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Decision 91-03-022 March 13, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Joint Application of GTE Corporation and Contel Corporation. | ) ) ) ) | Application 90-09-043 (Filed September 24, 1990) |

# OPINION

## I. Introduction and Summary

In this proceeding GTE Corporation (GTE) and Contel Corporation (Contel), collectively the "Joint Applicants", seek the Commission's approval of a transaction in which GTE's wholly owned subsidiary, GTE Exchange Corporation, will be merged into Contel. Contel, the surviving corporation, will thus become a wholly owned subsidiary of GTE, and GTE will indirectly acquire control of Contel's regulated subsidiaries, including those which are doing business in California. Approval of the merger by this Commission as well as various other state and federal agencies is a condition of closing of the merger transaction under the terms of the Merger Agreement and Plan of Reorganization dated August 7, 1990 (Merger Agreement) between the Joint Applicants.

The Commission received formal protests to the Joint Application from the California Attorney General (the AG); the Commission's Division of Ratepayer Advocates (DRA); the California Cable Telephone Association (CCTA); and the California Payphone Association (CPA). No evidentiary hearings have been held to date, although there have been three prehearing conferences in which the issues were discussed at some length by all parties.

This interim decision disposes of two pending motions. In the first motion ("the DRA Motion") the Joint Applicants and DRA have jointly requested an order which would bifurcate the proceeding. GTE would immediately be authorized to acquire

control of the regulated California subsidiaries of Contel by merging with GTE Exchange Corporation. The determination whether the merged entity may retain control of these subsidiaries would be deferred until a later phase of the proceeding. The Commission would conduct the second phase as a full evidentiary proceeding under § 854 of the Public Utilities (PU) Code and any other applicable statutes and Commission rules. Pending conclusion of the second phase GTE would be required to keep Contel's regulated California subsidiaries intact and entirely separate from those now owned by GTE and meet certain other conditions designed to preserve the status quo. If the Commission ultimately disapproved the application or imposed conditions of approval that GTE is unwilling to accept, GTE would take certain actions to divest itself of ownership of the affected California subsidiaries.

The second motion requests approval of a settlement ("the CCTA Settlement") under which CCTA would withdraw its protest and its opposition to the DRA Motion in return for certain cost study disclosures and a reassurance that the merged corporate parent and its affiliates will comply with the terms of an unrelated Commission decision. The CCTA Settlement is expressly contingent upon Commission approval.

All remaining opposition to the Joint Application has been withdrawn. CPA and the AG do not oppose either motion. Indeed, the AG indicated its acquiescence in the DRA Motion in a letter dated March 1, 1991, and CPA withdrew its protest to the Joint Application before either motion was filed.

The Commission concludes that GTE's immediate indirect acquisition of Contel's regulated California subsidiaries would not be contrary to the public interest, and that the CCTA Settlement would resolve all of the issues raised by CCTA's protest. Accordingly, both motions are granted.

## II. Discussion

### A. General

GTE is a New York corporation whose principal place of business is Connecticut. It is a multinational corporation with subsidiaries operating in 46 states and 41 countries in three major business groups: telephone operations, telecommunications products and services, and electrical products. GTE Exchange Corporation, a Delaware corporation, is a wholly owned nonutility subsidiary of GTE formed for the purpose of consummating the merger transaction.

GTE is not a regulated utility in California, but has several subsidiaries which are regulated by this Commission. Currently these include GTE California Incorporated, GTE West Coast Incorporated, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, GTE Mobilnet of California Incorporated, and GTE Cellular Communications Corporation. GTE also owns a 19.9 %, nonmanaging interest in US Sprint Limited Partnership, an interexchange carrier. GTE California Incorporated, a regulated California subsidiary that provides local exchange telephone service to more than 3.5 million access lines located predominantly in Southern California, would be affected most significantly by the parent company merger because of the potential for consolidating its facilities and operations with those of Contel's regulated California subsidiaries.

Contel is a Delaware corporation whose principal place of business is Georgia. Like GTE, Contel is not a regulated California utility, but a holding company with subsidiaries that provide local telephone services, cellular telephone services, and integrated telecommunications and information systems and services in 34 states. The California public utilities which are wholly or partially owned by Contel are Contel of California, Inc.; Fresno MSA Limited Partnership; Contel Cellular of California, Inc.; Contel Office Communications, Inc.; American Satellite Company, dba

Contel ASC; California RSA #3 Limited Partnership; and California RSA #4 Limited Partnership.

The Merger Agreement provides that GTE Exchange Corporation will merge into Contel, and that Contel will thereby become the surviving corporation[1]. The merger will be effected through a stock exchange in which GTE will issue 1.27 shares of its common stock for each share of Contel common stock. A similar exchange will be made for outstanding Contel options. All outstanding shares of Contel preferred stock will be redeemed by Contel or converted before the merger. As a consequence of this transaction Contel will become a wholly owned subsidiary of GTE, and its subsidiaries will in turn be owned indirectly by GTE.

There will be no change in the licensing or authorizations presently held by any of the Contel regulated subsidiaries after the merger, nor in the rates, terms, or conditions under which they provide telecommunications services. The Joint Application recognizes that none of the operations, lines, plant, franchises, or permits of these entities may be merged with those of any other regulated utility without appropriate regulatory approval. In short, although the transaction will result in a change of ownership of the subsidiaries, it should not alter the manner in which they provide services to their customers or the charges which customers pay for those services.

B. The Joint Application

The Joint Application was filed pursuant to Public Utilities (PU) Code $ 854 (a), which requires approval of this Commission before a corporation may acquire a public utility doing business in California. Subsection (a) of $ 854 contains no

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1 A complete copy of the Merger Agreement is attached as Appendix A to this Decision.

standards upon which to base approval, such as those in subsections (b) and (c).[2] The Joint Applicants contend that subsections (b)

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2 Section 854 states in full:

(a) No person or corporation, whether or not organized under the laws of this state, shall acquire or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute acquisition or control activities which are subject to this section. Any such acquisition or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

(b) Before authorizing the acquisition or control of any electric, gas, or telephone utility organized and doing business in this state, where the acquiring or to be acquired utility has gross annual California revenues exceeding five hundred million dollars ($500,000,000), the Commission shall find that the proposal does both of the following:

(1) Provide net benefits to ratepayers in both the short-term and long-term, and provide a ratemaking method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short- and long-term benefits.

(2) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

(c) Before authorizing the acquisition or control of any electric, gas, or telephone utility organized and doing business in this state, where the acquiring or to be acquired utility has gross annual California revenues exceeding five hundred million dollars ($500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (7), inclusive, and find, on balance, that the acquisition or control proposal is in the public interest.

(Footnote continues on next page)

and (c) are not applicable to this transaction, because they do not pertain to a merger of public utility holding companies. However, they argue, even if the Commission concludes that these provisions apply here, the public interest strongly favors the transaction. Accordingly, they urge the Commission to exempt the transaction from the requirement of prior authorization under § 853(b) of the Code, and to fashion expedited ex parte review of the transaction

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(Footnote continued from previous page)

(1) Maintain or improve the financial condition of the resulting public utility doing business in the state.

(2) Maintain or improve the quality of service to public utility ratepayers in the state.

(3) Maintain or improve the quality of management of the resulting public utility doing business in the state.

(4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.

(5) Be fair and reasonable to the majority of all affected public utility shareholders.

(6) Be beneficial on an overall basis to state and local economies, and to the communities in the areas served by the resulting public utility.

(7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.

(8) Generally provide mitigation conditions to prevent significant adverse consequences which may result.

by Commission Staff.[3]

C. The DRA Motion

The DRA Motion asks the Commission to adopt an entirely different procedure for reviewing the total effect of the transaction, from initial merger of the holding companies through consolidation or merger of their California subsidiaries. In so doing, the Commission will bypass the issues of exemption and application of § 854 standards in connection with the nationwide merger in return for full scrutiny of the subsequent consolidation of California-based operations.

The Joint Applicants explain why they believe the transaction is supported by the public interest as follows:

> The merger will ultimately benefit [Contel's regulated subsidiaries], and their customers, in several ways. Initially, the merger will improve the collective financial strength of the [r]egulated [s]ubsidiaries by allowing Applicants to achieve economies of scale which are important to each company's ability to compete in an increasingly competitive market. Access to capital markets should be enhanced. The merger may also allow Applicants to increase their research and development expenditures. Those costs can also be spread over a larger base, thus assuring that the benefits of such

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3 Section 853(b) states:

(b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provisions for refunds or credits to customers or subscribers.

> research and development can reach a larger segment of the public more quickly and efficiently. In addition, the experience of both GTE and Contel demonstrates there are also opportunities for the exercise of management skills to provide customer services with greater operational efficiencies than can be achieved by each Applicant operating separately. (Joint Application, pp. 8-9.)

Neither the Joint Application nor the DRA Motion papers include appreciable evidentiary support for these assertions, and on February 22 the ALJ ruled that the moving parties should submit competent evidence to demonstrate that the initial holding company merger at least would not adversely affect the public interest. The moving parties duly complied with that ruling, and the Commission is now satisfied that the indirect acquisition of Contel's California subsidiaries will not harm the public interest.

The DRA Motion proposes that the ultimate merger or consolidation of GTE's and Contel's present California subsidiaries not take place until a comprehensive plan for such action is thoroughly reviewed and approved by the Commission. It specifies that the Commission shall give the matter full review in accordance with PU Code § 854(b) and (c), and that as part of that process, the Commission will request an advisory opinion from the AG. See PU Code § 854(b)(2), supra. Consequently, the proposal contains safeguards to insure that authorization of the nationwide holding company merger will in no way deny the Commission a full opportunity to evaluate and regulate the postmerger actions contemplated by GTE.

The DRA Motion also stipulates that the Commission may take appropriate action to remedy any unacceptable competitive effects identified in the second phase of the proceeding. Moreover, pending completion of the second phase, the Joint Applicants will be subject to conditions to preserve the premerger

status of the corporate relationships, facilities, and operations of GTE and the Contel California Companies.[4]

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4 Pending the Commission's final decision, the moving parties stipulate in their Joint Motion that GTE will maintain the respective Contel California Companies, and "their businesses, assets, and operations in all respects...separate...[and] apart from any other subsidiary or affiliate of GTE and separate and apart from Contel". The specific conditions proposed to accomplish this include, without limitation, those which would require GTE to do, or refrain from doing, the following:

(1) Maintain separate books and records.

(2) Maintain separate management and other personnel.

(3) Maintain separate offices.

(4) Maintain the services presently provided by Contel Service Corporation, Contel Management Corporation, and other Contel affiliates to Contel of California. These services would be provided under one or more service contracts between Contel of California and GTE Service Corporation and other GTE affiliates at actual cost, and in any event at costs not exceeding the 1990 charges to Contel of California adjusted by the annual growth of the Gross National Product Price Index.

(5) Refrain from exercising direction or control over, or influencing directly or indirectly, the management or policies of Contel California Companies, or their businesses, assets, and operations, including refraining from changing the composition of the management, subject to certain exceptions to insure compliance with Commission orders and maintenance or improvement of service.

