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Decision 90-05-091 May 22, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

ORIGINAL

Case 87-06-022
(Filed June 2, 1987)

(See Appendix A for Appearances.)

I N D E X

<u>Subject</u>	<u>Page</u>
OPINION MODIFYING AND CLARIFYING DECISION 88-12-036	2
Summary	2
Introduction	3
Background	3
The December 29, 1989 Joint Petition to Modify D.88-12-036	6
A. Definition of "Serving Wire Center" or "Serving Central Office"	7
1. First Serving Central Office	7
2. Last Serving Central Office	7
B. Does D.88-12-036 Grant Authority to GTEC to Implement Inter-Wire Center Rates for GTEC?	8
C. Effective Date of Relief for Other Affected Private Line Customers	9
1. Simplified Method for Determination of Equivalent Relief for Other Private Line Customers	11
2. Appropriate Period for Credit on Customer's Bills	13
D. Refund Treatment for Intracompany Intraexchange Billing	14
E. Rates for Channel Terminals in GTEC's Exchanges	14
F. Impact of D.88-12-036 on the Toll Private Line Settlement Pool	15
G. Impact of D.88-12-036 on the High Cost Fund	17
H. Mileage Measurements	17
1. Intracompany Interexchange Mileage Measurement Prior to January 1, 1988	18
2. Intracompany Interexchange Mileage Measurement after January 1, 1988	19
3. Intracompany Interexchange Mileage Measurement after April 1, 1990 in Compliance with D.90-02-050	19
4. Intercompany Interexchange Mileage Measurement Prior to January 1, 1988	20
5. Intercompany Interexchange Mileage Measurement after January 1, 1988	21

I N D E X

<u>Subject</u>	<u>Page</u>
6. Intercompany Interexchange Mileage Measurement after April 1, 1990 in Compliance with D.90-02-050	22
I. Deposit Held by the Commission	23
Findings of Fact	24
Conclusions of Law	27
Order	28
Appendix A	
Appendix B	
Appendix C	

**OPINION MODIFYING AND CLARIFYING
DECISION 88-12-036**

Summary

This order modifies Decision (D.) 88-12-036 in response to a December 29, 1989 joint petition filed by the Commission's Division of Ratepayer Advocates (DRA), API Alarm Systems (API), GTE California Incorporated (GTEC), and Pacific Bell.

The key areas of D.88-12-036 being clarified are:

1. Definitions of "Serving Wire Center" or "Serving Central Office" and first and last serving central office.
2. Lack of authority for Inter-Wire Center rates for GTEC prior to April 1, 1990.
3. Effective dates for relief for other affected private line customers.
4. Applicability of rates for channel terminals in GTEC exchanges.
5. Impacts on Toll Private Line Settlement Pool and High-Cost Fund, and
6. Proper methods for mileage measurements.

This decision also modifies D.88-12-036 to:

1. Allow GTEC to use a simplified method to determine relief for affected private line customers other than API.
2. Recognize the issuance of D.90-02-050 and incorporate the newly adopted inter-wire center rates for GTEC's intracompany private circuits effective on and after April 1, 1990.
3. Establish appropriate interest accruals on amounts of relief held by GTEC for private line customers other than API, and,

4. Adopt new dates for GTEC's further distribution of the refunds to API and other private line customers contemplated under D.88-12-036.
5. Requires GTEC to withdraw Advice Letters 5203 and 5215 which are no longer necessary or appropriate under D.88-12-036, as modified by this order.

Introduction

On December 29, 1989, DRA, API, GTEC, and Pacific Bell jointly filed a petition to modify D.88-12-036 (joint petition) seeking clarification of a number of points which the parties believe are susceptible to differing interpretations.

The major points at issue are definitions of "First Serving Central Office," various mileage measurements' methods and the effective date of relief to parties other than complainant, API, required by Order Paragraphs 4 and 5 of D.88-12-036. The parties also ask for clarifications of a number of lesser issues including the applicability of rates for channel terminations and the effect if any of the resolution of this complaint on settlement revenues of other local exchange telephone companies (LEC's).

On January 19, 1990, the County of Los Angeles filed a protest to the joint petition urging at Page 6 that the Commission "state clearly that GTEC does have a refund obligation to its private line customers, in addition to API, and that such refunds must be based on billings from January 1, 1988 to the date that the ambiguities in the tariffs are corrected."

Background

API filed this formal complaint on June 2, 1987, after lengthy attempts to resolve its differences with GTEC informally since September 1980. The proceeding was divided into two phases, the first to determine if GTEC had improperly interpreted its tariffs for the provision of alarm circuits and private line services to API.

Phase II, scheduled for hearing in July of 1990, will deal with the amount of damages if any owed to API, as well as the propriety of certain recent billed charges by GTEC to API which API

believes are being applied incorrectly or unreasonably on private lines, foreign exchange lines and to Wide Area Telephone Services.

Hearings on Phase I were held in February and March 1988, and D.88-12-036 was issued on December 9, 1988. On December 29, 1988 (10 days prior to the effective date of D.88-12-036) GTEC filed an application for rehearing, which the Commission denied without comment on February 24, 1989.

On March 24, 1989, GTEC tendered Advice Letter 5203 for filing, in accordance with Ordering Paragraph 4 of D.88-10-036, to become effective on the regular 40-day notice provision of General Order (GO) 96-A.

API filed a protest of Advice Letter 5203 on April 14, 1989 asserting that "the proposed revisions do not comply with D.88-12-036 as upheld by D.89-02-081, the Commission's denial of GTEC's Rehearing and/or Alternatively for Modification of Decision 88-12-036."

After amending Advice Letter 5203 and tendering another related Advice Letter 5215 for filing on May 17, 1989, which API also protested, GTEC on June 6, 1989 filed a petition for modification of D.88-12-036 (June 6th Petition) seeking to vacate Ordering Paragraphs 4 and 5.

On June 9, 1989, the assigned Administrative Law Judge (ALJ) issued a related ruling requiring GTEC to serve copies of its June 6th Petition on all appearances and other parties to this proceeding as well as its general rate application (A.87-01-002) and to inform such parties that they may protest and/or comment on GTEC's June 6th Petition on or before July 10, 1989.

Comments or protests on the June 6th Petition were received from API, DRA, the County of Los Angeles and Pacific Bell. API and the County of Los Angeles opposed the GTEC's petition, whereas Pacific Bell, involved in providing certain interexchange circuits with GTEC, supported it. DRA argued that since GTEC had not implemented the two ordering paragraphs of D.88-12-036 "in a

timely manner" and now 'it may take as long as six months to restructure and rerate these circuits', the Commission should consider alternatives to implementing Ordering Paragraphs 4 and 5 in view of its forthcoming decision on GTEC's rate design.

Thereafter, following an August 3, 1989 prehearing conference for Phase II, where the subject of GTEC's June 6th Petition was also discussed by the parties, the assigned ALJ on August 11, 1989 issued a ruling giving GTEC the opportunity to file a timely amendment to its June 6th Petition to set forth its plans to "provide its customers with the same current and prospective monetary benefits as would result under D.88-12-036."

The ALJ ruling also placed GTEC on notice that it bears the responsibility for delays in compliance with Ordering Paragraphs 4 and 5 of D.88-12-036 and the associated continuing detriment to its private line customers. The ALJ ruling allowed parties 15 days to protest and/or comment on GTEC's amendment, if and when filed.

GTEC filed its amended petition on August 28, 1989 suggesting that an appropriate surcredit be adopted for private line customers based on a representative sample of affected private line circuits to provide a monetary benefit equivalent to the same billing decrease as anticipated by D.88-12-036.

GTEC requested, however, that the method of mileage measurement, an issue it asserts was in dispute, should first be resolved. GTEC then described an understanding that it had reached with the DRA and API as follows:

"Therefore, the DRA, API and GTEC have agreed that they will file a Petition for Clarification of language contained in D.88-12-036 which discusses the manner in which GTEC is to bill mileage on private line circuits. GTEC proposes that this Joint filing be made within 15 days of this submission or at the earliest mutually acceptable date. The Commission's decision on the Petition for Clarification will then form the basis of the surcredit calculation."

API, Pacific Bell, and the DRA responded to the amended petition. API continued to oppose the June 6th Petition even as amended and objected to GTEC's new proposal to spread the refund of the overcharges over a three to 12-month period.

Pacific Bell did not object to the surcredit method for refunding GTEC's overcharges, but asked the Commission to apply a separate surcredit to circuits provisioned by Pacific Bell and GTEC, but billed by Pacific Bell.

DRA did not object to a surcredit proposal, as such, but suggested certain technical changes to GTEC's proposal. DRA's main point is that the surcredit should be no greater than 100% of each monthly bill for the private line services but, aside from that limitation, it should liquidate any overcharge in the fastest manner possible.

DRA also recommended that interest apply to the refunds from the date of commencement of the requirement for refunds, and that refunds be limited to present customers and not to past accounts of customers who have terminated or revised their services.

Lastly, DRA asserts that GTEC's shareholders must bear the cost of the refunds occasioned by the inept behavior of GTEC in rewriting and filing its tariff revisions, and in subsequent applications of the tariffs.

Pursuant to the agreement described in GTEC's August 28th amended petition, on December 29, 1989, DRA, GTEC, Pacific Bell and API filed the joint petition to modify D.88-12-036. The period between August 28 and December 29, 1989 was apparently needed by the four parties to reach a consensus on the issues to be clarified.

The December 29, 1989 Joint
Petition to Modify D.88-12-036

DRA accepted the responsibility of presenting the introduction and overview, and then included each party's position

on the issues as well as its own. DRA also appended diagrams illustrating each party's interpretation of the mileage issue.

A. Definition of "Serving Wire Center"
or "Serving Central Office"

DRA interprets these terms as equivalent. DRA's definition is correct with the addition of the bracketed term for clarity as follows:

"For a central office (CO) or wire center¹ to serve it,² must [be a switching center and] have customer circuits routed to it or through it. A CO or wire center with no customer circuits reaching it is not a "serving" center." (Emphasis in original.)

