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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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API ALARM SYSTEMS, a Division of American Protection Industries, Inc., a Delaware corporation, Complainant, vs. GENERAL TELEPHONE COMPANY OF CALIFORNIA, a corporation (U-1002-C), Defendant.	Case 87-06-022 (Filed June 2, 1987)

Shea & Gould, by Alan Pepper, Attorney at Law, for API Alarm Systems, complainant.
James A. Garriss, Attorney at Law, for GTE California, defendant.
James S. Rood, Attorney at Law, for Division of Ratepayer Advocates.

I N D E X

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INTERIM OPINION ON TARIFF APPLICATION DISPUTES

I. Introduction

API Alarm Systems (API), complainant, as a division of American Protection Industries, Inc., is a large provider of alarm, supervisory control, processing, and monitoring services for commercial, governmental, academic, and residential customers in the greater Los Angeles Basin through use of central stations located in Los Angeles, Long Beach, Culver City, Van Nuys, Pomona, and Oxnard. API entered the alarm services business in 1969 through the acquisition of King's Alarm of Long Beach in 1969, Monarch Alarm in 1970, and operated central stations in Long Beach and Los Angeles areas thereafter. By further major acquisitions of Valley Alarm in Pomona in 1978, Morse Signal Devices of Los Angeles and Oxnard in 1981, US Alarm in 1984, and Sonitrol of Long Beach in 1986, it became the largest provider of security, supervisory control, processing, and alarm services in the Los Angeles Basin.

In providing these services, API relies on the use of telephone services provided to it and its customers by Pacific Bell and General Telephone Company of California (recently renamed GTE California Incorporated). API also uses a small number of telephone services provided by Continental Telephone Company of California.

GTE California Incorporated (GTEC), defendant, is the second largest local exchange telephone company (LEC) serving California. It currently serves local exchange and IntraLATA toll service to over 3 million access lines[1] in approximately 75

1 Source GTE-California 1987 Annual Report to the Commission filed April 2, 1988.

moderate to high growth exchange areas of Southern California and in about a dozen other exchange areas located in Northern and Central California. GTEC provides exchange, foreign exchange, private line, In-Wide Area Telephone Service (WATS), and Out-WATS services to API for its regular voice communications and also for alarm transmission. The alarm circuits involved in this complaint are primarily private lines.

II. Basis of Complaint and Phase I Issues

In this complaint API disputes the basis and manner by which GTEC is billing it for private line services. API asserts that since approximately September 1980, API disputed GTEC's billings and made repeated written and oral requests to obtain copies of GTEC's billing records to allow it to reconcile the charges contained on the bills with the services allegedly being provided. API made repeated attempts to obtain this information and resolve these disputes with GTEC through correspondence, telephone conversations, and face-to-face meetings until June 1985. When efforts at resolution of these disputes failed, API filed an informal complaint against GTEC on June 10, 1985.

Prior to the filing of the informal complaint, API tendered payment of its May 1985 bill in the approximate amount of $134,000 to the Commission. Along with the letter of June 10, 1985, containing the informal complaint, API tendered an additional payment in the sum of $9,272.20 to the Commission. The Commission refused to accept this payment.

On or about December 10, 1985, GTEC and API entered into a written agreement providing, inter alia, that upon resolution of these disputes the party who was determined to be indebted to the other party would pay interest at the rate of 7% per annum.

API also states that from September 1, 1983 to April 1985, API paid all bills rendered by GTEC, together with all

applicable late charges. From June 1985 through February 1987, API withheld the sum of $2,078,722 billed to API by GTEC, and commencing in March 1987, API paid GTEC's bills without offset as presented.

Since July 1987, in addition to paying the current bill, API has paid the sum of $125,000 per month to be applied against the amount withheld.

After filing its informal complaint on June 10, 1985, API continued to attempt to resolve these disputes, but finally, on June 2, 1987 API filed its formal complaint.

Generally, API complains that:

- Since about 1977 GTEC has been billing API for charges in excess of the charges allowed pursuant to its filed tariffs for private line, voice line, foreign exchange, WATS, and telephone services, in violation of California Public Utilities (PU) Code § 532.

There are other specific API allegations recited in a January 20, 1988 letter agreement, infra.

A. Additional Issue Raised by Complainant

Finally, on March 11, 1988, the last day of the evidentiary hearings in this matter, API introduced Exhibit (Exh.) 40 showing that GTEC was adding the Universal Lifeline Telephone Service (ULTS) surcharge to bills for private line service while Pacific Bell was not. Since both utilities were assertedly acting in compliance with Decision (D.) 87-10-088 issued October 28, 1987, API was concerned that GTEC was overcharging it compared to Pacific Bell's interpretation of the Commission's order.

B. Intervention by DRA

On September 22, 1987, counsel for the Commission's Division of Ratepayer Advocates (DRA) wrote a letter to the Administrative Law Judge (ALJ) requesting the opportunity to enter an appearance as an interested party for the following purposes:

"1. Insuring that any settlement or compromise of the claims included in the pleading does not result in a detriment to the general body of GTC's ratepayers.

"2. Determining the position of the parties to the dispute on the interpretation of GTC's tariffs and those of Pacific Bell, where applicable.

"3. Evaluating the evidence related to GTC's billing practices and the adequacy of detail that is available to customers to verify the appropriateness of billed charges.

"4. Establishing whether the tariff provisions related to the termination of service for nonpayment of undisputed monthly bills have been followed."

On December 10, 1987, the ALJ ruled that DRA could intervene for the purpose of developing a record on any departure from the published tariff rules governing billing disputes and termination of service procedures that the parties to this proceeding may have agreed to.

On January 15, 1988 by a telephone conference call with the ALJ, API and GTEC jointly requested that the hearings in this matter be divided into two phases to avoid unproductive alternative computations of credits due to API, until it is known how the Commission will rule on the issues dealing with tariff interpretation.

C. Phase I Hearing Schedule

Six days of hearings were held in February and March 1988 for the first phase of this proceeding to resolve tariff interpretations and their application, specifically:

1. Whether GTEC is required to apply its tariff or Pacific Bell's tariff to portions of contaminated private line circuits located in GTEC's service area;

2. Whether GTEC has improperly back-billed API for charges incurred in excess of three months prior to the date of the bill;

3. Whether GTEC has improperly applied Pacific Bell's tariff with regard to the imposition of nonrecurring channel construction and installation charges;

4. Whether GTEC improperly charged API for full duplex local loops connecting alleged primary and secondary offices of GTEC;

5. Whether GTEC improperly routed private line circuits through Pacific Bell's territory while the entire area served by the circuit was located in GTEC's territory;

6. Whether GTEC billed API for nonrecurring mileage charges on private line channels in accordance with GTEC's and Pacific Bell's tariffs; and

7. Whether GTEC billed API for mileage in accordance with the least cost routing requirements of the Pacific Bell's and GTEC's tariffs.

API also raised the following issue to be determined in Phase I. GTEC disagrees and believes it should be handled in Phase II since GTEC did not agree that it involves tariff interpretation:

8. Whether GTEC's billing statements contain sufficient detail to allow API to properly reconcile their bills and to properly determine the source, reason, and effective date of billing adjustments. (Exh. 1, pp. 1 and 2.)

API was permitted to raise this issue in Phase I as a prelude to our consideration of a resolution within the overall proceeding.

API also raised the question of eligibility for costs and attorney fees for complainant as a Phase I issue.

The parties requested that the dollar amounts for settlement of this matter be deferred for consideration in Phase II of this matter.

Testimony for Phase I was given by six witnesses, four for API and two for GTEC. Forty exhibits were identified and offered in evidence and 38 were received. Hearings on Phase I issues were concluded on March 11, 1988 and this first phase was submitted upon receipt of concurrent opening and closing briefs on May 2, 1988 and June 2, 1988, respectively.

III. Stipulations

During the course of the evidentiary hearings and thereafter API and GTEC, on the dates noted, stipulated to resolution of the following issues:

On February 8, 1988:

1. GTEC agreed that it had been billing API for full duplex local loops between rate centers, and it should not have been doing so. (Transcript (Tr.) pp. 12 and 13.)

2. GTEC also admitted that it had been charging API a channel termination charge on local loops under its tariff schedule G-4 and should not have done so. GTEC claimed, however, that it is permitted to charge a channel termination charge from its central office to another central office in a different exchange. (Tr. 13.)

On March 11, 1988, relative to Exh. 33 the parties stipulated as follows:

"A. Prior to July 1, 1984:

"1. Pacific Bell's ('Pacific') tariffs provided for a $45 nonrecurring charge for a USOC 27b or TPL. For the installation of a local loop, Pacific charged for both a 27b and TPL or a

total of $90 for 1000 and 3000 series private line[s] used by API.

"2. Pacific's tariffs provided for two $45 USOC TPL charges for the nonrecurring installation charge for a local loop between a primary and secondary central office in the same rate center. The incidents of this arrangement were very few and only applied to central offices identified in Pacific's private line tariffs. Pacific billed in accordance with its tariffs.

"3. Pacific's tariffs did not provide for a nonrecurring charge for the channel portion of a private line service (Series 1000 or 3000) used by API connecting rate centers for exchanges or district areas. Pacific billed in accordance with its tariff.

"B. On or after July 1, 1984 to present:

"1. Pacific's tariffs provided for and Pacific only charged a USOC 27b nonrecurring charge for the installation of a local loop on a 1000 or 3000 private line used by API ($119 to March 11, 1985, $179 from March 11, 1985 to present).

"2. Pacific did not charge a USOC TPL for the installation of a local loop or channel portions of 1000 or 3000 series private line used by API.

"3. Pacific's tariffs did not provide for and Pacific did not charge a nonrecurring charge for the installation of the channel portion of 1000 or 3000 series private lines used by API.

"4. With the advent of mileage charges for channel segments between wire centers, the use of primary and secondary central offices was discontinued and deleted from Pacific's tariffs.

"C. The rates referred to herein do not reflect the imposition of surcharges authorized for Pacific or the $14 USOC MPBLC bridging charge." (Tr. 691-693.)

On April 29, 1988 API and GTEC stipulated to four additional issues in a joint letter to the ALJ:

1. Service in contiguous GTEC exchanges

"A. GTEC's rates and charges shall apply to any private line circuit that terminates in contiguous GTEC exchanges or district areas provided that API's central station and all API customers are located in GTEC's service area even if the interoffice channel segment connecting the GTEC offices is routed through Pacific Bell's service area and is provided by Pacific."

2. Service in non-contiguous GTEC exchanges using GTEC facilities exclusively

"B. GTEC's rates and charges shall apply to any private line circuit that terminates in non-contiguous GTEC exchanges or district areas provided that API's central station and all API customers are located in GTEC's service area where the interoffice channel segment connecting the GTEC offices is provided over GTEC's owned facilities even though those facilities are routed through Pacific's service area."

3. Statute of Limitations

"C. Statute of Limitation. API's claim shall include all services rendered by GTEC to API on or after September 1, 1983."

4. Interest

Interest at the rate of 7% per annum will [basically] apply on net amounts due from time to time to API and/or GTEC starting

from December 10, 1985 to final payment upon disposition of this proceeding.[2]

The full text of the April 29, 1988 "Stipulation" is set forth in Appendix A.

At the ALJ's request, API by letter dated July 6, 1988 stated that it believed that four of the eight issues had been fully resolved, one partially resolved and only three issues remained.

By letter dated July 8, 1988, GTEC stated that while a number of the issues outlined in Exhibit 1 were partially resolved, only one (Item 5) was fully resolved:

> "5. Whether [GTEC] improperly routed private line circuits through Pacific Bell territory while the entire area served by the circuit was located in [GTEC's] territory."

GTEC's letter of July 8, 1988 prompted a second API letter dated July 15, 1988 stating its belief that the stipulation at pages 692 and 693 of the transcript had been, contrary to the GTEC July 8th letter, reviewed and agreed to by both Messrs. Garriss and Hatfield on behalf of GTEC. In addition after API's reading of the stipulation into the record, API recalled that the ALJ asked GTEC's counsel if he concurred in full with the stipulation and Mr. Garriss replied affirmatively.

API asserted that it believed this issue was fully resolved by stipulation and had refrained from introducing additional evidence or any lengthy argument on this issue.

On July 20, 1988 after reviewing API's July 15, 1988 letter, GTEC called the ALJ to advise that GTEC, without concurring in any omission on the part of GTEC, would agree to API's understanding of the terms of the stipulation on Issue 4. of

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2 The actual computation of interest will be made as set forth in a lengthy discussion which was included in the April 29, 1988 stipulation (see Appendix A for further details).

Exhibit 1, namely that GTEC would recompute bills in API's favor relative to:

> "4. Whether GTEC improperly charged API for full duplex local loops connecting alleged primary and secondary offices of GTEC."

The dollar amount of this result is relatively small according to GTEC, which believes it is preferable to stand by the stipulation than to argue the issue at length, so long as GTEC's options for future tariff revisions are left open regarding the circuit routing and potential charges for those circuits between primary and secondary offices in GTEC exchanges.

GTEC agreed that it had improperly charged API in certain instances of such circuit configurations. It agreed that this issue had been fully resolved by Paragraph A of the joint stipulation of April 29, 1988.

Discussion

We agree that while GTEC is always free to use circuits available to it from Pacific Bell and other LECs to avoid building new plant, or for its own operating convenience, when such circuits, supporting structures and switches are used to provide service within its exchanges or between its contiguous exchanges, it may only apply its own tariff rates and charges for such entire circuits and treat them so they will appear from the customer's viewpoint as if the entire circuit was owned and operated by GTEC. This treatment is in full accordance with the stipulation reached on April 29, 1988 between API and GTEC.

We proceed now to consider the issues outlined in Exhibit 1 which have not yet been fully resolved.

IV. Is GTEC Required to Apply its or Pacific Bell's Tariff to Portions of Contaminated[3] Private Line Circuits Located in GTEC's Service Area?

GTEC concurs in Pacific Bell's private line tariff schedules for service which include private line circuits that are provided partially by Pacific Bell and partially by GTEC, because API's customer is located in a Pacific Bell exchange and API's offices are located in a GTEC exchange or vice versa. The dispute herein relates to how such contaminated circuits should be charged out for each company's part of the service.

A. API's Position

Contending that GTEC's application of Pacific Bell's tariff to all portions of jointly provided private line circuits since January 1, 1984 is in violation of GTEC's GG tariff schedule, API asserts that:

> "The threshold issue in this proceeding is the interpretation of Sheet 1 of GTEC's GG tariff ('GG-1'). Paragraph A of 11th Revised Sheet 1, which was in effect from January 1, 1984, through December 31, 1987, states:
>
> > "When any portion of a channel for the following listed services is furnished by Pacific Bell, the rates and rules of that utility will apply. Terminal equipment provided at locations within this utility's operating territory and connected to these channels will be furnished as shown in Schedule Cal. P.U.C. G-10. [List of services omitted.]

3 The term "contaminated circuit" means a circuit which is partially furnished by Pacific Bell or other LECs and partially furnished by GTEC.

(Attachment '5-A' to Exhibit 2.)"[4]

API further contends that:

> "Since the adoption of 11th Revised Sheet 1, GTEC has applied Pacific's rates to all portions of any jointly provided private line circuit where Pacific furnishes any portion of any of the facilities on the circuit, despite the fact that this tariff requires GTEC to apply its own tariff to all facilities located within its service area, Pacific's tariff to all facilities located within its service area and Pacific's tariff to the inter-company channel." (API Op. Br. p. 31.)