(6) Refrain from using any assets of the Contel California Companies for the benefit of GTE or GTE subsidiaries, except for payment of dividends to the parent corporation in the usual course of business.

(7) Refrain from obtaining confidential, proprietary information relating to the businesses, assets, and operations of the Contel California Companies, with the exception of financial results normally reported by a subsidiary to its parent, and

(Footnote continues on next page)

The motion specifies that the Commission shall proceed to final consideration of the Joint Application as soon as practical after interim authorization is granted. Not less than twelve nor more than eighteen months from the date of this decision, GTE will submit a plan for consolidating Contel of California and GTE California, Inc., together with complete testimony supporting the application. In the event that GTE desires to consolidate cellular

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information necessary for the performance of the service contracts with the Contel companies.

(8) Refrain from selling, transferring, disposing of, encumbering, or otherwise impairing the marketability or viability of any of the businesses, assets, or operations of the Contel California Companies, except in the ordinary course of business of those companies (with one exception not material here).

(9) Refrain from commingling any of the businesses, assets, and operations of the Contel California Companies with those of GTE or its other subsidiaries.

(10) Limit dealings between Contel California Companies and GTE's present California subsidiaries to normal commercial activity of the sort that would occur between them if there were no common ownership.

(11) Take all other reasonable and necessary steps to maintain the Contel California Companies, and their businesses, assets, and operations, as separate and independent entities, so that GTE could readily divest itself of these companies if the Commission should ultimately disapprove the change in indirect control or impose conditions of approval which are unacceptable to GTE.

Since Contel Cellular, Inc., the parent company of Contel Cellular of California, Inc., is partially owned by third-party investors, appropriate substitutes for certain of the foregoing conditions are offered by the moving parties in relation to Contel Cellular of California, Inc.

or other nonwireline telephone operations in California before the date for submission of the overall consolidation plan, it may do so by separate application submitted no sooner than six months from the date of interim authorization. Any such application will also be reviewed pursuant to the $ 854(b) and (c) standards.

In the event that the Commission disapproves the transaction (or approves it subject to conditions which are unacceptable to GTE) and the decision becomes final, GTE stipulates that it will enter into various agreements to divest itself of the Contel California Companies within 18 months. In the specific case of Contel of California, GTE will sell the company "as a going concern."

The procedure proposed in the DRA Motion is apparently unprecedented in this Commission's experience, and there does not appear to be an identifiable statutory standard for authorizing the first phase of the procedure. Although we do not deem it necessary for the moving parties to show affirmatively that the indirect acquisition will advance the public interest, PU Code $ 853(b) and Commission Rule 51.1(e) suggest that on these facts the moving parties must at least demonstrate that this transaction will not harm the public interest.[5] The moving parties have now submitted evidence in response to the February 22 ALJ Ruling demonstrating that the public interest will not be harmed. This, coupled with the circumstance that Contel's California subsidiaries may not reduce their levels of employment pending completion of the second phase, reduces the risk of any public harm to a negligible level.

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5 Rule 51.1(e) states in pertinent part:

> The Commission will not approve stipulations or settlements [which are not] reasonable in light of the whole record, consistent with law, and in the public interest.

The parties' stipulation demonstrates that the merger is expected to enhance the financial strength of the subsidiaries by reducing the degree to which Contel is leveraged, giving it higher commercial paper ratings and thus greater access to capital markets at lower cost. This should translate into a benefit for the subsidiaries and savings to ratepayers.

The merger will enable the merged company to increase its research and development efforts at lower cost, with eventual benefit to the ratepayers. Specifically, the staffs of GTE Laboratories, Inc. and the Contel Technology Center, neither of which is in California, will be combined at the GTE laboratory site, eliminating project duplication and spreading research and development expense over a broader base.

Finally, the merged companies will be able to achieve cost savings through economies of scale. Elimination of duplicate staff functions and facilities of the unregulated entities which furnish administrative services to the subsidiaries, and allocation of the expense of these services over a larger customer base, will reduce their unit cost to the California subsidiaries. Moreover, the increased buying power of the merged entity should enable it to obtain better terms from vendors through greater standardization and volume discounts. These benefits will eventually be felt by California ratepayers.

The foregoing factors weigh in favor of the public interest. Since the settlement provides that the current status of the Contel California subsidiaries must in all respects be maintained, their acquisition by GTE should have no adverse effect upon the ratepayers or the general public. The economic effects upon the merged parent corporation will be uniformly positive, so there is no foreseeable possibility that the public interest will experience any negative effects after the merger. Consequently, the Commission will authorize the transaction.

D. The CCTA Motion

CCTA represents most of the cable television operators in the State. In its protest CCTA expresses concerns relating to its members' status as consumers and potential future competitors of the Joint Applicants' subsidiaries. Specifically, CCTA fears that the merger will create a competitive advantage for the merged entities and their subsidiaries in the markets served by its members. The Joint Applicants have agreed to make certain informational disclosures and adhere to rules and conditions established in another Commission proceeding in return for withdrawal of CCTA's protest.

The written Settlement Agreement (Agreement) provides that GTE will conduct and furnish to CCTA "bottoms up and tops down fully allocated cost studies (FAC)" for certain GTE service categories which are enumerated in the Agreement. The parties agree that the FAC will be filed in a separate Commission proceeding (Phase III of I.87-11-033), be completed no later than the last day for amending Phase III cost studies in that proceeding, and be subject to GTE's standard nondisclosure agreement. The Agreement also provides that GTE West Coast, Contel, and Contel of California, Inc. will be governed by the rules and conditions applicable to GTE under another Commission decision, D.89-10-031 (October 12, 1989), in deploying fiber plant beyond feeder cable.

CCTA states that the terms of the Agreement resolve the concerns raised in its protest. Indeed, at the third prehearing conference CCTA's attorney stated:

> "...[H]ad we had a hearing and put on evidence, what we were asking for is not for you to preclude the merger; what we would have asked for is mitigation. And what joint applicants agreed to here is in the nature of what we would have asked for at that point anyway." (Tr. 19, l. 1-6.)

The settlement is uncontested. Consequently, there will apparently be no residual issues to adjudicate between these parties if the CCTA Settlement is approved.

This settlement addresses CCTA's concerns, as reflected in its protest. The Agreement was executed not only on behalf of GTE, Contel, and CCTA, who are parties to this proceeding, but also by GTE California Incorporated, GTE West Coast Incorporated, and Contel of California, Inc. It states that these nonparties are signatories "solely for the purpose of facilitating the settlement." It does not explain whether their participation is supported by consideration, but we infer that anything which benefits a parent company also benefits its respective subsidiaries. At the third prehearing conference all parties orally waived the requirement for notice of a settlement conference under Rule 51.1(b). The settlement is reasonable in light of the record and consistent with law.

The Commission presumes that the settlement serves the interests of CCTA, its constituent members, and their respective customers, and therefore adopts the settlement and waives any requirement under Rule 51.4 or other rule applicable to the adoption of settlements, to the extent that such requirements are not moot.

## III. Conclusion

For the foregoing reasons the Commission grants the pending motions.

**Findings of Fact**

1. GTE is a New York corporation whose principal place of business is Connecticut. GTE is a multinational corporation with subsidiaries operating in 46 states and 41 countries in three major business groups: telephone operations, telecommunications products and services, and electrical products.

2. GTE Exchange Corporation, a Delaware corporation is a wholly owned nonutility subsidiary of GTE.

3. GTE is not a regulated utility in California.

4. GTE currently has the following subsidiaries which are regulated by this Commission: GTE California Incorporated; GTE West Coast Incorporated; GTE Mobilnet of California Limited Partnership; GTE Mobilnet of Santa Barbara Limited Partnership; GTE Mobilnet of California Incorporated; and GTE Cellular Communications Corporation.

5. GTE California Incorporated is a regulated California utility that provides local exchange telephone service to more than 3.5 million access lines, predominantly in Southern California.

6. GTE owns a 19.9% nonmanaging interest in US Sprint Limited Partnership, an interexchange carrier.

7. Contel is a Delaware corporation whose principal place of business is Georgia. Contel is not a regulated California utility. Contel's subsidiaries provide local telephone services, cellular telephone services, and integrated telecommunications and information systems and services in 34 states.

8. The California public utilities in which Contel has an ownership interest are: Contel of California, Inc.; Fresno MSA Limited Partnership; Contel Cellular of California, Inc.; Contel Office Communications, Inc.; American Satellite Company, dba Contel ASC; California RSA #3 Limited Partnership; and California RSA #4 Limited Partnership.

9. On or about August 7, 1990, GTE and Contel entered into the written agreement known as the Merger Agreement and Plan of Reorganization, referred to as the "Merger Agreement" herein, a copy of which is attached as Appendix A.

10. Under the terms of the Merger Agreement GTE Exchange Corporation will merge into Contel Corporation, and Contel will thereby become the surviving corporation. This merger will be effected through a stock exchange in which GTE will issue 1.27 shares of its common stock for each share of Contel common stock. A similar exchange will be made for outstanding Contel options. All outstanding shares of Contel preferred stock will be redeemed by Contel or converted prior to the merger, as a consequence of which Contel will become a wholly owned subsidiary of GTE.

11. As a consequence of the merger, Contel's subsidiaries, including its regulated California subsidiaries, will be owned indirectly by GTE.

12. GTE and Contel have filed a Joint Application seeking the Commission's authorization of GTE's indirect acquisition of ownership (or control) of Contel's regulated California subsidiaries in this merger.

13. There will be no change in the licensing or authorizations presently held by any of the Contel regulated subsidiaries as a consequence of this merger.

14. There will be no change in the rates, terms or conditions under which the Contel regulated California subsidiaries provide telecommunications services as a consequence of this merger.

15. Neither the manner in which the Contel's regulated California subsidiaries provide services to their customers, nor the charges which customers pay for those services, will be altered because of GTE's acquisition of those subsidiaries due to this merger.

16. The merger will improve the collective financial strength of Contel's regulated California subsidiaries, because the merged parents will have greater access to capital markets at lower cost.

17. The merger will improve the financial strength of Contel subsidiaries by enabling the merged company to increase its

research and development expenditures and spread those expenditures over a broader cost base.

18. The merger will improve the financial strength of Contel's subsidiaries by achieving economies of scale through elimination of duplicate staff and facilities at the unregulated holding company level, increasing buying power through greater standardization and volume discounts from vendors, and allocating administrative expenses over a larger customer base.

19. The economic benefits which Contel's regulated California subsidiaries receive as a result of the merger will ultimately benefit their customers as well.

20. Since the current status of Contel's regulated subsidiaries will in all respects remain unchanged after the merger, there will be no foreseeable adverse effect upon the public interest as a result of the merger.

21. DRA has filed a protest against the Joint Application.

22. The Joint Applicants and DRA have jointly requested an order which would bifurcate this proceeding in accordance with terms set out in their Joint Motion, referred to as the DRA Motion herein.

23. CCTA has filed a protest against the Joint Application.

24. CCTA has also filed an opposition to DRA Motion.

25. GTE, Contel, and CCTA have agreed to settle their disagreement by submitting to the Commission a Settlement Agreement, which is attached as Appendix B to this decision.