1. First Serving Central Office

Unless this term is qualified in some way it means the single central office or wire center within a GTEC exchange which results in the shortest airline distance when computing interexchange mileage using the V&H coordinate system to measure the rate distance from the central office in another exchange that serves API or its customers. This term will be further clarified by addressing specific mileage calculation methods for periods, after January 1, 1988, as questioned by the parties.

2. Last Serving Central Office

Where this term is used, in the order, it is qualified to mean the last serving central office, or the last serving wire center, on a specific circuit, as in Finding of Fact 51.

"51. For the period of September 1, 1983 to December 31, 1987 GTEC may properly apply

1 Any major facility which joins or interconnects wires but does not have switching facilities is not a central office or wire center as intended by the order.

2 The term customer here is not qualified and means "any" customer or customers. Thus, here, the first serving central office need not serve API or its customers.

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." (D.88-12-036, p. 68.)

Before addressing specific mileage measurement methods and issues, we will address and resolve the other perceived ambiguities raised as issues in the joint petition.

B. Does D.88-12-036 Grant Authority to GTEC to Implement Inter-Wire Center Rates for GTEC?

It is clear that D.88-12-036 does not allow changes of rates or tariff applications by GTEC which will raise any rate or charge. To introduce the wire center rate concept within GTEC's own service area would first require a showing by GTEC and a finding by the Commission that the new concept and increased rates resulting therefrom are reasonable in accordance with California Public Utilities Code (P.U. Code) § 454.³

Case 87-06-022 is a complaint case, not a general rate proceeding, and GTEC has made no showing of any kind therein that the inter-wire center rate concept is justified for intracompany circuits. Lastly, if there were any ambiguity about the justification of rate increases in this proceeding, Findings of Fact 25, and 43 and Conclusions of Law 9, 11, 15 and 16, together with Ordering Paragraph 4, which is clear regarding the limitations accorded any GTEC tariff revision, should dispel those concerns:

"4. GTEC shall, within 30 days from the effective date of this order, revise its tariff schedules to become effective on regular 40

3 "454. (a) Except as provided in Section 454.1 and 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified...."

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." (Emphasis added.)

We will not modify Ordering Paragraph 4 to authorize GTEC to implement intracompany inter-wire center rate concepts in this complaint proceeding.⁴

C. Effective Date of Relief for Other Affected Private Line Customers

In this joint petition, the parties present widely divergent views of the effective date of relief for parties other than API.

API asserts that the effective date of relief to others should be February 24, 1986, three years prior to the February 24, 1989 effective date of the final order on rehearing (D.89-02-081).

GTEC now contends that the effective date of relief to others should await the effective date of the tariffs and we should adopt the effective date of the "Amended Petition" for initiating the effective date of the rate reduction surcredit. However, in a September 20, 1989 reply to responses of DRA, API and Pacific Bell regarding its amended petition GTEC argued against the use of a February 24, 1989 date:

4 GTEC has proposed the implementation of intracompany inter-wire center rates in its recent general rate application A.87-01-002. Decision 90-02-050 issued February 23, 1990 in that proceeding does adopt that new rate method effective on and after April 1, 1990 for use within GTEC's intracompany operations. D.90-02-050 does not apply Pacific Bell's rates to any portions of an interexchange circuit which lies within a GTEC exchange. Therefore, meet-point pricing must be applied after April 1, 1990, using GTEC's interexchange rates to the closest common boundary point on Pacific Bell's exchange.

"If the Commission had approved GTEC's amended tariffs in the time frame set forth in the Decision, they would not have been in effect until 70 days after the effective date of the order, i.e., May 5, 1989." (Emphasis in original.)

DRA opines that the Commission may have intended that the relief for customers other than API be triggered 70 days after the effective date of D.89-02-081 (February 24, 1989) which would be May 5, 1989. Alternately, DRA opines that we had intended that relief for other customers "would date from January 1, 1988 the date on which GTEC was to restructure its private line billing."

Ordering Paragraph 4 of D.88-12-036 required GTEC to revise its tariff schedules to eliminate existing ambiguities within 30 days from the effective date of the order. The resulting tariff revisions were to become effective 40 days after filing and Ordering Paragraph 5 of D.88-12-036 required that:

"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." (D.88-12-036, mimeo. p. 76.)

The intent of this tariff revision was to bring similar relief to private line customers other than API, consistent with the relief granted to API, but on a prospective basis.

Based on the provisions of D.88-12-036, the 30 days allowed GTEC for filing the revised tariffs were to be measured from the decision effective date of January 8, 1989 yielding a filing date of no later than February 7, 1989. With a regular 40-day effective date the tariffs would have become effective no later than March 19, 1989.

However, GTEC on December 29, 1988 filed an application for rehearing of D.88-12-036 (10 days before the effective date of

that order) staying⁵ the effective date of the order. On February 24, 1989, the Commission issued D.89-02-061 denying GTEC's application for rehearing effective that date.

With the new February 24, 1989 effective date for the order, GTEC's tariff filing was due to be filed no later than March 26, 1989, with the revised tariffs to become effective on 40 days' notice on May 5, 1989.

This interpretation is consistent with 64 CPUC 770-71 (Orange County Commuters Association vs. Atchison Topeka and Santa Fe Railway Company) wherein the Commission determined that:

"Suspension of an order under Section 1733 necessarily means that the effective date of the order is suspended until rehearing is granted or denied. If rehearing is denied later than the suspended effective date, then the effective date of the order is the date rehearing is denied."

Accordingly we will require GTEC to provide relief, similar to that granted to API, to its other private line customers for all services rendered from May 5, 1989 through March 31, 1990. Private line services rendered after April 1, 1990 are to be provided in compliance with D.90-02-050 consistent with the mileage measurement principles set forth in Appendix B to this order.

1. Simplified Method for Determination
of Equivalent Relief for Other Private
Line Customers

GTEC, in its August 28, 1989 amended petition proposed to take a representative sample of the affected private line circuits

5 California Public Utilities Code Section 1733(a) states: "Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied;...."

to arrive at an appropriate amount of relief for its customers (including API), and submit its sample study to DRA and CACD for review and concurrence. GTEC then proposed that it be permitted to apply a surcredit to each affected private line account over a period of from three to twelve months, "at the Commission's discretion."

API and DRA both oppose GTEC's proposal to use a representative sample of circuits to determine the proper amount of relief due API. API and DRA note that GTEC is "required to recompute all bills rendered to API for all private line services rendered on or after September 1, 1983," to determine the amount of relief and interest due API (D.88-12-036, Conclusion of Law 19).

D.88-12-036 does not require a comprehensive study of all private line services of other customers, nor does DRA suggest that such a comprehensive analysis be made. Instead, DRA supports use of a sample study with the following reservation:

"DRA has no objection to the use of a sample to determine the appropriate surcredit reduction, but DRA would substitute the words 'statistically reliable' for 'representative' in characterizing the sample of private line circuits. The purpose for the substitution is that a representative sampling may not necessarily be statistically reliable.

"In addition, DRA does not object to the proposal that GTEC submit the sampled data to DRA and CACD for review. However, DRA proposes that the data also be submitted to the ALJ and to API for their review. This would enable all participants in the proceeding to review the data and comment on, among other things, the statistical reliability of the data."

We agree that GTEC's use of a statistically reliable sample of circuits to determine the appropriate level of relief for private line customers, other than API, has merit since that relief would apply only for the period of May 5, 1989 through March 31, 1990 under this order. However, GTEC does have the further

obligation to assure that those other private line customers' circuits are all properly measured for mileage and rated in accordance with D.90-02-050 and the principles set forth in this order for periods after April 1, 1990.

We will authorize GTEC to use a statistically reliable sample of private line circuits to determine the equivalent relief due to private line customers, other than API, under D.88-12-036 as clarified by this order. When completed, GTEC's study of sample private line circuits and its computation of equivalent relief for customers other than API should be provided to the DRA and CACD for review and concurrence prior to crediting those customers' bills.

2. Appropriate Period for Credit
on Customer's Bills

GTEC's has suggested that monetary relief to private line customers other than API be provided via a single "surcredit to each affected private line account over a period of 3 to 12 months at the Commission's discretion." DRA did not object to the proposed credit on customer bills but did object to its application over a 3- to 12-month period. DRA recommended that the credit be applied in full against GTEC's current customers' bills for private line services. However the amount of the credit should not exceed 100% of the billed amount for private line services in any given month. Any remaining credit under DRA's modified proposal would be applied to subsequent monthly bills up to and including 100% of the billed amount for private line services until the entire amount with interest is repaid, at which time the credit would cease to be applied.

DRA's proposal for crediting current private line customers' bills other than those of API is reasonable and will be adopted.

D. Refund Treatment for Intracompany
Intraexchange Billing

GTEC and DRA contend that no refund is justified for private line circuit mileage which GTEC provides on an intracompany intraexchange basis. GTEC and DRA correctly state that GTEC has no authority under D.88-12-036, or otherwise, to charge intraexchange mileage rates.

We agree that except for any erroneous billing(s) by GTEC for intracompany intraexchange mileage rates or charges, GTEC owes no refunds under D.88-12-036, to customers whose circuits are solely intracompany and intraexchange.

E. Rates for Channel Terminals in
GTEC's Exchanges

DRA and Pacific Bell state that this issue was not addressed in D.88-12-036, and DRA believes that GTEC's channel terminal rates should apply to the portion of the circuit that begins or ends at GTEC's first serving central office, and extends into GTEC's territory. DRA also believes that Pacific Bell's channel termination rates should apply to the portion of the circuit which begins or ends at Pacific Bell's last serving central office, crosses the exchange boundary and terminates at GTEC's first serving central office.

GTEC's understanding is similar:

"GTEC believes that the channel termination charge is a monthly rate associated with the interexchange mileage rate. Therefore, whichever utility's interexchange mileage rate is used, that utility's corresponding channel termination charge should apply. (Joint Petition, p. 13.)

It is somewhat surprising that this is still an issue, because there is considerable discussion in the order regarding nonrecurring termination charges which are applied consistently with recurring termination charges. At pages 32 and 33 of D.88-12-036, we determined that:

"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."