API argues that application of the fundamental principles of tariff interpretation set forth above requires adoption of API's construction of this tariff. The Eleventh Revised Sheet 1 became effective on January 1, 1984. Paragraph A of the prior tariff sheet (10th Revised Sheet 1) and all prior versions of this sheet stated as follows:

> "When any portion of the following listed services is furnished by the Pacific Telephone & Telegraph Company, the rates and rules of

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4 "Paragraphs B and C of GG-1 remained constant at all times relevant to this proceeding through December 31, 1987. They stated:

> "B. When a private line service or channel is jointly furnished by the utility with a connecting utility (other than covered in Paragraph A above), the applicable schedules of the respective utilities will apply to the portion furnished by each utility.
>
> "C. When a private line service or channel is furnished over wholly-owned lines of the utility, the utility's applicable schedule will apply." (API Opening Brief (Op. Br.) pages (pp.) 30-31.)

that utility will apply to the complete service." (API Op. Br. p. 31.)

API claimed that when 10th Revised Sheet 1 was superseded by 11th Revised Sheet 1 the term "complete service" was changed to "channel" and thus the meaning of the tariff was significantly altered. To bolster its case API cites its cross-examination of GTEC's witness Bob Hatfield:

"Q. (MR. PEPPER) Now, the duplex wire that connects Service Wire Center 1 and Service Wire Center 2, that would be called a channel, would it not?

"A. (MR. HATFIELD) That would be the, called the channel.

"Q. And the entire, the totality of this service would be called the circuit?

"A. In respect to bridged alarm, I would call it a backbone.

"Q. The totality of the entire service from everything, from API?

"A. All the way to Patron 5.

"Q. That would be a circuit?

"A. Yes." (Tr. p. 501.)

API then concludes that:

"...when any portion of a channel is furnished by Pacific Bell, the rates and rules of Pacific apply to that portion. Consequently, Paragraph A allows GTEC to apply Pacific's rates and rules to the portion of the channel located in Pacific's service area and the portion of the channel crossing the utility boundaries. Reference must then be made to Paragraph B of the 11th Revised Sheet, which provides that except as covered by Paragraph A, where GTEC jointly furnishes private line services with another utility, the rates and rules of the providing utility apply to the portion furnished by each utility. Paragraph B therefore requires GTEC to apply its rates to

> all portions of the circuit wholly within its area, including any purely intra-company portions of the channel, and to apply Pacific's rates only to portions of the circuit actually furnished by Pacific." (Op. Br. pp. 33-34.)

API claims that its conclusion is bolstered by changes made by GTEC to Paragraphs B and C in 12th Revised Sheet 1, which were carried over into the currently effective 13th Revised Sheet 1. In 11th Revised Sheet 1, these paragraphs read as follows:

> "B. When a private line service or channel is jointly furnished by the utility with a connecting utility (other than covered in Paragraph A above), the applicable schedules of the respective utilities will apply to the portion furnished by each utility.
>
> "C. When a private line service or channel is furnished over wholly-owned lines of the utility, the utility's applicable schedule will apply." (Op. Br. p. 34.)

In 12th Revised Sheet 1 effective January 1, 1988 the words "service or" were removed. This, alleges API, makes these paragraphs (B and C) consistent with Paragraph A. Thus API claims that as of January 1, 1988, the effective date of 12th Revised Sheet 1, GTEC can only apply Pacific Bell's rates and rules to the portions of the circuit located in Pacific Bell's service area and to the intercompany channel. (API Op. Br. pp. 35-36.)

API also asserts that:

> "Regardless of which interpretation of GG-1 is ultimately adopted by this Commission, it is clear that Pacific's rates can be applied only when <u>some</u> portion of the circuit is provided by Pacific. The mere fact that the circuit traverses Pacific's service area is insufficient. The tariff states that when 'any portion of the following listed services <u>is furnished by</u>...' (emphasis added), and not 'when any portion of the following listed

services traverses Pacific's serving area'"[5] (API Op. Br. p. 36.)

B. GTEC's Position

GTEC first states that there was no dispute with Paragraph A of its 10th Revised Sheet 1 of its GG tariff schedule, which allowed it to apply Pacific Bell's rates and charges to an entire circuit when any portion of that circuit is provided by Pacific Bell by relying on the language of the tariff as follows:

> "When any portion of the following listed services is furnished by The Pacific Telephone and Telegraph Company, the rates and rules of that utility will apply to the complete service:" (GTEC Op. Br. pp. 3-5.)

GTEC then contends that the subsequent revisions of Paragraph A of Tariff Schedule GG Sheet 1, namely Revised Sheets 11, 12, and 13, are not ambiguous although API's witnesses Ted Willie and W. Kenneth Edwards in their prepared testimony did claim that Revised Sheets 11 and 12 were ambiguous "...as interpreted by GTEC." (GTEC Op. Br. p. 4.) At issue is Paragraph A of Tariff Schedule GG in Revised Sheets 11, 12, and 13.

Paragraph A of Revised Sheet 11 reads in relevant part as follows:

> "When any portion of a channel for the following listed services is furnished by Pacific Bell, the rates and rules of that utility will apply. Terminal equipment provided at locations within this Utility's operating territory and connected to these channels will be furnished as shown in Schedule Cal. P.U.C. G-10."

The relevant part of Paragraph A of Revised Sheets 12 and 13 was changed effective January 1, 1988 to read:

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5 This point has been stipulated by API and GTEC and to the extent that there is any further ambiguity the interpretation stated by API in this paragraph will apply.

> "When any portion of a channel for the following listed services is furnished by Pacific Bell, the rates and rules of that utility will apply."

GTEC asserts that "...even if one assumes arguendo, that the language of the successor provisions modifying the 10th Revised Sheet 1 is ambiguous, the Commission has stated that 'the ambiguity must be a reasonable one...'"

For its reference to the opinion previously expressed by the Commission, GTEC cited Pacific Gas and Electric Company D.85-10-050 issued October 17, 1985 in Application (A.) 84-04-028 wherein the Commission stated:

> "In the exercise of its discretion the Commission may determine whether an interpretation of a tariff rule, as sought, is reasonable.[6] Accordingly, such claimed ambiguities must have a substantial basis and be considered in light of Commission decisions which set forth the policy on the matter in dispute." (p. 11 mimeo.)

GTEC then urged the Commission to consider the background necessitating the change in 10th Revised Sheet 1 and GTEC's intent in modifying the language as it did. GTEC asserts that it was Pacific Bell's divestiture from American Telephone and Telegraph Company (AT&T) which thereafter precluded Pacific Bell from offering private line "terminal equipment".

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6 In the cited decision the key words used were "reasonable interpretation" of an ambiguous tariff, and the Commission then concluded that:

> "3. While ambiguities in a tariff are to be construed against the utility, the interpretation sought must be reasonable. Such reasonableness may be determined in accordance with Commission decisions which set forth the policy on the matter in dispute." (Conclusion of Law 3, p. 21 mimeo.)

GTEC argues that it has always maintained that if any of Pacific Bell's facilities are used in providing private line services then GTEC would apply all of Pacific Bell's rates and rules to the complete service offered by GTEC. (GTEC Op. Br. p. 6.)

On the question of intent, GTEC cites Advice Letter 4845[7] (Exh. 9), filed with 11th Revised Sheet 1 of Schedule GG, wherein GTEC merely requested that it be allowed to establish the same rates and charges as were previously contained in Pacific Bell's tariff for terminal equipment.

GTEC further argues that API's interpretation of Paragraphs A, B, and C of the various revisions of Sheet 1 of Schedule GG renders first B and C superfluous in considering Paragraph A and vice versa. (GTEC Op. Br. pp. 9-10.)

GTEC then renews its request that the Commission give great weight to its:

> "...'consistent, long-standing contemporaneous interpretation' and similarly conclude that whenever private line facilities are jointly provided by Pacific Bell, GTEC is fully

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7 Advice Letter 4845 contained the phrases:

"The January 1, 1984 divestiture of [Pacific Telephone and Telegraph Company] PT&T from AT&T will relieve PT&T from the provision of Private Line Terminal Equipment under tariff. This results in General Telephone having full responsibility for billing of all terminal equipment it provides in conjunction with channels terminating in its serving territory.

"This filing transfers the necessary terminal equipment items from the five PT&T Schedules with no changes in charges, rates, description or special conditions so that no revenue effect nor application of service will affect any customers.

"This filing will not increase any rate or charge, cause the withdrawal of service, nor conflict with other schedules or rules." (Exh. 9.)

authorized to apply Pacific Bell's rates to the entire circuit. Any other interpretation would render some of the other provisions a nullity and lead to an unreasonable result." (GTEC Op. Br. p. 10.)

c. DRA's Position

While DRA offered no testimony and presented no witnesses in this proceeding, counsel for DRA appeared at the hearings and filed an opening brief. According to that brief DRA's interest in this proceeding is narrowly focused on the question of whether GTEC has misinterpreted its private line tariff schedules and, if so, what ratemaking adjustment should be applied.

According to the DRA brief:

"The central issue in this dispute involves the interpretation of GTE's GG tariff (GG-1) Paragraph A of the tenth and eleventh Revised Sheet 1. Paragraph A of tenth Revised Sheet 1 and all of the previous versions of this sheet contain the following language:

'When any portion of the following listed services is furnished by the Pacific Telephone and Telegraph Company (PTTC), the rates or rules of that utility will apply to the complete service.'

"Paragraph A of the eleventh Revised Sheet 1, which was in effect from January 1, 1984 through December 31, 1987, provides as follows:

'When any portion of a channel for the following listed services is furnished by Pacific Bell, the rates and rules of that utility will apply. Terminal equipment provided at locations within this utility's operating territory and connected into these channels will be furnished as shown in Schedule Cal. P.U.C. G-10.'

"The principal difference between API and General is whether the deletion of the terms 'will apply to the complete service' from the tenth to the eleventh Revised Sheet should mean that General's tariff, which is lower than

Pacific's tariff should be applied to such private line service.

"The Legal Division's position is that General's rates should apply. The reason for this position is the plain meaning of the language. The deletion of the phrase 'will apply to the complete service.' from Paragraph A of eleventh Revised Sheet 1 can be logically read only to indicate that there has been a change from Sheet 10 to Sheet 11 to the effect that Pacific's rates will not apply to the 'complete service' of General, simply because a portion of a channel is furnished by Pacific. General's explanation for the change in the tariff rates was that...this was required by the divestiture proceedings, which forbade Bell Companies from providing terminal equipment, and that it was necessary to modify Paragraph A GG-1 to indicate that Pacific's tariff would no longer apply to the provision of terminal equipment. (T-354) However, Paragraph A could have simply been modified to read 'when any portion of the following listed services is furnished by Pacific, the rates and rules of that utility will apply to the complete service except for terminal equipment.' However, General modified its tariff so that the meaning was entirely changed to provide that Pacific's rates would be applied to those facilities which Pacific so provided.

"The DRA supports General's position and is of the opinion that no change in rate was intended by the change in tariff sheets, but that they were merely required by the divestiture proceedings. Since DRA believes the intent of the change in tariff was not to change rates, DRA recommends that the Commission should order the utility to correct its tariffs. The utility should be ordered to file an advice letter for the Commission['s] approval by resolution...

"The Legal Division believes that its interpretation is consistent with prior Commission rulings that utility tariffs, when capable of more than one interpretation, should be interpreted so as to give the customer the lowest possible rates. Further, although

> General's witness, who himself wrote General's tariff testified as to his intention that Pacific's tariff should apply to the entire private line system, it is a matter of settled regulatory law that the intention of the framers of tariffs cannot be given controlling weight, regardless of testamentary evidence that a utility may introduce as to the intentions of its employee with respect to the interpretation of the tariffs at issue. Kings Alarm Systems, Inc., v. The PT&T Company and General Telephone Company of California (1977) Decision No. 86879, Case 9914, 81 Cal. P.U.C. 283." (Staff Op. Br. pp. 2-3.)

D. Discussion

The parties in this proceeding are not inexperienced or lacking in expertise in carrying out their respective business operations. GTEC is a large local exchange telephone company and API appears to be a large and successful alarm company. API uses GTEC's facilities and services not exclusively for its own use but rather to provide service to its customers. From this standpoint API must apply GTEC's facilities and services effectively, and bill its own alarm customers accurately.

For API's own customers the pass-through of GTEC's rates and charges for circuits and other facilities and services becomes a significant portion of API's alarm service costs of operation. It is in this overall light that we will review this serious question of tariff interpretation.

First GTEC asks API and this Commission to look not only at the language of its GG-1 tariff but to "...the proper effect that the drafters intended.", and to its "...consistent, long-standing contemporaneous interpretation" of the tariff. (GTEC Op. Br. p. 10.)

API asks instead for an interpretation of the revised GG-1 tariff that would use Pacific Bell's rates and charges for the portion of the circuit provided by it and GTEC's rates and charges for the portion of the circuit provided by GTEC, stating: "If GTEC

had intended to continue applying Pacific's rates to the complete service, they could and would have left that reference in the 11th Revised Sheet" (API Op. Br. p. 32.)

Since GTEC applied Pacific Bell's rates to the entire circuit without dispute until January 1, 1984 under 10th Revised Sheet 1 of Tariff Schedule GG-1 and that tariff was unambiguous, it is clear that the alleged ambiguity began with the effective date of 11th Revised Sheet 1 of Tariff Schedule GG-1 on January 1, 1984. Advice Letter 4845 which transmitted and defined the changes which resulted from the filing of 11th Revised Sheet 1 of Tariff Schedule GG-1 made it clear that:

> "This filing transfers the necessary terminal equipment items from the five PT&T Schedules with no changes in charges, rates, description or special conditions so that no revenue effect nor application of service will affect any customers." (Exh. 9.)

Since the rates were not being changed by that filing and the advice letter confirmed that the only changes were the transfers of current rates and charges for terminal equipment from PT&T's pre-divestiture rate schedules to GTEC's tariff schedules, API was in no way enriched or harmed by 11th Revised Sheet 1 of Tariff Schedule GG-1 which became effective January 1, 1984.

However, as time passed and Pacific Bell's private line rates and charges were revised (increased) in its general rate proceedings the ambiguity which began with 11th Revised Sheet 1 of Tariff Schedule GG-1 on January 1, 1984 then affected GTEC's customers.

On January 1, 1988 the 12th Revised Sheet 1, and 13th Revised Sheet 1 of Tariff Schedule GG-1 became effective on a sequential basis on the same day, the first by Advice Letter 5075 and the latter by Advice Letter 5109, all references to Advice Letter 4845 disappeared from the newly revised tariff sheets.

Under the current 13th Revised Sheet 1 of Tariff Schedule of GG-1 the ambiguities of the tariff in Paragraphs A and B are not clarified as to GTEC's intent or to its consistent, long-standing contemporaneous interpretation by Advice Letter 5109.

Well settled regulatory law dictates that any ambiguity be resolved in favor of the complainant API and its alarm service customers. In a similar proceeding involving Kings Alarm Systems, Inc. and GTEC's predecessor, among others, (supra) the Commission concluded that:

> "A utility may not charge or receive a different compensation for any service rendered other than as specified in its tariff schedules on file and in effect. Where a tariff is capable of more than one interpretation the utility must interpret the tariff so as to give the customer the lowest possible rate." (81 Cal. P.U.C. 283, 290.) (Also see Ellickson v General Telephone Company of California 6 P.U.C. 2d 432, and Carlton Hills School v San Diego Gas and Electric Company 8 P.U.C. 2d 438.)

In reaching this determination we further note that API's complaint has been pending on an informal basis since July 11, 1985 and on a formal basis since May 2, 1987, and GTEC had many opportunities to clarify its Tariff Schedule GG-1 to eliminate the ambiguities, be they perceived or actual.

In this case the ambiguities were easy to clarify, e.g. Paragraph A of Sheet 1 of Tariff Schedule GG-1 required the addition of only eight words at the end of the paragraph to achieve full clarity of GTEC's stated intent that Pacific Bell's rates and rules will apply "...to the complete service except for terminal equipment." (DRA Op. Br. p. 3.)