26. The procedure requested in the DRA Motion provides adequate safeguards to insure that the merger will not deny the Commission a full opportunity to evaluate the potential effects of postmerger actions contemplated by GTE.

27. The procedure requested in the DRA Motion provides adequate safeguards to insure that the premerger status of the corporate relationships, facilities, and operations of GTE and

Contel's regulated California subsidiaries will be maintained pending conclusion of the proceeding.

28. The procedure requested in the DRA Motion contains adequate safeguards to remedy any unacceptable competitive effects of the merger which may be identified in the second phase of the proceeding.

29. The CCTA Agreement provides that, upon approval thereof by this Commission, CCTA's protest to the Joint Application, and its opposition to the DRA Motion shall be deemed withdrawn.

30. The CCTA Agreement fully addresses the concerns of CCTA as expressed in its protest.

31. The CCTA settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

**Conclusions of Law**

1. The DRA Motion should be granted subject to the conditions contained in Appendix C.

2. The CCTA Settlement Agreement should be approved and adopted.

3. Any requirement of Rule 51.4 pertaining to the approval of settlements or stipulations, and any other requirement pertaining thereto, should be waived as part of the Commission's order herein.

4. This order should be effective today because immediate approval is required as a condition of closing under the Merger Agreement, whose effective date is imminent.

## O R D E R

**IT IS ORDERED** that:

1. The DRA Motion is granted subject to the conditions contained in Appendix C, and GTE Corporation (GTE) is authorized on an interim basis to acquire indirect control of Contel Corporation's regulated California subsidiaries.

2. In the event that the Commission disapproves the application upon the conclusion of this proceeding, or approves the application with conditions GTE is unwilling to accept, GTE shall proceed with divestiture as required by Paragraph 6 of Appendix C.

3. The CCTA Settlement (Appendix B) is approved and adopted.

4. Any additional requirement of Rule 51.4 or any other Commission rule pertaining to the approval of settlements or stipulations is hereby waived, to the extent that such requirement is not moot.

This order is effective today.

Dated March 13, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director

A.90-09-043

APPENDIX A

# MERGER AGREEMENT AND PLAN OF REORGANIZATION

Dated as of August 7, 1990

by and among

GTE Corporation,

GTE Exchange Corporation

and

Contel Corporation

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# MERGER AGREEMENT AND PLAN OF REORGANIZATION

**MERGER AGREEMENT AND PLAN OF REORGANIZATION**, dated as of August 7, 1990 (the "Agreement"), by and among GTE Corporation, a New York corporation ("Parent"), GTE Exchange Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("Subsidiary"), and Contel Corporation, a Delaware corporation (the "Company").

**WHEREAS**, the Boards of Directors of Parent, Subsidiary and the Company have approved the merger of Subsidiary with and into the Company pursuant to this Agreement (the "Merger") and the transactions contemplated hereby upon the terms and subject to the conditions set forth herein; and

**WHEREAS**, it is intended that Parent, Subsidiary and the Company and their respective stockholders (except to the extent such stockholders receive cash in lieu of fractional shares) will recognize no gain or loss for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder as a result of the consummation of the Merger;

**NOW, THEREFORE**, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I

## THE MERGER

**Section 1.1 The Merger.** Upon the terms and subject to the conditions of this Agreement, at the Effective Time in accordance with the Delaware General Corporation Law (the "DGCL"), Subsidiary shall be merged with and into the Company and the separate existance of Subsidiary shall thereupon cease. The Company shall be the surviving corporation in the Merger (hereinafter sometimes referred to as the "Surviving Corporation").

**Section 1.2 Effective Time of the Merger.** The Merger shall become effective at such time (the "Effective Time") as a Certificate of Merger, in the form set forth as Exhibit I hereto, is filed with the Secretary of State of the State of Delaware (the "Merger Filing"); such filing shall be made simultaneously with or as soon as practicable after the closing of the transactions contemplated by this Agreement in accordance with Section 3.6.

## ARTICLE II

## THE SURVIVING AND PARENT CORPORATIONS

Section 2.1 Certificate of Incorporation. Immediately following the Effective Time, the Surviving Corporation shall amend its Certificate of Incorporation to conform to the Certificate of Incorporation included in Exhibit I to this Agreement.

Section 2.2 By-Laws. The By-laws of Subsidiary as in effect immediately prior to the Effective Time shall be the By-laws of the Surviving Corporation after the Effective Time, and thereafter may be amended in accordance with their terms and as provided by the Certificate of Incorporation of the Surviving Corporation and the DGCL.

Section 2.3 Directors. Immediately prior to the Merger, Parent shall amend its By-laws to cause the authorized number of its directors to be increased to 18. Consistant with its fiduciary duties, the Board of Directors of Parent shall take such corporate action as may be necessary to cause Parent's Board of Directors immediately following the Effective Time to be comprised of (i) 13 members selected from and designated by the Board of Directors of Parent immediately prior to the Effective Time, and (ii) 5 members selected from and designated by the Board of Directors of the Company immediately prior to the Effective Time. Consistant with its fiduciary duties, the Board of Directors of Parent shall take such corporate action as may be necessary to cause the directors described in clause (ii) above to be nominated and elected to serve as directors of Parent at the first annual meeting of Parent shareholders following the Closing.

## ARTICLE III

## CONVERSION OF SHARES

Section 3.1 Conversion of Company Shares in the Merger. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any capital stock of the Company:

(a) each share of Common Stock, $1.00 par value, of the Company ("Company Common Stock"), including the associated right to purchase shares of Junior Participating Preferred Stock, Series K, pursuant to the Rights Agreement dated as of November 30, 1988 between the Company and Manufacturers Hanover Trust Company, as rights agent (the "Company Rights Agreement"), if any, owned by Parent or any subsidiary

of Parent or the Company or any subsidiary of the Company immediately prior to the Effective Time shall be cancelled and shall cease to exist from and after the Effective Time;

(b) each remaining issued and outstanding share of Company Common Stock, including the associated right issued pursuant to the Company Rights Agreement, if any remain outstanding, shall, subject to Section 3.4 hereof, be converted into the right to receive, and become exchangeable for, 1.27 (the "Exchange Ratio") shares of validly issued, fully paid and nonassessable common stock, $0.05 par value, of Parent ("Parent Common Stock"), including the corresponding percentage of a right to purchase shares of Series A Participating No Par Preferred Stock of Parent pursuant to the Rights Agreement dated December 7, 1989 between Parent and State Street Bank and Trust Company, as rights agent (the "Parent Rights Agreement"), as provided in this Agreement; and

(c) subject to and as more fully provided in Section 7.10, each unexpired option to purchase Company Common Stock that is outstanding at the Effective Time shall automatically and without any action on the part of the holder thereof be converted into an option to purchase a number of shares of Parent Common Stock equal to the number of shares of Company Common Stock that could be purchased under such option multiplied by 1.27, at a price per share of Parent Common Stock equal to the price per share determined pursuant to such option divided by 1.27.

Section 3.2 Conversion of Subsidiary Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any capital stock of Subsidiary, each issued and outstanding share of Common Stock, $.01 par value, of Subsidiary ("Subsidiary Common Stock") shall be converted into one share of common stock, $.01 par value, of the Surviving Corporation and, if the Company Rights Agreement has not theretofore been terminated, the associated right to purchase shares of Junior Participating Preferred Stock, Series K, pursuant to the Company Rights Agreement.

Section 3.3 Exchange of Certificates. (a) From and after the Effective Time, each holder of an outstanding certificate which immediately prior to the Effective Time represented shares of Company Common Stock shall be entitled to receive in exchange therefor, upon surrender thereof to an exchange agent selected by Parent and reasonably acceptable to the Company (the "Exchange Agent"), a certificate or certificates theretofore representing the

number of whole shares of Parent Common Stock, to which such holder is entitled pursuant to Section 3.1. Notwithstanding any other provision of this Agreement, (i) until holders or transferees of certificates theretofore representing shares of Company Common Stock have surrendered them for exchange as provided herein, no dividends shall be paid with respect to any shares represented by such certificates and no payment for fractional shares shall be made, and (ii) without regard to when such certificates representing shares of Company Common Stock are surrendered for exchange as provided herein, no interest shall be paid on any dividends or any payment for fractional shares. Upon surrender of a certificate which immediately prior to the Effective Time represented shares of Company Common Stock, there shall be paid to the holder of such certificate the amount of any dividends which theretofore became payable, but which were not paid by reason of the foregoing, with respect to the number of whole shares of Parent Common Stock represented by the certificate or certificates issued upon such surrender. If any certificate for shares of Parent Common Stock is to be issued in a name other than that in which the certificate for shares of Company Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the person requesting such exchange shall pay any transfer or other taxes required by reason of the issuance of certificates for such shares of Parent Common Stock in a name other than that of the registered holder of the certificate surrendered, or shall establish to the satisfaction of Parent that such tax has been paid or is not applicable.

(b) Promptly after the Effective Time, Parent shall make available to the Exchange Agent the certificates representing shares of Parent Common Stock required to effect the exchange referred to in Section 3.3(a).

(c) Promptly after the Effective Time, the Exchange Agent shall mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (the "Company Certificates") (i) a form letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Company Certificates shall pass, only upon actual delivery of the Company Certificates to the Exchange Agent) and (ii) instructions for use in effecting the surrender of the Company Certificates in exchange for certificates representing shares of Parent Common Stock. Upon surrender of Company Certificates for cancellation to the Exchange Agent, together with a duly executed letter of transmittal and such other documents as the Exchange Agent shall reasonably require, the holder of such Company Certificates shall be entitled to receive in exchange therefor a

certificate representing that number of whole shares of Parent Common Stock into which the shares of Company Common Stock theretofore represented by the Company Certificates so surrendered shall have been converted pursuant to the provisions of Section 3.1, and the Company Certificates so surrendered shall forthwith be cancelled. Notwithstanding the foregoing, neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of Company Common Stock for any shares of Parent Common Stock or dividends or distributions thereon delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(d) From and after the Effective Time, Subsidiary shall be entitled to treat outstanding certificates which immediately prior to the Effective Time represented shares of Subsidiary Common Stock as evidencing the ownership of the number of full shares of Common Stock, $1.00 par value, of the Surviving Corporation which the holder of the shares of Subsidiary Common Stock represented by such certificates is entitled to receive pursuant to Section 3.2, and the holder of such certificates shall not be required to surrender such certificates for exchange. Shares of Common Stock of the Surviving Corporation which the holder of shares of Subsidiary Common Stock is entitled to receive in the Merger shall be deemed to have been issued at the Effective Time.

Section 3.4 No Fractional Securities. Notwithstanding any other provision of this Agreement, no certificates or scrip for fractional shares of Parent Common Stock shall be issued in the Merger and no Parent Common Stock dividend, stock split or interest shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any other rights of a security holder. In lieu of any such fractional shares, each holder of Company Common Stock who would otherwise have been entitled to receive a fraction of a share of Parent Common Stock upon surrender of Company Certificates for exchange pursuant to this Article III shall be entitled to receive from the Exchange Agent a cash payment equal to such fraction multiplied by the closing price per share of Parent Common Stock on the last business day on which Company Common Stock is traded on the New York Stock Exchange, as reported by the Wall Street Journal.