Recurring monthly termination charges should be applied in the same manner and we will include an appropriate ordering paragraph in this order to further clarify this issue for the parties, basically concurring with GTEC's stated understanding discussed above.

F. Impact of D.88-12-036 on the Toll
Private Line Settlement Pool

DRA observes that GTEC and other local exchange telephone companies (LECs) in California concur in Pacific Bell's provision of interexchange private lines and in so doing are part of the toll private line settlements pool (TPLSP). By doing so each participant in the pool withdraws its claimed expenses and taxes from the pooled revenues. Then, according to DRA, the remaining "billings" revenues are distributed to the pool participants in direct proportion to their net private line investments.

DRA contends that as a participant in the TPLSP, GTEC should concur in Pacific Bell's interexchange private line rates and charges. However, D.88-12-036 ordered GTEC to apply its own rates after January 1, 1988, to the portions of intercompany interexchange private line circuits (ICIXPL) it provides.

As a result DRA asserts that the TPLSP will accumulate less billings for distribution to participants and consequently, the other utilities who participate in the TPLSP and their ratepayers will be penalized for GTEC's improper and costly misapplication of the tariffs.

DRA opines that D.88-12-036 did not intend for any other utility or its ratepayers to pay for GTEC's errors. Therefore, DRA urges that we order GTEC to make up any billing loss to the TPLSP experienced by GTEC and all other LECs resulting from D.88-12-036 beginning on January 1, 1989.

While we have not authorized GTEC to restate its past revenues and expenses for purposes of the TPLSP in D.88-12-036, and do not intend to do so herein, it is apparent that GTEC's "billings" (revenues) for intercompany interexchange private lines will differ when it applies its own (rather than Pacific Bell's) rates for its portion of the service.

Therefore, when it files its tariff revisions for prospective intercompany interexchange private line service, those tariff schedules will set the rates which will determine the future billings for settlement purposes in the TPLSP.

Accordingly, we will not authorize GTEC to adjust its past settlements revenues or expenses for the refunds occasioned by the disposition of this complaint in accordance with D.88-12-036 as clarified by this order, including the refunds due to others than API subsequent to May 5, 1989. However, we have authorized GTEC to file revised private line tariffs in accordance with the provisions of D.90-02-050, and effective April 1, 1990, those tariff rates and charges will determine GTEC's future billings for these services and those billings will in turn determine the amount of revenues available for the TPLSP. There is no evidence in this proceeding to require GTEC's shareholders to sustain a further loss of earnings due to future nonearned contributions by them to GTEC's revenues for settlement purposes.

G. Impact of D.88-12-036 on the High Cost Fund

DRA notes that the High Cost Fund (HCF) exists to mitigate the disparity between the basic rates of the smaller LECs and comparable California urban basic rates. DRA contends that when a settlement change or effect results from an order of this Commission, the LECs may file an Advice Letter to seek recovery from the HCF of the amount of the change. DRA asserts that it would be unreasonable for the LECs and their ratepayers to..."foot the bill for GTEC's tariff misapplications." Therefore, DRA again urges the Commission to order GTEC to make up the revenues lost to the settlement pool resulting from the requirement that GTEC correctly apply its tariffs under D.88-12-036.

Again, there are two time periods involved, one dealing with refunds to API and others and another which will involve rates under revised tariffs filed pursuant to D.90-02-050, which became effective on April 1, 1990. As to the first period dealing with any and all refunds with interest, as appropriate, GTEC will not be authorized to recast and reduce its revenues or billings for settlement purposes.

However, the current rates and charges filed pursuant to D.90-02-050, and effective April 1, 1990, will govern the revenues for prospective settlements. There is no record evidence in C.87-06-022 to require otherwise.

H. Mileage Measurements

The diagrams contained in Appendix B to this order will serve to schematically depict the methods to be used to determine the proper mileages for the various circuit routes at issue in the joint petition. The following narratives discuss the logic taken from D.88-12-036 applicable to each of the five examples. We have also included three diagrams to set forth the proper method of determining private line circuit mileages after April 1, 1990 in

compliance with D.90-02-050 which implemented intracompany wire center rate concepts for GTEC effective April 1, 1990.

1. Intracompany Interexchange Mileage Measurement Prior to January 1, 1988

Decision 88-12-036 at page 44 (mimeo.) states:

"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."

Prior to January 1, 1988 GTEC used the rate centers⁶ of its exchanges to determine the interexchange mileage. Therefore, the most accurate method of measuring the intracompany interexchange mileage, for periods prior to January 1, 1988, would

6 The "Rate Centers" of telephone exchanges are designated when the exchange is first established and their location does not change. GTEC's witness Bob Hatfield, a tariff expert, confirmed that: "they do not change" in location once established (Tr. 461). It also appears that many of the older exchange rate centers were established at the location of the post office or of another federal building within the given community or city and not at the actual location of the telephone central office. This ancient custom appears to have its origin when, prior to the existence of the Federal Communications Commission (FCC) (1934) the Postmaster General had certain authority to fix rates and interconnection on a nondiscriminatory basis. This authority originally dealing with telegraph service dates back to "The Act of July 24, 1866," (14 Stat. 221, 39th Cong., 1st sess.) Also, President Woodrow Wilson placed the control of telephone communications under Postmaster General A. S. Burleson from August 1, 1918 to July 31, 1919, as deemed necessary for the national security or defense, during World War I. (40 Stat. 1807, July 22, 1918.) Since the Postmaster General knew where all the nation's post offices were located, these locations became a matter of convenience for other possible uses including the rate centers of telephone exchanges. The authority granted the Postmaster General in 1866 was transferred to the FCC in 1934 by Section 601(b) of the Communications Act of 1934.

be to use the V&H coordinates for rate centers (see example points 9 and 10, Page 1 of Appendix B).

2. Intracompany Interexchange Mileage
Measurement after January 1, 1988

API's suggestion that we use wire centers 7 and 8 as shown in Page 2 of Appendix B, for intracompany interexchange mileage is flawed because there is no API service associated with either of these points, no API circuit path exists between them, and they are not near the historical rate centers of the exchange.

D.88-12-036, as quoted above, leads only to the use of wire centers 2 and 3 as set forth in Page 2 of Appendix B to determine the correct V&H mileage for the interexchange circuit route on intracompany circuits for periods after January 1, 1988.

Points 2 and 3 are the exact locations of the closest wire centers across GTEC's exchange boundary and also fairly represent the wire centers which are nearest the historical rate centers used for message toll telephone service.

3. Intracompany Interexchange Mileage
Measurement after April 1, 1990 in
Compliance with D.90-02-050

D.90-02-050 authorized GTEC to implement intracompany inter-wire center rate concepts within its exchanges and between its exchanges. When any part of the circuit goes to serve a customer in another exchange (interexchange) then the entire circuit is priced at GTEC's higher interexchange rate.⁷ Page 3

7 DRA's witness Richard Shanky in A.87-01-002 (Tr. 7367-7368) recommended that the higher interexchange rate of \$5 per mile be applied to all portions of an interexchange circuit including those parts of the circuit which are within a given exchange. Although Western Burglar and Fire Alarm Association argued against the use of the higher interexchange rate for portions of GTEC interexchange private line circuits which were wholly intraexchange, DRA's recommendation was adopted by D.90-02-050.

of Appendix B schematically describes the mileage rating method to be used for GTEC intracompany interexchange private line circuits after April 1, 1990 in compliance with D.90-02-050.

4. Intercompany Interexchange Mileage
Measurement Prior to January 1, 1988

As noted by DRA, Finding of Fact 37⁸ and Conclusion of Law 3⁹ of D.88-12-036 (infra) clearly set forth the method to be used for determining intercompany interexchange mileage for private line service to API from January 1, 1984 through December 31, 1987.

Pacific Bell had authority to include interservice center mileages for its private line services during that period of time. Accordingly, GTEC's use of the V&H coordinates of its wire centers from Pacific Bell's Schedule 175-T to determine intercompany interexchange private line circuit mileages as set forth schematically on Page 4 of Appendix B and to apply Pacific Bell's interexchange rates thereto, is reasonable and proper.

8 "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." (Finding of Fact 37, D.88-12-036, p. 66, mimeo.)

9 "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." (Conclusion of Law 3, D.88-12-036, p. 71, mimeo.)

5. Intercompany Interexchange Mileage Measurement after January 1, 1988

API correctly states that after January 1, 1988 GTEC may only apply Pacific Bell's rates to that portion of an intercompany interexchange circuit lying in Pacific Bell's territory to the meet point on the common boundary between Pacific Bell and GTEC exchanges. However, DRA appropriately called attention to the exception language describing the alternative method to be used in instances where the meet point on the common boundary of the exchanges cannot be accurately determined. That exception language in D.88-12-036 (p. 46 mimeo.) states:

"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."

The schematic diagram on Page 5 of Appendix B sets forth the preferred method of using Pacific Bell's interexchange rates for its portion of the interexchange circuit and GTEC's interexchange rates for its portion of that circuit. It also illustrates the alternative V&H method discussed above. Note that no mileage rates apply to the exclusively intraexchange portions of private line circuits within GTEC's exchanges since GTEC did not have authority for intraexchange mileage rates at that time.

Page 6 of Appendix B contains a schematic diagram of a second example of intercompany interexchange mileage measurement after January 1, 1988 where private line services are provided across multiple GTEC exchanges from a Pacific Bell exchange and where no customer services are taken in the GTEC exchange contiguous to Pacific Bell. In this example, GTEC's interexchange rates apply to the shortest interexchange circuit path across the GTEC exchange where no service is taken to the meet point on the common boundary with Pacific Bell. Pacific Bell's interexchange

rates again apply from Pacific Bell's wire center serving API or its customers and the nearest meet point in the common boundary. The exception case for the alternate V&H mileage from Pacific Bell's wire center (Point 5) to the first wire center in GTEC's exchange (Point 2) wherein API or its customers take service is also applicable in the rare instance that using Pacific Bell's rates together with that V&H mileage would result in a lower overall cost to GTEC's private line customers. This determination follows the discussion at, and preceeding, page 46 of D.88-12-036 (mimeo.) which concludes:

"An exception will apply in cases where the pricing out of this service at GTEC's [interexchange]¹⁰ 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."

