

ORIGINAL

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

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OCT 10 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

GTE TELEPHONE OPERATING COMPANIES)
 Tariff F.C.C. No. 1)
) Transmittal Nos. 873, 874,
) 893
 Video Channel Service at)
 Cerritos, California) CC Docket No. 94-81

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY TO OPPOSITION TO SUPPLEMENTAL
APPLICATION FOR REVIEW

APOLLO CABLEVISION, INC.

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October 10, 1995

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SUMMARY

Both parties are in agreement that the Commission should promptly decide whether the offering GTE Telephone seeks to tariff is, given the unique facts extant in Cerritos, private or common carriage in nature. The carrier disputes none of the essential facts Apollo set forth in that regard. Most notably, GTE Telephone does not challenge the fact that the facilities and services involved -- ones implemented and utilized since 1989 pursuant to Commission-approved agreements, not tariffs -- are not being indiscriminately offered to the public and are exclusively used by, and available to, Apollo and GTE Service Corp. Neither is GTE Telephone successful in showing that the superficial last-minute word changes in the tariff headings altered the real-world facts defining the private carrier nature of the facilities use involved.

While the carrier endeavors to tie its earlier request for Commission declaratory relief to the action here, the matters for resolution in the two proceedings are discrete. The definitional elements of common carriage under the Act and the Rules are at issue here; GTE's earlier declaratory ruling motion involves interpretation of the "rebate" provision of Section 203(c) of the Act, and the effect of Section 414 of the Act on the carrier's requested declaration. Moreover, GTE Telephone's basis for joining the two sets of considerations -- that Apollo's civil suit is based on its private carriage argument here -- is simply untrue.

Whatever the historical generalities with respect to leaseback cable operations may be, the Commission is obliged to evaluate the facts of this undeniably unique situation. Measuring these facts against the most fundamental requirements of common carriage -- an indiscriminate holding out to the public -- the relationships among GTE Telephone, Apollo and GTE Service Corp. are undeniably private carriage in nature. For this reason alone, the tariffs must be rejected; the Bureau's rulings to the contrary were plain and significant error.

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**REPLY TO OPPOSITION TO
SUPPLEMENTAL APPLICATION FOR REVIEW**

Apollo CableVision, Inc. ("Apollo"), by its attorneys and pursuant to Sections 1.45(b) and 1.115(d) of the Commission's Rules, replies herewith to the "Comments of GTE On Supplemental Application for Review and Petition for Expedited Consideration" filed herein September 27, 1995 ("Opposition").

ARGUMENT

**I. The Single Issue Here Is Discrete From Those
In Other Pending Proceedings**

GTE Telephone devotes a large portion of its pleading to relating how it is being "substantially prejudiced" by Apollo's arguments in its civil contract action against the carrier, and how the Commission needs promptly to set Apollo and the court straight. (Opposition, pp. 2-6) Translated: the carrier has failed thus far to have the courts dismiss Apollo's breach-of-contract suit on primary jurisdiction grounds, the carrier's

getting worried, and it's looking to the Commission for help in avoiding Apollo's civil damages claims.

In February of this year, the carrier requested the Commission to issue a declaratory ruling directed to the same matters raised in this portion of its Opposition.^{1/} Apollo has fully responded to the carrier's arguments in that context, and will not repeat its positions here.^{2/} Suffice it to say, the principal issues in the declaratory ruling context -- "preferences" and "rebates" under Section 203(c)(2) of the Communications Act, as well as the reach and effect of Section 414 of the Act -- are far different than the private vs. common carriage issue here.^{3/}

^{1/} "Motion of GTE California Incorporated For Declaratory Ruling," February 8, 1995.

^{2/} "Opposition to GTE Motion For Declaratory Ruling," February 23, 1995; "Petition for Leave to File and Response to GTE Reply," March 28, 1995.