Section 3.5 Redemption of Preferred Stock. The outstanding shares of Company Preferred Stock shall be redeemed by the Company in accordance with Section 6.4 prior to the Effective Time and shall not be converted into shares of Parent Common Stock in the Merger.

Section 3.6 Closing. The closing (the "Closing") of the transactions contemplated by this Agreement shall take place at the offices of O'Melveny & Myers, Citicorp Center, 153 East 53rd Street, 54th Floor, New York, New York 10022-4611, on the fifth business day immediately following the date on which the last of the conditions set forth in Article VIII hereof is fulfilled or waived, or at such other time and place as Parent and the Company shall agree (the date on which the Closing occurs being the "Closing Date").

## ARTICLE IV

## REPRESENTATIONS AND WARRANTIES OF PARENT AND SUBSIDIARY

Parent and Subsidiary each represent and warrant to the Company as follows:

Section 4.1 Organization and Qualification. Each of Parent and Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each of Parent and Subsidiary is qualified to do business and is in good standing in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified and in good standing will not, when taken together with all other such failures, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole. True, accurate and complete copies of each of Parent's and Subsidiary's Certificates of Incorporation and By-laws and the Parent Rights Agreement, in each case as in effect on the date hereof, including all amendments thereto, have heretofore been delivered to the Company.

Section 4.2 Capitalization. (a) The authorized capital stock of Parent consists of 2,000,000,000 shares of Parent Common Stock, par value $.05 per share; 9,416,504 shares of preferred stock, par value $50 per share; and 12,236,618 shares of no par preferred stock. The authorized shares of preferred stock, par value $50 per share, of Parent consist of the following:

| Series | Number of Shares |
|---|---|
| 5.00% Cumulative Convertible | 2,975,632 |
| 5.50% Cumulative Convertible | 64,263 |
| 5.05% Cumulative Convertible | 105,084 |
| 5.35% Cumulative Convertible | 8,244 |
| 4.75% Cumulative Convertible | 518,587 |
| 5.28% Cumulative Convertible | 1,023 |
| 4.36% Cumulative Convertible | 1,028 |
| 4.00% Cumulative Convertible | 51,835 |
| 4.40% Cumulative | 28,837 |
| 7.85% Cumulative | 1,342,000 |
| 7.75% Cumulative | 960,000 |
| Undesignated | 3,359,971 |

The authorized shares of no par preferred stock of Parent consist of the following:

| Series | Number of Shares |
|---|---|
| $2.475 Cumulative | 4,000,000 |
| $2.00 Convertible | 1,251,618 |
| Auction Preferred, Series A | 600,000 |
| Auction Preferred, Series B | 600,000 |
| Auction Preferred, Series C | 750,000 |
| Auction Preferred, Series D | 750,000 |
| Auction Preferred, Series E | 750,000 |
| Series A Participating | 700,000 |
| Undesignated | 2,835,000 |

As of June 30, 1990 the issued and outstanding capital stock of Parent was as set forth on Schedule 4.2(a) hereto. All of the issued and outstanding shares of Parent Common Stock are validly issued and are fully paid, nonassessable and free of preemptive rights. No subsidiary of Parent holds any shares of capital stock of Parent.

(b) The authorized capital stock of Subsidiary consists of 100 shares of Subsidiary Common Stock, of which 100 shares are issued and outstanding, all of which are owned beneficially and of record by Parent.

(c) Except as set forth in Schedule 4.2(c) hereof, as of the date hereof, there are no outstanding subscriptions, options, calls, contracts, commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement obligating Parent or any subsidiary of Parent to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of Parent or obligating Parent or any subsidiary of Parent to grant, extend or enter into any such agreement or commitment,

except for this Agreement, the Rights Agreement, Parent's Shareholder Systematic Investment Plan (the "Parent DRIP"), Parent's Employees' Stock Plan (the "Parent SP"), Parent's Long Term Incentive Plan (the "Parent LTIP"), Parent's Executive Incentive Plan (the "Parent EIP"), Parent's Savings, Investment & Tax-Deferral Plans and Savings and Investment Plan and the AGCS Savings and Investment Plan for hourly employees and the AGCS Savings, Investment and Tax Deferral Plan (collectively, the "Parent ITDPs"), Parent's Unit Incentive Plan (the "Parent UIP"), Parent's Performance Share Plan (the "Parent PSP") and Parent's Deferred Compensation Plan for Directors (the "Parent DCPD"). There are no voting trusts, proxies or other agreements or understandings to which Parent or any subsidiary of Parent is a party or is bound with respect to the voting of any shares of capital stock of Parent. The shares of Parent Common Stock issued to stockholders of the Company in the Merger will be at the Effective Time duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights.

Section 4.3 Subsidiaries. Each direct and indirect corporate subsidiary of Parent is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each subsidiary of Parent is qualified to do business, and is in good standing, in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified and in good standing will not, when taken together with all such other failures, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole. Except as set forth in Parent's Annual Report on Form 10-K for the year ended December 31, 1989 and the exhibits and schedules thereto (the "Parent 10-K"), or Parent's Quarterly Report on Form 10-Q for the quarter ended March 31, 1990 and the exhibits and schedules thereto (the "Parent 10-Q"), all of the outstanding shares of capital stock of each corporate subsidiary of Parent are validly issued, fully paid, nonassessable and free of preemptive rights, and those owned directly or indirectly by Parent are owned free and clear of any liens, claims, encumbrances, security interests, equities, charges and options of any nature whatsoever. Except as set forth in the Parent 10-K or the Parent 10-Q (including in references to preferred stock of telephone operating subsidiaries), except for the Dividend Reinvestment Plan, Employees Stock Purchase Plan and Stock Option Plan maintained by Quebec-Telephone and the

Long-Term Incentive Share Option Plan and Dividend Reinvestment and Share Purchase Plan maintained by British Columbia Telephone Company (all such plans being, collectively, the "Subsidiary Plans"), Parent owns directly or indirectly all of the issued and outstanding shares of the capital stock of each of its corporate subsidiaries. Except as set forth in the Parent 10-K or the Parent 10-Q and for options, rights and shares issuable pursuant to Subsidiary Plans, there are no subscriptions, options, warrants, rights, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions or arrangements relating to the issuance, sale, voting, transfer, ownership or other rights with respect to any shares of capital stock of any corporate subsidiary of Parent, including any right of conversion or exchange under any outstanding security, instrument or agreement. As used in this Agreement, the term "subsidiary" shall mean any corporation, partnership, joint venture or other entity of which the specified entity, directly or indirectly, controls or which the specified entity (either acting alone or together with its other subsidiaries) owns, directly or indirectly, 50% or more of the stock or other voting interests, the holders of which are, ordinarily or generally, in the absence of contingencies (which contingencies have not occurred) or understandings (which understandings have not yet been required to be performed) entitled to vote for the election of a majority of the board of directors or any similar governing body.

Section 4.4 Authority; Non-Contravention; Approvals. (a) Parent and Subsidiary each have full corporate power and authority to enter into this Agreement and, subject to the Parent Stockholders' Approval, the Subsidiary Stockholder's Approval, and the Parent Required Statutory Approvals, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, and the consummation by Parent and Subsidiary of the transactions contemplated hereby, have been duly authorized by Parent's and Subsidiary's Boards of Directors, respectively, and no other corporate proceedings on the part of Parent or Subsidiary are necessary to authorize the execution and delivery of this Agreement and the consummation by Parent and Subsidiary of the transactions contemplated hereby, except for the Parent Stockholders' Approval and Subsidiary Stockholder's Approval, and the obtaining of the Parent Required Statutory Approvals. This Agreement has been duly and validly executed and delivered by each of Parent and Subsidiary, and, assuming the due authorization, execution and delivery hereof by the Company, constitutes a valid and binding agreement of each of Parent and Subsidiary enforceable against each of them in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, reorganization,

moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and (b) general equitable principles.

(b) The execution and delivery of this Agreement by each of Parent and Subsidiary do not, and the consummation by Parent and Subsidiary of the transactions contemplated hereby will not, violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of Parent or any of its subsidiaries under any of the terms, conditions or provisions of (i) the respective charters or by-laws of Parent or any of its subsidiaries, (ii) subject to obtaining the Parent Required Statutory Approvals and the receipt of the Parent Stockholders' Approval and the Subsidiary Stockholder's Approval, any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any court or governmental authority applicable to Parent or any of its subsidiaries or any of their respective properties or assets, or (iii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which Parent or any of its subsidiaries is now a party or by which Parent or any of its subsidiaries or any of their respective properties or assets may be bound or affected, excluding from the foregoing clauses (ii) and (iii) such violations, conflicts, breaches, defaults, terminations, accelerations or creations of liens, security interests, charges or encumbrances that would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

(c) Except for (i) the filings by Parent and the Company required by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Joint Proxy Statement/ Prospectus with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Securities Act of 1933, as amended (the "Securities Act"), and the declaration of the effectiveness thereof by the SEC and filings with various state blue sky authorities, (iii) the necessary approvals, if any, of state and foreign public utilities commissions or similar state or foreign regulatory bodies ("PUCs") identified in Schedule 4.4(c) as having

jurisdiction over Parent or any of its subsidiaries (the "Parent PUCs") and the Company PUCs, in each case pursuant to applicable state or foreign laws or regulations (together with any other similar state or foreign laws or regulations relating to or regulating the telephone, mobile cellular, paging, cable television or other telecommunications businesses, "Utilities Codes"), (iv) the approvals of the Federal Communications Commission (the "FCC") pursuant to the Federal Communications Act of 1934, as amended (the "Federal Communications Act"), (v) the making of the Merger Filing with the Secretary of State of the State of Delaware in connection with the Merger, (vi) any required filings with or approvals from applicable state environmental authorities and (vii) the approval of the Department of Justice or the court under the consent decree entered December 21, 1984 in United States v. GTE Corporation, Civil Action No. 83-1298 by the United States District Court for the District of Columbia (the "Parent Consent Decree") (the filings and approvals referred to in clauses (i) through (vii) are collectively referred to as the "Parent Required Statutory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by Parent or Subsidiary or the consummation by Parent or Subsidiary of the transactions contemplated hereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

**Section 4.5 Reports and Financial Statements.** Since December 31, 1986, Parent and each of its subsidiaries required to make filings under the Securities Act, the Exchange Act, any Utilities Codes, or the Federal Communications Act have filed with the SEC, the pertinent PUCs or the FCC, as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by them under each of the Securities Act, the Exchange Act, the applicable Utilities Codes and the Federal Communications Act and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder. Parent has previously delivered to the Company copies of its (a) Annual Reports on Form 10-K for the fiscal year ended December 31, 1989 and for each of the two immediately preceding fiscal years, as filed with the SEC, (b) proxy and information statements relating to (i) all meetings of its stockholders (whether annual or

special) and (ii) actions by written consent in lieu of a stockholders' meeting from December 31, 1986, until the date hereof, and (c) all other reports or registration statements filed by Parent with the SEC since December 31, 1986 (other than Registration Statements filed on Form S-8) (collectively, the "Parent SEC Reports"). As of their respective dates, the Parent SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The audited consolidated financial statements and unaudited interim consolidated financial statements of Parent included in such reports (the "Parent Financial Statements") have been prepared in accordance with generally accepted accounting principles applied on a consistent basis (except as may be indicated therein or in the notes thereto) and fairly present the financial position of Parent and its subsidiaries as of the dates thereof and the results of their operations and changes in financial position for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal year-end and audit adjustments and any other adjustments described therein.