6. Intercompany Interexchange Mileage Measurement after April 1, 1990 in Compliance with D.90-02-050

D.90-02-050 authorized GTEC to implement intracompany inter-wire center rate concepts within its exchanges and between its exchanges. However, D.90-02-050 did not authorize GTEC to apply Pacific Bell's higher interexchange rates to circuit paths within its exchanges. GTEC is authorized to use its higher

¹⁰ The bracketed term [interexchange] is a correction for "intraexchange" erroneously contained in the text of D.88-12-036 (p. 46 mimeo.).

interexchange rates for any portion of a circuit which goes to serve a customer in another exchange as explained earlier.

Page 7 of Appendix B illustrates the method for measuring intercompany interexchange mileages and the applicable rates within GTEC's and Pacific Bell's exchanges using the V&H coordinates found in Pacific Bell's Schedule 175-T for all applicable wire centers serving API or its customers. Under the example set forth in Page 7 of Appendix B, Pacific Bell's interexchange rate may only be applied from Pacific Bell's wire center, serving API or its customers, to the nearest meet point on the common boundary with GTEC's nearest exchange serving API or its customers.

Page 8 of Appendix B contains a schematic diagram of a second example of an intercompany interexchange mileage measurement pursuant to D.90-02-050 after April 1, 1990, where private line services are provided across multiple GTEC exchanges from a Pacific Bell exchange and where no customer services are taken in the GTEC exchange contiguous to Pacific Bell's exchange.

In this example, Pacific Bell's rates apply only to the shortest distance from its wire center serving API or its customers to the common meet point on GTEC's closest contiguous exchange to Pacific Bell.

However, nothing in D.90-06-050 modified in any way the earlier described exception of D.88-12-036 allowing the benefit to GTEC's customers of the alternative measurement of the shortest airline distance from Pacific Bell's first wire center serving private line customers of GTEC to GTEC's first wire center serving those same customers at Pacific Bell's rates, in the event that those rates applied to that shortest airline distance results in lower costs to GTEC's customers.

I. Deposit Held by the Commission

An inquiry made to the Commission's fiscal office, by the ALJ confirmed that as of March 31, 1990, API had \$178,041.70 (including interest) on deposit with this Commission. The issue of

the appropriate distribution of these funds may be addressed when Phase II issues are being considered in this proceeding.

Findings of Fact

1. After encountering various differences of opinion on, and objections to, its attempts to implement new private line tariff provisions following the issuance of D.88-12-036, GTEC met with representatives of API, DRA and Pacific Bell to address the parties' concerns relative to its implementation of tariff revisions in compliance with D.88-12-036.

2. Counsel for DRA agreed to assist GTEC and the other parties in seeking clarification and/or modification of D.88-12-036 and on December 29, 1989 filed a joint petition of DRA, API, GTEC and Pacific Bell to modify D.88-12-036.

3. In view of the continuing differences of the parties regarding proper compliance with D.88-12-036, it is necessary to clarify the methods of interexchange mileage measurement for each period contemplated by D.88-12-036.

4. Because of the complexity of reviewing each private line circuit configuration and mileage measurement and the elapsed time since issuance of D.88-12-036 (December 9, 1988) GTEC has requested that a simplified representative sample method be used for determining relief for private line customers other than API. Any such alternative method will require modification of Ordering Paragraphs 4 and 5 of D.88-12-036.

5. DRA's joint petition definition of "serving wire center" or "serving central office" is correct as follows, with the inclusion of the bracketed term and with the further understanding that the term customer means "any" customer or customers:

"For a central office (CO) or wire center to serve it must [be a switching center and] have customer circuits routed to it or through it. A CO or wire center with no customer circuits reaching it is not a 'serving' center."
(Emphasis in original.)

6. The term "first serving central office," unless qualified in some way, is the single central office or wire center within a GTEC exchange which results in the shortest airline distance when computing intraexchange mileage using the V&H coordinator system to measure the rate distance from the central office in another exchange serving API or its customers.

7. The term "last serving central office" as qualified in Finding of Fact 51 of D.88-12-036 means the last serving central office or the last serving wire center on a specific circuit route which serves API or its customers.

8. D.88-12-036 does not allow changes of rates or more restrictive tariff applications which will raise any rate or charge and does not adopt or implement inter-wire center rates for GTEC.

9. D.90-02-050 issued February 23, 1990 did adopt intracompany inter-wire center rates effective on or after April 1, 1990 for use within GTEC's intracompany operations.

10. D.90-02-050 does not authorize Pacific Bell's rates for any portion of an interexchange circuit which lies within a GTEC exchange. Therefore, GTEC's interexchange rates will apply within its exchanges to the closest point on the common boundary with Pacific Bell exchanges, after its tariffs filed in compliance with D.90-02-050 became effective on April 1, 1990.

11. The appropriate effective date for rate relief, similar to that granted to API by D.88-12-036, for GTEC's other private line customers is May 5, 1989. This relief will continue until GTEC's tariff schedules revised in compliance with D.90-02-050 became effective on April 1, 1990, thereafter the revised tariff schedules apply in accordance with mileage measurements determined by using the diagrams on Pages 3, 7 and 8 of Appendix B to this order.

12. GTEC's use of a "statistically reliable" sample of circuits to determine the appropriate level of relief for private

line customers, other than API, has merit and is supported by the DRA.

13. DRA's recommendation that credit be applied in full, against private line bills of customers other than API, not to exceed 100% of the billed amount for private line services in any given month, and remain as a further credit on subsequent monthly bills for private line service until the entire amount with interest is repaid, is reasonable.

14. No refunds or other relief is justified for GTEC's solely provided intracompany intraexchange private line circuits, except for any possible erroneous billings which were not at issue in D.88-12-036.

15. Recurring termination charges apply from whichever utility furnishes the terminals; therefore, terminals in Pacific Bell's exchanges are provided under Pacific Bell's tariff schedules and terminals in GTEC's exchanges are provided under GTEC's tariff schedules, consistent with the applicability of nonrecurring termination charges outlined in D.88-12-036.

16. GTEC has no authority under D.88-12-036 to restate or revise its past revenues or expenses for the toll private line settlement pool or for the High Cost Fund.

17. GTEC will, on and after April 1, 1990, enjoy different rates and charges prospectively for its private line services under D.90-02-050 and those rates as filed and effective will form the basis for prospective toll settlements and the High Cost Fund.

18. The eight diagrams contained in Appendix B schematically depict the methods to be used to determine the proper mileages for the various circuit routes and periods at issue in the joint petition as well as for compliance with D.90-02-050 which implemented intracompany wire center rate concepts for GTEC effective on April 1, 1990.

19. The narrative of this order commencing at Section H titled "Mileage Measurements" is based on D.88-12-036 which applies

to the various mileage measurements to be made in accordance with Appendix B to this order.

20. D.90-02-050 authorized GTEC to revise its intracompany private line tariff schedules to incorporate inter-wire center rate concepts effective on April 1, 1990. Accordingly, Pages 3, 7 and 8 of Appendix B describe schematically how mileages are measured for billing purposes after April 1, 1990.

Conclusions of Law

1. The "Joint Petition of the Division of Ratepayer Advocates, API Alarm Systems, GTE California, and Pacific Bell to Modify D.88-12-036", (Joint Petition) dated December 29, 1989, raises a number of questions regarding the reasonable interpretation of mileage measurement details for private line circuits intended by D.88-12-036, which should be clarified by a further order in this proceeding.

2. Following the filing of the Joint Petition, D.90-02-050 was issued on February 23, 1990, which adopted an intracompany inter-wire center rate concept for GTEC. Accordingly, the mileage measurement methods employed by D.88-12-036 should also be further revised and clarified to incorporate the provisions of the tariff schedules filed pursuant to D.90-02-050.

3. GTEC should be required to apply the definitions, interpretations and effective dates set forth in the narrative, together with the findings of fact, and the diagrams contained in Appendix B of this order to determine the appropriate level of remaining relief due API from D.88-12-036, in this proceeding.

4. Ordering Paragraphs 4 and 5 of D.88-12-036 should be modified and GTEC should be allowed to use a "statistically reliable" sample of circuits and the further clarifications set forth in this order, rather than the revised tariff schedules contemplated by D.88-12-036, to determine the appropriate amount of relief for private line customers other than API.

5. The period for determination of relief to customers, other than API, should be from May 5, 1989 through March 31, 1990. Thereafter, the revised tariff schedules filed pursuant to D.90-02-050, and interpreted in accordance with this order, especially the diagrams on Pages 3, 7 and 8 of Appendix B, should apply.

6. The clarifications and modifications sought in the "Joint Petition" should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The narrative and the Findings of Fact of Decision (D.) 88-12-036 dated December 9, 1988 are modified and clarified as follows:

- a. The third sentence of the discussion on Page (P.) 46 (mimeo.) is changed to read:

An exception will apply in cases where the pricing out of this service at GTEC's interexchange 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.

- b. Finding of Fact 50 on P. 68 (mimeo.) is changed to state:

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 and applying the principles set forth in this order and D.90-05-091 and Appendix B to that latter order.

- c. Ordering Paragraph 3 on P. 76 (mimeo.) is changed to state:

3. All future bills rendered by GTEC to API shall be rendered in accordance with the principles set forth in this decision as later clarified and modified by D.90-05-091 together with Appendix B to that order.
- d. Ordering Paragraph 4 on P. 76 (mimeo.) is changed to state:
 4. GTEC shall, on or before July 13, 1990, take steps necessary to ensure that any remaining billing disputes with API for past services rendered prior to April 1, 1990, are resolved in accordance with the principles set forth herein, as modified and clarified by D.90-05-091 issued May 22, 1990, and 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 in these orders (emphasis added). (Note it is recognized that in certain very rare instances, the use of the exception provision of Page 5 of Appendix B to D.90-05-091, may yield a minor increase in monthly mileage charges on a small number of circuits serving API.)
- e. Ordering Paragraph 5 on P. 76 (mimeo.) is changed to state:
 5. GTEC shall, on or before June 29, 1990, take necessary steps to ensure that all of its bills for private line services are being rendered in accordance with its current tariff schedules which were revised pursuant to D.90-02-050 and which became effective on April 1, 1990. In so doing, GTEC shall also ensure that those tariff schedules and rates are administered in accordance with the principles set forth in this order as modified and clarified by D.90-05-091 issued May 22, 1990. Any inadvertent over charges made by GTEC after April 1, 1990, shall be corrected

and credited to customers' bills
rendered on or before July 15, 1990.

