situation. GTECA and Service Corp. therefore join with Apollo in requesting that the Commission lay this issue to rest once and for all. GTECA and Service Corp. do not agree with Apollo that these issues should be taken out of the hands of the Bureau. Supplemental Application, at 9 n. 6. Rather, GTECA and Service Corp. believe that Apollo's erroneous private carriage argument should be rejected by the Commission with, appropriately, input from both the Bureau and the General Counsel's office.

III. GTECA'S PROVISION OF VIDEO TRANSPORT IN CERRITOS CONSTITUTES COMMON CARRIAGE SUBJECT TO TITLE II OF THE ACT.

Apollo continues to assert that the video transport services provided by GTECA to Apollo and GTE Service Corp. constitute private, versus common carriage, and, therefore, GTECA was precluded from filing its video channel service tariffs for Cerritos.[19] To the contrary, the Commission has quite explicitly assumed and exercised its Title II jurisdiction over the Cerritos network time and time again, initially by granting GTECA Section 214 authority to provide video signal transport to Apollo and Service Corp.,[20] and then by issuing order after order since that time requiring GTECA to comply with the statutory provisions of the Act and the Commission's implementing regulations.[21]

Despite arguments initially advanced by GTECA,[22] the Commission required GTECA to obtain authority under Section 214 of the Act and a waiver of the Commission's Rules in order to provide video transport service to Apollo and Service Corp.[23] Under the authority granted by the Commission, GTECA was not allowed to

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[19] Supplemental Application, at 2-5.

[20] *In re General Telephone Co. of California*, 3 FCC Rcd 2317 (Com.Car.Bur. 1988) (*Waiver Order*); *In re General Telephone Co. of California*, 4 FCC Rcd 5693 (1989) (*Cerritos Order*).

[21] *E.g., In re General Telephone Co. of California*, 8 FCC Rcd 8178 (1993) (*Remand Order*); *In re GTE Telephone Operating Companies*, 9 FCC 3613 (Com.Car.Bur. 1994), *applications for review pending* (*Cerritos Tariff Order*); *In re GTE Telephone Operating Companies*, 9 FCC Rcd 5229 (Com.Car.Bur. 1994) (*Transmittal 909 Suspension Order*); *In re GTE Telephone Operating Companies*, DA 95-1796 (released August 14, 1995) (*Supplemental Designation Order*).

[22] *In Matter of the Application of General Telephone Company of California For Authority Pursuant to Section 214*, File No. W-P-C-5927, General Telephone Company of California's Opposition to Petitions to Deny, April 16, 1987, at 25-30.

[23] *Waiver Order*; *Cerritos Order.*

include any costs associated with its Cerritos operation in any regulated ratebase without prior Commission approval.[24] This requirement, coupled with the waiver of the Commission's Rules, allowed GTECA to enter into contractual relationships with Apollo and Service Corp. rather than tariffing the video transport arrangement from the outset.[25] However, while the Bureau placed no temporal limitation on this arrangement, the Commission later imposed a 5-year limit, which expired on July 17, 1994.[26] In any event, at no time during any of these proceedings has the Commission *ever* relinquished its jurisdiction over GTECA's provision of common carrier video transport.[27]

Apollo is correct in its observation that the initial construction and design of the Cerritos network was tailored to the specific needs of the City of Cerritos, Apollo and

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[24] *Cerritos Order*, 4 FCC Rcd at 5693; *Waiver Order*, 3 FCC Rcd at 2324.

[25] Quite amazingly, Apollo now questions whether any agreement ever existed between GTECA and Service Corp. (Supplemental Application, at 3 n. 1), even though Apollo has been cognizant of this agreement for eight years. Indeed, the GTECA-Service Corp. Lease Agreement was filed with the Commission on July 17, 1987. *See In the Matter of the Application of General Telephone Company of California For Authority Pursuant to Section 214*, File No. W-P-C-5927, Correspondence from Richard M. Cahill, Esq., GTECA, to Mr. James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, July 17, 1987, Appendix Two. The GTECA-Service Corp. Lease Agreement was repeatedly discussed by the parties and exhaustively examined by the Bureau from that date onward.

[26] The fact that GTECA and Apollo might become subject to the Commission's jurisdiction after execution of the pre-existing contracts was a circumstance specifically envisioned by the parties and provided for in the Lease Agreement. Lease Agreement, ¶ 19 ("If the ... FCC claim[s] Title II jurisdiction over the service provided by [GTECA], [Apollo] shall be subject to the rates, terms and conditions such agency may impose."); *see* Direct Case of GTE, August 15, 1994, at 27-28; Supplemental Rebuttal of GTE, September 21, 1995, at 2-3.

[27] In fact, during the five year period covered by the waiver, GTECA was required to submit extensive annual reports to the Commission and subject itself to a number of Commission inquiries and audits. Clearly, if the Commission had no intention of regulating Cerritos as a common carrier network it would not have devoted its own resources and efforts in this regard.

Service Corp.[28] However, Apollo ignores the fact that these operating conditions, implemented via private agreements by and among the City, Apollo, GTECA and Service Corp., were permissible only by virtue of the waiver of the Commission's Rules.

Faced with expiration of the waiver in July, 1994 and mandatory conversion of the Cerritos system to a common carriage arrangement, GTECA had no choice but to supplant the existing Apollo and Service Corp. agreements with a tariff.[29] For video channel service, the Commission has consistently found that a telephone company must offer such services pursuant to full Title II requirements, including tariffing.[30]

Apollo also claims that GTECA, through its tariffed video channel service offering, cannot hold itself out to provide service indifferently "to all potential users", citing GTECA's tariff submission designed to provide channel service to Service Corp. However, despite comments that Transmittal Nos. 874/909/918 were filed in order to provide "video channel service to Service Corp.",[31] it is the tariff -- which is clearly a general offering of channels 40 though 78 -- which governs. The references to Service Corp. in GTECA's pleadings were, of course, necessary to fulfill GTECA's disclosure obligations to the Commission because the Commission had continued to enforce the

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[28] Supplemental Application, at 3.