As for Paragraph B of Tariff Schedule GG-1 which is also ambiguous, it too would have been easy to clarify by merely changing the words "(other than covered in Paragraph A. above)" to (for connecting utilities, other than Pacific Bell) or (for other

than the services listed in Paragraph A. above) whichever provision was intended by GTEC.

It is clearly the duty and obligation of a utility to clarify any ambiguous language which it discovers in its tariff schedules. If unresolved, such ambiguities merely invite further complaints which ultimately cost GTEC time, effort, and money to resolve, not to mention a poor image from its customers' point of view.

We will, therefore, find that effective January 1, 1988 Pacific Bell's rates, rules, and charges apply for any portion of a service provided by it under GTEC's Tariff Schedule GG-1 and GTEC's rates, rules, and charges will apply to the portions of those services provided by it. We will direct GTEC to clarify its Tariff Schedule GG-1 accordingly.

V. Did GTEC Improperly Back-bill API for Charges Incurred in Excess of Three Months prior to the Date of the Bill?

GTEC does not have a specific tariff rule limiting its ability to back-bill customers in excess of three months for previously unbilled charges.[8] However, when it renders private line service in connection with channels or similar services of Pacific Bell it states that "...the rates and rules of that utility will apply." (GTEC Tariff Schedule GG-1, 13th Revised Sheet 1, Paragraph A.)

8 As of June 2, 1988, a routine review of the tariff schedules on file with this Commission by the 23 LECs serving California reveals that all but three of these 23 LECs have rules limiting their ability to back-bill their customers. The three which do not have such rules are GTEC, The Siskiyou Telephone Company, and GTE West Coast, Inc. (affiliated with GTE of the Northwest).

A. Position of API

API asserts that in applying Pacific Bell's tariffs GTEC has back-billed API in violation of the three-month limitation contained in Pacific Bell's B-2 tariff, which, among other things, states:

> "A bill shall not include any previously unbilled charges for private line service furnished prior to three months immediately preceding the date of the bill." (API Op. Br. p. 70.)

According to API this backbilling limitation has been in effect since October 10, 1982, and 2nd Revised Sheet 8 of Pacific Bell's Schedule 44-T confirms that effective date.

B. Position of GTEC

GTEC contends that by Paragraph A of Tariff Schedule GG-1, it intended to adopt the rates and rules only for those comparable Pacific Bell services that are specifically listed in Paragraph A, which, as stipulated, are all found in Pacific Bell's Schedule B-3. Pacific Bell's backbilling restrictions are not located in Schedule B-3, but, instead, are located in Schedule B-2. GTEC argues that:

> "There is no document in which GTEC has expressly stated that GTEC adopts Pacific Bell's Schedule B-2. Pacific Bell's internal guidelines for billing customers should not supersede GTEC's billing policies." (GTEC Op. Br. p. 11.)

> "If the Commission concludes that GTEC must apply Pacific Bell's rules other than those rules set forth in Schedule B-3, such a Commission ruling would, in effect, compel GTEC to concur in Pacific Bell's tariffs it did not intend. Furthermore, such a ruling may also suggest that GTEC must apply Pacific Bell's rules that impose surcharges that are applicable to all Pacific Bell services. Heretofore GTEC has applied its own surcharges, but it has not applied any Pacific Bell surcharges that are found in Pacific Bell rules other than in Schedule B-3 or its predecessor tariffs (R.T. 492-493).* There are numerous Pacific Bell rules that are

applicable to all Pacific Bell services that GTEC has never adopted and, consequently, have not been applied by GTEC.

"There is no dispute that the utility that controls the circuit is responsible for the billing for services rendered irrespective of whether those services have been jointly provided by Pacific Bell and GTEC (R.T. 492). Since GTEC has the responsibility for billing API on circuits that are controlled by GTEC, then the method of billing should be determined by GTEC. If GTEC's standard policy authorizes billing in excess of 90 days of the date of the rendering of the services, then that policy is entitled to enforcement." (GTEC Op. Br. p. 12.)

* Footnote omitted from quoted material.

C. Discussion

Since API must pass through GTEC's rates and charges to its customers on a timely basis, any backbilling of previously unbilled charges can constitute a burden to it in its own customer relations and if its own customers have terminated their API service, any subsequent backbilling may not be recoverable by API.

We have previously discussed our position on telephone utilities' backbilling practices in Order Instituting Rulemaking (R.) 85-09-008 and the subject of GTEC's own backbilling policy has been addressed in D.88-09-061 issued September 28, 1988 in that proceeding.

In this proceeding, however, we are being asked to focus narrowly on the issue of backbilling as it relates to previously unbilled rates and charges for private line services and channels provided in part by Pacific Bell as concurred in by GTEC's Tariff Schedule GG-1.

Paragraph A of Tariff Schedule GG-1 states in pertinent part that:

> "A. When any portion of a channel for the following listed services is furnished by Pacific Bell, the rates and rules of that utility will apply."

Nowhere in Tariff Schedule GG-1 is there any exception or description as to which rules of Pacific Bell apply, only that the "...rules of that utility will apply."

Pacific Bell's rule on backbilling "generally" appears in its Schedule A2, General Regulations, 1st Revised Sheet 69, and states:

> "I. UNDER AND OVERCHARGES
>
> "1. A bill shall not include any previously unbilled charge for exchange service furnished prior to three months immediately preceding the date of the bill."

Pacific Bell's backbilling rule for private line service now appears in its schedule B-2 which was relocated and unchanged from that contained in PT&T's Tariff Schedule 44-T, 2nd Revised Sheet 8, Paragraph B "REGULATIONS APPLICABLE TO ALL PRIVATE LINE SERVICES AND CHANNELS", which established the current language effective October 10, 1982. The pertinent part of that regulation states:

> "7. Payment for Service
>
> "A bill shall not include any previously unbilled charge for Private Line service furnished prior to three months immediately preceding the date of the bill."

A clear and simple interpretation of GTEC's Tariff Schedule GG-1 in our view requires GTEC to limit its backbilling of any services billed to API in concurrence with Pacific Bell's tariff schedules to a maximum of three months immediately preceding the date of the bill.

Further clarifying this determination in conformance with the previous issue from Section IV of this decision we will direct that:

- For the period of September 1, 1983 to December 31, 1983, Pacific Bell's backbilling limitation will apply to the complete private line service whenever any portion of that service was provided by Pacific Bell,
- For the period of January 1, 1984 to December 31, 1987, Pacific Bell's backbilling limitation will apply to the complete service except for terminal equipment provided by GTEC, and
- For the period of January 1, 1988 to the present, and until such time as GTEC has a standard backbilling rule in effect, Pacific Bell's backbilling limitation will apply to the portion of the private line service(s) provided to API by it in concurrence with GTEC's GG-1 tariff schedule.

VI Did GTEC Improperly Apply Pacific Bell's Tariff with Regard to the Imposition of Nonrecurring Channel Construction and Installation Charges?

A. Position of API

API claims that GTEC has consistently incorrectly applied Pacific's tariff in both GTEC and Pacific service areas. API further contends that even if we determine that GTEC may apply Pacific Bell's tariff to an entire jointly provided circuit, API is still entitled to reparations for overpayments resulting from misapplication of Pacific Bell's tariff.

At issue here are the nonrecurring charges for service to a new customer of API, when API needs the installation of another local loop to an existing circuit or the creation of a new circuit to serve that API customer.

API noted that creation of a new circuit requires the installation of two local loops - one local loop[9] connecting API's central station to the telephone company's central office, and a half-duplex local loop connecting the telephone company's central office to API's customer.

At all times relevant to this proceeding Pacific Bell's tariff schedules required a nonrecurring charge for the installation of these local loops. However, at no time did Pacific Bell's tariff authorize any nonrecurring charge for the inter-office channel portion of these circuits. From July 1, 1984 to March 10, 1985 the nonrecurring charge for these local loops was $119 and from March 11, 1985 to the date of submission of Phase I of this proceeding (June 2, 1988) and until otherwise changed or modified by Pacific Bell the installation charge has been and is $179. In addition, Pacific Bell's tariffs provide for a multi-point bridging charge (MLPBC) of $14 per loop on Series 3000 circuits with three or more loops.

API then stated that Pacific Bell rendered a total nonrecurring charge of $238 for one customer local loop and one API local loop from July 1, 1984 to March 10, 1985 and $358 for these same loops from March 11, 1985 to the submission of Phase I of this proceeding on June 2, 1988 and until otherwise changed or modified by Pacific Bell.

API then asserted that since July 1, 1984 GTEC has misapplied nonrecurring charges on nearly every installation involving concurrence in Pacific Bell's rates; the one exception occurred when adding a new local loop to an existing circuit not involving an additional wire center. API argues that, in most instances, GTEC has imposed nonrecurring charges of $537, rather than $179 (plus MLPBC) for the addition of a local loop requiring

9 Full-duplex local loop for Series 3002 circuits and half-duplex on Series 1009 circuits.

the addition of a new wire center and $1,074, rather than $358 for creation of a new circuit with one customer loop, although the misapplied amount varied.

On cross-examination by API, GTEC witness Hatfield conceded that GTEC had in fact misapplied the nonrecurring charges for private line circuits involving service provided in part by Pacific Bell, and had thereby overcharged API.

From this exchange and the stipulation at Tr. 691-693, API felt that this issue was resolved in favor of API.

B. Position of GTEC

In view of its comments in a letter to the ALJ dated July 8, 1988 regarding the various stipulations, GTEC does not see this issue as fully resolved. GTEC claims that this issue was not resolved by the stipulation at Tr. pages 691 through 693. From GTEC's point of view that stipulation was only an agreement as to how the charges were billed from time to time by Pacific Bell. GTEC does not agree that these charges were the only charges mandated by Pacific Bell's tariff. In its closing brief GTEC asserts that API's contention that the effect of this stipulation is an admission by GTEC that when applying Pacific Bell's tariffs, it has overcharged API on all installations since July 1, 1984 is wrong.

GTEC argues that:

> "The stipulation only describes how Pacific Bell has applied nonrecurring charges. There was no agreement by GTEC that Pacific Bell's application is correct. In fact, Pacific Bell's application of its nonrecurring charges diverges from the literal language of its Schedule Cal. P.U.C. No. B3 ('Schedule B-3')."

GTEC acknowledges that:

> "'Pacific did not charge a [Universal Service Order Code] USOC [Test Point Level] TPL for the installation of a local loop or channel portions of 1000 or 3000 series private line used by API.' GTEC agrees that procedure was followed by Pacific Bell. GTEC, however, contends that Pacific Bell's interpretation of

its tariff is incorrect." (GTEC Closing (Cl.) Br. p. 12.)

GTEC then quoted the relevant part of Pacific Bell's "Private Line Services B3. Channels" tariff as follows:

	"Nonrecurring Charge	USOC
Each termination for intrawire center and interwire center service		
- Type 3001 and 3002, CPE termination	$179.00	27B
- Type 3001 and 3002, Utility termination	$179.00	TPL"

GTEC asserts that:

> "The literal language of the foregoing excerpt requires that whenever there is a utility termination, a USOC TPL must be applied for '[e]ach termination for intrawire center and interwire center service.' When there is the installation of a local loop or channel portions, there physically has to be a utility termination.
>
> "Pursuant to the plain and unambiguous words of the tariff, Pacific Bell was obligated to apply a USOC TPL when there was a utility termination just as GTEC was compelled to assess this rate element." (GTEC Cl. Br. p. 12.)

GTEC believes that its construction of Schedule B-3 on this point is reasonable and well founded. If the tariff wording controls over a utility practice that is not in conformity with the tariff, then GTEC was warranted in adhering to its skepticism about the propriety of Pacific Bell's application.

C. Discussion

In addressing Pacific Bell's application of nonrecurring termination charges, we note that while GTEC did literally interpret the quoted part of the Private Line Services B3 Channels

tariff, it omitted from its quote a very important heading which essentially modifies the interpretation of the termination charges as follows:

> "4. Channel between first terminations in different premises on noncontinuous property
>
> "a. Local loop (dry facility) for each first termination on a premises within a wire center or between wire centers."

With the added words contained in that heading it is clear that only each first termination is subject to the nonrecurring termination charge for a "USOC 27B" or "USOC TPL".

By GTEC's Tariff Schedule GG-1 titled: "PRIVATE LINE SERVICES AND CHANNELS", GTEC fully concurred in the application of Pacific Bell's rates and charges (except for terminal equipment) for the period from January 1, 1984 through December 31, 1987.

Full concurrence also bears the responsibility and obligation of full agreement by GTEC in the administration of the rates and charges of Pacific Bell in the same manner as practiced by Pacific Bell. The customer, in this case API, should see no differences in the rates or charges for any concurred in service offering be it rendered by Pacific Bell or GTEC. There may be circumstances when two responsible individuals would interpret a concurrence in tariff schedule differently. When they do, they should discuss their concerns and differences and arrive at a reasonable common ground. When a common understanding is not reached the concurring utility, in this case GTEC, may only apply the understanding of the concurred in utility, in this case Pacific Bell, to achieve total parity of rates and charges to the customer. Therefore, we will again adopt Pacific Bell's interpretation and method or practice of applying its "B3. Channels" tariff for GTEC's concurrence in that tariff, when a portion of the circuit is provided by Pacific Bell on an interexchange basis. We will direct GTEC to recompute API's bills for nonrecurring charges on jointly

provided services with Pacific Bell from July 1, 1984 to December 31, 1987 accordingly, except for any terminal equipment provided at the customer's premises in GTEC's service area, which is to be provided at GTEC's nonrecurring charges and rates on or after January 1, 1984.

We will also direct GTEC to apply Pacific Bell's nonrecurring termination charges as interpreted by Pacific Bell under its tariff Schedule B3. for Private Line Services and Channels within Pacific Bell's service area on or after January 1, 1988 and to apply its own nonrecurring termination charges after that date for the portions of these services and channels within GTEC's service area.

VII. Did GTEC Bill API for Nonrecurring Mileage Charges on Private Line Channels in Accordance With GTEC's and Pacific Bell's Tariffs?

A. Position of API

API states that Pacific Bell's charges for channel mileage and channel terminals are higher than GTEC's and Pacific Bell measures mileage on a wire center to wire center basis. GTEC, on the other hand, measures mileage on a rate center to rate center basis. Thus argues API, the only mileage imposed is for mileage between rate centers, and no mileage charge applies to connect two central offices in the same GTEC exchange. Under Pacific Bell's tariff, a mileage charge is imposed between each wire center located on a circuit route, even between wire centers in the same exchange.

API contends that there can be no more than two channel terminals per exchange under GTEC's tariffs. Whereas, under Pacific Bell's tariff, a channel terminal charge will be imposed coming into and going out of every wire center located on the channel portion of the circuit.

API asserts that applying GTEC's tariff to its portion of an entire example circuit results in a billing of 40 miles and 22 channel terminals, whereas imposition of Pacific Bell's tariff results in billing for 54 miles and 36 channel terminals. Thus argues API, the application of Pacific Bell's tariff on jointly provided circuits has resulted in substantial mileage[10] and channel overcharges.

B. Position of GTEC

In concurring in Pacific Bell's tariffs GTEC claims that it has received Pacific Bell's confirmation as to its method of billing the mileage rate for "contaminated" circuits. GTEC maintains that on an interexchange circuit Pacific Bell applies the interexchange mileage charge for all wire center measurements associated with that circuit.[11]

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10 We have previously determined that Pacific Bell's tariffs will apply as well as its method of administering the tariff so we will use Pacific Bell's measurements method to resolve this issue. In doing so there remains the problem of how to properly interpret Pacific Bell's tariff as to rates between wire centers and interexchange rates.