- f. Ordering Paragraph 12 on P. 78 (mimeo.) is changed to state:

12. Hearings in Phase II to resolve the remaining issues in this complaint are scheduled to begin at 11:00 a.m. on July 24, 1990, in the Commission's Courtroom, Los Angeles, before the assigned ALJ.

- g. Ordering Paragraph 13 is added to D.88-12-036 at P. 78 (mimeo.) as follows:

13. GTEC shall ensure that it consistently applies channel termination rates and charges associated with interexchange private line mileage rates, so that whichever utility's interexchange mileage rate is used, that utility's corresponding channel termination tariff rate or charge shall also apply.

- h. Ordering Paragraph 14 is added to D.88-12-036 follows:

14. GTEC is hereby authorized to use a "statistically reliable" sample of circuits, and the further clarifications set forth in D.90-05-091, rather than the revised tariff schedules contemplated by Ordering Paragraph 4 of D.88-12-036, to determine the appropriate amount of relief for private line customers other than API. This "statistically reliable" sample study shall be provided to DRA and CACD no later than August 1, 1990 and subject to CACD approval permit GTEC to credit such relief in full, with interest, on all applicable customer bills by no later than the October 1, to October 31, 1990, billing round.

- i. Ordering Paragraph 15 is added to D.88-12-036 as follows:

15. The period for determination of relief to customers, other than API, discussed in Ordering Paragraph 14, above, shall be from May 5, 1989 through March 31, 1990. Thereafter, the revised tariff schedules filed pursuant to D.90-02-050, and interpreted in accordance with D.90-05-091, especially the diagrams on Pages 3, 7 and 8 of Appendix B to that order, apply.

- j. Ordering Paragraph 16 is added to D.88-12-036 as follows:

16. GTEC shall add interest to the average monthly balance amount of relief held for each private line customer, other than API, as contemplated by Ordering Paragraphs 14 and 15 above. Such interest shall accrue at the average three-month commercial paper rates until refunds are credited in full to the customers' private line services. Thereafter, the credited amount shall be applied in full, against private line bills not to exceed 100 percent of the billed amount for private line services in any given month and remain as a further credit on subsequent monthly bills for private line service until the entire amount with interest is repaid.

2. GTEC shall withdraw the protested advice letters, Nos. 5203 and 5215, which it previously filed pursuant to Ordering Paragraphs 4 and 5 of D.88-12-036, which have now been modified by this order.

3. The ordering paragraphs and other requirements of D.88-12-036 dated December 9, 1988, except as expressly modified and clarified here, continue to apply to GTEC after the effective date of this order. Appendix C to this order restates the

currently applicable ordering paragraphs of D.88-12-036 as modified by this order.

4. Any relief due customers billed by Pacific Bell for private line services jointly provided with GTEC shall be determined consistent with the principles and provisions of D.88-12-036 and D.90-05-091, through the full cooperation of GTEC and Pacific Bell, and credited by Pacific Bell. Should any dispute arise as to the proper credits to be flowed through to customer bills by Pacific Bell, those matters may be addressed as part of the Phase II hearings in this proceeding.

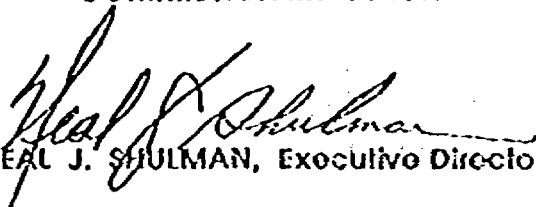
This order is effective today.

Dated May 22, 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

APPENDIX A

Service List in C.87-06-022

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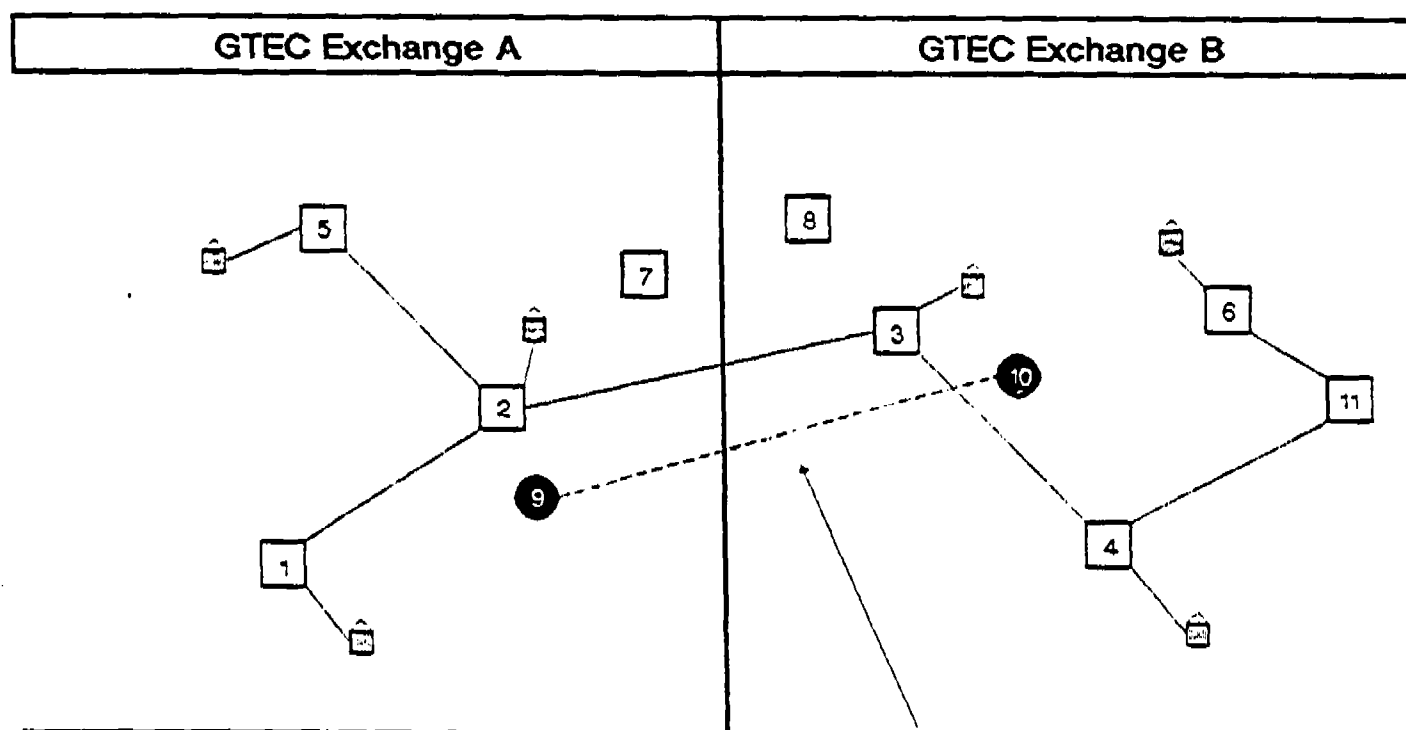
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(END OF APPENDIX A)

Intracompany Interexchange

Private Line Circuit Mileage Measurement (prior to 1-1-88)



