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Before the  
FEDERAL COMMUNICATIONS COMMISSION SEP 29 1994  
Washington, D.C. 20554

COMMUNICATIONS SECTION  
SEP 29 1994

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In the Matter of )  
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Petition of the People of the State of )  
California and the Public Utilities )  
Commission of the State of California )  
to Retain Regulatory Authority Over )  
Intrastate Cellular Service Rates )  
)  
\_\_\_\_\_ )

PR Docket No. 94-105

OPPOSITION OF AIRTOUCH COMMUNICATIONS TO REQUEST OF  
THE NATIONAL CELLULAR RESELLERS ASSOCIATION FOR ACCESS TO  
CALIFORNIA PETITION FOR STATE REGULATORY AUTHORITY  
PURSUANT TO THE TERMS OF A PROTECTIVE ORDER

AIRTOUCH COMMUNICATIONS  
David A. Gross  
Kathleen Q. Abernathy  
1818 N Street, N.W.  
8TH Floor  
Washington, D.C. 20036  
(202) 293-3800

PILLSBURY MADISON & SUTRO  
Mary B. Cranston  
Megan Waters Pierson  
P.O. Box 7880  
San Francisco, CA 94120-7880  
(415) 983-1000

September 29, 1994

Attorneys for AirTouch  
Communications

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## SUMMARY

The California Public Utilities Commission ("CPUC") has submitted confidential data to the Commission in violation of the carriers' due process rights and state law. Disclosure of the cellular carriers' competitively sensitive data would merely compound the problems created by the CPUC's procedural abuse.

AirTouch Communications ("AirTouch") hereby formally requests that its data be treated as confidential pursuant to the Commission's Rules. The data submitted by AirTouch to the CPUC reveals highly sensitive information regarding subscribers on each rate plan and cell site capacity utilization. AirTouch did not disclose this information to the resellers or other cellular carriers in the California proceeding. The request of the National Cellular Resellers Association provides no justification for such disclosure now.

Disclosure of the information would place AirTouch at a serious competitive disadvantage, affecting its ability to compete in the marketplace. Disclosure of the data would also be contrary to the Commission's finding that the public filing of even rate information is anticompetitive. Moreover, release of the information without adequate review by the Commission would constitute a criminal violation and a severe abuse of agency discretion.

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PR Docket No. 94-105

OPPOSITION OF AIRTOUCH COMMUNICATIONS TO REQUEST OF  
THE NATIONAL CELLULAR RESELLERS ASSOCIATION FOR ACCESS TO  
CALIFORNIA PETITION FOR STATE REGULATORY AUTHORITY  
PURSUANT TO THE TERMS OF A PROTECTIVE ORDER

Pursuant to Section 1.45 of the Commission's Rules, AirTouch Communications ("AirTouch") opposes the Request of The National Cellular Resellers Association ("NCRA") for Access to California Petition for State Regulatory Authority Pursuant to the terms of a Protective Order ("NCRA's Request"). The California Public Utilities Commission ("CPUC") has submitted to the Commission confidential information which it obtained from the cellular carriers and the California Attorney General. AirTouch thus has a strong interest in opposing the request of NCRA to preserve the confidentiality of its data. AirTouch hereby formally requests that its data be treated as confidential pursuant to the Commission's Rules.

Of the states filing to extend regulatory authority, only the CPUC chose to rely substantially on confidential data to

meet its heavy burden. The carriers' were given no notice of the confidential submission or opportunity to protect their interest in maintaining the confidentiality of the data. The CPUC's submission of confidential data constitutes both a violation of the carrier's due process rights and state law.<sup>1</sup> The CPUC now appears to be compounding the problem by abrogating its duty to protect the confidential nature of the data.<sup>2</sup> Release of AirTouch's highly sensitive competitive data will only compound the fundamental unfairness created by the CPUC's procedural abuse. NCRA's untimely request fails to state any justification for disclosure of such information. In fact, disclosure of the information would be contrary to the Commission's policy that the public filing of even rate information can be anti-competitive.<sup>3</sup> Moreover, release of the information without adequate notice to AirTouch and full review by the Commission would constitute a criminal violation and a severe abuse of agency discretion.