^{3/} With its now-familiar word-play, the carrier finds "unbelievable" Apollo's having "asserted that the Commission does not have Title II jurisdiction over GTECA's Cerritos video network." (Opposition, p.3, n.4.) As the carrier -- which continues erroneously to argue that an agency assertion of authority under any part of Title II is an implicit holding that all parts of Title II are thereby invoked -- knows, Apollo's position is that while the Commission exercised Section 214 authority, it did not order Section 203 tariffs. The carrier continues to resent Apollo's unwillingness to agree that the former is tantamount to the latter -- a proposition which is not the law (see, e.g., Lightnet, 58 R.R.2d 182 (1985)), and which even GTE has disputed with respect to the Cerritos project:

[T]he filing of a Section 214 application in no way prejudices the issue of whether the facilities can be provided on a non-common carrier basis. In fact, in several cases, the Commission has approved the ultimate in non-tariffed offering -- the rate of the facilities to the cable operator.

Opposition to Petitions to Deny, filed April 16, 1987, fn.24; see also id. at pp. 27-30. See also Attachment 1 hereto, an excerpt from Apollo's March 28, 1995 "Petition for Leave to File and Response to GTE Reply."

What does bear emphasis here, however, is that, for all its efforts at inflammatory excerpting from civil pleadings (Opposition, pp. 4-6), GTE Telephone's basic assertion that Apollo's civil action is based on a "private carriage" argument is plainly inaccurate. Apollo's suit alleges, among other things, that GTE Telephone had breached its agreement to make available to Apollo at "reasonable market rates" the 39 channels GTE Service Corp. had finished using. GTE Telephone's defense in the civil suit has been that it was required by the Commission to file the tariffs it did, and it was therefore excused from its contract obligation (and liability) to Apollo. Apollo's position is that, even assuming (without conceding) that some form of tariffs was required, the voluntary filing of tariffs in a form inconsistent with GTE Telephone's contract obligation is a breach for which damages are recoverable.

Viewed accurately, therefore, Apollo's civil suit does not depend on -- is not "in part underpin[ned]" by (Opposition, p.3) -- a Commission determination of either private or common carriage. Even if the latter were the case, the carrier could have structured its tariffs to accommodate the earlier agreement, but chose not to. What GTE Telephone seeks in its declaratory ruling motion -- and endeavors to have lumped in here -- is some sort of Commission pronouncement on the basis of which the carrier can argue to the court, not only that it was required to file tariffs, but that it was required to file tariffs containing the terms and conditions it chose to insert.

Apollo does not believe any tariffs were required, but even if they were, they could have been made consistent with the carrier's contract obligation. To that extent, Apollo's civil suit is not dependent on a Commission finding of private carriage, and GTE Telephone's efforts to confuse the distinct character of the issue here with the matters raised in its declaratory relief motion should be rejected. There is no public interest justification for the Commission's assisting GTE Telephone in its civil litigation with Apollo.

II. GTE Telephone Disputes None of The Facts Requiring A Finding Of Private Carriage Here

In both its initial Application For Review and its Supplemental Application for Review, Apollo demonstrated that the fundamental determinant of whether any particular service offering is private or common carriage is whether what is offered is indiscriminately held out to all potential users. As the Commission itself has restated the proposition most recently:

The precedents are clear that the key feature of common carriage is that the service provider undertakes to provide service indifferently to all potential customers.

Beehive Telephone, Inc. v. The Bell Operating Companies, File No. E-94-57 (FCC 95-358, released August 16, 1995), ¶15 (citing National Association of Regulatory Utility Commissioners v. FCC, 533 F.2d 601, 608 (D.C. Cir. 1976) and Frontier Broadcasting Co. v. J.E. Collier, 24 F.C.C. 251, 254 (1958)).

Applying that principle to the facts here, Apollo further showed that the tariffs involved govern facilities and services designed specifically for the two current users of the Cerritos network, and available to no others. Cited in support were the parties' expressed intentions in 1987-1989, the Commission's own approvals at that time, the system occupants' exclusive use of the facilities pursuant to Commission-approved long-term contracts, and the tariffs' avowed preservation of the parties' exclusivity.

The carrier disputes none of the relevant facts; indeed, it affirmatively accepts them.^{4/} And while it devotes 4 pages to the matter (Opposition, pp. 7-10), GTE Telephone nowhere contends that use of the facilities or services involved are in fact available for any entities other than the two which have used them since the day they were constructed.^{5/}

^{4/} E.g., Opposition, pp. 8-9 ("Apollo is correct ... that the initial construction and design of the Cerritos network was tailored to the specific needs of the City of Cerritos, Apollo and [GTE] Service Corp").