— Circuit Route

--- Mileage billed at GTEC's rates

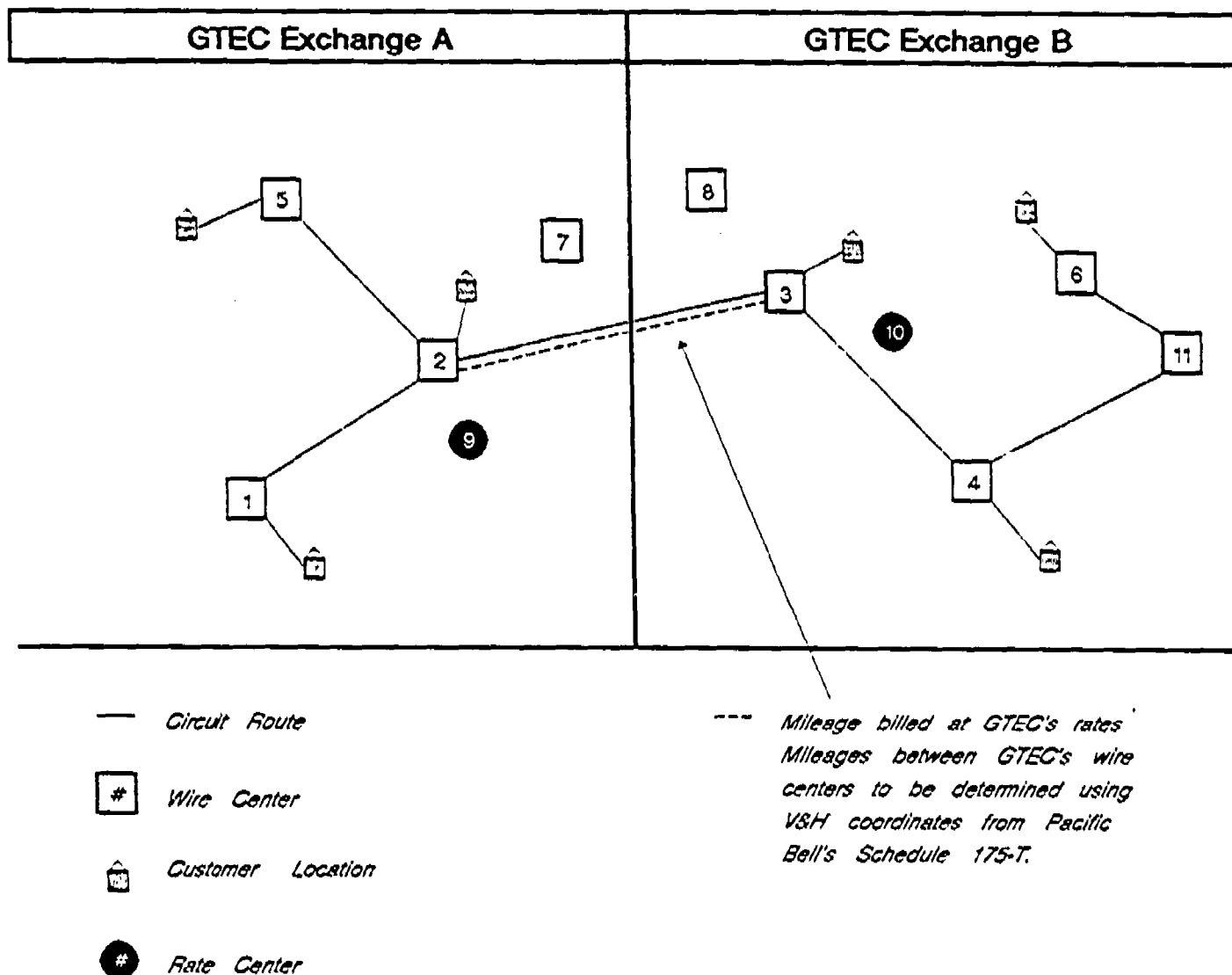
Wire Center

Customer Location

Rate Center

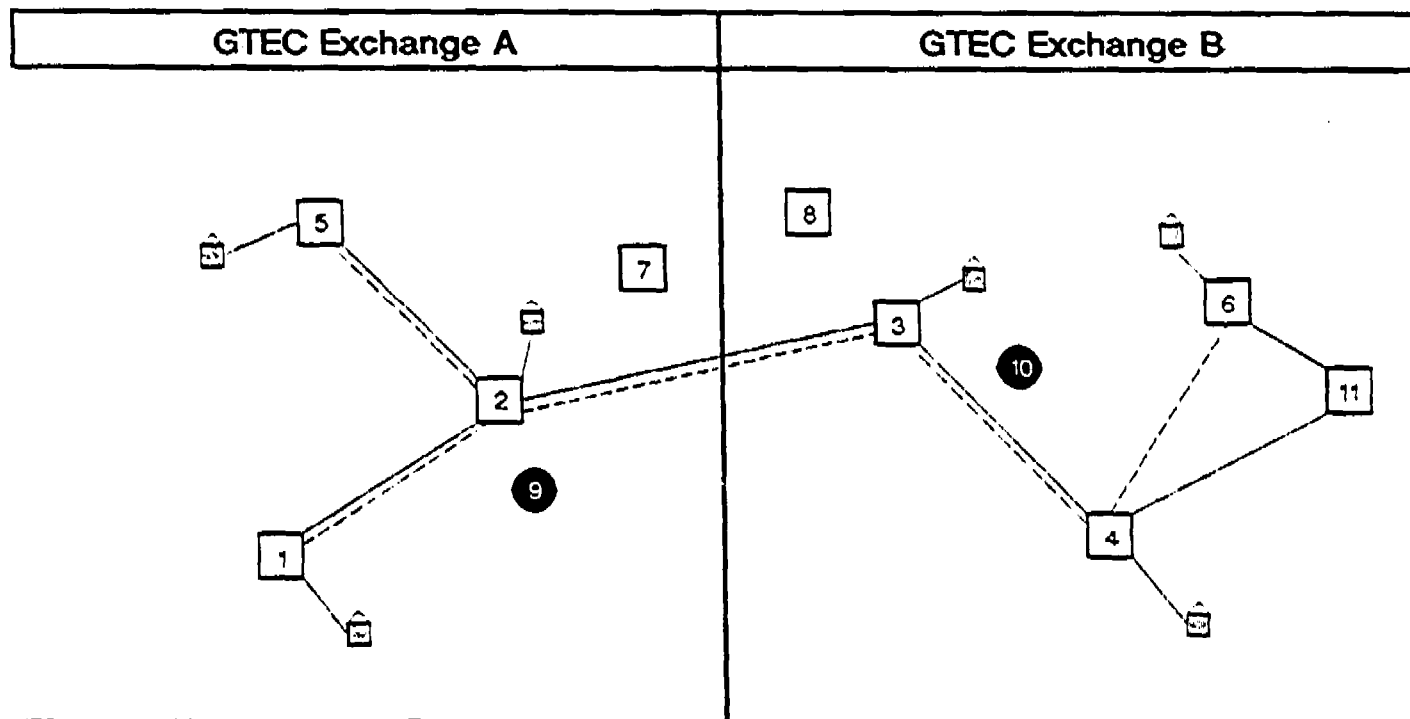
Intracompany Interexchange

Private Line Circuit Mileage Measurement (after 1-1-88)



Intracompany Interexchange

Private Line Circuit Mileage Measurement (after 4-1-90 per D.90-02-050)



— Circuit Route

Wire Center

Customer Location

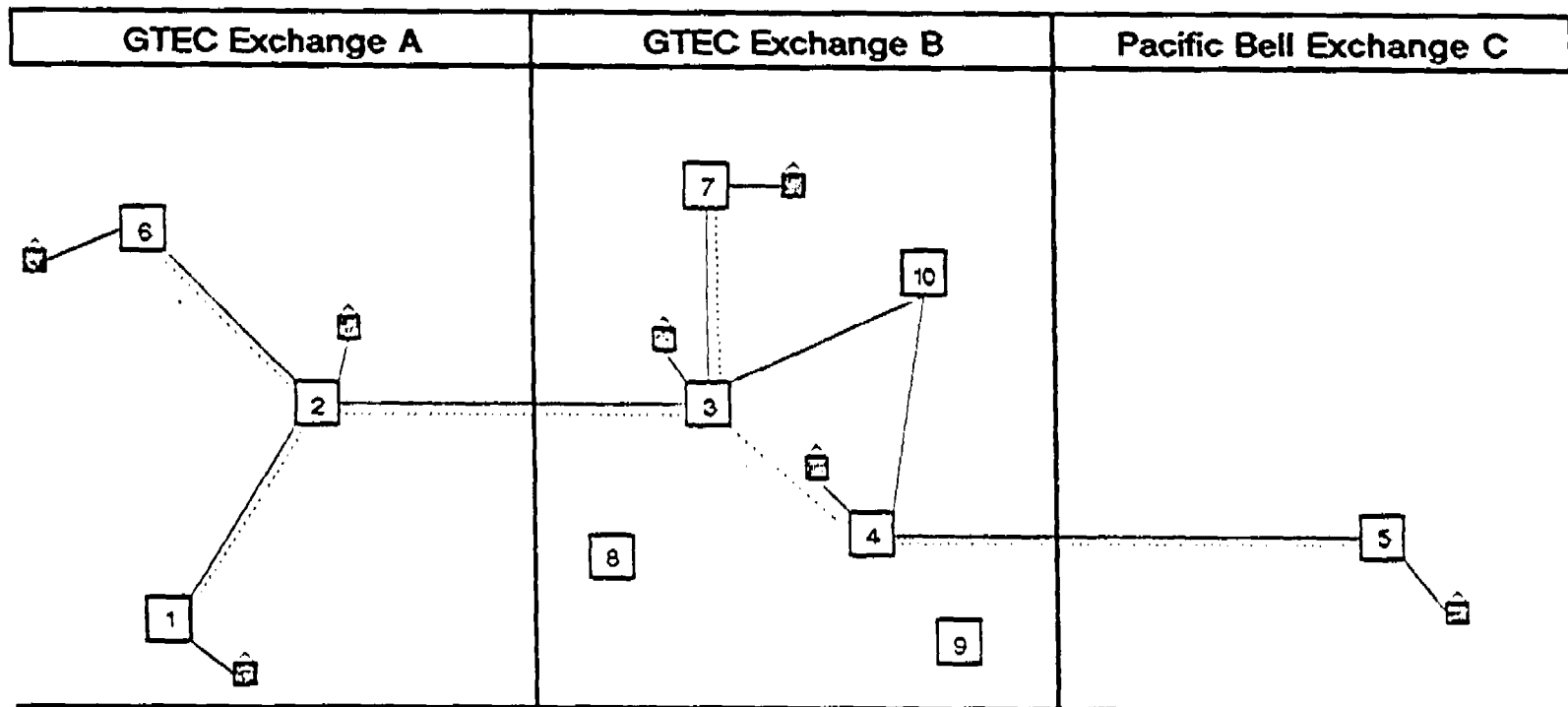
Rate Center

--- Mileage billed at GTEC's
Intracompany Interexchange rates
All mileages to be determined using
V&H coordinates from Pacific Bell's
Schedule 175-T.

Intercompany Interexchange

Private Line Circuit Mileage Measurement (prior to 1-1-88)