I. NCRA'S UNSUBSTANTIATED REQUEST SEEKS ACCESS TO INFORMATION BEYOND THAT OBTAINED BY THE RESELLERS IN THE CALIFORNIA PROCEEDING.

The resellers did not obtain access to all of the confidential information submitted with the CPUC's Petition.

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1 The CPUC's disclosure of data that it received from the California Attorney General constitutes a potential criminal violation pursuant to California Government Code section 11183.

2 The CPUC now claims that it has "no independent interest in continuing to treat any of this information as confidential". See "Opposition of California to Motion to Reject Petition or, alternatively, Reject Redacted Information" at 4, dated September 26, 1994.

3 See p. 6 infra.

First, the information submitted with the CPUC's Petition goes beyond that derived from the CPUC proceeding. The CPUC has submitted information it independently obtained from the California Attorney General. This information obviously was not subject to any nondisclosure agreement. Second, even as to the data submitted in the CPUC's proceeding, neither the resellers nor any other carrier obtained any of AirTouch's confidential information.

Moreover, NCRA's untimely request fails to make any showing of a compelling need for the information. NCRA waited nearly six weeks to file its request for access to the confidential data.<sup>4</sup> NCRA does not and in fact cannot explain its delay. Having inexcusably delayed until the comment period expired, NCRA now requests access to confidential information merely to bootstrap improperly a reason for allowing for further comments to be filed on a leisurely briefing schedule.<sup>5</sup> NCRA's failure to submit its request in a timely fashion is not sufficient justification for delaying this proceeding. NCRA's Request, if granted, could impair the Commission's ability to comply with

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4 The CPUC filed its Petition on August 9th. The Commission has one year within which to act on the Petition, including any reconsideration. Pursuant to the Commission's rules, interested parties have 30 days to file comments and 15 days to file replies. Second Report and Order, 9 F.C.C 2d 1411, 1522-23 (1994). The time for filing replies has already been extended for an additional 15 days at the CPUC's request in part to allow the public to comment on material the CPUC disclosed publicly in September. See "Order Extending Time and Permitting Replies to Revised Petition," adopted and released September 26, 1994 (DA 94-1054).

5 NCRA asserts that if the confidential information is disclosed, parties "should be permitted a reasonable period of time to amend their comments in this proceeding." NCRA's Request at 3.

"the stringent statutory deadlines in [this] complex and massive proceeding."<sup>6</sup>

Even if NCRA had filed in a timely fashion, the request has absolutely no merit. The request is devoid of any explanation as to why it is necessary to obtain the confidential data to respond to the CPUC Petition. Other parties were able to file responsive comments without delaying this proceeding. Indeed, it appears that NCRA has not even evaluated the public data in order to determine whether it is necessary to gain access to the confidential information to respond to the Petition. NCRA has failed to demonstrate a compelling need for access to the data and thus, the request must be rejected.

**II. IT HAS BEEN CONCLUSIVELY DETERMINED THAT THE INFORMATION IS COMPETITIVELY SENSITIVE. DISCLOSURE WOULD BE ANTI-COMPETITIVE.**

The documents produced to the CPUC by AirTouch reveal, inter alia, sensitive market data regarding subscribers on each rate plan and cell site capacity utilization information.<sup>7</sup>

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<sup>6</sup> See "Order Extending Time and Permitting Replies to Revised Petition," adopted and released September 26, 1994 (DA 94-1054).

<sup>7</sup> The CPUC directed the cellular carriers to provide:

(1) year-end subscriber unit totals (1989-1993), broken down by categories of facilities-based retail units, reseller units, master volume users, and governmental agency subscribers, based on three minutes of use categories;

(2) the total number of subscribers on "Basic Plan" and its equivalent (1989-1993) and the billed rate broken down between facilities-based operations and resellers, as well as the access charge for each classification; and

(3) the totals on non-"Basic Plan" units in service, again broken down by categories of facilities-based operations, resellers, "master volume" users, and governmental agencies (1989-1993) and the monthly customer bill for the three minutes

(continued...)

Disclosure of such information could place AirTouch at a serious competitive disadvantage, affecting its ability to compete in the market and producing imminent and direct harm of major consequence.