11 The backup for GTEC's "confirmation" of Pacific Bell's method of billing is a memorandum from Judith Ann Ciphers, a Pacific Bell Regulatory Group Manager, dated March 3, 1988 confirming a conversation with GTEC's witness Bob Hatfield. This document was presented without the opportunity of API to question the author on Pacific Bell's application of other related charges as well as verification of the facts stated therein is not proper. Therefore, when concurring that Pacific Bell had faxed the same memorandum to it, API requested and was permitted to include a seven-page question and answer document relative to Pacific Bell's application of non-recurring charges for private line channels. To further complicate this issue on March 11, 1988 API presented a further quote purportedly from Rick Normington, Executive Director of Priority Marketing of Pacific Bell which fully contradicted the memorandum from Ms. Ciphers of Pacific Bell. The use of these materials will be limited to general information and will not be relied upon in reaching a determination in this matter.

In arguing to give weight to the information it received from Pacific Bell, GTEC alluded to its cross-examination of API witness O'Brien and his concession that Pacific Bell should apply the higher interexchange rate when any portion of the circuit goes interexchange. With this concurrence GTEC concludes that when the circuit is entirely intraexchange only the intraexchange rate applies. However, when the circuit extends beyond the exchange boundary the interexchange mileage rate will apply to the entire circuit.

C. Discussion

On the first issue consistent with our prior determinations in this proceeding, we will again direct GTEC to apply Pacific Bell's nonrecurring charges and rates as well as Pacific Bell's methods and practices for measuring and billing mileage for complete "Private Line Channels" for the period of September 1, 1983 to December 31, 1987, when these channels were provided jointly by Pacific Bell and GTEC on an interexchange basis.

Subsequent to January 1, 1988 GTEC will be directed to use its own tariff rates and charges for all channel mileage within its service area and Pacific Bell's rates and charges and measurement practices for the portion of such channels within its service area.

As to the question of how Pacific Bell applies its tariff rates for intraexchange portions of interexchange channels we have two Pacific Bell experts who apparently completely disagree with each other.

The issue here is that Pacific Bell has two rates which apply to channel mileage - a lower rate for channel mileage between Pacific Bell's wire centers within a Pacific Bell exchange and a higher rate for channel mileage on an interexchange basis. GTEC cites the advice of Ms. Ciphers of Pacific Bell, and asserts that

once a channel crosses an exchange boundary, the entire channel is priced out at the higher interexchange mileage rate.

API contradicts this citing by Mr. Normington of Pacific Bell and asserts that the lower mileage rate for the portion of the channel between wire centers of an exchange continues to apply to that portion of a channel when the channel crosses an exchange boundary and becomes an interexchange channel. The interexchange mileage rate only applies to the net portion of the channel that goes from the rate center of the first exchange to the rate center of the second exchange. Looking at the specific tariff language only complicates the matter further, because that language leads to a very logical third interpretation which is best described by studying a diagram of a simple multipoint interexchange circuit which is jointly provided by Pacific Bell and GTEC, as noted in Figure 1 and the supporting tariff provisions which apply to contaminated circuits.

Pacific Bell's Tariff Schedule B-3 for Series 1000, 2000, and 3000 channels under "Mileage Measurements" Section 3.1.4.A.2. states:

"2. Interwire Center Channels

"a. Two-point Service

"(1) The rate mileage is the airline distance between the wire centers or locations outside wire centers determined in accordance with Schedule Cal.P.U.C. No. 175-T, Section 14.

"b. Multipoint Service

"(1) The rate mileage is the shortest combination of airline mileages which will connect the wire centers of the service points, each section being determined as specified in a., preceding.

"(2) When the customer requests that the wire centers be connected in a specified sequence, the mileage is the shortest airline mileage which will connect the wire centers in the specified sequence."

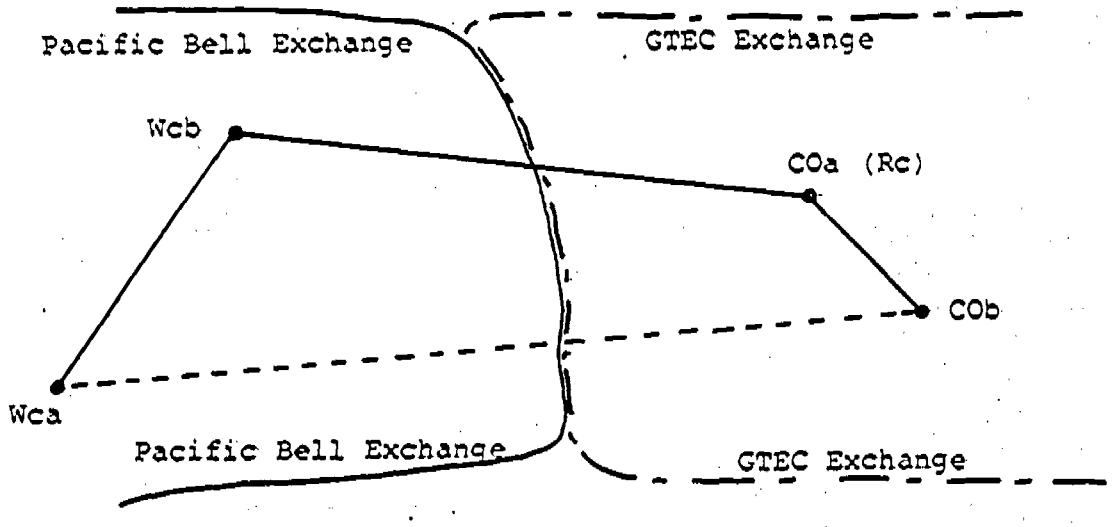

Figure 1

When there is no interexchange service involved then the rate and mileage set forth under "2a. Two Point Service" applies between wire centers in Pacific Bell's service area. This would be the case for communications service which begins at wire center a (Wca) and ends at wire center b (Wcb) in Figure 1 if the circuit ended there.

However, Figure 1 illustrates a path for communications from Wca to Wcb then across the exchange boundary to central office a which is the rate center (Coa Rc) of GTEC's exchange and then on to a second GTEC central office b (Cob). Using the shortest combination of airline mileage for this service would require that the mileage between Wca and Cob, represented by a dotted line on Figure 1, be determined using the vertical and horizontal (V&H) coordinate[12] system set forth in Pacific Bell's Tariff Schedule 175-T, Section 14.

Since there is no persuasive evidence on the record as to how Pacific Bell actually determines channel mileage for billing purposes and our review of Pacific Bell's tariff Schedule B-3 does nothing to resolve this issue, we will direct API and GTEC to examine a representative number of Pacific Bell bills to API where service is provided on an interexchange basis from Pacific Bell to Pacific Bell exchanges and determine from those bills the way that Pacific Bell is actually determining the channel mileage. API and GTEC should obtain assistance as necessary from Pacific Bell to determine the actual method used to calculate these mileages.

Then GTEC should use the same method for calculating the interexchange mileage for API's bills for contaminated circuits from September 1, 1983 through December 31, 1987.

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12 For an explanation of the V&H coordinate mileage measurement method, see Appendix B.

From January 1, 1988 to the present, GTEC should use Pacific Bell's method only for the portion of these circuits provided by Pacific Bell. GTEC should use its own tariff schedules to determine mileage distances for the portions of circuits provided by it on or after January 1, 1988.

The results of these studies and calculations will be the subject of further hearings in Phase II of this proceeding unless resolved by prior stipulation.

VIII. Did GTEC Bill API for Mileage in Accordance With the Least Cost Routing Requirements of Pacific Bell and GTEC Tariff Schedules?

This issue is intertwined with the question we have just addressed. In addition, it also ties in with questions how GTEC uses V&H coordinates to measure private line mileages and API's inability to verify from GTEC's billing statements what the actual mileage being billed is. The latter question is dealt with separately.

A. API's Position

API concedes that the routing of any particular private line circuit is left to the discretion of the utilities involved in rendering the service. However, to prevent abuses of excessive nonrecurring charges and mileage rates, both Pacific Bell's and GTEC's tariffs contain provisions that the customer may only be billed as if the entire circuit was routed in a manner resulting in the shortest airline path and therefore least cost to the customer.

There was no dispute regarding the meaning of these tariff provisions and GTEC is bound by these provisions.

Nonetheless, API asserts that GTEC has been flagrantly violating these tariff provisions and pointed to Exhibit 5 which depicted a situation where GTEC billed API for a mileage of 29 miles from Torrance to San Pedro which is far in excess of the actual distance between these points.

As a separate but related issue, API contends that in applying its own tariff GTEC is required to measure mileage between rate centers. However, GTEC is unable to measure mileage between rate centers since the 'V&H' coordinates of GTEC's private line rate centers are not contained in any approved California tariff. Carrying this point further API contended that without the V&H coordinates for its rate centers, GTEC cannot use the applicable Tariff Schedule G-9, 5th Revised Sheet 10 and must resort to Section A-25 of GTEC's GG tariff which states:

> "Except as otherwise provided, airline mileage measurements used in the determination of charges, are made on base rate and exchange area maps contained in Schedule Cal. P.U.C., No. AB, Exchange Area Maps.
>
> "(Schedule Cal. P.U.C., No. GG, 4th Revised Sheet 17.)"

On cross-examination, GTEC witness Hatfield admitted that it was impossible to use exchange area maps to accurately measure interexchange mileage because:

1. The exchange maps did not indicate any V&H coordinates.

2. The exchange maps did not show the physical location of any rate centers, and

3. The maps were separate for each exchange and could not be easily pasted together to measure across multiple exchanges.

Also, if the exchange areas between the GTEC exchanges in question are served by Pacific Bell, different scales would exist making it very difficult to measure the distances with any accuracy.

Hatfield concurred that no method approached the accuracy of the V&H coordinate system for measurement of interexchange mileage.

API then proceeded to argue that because Pacific Bell had canceled its Tariff Schedule 123-T in July 1984 the V&H coordinates for GTEC's exchanges disappeared from any effective California tariff and were not then replaced by another tariff listing GTEC's rate centers.

API cross-examined GTEC witness Michelle Grace on what source GTEC used for V&H coordinates to determine mileages for API's circuits. API learned that GTEC used an ARIES report based on the National Exchange Carriers Association (NECA) Tariff No. 4 (filed with the Federal Communications Commission) to determine new circuit mileages. This, API argues, conflicts with Hatfield's testimony that GTEC uses Pacific Bell's A-6 Tariff Schedule V&H coordinates.

API further argued:

> "GTEC's witnesses identified three different sources from which GTEC allegedly obtains 'V&H coordinates for its rate centers on private line services -- its own G tariff, the NECA-4 tariff, and Pacific Bell's A-6 tariff. Use of any of these is improper.
>
> "First, GTEC clearly can't use 'V&H' coordinates contained in their G Schedules, as none of their G Schedules contain any 'V&H' coordinates. Indeed, Mr. Hatfield testified that Pacific Bell's A-6 and 175-T tariffs were the only two California tariffs containing 'V&H' coordinates.
>
> "Use of the NECA-4 tariff is inappropriate because NECA-4 is not a tariff approved by the Commission for use in California." (API Op. Br. p. 85.)

According to API, the use of Pacific Bell's A-6 tariff is inappropriate since that tariff does not apply to private lines.

B. GTEC's Position

GTEC claims that Pacific Bell has been designated by all of the local exchange companies as the entity responsible for the establishment of all V&H coordinates in California to be used in determining airline mileage measurements, and the current V&H coordinates used by GTEC are found in Pacific Bell's Tariff Schedule A-6. GTEC further contends that prior to inclusion in Schedule A-6, the V&H coordinates were published in Pacific Bell's predecessor's Tariff Schedules 53-T and 123-T.

GTEC then argued that:

"Although [Pacific Bell's Tariff] Schedule A6 identifies the V and H coordinates for measuring airline mileage, among other things, for message toll telephone service, through the use of formulas contained in Rule No. 16, those V and H coordinates can also be utilized to compute airline mileage measurements in private line operations (R.T. 415-416).

"GTEC's Rule No. 16 is an integral component of GTEC's overall tariff structure and should be construed together with GTEC's Schedule Cal. P.U.C. No. G-4 and Schedule Cal. P.U.C. No. G-9. The G-9 tariff contained a specific reference to Rule No. 16 (Ex. 24). Although the G-4 tariff does not include such a reference, the lack of a specific allusion to Rule No. 16 does not preclude the application of the Rule No. 16 formulas for computation of airline mileage measurements in the private line services.

"The Preliminary Statement to GTEC's Definitions and Rules provides that '[t]he definitions and rules in this schedule apply except that if a definition, or condition for service in any other schedule conflicts with these definitions and rules, the definition or condition for service, in the other schedule shall apply.' Since the G-4 tariff may be silent with regard to the method of calculation of airline mileage, there is no conflict with the Definitions and Rules. Hence, Rule No. 16 must be applied as it constitutes a binding

ingredient for the construction of the G-4 tariff." (GTEC Op. Br. pp. 22-23.)

GTEC took issue with API witness Diane Martinez's suggestion that GTEC was not authorized to charge API for a full duplex loop because Pacific Bell never filed V&H coordinates for any secondary central offices of GTEC. GTEC claims that its own witness Hatfield established that Pacific Bell in its Tariff Schedule A-6 and its Predecessor in Tariff Schedules 53-T and 123-T included V&H coordinates for all of GTEC's central offices.

GTEC contends that there is no disagreement that GTEC and Pacific Bell tariffs require that rate mileage be based on the shortest combination of airline mileages that will connect the rate centers of the service points.

Then GTEC concluded that:

"Although billing mistakes have no doubt occurred from time to time, GTEC submits that it has properly complied with the literal language of those tariff provisions.

"In its Opening Brief, API keeps citing the example where GTEC charged API for rate mileage of 29 miles from Torrance to San Pedro (API O.B. 64). That obviously was an error, no matter how the circuit could have been physically routed. But that mistake does not justify API's blanket condemnation that 'GTEC has been flagrantly violating these provisions' (API O.B. 64:1).

"Moreover, Stipulation A that was reached between GTEC and API on April 29, 1988 does not constitute an admission that GTEC has violated the tariffs. Irrespective of whether Pacific Bell's or GTEC's facilities have been utilized in contiguous GTEC exchanges or district areas and regardless of the routing of the circuit, the tariffs only require that the customer be charged the shortest combination of airline mileages. Whether or not GTEC has disclosed to API how each circuit is routed is irrelevant, since the customer is not charged on the basis of the routing of the circuit but on the

shortest combination of airline mileages."
(GTEC Cl. Br. pp. 14-15 with footnote omitted.)

c. Discussion

API is entitled to have interexchange private line circuit mileage measured accurately to reflect the shortest airline distance between the wire centers of the service points. On the other hand, it is uncertain how many of API's circuits are currently computed in error. GTEC does agree that, at least in the Torrance to San Pedro case, the airline mileage was computed in error. Whether this example represents one isolated incident, or a single example of error that is repeated 100 fold is unknown.

The three possible methods to measure these interexchange airline distances described by GTEC witness Hatfield also raise serious questions of accuracy as noted by API. Yet it is clear that the only accurate method discussed must use V&H coordinates.

We have taken official notice of the filed and effective tariff schedules of Pacific Bell and GTEC in resolving this complaint. This official notice allows the examination of the contents of Pacific Bell's currently effective Tariff Schedule 175-T which includes the V&H coordinates of all of the wire centers, and/or central offices of Pacific Bell and the primary and secondary central offices of the other local exchange telephone companies serving California. Pacific Bell's Tariff Schedule Cal. 175-T replaces Tariff Schedule Cal. 123-T which Pacific Bell's predecessor used until that schedule was canceled in July 1984 and had not until June 8, 1988 been replaced by another effective California tariff schedule.

API's argument that the use of the NECA Tariff No. 4 is improper because that tariff is not filed with this Commission in California is sound. Equally sound is the argument that airline mileage cannot accurately be measured across multiple boundaries of individual exchange area maps.