[29] Apollo continues to assert that GTECA had some other "options" available to it upon waiver expiration. GTECA has addressed (and refuted) this argument elsewhere. *See* Supplemental Rebuttal of GTE, September 21, 1995, at 8 & n. 21.

[30] *See* n. 5, *supra*. In addition, GTECA was precluded from providing video channel service to affiliates outside the confines of a tariff (absent a waiver). *See* 47 C.F.R. § 32.27.

[31] Supplemental Application, at 4-5, *citing, e.g.*, Comments of GTE, September 15, 1995, at 4.

telephone company/cable television cross-ownership ban against GTECA and Service Corp. during that entire period.[32]

Apollo's suggestion that acceptance of its private carriage argument will somehow alleviate the need for Commission "time and energy" being devoted to Cerritos matters is -- in reality -- little more than fantasy.[33] If GTECA, Apollo and Service Corp. were (somehow) *not* required to come into compliance with the Act and the Commission's Rules upon waiver expiration, then a whole host of new issues would be raised as to GTECA's continued provision of service to these customers.[34] In actuality, Apollo seeks review of the common carriage issue only to further its efforts to have the Commission reject GTECA's tariffs, force discontinuance of service to Service Corp. and gain control of Service Corp.'s channels.

IV. GTECA'S TARIFFS APPROPRIATELY REFLECT THE COMMISSION'S PRIOR ASSERTION OF TITLE II JURISDICTION OVER GTECA'S VIDEO TRANSPORT SERVICE IN CERRITOS.

Apollo takes issue with the Bureau's acceptance of certain revisions made to GTECA's video channel service tariffs which were designed to reflect the general availability of the service offering.[35] Contrary to Apollo's assertions, such tariff changes

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[32] It was not until January, 1995, some 6 months after the waiver expired and GTECA, Apollo and Service Corp. were required to come into compliance with the Act and the Commission's Rules, that GTECA obtained an injunction against the Telephone Company - Cable Television Cross-Ownership Ban. *GTE South Incorporated v. United States*, No. 94-1588-A (E.D.Va., Jan. 13, 1995).

[33] Supplemental Application, at 9-10.

[34] For example, GTECA assumed maintenance responsibilities upon expiration of the waiver, to which Apollo has long objected. Thus, it is most unclear how the parties could be returned to the *status quo ante* if the Commission were to accept Apollo's private carriage argument.

[35] Supplemental Application, at 5-7.

were not merely "window dressing". GTECA modified its original tariff submissions under Transmittal Nos. 893 and 918 to remove tariff section headings that identified specific customers, Apollo and Service Corp.[36] The retention of these headings would imply that the video channel services in Cerritos would be made available to these two entities alone. While capacity on the network is fixed and is currently fully utilized, any channels which may become available in the future, from either party, will be offered on a first-come, first-served basis to any customer, subject to the right of first refusal granted to Apollo under the tariff's terms and conditions.[37] Changes in the tariff section headings by GTECA simply contemplate that available capacity on the system might materialize at some point in the future.

Apollo's comments also imply that because all channels on the system are currently being utilized at rates individually negotiated with the users of the system, GTECA cannot characterize the video channel service offering as common carriage. However, as GTECA has previously demonstrated, such arrangements are common. Individual case based (ICB) rates have traditionally been included in carrier tariffs in response to a customer's particular service needs. ICB rates are permissible when a carrier does not have sufficient experience to develop averaged rates or the service is unique.[38]

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[36] Apollo complains that GTECA "slipped in" this tariff wording change without providing Apollo with adequate notice. Supplemental Application, at 6. To the contrary, all tariff filings made with the Commission are placed on public notice and are readily available to all requesting parties from the Commission's duplicating contractor. In addition, under the Commission's tariff filing rules, GTECA is not required to serve Apollo with a copy of its filings.

[37] *See* Transmittal No. 873, Section 18.4(A)(4).

[38] *See ICB Order*, 4 FCC Rcd 8634, 8641 (1989).

Finally, Apollo simply cannot substantiate its claim that the tariffs impart some economic injury on its operations.[39] GTECA has previously demonstrated that the tariffing of the Cerritos video channel service offerings has not negatively impacted Apollo.[40] There is no reason why Apollo and Service Corp. cannot continue provision of their video service offerings to Cerritos subscribers pursuant to the conditions of the existing tariffs.

V. SUMMARY

The Commission has exerted its Title II jurisdiction over GTECA's Cerritos operations from day one and has reaffirmed this oversight on numerous occasions. Interestingly, Apollo has never sought review of these findings. However, Apollo's actions in state court invite that court to act contrary to the Act, thirty years of

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[39] Supplemental Application, at 10.

[40] *See, e.g.*, GTE Comments, September 15, 1994, at 19-31.

Commission precedent, and the Commission's own actions in this very case. Thus, GTECA and Service Corp. join with Apollo and respectfully request that the Commission lay to rest, once and for all, Apollo's erroneous private carriage argument.

Respectfully submitted,

The GTE Telephone Operating Companies, on behalf of GTE California Incorporated and GTE Service Corporation

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE on Supplemental Application For Review and Petition For Expedited Consideration" have been mailed by first class United States mail, postage prepaid, on the 27th day of September, 1995 to all parties on the attached list.

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