The highly proprietary nature of this material and its great commercial sensitivity has been conclusively determined.<sup>8</sup> In the CPUC proceeding, the assigned Administrative Law Judge found that the data should be afforded confidential treatment because the carriers had met the stringent standard set forth in D.86-01-026 Re Pacific Bell, 20 CPUC 2d 237, 252 (1986), that disclosure of the data would lead to "imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental." This state standard for obtaining confidential treatment is at least equal to, if not tougher, than the federal standard of merely showing a likelihood of substantial competitive injury. See e.g., National Parks and Conservation Ass'n v. Martin, 498 F.2d 765, 770 (D.C. Cir. 1974). The ALJ determined that the disclosure of

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7(...continued)  
of use categories, including access charges.

The CPUC subsequently directed the carriers to classify the cell sites in each of its service areas by their capacity utilization rates--defined as the average busy hour capacity (the average weekly peak capacities for a year) as a proportion of the designed capacity of the cell site (measured in Erlangs)--into three categories: "High," "Medium," or "Low." See "Administrative Law Judge's Ruling Directing Parties to Provide Supplemental Information," dated April 11, 1994 at 4; and "Administrative Law Judge's Ruling Directing Parties to Provide Supplemental Information," dated April 22, 1994 at 2.

<sup>8</sup> See "Administrative Law Judge's Ruling Granting Motion for Modification of July 19, 1994 Ruling," dated August 8, 1994. A copy is attached hereto.

this type of information would cause "imminent and direct harm of major consequence" which was not counterbalanced by "the public interest of having an open and credible regulatory process." The ALJ found that "if a competitor knew a carrier's specific number of subscribers by market area applicable to the various categories [of subscriber and rate data] it could assess the carrier's strengths and weaknesses and adjust its marketing strategy accordingly."<sup>9</sup> Based on this finding, the ALJ concluded it was necessary to maintain the confidentiality of this information.

Similarly, the CPUC asserted in its filing with this Commission that the materials for which it sought confidential treatment "contain proprietary data and materials concerning commercially sensitive information not customarily released to the public which, if disclosed, could compromise the position of a cellular carrier relative to other carriers in offering service in various markets in California."<sup>10</sup> Nothing has changed to undercut this conclusion.

Indeed, disclosure of such sensitive information would be contrary to the Commission's policy of prohibiting the filing of

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9 The ALJ noted that "[d]isclosure of subscriber data could enable a competitor to possibly structure an advertising sales message claiming superiority over the competing carrier based on total subscribers or number of subscribers by a specific customer segment. Disclosure of the carriers' capacity utilization data could likewise allow competitors to glean sensitive data as to the configuration and use of the carrier's system as a basis to make planning decisions rather than basing decisions on each competitor's independent analysis of the marketplace . . . Confidential treatment is warranted for the number of subscribers associated with specific billing plans and for data relating to capacity utilization, at least for recent periods." Id. at 3-4.

10 CPUC Request at 1-2, dated August 8, 1994.

rate tariffs because such information could be used anti-competitively. As the Commission recently determined "in a competitive environment [such as cellular], requiring tariff filings would create a risk that competitors would file their rates merely to send price signals and thereby manipulate prices. By refusing to accept their tariff filings we prevent carriers from hiding behind their tariffs to avoid reducing their risks."<sup>11</sup>

Both the CPUC and AirTouch have maintain the data constitutes "commercially sensitive information." Disclosure of this information without adequate review by the Commission<sup>12</sup> and notification to AirTouch would constitute a criminal offense under the Federal Trade Secrets Act, 18 U.S.C. § 1905 (the "Act")<sup>13</sup> and a serious abuse of agency discretion. Exemption 4

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11 Second Report and Order, 9 F CC 2d at 1479-80 (footnote omitted).

12 Executive Order No. 12600, 52 Fed. Reg. 23781 (June 23, 1987), requires the Commission to notify any person who has submitted confidential commercial information that such information may be disclosed. It also requires the Commission to give AirTouch an opportunity to object to the disclosure, and to give careful consideration to those objections. Therefore, the Commission must specify to AirTouch the information that may be disclosed, and give AirTouch an opportunity to object prior to disclosure. See, e.g., Section 0. 461 of the Commission's Rules.