Section 4.6 Absence of Undisclosed Liabilities. Except as disclosed in the Parent 10-K or the Parent 10-Q, or as expressly disclosed and described in any of the schedules hereto, neither Parent nor any of its subsidiaries had at December 31, 1989, or has incurred since that date, any liabilities or obligations (whether absolute, accrued, contingent or otherwise) of any nature, (a) except liabilities, obligations or contingencies (i) which are accrued or reserved against in the Parent Financial Statements or reflected in the notes thereto or (ii) which were incurred after December 31, 1989 and were incurred in the ordinary course of business and consistent with past practices and (b) except for any liabilities, obligations or contingencies which (i) would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole, or (ii) have been discharged or paid in full prior to the date hereof.

Section 4.7 Absence of Certain Changes or Events. Except as set forth in the Parent 10-Q, from December 31, 1989 through the date hereof, there has not been any material adverse change in the business, operations, properties, assets, liabilities, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

Section 4.8 Litigation. There are no claims, suits, actions or proceedings pending or, to the knowledge of Parent, threatened against, relating to or affecting Parent or any of its subsidiaries, before any court, governmental department, commission, agency, instrumentality or authority, or any arbitrator which could reasonably be expected, either alone or in the aggregate with all such claims, actions or proceedings, to materially and adversely affect the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole. Except for the Parent Consent Decree and except as set forth in the Parent 10-K or the Parent 10-Q, neither Parent nor any of its subsidiaries is subject to any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or authority or any arbitrator which prohibits or restricts the consummation of the transactions contemplated hereby or would have any material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

Section 4.9 Registration Statement and Proxy Statement. None of the information to be supplied by Parent or its subsidiaries for inclusion in (a) the Registration Statement on Form S-4 to be filed under the Securities Act with the SEC by Parent in connection with the Merger for the purpose of registering the shares of Parent Common Stock to be issued in the Merger (the "Registration Statement") or (b) the proxy statement to be distributed in connection with the Company's and Parent's meetings of their respective stockholders to vote upon this Agreement and the transactions contemplated hereby (the "Proxy Statement" and, together with the prospectus included in the Registration Statement, the "Joint Proxy Statement/Prospectus") will, in the case of the Proxy Statement or any amendments thereof or supplements thereto, at the time of the mailing of the Proxy Statement and any amendments or supplements thereto, and at the time of the meetings of stockholders of the Company and Parent to be held in connection with the transactions contemplated by this Agreement, or, in the case of the Registration Statement, as amended or supplemented, at the time it becomes effective and at the time of such meetings of the stockholders of the Company and Parent, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Joint Proxy Statement/Prospectus will comply as to form in all material respects with all applicable laws, including the provisions of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, except

that no representation is made by Parent or Subsidiary with respect to information supplied by the Company for inclusion therein.

**Section 4.10 No Violation of Law.** Except as disclosed in the Parent 10-K or the Parent 10-Q, neither Parent nor any of its subsidiaries is in violation of, or has been given notice or been charged with any violation of, any law, statute, order, rule, regulation, ordinance, or judgment (including, without limitation, any applicable environmental law, ordinance or regulation) of any governmental or regulatory body or authority, except for violations which, in the aggregate, do not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole. Except as disclosed in the Parent 10-K or the Parent 10-Q, as of the date of this Agreement, to the knowledge of Parent no investigation or review by any governmental or regulatory body or authority is pending or threatened, nor has any governmental or regulatory body or authority indicated an intention to conduct the same, other than, in each case, those the outcome of which, as far as reasonably can be foreseen, will not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Parent and its subsidiaries taken as a whole. Parent and its subsidiaries have all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals necessary to conduct their businesses as presently conducted, including, without limitation, authorizations under applicable Utilities Codes and under the Federal Communications Act (the "Parent Permits"), except for permits, licenses, franchises, variances, exemptions, orders, authorizations, consents and approvals the absence of which, alone or in the aggregate, would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Parent and its subsidiaries, taken as a whole. Parent and its subsidiaries (a) have duly and currently filed all reports and other information required to be filed with the FCC or any other governmental or regulatory authority in connection with the Parent Permits, and (b) are not in violation of the terms of any Parent Permit, except for delays in filing reports or violations which, alone or in the aggregate, would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Parent and its subsidiaries, taken as a whole.

Section 4.11 Compliance with Agreements. Except as disclosed in the Parent 10-K or the Parent 10-Q, Parent and each of its subsidiaries are not in breach or violation of or in default in the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or action by a third party, could result in a default under, (a) the respective charters, by-laws or other similar organizational instruments of Parent or any of its subsidiaries or (b) any contract, commitment, agreement, indenture, mortgage, loan agreement, note, lease, bond, license, approval or other instrument to which Parent or any of its subsidiaries is a party or by which any of them is bound or to which any of their property is subject, which breaches, violations and defaults, in the case of clause (b) of this Section 4.11, would have, in the aggregate, a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

Section 4.12 Taxes. (a) Parent and its subsidiaries have (i) duly filed with the appropriate governmental authorities all Tax Returns required to be filed by them for all periods ending on or prior to the Effective Time, other than those Tax Returns the failure of which to file would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole, and such Tax Returns are true, correct and complete in all material respects, and (ii) duly paid in full or made adequate provision for the payment of all Taxes for all periods ending at or prior to the Effective Time. The liabilities and reserves for Taxes reflected in the Parent balance sheet as of December 31, 1989 contained in the Parent 10-K (the "1989 Parent Balance Sheet") are adequate to cover all Taxes for all periods ending on or prior to December 31, 1989 and there are no material liens for Taxes upon any property or assets of Parent or any subsidiary thereof, except for liens for Taxes not yet due. There are no unresolved issues of law or fact arising out of a notice of deficiency, proposed deficiency or assessment from the Internal Revenue Service (the "IRS") or any other governmental taxing authority with respect to Taxes of the Parent or any of its subsidiaries which, if decided adversely, singly or in the aggregate, would have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole. Neither Parent nor any of its subsidiaries is a party to any agreement providing for the allocation or sharing of Taxes with any entity that is not, directly or indirectly, a wholly owned corporate subsidiary of Parent other than agreements the consequences

of which are fully and adequately reserved for on the 1989 Parent Balance Sheet. Neither Parent nor any of its corporate subsidiaries has, with regard to any assets or property held, acquired or to be acquired by any of them, filed a consent to the application of Section 341(f) of the Code.

(b) For purposes of this Agreement, the term "Taxes" shall mean all taxes, charges, fees, levies or other assessments, including, without limitation, income, gross receipts, excise, property, sales, withholding, social security, occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, imposed by the United States, or any state, local or foreign government or subdivision or agency thereof whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall include any interest, fines, penalties or additional amounts attributable or imposed or with respect to any such taxes, charges, fees, levies or other assessments.

(c) For purposes of this Agreement, the term "Tax Return" shall mean any return, report or other document or information required to be supplied to a taxing authority in connection with Taxes.

**Section 4.13 Employee Benefit Plans; ERISA.** (a) Except as set forth in the Parent 10-K, the proxy statement for the 1990 annual meeting of stockholders of Parent or in Schedule 4.13 hereof, at the date hereof, Parent and its subsidiaries do not maintain or contribute to any material domestic employee benefit plans, programs, arrangements or practices (such plans, programs, arrangements or practices of Parent and its subsidiaries being referred to as the "Parent Plans"), including employee benefit plans within the meaning set forth in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or other similar material arrangements for the provision of benefits (excluding any "Multiemployer Plan" within the meaning of Section 3(37) of ERISA or a "Multiple Employer Plan" within the meaning of Section 413(c) of the Code). Schedule 4.13 lists all Multiemployer Plans and Multiple Employer Plans which any of Parent or its subsidiaries maintains or to which any of them makes contributions. Neither Parent nor its subsidiaries has any obligation to create any additional such plan or to amend any such plan so as to increase benefits thereunder, except as required under the terms of the Parent Plans, under existing collective bargaining agreements or to comply with applicable law.

(b) Except as disclosed in the Parent 10-K, (i) there have been no prohibited transactions within the meaning of Section 406 or 407 of ERISA or Section 4975 of

the Code with respect to any of the Parent Plans that could result in penalties, taxes or liabilities which, singly or in the aggregate, could have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole, (ii) except for premiums due, there is no outstanding liability in excess of $1,000,000, whether measured alone or in the aggregate, under Title IV of ERISA with respect to any of the Parent Plans, (iii) neither the Pension Benefit Guaranty Corporation nor any plan administrator has instituted proceedings to terminate any of the Parent Plans subject to Title IV of ERISA other than in a "standard termination" described in Section 4041(b) of ERISA, (iv) none of the Parent Plans has incurred any "accumulated funding deficiency" (as defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, as of the last day of the most recent fiscal year of each of the Parent Plans ended prior to the date of this Agreement, (v) the current present value of all projected benefit obligations under each of the Parent Plans which is subject to Title IV of ERISA did not, as of its latest valuation date, exceed the then current value of the assets of such plan allocable to such benefit liabilities by more than the amount, if any, disclosed in the Parent 10-K as of December 31, 1989, based upon reasonable actuarial assumptions currently utilized for such Parent Plan, (vi) each of the Parent Plans has been operated and administered in all material respects in accordance with applicable laws during the period of time covered by the applicable statute of limitations, (vii) each of the Parent Plans which is intended to be "qualified" within the meaning of Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and such determination has not been modified, revoked or limited by failure to satisfy any condition thereof or by a subsequent amendment thereto or a failure to amend, except that it may be necessary to make additional amendments retroactively to maintain the "qualified" status of such Parent Plans, and the period for making any such necessary retroactive amendments has not expired, (viii) with respect to Multiemployer Plans, neither Parent nor any of its subsidiaries has, since December 31, 1982, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203, 4204 and 4205 of ERISA and, to the best knowledge of Parent and its subsidiaries, no event has occurred or is expected to occur which presents a material risk of a complete or partial withdrawal under said Sections 4203, 4204 and 4205, (ix) to the best knowledge of Parent and its subsidiaries, there are no material pending, threatened or anticipated claims involving any of the Parent Plans other than claims for benefits in the ordinary course, and (x) Parent and its subsidiaries have no current liability in excess of

$1,000,000, whether measured alone or in the aggregate, for plan termination or withdrawal (complete or partial) under Title IV of ERISA based on any plan to which any entity that would be deemed one employer with Parent and its subsidiaries under Section 4001 of ERISA or Section 414 of the Code contributed during the period of time covered by the applicable statute of limitations (a "Parent Controlled Group Plan"), and Parent and its subsidiaries do not reasonably anticipate that any such liability will be asserted against Parent or any of its subsidiaries, none of the Parent Controlled Group Plans has an "accumulated funding deficiency" (as defined in Section 302 of ERISA and Section 412 of the Code), and no Parent Controlled Group Plan has an outstanding funding waiver which could result in the imposition of liens, excise taxes or liability in excess of $1,000,000 against Parent and its subsidiaries.

