

determine whether the request is justified regarding some or all of the materials, and will expeditiously announce that determination in a Public Notice specifying the scope of materials to be covered by the Protective Order attached as Appendix A.¹¹⁶ This protective order was carefully crafted based on our precedent and with input from parties after notice of the provisions to all parties in the PR Docket No. 94-105 proceeding, whose interests reflect those of parties in the other state proceedings, and the terms of this protective order will be adopted to govern treatment of confidential materials submitted by the other states.¹¹⁷

42. Parties in PR Docket Nos. 94-105, 94-103, 94-106, and 94-108 who elect to inspect unredacted materials submitted by the States of Connecticut, Hawaii or New York shall execute and comply with the protective order attached as Appendix A (Appendix B for Connecticut), and with the provisions of this Order, and shall file comments on those pleadings no later than February 9, 1995, and the States of California, Connecticut, Hawaii and New York shall file their reply comments no later than February 15, 1995.

V. Ordering Clauses

California

43. Accordingly, pursuant to 0.459(d) of the Commission's Rules, IT IS ORDERED that the request for proprietary treatment filed by the Public Utilities Commission for the State of California IS GRANTED IN PART and IS DENIED IN PART as described in paragraphs 25-34.

44. IT IS FURTHER ORDERED that the Public Utilities Commission for the State of California SHALL FILE no later than January 27, 1995, for inclusion in the record of PR Docket No. 94-105, separate redacted (public) and unredacted (sealed) versions of its Petition and related Appendices. The newly filed public version of the Petition and Appendices shall include all material that we refer to as Group A data, excepting Group A data that pertains to carriers other than AirTouch, BellSouth, L.A. Cellular, GTE, and McCaw. The newly filed sealed version of the Petition and Appendices shall include all material that we refer to as Group A data, pertaining to all carriers, as well as all material that we refer to as Group B data. The materials that we refer to as Group C materials, however, shall be redacted from both the newly filed public version and the newly filed sealed version of the Petition and Appendices.

¹¹⁶ We expect to complete that assessment in time to adhere to the comment and reply dates established in para. 42, and consequently will regard requests for extension of time from Hawaii or New York with disfavor.

¹¹⁷ As noted *supra*, we held a public meeting on Sept. 30, 1994, with notice to all parties and participation in person and by telephone by most parties. See also Public Notice, DA No. 94-1083, *supra* note 72.

45. Parties to PR Docket No. 94-105 who seek to inspect the newly filed unredacted version of the California petition and related Appendices may obtain those documents by filing an executed copy of the Protective Order attached to this Order as Appendix A with the Secretary of this Commission. For this purpose, Confidential Information shall consist of those materials described in paragraph 34.

46. IT IS FURTHER ORDERED that, if the Public Utilities Commission for the State of California chooses to re-file the so-called AG Excerpts in accordance with Section 20.13 of the Commission's Rules, as described above in paragraph 33, it SHALL FILE SUCH REVISED SUBMISSIONS, accompanied by a request for confidential treatment, no later than January 30, 1995.

47. IT IS FURTHER ORDERED that parties in PR Docket No. 94-105 who elect to inspect confidential Group A or Group B materials submitted by the California Public Utilities Commission SHALL FILE comments on those materials no later than February 9, 1995, and that reply comments SHALL BE FILED no later than February 15, 1995.

48. IT IS FURTHER ORDERED that, if CTIA or AirTouch chooses to file information underlying the affidavit of economist Jerry Hausman, one or both parties SHALL FILE SUCH SUBMISSIONS, accompanied by any request for confidential treatment, no later than January 30, 1995.

49. IT IS FURTHER ORDERED that parties in PR Docket No. 94-105 who elect to inspect any information, submitted by CTIA and/or AirTouch, that supported the affidavit of economist Jerry Hausman, SHALL FILE comments on those materials no later than February 9, 1995, and that reply comments SHALL BE FILED no later than February 15, 1995.

