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BEFORE THE

Federal Communications Commission

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WASHINGTON, D. C. 20554

SEP 29 1994

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 )  
 Requesting Authority to )  
 Regulate Rates Associated )  
 with the Provision of Cellular )  
 Service within the State )  
of California )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

PR Docket No. 94-105

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**OPPOSITION OF GTE SERVICE CORPORATION, ON BEHALF OF  
 ITS TELEPHONE AND PERSONAL COMMUNICATIONS COMPANIES,  
 TO THE REQUEST FOR ACCESS TO CALIFORNIA PETITION FOR  
 STATE REGULATORY AUTHORITY PURSUANT TO THE TERMS OF  
 A PROTECTIVE ORDER, SUBMITTED BY THE NATIONAL  
 CELLULAR RESELLERS ASSOCIATION**

GTE Service Corporation ("GTE"), on behalf of its Telephone and Personal Communications Companies, through counsel and pursuant to Section 1.45 of the Commission's Rules, respectfully submits this Opposition to the Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order ("Request"), submitted by the National Cellular Resellers Association ("NCRA").

GTE, through its affiliates GTE Mobilnet Incorporated and Contel Cellular Inc., has extensive cellular interests within the State of California and is therefore directly and adversely affected by the Request of NCRA because it seeks the disclosure of highly sensitive and proprietary information which the Public Utilities Commission of the State of California ("CPUC"), in Orders dated July 19, 1994 and August 8, 1994 has declared confidential

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(See I.93-12-007).

On August 9, 1994, the CPUC filed with the Commission a Petition to Retain Regulatory Authority over Intrastate Cellular Service Rates, with Appendices and a copy filed under seal, containing information covered by a Request for Proprietary Treatment of Documents Used in Support of California Petition. On August 12, 1994, by Public Notice, the Commission announced the filing of the CPUC's petition; it has provided only the redacted version to the public. On September 13, 1994, the CPUC filed with the Commission portions of its Petition containing previously redacted information which, according to the CPUC, had been previously publicly available.<sup>1</sup> On September 19, 1994, NCRA filed its Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order. For the reasons discussed below, this Request should be dismissed or denied.

**I. NCRA Failed to Meet the Requirements of Section 0.461 of the Commission's Rules.**

NCRA's Request asks the Commission to reveal information which was treated as confidential by both the CPUC and the Commission. As such, NCRA was required to comply with Section 0.461 of the Commissions Rules. Section 0.461, for "[r]equests for inspection

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<sup>1</sup> GTE just recently received the September 13, 1994 filing and at this point expresses no opinion as to the appropriateness of the CPUC's action. However, to the extent information was disclosed, a question arises as to whether NCRA's informational needs have been met.

of materials not routinely available for public inspection," states that persons seeking such information ". . . shall file a request for inspection meeting the requirements of this section." NCRA has failed, in virtually every way, to comply with the requirements set forth in that Section, and therefore NCRA's Request cannot be classified as a FOIA Request. On this basis alone, NCRA's Request should be dismissed.

Two of NCRA's failures to comply with Section 0.461 will be highlighted. First, NCRA did not caption its Request "Freedom of Information Act Request," as required by Subsection 0.461(b)(1). In fact, NCRA does not mention the Freedom of Information Act anywhere in its Request.

Second, NCRA did not deliver its Request to the Managing Director (See Section 0.11), as required by Subsection 0.461(c). The importance of this failure is clarified by a review of Subsections 0.461(e) and (d) of the Rules. Subsection 0.461(e) explains that "[w]hen the request is received by the Managing Director, it will be assigned to the Freedom of Information Act (FOIA) Control Office, where it will be date-stamped and assigned to the custodian of the records [who, as 0.461(d)(1) points out, is the "Chief of the appropriate Bureau or Office"]." It is the custodian of records who acts upon the request. Hence, NCRA has not filed its Request in the appropriate manner for the Bureau to act on a FOIA request. For these reasons, NCRA's Request is procedurally deficient and should be dismissed.

**II. NCRA has Requested an Extraordinary Remedy and has Failed to Provide a Sufficient Rationale.**

**A. NCRA has Requested the Disclosure of Highly Proprietary Information.**

In its Orders dated July 19, 1994 and August 8, 1994, the CPUC found much of the information NCRA requests to be confidential. In recognition of the confidential nature of the information, the CPUC has submitted its Comment in redacted form. Thus, the CPUC took steps necessary to ensure the information is kept confidential. GTE concurs with the CPUC's assessment that this information is confidential and proprietary. The information is clearly proprietary as it concerns capacity, utilization, and subscriber information of each of GTE's California cellular systems by rate plan. The adverse impact to GTE of the disclosure of this information would be overwhelming. Additionally, the adverse impact to cellular competition in California would be significant as competitors would gain access to sensitive carrier specific information.