13 The Act "represent[s] a uniform, comprehensive, and reasonable though perhaps stringent approach to discouraging unauthorized disclosures of private commercial and financial data entrusted to the Government." CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1151 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988).

The Act is "at least co-extensive with that of Exemption 4 [of the federal Freedom of Information Act]." Ibid. 5 U.S.C. section 552(b)(4) is referred to herein as "Exemption 4." The federal Freedom of Information Act is referred to as the "FOIA."  
(continued...)

of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4).

AirTouch's data<sup>14</sup> submitted with the CPUC filing constitutes confidential<sup>15</sup> commercial<sup>16</sup> and financial information which requires that the Commission handle the information in a manner to preserve its confidential nature.

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13(...continued)

Thus, if information falls within the scope of Exemption 4, its release is prohibited under the Act. Id. at 1144.

14 The information at issue was obtained by the Commission indirectly from AirTouch, a person within the meaning of Exemption 4.

15 Voluntarily provided information is "confidential" within the meaning of Exemption 4 "if it is of a kind that would not customarily be released to the public by the person from whom it was obtained." Critical Mass Energy Project v. NRC, 975 F.2d 871, 879 (D.C. Cir. 1992), cert. denied, 113 S. Ct. 1579 (1993). Information provided under compulsion is "confidential" for purposes of Exemption 4 if disclosure of the information under the FOIA is likely to have either of the following effects: (1) diminution of the "reliability" or "quality" of information submitted to the government (id. at 878), or (2) substantial harm to the competitive position of the person from whom the information was obtained (id. at 879). The data submitted by AirTouch meets both tests.

16 Records are commercial so long as the submitter has a "commercial interest" in them. Public Citizen Health Research Group v. Food and Drug Administration, 704 F.2d 1280, 1290; see also American Airlines, Inc. v. National Mediation Bd., 588 F.2d 863, 870 (2d Cir. 1978) (the term "commercial" includes anything "pertaining or relating to or dealing with commerce"); Brockway v. Department of the Air Force, 370 F. Supp. 738, 740 (N.D. Iowa 1974) (reports generated by a commercial enterprise "must generally be considered commercial information"), rev'd on other grounds, 518 F.2d 1184 (8th Cir. 1975). The information submitted by AirTouch to the CPUC was of a strictly commercial nature.

**III. GRANTING ACCESS TO NCRA WILL NOT RECTIFY THE  
FUNDAMENTAL UNFAIRNESS CREATED BY THE CPUC'S  
FILING.**

The CPUC was the only state agency to submit a "swiss cheese" petition to the Commission. The CPUC redacted substantial information from its public Petition that effectively denied interested parties their right to respond and comment. Release of the confidential data to NCRA will only compound the fundamental unfairness created by the CPUC's procedural abuse. Given the broad scope and unlimited public participation in this proceeding, release of the confidential information to NCRA places the Commission in the position of potentially allowing unprecedented public access to competitively sensitive information.

The Commission has not, in any other proceeding of comparable scope and nature, relied upon confidential information in rendering its decision<sup>17</sup> and it need not resort to such action here.<sup>18</sup> The record is sufficient to render a decision.

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17 The Commission has permitted the use of nondisclosure agreements in complaint, application and certain investigatory proceedings. However, those proceedings involved a limited number of parties with standing and were not open to the entire public as is this proceeding. Moreover, the use of such agreements was with the consent of the party whose confidential data was disclosed.

18 Indeed, the cases NCRA has cited in support of its request reinforce the importance of relying upon public data. They do not stand for the proposition that a protective order can be used. See Home Box Office v. FCC, 567 F.2d 9, 54 (D.C. Cir. 1991) ("Even the possibility that there is here one administrative record for the public and this court and another for the Commission and those 'in the know' is intolerable."); Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 393 (D.C. Cir. 1973) ("It is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is

(continued...)

IV. CONCLUSION.

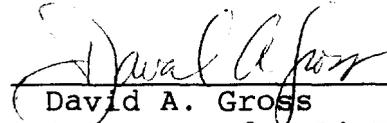
For the foregoing reasons, AirTouch Communications respectfully requests that the Commission deny NCRA's Request for access to the confidential portions of the CPUC Petition.

Dated: September 29, 1994.