However, to properly administer the rates and charges for interexchange private line services the distances must be accurately measured. With the adoption of Resolution T-12087 Pacific Bell was authorized to make its Tariff Schedule 175-T filed on January 22, 1988 effective on June 8, 1988. This Schedule 175-T now contains V&H coordinates of all primary and secondary central offices of all local exchange telephone companies serving California as well as all Pacific Bell wire centers. (A copy of Resolution T-12087 is attached as Appendix C.)

With the use of Pacific Bell's Tariff Schedule 175-T it is now possible for GTEC to accurately recompute the airline mileages of all of API's private line circuits using the V&H coordinate method and we will so direct. Also it would be prudent for GTEC to revise its tariffs to reference Pacific Bell's Tariff Schedule 175-T as its source of V&H coordinates for its serving central offices, to be used for mileage measurements of private line services.

While API could argue that the V&H method cannot be applied by GTEC for private line mileage measurements for the period from July 1984 to June 8, 1988 since proper references did not exist for the V&H coordinate measurement system, such an argument would be without merit since the service was rendered to API and the serving offices did have physical locations within Pacific Bell and GTEC service areas, and those physical locations of the serving offices have not changed.

Therefore, we will accept that GTEC has every right to reasonable recovery of rates and charges for services measured by the V&H coordinate system and we will require that for the period from September 1, 1983 to December 31, 1987, GTEC may apply Pacific Bell's rates and charges and must measure interexchange mileage as the shortest airline mileage from Pacific Bell's first serving central office to GTEC's last serving central office on the circuit route serving API or its customers.

For periods from January 1, 1988 until GTEC's tariff schedules are otherwise revised GTEC may only bill the interexchange mileage at Pacific Bell's rates to its first serving office in its (GTEC's) exchange. Any subsequent intraexchange circuit mileage may only be billed at GTEC's rates and charges. An exception will apply in cases where the pricing out of this service at GTEC's intraexchange rates and charges results in a greater airline mileage (and greater rates and charges) than would occur if the overall circuit shortest airline mileage were computed for the service from beginning to end. In such exceptional cases API should be given the benefit of the computation of the shortest interexchange mileage to serve it as required by GTEC's tariff schedules and that entire service is then billed at Pacific Bell's rates and charges.

GTEC may wish to revise its own rates and charges, or again seek to file an unambiguous concurrence in the private line schedules of Pacific Bell, as appropriate, in its next general rate proceeding, or its next formal rate proceeding where private line rates and charges are to be revised, so that the entire interexchange service is priced out at Pacific Bell's rates and charges when any service originates or terminates in a Pacific Bell exchange.

IX. Do GTEC's Billing Statements Contain Sufficient Detail to Allow API to Properly Reconcile the Source, Reason, And Effective Date of Billing Adjustments?

API's complaint alleges that GTEC's billing statements do not contain any information explaining the basis for the charges or any explanation of what rate elements or credits and debits are included in the charges.

The complaint also alleges that additions to service or credits for deletions from service are contained in the bills without in any manner identifying the locations at which the service was added or deleted.

A. Position of API

API argues the inadequacy of GTEC's billing statements by comparing GTEC's bills with similar ones from Pacific Bell.

Pacific Bell's bills identify the addition of a single customer to an existing circuit, the name of the wire center from which the customer is being serviced, the name and address of the customer, and an element by element breakdown of the installation charges. Whereas GTEC's bill statements simply contain a lump sum charge for the connection of the new service. They do not contain the identity of the customer wire center, the customer name or address, or a breakdown of the installation charges. Moreover, the order numbers bear no relationship to the order numbers given to API at the time the order was placed.

API also asserts that comparison of the two utilities' billing statements for newly created circuits demonstrates even more dramatically the inadequacy of GTEC's billing statements.

> "While [Pacific Bell's] statements reflect correct order numbers, all customer names and addresses, identification of all wire centers on the circuit, an element by element breakdown of all installation charges, element by element breakdown of all recurring charges including channel mileage, channel terminals, local loops, and associated customer equipment,

> GTEC's billings again contain random order numbers and nothing more than lump sum figures for the recurring and non-recurring charges." (API Op. Br. pp. 98-99, Tr. 590-594.)

API also claims that:

> "In addition to providing statements which detail the changes in both recurring and non-recurring rates resulting from additions to or deletions from particular circuits, Pacific provides a monthly detailed record for each circuit. This Customer Service Record ('CSR') contains the name and address of each location on the circuit, the wire centers from which each customer is served, the circuit routing for mileage purposes, and an element by element breakdown of each component of the recurring charges. GTEC does not provide a similar record on a regular basis and has never voluntarily provided such information." (API Op. Br. p. 99.)

API concedes that on rare occasions GTEC, at its insistence, has provided documents with a greater level of detail than that contained on the bill. However, these occasionally provided documents contained nowhere near the level of detail generated and provided on a monthly basis by Pacific Bell.

During cross-examination by API, GTEC's witness agreed that GTEC's bills did not identify service locations, or billing elements on new orders, the number of miles of circuits being charged, whether the circuit was full duplex or half duplex service, and the number of terminations if any.

She agreed that Pacific Bell's bills and customer service records regularly provided to API did include such details, and that GTEC did not provide similar records on a regular basis.

As to new purchase orders for service additions or removals GTEC admitted that the information provided to API by GTEC showed installation charges and monthly rates that did not always agree with subsequent bills, and that it would be difficult for API to reconcile such differences. When asked to verify billing

information at GTEC, the witness said she uses a departmental "Cheat Sheet" that is prepared by one of GTEC's service departments. From that "Cheat Sheet" she calculates the rate for mileage for the new service using new mileage that she would take off of an "ARIES" report based on National Exchange Carriers Association (NECA) 4 Tariffs on file with the Federal Communications Commission. She compares that information with her Master Account Record System (MARS) report to reconcile the difference between the API bill and what had been previously quoted to API for the new service. However, at the hearing when she was shown a bill which included a monthly charge of $38.99 versus a prior quote of $70.37 she could not, without her "Cheat Sheet" or "ARIES" report, reconcile the lesser bill as accurate or improperly computed or determine what caused the difference. She could not decipher whether the difference was due to an error in mileage calculation or for other element charges such as for local loops, bridging, or termination.

API concluded that:

> "GTEC has continually withheld and consistently refused to provide the type of detailed information which API has requested and is entitled to despite the fact that they have testified that that information is within their possession and easily providable. Rather than provide this information, GTEC has, for some unexplainable reason, chosen to provide API with forms which, even when correct, provide API with little more information than is contained on the bills, and when incorrect, raise more questions than they answer." (API Op. Br. pp. 106-107.)

B. Position of GTEC

GTEC contends that it provides API with a plethora of billing information to assist API to understand the nature of its charges. If API has questions that are generated by the billing statement or any adjustments made thereon, each document has a phone number for API to call to seek further clarification. GTEC

identified its Alarm Department which functions as a single point of contact for any assistance needed by API and other alarm companies. GTEC argues that although API may not agree with the format used by it for furnishing billing information, GTEC has given API more than ample documentation to satisfy its reasonable customer billing requirements.

GTEC cited Cf. Parts Locator, Inc. v Pacific Tel & Tel. Co. (1982) 9 CPUC 2d 262, 271, where this Commission did not agree that defendant's failure to render a correct billing statement is per se a violation of defendant's statutory duty to provide "adequate, efficient...and reasonable service."

GTEC affirms that its company is comprised of individuals who are not immune from human errors. In 1987 it conducted a detailed audit of 10% of API's circuits and discovered a billing error rate of only 1.47%. Therefore, it did not expect that API would introduce into evidence the particular examples of GTEC's billing errors which it used. GTEC contends that these examples were deliberately chosen to distort what in actuality is a reasonably adequate and acceptable billing system.

For reconciliation of its bills GTEC believes that the supplementary information it routinely provides is more than sufficient, and any discrepancies can immediately be brought to GTEC's attention for proper resolution.

GTEC concedes that in the past there were differences of opinion between GTEC and API as to proper interpretation of its tariff schedules and those of Pacific Bell. These disputes culminated in this formal complaint. It believes that as an outgrowth of this proceeding, future conflicts may be minimized or eliminated.

GTEC concludes that API's complaint is with GTEC's billing format, which requires API to examine several documents to get the data it needs. GTEC urges that it not be compelled to drastically revamp its billing system at substantial ratepayer

expense merely so that one customer may receive bills in a format that it favors.

GTEC also asked that it not be required to furnish API with any additional documentation on new orders. However, GTEC said it would be willing to provide verbiage similar to that contained in [Pacific Bell's] Mr. Sullivan's letter on any new installation order from API if API furnishes to GTEC the appropriate drawings as illustrated in Diagram Nos. 1-3 of Attachment 14a of Exhibit 5.

c. Discussion

It is clear that Pacific Bell provides better explanations of services rendered and service charges to API in its monthly bills and customer service records, than does GTEC.

It is also clear that GTEC through various sources within the company has similar information available to it, but does not routinely send this information out to API. As an example, we noted that even GTEC's expert witness on billing had difficulty reconciling differences between quoted and billed charges to API on new services without use of a GTEC internal "Cheat Sheet" document, the "ARIES" report, and its MARS data base on GTEC's computer. It follows that without such documents, and the same computer data base, API could not reconcile such bills.

API needs some, if not most, of this additional information to properly rate and accurately bill its customers for alarm services. Here again, we recognize that API uses GTEC's circuits to serve its customers and GTEC's rates and charges become a significant part of API's customers' costs. API and GTEC in their respective roles have the appearance of a quasi-partnership to render a combined service to the alarm customers. In this enterprise were it not for API, or another alarm company similar to it, marketing these services to existing and potential alarm service customers, GTEC would not benefit from this expanded

business. It therefore behooves GTEC to communicate more effectively with API.

GTEC's offer to accept diagrams of new or changed services and special arrangements for those services from API, and then accurately establish and describe rates and charges, is a good first step.

Next, however, remains the question of the additional information needed by API on a monthly or other periodic basis. GTEC's present bills are inadequate. GTEC's suggestion that API should have to request and review additional documents as needed is also an insufficient solution to the problem.

We are reluctant to take the simple expedient step of directing GTEC to drastically revamp its billing system, at substantial cost, to render bills which mirror those of Pacific Bell, for services to API. We believe that differences in the data processing equipment and software used by Pacific Bell and GTEC should be explored and understood by those who must consider this problem and recommend any logical solution to it. The record in this proceeding, without this information, is inadequate to resolve this problem.

Therefore, we will direct GTEC to work with API to determine the minimum additional information necessary to API on a monthly basis, and to develop the software and billing or other reporting format so that this information can be provided to API either in the monthly bill itself or appended to the bill each month.

We will also direct the parties to report to us, prior to the submission of the Phase II record in this proceeding, as to the progress of their efforts on better billing communications, and the resolution of the current problem of API spending considerable time analyzing its regular bills from GTEC.

X. Is GTEC Applying the ULTS Surcharge Properly in its Private Line Services?

A. Background

On the last day of the evidentiary hearings API introduced Exhibit 40 which included a copy of GTEC's Advice Letter 5112 and a copy of Pacific Bell's Advice Letter 15316-A together with their respective tariff revisions to implement the 4% ULTS effective January 1, 1988 pursuant to this Commission's Order D.87-10-088 dated October 28, 1987. Exhibit 40 also contained copies of February and March 1988 GTEC bills to API for private line services which included the 4% ULTS surcharge. Through testimony of API witness O'Brien it was noted that Pacific Bell was not applying the 4% ULTS surcharge to private line service whereas GTEC is applying it.

GTEC's counsel objected to the receipt of Exhibit 40. He also opined that this matter is the subject of another Commission proceeding (OII 83-11-05).

Based on GTEC's objection Exhibit 40 was not received in evidence and this issue will not be dealt with in Phase I of this proceeding.

B. Discussion

We believe that the ULTS surcharge should be applied uniformly by the Local Exchange and Interexchange Telecommunications companies serving California. Toward that goal, if this matter is brought forth as an issue for resolution in another proceeding (OII 83-11-05) that will be well and good. However, absent that opportunity,[13] we will review the applicability of ULTS solely to GTEC's private line circuits, which

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13 DRA on July 19, 1988 petitioned for modification of D.87-10-088 on a related issue, which may also result in a decision resolving this issue.

are not used to handle voice communications for exchange or toll messages, in Phase II of this proceeding.

This will afford GTEC a reasonable opportunity to review and respond to API's Exhibit 40 before it is again offered in evidence.

XI. Is GTEC's Method of Charging API for WATS Service Arbitrary and Discriminatory Against API?

A. API's Position

API contends that in billing for inward WATS GTEC bills API without knowing:

1. The time of day the call was made;
2. Whether the call is interLATA or intraLATA; and
3. The exact number of calls.

API speculates that GTEC merely attempts to determine the total number of calls each month and then divides them into day versus night and intra versus interLATA by applying the same arbitrary percentage across the board to all customers.

API asserts that GTEC's bills show that the percentage of calls billed as being made in day time and off peak hours are the same for GTEC and AT&T calls at least to one decimal point, and to two decimal points on three consecutive bills.

API claims that it uses these lines to monitor alarm systems and therefore a large percentage of these calls are received during nonbusiness hours, when alarm systems are activated. However, GTEC's arbitrary percentages indicate a much higher percentage of day time calls than actually occur. Also, none of these systems are outside the LATA, thus our inward WATS bill should reflect no AT&T charges. Yet API continually receives thousands of dollars in interLATA (AT&T) charges each month. In addition, according to API, some of GTEC's bills indicate outward

calls from a Long Beach exchange, even though these bills are for inward WATS service which lines cannot be used for outgoing calls.

B. GTEC's Position

GTEC contends that its method of charging for WATS service is not a subject for consideration in Phase I of this proceeding.

GTEC asserts that:

> "Exhibit 1 contains a listing of the eight subjects that were to be considered in Phase I. Inasmuch as the topic of WATS service is not even remotely related to the covered areas, it would be inappropriate for the Commission to address the WATS service issue in Phase I of this proceeding. That issue should be considered, if at all, in Phase II." (GTEC Cl. Br. p. 26.)

C. Discussion

We agree with GTEC that, since this issue was not specifically addressed as a Phase I issue in Exhibit 1 of this proceeding, it should be deferred for consideration in Phase II thus affording GTEC the opportunity to present evidence on its position relative to WATS billing.

Similarly, API's Exhibit 5 dwells on the propriety of GTEC's:

- Access charges on foreign exchange lines,
- Practice of applying surcharges to gross billing amounts instead of net bills after credits, and
- Practice of applying late charges to gross billing amounts instead of net amounts after all credits.

These billing issues will also be deferred to Phase II of this proceeding for the same reasons as discussed above.

XII. Request for Award of Additional Reparations and Attorney Fees by API

A. API's Position

API alleges that GTEC's conduct concerning the issues involved in this complaint has been "grossly negligent and wilful" justifying an award of additional reparations and attorney fees to API.

For this proceeding API believes that it is entitled to a:

> "...substantial reparation to compensate it for the huge loss in value of the services provided by GTEC. API suggests that at a minimum such reparation should include the following:
>
> "1. Reimbursement of the increased costs experienced by API as a result of GTEC's conduct; and
>
> "2. Additional reparations in an amount representing no less than two months' average private line billing for the period covered by this claim.
>
> "In addition, API should receive an award of the attorneys' fees it has incurred in pursuing this claim. It is clear that such an award is appropriate." (API Op. Br. p. 116.)

Citing Parts Locator API contends that under the substantial benefit theory an award of attorney fees is appropriate where the complainant obtains a result which not only benefits him, but contributes to the interests of all ratepayers in either a pecuniary or non-pecuniary way.