50. IT IS FURTHER ORDERED, pursuant to delegated authority, that the Emergency Motion to Compel Production to the California Public Utilities Commission of Information Contained in Oppositions to California's Petition to Retain State Regulatory Authority over Intrastate Cellular Services Rates, filed by the California Public Utilities Commission and the People of the State of California and the Motion by California to Strike Affidavit and Testimony of Jerry A. Hausman Appended to and Discussed in the Opposition of CTIA ARE DENIED AS MOOT AS INDICATED HEREIN, and the Motion to Reject Petition or, Alternatively, Reject Redacted Information, filed by the Cellular Carriers Association of California, IS GRANTED IN PART AND DENIED IN PART.

Hawaii and New York

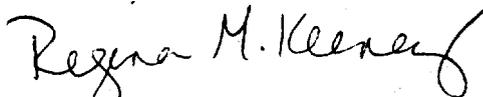
51. IT IS FURTHER ORDERED that the States of Hawaii and New York MAY SUBMIT SUPPLEMENTAL MATERIALS, accompanied by a request for confidential treatment under Section 0.459 of the Rules, 47 C.F.R. § 0.459, no later than January 30, 1995.

52. **IT IS FURTHER ORDERED** that parties in PR Docket Nos. 94-103, 94-106, and 94-108 who elect to inspect unredacted materials submitted by the States of Connecticut, Hawaii or New York **SHALL FILE** comments on those pleadings no later than February 9, 1995, and that reply comments **SHALL BE FILED** no later than February 15, 1995.

53. This Order is issued under delegated authority and, in order to meet the statutory deadline set forth in Section 332(c)(3)(B) of the Communications Act, 47 U.S.C. 332(c)(3)(B), is effective upon adoption. California may, within 5 working days, file an application for review by the Commission of the partial denial of California's request for confidentiality. 47 C.F.R. § 0.459(g).

54. This Order will be served upon release by electronic facsimile upon the states of California, Connecticut, Hawaii, and New York, and upon CTIA and AirTouch, to permit them to file or re-submit supplemental materials and an accompanying request for confidential treatment, in accordance with the time frames established herein.

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney
Chief, Wireless Telecommunications Bureau

Attachments

APPENDIX A

PROTECTIVE ORDER AND DECLARATION

1. For purposes of this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4), as well as [any additional types of confidential information].

2. Confidential Information submitted herein by the [State -- full name] ([State -- short form name]) shall be segregated from all material filed and deemed non-confidential as generally set forth in the pleadings filed publicly by [State] on [date], and subsequent revisions filed on [date], in PR Docket No. 94-[] (Proceeding). Confidential Information, thus segregated, shall consist of materials specified by the Commission in its Order, DA 94-111 (Jan. 25, 1995) or any subsequent actions in these proceedings.

3. Confidential Information may be disclosed, directly or indirectly, only to:

a. Counsel for the Parties to this Proceeding (Parties) and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding, provided that such persons are not representing or advising or otherwise assisting providers of [State] commercial mobile radio services in devising marketing plans to compete against [State] carriers that are Parties to this Proceeding;

b. Specified persons, including employees of the Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in

connection with PR Docket No. 94-[], excluding those persons who are directly or indirectly involved in or have direct or indirect supervisory responsibilities over the development of marketing plans for [State] commercial mobile radio services providers to compete against [State] cellular carriers that are parties to this Proceeding; or

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

4. Counsel may request that the Commission provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than two additional copies but only to the extent required and solely for the preparation and use in this proceeding, and provided further, that all copies of the Confidential Information shall remain in the care and control of counsel at all times and shall not pass to any other persons. Following the filing of Further Comments on _____, 1995, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with PR Docket No. 94-[] in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of PR Docket No. 94-[] all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under this Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), and shall not be used for competitive business purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

6. a. Before obtaining access to Confidential Information, counsel must apply for access to such materials by executing the attached Declaration.

b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of paragraph 3 of this Order only after advising such persons of the terms and obligations of this Order and obtaining such person's written consent to be bound by its terms, except that written consent need not be obtained from paralegals and clerical staff.

c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to California and/or the other Parties, the name and affiliation of each person other than counsel to whom disclosure is made or to whom actual physical control over the documents is provided, by the deadline prescribed by the Commission for filing comments on the Confidential Information, or within three (3) business days after the disclosure if such disclosure occurs after the deadline for filing such comments. To the extent that any name is not disclosed to [State], that fact shall be disclosed to the FCC and [State].

7. Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleading;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order; and

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential information included pursuant to Protective Order, PR Docket No. 94-[]."

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and [State], and one and only one copy shall be served upon those individuals who have signed the attached Declaration, and such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File, unless the Commission directs otherwise (with notice to the Party that filed the pleading and an opportunity to comment on such proposed disclosure). The Parties shall provide courtesy copies to the Legal Advisor to the Wireless Telecommunications Bureau Chief and to the Chief, Policy Division, Wireless Telecommunications Bureau, who will ensure that copies are distributed to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by [State] or any other Party in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of [State] to apply for additional or different protection where it is deemed necessary or to the rights of the Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way precludes the Commission from disclosing any information where the public interest so requires.

DECLARATION

PR DOCKET | 94- |

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Wireless Telecommunications Bureau in Federal Communications Commission proceeding PR Docket No. 94-| |, and that I agree that I will be bound by its terms pertaining to the confidentiality of Confidential Information and that I am not involved in devising marketing plans for any of the Parties.

APPENDIX B

FEDERAL COMMUNICATIONS COMMISSION

PR DOCKET NO. 94-106

PROTECTIVE ORDER (CONNECTICUT)

WHEREAS Springwich Cellular Limited Partnership ("Springwich") and Metro Mobile CTS of Fairfield County, Inc., Metro Mobile CTS of Hartford, Inc., Metro Mobile CTS of New Haven, Inc., Metro Mobile CTS of New London, Inc., Metro Mobile CTS of Windham, Inc. (collectively "Metro Mobile"), and Litchfield County Cellular, Inc. ("Litchfield") are providing certain information, namely interrogatory responses and late filed exhibits, which would in the opinion of Springwich, Metro Mobile, and Litchfield result in the disclosure of confidential and proprietary information, and which information Springwich, Metro Mobile, and Litchfield contend constitutes trade secrets.

NOW THEREFORE, IT IS HEREBY ORDERED that the following procedure be adopted for the protection of said interrogatory responses and late filed exhibits by or from Springwich, Metro Mobile, and Litchfield:

1. Any and all information provided by Springwich, whether in documentary form or otherwise, identified as follows: Attachment A to TE-3, Attachment A to TE-5, and Attachment A to TE-6, and any and all information requested on or after the hearings commenced in this proceeding on May 12, 1994, and which the Department has or may in the future require Springwich to provide on a protected basis, including but not limited to Springwich's responses to late-filed requests number 2, 3, 4, 5, 7 and 9 (portions), shall be governed by the terms of this Order (hereafter, together with the information provided hereunder by Metro Mobile and Litchfield, the "Confidential Information"). This Order is applicable to all such "Confidential Information, whether in the form of documents, data, testimony, studies, or otherwise, and applies also to any material in the form of documents, data, testimony, studies, or otherwise which may be created for purposes of this proceeding by Recipients, as defined below, based upon or by reference to the Confidential Information.

2. Any and all information provided by Metro Mobile, whether in documentary form or otherwise, identified as follows: TE-3 and TE-6, and any and all information requested on or after the hearings commenced in this proceeding on May 12, 1994 and which the Department has or may in the future require Metro Mobile to provide on a protected basis, shall be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies, or

otherwise, and applies also to any material in the form of documents, data, testimony, studies, or otherwise which may be created for purposes of this proceeding by Recipients, as defined below, based upon or by reference to the Confidential Information.

3. Any and all information provided by Litchfield, whether in documentary form or otherwise, identified as follows: TE-3, and TE-6 and any and all information requested on or after the hearings commenced in this proceeding on May 12, 1994 and which the Department has or may in the future require Litchfield to provide on a protected basis, shall be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies, or otherwise and applies also to any material in the form of documents, data, testimony, studies, or otherwise which may be created for purposes of this proceeding by Recipients, as defined below, based upon or by reference to the Confidential Information.