**Section 4.14 Investment Company Act.** Parent and each of its subsidiaries either (a) is not an "investment company", or a company "controlled" by, or an "affiliated company" with respect to, an "investment company", within the meaning of the Investment Company Act of 1940 (the "Investment Company Act") or (b) satisfies all conditions for an exemption from the Investment Company Act, and, accordingly, neither Parent nor any of its subsidiaries is required to be registered under the Investment Company Act.

**Section 4.15 Labor Controversies.** Except as set forth in the Parent 10-K or the Parent 10-Q, (a) there are no significant controversies pending or, to the knowledge of Parent, threatened between Parent or its subsidiaries and any representatives of any of their employees, (b) to the knowledge of Parent, there are no material organizational efforts presently being made involving any of the presently unorganized employees of Parent and its subsidiaries, (c) Parent and its subsidiaries have, to the knowledge of Parent, complied in all material respects with all laws relating to the employment of labor, including, without limitation, any provisions thereof relating to wages, hours, collective bargaining, and the payment of social security and similar taxes, and (iv) no person has, to the knowledge of Parent, asserted that Parent or any of its subsidiaries is liable in any material amount for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing, except for such controversies, organizational efforts, non-compliance and liabilities which, singly or in the aggregate, could not reasonably be expected to materially and adversely affect the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole.

Section 4.16 Environmental Matters. Except as set forth in the Parent 10-K or the Parent 10-Q, to the knowledge of Parent, neither Parent nor any of its subsidiaries has disposed of or arranged for the disposal of any hazardous substance at any facility, location or site so as to be or become a potentially liable party for remedial action or response costs in connection with such facility, location or site under the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Resource Conservation and Recovery Act, as amended, or similar state statutes which liability could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries taken as a whole.

Section 4.17 Opinions of Financial Advisors. Parent has received the opinions of Merrill Lynch Capital Markets and PaineWebber Incorporated to the effect that, as of the date hereof, the Exchange Ratio is fair, from a financial point of view, to Parent. A copy of each such opinion will be delivered promptly to the Company.

Section 4.18 Article 11 of Parent's Certificate of Incorporation and Section 912 of the New York Business Corporation Law Not Applicable. Neither the provisions of Article 11 of Parent's Certificate of Incorporation nor the provisions of Section 912 of the New York Business Corporation Law will, assuming the accuracy of the representations of the Company contained in Sections 5.2 and 5.22 (without giving effect to the knowledge qualification thereof) apply to this Agreement or to the transactions contemplated hereby.

Section 4.19 Accounting Matters. Neither Parent nor, to its best knowledge, any of its affiliates, has through the date of this Agreement, taken or agreed to take any action that would prevent Parent from accounting for the business combination to be effected by the Merger as a pooling of interests.

Section 4.20 Parent Ownership of Company Common Stock; Company Not a Related Person or an Acquiring Person. Parent and, to the best of its knowledge, its "affiliates" and "associates" collectively are the "beneficial owner" (as such terms are defined in the Company Rights Plan) of less than 1% of the shares of Company Common Stock outstanding, as set forth in Section 5.2. So long as the Company's representation set forth in the first sentance of Section 5.22 is accurate (without giving effect to the knowledge qualification thereof), neither the execution and delivery of this Agreement by the parties hereto nor the consummation by the Company of the transactions contemplated

hereby will cause the Company to be within the definition of "Related Person" (as such term is defined in Article 11 of Parent's Certificate of Incorporation), or cause the Company or any of its "affiliates" or "associates" to be within the definition of "Acquiring Person" (as such terms are defined in the Parent Rights Plan).

Section 4.21 Materiality. The representations and warranties set forth in this Article IV would in the aggregate be true and correct even without the materiality exceptions or qualifications contained therein except for such exceptions and qualifications which, in the aggregate for all such representations and warranties, are not and could not reasonably be expected to be materially adverse to the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Parent and its subsidiaries taken as a whole.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Subsidiary as follows:

Section 5.1 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. The Company is qualified to do business and is in good standing in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified and in good standing will not, when taken together with all other such failures, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole. True, accurate and complete copies of the Company's Certificate of Incorporation and By-laws and the Company Rights Agreement, in each case as in effect on the date hereof, including all amendments thereto have heretofore been delivered to Parent.

Section 5.2 Capitalization. (a) The authorized capital stock of the Company consists of 300,000,000 shares of Company Common Stock and 3,200,000 shares of preferred stock. As of June 30, 1990, (i) 158,511,977 shares of Company Common Stock, (ii) 96,724 shares of 5% Preferred Stock, par value $25 per share, and (iii) 10,651 shares of

$.80 Convertible Preferred Stock, Series C, 70,051 shares of $1.00 Convertible Preferred Stock, Series D and 2,459 shares of $.80 Convertible Preferred Stock, Series E (the "Company Convertible Preferred Stock" and, together with the preferred stock described in clause (ii), the "Company Preferred Stock") were issued and outstanding. All of the issued and outstanding shares of Company Common Stock and Company Preferred Stock are validly issued and are fully paid, nonassessable and free of preemptive rights. No subsidiary of the Company holds any shares of the capital stock of the Company.

(b) Except as set forth in Schedule 5.2(b) hereof, as of June 30, 1990 there were no outstanding subscriptions, options, calls, contracts, commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating the Company or any subsidiary of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of the capital stock of the Company or obligating the Company or any subsidiary of the Company to grant, extend or enter into any such agreement or commitment, except that 166,850 shares were subject to issuance upon conversion of the Company Convertible Preferred Stock, 2,539,013 shares were subject to issuance upon the exercise of stock options and restricted stock units granted on or before the date hereof, assuming all stock options were vested and all restriction periods on restricted stock units had lapsed, under the Company's 1977 Stock Option and Appreciation Rights Plan, 1984 Stock Option and Appreciation Rights Plan and 1988 Key Employee Stock Plan (the "Company SOP"), 6,522 shares were subject to issuance upon the exercise of stock options granted prior to the date hereof by IPC Communications, Inc. ("IPC"), a corporation acquired by the Company in 1986 after the issuance of such options, 2,335,168 shares were subject to issuance under the Company's Employee Stock Purchase Plan (the "Company ESPP"), and 1,000,000 shares of Junior Participating Preferred Stock, Series K, were reserved for issuance under the Company's Rights Agreement. There are no voting trusts, proxies or other agreements or understandings to which the Company or any subsidiary of the Company is a party or is bound with respect to the voting of any shares of capital stock of the Company. Subsequent to June 30, 1990 and on or prior to the date hereof, the Company has not (i) issued any shares of Company Common Stock except upon exercise or conversion of the above-described stock equivalents or (ii) issued any additional stock equivalents.

**Section 5.3 Subsidiaries.** (a) Each direct and indirect corporate subsidiary of the Company is a corporation duly organized, validly existing and in good

standing under the laws of its jurisdiction of incorporation and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each subsidiary of the Company is qualified to do business, and is in good standing, in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified and in good standing will not, when taken together with all such other failures, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole. The authorized capital stock of Contel Cellular Inc., a Delaware corporation ("Cellular"), consists of (a) 100,000,000 shares of Class A Common Stock, par value $1.00 per share, of which 9,916,000 shares are issued and outstanding as of the date of this Agreement and 298,500 shares are subject to outstanding options and restricted stock units granted under Cellular's Key Employee Stock Plan (the "Cellular SOP"), assuming all stock options were vested and all restriction periods on restricted stock units had lapsed, and (b) 100,000,000 shares of Class B Common Stock, par value $1.00 per share, of which 90,000,000 shares are issued and outstanding. The Company owns of record and beneficially all of the outstanding shares of Cellular's Class B Common Stock and none of the shares of Cellular's Class A Common Stock.

(b) Except as set forth in the Company's Annual Report on Form 10-K for the year ended December 31, 1989 and the exhibits and schedules thereto (the "Company 10-K") or in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1990 and the exhibits and schedules thereto (the "Company 10-Q"), all of the outstanding shares of capital stock of each corporate subsidiary of the Company are validly issued, fully paid, nonassessable and free of preemptive rights and those owned directly or indirectly by the Company are owned free and clear of any liens, claims, encumbrances, security interests, equities, charges and options of any nature whatsoever. Except as set forth in the Company 10-K, the Company 10-Q or in Schedule 5.3(b) hereof, the Company owns directly or indirectly all of the issued and outstanding shares of the capital stock of each of its corporate subsidiaries except for Cellular. Except for options issued under the Cellular SOP to acquire an aggregate of 298,500 shares of Cellular's Class A Common Stock and except as set forth in the Company 10-K, the Company 10-Q or Schedule 5.3(b), there are no subscriptions, options, warrants, rights, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions or arrangements relating to the issuance, sale, voting,

transfer, ownership or other rights with respect to any shares of capital stock of any corporate subsidiary of the Company, including any right of conversion or exchange under any outstanding security, instrument or agreement.

Section 5.4 Authority; Non-Contravention; Approvals. (a) The Company has full corporate power and authority to enter into this Agreement and, subject to the Company Stockholders' Approval and the Company Required Statutory Approvals, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, and the consummation by the Company of the transactions contemplated hereby, have been duly authorized by the Company's Board of Directors and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement and the consummation by the Company of the transactions contemplated hereby, except for the Company Stockholders' Approval and the obtaining of the Company Required Statutory Approvals. This Agreement has been duly and validly executed and delivered by the Company, and, assuming the due authorization, execution and delivery hereof by Parent and Subsidiary, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and (b) general equitable principles.