**B. NCRA's Request Does Not Provide a Sufficient Rationale.**

NCRA has presented no compelling reason for the disclosure of this confidential and highly sensitive information.<sup>2</sup> NCRA's mere recitation of the goals of Section 332 of the Communications Act, without even acknowledging that the sought information is highly

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<sup>2</sup> Subsection 0.461(f)(4) provides, ". . . the considerations favoring disclosure and non-disclosure will be weighed in the light of the facts presented . . ." NCRA has presented very little in the way of facts.

proprietary, constitutes little more than a bare request for the information. If this were a sufficient rationale, then all rights to confidentiality would vanish from the law as all information, regardless of its sensitive and potentially damaging nature, would be subject to disclosure upon any party's saying "please."

Further, NCRA waited to file its Request until after it had filed its Comment on the CPUC's petition. If NCRA felt this information was essential to respond to the CPUC's Petition, it should have filed an appropriate FOIA request immediately. Instead, NCRA chose to file its Comment and then seek the redacted information.<sup>3</sup> None of the other numerous commenting parties was precluded from filing a Comment in this proceeding by the nondisclosure of the information. Thus, the record is extensive.

Granting the extraordinary relief NCRA seeks would give it an inappropriate second "bite at the apple." This would be unfair to the other Commentors, disrupt the Comment cycle, and should not be countenanced by the Commission.

C. Granting NCRA's Request Would Further Attenuate the Process and Endanger the Commission's Ability to Meet its Statutory Deadline.

The Omnibus Budget Reconciliation Act of 1993 has imposed upon the Commission a tight twelve-month deadline in which to resolve all states' petitions to retain their regulatory authority over

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<sup>3</sup> The very act of NCRA's filing a Comment refutes the contention contained in its Request that disclosure of the confidential information was necessary to comment in the proceeding.

cellular service rates. Recently, the Commission only reluctantly extended the deadline for filing Reply Comments in response to the CPUC's Petition and related pleadings until October 19, 1994. Order Extending Time and Permitting Replies to Revised Petition, ("Order") PR Docket No. 94-105, released September 26, 1994. The Commission recognized that "[t]he record in this proceeding is voluminous, and the issues . . . are intricate," but was concerned that it ". . . is faced with stringent statutory deadlines in a complex and massive proceeding." Order, 2. While the CPUC had requested a forty-five day extension of time, the Commission found that "[g]ranted an extension as long as California requests could impair the Commission's ability to comply with the statutory deadlines." Order, 2. The Commission therefore reduced the requested extension to fifteen days.

NCRA's Request has much greater dilatory potential than even the month-and-a-half extension that the CPUC requested. Equity and administrative law would require that the Commission afford all parties the opportunity to view the material if it affords it to one party. Further, parties would insist upon their right to file Supplemental Comments before any Reply Comments were filed. Thus, a grant of this Request would significantly lengthen the Comment/Reply cycle and endanger the Commission's ability to meet its statutory deadline. For this reason, NCRA's Request should be denied.

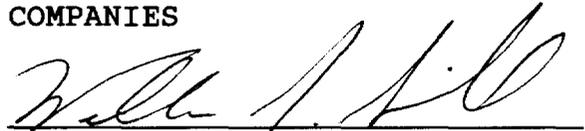
### III. Conclusion

NCRA has submitted a procedurally flawed, unsupported Request for the disclosure of confidential information, the release of which would have significantly adverse direct consequences for GTE, other parties to this matter, and to the cellular marketplace. Further, this Request gives NCRA an improper second opportunity to comment and will endanger the Commission's ability to fulfill its Congressionally mandated deadline.

To justify such upheaval, NCRA has cavalierly stated that the public has a right to know. In light of the compelling reasons why this information **should not** be disclosed, NCRA was compelled to offer important documented reasons for its Request. It has not. For the forgoing reasons, NCRA's Request should be dismissed or denied.

Respectfully submitted,

GTE SERVICE CORPORATION  
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September 29, 1994

CERTIFICATE OF SERVICE

I, R. Bradley Koerner, do hereby certify that true copies of the foregoing "Opposition of GTE Service Corporation, On Behalf Of Its Telephone And Personal Communications Companies, To The Request For Access To California Petition For State Regulatory Authority Pursuant To The Terms Of A Protective Order, Submitted By The National Cellular Resellers Association" were sent this 29th day of September, 1994, by first-class United States mail, postage prepaid, to the following:

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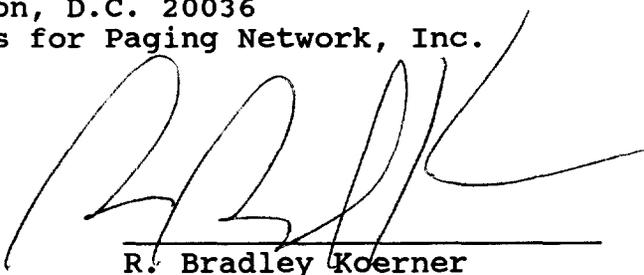
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