B. GTEC's Position

GTEC believes that API is entitled to a refund of any overcharges stemming from any proved misapplication of GTEC's or Pacific Bell's tariff schedules. However, it asserts that there is no factual or legal basis justifying an award of reparations or attorney fees.

GTEC contends that API's initial complaint, used as a starting point, does not seek reparations. For the first time in its brief API claims reparations. API's demand for reparations is untimely, unreasonable, and not supported by any of the evidence that was presented.

GTEC argues that to be awarded reparations, a complainant must establish that it has satisfied the criteria of PU Code § 734 that the rate(s) charged by the utility were unreasonable, excessive, or discriminatory and no evidence presented by API supports a finding that GTEC violated § 734.

GTEC also contends that until API filed its opening brief, API never alleged that it had received service of diminished value from GTEC, and never alleged that private lines and other communications services provided to it by GTEC did not function properly.

C. Discussion

API's request for additional reparations certainly was not clearly set forth in its complaint as filed on June 2, 1987. At best it could be assumed to be inherent in Paragraph 7 of the complaint as follows:

> "7. For such further relief as may be just and proper."

Further, API had the ability to clearly state what reparations were being sought and for what reasons they were being sought at the time it filed the complaint.

It is also a significant matter that GTEC has entered into three separate and substantive stipulations with API each covering one or more issues during this proceeding, both on the formal record and in writing, as previously discussed herein. These stipulations proceeded without any agreement or knowledge of API's last minute request for additional reparations of a minimum amount equivalent to two months of GTEC's billing to API. First, the existing record which was so carefully developed will not stand

if we are to entertain API's substantial additional last minute request. Second, and more importantly, API confounds reparations and damages. While it asks for "additional reparations" in the minimum amount equivalent to two months of GTEC's bills to API, this demand is in no way associated with poor telephone service from GTEC. Instead API urges this amount be granted because of all of GTEC's lack of concern with regard to correct tariff interpretation and/or grossly negligent or deliberate overcharging through tariff misapplication. What API is apparently seeking is an additional amount unrelated to improper bills or poor service which would somehow compensate API and punish GTEC for its disregard of API's wasted time, efforts, and other costs to resolve its long-standing concerns and complaints. Clearly the request is for "damages" and not "reparations".

While the Commission has jurisdiction over requests for specific reparations, it has no authority to award damages, as noted in Mak vs PT&T (infra).

> "The California Supreme Court has clearly stated that the 'Commission is not a body charged with the enforcement of private contracts. (See Hanlon vs. Eshelman, 169 Cal. 200, [146 Pac. 656].) Its function, like that of the interstate commerce commission, is to regulate public utilities and compel the enforcement of their duties to the public...not to compel them to carry out their contract obligations to individuals.' Atchison, T.&S.F. Ry. Co. v. Railroad Commission, 173 Cal. 577, 582.) If PT&T's alleged conduct be considered as tortious (either trespass or fraud), a similar result would obtain. The Commission has no jurisdiction to award monetary damages for tortious conduct. (Vila v. Tahoe Southside Water Utility, 233 Cal. App. 2d 469; M.L.M. Jones v. P.T.& T. Co., 61 Cal. P.U.C. 674; see also Cal. Constit., Art. VI, Sections 1, 5; Pub. Util. Code Section 2106; Code Civ. Proc. Sections 20, 21, 22, 24, 25, 27, 28, 29, 30, 338.) Mak must go to court rather than the Commission to recover any damages to which she may be entitled." (Mary Quan Mak vs The

Pacific Telephone and Telegraph Company 72 Cal. P.U.C. 735, 738.) (Also see W. Schumacher vs. The Pacific Telephone and Telegraph Company (64 Cal. P.U.C. 295).)

We will therefore deny this last minute request for additional reparations by API, since it is untimely by any rational review and more specifically API's request is really for damages over which we have no jurisdiction.

Additionally, in Parts Locator the Commission did not grant any monetary relief to the complainant for past inaccurate bills. In contrast, API will receive monetary benefits from each correction made to its prior bills back to September 1, 1983, whenever such bills were not rendered in accordance with GTEC's filed tariffs. These benefits to API include any backbilling amounts beyond 90 days for instances where GTEC concurred in Pacific Bell's tariffs. Noting these facts relative to the Parts Locator proceeding, it is apparent that the two proceedings are significantly different in result and the modest $3,058.90 (one month's increase in private line rates) reparation can only be viewed as a one-time modest award for the diminution of service previously sustained by Parts Locator.

On the question of attorney fees the Commission's order on Parts Locator stated:

> "With respect to complainant's request for damages and attorney fees, we agree with defendant that we have no jurisdiction to award damages and that the circumstances necessary for an award of attorney fees are not present in this case." (9 P.U.C. 2nd 272.)

That decision did order PT&T to revise its tariff limiting backbilling for intrastate private line service customers to a 3-month period. That new backbilling limitation obviously provided some benefits to other private line customers, including actual monetary benefits, as will likely result to API. However, the Commission denied Parts Locator's request for attorney fees.

Similarly, our review of Parts Locator persuades us that complainant's reliance on that decision in support of its request for attorney fees is misplaced. In Parts Locator, after analyzing three equitable theories known as the private attorney general, common fund, and substantial benefits tests and rejecting the first two theories as inapposite, the Commission determined that an award of attorney fees under the equitable doctrine known as the "substantial benefits test" was inappropriate.

> "The total benefits that may accrue to ratepayers as a result of today's changes simply are not significant enough to warrant an award of attorney fees." (9 CPUC 2d 273.)

In making that determination the Commission acknowledged that complainant had provided a vehicle for ordering a tariff revision with universal application, but that its practical effect was limited to a discrete group of ratepayers.

In the instant proceeding the relief API has obtained, while significant, does not impact the interests of all ratepayers. Thus, we believe that API has not conferred a substantial benefit on the general body of GTEC's ratepayers, sufficient to justify an award of attorney fees under the substantial benefits theory.

In citing Parts Locator, API relies on the substantial benefits theory, and does not argue that an award of fees is justified under the common fund or private attorney general theories.

It is enough to say that API will likely enjoy significant benefits for certain of its actual claims for errors of tariff application by GTEC. Otherwise, since API does not meet any of the requisite tests for eligibility API does not qualify for attorney fees in this proceeding, and therefore any and all claims for recovery of attorney fees by API will be denied.

Findings of Fact

1. Complainant API is a large provider of alarm services to residential and business customers in the Southern California

market through its central stations located in Los Angeles, Long Beach, Culver City, Van Nuys, Pomona, and Oxnard.

2. API acquired certain other alarm companies during the period covered by this claim and its complaint includes claims for overcharges imposed on these companies prior to their acquisition by API.

3. API uses telecommunication services both in the conduct of its normal business activities and in the provision of alarm services to its subscribers.

4. GTEC is the second largest local exchange telephone company in the State of California serving local exchange and intraLATA toll services to over three million access lines for customers in approximately 75 exchanges in moderate to high growth areas of California.

5. GTEC provides exchange, foreign exchange, private line, in-WATS, and out-WATS services to API which API uses for its regular voice communications and also for alarm transmission. API uses private lines primarily for alarm transmission.

6. API makes use of private line circuits that are routed through the serving areas of both GTEC and Pacific Bell.

7. The bill for any given circuit which contains facilities provided by both utilities is rendered by the utility in whose service area API's central station is located.

8. Prior to July 1, 1984, both Pacific Bell and GTEC measured private line interoffice channel mileage between rate centers.

9. Subsequent to July 1, 1984, Pacific Bell began measuring mileage on a wire center basis, and the costs of private line service were increased leading to certain of the disputes in this proceeding.

10. Since approximately September 1980, API disputed certain of GTEC's billings and made repeated written and oral requests to obtain copies of GTEC's billing records to allow it to reconcile

the charges contained on the bills with the services allegedly being provided. These efforts and attempts to resolve these disputes with GTEC continued until June 1985.

11. When efforts at resolution of these disputes failed, API filed an informal complaint against GTEC on June 10, 1985.

12. Prior to the filing of the informal complaint, API tendered payment of its May 1985 bill in the approximate amount of $134,000 to the Commission.

13. Along with the June 10, 1985 letter, containing the informal complaint, API tendered an additional payment in the sum of $9,272.20 to the Commission, which refused to accept this payment.

14. Between the filing of the informal complaint and the formal complaint, API, while continuing its attempt to resolve these disputes, did exercise certain nonpayment options, first by withholding over $2,000,000 of past billed amounts and later agreeing to pay current bills and $125,000 per month against the amount withheld. Meanwhile, with little success at resolving its disputed claims, on June 2, 1987 API filed this formal complaint.

15. Throughout the periods involved in this complaint GTEC has applied Pacific Bell's rates and charges to all portions of jointly furnished private line services.

16. Pacific Bell's private line tariffs have contained a three-month backbilling limitation since October 10, 1982.

17. In applying Pacific Bell's tariff schedules to private line services, GTEC has not observed Pacific Bell's backbilling limitation, and instead has back-billed private line services for up to a three-year period.

18. GTEC sometimes applied Pacific Bell's rates to private line circuits which traversed Pacific Bell's service areas, even when all facilities were provided by GTEC.

19. As stipulated by GTEC and API on April 29, 1988 the adjustments to API's bill's resulting from this and any subsequent

orders in this proceeding will be limited to service rendered by GTEC to API on or after September 1, 1983.

20. Interest payments on net amounts due from time to time to API and/or GTEC will commence on any net balance due on December 10, 1985 and continue as appropriate until the final payment is made upon final disposition of this proceeding. The actual calculation of interest due is to be made in accordance with the April 29, 1988 stipulation between API and GTEC, set forth in Appendix A to this order.

21. GTEC has agreed and stipulated that it improperly charged API for full duplex local loops connecting primary and secondary offices of GTEC and will make adjustments for such billing and tariff interpretation error with the understanding that it makes these adjustments in this proceeding without prejudice to possible future tariff revisions.

22. When GTEC filed 11th Revised Sheet 1 of its Tariff Schedule GG-1 on November 30, 1983, its Advice Letter 4845 transmitting that revision to become effective on January 1, 1984, GTEC made it clear that it was transferring only the necessary terminal equipment from five of Pacific Bell's predecessor's tariff schedules to its own tariffs, with no changes in charges, rates, description, or special conditions. Therefore, its full concurrence in Pacific Bell's rates and charges for the complete service except for terminal equipment continued in effect through December 31, 1987, when it again revised this tariff sheet.

23. On January 1, 1988, 12th and 13th Revised Sheet 1 of Tariff Schedule GG-1 became effective sequentially on the same day, the first as filed under Advice Letter 5075 and the latter by Advice Letter 5109, and all references to Advice Letter 4845 then disappeared from the newly revised tariff sheets.

24. In the current 13th Revised Sheet 1 of Tariff Schedule GG-1, the ambiguities in Paragraphs A and B are not clarified as to intent or GTEC's consistent, long standing contemporaneous

interpretation either within the tariff itself or by Advice Letter 5109 under which this tariff schedule was filed.

25. This Commission by D.86879 dated January 18, 1977 in Case 9914 determined that in cases where a tariff is capable of more than one interpretation the utility must interpret the tariff so as to give the customer the lowest possible rate. The same circumstances necessarily apply in this proceeding, especially since GTEC had many opportunities to clarify the ambiguities whether they were merely perceived or certain.

26. For GTEC to be aware of the ambiguous language for well over two years and then to otherwise revise the tariff sheet in question twice for other reasons and not clarify the ambiguities is unreasonable and creates a negative image with its customers.

27. Effective January 1, 1988 Pacific Bell's rates, rules, and charges, whenever such are greater or more restrictive than GTEC's rates, may only apply to portions of interexchange service provided by it and GTEC's rates, rules, and charges apply to the portions of those interexchange services provided by it. Accordingly, Tariff Schedule GG-1 still needs clarification to eliminate any further ambiguities.

28. As of June 2, 1988, all but three of the 23 Local Exchange Telephone Companies serving California have rules limiting their ability to back-bill their customers. The three which do not have such rules are GTEC, The Siskiyou Telephone Company, and GTE West Coast, Inc. (affiliated with GTE of the Northwest).

29. The reasonableness of GTEC's own backbilling limitations and any necessary associated tariff revisions was addressed and resolved in D.88-09-061 issued September 28, 1988 in R.85-09-008.

30. For service provided exclusively by GTEC to API, backbilling is only limited by the statute of limitations, for a period of 3 years, due to the absence of the standard three-month limitation in GTEC's filed tariff schedules. This determination will apply until the effective date of any less onerous backbilling

limitation is set forth in GTEC's filed tariff pursuant to D.88-09-061.

31. The focus of the backbilling issue in this proceeding is on the Tariff Schedules of Pacific Bell as concurred in from time to time by GTEC, by virtue of its Tariff Schedule GG-1.

32. GTEC's Tariff Schedule GG-1 contains no exceptions setting forth which rules of Pacific Bell do not apply, only that the "...rules of that utility will apply."

33. Pacific Bell's Tariff Schedule A-2, General Regulations, and its Tariff Schedule B-2 regarding regulations applicable to all private line services and channels, both contain the same limitation on backbilling, namely for service not exceeding three months immediately preceding the date of the bill. GTEC, based on the record in this proceeding, exceeded these limitations in backbilling for services furnished jointly by it and Pacific Bell.

34. A clear and simple interpretation of GTEC's Tariff Schedule GG-1 requires GTEC to limit its backbilling of any services billed to API in concurrence with Pacific Bell's tariff schedules to a maximum of three months immediately preceding the date of the bill.

35. Because of changes in Pacific Bell's and GTEC's tariff schedules which occurred after December 31, 1983 the backbilling adjustments required to resolve this complaint need further interpretation as follows:

a. For the period of September 1, 1983 to December 31, 1983, Pacific Bell's backbilling limitation will apply to the complete private line service whenever any portion of that service was provided by Pacific Bell,

b. For the period of January 1, 1984 to December 31, 1987, Pacific Bell's backbilling limitation will apply to the complete service except for terminal equipment provided by GTEC, and

c. For the period of January 1, 1988 to the present, and until such time as GTEC has a standard backbilling rule, Pacific Bell's backbilling limitation will apply to the portion of the private line service(s) provided to API by it in concurrence with GTEC's GG-1 tariff schedule.

36. GTEC improperly imposed nonrecurring installation charges for the interoffice channel portion of circuits jointly provided by Pacific Bell and GTEC to API.

37. Full concurrence by GTEC in Pacific Bell's Tariff Schedule B-3 requires GTEC to administer the rates and charges for this service in the same manner as practiced by Pacific Bell. This will mean that API, as a customer, should see no differences in the overall rates and charges for service jointly furnished by Pacific Bell and GTEC when billed by GTEC, as contrasted to Pacific Bell furnishing the entire service and rendering the bill itself.

38. GTEC's rates and charges apply to its portion of jointly provided circuits on or after January 1, 1988.

39. GTEC's claim that it received Pacific Bell's confirmation as to the method used by it to compute the mileage rate on interexchange circuits is contradicted by API's claim that it received confirmation by another Pacific Bell representative on its differing interpretation for such computations, and a logical tariff analysis leads to still a third interpretation.

40. The record in this proceeding lacks real evidence as to how Pacific Bell actually determines interexchange channel mileage rates and charges for billing purposes.

41. GTEC and API need to jointly examine a representative number of Pacific Bell bills to API, where service is provided on an interexchange basis to determine the way Pacific Bell was actually calculating the interexchange rates, charges, and mileages and then apply the same charges, rates, and method to resolve this issue for contaminated circuits from September 1, 1983 through December 31, 1987.

42. For all periods after January 1, 1988, Pacific Bell's method only applies to the portions of the interexchange service provided by it and GTEC's own tariff schedules and practices are to be used to determine mileage distances and rates and charges provided by it.