^{5/} GTE Telephone finds "amazing" Apollo's uncertainty concerning the character and existence of a GTE Telephone/GTE Service Corp. lease agreement since it was supposedly filed with the Commission in July of 1987. (Opposition, p.8, n.25.) What is "amazing," however, is the carrier's inconsistency. In its September 11, 1995 Supplemental Opposition, Apollo provided documents obtained in the pending civil proceeding which showed that the lease was only in "draft" in April of 1988 (id., Attachment 3), and that an amendment to the lease had "still not been signed" in December of 1992 (id., Attachment 2). In response, GTE Telephone did not challenge its documents insofar as they showed that the lease agreement had not been concluded. Instead, the carrier indicated only that the lease terms being discussed in 1988 were not final, but were merely being considered during the planning stages of the Cerritos Project." Supplemental Rebuttal, September 21, 1995, p. 25, n. 55. For convenience, a copy of the 1988 document is appended hereto as Attachment 2. Together with the carrier's earlier acknowledgment, it is directly inconsistent with GTE Telephone's current pleading assertion. And the 1992 document suggests that further undisclosed changes may have been made to whatever agreement was actually signed by the carrier and its affiliate.

To be sure, GTE Telephone refers to the initial requirement for Section 214 authority prior to construction, and to the fact that it has filed tariffs with the Commission. (Opposition, pp. 7-9.) However, as Apollo has shown, Section 214 certification is not conclusive on the private/common carrier issue; certificate authority is granted for private as well as common carriage facilities. (See note 3, supra, and Attachment 1.) Moreover, the fact that GTE Telephone lodged tariffs merely begs the question; if the character of the offering involved is not common carriage, those tariffs should not have been filed.

The unique facts of the Cerritos project, its history and its implementation since 1989, and the Commission's specific authorization of the exclusive use of those facilities and services, are uncontroverted. A finding of common carriage based on those facts cannot rationally be made here. And uncritical reliance on decades-old Commission decisions supposedly requiring tariffs for video channel service -- precedents dealt with earlier by Apollo -- would not represent reasoned decision-making in these unique circumstances.^{5/}

^{5/} GTE Telephone suggests that if its tariffs were rejected on this basis, "a whole host of new issues would be raised as to GTECA's continued provision of service to these customers." (Opposition, p. 10.) The only specific "issue" noted, however, is the carrier's having taken over system maintenance from Apollo, and an uncertainty how the status quo ante would be recreated.

Simple. The parties' conduct would continue to be governed by the un-abrogated agreements in effect before the carrier ran amok and the tariffs were filed. With respect to maintenance, the parties' agreement contemplated the carrier's take-over by this point in any event, and compensation for interim injury to Apollo is readily calculated. Alternatively, the parties could negotiate an extension of Apollo's earlier maintenance responsibilities.

There are no necessary, practical horrors flowing from a rejection of the carrier's tariffs.

**III. The Governing Facts Remain Unaltered
By Last-Minute Tariff Word Changes**

In its appeal pleadings, Apollo noted last-minute, apparently Bureau-inspired, changes to headings in the tariffs, and demonstrated that those modifications did not alter the operational facts or the actual service availability.

(Application for Review, pp. 12-15; Supplemental Application, pp. 5-7.) The carrier's response:

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 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.

(Opposition, p., 11.) That pleading assertion, however, is simply untrue.

Apollo's use of half of the system bandwidth is prepaid. Until May of 2006, those channels are available to no one else. And the proposed tariff so states. As to GTE Service Corp., the tariff wording itself similarly dedicates the second half of the bandwidth to that entity until 2006. The carrier's pleadings statement here concerning its future intentions is not only patently disingenuous, it is flatly inconsistent with its oft-repeated earlier position that the tariffs are but a "conversion" of the parties' earlier agreements -- contracts which

specifically granted exclusivity to the current system occupants.^{2/}

In a parting shot unrelated to the legal issues, GTE Telephone asserts once more that the proposed tariffs would work no economic injury on Apollo. (Opposition, p. 12.) And once more the carrier is knowingly wrong. As shown most recently in Apollo Counsel's September 28, 1995 letter to the Bureau Chief, since the carrier's tariff filing (and as a direct result of that action) Apollo's prior average monthly income of \$9,150 has become an average monthly loss of \$21,360. This amount is after approximately \$100,000 in transition costs resulting from the carrier's seizure of maintenance activities, and before payment of some \$10,000 in monthly disputed carrier charges. (The materials appended to counsel's letter are reproduced as Attachment 3 hereto.)