AIRTOUCH COMMUNICATIONS  
David A. Gross  
Kathleen Q. Abernathy  
1818 N Street, N.W.  
8TH Floor  
Washington, D.C. 20036  
(202) 293-3800

PILLSBURY MADISON & SUTRO  
Mary B. Cranston  
Megan Waters Pierson  
P.O. Box 7880  
San Francisco, CA 94120-7880  
(415) 983-1000

By



David A. Gross  
Attorneys for AirTouch  
Communications

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18(...continued)  
known only to the agency.") Similarly, Abbott Laboratories v. Young, 691 F. Supp. 462, 467 (D.D.C. 1988) is inapposite. In that case the court merely found that it was proper for the FDA to rely on an expert opinion without affording a party the opportunity to comment.

AUG 09 1994

CRANSTON

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 Own Motion into Mobile Telephone ) I.93-12-007  
 Service and Wireless Communications. )  
 \_\_\_\_\_ )

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING  
 MOTION FOR MODIFICATION OF JULY 19, 1994 RULING**

Administrative Law Judge (ALJ) ruling of July 19, 1994 granted the motions, in part, for confidential treatment of data submitted by certain cellular carriers (respondents)<sup>1</sup> in response to ALJ data requests in this proceeding. The ruling directed respondents to provide the confidential data to the Cellular Resellers Association (CRA) under a nondisclosure agreement.

On July 26 and 27, 1994, additional motions were filed by certain of the respondents requesting modification or clarification of the July 19 ALJ ruling. Still concerned over publicly disclosing certain data which the July 19 ruling deemed to be nonconfidential, certain respondents redacted the information described in Categories 1(b)(1), (2), and (3) on page 6 of the ruling from the copy provided to CRA. Categories 1(b)(1) and (2) concern data on the number of aggregate subscribers on each carrier's discount plans and basic rate plans, respectively. Category 1(b)(3) concern the number of aggregate subscribers of the company in total, broken down between wholesale and retail service.

The July 19 ruling designated this data nonconfidential since it disclosed only aggregate subscriber numbers, but not customer numbers on any single discount plan. Thus, competitors

<sup>1</sup> Respondents filing separate motions include AirTouch Cellular (AirTouch), Bay Area Cellular Telephone Company (BACTC) McCaw Cellular Communications (McCaw), and US West Cellular (US West). Respondents filing joint include GTE Mobilenet (GTE), Fresno MSA, Contel Cellular, and California RSA No. 4.

would not be able to learn which particular discount plan(s) were more popular with subscribers with the intent of emulating them for competitive advantage. In lieu of disclosing this information, the respondents filed motions for modification of the ruling. The procedure for filing the motions was approved by the ALJ by phone call with certain carriers' representatives prior to the motions being filed.

On July 29, an interim ruling was issued temporarily staying the portions of the July 19 ruling for which respondents sought reconsideration, pending an opportunity for comment by other parties by August 3, 1994. The July 19 ruling also directed public disclosure of the percentages--as opposed to specific numbers of customers--applicable to the various categories of data cited in parties' motions. This ruling grants the motions of the respondents for reconsideration, as noted below.

#### Positions of Partics

Respondents request that the Commission treat the information in categories 1(b)(1), (2), and (3) of the July 19 ruling as confidential, and that the ruling be revised accordingly. Respondents argue that if this data is not kept confidential, competitors will have sufficient information to fully and accurately calculate the market share of the respondent providing the data, and use such information to the competitive harm of the party providing the data.

Although the July 19 ruling provided for only the number of aggregate subscribers to be publicly disclosed, respondents contend that even the types of aggregate data called for by the ALJ ruling are of so specific as to render them very valuable to competitors who could use them to analyze the carrier's business operations. Disclosure of such information to competitors would allow them to tailor their marketing plans in response to the carrier's subscribership pattern. A competitor may also structure an advertising sales message claiming superiority over the carrier

based on total subscribers or number of subscribers by a specific customer segment or growth rate of total subscribers.