C.87-06-022



— Circuit Route

Wire Center

Customer Location

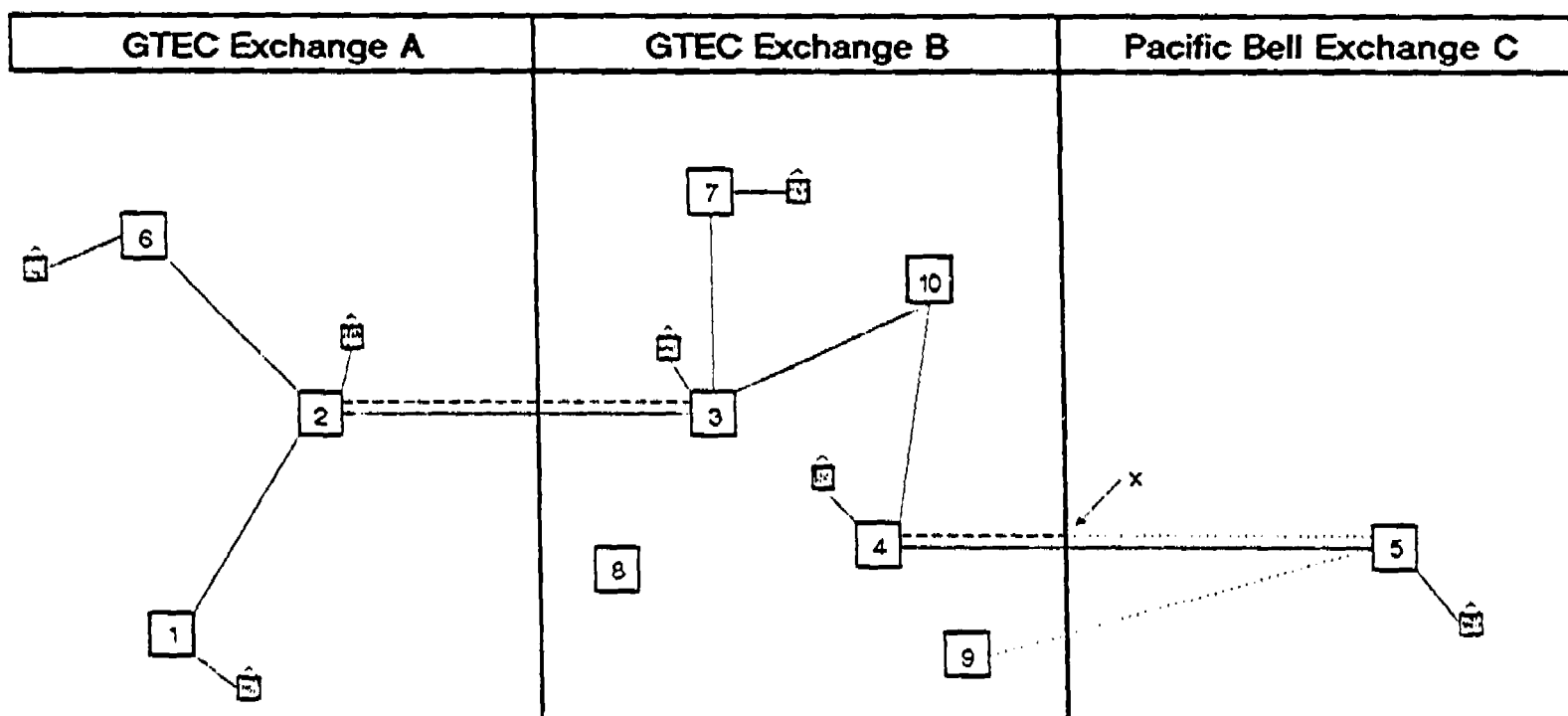
Mileage billed at PacBell's rates

All mileages to be determined
using V&H coordinates from
Pacific Bell's Schedule 175-T.

APPENDIX B
Page 4

Intercompany Interexchange

Private Line Circuit Mileage Measurement (after 1-1-88)



— Circuit Route

Wire Center

Customer Location

x Nearest Point on
Common Boundary

--- Mileage billed at GTEC's rates

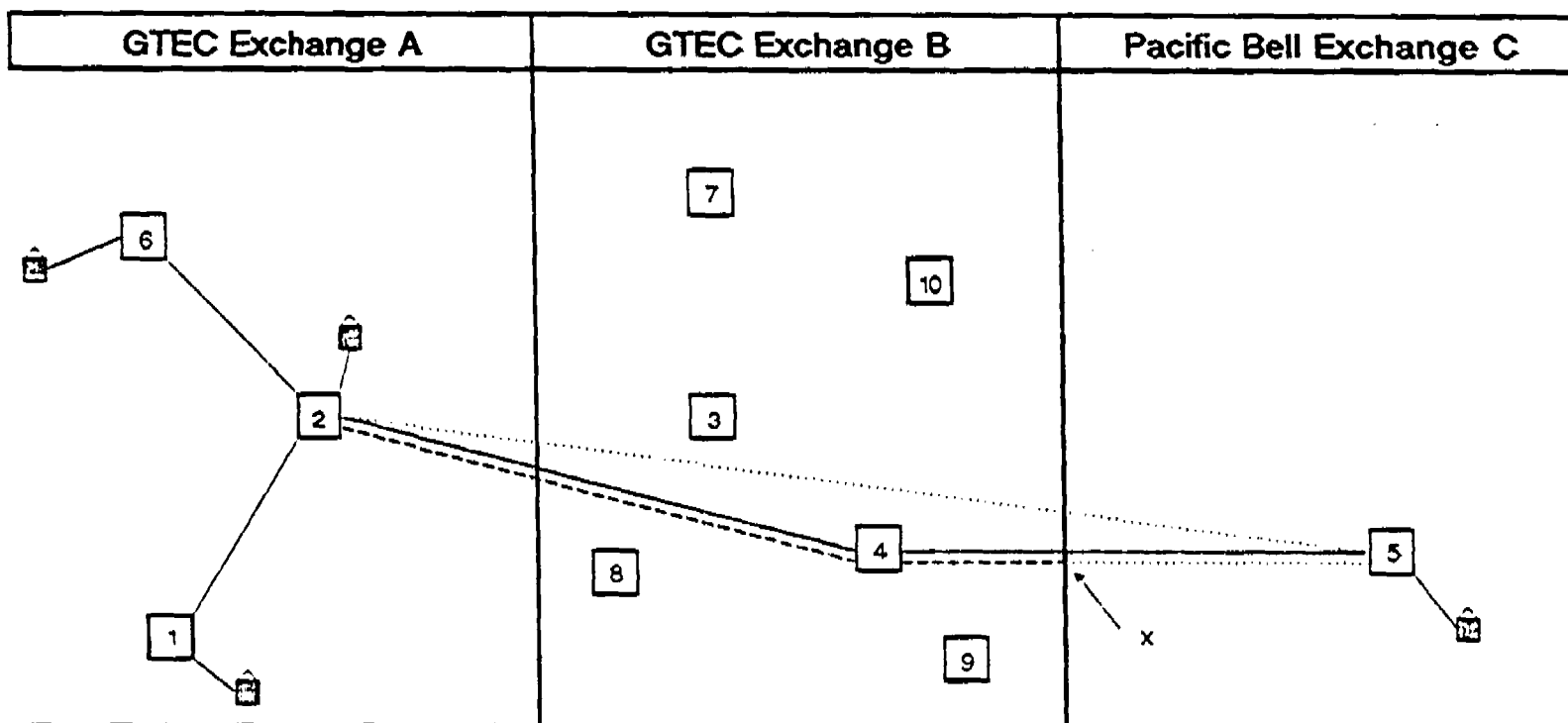
... Mileage billed at PacBell's rates

Only one distance needs to be measured to closest point on the exchange boundary (at point x) from either point 5 or point 4, whichever exchange map is more accurate (Pacific Bell's or GTEC's). The balance distance from point 5 to point 4 can be determined by subtracting that distance (e.g. 5 to x or 4 to x) from the V&H distance between points 5 and 4 per Pacific Bell's Schedule 175-T.

Except when distance to the exchange boundary cannot be accurately measured, then PacBell's rates will apply to the V&H distance from wire center 5 to 9 and GTEC's rates will apply to the V&H distance from wire center 2 to 3.

Intercompany Interexchange

Private Line Circuit Mileage Measurement (after 1-1-88)



— Circuit Route

--- Mileage billed at GTEC's rates

..... Mileage billed at PacBell's Rates

Wire Center

Customer Location

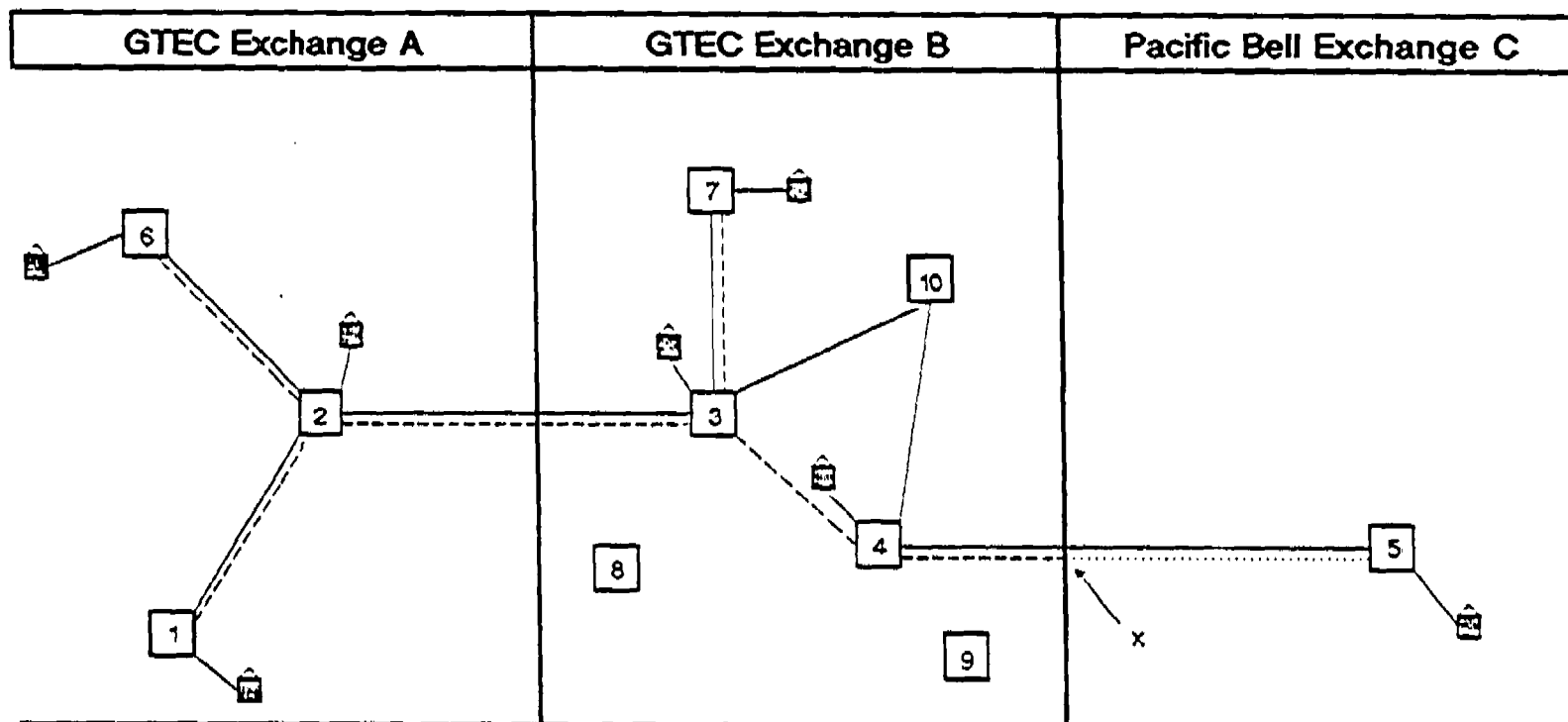
x Nearest Point on
Common Boundary

Only one distance needs to be measured to closest point on the exchange boundary (at point x) from either point 5 or point 4, whichever exchange map is more accurate (Pacific Bell's or GTEC's). The balance distance from point 5 to point 4 can be determined by subtracting that distance (e.g. 5 to x or 4 to x) from the V&H distance between points 5 and 4 per Pacific Bell's Schedule 175-T.