CONCLUSION

For the reasons set forth herein, and in its earlier unopposed Application for Review, Apollo requests that the Bureau rulings in its July 1994 and August 1995 designation/investigation orders be reversed, insofar as they denied Apollo's arguments concerning the private carriage nature of the facilities and services involved. Transmittal Nos.

^{2/} The carrier's reference (Opposition, p.11) to ICB rates as evidence that individually negotiated rates are not mutually exclusive with common carriage is a non-sequitur. ICB rates relate to services which are made available on a true common carrier basis; here, the character of the services included establish their private carriage nature, and the proposed rates, while an element for consideration, are not determinative of that issue.

873,874 and their successor transmittals should be rejected as an unlawful effort to tariff private carrier services.

Respectfully submitted,

APOLLO CABLEVISION, INC.

By:



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October 10, 1995

EXCERPT FROM APOLLO CABLEVISION'S "PETITION FOR LEAVE TO FILE AND
RESPONSE TO GTE REPLY", CC DOCKET NO 94-81, MARCH 28, 1995:

- 8 -

II. The Erroneous Predicate For GTE's Legal Position

Paragraph 19 of the January 22, 1987 Lease Agreement between GTE and Apollo provided, among other things, that if "the FCC claim[s] Title II jurisdiction over the service provided by [GTE], [Apollo] shall be subject to the rates, terms and conditions such agency may impose." (See Attachment 4.) Before the Commission and the courts, GTE has sought to avoid contract liability by characterizing both the fact of its tariff filings, and the carrier-chosen tariff contents, as "rates, terms and conditions" the Commission has "imposed" on GTE.

Consistent with that overall effort, GTE once more repeats its central predicate here: that in 1988 the Bureau, and in 1989 the Commission, "asserted Title II jurisdiction over" the GTE/Apollo contract relationship (Motion, pp. 2-3), and that its 1994 tariff filings were therefore compelled. Indeed, with each succeeding expression of that view, GTE's characterizations of the Commission's actions have become progressively more misleading. In this Motion (p. 7), GTE asserts that --

. . . the Commission determined in its 1988 and 1989 Orders that upon expiration of the [cross-ownership] waiver, GTECA's Cerritos video network would be fully subject to the express provisions of the Communications Act, including Section 203(a) and 203(c), the mandatory, non-discriminatory filed rate provision GTECA necessarily had to file mandatory tariffs . . . that then would govern the terms and conditions of the common carrier-user relationship among GTECA, Apollo and [the City of] Cerritos.

First, neither the Bureau in 1988,^{10/} nor the Commission in 1989,^{11/} uttered any decisional wording even remotely suggesting the applicability of all Title II requirements to the Cerritos project. To be sure, both rulings dealt with certifying the Cerritos cable system's construction and use under Section 214 of the Act.^{12/} But neither ruling referred to the future need to file tariffs of any sort. To the contrary. Even the need to include "illustrative tariffs" with the Section 214 application at the time was dispensed with.^{13/}

Second, no subsequent Staff or Commission decision directed the tariff filings GTE submitted in 1994. Indeed, in its November 1993 ruling rescinding GTE's earlier Section 214 authority and cross-ownership waiver, the Commission specifically eschewed prescribing any one of the various available methods of complying with applicable statutory and regulatory requirements:

^{10/} General Telephone Company of California, 3 F.C.C. Rcd. 2317 (C.C.Bur. 1988).

^{11/} General Telephone Company of California, 4 F.C.C. Rcd. 5693 (C.C.Bur. 1989).

^{12/} GTE's Section 214 filings with the Commission at the time specifically reserved "future argument -- not pressed here -- that the private lease arrangement with Apollo removes [GTE] from the classification of 'carrier' contained in Section 214." W-P-C-5927, filed February 6, 1987, pp. 3-4. See also W-P-C-6250, filed June 28, 1988, p. 3.