On August 3, two parties, Cellular Carriers' Association of California (CCAC) and CRA filed responses to the July 26/27 motions. CCAC supports respondents' motions. CCAC contends that any inadequate showing of competitive harm in the initial motions has since been remedied by the justifications provided in the motions for modification. According to CCAC, "imminent and direct harm" would result from disclosure of the disputed customer information to competitors who could then use it to tailor their own discount plans and marketing strategies accordingly. CCAC asserts that no competitor should be compelled to divulge to its competition what amounts to a blue print of its subscriber area strengths and weaknesses. CCAC also disputes that public disclosure of the disputed data promotes a "fully open regulatory process" since only cellular carriers--and not other wireless service providers--are being compelled to disclose sensitive data. CCAC submits that it is unfair to require such disclosure from some providers and not others, and that compelling such disclosure will compromise the healthy competition which the Commission seeks to foster.

CRA opposes the motions for modification of the July 19 ALJ ruling, and argues that there has been no showing of "imminent and direct harm of major consequence" from disclosure of the data. CRA observes that not all the carriers have objected to provide the requested data in aggregate form. For example, California RSA #2 provided the data to CRA without complaint. Likewise, Los Angeles Cellular Telephone Company (LACTC) did not object to providing the noted data. CRA also disputes, in particular, US West's claims of competitive harm, noting that US West has announced a joint venture with its San Diego duopoly competitor, AirTouch. CRA also contends that mere knowledge of aggregated subscriber information would not be usable by competitors to gain any advantage over carrier making

the disclosure since the subscriber would not know which plans subscribers are utilizing.

Discussion

As stated in the earlier July 19 ruling, the standard for ruling on parties' motions for confidential treatment is whether public disclosure would cause "imminent and direct harm of major consequence." The risk of such harm is to be balanced with "the public interest of having an open and credible regulatory process." (In Re Pacific Bell 20 CAL PUC 237, 252). Examples of information considered to cause such harm includes customer lists, prospective marketing strategies, and true trade secrets.

It is concluded that based on the additional explanation presented by respondents, in their motions of July 26/27, the data referenced in categories 1(b)(1), (2), and (3) of the July 19, 1994 ALJ ruling should be restricted from public disclosure and treated confidentially. Parties may still obtain access to this confidential data, but only through execution of an appropriate nondisclosure agreement.

As explained by the July 26/27 motions, however, the problem of significant competitive harm is not eliminated merely by requiring the data to be disclosed in the aggregate. Even though in aggregate form, the disclosure of absolute numbers would still reveal the relative market shares of each respondent in each of the service areas identified in the original ALJ data request. Knowledge of market share could be used by a competitor to structure an advertising message claiming superiority over the carrier, based on total subscribers. If a competitor knew a carrier's specific number of subscribers by market area applicable to the various categories referenced in the July 19 ruling, it could assess the carrier's strengths and weaknesses and adjust its marketing strategy accordingly.

The only party to file an objection to respondents' motions was CRA. As one reason for its objection, CRA cites the

fact that at least two carriers, California RSA #2, Inc. and LACTC did not object to providing the data on aggregate numbers of customers. The willingness of these carriers to publicly disclose the data for their own operations does not, of itself, prove that similar disclosure by other carriers would not cause them competitive harm. The basis for deciding the motions at issue are the claims of competitive harm that would result for those carriers who did file motions. There is no basis to speculate regarding why other carriers chose for whatever reason not to object to releasing various forms of data. On this basis of the filed motions, the carriers have provided adequate justification.

CRA also cites the announcement of a joint venture between US West and its only duopoly competitor, AirTouch as additional evidence justifying public disclosure of the data. According to CRA, US West's position amounts to nothing less than AirTouch can have this competitive information, but the public or any other competitor cannot. Thus, CRA appears to concede that the information has competitive value, but seeks to have it publicly disclosed anyway so all prospective competitors can have equal opportunity to competitively benefit from the information, not just AirTouch. By advancing this argument, CRA actually lends credence to carriers' arguments that the data does, in fact, have commercially sensitive value to competitors. The fact that US West voluntarily decides to share certain data with AirTouch in connection with a joint venture is its proprietary right. It does not follow that US West should be required to disclose commercially sensitive data to other competitors with whom it has no joint venture interests.

As a final argument, CRA claims that since the data would only disclose aggregated numbers, it cannot be construed to be a "trade secret." Since the aggregated data would not disclose which billing plans a subscriber utilized, CRA argues that a competitor would not be able to use the data for competitive gain.