Except when cost would be less using PacBell's rates for entire interexchange circuit, then PacBell's rates will apply to the entire V&H distance from wire center 2 to 5.

Intercompany Interexchange

Private Line Circuit Mileage Measurement (after 4-1-90 per D.90-02-050)

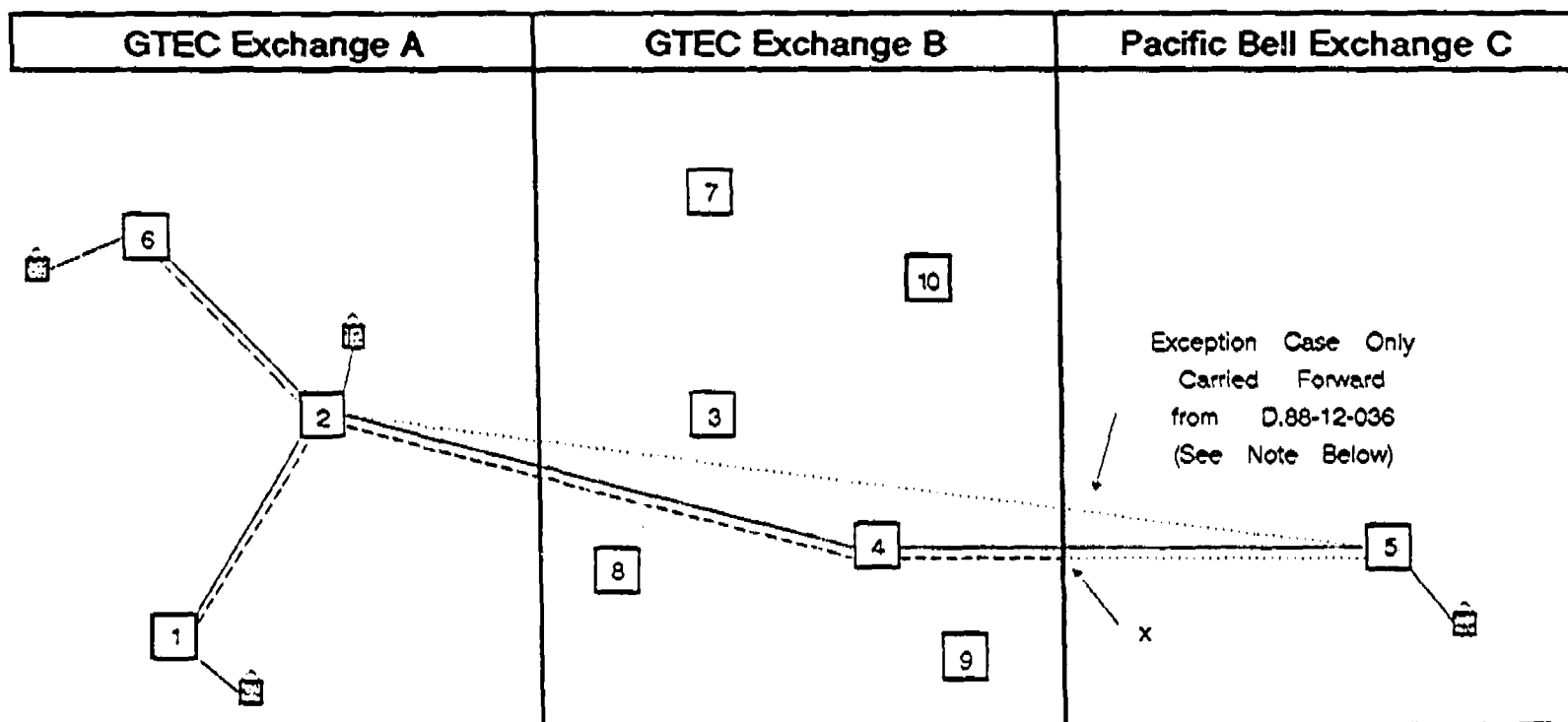


Only one distance needs to be measured to closest point on the exchange boundary (at point x) from either point 5 or point 4, whichever exchange map is more accurate (Pacific Bell's or GTEC's). The balance distance from point 5 to point 4 can be determined by subtracting that distance (e.g. 5 to x or 4 to x) from the V&H distance between points 5 and 4 per Pacific Bell's Schedule 175-T.

Intercompany Interexchange

Private Line Circuit Mileage Measurement (after 4-1-90 per D.90-02-050)

(END OF APPENDIX B)



— Circuit Route

--- Mileage billed at GTEC's rates

..... Mileage billed at PacBell's Rates

Wire Center

Customer Location

x Nearest Point on
Common Boundary

Only one distance needs to be measured to closest point on the exchange boundary (at point x) from either point 5 or point 4, whichever exchange map is more accurate (Pacific Bell's or GTEC's). The balance distance from point 5 to point 4 can be determined by subtracting that distance (e.g. 5 to x or 4 to x) from the V&H distance between points 5 and 4 per Pacific Bell's Schedule 175-T.

Exception: Where the V&H distance from point 5 to point 2 priced at Pacific Bell's rates would result at a lower total cost. All other circuit paths within GTEC's service area are to be billed at GTEC's interexchange mileage rates per D.90-02-050.

APPENDIX C
Page 1

DECISION 88-12-036 ORDERING PARAGRAPHS
AS REVISED PURSUANT TO D.90-05-091

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 be¹ rendered in accordance with the principles set forth in this decision as later clarified and modified by D.90-05-091 together with Appendix B to that order.

4. GTEC shall, on or before July 13, 1990, take steps² necessary to ensure that any remaining billing disputes with API for past services rendered prior to April 1, 1990, are resolved in accordance with the principles set forth herein, as modified and clarified by D.90-05-091 issued May 22, 1990, and in so doing

¹ This ordering paragraph was modified in accordance with D.90-05-091, effective May 22, 1990.

² This ordering paragraph was modified in accordance with D.90-05-091, effective May 22, 1990.

APPENDIX C
Page 2

no nonrecurring charge or monthly rate is increased and no condition, classification, practice, or rule is made more restrictive than found reasonable and interpreted in these orders (emphasis added). (Note it is recognized that in certain very rare instances, the use of the exception provision of Page 5 of Appendix B to D.90-05-091, may yield a minor increase in monthly mileage charges on a small number of circuits serving API.)

5. GTEC shall, on or before June 29, 1990, take necessary³ steps to ensure that all of its bills for private line services are being rendered in accordance with its current tariff schedules which were revised pursuant to D.90-02-050 and which became effective on April 1, 1990. In so doing, GTEC shall also ensure that those tariff schedules and rates are administered in accordance with the principles set forth in this order as modified and clarified by D.90-05-091 issued May 22, 1990. Any inadvertent over charges made by GTEC after April 1, 1990, shall be corrected and credited to customers' bills rendered on or before July 15, 1990.

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.

3 See Footnote 2.

APPENDIX C
Page 3

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.

APPENDIX C
Page 4

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. Hearings in Phase II to resolve the remaining issues⁴ in this complaint are scheduled to begin at 11:00 a.m. on July 24, 1990, in the Commission's Courtroom, Los Angeles, before the assigned ALJ.

13. GTEC shall ensure that it consistently applies channel⁵ termination rates and charges associated with interexchange private line mileage rates, so that whichever utility's interexchange mileage rate is used, that utility's corresponding channel termination tariff rate or charge shall also apply.

14. GTEC is hereby authorized to use a "statistically⁶ reliable" sample of circuits, and the further clarifications set forth in D.90-05-091, rather than the revised tariff schedules contemplated by Ordering Paragraph 4 of D.88-12-036, to determine the appropriate amount of relief for private line customers other than API. This "statistically reliable" sample study shall be provided to DRA and CACD, no later than August 1, 1990, and subject to CACD approval, permit GTEC to credit such relief in full, with

4 This ordering paragraph was modified in accordance with D.90-05-091, effective May 22, 1990.

5 This ordering paragraph was added in accordance with D.90-05-091, effective May 22, 1990.

6 See Footnote 5.

APPENDIX C
Page 5

interest, on all applicable customer bills by no later than the October 1, to October 31, 1990, billing round.

15. The period for determination of relief to customers,⁷ other than API, discussed in Ordering Paragraph 14, above, shall be from May 5, 1989 through March 31, 1990. Thereafter, the revised tariff schedules filed pursuant to D.90-02-050, and interpreted in accordance with D.90-05-091, especially the diagrams on Pages 3, 7 and 8 of Appendix B to that order, apply.

16. GTEC shall add interest to the average monthly balance⁸ amount of relief held for each private line customer, other than API, as contemplated by Ordering Paragraphs 14 and 15 above. Such interest shall accrue at the average three-month commercial paper rate, until refunds are credited in full to the customer's private line services. Thereafter, the credited amount shall be applied in full, against private line bills not to exceed 100 percent of the billed amount for private line services in any given month and remain as a further credit on subsequent monthly bills for private line service until the entire amount with interest is repaid.

This order becomes effective 30 days from today.⁹

Dated December 9, 1988, at San Francisco, California.

(END OF APPENDIX C)

⁷ See Footnote 5.

⁸ See Footnote 5.

⁹ The effective date of this order became, and is, February 24, 1989, by further order of this Commission (D.89-02-081) in this proceeding.