^{13/} At page 8 of its Section 214 application filed February 6, 1987 (W-P-C-5927), in lieu of an illustrative tariff, GTE stated:

The facilities applied for are not to be included in General's regulated telephone rate base, and are provided under an individualized lease whose rates, terms and conditions are fully set forth in the Lease Agreement [between GTE and Apollo]

No tariff was required. See General Telephone Company of California, supra, 3 F.C.C. Rcd. at 2317 (¶ 5), 2318 (¶ 10), n.39.

We do not mandate a specific remedy at this time, such as ordering GTECA to divest the Cerritos facilities or removing Apollo as the franchised cable operator in Cerritos as urged by waiver opponents. Rather, we simply direct GTECA to take steps necessary to achieve compliance with the telephone company/cable television cross-ownership restriction within 120 days from the date this decision is released. If GTECA's proposed action in this regard requires prior approval by the Commission (e.g., Section 214 certification to offer channel service or video dialtone service), GTECA must submit any necessary filings within 30 days of the release date of this decision in order to allow adequate time for public comment and Commission review. If GTECA's proposed action does not require such Commission certification, it shall inform us of this fact, and its plans, within 30 days of the release date of this decision.

General Telephone Company of California, 8 F.C.C. Rcd. 8178, 8182 (1993).

Third, GTE's implication that the 1989 issuance of a Section 214 authorization, without more, compelled its 1994 tariff filing is likewise untenable. In GTE's own words:

[T]he filing of a Section 214 application in no way prejudices the issue of whether the facilities can be provided on a non-common carrier basis. In fact, in several cases the Commission has approved the ultimate in non-tariffed offering -- the sale of the facilities to the cable operator.

Opposition to Petitions to Deny, filed April 16, 1987, fn. 24. See also id. at pp. 27-30.^{14/}

^{14/} And see id. at pp. 25-26:

Petitioners seek dismissal of the [GTE Section 214] Application because General has proposed to offer the facilities to Apollo under lease rather than by tariff. Contrary to Petitioners' assertions, however, General has not ignored the "black letter" law in this area. General does not dispute that when providing common carrier services to customers/users, a carrier must offer service by tariff. In this case, however, as explained in the Application, General is not proposing to offer a common carrier service to Apollo, but rather is proposing a private carriage offering.

[Continued on next page]

[Continued from previous page]

Under these circumstances, a lease arrangement is permissible and appropriate.

Although the Commission may not previously have considered the leasing of broadband facilities by a telephone company to a cable operator on a non-common carrier basis within the Company's service area, General believes that its offering meets the standard accepted for other non-common carrier services. Specifically, there is no holding out of facilities to the public . . . [Footnotes omitted.]

Apollo has elsewhere explained in detail that a grant of Section 214 certification does not, in itself, predetermine whether tariffs will be required for the services to be provided over the certificated facilities. See Apollo's Petition to Reject or Suspend Tariffs, filed May 17, 1994, at pp. 14-19; Application for Review, filed August 1, 1994, at pp. 6-12; Letter dated July 8, 1994, from James S. Blaszak to David Nall, FCC, Memorandum of Law, at pp. 3-10. See also, e.g., Lightnet, 58 R.R.2d 182 (1985).

Posted: Fri Apr 15, 1988 11:35 AM EDT
From: D. SEIBEL
To: G.K. MOORE
CC: AOTEAM, L. CARTER
Subj: LEASE AGREEMENTS

Msg: DGII-2829-1668

CRAIG WECKESSER TOLD ME THAT IN THE DRAFT OF THE LEASE WE AGREED TO, YOU HAVE COME ACROSS A PROBLEM AS TO WHAT TO USE FOR A COST OF CAPITAL IN DETERMINING LEASE PAYMENTS.

I HAVE DISCUSSED THIS ISSUE WITH SEVERAL DEPARTMENTS WITHIN GTE AND WE BELIEVE THAT IN THE SPIRIT OF THE MEMORANDUM OF UNDERSTANDING SIGNED BETWEEN GTE AND GTC, GTE SHOULD MAKE GTC "WHOLE" AND THAT GTC SHOULD RECOVER COSTS FOR THE PROJECT BUT NOT A PROFIT.

FOR THESE REASONS, WE THINK A COST OF DEBT SHOULD BE USED BY GTC. WE HAVE BEEN INFORMED THAT THE CURRENT FIGURE IS APPROXIMATELY 8 1/2 %.