Yet, the additional arguments presented by the carriers show that there is an economic value in knowledge of the aggregate number of subscribers to the extent it indicates a carrier's market share in particular market areas and total number of subscribers on discount plans in given market areas. Such information can be reasonably classified as "trade secrets." As defined under the Uniform Trade Secrets Act, codified in the California Civil Code, § 3426 et seq., a "trade secret" is:

"information . . . that derives independent economic value, actual or potential, from not being generally known to the public . . . and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Accordingly, to the extent the information on numbers of subscribers has significant economic value to competitors, it can properly be considered as "trade secrets" under the Uniform Trade Secrets Act. In the interests of promoting a more competitive market, carriers should be allowed to protect the confidentiality of such competitively sensitive information.

**Procedures for Third-Party Access  
to Carriers' Data Responses**

In its motion, BACTC also requests that the Commission clarify the procedure to be followed for making non-confidential data available to the public while preserving the confidentiality of information deemed proprietary under General Order (GO) 66-C. BACTC notes that although the ALJ ruling establishes a procedure to provide the publicly available information in the data request to CRA, no procedure was explained whereby the non-confidential data is to be made available to other parties. BACTC proposes that all data produced in response to the ALJ rulings of April 11, 1994 and April 22, 1994 be physically segregated from the public documents in the formal proceeding files. BACTC also proposes that parties go through the respective carriers to request access to the data responses.

No other party commented on BACTC's proposal as to procedures for Commission custody of the data, and third-party access. BACTC's request for clarification of procedures for providing data to third parties is addressed in the ruling below.

**IT IS RULED** that:

1. The motions of the respondents to modify the July 19, 1994 ruling are granted with respect to the confidentiality of information designated as categories 1(b)(1) (2), and (3) in the July 19 ruling as described above.

2. The July 19, 1994 ruling is revised as follows: The information on aggregate numbers of subscribers indicated in categories 1(b)(1), (2), and (3) of the ruling shall be subject to the confidentiality provisions of GO 66-C and Public Utilities Code § 583, applicable to those respondents filing motions for reconsideration.

3. This confidential information shall be provided to CRA pursuant to the nondisclosure agreement as explained in the July 19 ruling.

4. Any party, other than CRA, interested in obtaining a copy of the redacted version of the data responses provided by the carriers in this proceeding shall directly contact the respective carriers to obtain such copies, not Commission staff.

5. The carriers shall promptly provide to any party who makes a specific request, a copy of all redacted data responses produced by carriers in this proceeding.

6. Any party, other than CRA, interested in obtaining a copy of the unredacted confidential version of the data responses provided by the carriers in this proceeding shall do so by contacting the respective carriers and executing a nondisclosure agreement as prescribed in the July 19 ruling. Confidential copies shall not be available through the Commission.

Dated August 8, 1994, at San Francisco, California.

/s/ THOMAS R. PULSIFER  
Thomas R. Pulsifer  
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion for Modification of July 19, 1994 Ruling on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 1994, at San Francisco, California.

/s/ GABRIELLE NGUYEN  
Gabrielle Nguyen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number of the service list on which your name appears.

CERTIFICATE OF SERVICE

I, Tina L. Murray, do hereby certify that I have on this 29th day of September, 1994, caused to be forwarded a copy of the foregoing Opposition of AirTouch Communications to Request of the National Cellular Resellers Association For Access to California Petition For State Regulatory Authority Pursuant to the Terms of A Protective Order by first class United States mail, postage prepaid, to the following:

Ellen S. LeVine  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Joel H. Levy  
Cohn and Marks  
Suite 600  
1333 New Hampshire Ave., NW  
Washington, DC 20036

Adam Anderson, Esq.  
Senior Counsel  
Bay Area Cellular Telephone Co.  
651 Gateway Boulevard, Ste. 1500  
South San Francisco, CA 94080

Leonard J. Kennedy  
Dow, Lohnes & Albertso  
1255 23rd Street, N.W.  
Washington, D.C. 20037

Michael Shames  
1717 Kettner Blvd., Suite 105  
San Diego, CA 92101

Howard J. Symons  
Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C.  
Suite 900  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004