4. All Confidential Information made available pursuant to this Order shall be given solely to the Federal Communications Commission ("Commission") and any member of its staff. Such Confidential Information shall also be provided, subject to the terms of this Order, to the following Recipients: the Office of Consumer Counsel, and any member of its staff; the Attorney General, and any member of his staff; Jean L. Kiddo and Shelley L. Spencer (as outside counsel to Springwich) of Swidler & Berlin, Chtd; Robert P. Knickerbocker (as outside counsel to Metro Mobile) of Day, Berry & Howard; Thomas Ryan (as outside counsel to Escotel Cellular, Inc., The Phone Extension, Inc., and Esco PCN Telecommunications, Inc.); Paul E. Knag (as outside counsel to the Connecticut Resellers Coalition) of Cummings and Lockwood; Charles W. King (as outside expert witness for the Connecticut Resellers Coalition) of Snavely & King; and Jerry A. Hausman (as outside expert witness for Metro Mobile and, for purposes of this Order, as outside expert for Springwich) of the Massachusetts Institute of Technology; and to such individuals at their respective firms or other independent outside experts retained by any admitted party or intervenor herein as may also execute a copy of this Order and submit such executed copy to the Department, with a copy to counsel for Springwich, Metro Mobile and to Litchfield. Confidential Information may not be provided or disclosed in any manner by the Commission or any Recipient to any individual with operational responsibilities at any party or intervenor or to anyone else whatsoever except those designated as permissible Recipients hereunder.

5. Confidential Information will be plainly marked as such and delivered in sealed envelopes to William F. Caton, Secretary, Federal Communications Commission, for filing under seal, and to the other recipients. Confidential Information so provided shall be

maintained by the Commission and Recipients in sealed envelopes or containers and a statement in the following form placed on such envelope or container:

**THIS ENVELOPE IS NOT TO BE OPENED
NOR THE CONTENTS THEREOF TO BE
DISPLAYED OR REVEALED EXCEPT PURSUANT
TO THE PROTECTIVE ORDER ISSUED IN
PR DOCKET NO. 94-106.**

6. The Commission and all Recipients shall be bound by the terms of this Order.

7. In the event the Confidential Information is to be used in any manner in this proceeding before the Commission, such proceeding or hearing shall not be held before, nor any record of it made available to, any party, intervenor, or any other person or entity other than under seal issued hereunder. Present at such proceeding or hearing shall be the Recipients, as well as counsel and representatives of Springwiche where Confidential Information provided by Springwiche is used, counsel and representatives of Metro Mobile where Confidential Information provided by Metro Mobile is used, and by counsel and representatives of Litchfield where Confidential Information provided by Litchfield is used; provided, however, that outside counsel of Springwiche, Metro Mobile, and Litchfield may participate in all such proceedings or hearings. No record shall be disclosed or communication made at any time to any person or entity other than as specified in this Order, except by Commission decision explicitly providing affected parties the opportunity for prior judicial review.

8. Any reference to Confidential Information in briefs in this proceeding shall be by separate supplemental or unredacted briefs, which supplemental or unredacted briefs shall be plainly marked to identify the contents as Confidential Information, shall be separately filed with the Commission in plainly marked sealed envelopes, shall be distributed only to individuals who are permitted access to the Confidential Information pursuant to this Order, and will be retained by the Commission under seal.

9. No copies shall be made of the Confidential Information other than for the Recipients unless expressly ordered by the Commission.

10. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing. Moreover, nothing herein shall be considered a waiver of either party's right to assert at a later date that the material is or is not proprietary or is privileged. A party seeking to change the terms of this Order shall by Motion give the other parties three (3) days prior written notice. No information protected by this Order shall be made public until the Commission rules on any request to change the terms of the Order and such ruling becomes final.

11. Confidential Information otherwise properly discovered, even though also subject to the terms of this Order, shall not be considered protected by this Order.

12. No Recipient shall use or disclose the Confidential Information for purposes of business or competition, or for any other purpose, other than the purpose of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall in good faith take all reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order. To the extent that the Commission determines to use any Confidential Information in findings of fact or otherwise in its decision in this proceeding, it shall do so in an addendum to its decision, and shall maintain such addendum subject to the terms of this Order.