IT IS THEREFOR REQUESTED THAT THE LEASE AGREEMENT CONTAIN THE PROVISION OF A COST OF DEBT AT 8 1/2 %.

PLEASE LET ME KNOW GTC'S THOUGHTS ON THIS. I BELIEVE WITH THE 214 APPROVAL IN HAND, THE ABILITY TO GET THIS LEASE ARRANGEMENT APPROVED ASAP IS IMPORTANT.

ANKS.

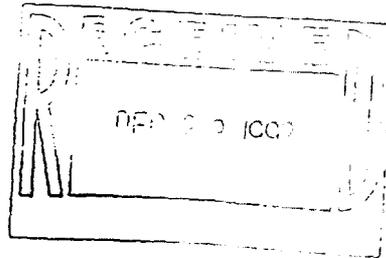
DAVE SEIBEL

GTE 00000523



INTRACOMPANY CORRESPONDENCE

GTE Telephone Operations



Reply To

HQW01N12
Irving, TX

To: B. M. Barbe - HQW01N21 - Irving, TX
R. A. Cecil - HQE04N58 - Irving, TX
T. M. Edwards - HQW03J68 - Irving, TX
C. R. Holliday - HQW02H61 - Irving, TX
B. Maring - HQW02J52 - Irving, TX
M. McDonough - HQE03H05 - Irving, TX

Subject: CERRITOS STEERING COMMITTEE MEETING

A Cerritos Steering Committee meeting was held at 8:00 a.m., December 3, 1992, in HQW01K21. A list of the attendees is attached. Topics discussed during the meeting included the following.

1. Remand and Bache Visit to FCC. Don Bache gave a brief update on his visit with the FCC on December 2, 1992. Representatives from Regulatory Affairs, Governmental Affairs, and Don met with the FCC to give them an update on the Cerritos project, to inform them of some of the very positive results from Cerritos, and to lobby on GTE's behalf for a positive final order on the remand. Don described the meetings with the FCC as very positive and encouraging. A final order related to the Cerritos remand is expected in the near future and the current opinion is that this order will be favorable to GTE.
2. Main Street (Test B-3). Paul Harrington's letter to the Steering Committee dated November 3, 1992 was discussed in detail. In this letter, Mr. Harrington requested that any excess contingency dollars in 1992 be transferred to Main Street because of excess costs that Main Street has incurred in Cerritos. After considerable discussion, it was agreed that \$300K of 1992 contingency dollars would be transferred to GTE Main Street. The Steering Committee also requested that Paul Harrington and Tom Grieb attend the next Cerritos

Steering Committee meeting and provide an update on Main Street in Cerritos. Mr. Harrington and Mr. Grieb should be prepared to discuss the following topics:

- Results being obtained from Main Street in Cerritos and what benefits Telops is receiving.
 - Action being taken by Main Street to increase the number of subscribers in Cerritos.
 - Steps that can possibly be taken by Main Street to reduce costs in Cerritos.
 - Plans for GTE Main Street in Cerritos beyond 1993 and particularly to the end of 1994.
3. GTE Imagitrek (Test B-6). Matt Dillion and Barry Hobbs made a presentation on a proposed enhancement to Test B-6 which will add inter-active advertising to this test. GTE Vantage requested \$755K in 1993 to fund these enhancements. The Steering Committee approved this funding with the following caveats:
- a. Barry Hobbs will attend the February, 1993 Steering Committee and provide a detailed time line for this test with quarterly milestones.
 - b. Funding for this test will be provided on a quarterly basis and no money will be paid to GTE Vantage until quarterly milestones are met.
 - c. Advanced Operations Testing will be responsible for verifying that all milestone dates are met and administering the transfer of funds to GTE Vantage.
 - d. During the February meeting, Barry Hobbs will advise the Steering Committee of the steps being taken by GTE Vantage to protect GTE's intellectual property rights and investments as a result of the Cerritos test.

Money will be transferred from contingency funds to meet the funding requirements for this enhancement to Test B-6.

4. Transition of Cerritos to Business as usual. Paul Rettman gave a brief update on the effort to develop a plan to transition Cerritos to a business as usual mode by the end of 1993. The business goals for Cerritos have been

completed, an initial meeting was scheduled for the afternoon of December 10, 1992, to begin discussing the development of the plan. The current schedule is still to have the transition plan approved by February, 1993.