43. While the routing of any particular private line circuit is left to the discretion of the utilities involved in rendering the service, the mileage, according to both Pacific Bell's and GTEC's tariff schedules, may only be based on the shortest airline path and least cost routing for the customer.

44. GTEC agreed that it is bound by the tariff provisions which require least cost routing for billing purposes.

45. No other commonly used method of measuring interexchange mileage approaches the accuracy of the V&H coordinate method.

46. API correctly pointed out that at the time of the hearings, in this proceeding, there existed no effective California tariff listing all V&H coordinates for GTEC's primary and secondly offices.

47. GTEC's use of the NECA Tariff No. 4 for determining circuit mileages is improper because that tariff is not filed in California and is not on file with this Commission.

48. After the last day of hearing in Phase I of this proceeding, the Commission on June 8, 1988 adopted Resolution T-12087 approving Pacific Bell's Tariff Schedule 175-T containing V&H coordinates of all primary and secondary central offices of all local exchange telephone companies serving California as well as all Pacific Bell wire centers.

49. With the use of Pacific Bell's Tariff Schedule 175-T it is now possible for GTEC to accurately recompute the airline mileages of all of API's private line circuits using the V&H coordinate method.

50. GTEC has every right to recovery of reasonable rates and charges for private line services rendered to API, with interexchange mileages determined using the V&H coordinate system.

51. For the period of September 1, 1983 to December 31, 1987 GTEC may properly apply Pacific Bell's rates and charges to the shortest overall interexchange airline mileages using V&H coordinates from Pacific Bell's serving central offices to GTEC's last serving central office on each circuit route which serves API or its customers.

52. For periods from January 1, 1988 until GTEC's tariff schedules are otherwise revised, GTEC may only apply Pacific Bell's interexchange rates and charges for the V&H mileage to its first serving central office in GTEC's exchange, except where the piecing out of further circuit routes at GTEC's intraexchange rates and charges results in a greater airline mileage than would occur for the overall service.

53. GTEC's current billing statements to API do not contain sufficient information to properly explain the basis for the billed charges, rate elements, or credits included in the bill.

54. GTEC's current bills to API do not satisfactorily explain or identify locations where additions or deletions of service occurred during the billing period.

55. Pacific Bell provides more and better explanations of services rendered and service charges in its monthly bills and customer service records than does GTEC.

56. GTEC through various sources within the company has the necessary billing information, but does not routinely send this information out to API.

57. Without the billing information, possessed but not provided by GTEC, API cannot in any way reconcile its bills.

58. Because of the quasi-partnership appearance of GTEC and API, to alarm customers of API in rendering combined service, it

behooves GTEC to communicate its rates and charges and accurate circuit billing details more effectively with API.

59. GTEC's offer to accept diagrams of new or changed services and special arrangements for those services from API, and then accurately establish and describe the rates and charges therefor, is a good first step toward better communications.

60. GTEC's suggestion that API request and review additional GTEC documents as needed to reconcile its bills is an inadequate solution to the current void of necessary information appearing on its bills.

61. The simple expedient step of directing GTEC to drastically revamp its billing system at substantial cost, to render bills mirroring those of Pacific Bell, is too drastic, and may well be unreasonable because of likely differences in data processing equipment and software used by the two utilities.

62. The Phase I record in this proceeding does not usefully contribute to reaching a reasonable final solution to the problem of providing adequate information on GTEC bills to API.

63. It is necessary that GTEC work closely with API to determine the minimum additional information necessary to API on a monthly basis, and then develop the software and billing or other format so that this information can be provided to API either on the monthly bill or appended to the monthly bill each month.

64. Phase II of this proceeding will provide a proper forum to determine if a reasonable solution is reached on the current problem of API spending considerable time analyzing its monthly bills from GTEC.

65. GTEC is currently applying the 4% ULTS surcharge to bills for its private line services rendered to API effective on or after January 1, 1988, whereas Pacific Bell does not apply that surcharge on its bills for such service.

66. This ULTS surcharge billing issue was raised on the last day of hearings in Phase I and GTEC had insufficient time to review the background on this issue and provide a reasonable response.

67. The issue whether the 4% ULTS surcharge was intended to be applied uniformly by the Local Exchange and Interexchange Telecommunications companies serving California may well be resolved in another proceeding (OII 83-11-05) before the conclusion of Phase II of this proceeding.

68. In the event that the question of uniform applicability of ULTS to private line services is not resolved prior to the conclusion of the evidentiary hearings in Phase II of this proceeding, it will be considered therein for services to API to afford GTEC an opportunity to respond to Exhibit 40 before its receipt in evidence.

69. API claimed that GTEC improperly bills it for its WATS service both for peak and nonpeak intraLATA usage but for interLATA WATS services as well which it does not use.

70. API contended that GTEC used arbitrary percentages to determine peak and nonpeak intraLATA and interLATA WATS bills for API.

71. GTEC did not present a response to API's contentions concerning WATS billings because its agreement of issues for Phase I set forth in Exhibit 1 of this proceeding did not include this matter.

72. Deferring the WATS billing issue to Phase II of this proceeding will afford GTEC an opportunity to present evidence on the reasonableness of its WATS billing.

73. API's Exhibit 5 questioned the propriety of GTEC's access charges on foreign exchange lines, surcharges on gross rather than net bills after adjustments and credits, and its practice of applying late charges to gross rather than net bill amounts. These issues are to be deferred to Phase II of this proceeding in accordance with Exhibit 1 of Phase I.

74. GTEC agreed that API is entitled to be refunded any overcharges stemming from proved misapplication of GTEC's or Pacific Bell's tariff schedules but did not agree that API was entitled to any additional reparations or attorney fees.

75. API's last minute request for additional reparations, equal to a minimum amount equivalent to two months of GTEC's billings to API, in addition to being late, is misapplied in the sense that API did not receive poor telephone service from GTEC. Therefore, what API seeks is not reparations, but damages, and this Commission is without authority to award damages.

76. On the question of an award of attorney fees for API, this record is similar to that of Parts Locator in that the benefits of resolving this complaint will only accrue to a relatively small percentage of GTEC's ratepayers and the circumstances necessary for an award of attorney fees, under the substantial benefits theory, are not present in this proceeding.

Conclusions of Law

1. Any and all adjustments made in accordance with this order should only be applied to services rendered by GTEC to API on or after September 1, 1983 as stipulated by the parties to this proceeding.

2. For services rendered prior to January 1, 1984, Pacific Bell's rates and charges should be applied to the complete private line service whenever any portion of that service was furnished by Pacific Bell in its serving exchanges.

3. For services rendered from January 1, 1984 through December 31, 1987, Pacific Bell's rates and charges should be applied to the complete private line service with the exception of terminal equipment, whenever any portion of that service was furnished by Pacific Bell in its serving exchanges.

4. Subsequent to January 1, 1988, Pacific Bell's rates and charges should only be applied to the portions of jointly provided private line services and channels furnished by it and GTEC's rates

and charges should be applied to the remainder of such services furnished by it.

5. GTEC should apply Pacific Bell's three-month backbilling limitation to all portions of jointly provided services rendered to API prior to January 1, 1984.

6. GTEC should apply Pacific Bell's three-month backbilling limitation for all portions of jointly provided services excepting terminal equipment furnished by GTEC during the period of January 1, 1984 through December 31, 1987.

7. For all periods on or after January 1, 1988 GTEC should apply Pacific Bell's backbilling limitation to the portions of all services which are furnished by Pacific Bell and may apply its own backbilling limitation to the portions of all such services rendered by GTEC.

8. GTEC should conform all of API's bills since September 1, 1983 to reflect the agreements reached in the three stipulations presented for adoption in this proceeding without prejudice to possible future tariff modifications.

9. Any ambiguity in GTEC's filed tariff schedules which is not clearly remedied by a timely filed clarifying advice letter and revised tariff sheets, as may be appropriate, must be strictly construed against the utility and in favor of its customers.

10. GTEC should not apply Pacific Bell's rates and charges to any private line circuit that originates and terminates in contiguous GTEC exchanges even when a portion of that circuit is pieced out using facilities of Pacific Bell for the operating convenience of GTEC or to avoid otherwise necessary new construction by GTEC.

11. GTEC should not apply Pacific Bell's rates and charges to private line circuits furnished entirely by GTEC which terminate in noncontiguous GTEC exchanges, even when such circuits traverse Pacific Bell exchanges.

12. When GTEC concurs in and applies Pacific Bell's tariff schedules for any specific service, it should be aware of, and use the exact procedures Pacific Bell follows in administering those tariff schedules, so that the customer will enjoy identical rates, rules, classifications, and conditions of service for the services provided by GTEC, as if such concurred in services were provided exclusively by Pacific Bell.

13. If GTEC wishes to retain certain exceptions for otherwise concurred in tariff schedules of Pacific Bell, it should clearly set forth those specific exceptions in its own tariff schedules.

14. The Phase I record for this proceeding is not clear as to how Pacific Bell actually determines interexchange mileages for billing purposes; therefore, GTEC and API should jointly examine a representative number of Pacific Bell bills to determine the way Pacific Bell is actually calculating interexchange mileages and then apply the same method to resolve that issue for all contaminated interexchange circuits through December 31, 1987.

15. For periods after January 1, 1988 Pacific Bell's billing determination method should be applied only to the portion of the interexchange service provided by it and GTEC's own tariff schedules and practices should be applied to the portion of such contaminated circuits provided by GTEC.

16. As agreed by both API and GTEC, GTEC should apply the least cost routing for billing any and all private line circuits, regardless of how the circuits are physically routed in conformance with its tariff schedules.

17. Interexchange mileages of API's private line circuits should be accurately recomputed and charges adjusted using the V&H coordinates for the Pacific Bell wire centers and GTEC primary and secondary central offices contained in Pacific Bell's Tariff Schedule 175-T, as discussed in the narrative and findings of this order.

18. GTEC should revise and clarify its tariff schedules to concur in the use of V&H coordinates of all wire centers and central offices as contained in Pacific Bell's Tariff Schedule 175-T.

19. GTEC should be required to recompute all bills rendered to API for all private line services rendered on or after September 1, 1983, in accordance with the principles set forth in this decision, and refund to API the total amount of overcharges collected plus interest.

20. Principal and interest payments to resolve this complaint should be made as set forth in the stipulation which is contained in Appendix A to this order after all billings are recomputed pursuant to this decision and agreement is reached on the net amount due to GTEC or API.

21. The $125,000 monthly payments to GTEC made by API since July 1987 and the current balance of $163,012.31 (including accrued interest)[14] as of August 31, 1987 representing the payment(s) made by API in 1985 to this Commission, protesting the amounts due to GTEC, should be applied against any interest and principal which is currently due to GTEC by API. Additional interest likely to be available on the funds on deposit with the Commission at the time of disposition of these funds should also be applied to any amounts due to GTEC by API.

22. In the event the payments at the rate of $125,000 per month currently being made by API, plus the balance of the funds on deposit with the Commission exceed the net amount that API is found obligated to pay to GTEC as a result of the decision in this proceeding, API should then be entitled to interest at the rate of 7% per annum on the amount refunded to API by GTEC from the date

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14 This $163,012.31 current balance was provided by the Commission's Fiscal Office.

paid to the date of the refund, as set forth in Appendix A to this order.

23. API should accept GTEC's offer to take diagrams of new or changed services and special arrangements for those services from API and then accurately describe the rates and charges therefor.

24. GTEC should not be required to reconfigure its billing system to render bills which mirror those of Pacific Bell.

25. GTEC, nonetheless, should be required to work with API to determine the minimum additional information necessary on a monthly basis to API, and then develop the software and billing or other format to provide such information to API either on the monthly bill or appended to the bill each month.

26. The: (1) applicability of the 4% ULTS surcharge to private line bills, (2) merits of API's claim that GTEC improperly billed API for WATS service, (3) propriety of GTEC's access charges on foreign exchange lines, (4) merits of API's allegation that GTEC applied surcharges to gross rather than net bills after adjustments and credits, and (5) the merits of API's claim that GTEC applied late charges to gross rather than net bills are all issues which should be dealt with in Phase II of this proceeding to afford GTEC an opportunity to respond, as may be appropriate, to these issues.

27. API's request for additional reparations equal to a minimum of two months of GTEC's billings to API is in reality a request for "damages", and should be denied.

28. API's request for an award of attorney fees should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. GTE California Incorporated (GTEC) shall, within 90 days after the effective date of this order, recompute all bills rendered to API Alarm Systems (API) on or after September 1, 1983

to the then current date, in accordance with the stipulations entered into by GTEC and API, and the discussions, findings, and conclusions of this order, and refund to API the total amount of any overcharges collected plus interest.

2. The treatment of over- or undercollections and interest, as may apply to the amounts recomputed in Ordering Paragraph 1 above, shall be made in accordance with the stipulation reached on April 29, 1988 contained in Appendix A to this order.

3. All future bills rendered by GTEC to API shall be rendered in accordance with the principles set forth in this decision.

4. GTEC shall, within 30 days from the effective date of this order, revise its tariff schedules to become effective on regular 40 days' notice pursuant to General Order 96-A, to eliminate existing ambiguities noted in this decision ensuring that in so doing no nonrecurring charge or monthly rate is increased and no condition, classification, practice, or rule is made more restrictive than found reasonable and interpreted herein.

5. GTEC shall take all steps necessary to assure that bills rendered on and after the effective date of the tariff schedules filed pursuant to Ordering Paragraph 4 are rendered in accordance with the provisions of this order.

6. GTEC shall, within 10 days after the effective date of this order, renew its offer to accept diagrams of new or changed services and special arrangements for those services from API and then accurately set forth the appropriate monthly rates and nonrecurring charges.

7. GTEC and API shall, within 10 days after the effective date of this order, meet and confer, as necessary, to determine the minimum additional information needed by API on a monthly basis, and then GTEC shall, within the subsequent 110 day-period, develop and deploy the software and billing or other format to provide such

information to API either on the monthly bill or appended to the monthly bill.

8. GTEC shall present samples of the data it proposes to provide to API, on an ongoing basis in accordance with Ordering Paragraphs 7 and 8 above, as part of its exhibits and testimony for Phase II of this proceeding. API will be afforded the opportunity to address any remaining deficiencies in the data proposed to be provided by GTEC at that time.

9. The following issues shall be deferred to Phase II of this proceeding:

a. Applicability of the 4% Universal Lifeline Telephone Service surcharge to the private line services provided by GTEC to API.

b. API's claim that GTEC improperly billed API for Wide Area Telephone Service.

c. The reasonableness of GTEC's inclusion of access charges on foreign exchange service lines.

d. API's allegation that GTEC applied surcharges to gross rather than net bills after adjustments and credits.

e. API's claim that GTEC applied late charges to gross rather than net bills after adjustments and credits.

f. Determination of the methods and practices, and rates and charges, used by Pacific Bell to compute interexchange mileage costs for its bills to API, if agreement is not reached on this issue by further stipulation.

10. In Phase II of this proceeding API may expand its current showing with further testimony and exhibits in support of its position, but limited to, the matters addressed in Ordering Paragraphs 7, 8, and 9 of this order. Accordingly, GTEC will be afforded a full opportunity to respond to API's further showing on these limited Phase II issues.

11. The stipulations reached between API and GTEC on February 8, March 11, and April 29, 1988, with the exception of those specific portions addressed and resolved separately in this order, are reasonable and are adopted.

12. Within 120 days from the effective date of this order, the Administrative Law Judge will schedule hearings for Phase II to resolve the remaining issues of this complaint.

This order becomes effective 30 days from today.