(b) The execution and delivery of this Agreement by the Company do not, and the consummation by the Company of the transactions contemplated hereby will not, violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any of its subsidiaries under any of the terms, conditions or provisions of (i) the respective charters or by-laws of the Company or any of its subsidiaries, (ii) subject to obtaining the Company Required Statutory Approvals and the receipt of the Company Stockholders' Approval, any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any court or governmental authority applicable to the Company or any of its subsidiaries or any of their respective properties or assets, or (iii) subject to the performance by the Company of its covenants set forth in Section 7.14, any note, bond, mortgage, indenture, deed of trust, license, franchise,

permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which the Company or any of its subsidiaries is now a party or by which the Company or any of its subsidiaries or any of their respective properties or assets may be bound or affected, excluding from the foregoing clauses (ii) and (iii) such violations, conflicts, breaches, defaults, terminations, accelerations or creations of liens, security interests, charges or encumbrances that would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

(c) Except for (i) the filings by Parent and the Company required by Title II of the HSR Act, (ii) the filing of the Joint Proxy Statement/Prospectus with the SEC pursuant to the Exchange Act and the Securities Act and the declaration of the effectiveness thereof by the SEC and filings with various state blue sky authorities, (iii) the necessary approvals, if any, of the PUCs identified on Schedule 5.4(c) as having jurisdiction over the Company or any of its subsidiaries (the "Company PUCs") pursuant to applicable Utilities Codes, (iv) the approvals of the FCC pursuant to the Federal Communications Act, (v) the making of the Merger Filing with the Secretary of State of the State of Delaware in connection with the Merger, and (vi) any required filings with or approvals from applicable state environmental authorities (the filings and approvals referred to in clauses (i) through (vi) are collectively referred to as the "Company Required Statutory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

**Section 5.5 Reports and Financial Statements.** Since December 31, 1986, the Company and each of its subsidiaries required to make filings under the Securities Act, the Exchange Act, any Utilities Codes, or the Federal Communications Act have filed with the SEC, the pertinent PUCs or the FCC, as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by

them under each of the Securities Act, the Exchange Act, the applicable Utilities Codes or the Federal Communications Act and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder. The Company has previously delivered to Parent copies of its (a) Annual Reports on Form 10-K for the fiscal year ended December 31, 1989 and for each of the two immediately preceding fiscal years, as filed with the SEC, (b) proxy and information statements relating to (i) all meetings of its stockholders (whether annual or special) and (ii) actions by written consent in lieu of a stockholders' meeting from December 31, 1986 until the date hereof, (c) all other reports or registration statements filed by the Company with the SEC since December 31, 1986 (other than Registration Statements filed on Form S-8) and (d) the Company's earnings announcement (the "June Earnings Release") for the three and six months ended June 30, 1990, as released July 23, 1990 (the documents referred to in clauses (a), (b) and (c) are collectively referred to as the "Company SEC Reports"). As of their respective dates, the Company SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The audited consolidated financial statements and unaudited interim consolidated financial statements of the Company included in such reports (the "Company Financial Statements") have been prepared in accordance with generally accepted accounting principles applied on a consistent basis (except as may be indicated therein or in the notes thereto) and fairly present the financial position of the Company and its subsidiaries as of the dates thereof and the results of their operations and changes in financial position for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal year-end and audit adjustments and any other adjustments described therein.

**Section 5.6 Absence of Undisclosed Liabilities.** Except as disclosed in the Company 10-K or the Company 10-Q, or in a writing delivered to Parent pursuant to Section 5.3, or as expressly disclosed and described in any of the schedules hereto, neither the Company nor any of its subsidiaries had at December 31, 1989, or has incurred since that date, any liabilities or obligations (whether absolute, accrued, contingent or otherwise) of any nature, (a) except liabilities, obligations or contingencies (i) which are accrued or reserved against in the Company Financial Statements or reflected in the notes thereto or (ii) which were incurred after December 31, 1989 and were incurred in the ordinary course of business and consistent with past practices and (b) except for any liabilities, obligations or

contingencies which (i) would not, in the aggregate, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole, or (ii) have been discharged or paid in full prior to the date hereof.

**Section 5.7 Absence of Certain Changes or Events.** Except as set forth in the Company 10-Q and the June Earnings Release, from December 31, 1989 through the date hereof, there has not been any material adverse change in the business, operations, properties, assets, liabilities, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

**Section 5.8 Litigation.** Except as previously disclosed in writing to Parent prior to the date hereof, there are no claims, suits, actions or proceedings pending or, to the knowledge of the Company, threatened against, relating to or affecting the Company or any of its subsidiaries, before any court, governmental department, commission, agency, instrumentality or authority, or any arbitrator which could reasonably be expected, either alone or in the aggregate with all such claims, actions or proceedings, to materially and adversely affect the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole. Except as set forth in the Company 10-K or the Company 10-Q, neither the Company nor any of its subsidiaries is subject to any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or authority, or any arbitrator which prohibits or restricts the consummation of the transactions contemplated hereby or would have any material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

**Section 5.9 Registration Statement and Proxy Statement.** None of the information to be supplied by the Company or its subsidiaries for inclusion in (a) the Registration Statement or (b) the Proxy Statement will, in the case of the Proxy Statement or any amendments thereof or supplements thereto, at the time of the mailing of the Proxy Statement and any amendments or supplements thereto, and at the time of the meetings of stockholders of the Company and Parent to be held in connection with the transactions contemplated by this Agreement, or, in the case of the Registration Statement, as amended or supplemented, at the time it becomes effective and at the time of such meetings

of the stockholders of the Company and Parent, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Joint Proxy Statement/Prospectus will comply as to form in all material respects with all applicable laws, including the provisions of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, except that no representation is made by the Company with respect to information supplied by Parent or Subsidiary for inclusion therein.

Section 5.10 No Violation of Law. Except as disclosed in the Company 10-K or the Company 10-Q, neither the Company nor any of its subsidiaries is in violation of or has been given notice or been charged with any violation of, any law, statute, order, rule, regulation, ordinance or judgment (including, without limitation, any applicable environmental law, ordinance or regulation) of any governmental or regulatory body or authority, except for violations which, in the aggregate, do not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole. Except as disclosed in the Company 10-K or the Company 10-Q and except for the investigation disclosed in the writing delivered to Parent pursuant to Section 5.8, as of the date of this Agreement, to the knowledge of the Company no investigation or review by any governmental or regulatory body or authority is pending or threatened, nor has any governmental or regulatory body or authority indicated an intention to conduct the same, other than, in each case, those the outcome of which, as far as reasonably can be foreseen, will not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries taken as a whole. Except as disclosed on Schedule 5.10 hereto, the Company and its subsidiaries have all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals necessary to conduct their businesses as presently conducted, including, without limitation, authorizations under applicable Utilities Codes and under the Federal Communications Act (the "Company Permits"), except for permits, licenses, franchises, variances, exemptions, orders, authorizations, consents and approvals the absence of which, alone or in the aggregate, would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole. The Company and its

subsidiaries (a) have duly and currently filed all reports and other information required to be filed with the FCC or any other governmental or regulatory authority in connection with the Company Permits, and (b) are not in violation of the terms of any Company Permit, except for delays in filing reports or violations which, alone or in the aggregate, would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

Section 5.11 Compliance with Agreements. Except as disclosed in the Company 10-K, the Company 10-Q or Schedule 5.11 hereto, the Company and each of its subsidiaries are not in breach or violation of or in default in the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or action by a third party, could result in a default under, (a) the respective charters, by-laws or similar organizational instruments of the Company or any of its subsidiaries or (b) any contract, commitment, agreement, indenture, mortgage, loan agreement, note, lease, bond, license, approval or other instrument to which the Company or any of its subsidiaries is a party or by which any of them is bound or to which any of their property is subject, which breaches, violations and defaults, in the case of clause (b) of this Section 5.11, would have, in the aggregate, a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.

Section 5.12 Taxes. The Company and its subsidiaries have (i) duly filed with the appropriate governmental authorities all Tax Returns required to be filed by them for all periods ending on or prior to the Effective Time, other than those Tax Returns the failure of which to file would not have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole, and such Tax Returns are true, correct and complete in all material respects, and (ii) duly paid in full or made adequate provision for the payment of all Taxes for all periods ending at or prior to the Effective Time. The liabilities and reserves for Taxes reflected in the Company balance sheet as of December 31, 1989 contained in the Company 10-K (the "1989 Company Balance Sheet") are adequate to cover all Taxes for all periods ending on or prior to December 31, 1989 and there are no material liens for Taxes upon any property or asset of the Company or any subsidiary thereof, except for liens for Taxes not yet due. There are no unresolved issues of law or fact arising out of a notice of

deficiency, proposed deficiency or assessment from the IRS or any other governmental taxing authority with respect to Taxes of the Company or any of its subsidiaries which, if decided adversely, singly or in the aggregate, would have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole.. Neither the Company nor any of its subsidiaries is a party to any agreement providing for the allocation or sharing of Taxes with any entity that is not, directly or indirectly, a wholly owned corporate subsidiary of Company other than (i) agreements the consequences of which are fully and adequately reserved for on the 1989 Company Balance Sheet and (ii) the tax arrangement referred to in note 7 to the 1989 Company Balance Sheet. Neither the Company nor any of its corporate subsidiaries has, with regard to any assets or property held, acquired or to be acquired by any of them, filed a consent to the application of Section 341(f) of the Code.

**Section 5.13 Employee Benefit Plans; ERISA.** (a) Except as set forth in the Company 10-K, the proxy statement for the 1990 annual meeting of stockholders of the Company or in Schedule 5.13(a) hereof, at the date hereof, the Company and its subsidiaries do not maintain or contribute to any material employee benefit plans, programs, arrangements and practices (such plans, programs, arrangements and practices of the Company and its subsidiaries being referred to as the "Company Plans"), including employee benefit plans within the meaning set forth in Section 3(3) of ERISA, or any written employment contracts providing for an annual base salary in excess of $200,000 and having a term in excess of 1 year, which contracts are not immediately terminable without penalty or further liability, or other similar material arrangements for the provision of benefits (excluding any "Multiemployer Plan" within the meaning of Section 3(37) of ERISA or a "Multiple Employer Plan" within the meaning of Section 413(c) of the Code). Schedule 5.13(a) hereto lists all Multiemployer Plans and Multiple Employer Plans which any of the Company or its subsidiaries maintains or to which any of them makes contributions. Neither the Company nor its subsidiaries has any obligation to create any additional such plan or to amend any such plan so as to increase benefits thereunder, except as required under the terms of the Company Plans, under existing collective bargaining agreements or to comply with applicable law.