5. Coat Lease Agreement. Jim King advised the Steering Committee that the amendment to the capital lease agreement between GTE Service and GTE California has still not been signed. This amendment should have been signed several months ago and it appears that copies of the actual agreement have been lost in Irving. Jim King will provide Mike Hamilton with updated copies of the agreement. Bruce Barbe also agreed to follow-up with Dick Cecil on this matter.

The meeting adjourned at approximately 11:15 a.m. The next Cerritos Steering Committee meeting will be held on January 7, 1993, in HQW01K21, beginning at 1:00 P.M.

P. M. Hamilton

P. M. Hamilton
Manager-
Advanced Operation Testing

at the time of the meeting

PMH:pjm

c: Distribution List

Apollo CableVision, Inc.
INCOME STATEMENT

(July 1994 - August 1995)

	07/31/94	08/31/94	09/30/94	10/31/94	11/30/94	12/31/94	01/31/95	02/28/95	03/31/95	04/30/95	05/31/95	06/30/95	07/31/95	08/31/95
REVENUE	278,414.53	276,292.41	286,701.93	276,726.79	282,517.37	283,595.89	273,915.92	281,933.67	272,958.62	281,709.12	290,145.59	289,841.64	299,368.27	307,540.68
DIRECT SERVICE COSTS	87,691.35	94,064.57	94,394.57	91,037.76	91,894.80	89,584.80	94,556.38	91,578.73	91,404.99	97,175.83	94,692.41	94,594.47	91,539.33	104,670.32
GROSS PROFIT	190,722.58	182,227.84	192,307.36	185,689.03	190,622.57	194,011.09	179,359.54	190,354.94	181,553.63	184,533.29	195,453.18	195,247.17	207,829.94	202,870.36
SERVICE/TECHNICAL COSTS	25,097.17	43,517.20	27,578.50	10,121.03	13,681.56	13,624.89	13,716.50	7,633.64	7,561.78	7,557.71	7,573.33	7,506.13	7,609.92	4,916.78
SALES/MARKETING COSTS	2,410.85	1,734.06	1,640.28	1,526.83	1,241.93	3,420.19	1,328.93	1,163.93	1,753.70	1,141.93	3,302.57	2,530.15	1,773.90	1,128.93
CUSTOMER SERVICE COSTS	28,040.82	23,330.34	35,842.75	24,408.30	24,871.16	25,456.31	28,745.76	26,022.66	33,536.47	26,934.36	25,881.28	26,909.09	25,951.32	25,914.48
GENERAL & ADMINISTRATIVE COSTS	169,798.85	166,886.51	286,914.47	156,651.11	146,443.02	156,089.55	152,438.65	151,252.87	162,081.60	174,893.58	144,766.31	147,081.59	174,009.14	174,614.69
SYSTEM INCOME (LOSS)	(34,624.71)	(53,240.27)	(159,608.04)	(7,016.04)	4,584.90	(4,580.45)	(16,868.30)	2,281.62	(23,379.92)	(25,994.29)	13,929.69	11,140.30	(1,514.34)	(3,904.52)
CORPORATE OVERHEAD	50.33	76.93	70.21	29.67	65.61	321.31	80.17	184.81	32.13	27.87	357.87	135.37	200.96	206.71
OPERATING INCOME (LOSS)	(34,675.04)	(53,317.20)	(159,738.85)	(7,045.71)	4,519.29	(4,901.76)	(16,948.47)	2,096.81	(23,412.05)	(26,022.16)	13,571.82	11,004.93	(1,151.30)	(4,111.23)
OTHER INCOME AND EXPENSE	(12.22)	49.03	(1,115.91)	74.52	87.83	22.01	79.14	54.38	78.20	74.12	(13.32)	82.00	89.00	(57.08)
NET PROFIT (LOSS) FOR THE PERIOD	(34,687.26)	(53,268.17)	(160,854.76)	(6,971.19)	4,586.92	(4,879.75)	(16,869.33)	2,151.19	(23,333.85)	(25,948.04)	13,658.50	11,106.94	(1,062.30)	(4,218.31)