Dated DEC 9 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

API vs. GTEC
C.P.U.C. CASE NO. 87-06-022

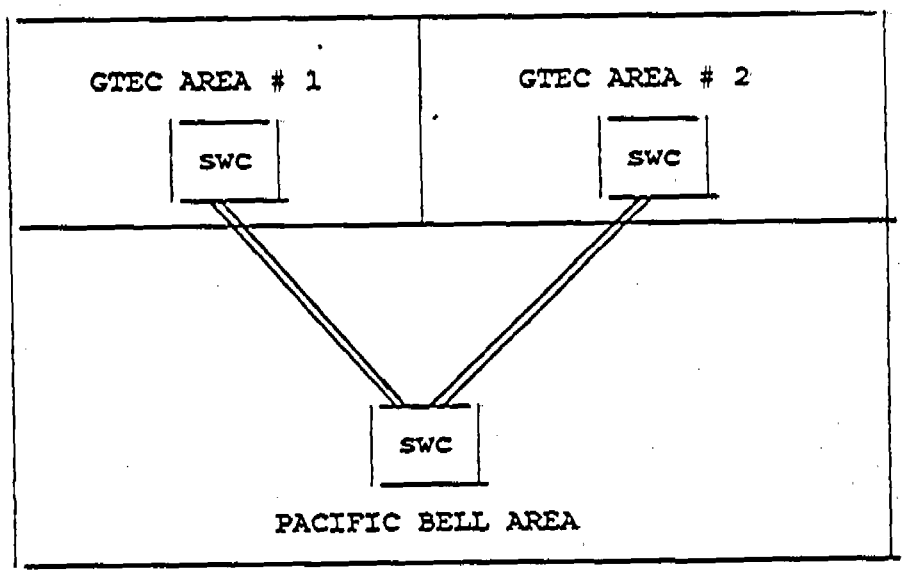
STIPULATION

Complainant API Alarm Systems ("API") and Respondent GTE California Incorporated, formerly General Telephone Company of California ("GTEC") hereby stipulate and agree as follows:

A. GTEC's rates and charges shall apply to any private line circuit that terminates in contiguous GTEC exchanges or district areas provided that API's central station and all API customers are located in GTEC's service area even if the interoffice channel segment connecting the GTEC offices is routed through Pacific Bell's service area and is provided by Pacific.

Example:

GTEC's rates and charges would apply to the following hypothetical circuit:

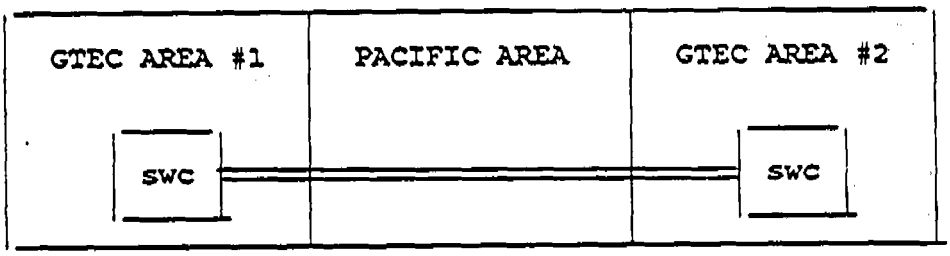


The channel segment connects two GTEC offices and is routed through Pacific Bell. API's central station and all of API's customers are located in the GTEC areas. GTEC's rates apply to the entire service.

B. GTEC's rates and charges shall apply to any private line circuit that terminates in non-contiguous GTEC exchanges or district areas provided that API's central station and all API customers are located in GTEC's service area where the interoffice channel segment connecting the GTEC offices is provided over GTEC's owned facilities even though those facilities are routed through Pacific's service area.

Example:

GTEC's rates and charges would apply to the following hypothetical circuit:



The interoffice channel facility is owned and operated by GTEC, even though it passes over or through a Pacific service area. No Pacific facilities are used. API's central station and all API's customers are located in GTEC areas.

C. Statute of Limitations. API's claim shall include all services rendered by GTEC to API on or after September 1, 1983.

D. Interest.

1. This claim covers all services rendered by GTEC to API on or after September 1, 1983.

2. From September 1, 1983, to April, 1985, API paid all bills rendered by GTEC together with all applicable late charges.

3. API made payment of its May 1985 bill in the approximate amount of $134,000.00 to the Public Utilities Commission. The Commission still holds that money.

4. API tendered an additional payment to the Commission in June, 1985. The Commission refused to accept this payment.

5. API withheld the sum of $ 2,078,722 billed to API by GTEC during the period from June, 1985 through February, 1987.

6. Commencing March, 1987 API paid GTEC's bills without offset as presented.

7. Since July, 1987, API has paid the sum of $125,000 per month to be applied against the amount withheld.

8. On or about December 10, 1985, API and GTEC entered into an agreement pursuant to which the parties agreed inter alia that interest at the rate of seven percent (7%) would be paid on any amounts found to be due and owing to API from GTEC or due and owing from GTEC to API.

9. If the amount of refund to which the Commission finds API is entitled for services rendered from September 1, 1983, to May 31, 1985, exceeds the amount found by the Commission to be due and owing to GTEC for services rendered from June 1, 1985, to February 28, 1987, then GTEC shall pay API interest at the rate of seven percent (7%) per annum on the amount of the difference from June 1, 1985, until paid in full.

10. If the amount found by the Commission to be due and owing to GTEC for services rendered from June 1, 1985, to February 28, 1987, exceeds the amount of the refund to which the Commission finds API is entitled for services rendered during the period from September 1, 1983, to May 31, 1985, then API shall pay interest at the rate of seven percent (7%) per annum on the unpaid portion of the difference from June 1, 1985, until paid in full.

11. The $125,000 payments described in Paragraph 7 shall be applied against any interest and principal which is due to GTEC from API pursuant to Paragraph 10.

12. In the event the payments at the rate of $125,000 per month (as set forth in Paragraph 7) by API exceeds the net amount that API is found obligated to pay to GTEC as a result of the decision in this proceeding, API shall be entitled to interest at the rate of 7% per annum on the amount refunded to API by GTEC from the date paid to the date of the refund.

13. For all billing overcharges for all amounts wrongfully billed to API and paid by API, for all services rendered between March 1, 1987, and the earlier of:

(a) the effective date of the Administrative Law Judge's order

or decision in "Phase I" of these proceedings; or

(b) 30 days following the date of the Administrative Law Judge's decision or order in "Phase I" of these proceedings,

GTEC shall pay interest at the rate of seven percent (7%) per annum from the date of the overpayment until repaid in full.

14. For all amounts due and owing to GTEC from API and not timely paid by API for services rendered between March 1, 1987, and the earlier of:

(a) the effective date of the Administrative Law Judge's order or decision in "Phase I" of these proceedings; or

(b) 30 days following the date of the Administrative Law Judge's decision or order in "Phase I" of these proceedings,

API shall pay interest at the rate of seven percent (7%) per annum from the late payment date appearing on the bill for such services until paid in full.

API ALARM SYSTEMS

DATED: April 29, 1988

By: _____
JOSHUA L. ROSEN
SHEA & GOULD
Attorneys for API ALARM SYSTEMS

GTE CALIFORNIA INCORPORATED

JAO

DATED: April 29, 1988

By: _____
Attorneys for GTE CALIFORNIA INCORPORATED JAO

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ALP04078-A22

APPENDIX B

Brief Explanation of the Vertical (V) and Horizontal (H) Airline Mileage Measurement System

The V&H coordinate system has been used as a telephone industry standard in the United States for computing airline mileages between telephone rate centers for many years, to rate toll calls, private line circuit mileage, and to rate most other telephone services that are priced on a mileage sensitive basis and are provided beyond any given telephone exchange boundary, and more recently to measure distances between multiple wire centers of an exchange, where applicable.

The V&H coordinate system consists of a large number of vertical (V) and horizontal (H) grid lines laid across the United States such that a distance of one coordinate unit is the square root of 0.1 expressed in statute miles. By the V&H private line mileage determination method, the V coordinates difference and the H coordinate difference are each squared and then added to each other. Dividing the sum of the squares of such V&H differences by 10 and taking the square root of the resulting number yields the airline distance in miles between the rate centers involved.

Example: Mileage measurement for GTEC's Santa Maria Exchange to Pacific Bell's Fullerton Exchange

	V	H
Santa Maria	9,073	8,298
Fullerton	9,242	7,812
Difference	169	486
Square and Add	28,561 + 236,196 = 264,757	
Divide by 10	264,757 ÷ 10 = 26,475.7	
Take Square Root	$\sqrt{26,475.7}$ = 162.7	

Round to 163 airline miles

(Source of formula, GTEC Tariff Schedule D&R, Sheet 47. Source of V&H Coordinates for GTEC's Santa Maria and Pacific Bell's Fullerton Exchanges are from Pacific Bell Tariff Schedule 175-T, Section 14.4.)

(END OF APPENDIX B)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
Telecommunications Branch

RESOLUTION NO. T-12087
June 8, 1988

R E S O L U T I O N

RESOLUTION NO. T-12087. API PROTEST OF PACIFIC BELL ADVICE LETTER NO. 15336, THIS PROTEST HAS BEEN RESOLVED.

SUMMARY

Pacific Bell filed Advice Letter No. 15336, on January 22, 1988, to update Section 14.1.3, Availability of Methods Used for Developing V&H; Section 14.1.4, Availability of Maps and Section; 14.4, Serving Wire Center V&H Coordinate Information of Access Service Tariff, Cal. P.U.C. No. 175-T. API Alarm Company (API) protested Pacific Bell's (Pacific) filing claiming it does not comply with General Order 96-A due to errors, omissions, and unclear references. Pacific responded to the protest by filing Supplemental Advice Letters 15336A and 15336B on February 23 and May 4, respectively, to resolve the protest. These Advice Letters include mileage listings inadvertently omitted in the original filing, the availability of maps and formulas used to calculate billing mileage.

BACKGROUND

Pacific Bell filed Advice Letter No. 15336 to revise Section 14.4 of Pacific's Access Service Tariff, 175-T. This section contains the vertical and horizontal (V&H) coordinates to establish points between wire centers. These points are used to calculate mileage for WATS, Private Line Services, and other services used by large business customers. Pacific has not revised their V&H coordinate tariff since 1984. Public Utilities (PU) Code Section 451 requires up-to-date tariffs to be maintained with the California Public Utilities Commission (CPUC). When notified of this code violation by CPUC staff, Pacific filed Advice Letter No. 15336.

PROTEST

On February 9 and 26, 1988, API protested Pacific Bell's Advice Letter No. 15336. API's arguments are summarized as follows:

1) API claims that the format of the tariff used by Pacific in Section 14.4 of 175-T does not identify line by line revisions of the tariff, as required by GO 96-A, making review of the tariff difficult. API wants Pacific to file an appendix identifying all additions, deletions and omissions made in the tariff on a line by line basis.

2) API disputes the accuracy of Pacific's Advice Letter statement, "This filing will not increase any rate or change...". General Order 96-A requires any rates that are changed or increased must be stated in the Advice Letter. Without individual line by line revisions shown on the tariff, API claims, it is difficult to determine whether rates have been changed or increased.

3) API objects to Pacific's numerous format changes, which API believes contribute to making the tariff more difficult to understand rather than easier, as required by GO 96-A. API claims additionally column headings, such as "CCLI", "OT", "CC", "NXX", are not defined. That the order of the columns in Section 14.4 of Advice Letter No. 15336 are changed so as to make comparison with the current filing difficult. API wants Pacific to file a revised tariff with columns in the same order as the existing tariff.

4) API informally argues that in order to clarify the tariff, wire center boundary maps and documents explaining the methods used to develop V&H coordinates should be made available to the public. API also claims that Pacific needs to make further improvements to the tariff in the future.

Pacific responded to API's protest, by filing Supplemented Advice Letters I5336A and 15336B on February 23, and May 4, 1988 respectively.

Pacific gives the following reasons for the changes:

1) "Pacific's filing is designed to conform to the National Exchange Carrier Association (N.E.C.A.) Tariff F.C.C. No. 4, Section 16. N.E.C.A. collects all serving wire center and V&H data from exchange companies nationwide and files the information on their behalf in F.C.C. No. 4 which is the national standard used to calculate mileage for billing. It would be virtually impossible for Pacific to illustrate each and every historical change to the listing on a line by line basis. [due to the volume of changes that have taken place over the last four years]."

Advice Letter No. 15336A adds and updates 350 wire center references previously omitted due to an error in Pacific's records.

Advice Letter No. 15336B further updates wire center references, defines codes and headings, and makes publicly available wire center boundary maps and the formulas used to determine V&H coordinates.

2) Advice Letter No. 15336 updates Section 14.4 of Cal. P.U.C. Schedule No. 175-T (formerly Section 14.2) to conform with the national standard (N.E.C.A.). Pacific currently bills customers for mileage based on the V&H coordinates listed in Tariff F.C.C. No. 4. Therefore, the net revenue effect of updating the California tariff with NECA is zero.

3) Pacific states that column headings are explained on Sheet Nos. 2, 2-A, and 695-Z-77 to 695-Z-79. Pacific maintains the column order has not changed, but the information contained in each column has been sorted differently to improve readability.

4) Pacific agrees to include references to the availability of wire center boundary maps and documents explaining the methods used to develop V&H coordinates.

5) Additionally, after informal meetings with API, Pacific agrees to make further improvements to Section 14.4.

DISCUSSION

Pacific has submitted Supplemental Advice Letter Nos. I5336A and 15336B which address the issues raised in the protests. We therefore find that no good cause remains to sustain the protests.

FINDINGS

(1) Pacific Bell 175-T Access Tariff Section 14.4 (formerly Section I4.2) Section Serving Wire Centers, V&H coordinates has not been revised since 1984.

(2) API's protest claims that due to errors, omissions, and unclear references, Pacific's Advice Letter 15336 does not comply with GO 96-A.

(3) Pacific Bell's Supplemental Advice Letter Nos. 15336A and 15336B resolve all protest issues.

IT IS ORDERED that:

(1) The effective date of Advice Letter No. 15336, 15336A and 15336B is today.

(2) All tariff sheets filed under Advice Letter No.15336, 15336A and 15336B shall be marked to show that such sheets were authorized by Resolution of the Public Utilities Commission if the State of California Number T-12087.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 8, 1988. The following Commissioners approved it:

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Victor Weissell

Executive Director

Glossary of Acronyms

A.	Application
ALJ	Administrative Law Judge
API	API Alarm Systems (Complainant)
ARIES	ARIES Publishing Company, a data service company that provides users with information contained in tariff schedules on file with the Federal Communications Commission.
AT&T	American Telephone and Telegraph Company
Cl. Br.	Closing Brief
D.	Decision
DRA	Division of Ratepayer Advocates of the California Public Utilities Commission (Intervenor)
Exh.	Exhibit
GTEC	GTE California Incorporated (Defendant)
IN-WATS	Inward Calling Only - WATS
LATA	Local Access and Transport Area
LEC	Local exchange telephone company
MARS	Master Account Record System
MPLBC	Multi-point bridging charge
NECA	National Exchange Carriers Association
Op. Br.	Opening Brief
OUT-WATS	Outward Calling Only - WATS

APPENDIX D
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p.	Page
pp.	Pages
PT&T	The Pacific Telephone and Telegraph Company (Predecessor of Pacific Bell)
PU Code	Public Utilities Code
Series 1000 Channel	A private line loop used for signalling. It is called "sub-voice signalling" because it's either off or on. Used for signals such as alarms. No voice or data transmission is possible, on this series of channels.
Series 2000 Channel	A private line loop which is designed for voice only.
Series 3000 Channel	A private line loop which can carry voice, data or both.
Tr.	Transcript
ULTS	Universal Lifeline Telephone Service
USOC	Universal Service Order Code
USOC-27B	A private line channel between terminations in different premises in Pacific Bell's service areas.
USOC-TPL	A private line channel between first terminations in different premises in Pacific Bell's service areas.
V&H	Vertical and Horizontal Coordinates
WATS	Wide Area Telephone Service

(END OF APPENDIX D)