13. Confidential Information made part of the record in this proceeding shall remain in the possession of the Recipients; provided, however, that all Springwich Confidential Information shall be returned to Springwich, all Metro Mobile Confidential Information shall be returned to Metro Mobile, and all Litchfield Confidential Information shall be returned to Litchfield, within 10 days after demand following a final decision of the FCC proceeding described herein, including any appeal therefrom. Confidential Information to be returned shall include all Confidential Information provided by Springwich, Metro Mobile, and Litchfield including any documents, data, testimony, studies, briefs, or materials in any form whatsoever created by Recipients bases upon or by reference to such Confidential Information.

14. Employees of Springwich shall not review or seek to review the Confidential Information provided by Metro Mobile and Litchfield, employees of Metro Mobile shall not review or seek to review the Confidential Information provided by Springwich and Litchfield, and employees of Litchfield shall not review or seek to review the Confidential Information provided by Springwich and Metro Mobile. Provided, however, that Springwich, Metro Mobile, and Litchfield will provide their Confidential Information to the outside counsel of each other.

APPENDIX C

Parties Filing Comments or Replies in PR Docket Nos. 94-103, 94-105, 94-106, 94-108

Hawaii

PR Docket No. 94-103

BellSouth Corp. (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
E.F. Johnson Co. (E.F. Johnson)
GTE Service Corp. (GTE)
Hawaii Public Utilities Commission (Hawaii or HPUC)
McCaw Cellular Communications, Inc. (McCaw)
Mobile Telecommunications Technologies Corp. (MTel)
National Cellular Resellers Association (NCRA)
Nextel Communications, Inc. (Nextel)
Personal Communications Industry Association (PCIA)

California

PR Docket No. 94-105

Airtouch Communications (Airtouch)
American Mobile Telecommunications Association, Inc. (AMTA)
Bakersfield Cellular Telephone Co. (Bakersfield)
Bay Area Cellular Telephone Co. (BACTC)
California Public Utilities Commission (California or CPUC)
Cellular Carriers Association of California (CCAC)
Cellular Resellers Association Inc. (Cellular Resellers or CRA)
Cellular Telecommunications Industry Association (CTIA)
County of Los Angeles (L.A. County)
E.F. Johnson Co. (E.F. Johnson)
GTE Service Corp. (GTE)
Los Angeles Cellular Telephone Co. (L.A. Cellular)
McCaw Cellular Communications, Inc. (McCaw)
Mobile Telecommunication Technologies Corp. (MTel)
National Cellular Resellers Association (NCRA)
Nextel Communications, Inc. (Nextel)
Paging Network, Inc. (Pagenet)
Personal Communications Industry Association (PCIA)
Utility Consumers' Action Network and Towards Utility Rate
Normalization (UCAN/TURN)
US West Cellular of California (US West)
GTE Service Corp. (GTE)

Connecticut

PR Docket No. 94-106

American Mobile Telecommunications Association Inc. (AMTA)
Attorney General of the State of Connecticut (Connecticut Attorney General)
Bell Atlantic Metro Mobile Companies (Bell Atlantic or BAMMC)
Cellular Telecommunications Industry Association (CTIA)
Connecticut Department of Public Utility Control (Connecticut or DPUC)
Connecticut Office of Consumer Counsel (OCC)
Connecticut Telephone and Communication Systems (CTCS)
E.F. Johnson Co. (E.F. Johnson)
GTE Service Corporation (GTE)
McCaw Cellular Communications, Inc. (McCaw)
Mobile Telecommunication Technologies Corp. (MTel)
National Cellular Resellers Association (NCRA)
Nextel Communications, Inc. (Nextel)
Paging Network, Inc. (PageNet)
Personal Communications Industry Association (PCIA)
Springwich Cellular Limited Partnership (Springwich)

New York

PR Docket 94-108

Cellular Telecommunications Industry Association (CTIA)
Contel Cellular (Contel)
E.F. Johnson Co. (E.F. Johnson)
McCaw Cellular Communications Inc. (McCaw)
Mobile Telecommunications Technologies Corp. (MTel)
National Cellular Resellers Association (NCRA)
New York Public Service Commission (New York or NYPSC)
Nextel Communications (Nextel)
NYNEX Mobile Communications Co. (NYNEX)
Personal Communications Industry Association (PCIA)
Southwestern Bell Mobile Systems, Inc. (Southwestern Bell)
Vanguard Cellular Systems, Inc. (Vanguard)