(b) Except as disclosed in the Company 10-K or as set forth in Schedule 5.13(b) hereof, (i) there have been no prohibited transactions within the meaning of Section 406 or 407 of ERISA or Section 4975 of the Code with respect to any of the Company Plans that could result in penalties, taxes

or liabilities which, singly or in the aggregate, could have a material adverse effect on the business, operations, properties, assets, condition (financial or other) results of operations or prospects of the Company and its subsidiaries, taken as a whole, (ii) except for premiums due, there is no outstanding liability in excess of $1,000,000, whether measured alone or in the aggregate, under Title IV of ERISA with respect to any of the Company Plans, (iii) neither the Pension Benefit Guaranty Corporation nor any plan administrator has instituted proceedings to terminate any of the Company Plans subject to Title IV of ERISA other than in a "standard termination" described in Section 4041(b) of ERISA, (iv) none of the Company Plans has incurred any "accumulated funding deficiency" (as defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, as of the last day of the most recent fiscal year of each of the Company Plans ended prior to the date of this Agreement, (v) the current present value of all projected benefit obligations under each of the Company Plans which is subject to Title IV of ERISA did not, as of its latest valuation date, exceed the then current value of the assets of such plan allocable to such benefit liabilities by more than the amount, if any, disclosed in the Company 10-K as of December 31, 1989 (based upon reasonable actuarial assumptions currently utilized for such Company Plan), (vi) each of the Company Plans has been operated and administered in all material respects in accordance with applicable laws during the period of time covered by the applicable statute of limitations, (vii) each of the Company Plans which is intended to be "qualified" within the meaning of Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and such determination has not been modified, revoked or limited by failure to satisfy any condition thereof or by a subsequent amendment thereto or a failure to amend, except that it may be necessary to make additional amendments retroactively to maintain the "qualified" status of such Company Plans, and the period for making any such necessary retroactive amendments has not expired, (viii) with respect to Multiemployer Plans, neither the Company nor any of its subsidiaries has, since December 31, 1982, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203, 4204 and 4205 of ERISA and, to the best knowledge of the Company and its subsidiaries, no event has occurred or is expected to occur which presents a material risk of a complete or partial withdrawal under said Sections 4203, 4204 and 4205, (ix) to the best knowledge of the Company and its subsidiaries, there are no material pending, threatened or anticipated claims involving any of the Company Plans other than claims for benefits in the ordinary course, and (x) the Company and its subsidiaries have no current liability in excess of $1,000,00', whether measured

alone or in the aggregate, for plan termination or withdrawal (complete or partial) under Title IV of ERISA based on any plan to which any entity that would be deemed one employer with the Company and its subsidiaries under Section 4001 of ERISA or Section 414 of the Code contributed during the period of time covered by the applicable statute of limitations (the "Company Controlled Group Plans"), and the Company and its subsidiaries do not reasonably anticipate that any such liability will be asserted against the Company or any of its subsidiaries, none of the Company Controlled Group Plans has an "accumulated funding deficiency" (as defined in Section 302 of ERISA and 412 of the Code), and no Company Controlled Group Plan has an outstanding funding waiver which could result in the imposition of liens, excise taxes or liability against the Company and its subsidiaries in excess of $1,000,000 whether measured alone or in the aggregate.

Section 5.14 Investment Company Act. The Company and each of its subsidiaries either (a) is not an "investment company," or a company "controlled" by, or an "affiliated company" with respect to, an "investment company," within the meaning of the Investment Company Act or (b) satisfies all conditions for an exemption from the Investment Company Act, and, accordingly, neither the Company nor any of its subsidiaries is required to be registered under the Investment Company Act.

Section 5.15 Labor Controversies. Except as set forth in the Company 10-K or the Company 10-Q, (a) there are no significant controversies pending or, to the knowledge of the Company, threatened between the Company or its subsidiaries and any representatives of any of their employees, (b) to the knowledge of the Company, there are no material organizational efforts presently being made involving any of the presently unorganized employees of the Company or its subsidiaries, (c) the Company and its subsidiaries have, to the knowledge of the Company, complied in all material respects with all laws relating to the employment of labor, including, without limitation, any provisions thereof relating to wages, hours, collective bargaining, and the payment of social security and similar taxes, and (d) no person has, to the knowledge of the Company, asserted that the Company or any of its subsidiaries is liable in any material amount for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing, except for such controversies, organizational efforts, non-compliance and liabilities which, singly or in the aggregate, could not reasonably be expected to materially and adversely affect the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries taken as a whole.

Section 5.16 Environmental Matters. Except as set forth in the Company 10-K or the Company 10-Q, to the knowledge of the Company, neither the Company nor any of its subsidiaries has disposed of or arranged for the disposal of any hazardous substance at any facility, location or site so as to be or become a potentially liable party for remedial action or response costs in connection with such facility, location or site under the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Resource Conservation and Recovery Act, as amended, or similar state statutes which liability could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries taken as a whole.

Section 5.17 Regulation as a Utility. (a) Schedule 5.17(a) sets forth (i) each state in which one or more subsidiaries of the Company is, under applicable law, regulated as a public utility and (ii) the subsidiaries which are regulated as a public utility in each such state.

(b) Certain subsidiaries of Cellular which provide cellular service hold licenses, permits or authorizations issued by the FCC. Schedule 5.17(b) sets forth a list of all subsidiaries of Cellular that hold authorizations for cellular systems that are in operation at present. In addition, certain of the subsidiaries listed in Schedule 5.17(b) are also regulated by virtue of the provision of cellular telephone services by a state agency as indicated on Schedule 5.17(b).

(c) Except as set forth in Schedules 5.17(a) or 5.17(b) hereof, neither the Company nor any of its subsidiaries is subject to regulation as a public utility, public service company (or similar designation) or by virtue of the provision of cellular telephone services by any other state in the United States or any foreign country.

Section 5.18 Certain Agreements. Except as set forth in the Company 10-K or the Company 10-Q, or as set forth in Schedule 5.18 hereof, and except for this Agreement, as of the date hereof, neither the Company nor any of its subsidiaries is a party to any oral or written (a) consulting or similar agreement with any present or former director, officer or employee or any entity controlled by any such person not terminable on 60 days' or less notice involving the payment of more than $250,000 per annum, (b) agreement with any executive officer or other key employee of the Company or any of its subsidiaries the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction

involving the Company of the nature contemplated by this Agreement, (c) agreement with respect to any executive officer or other key employee of the Company or any of its subsidiaries providing any term of employment or compensation guarantee extending for a period longer than three years and for the payment in excess of $200,000 per annum, or (d) agreement or plan, including any stock option plan, stock appreciation right plan, restricted stock plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of the benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of the transactions contemplated by this Agreement.

**Section 5.19 Opinions of Financial Advisors.** The Company has received the separate opinions of Goldman, Sachs & Co. and Salomon Brothers Inc to the effect that, as of the date hereof, (i) in the case of Goldman, Sachs & Co., the Exchange Ratio is fair to the Company's stockholders and (ii) in the case of Salomon Brothers Inc, the Exchange Ratio is fair to the Company's stockholders from a financial point of view. A copy of each such opinion will be delivered promptly to Parent.

**Section 5.20 Section 203 of the DGCL Not Applicable.** The provisions of Section 203 of the DGCL will not, assuming the accuracy of the representations of Parent contained in Sections 4.2 and 4.20 (without giving effect to the knowledge qualification thereof) apply to this Agreement or to the transactions contemplated hereby.

**Section 5.21 Accounting Matters.** Neither the Company nor, to the best of its knowledge, any of its affiliates, has through the date of this Agreement, taken or agreed to take any action that would prevent Parent from accounting for the business combination to be effected by the Merger as a pooling of interests.

**Section 5.22 Company Ownership of Parent Common Stock; Parent Not an Acquiring Person.** The Company and, to the best of its knowledge, its "affiliates" and "associates" collectively are the "beneficial owner" (as such terms are defined in the Parent Rights Plan) of, and the Company is the direct or indirect "beneficial owner" (as such term is defined in Article 11 of Parent's Certificate of Incorporation) of, less than 1% of the shares of Parent Common Stock outstanding, as set forth in Section 4.2. So long as Parent's and Subsidiary's representations set forth in the first sentance of Section 4.20 are accurate (without giving effect to the knowledge qualification thereof), neither the execution and delivery of this Agreement by the parties hereto nor the consummation by Parent of the

transactions contemplated hereby will cause Parent or any of its "affiliates" or "associates" to be within the definition of "Acquiring Person" (as such terms are defined in the Company Rights Plan).

Section 5.23 Materiality. The representations and warranties set forth in this Article V would in the aggregate be true and correct even without the materiality exceptions or qualifications contained therein except for such exceptions and qualifications which, in the aggregate for all such representations and warranties, are not and could not reasonably be expected to be materially adverse to the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries taken as a whole.

## ARTICLE VI

## CONDUCT OF BUSINESS PENDING THE MERGER

Section 6.1 Conduct of Business by the Company Pending the Merger. Except as set forth in Schedule 6.1 hereof or as otherwise contemplated by this Agreement, after the date hereof and prior to the Closing Date or earlier termination of this Agreement, unless Parent shall otherwise agree in writing, the Company shall, and shall cause each of its subsidiaries, to:

(a) conduct their respective businesses in the ordinary and usual course of business and consistent with past practice;

(b) not (i) amend or propose to amend their respective charters or by-laws, or (ii) split, combine or reclassify their outstanding capital stock or declare, set aside or pay any dividend or distribution payable in cash, stock, property or otherwise, except for (A) regular quarterly cash dividends on Company Common Stock of no more than $0.275 per share of Company Common Stock, (B) regular quarterly or semi-annual cash dividends on preferred stock in accordance with the terms thereof and (C) the payment of dividends or distributions by a wholly owned subsidiary of the Company;

(c) not issue, sell, pledge or dispose of, or agree to issue, sell, pledge or dispose of, any additional shares of, or any options, warrants or rights of any kind to acquire any shares of their capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock, except that in the ordinary course of

its business and consistent with its past practices (i) the Company may grant stock options under the Company SOP covering an aggregate amount not to exceed 500,000 shares of Company Common Stock with respect to options to be granted in November 1990 and through the remainder of the year, and, up to the Effective Time, the Company may grant stock options under the Company SOP covering an aggregate amount not to exceed 200,000 shares of Company Common Stock with respect to options to be granted in January or February 1991 and 25,000 shares of Company Common Stock with respect to options to be granted from March 1, 1991 through July 31, 1991, (ii) the Company may issue shares upon exercise of outstanding options or conversion of outstanding Company Convertible Preferred Stock, or upon the expiration of the restriction period with respect to restricted stock units under the Company SOP, (iii) Cellular may grant stock options under the Cellular SOP covering an aggregate amount not to exceed 25,000 shares of Cellular's Class A Common Stock with respect to options to be granted through the remainder of 1990, and, up to the Effective Time in 1991, Cellular may grant stock options under the Cellular SOP covering an aggregate amount not to exceed 100,000 shares of Cellular's Class A Common Stock with respect to options to be granted through the end of March 1991 and 25,000 shares of Cellular's Class A Common Stock with respect to options to be granted from April 1, 1991 through July 31, 1991, (iv) Cellular may issue shares of its Class A Common Stock upon exercise of outstanding options or upon the expiration of the restriction period with respect to restricted stock units under the Cellular SOP, (v) the Company may issue an aggregate amount not to exceed 1,000,000 shares of Company Common Stock under the Company ESPP at the conclusion of the purchase period under the Company ESPP that began with the first pay period ending after September 30, 1989, (vi) the Company may grant stock options under the Company ESPP covering an aggregate amount not to exceed 1,400,000 shares of Company Common Stock to be purchased under the Company ESPP during the purchase period beginning with the first pay period after September 30, 1990, and (vii) the Company may issue shares of its Company Common Stock in connection with the Matching Employer Contribution under the Contel Retirement Savings Plan ("CRSP") in accordance with the terms of CRSP as in effect on the date hereof;

(d) not (i) incur or become contingently liable with respect to any indebtedness for borrowed money other than (A) borrowings in the ordinary course of business or (B) borrowings to refinance existing indebtedness, (ii) redeem, purchase, acquire or offer

to purchase or acquire any shares of its capital stock, other than as permitted by the governing terms of such securities, (iii) take any action which would jeopardize the treatment of Parent's acquisition of the Company as a "pooling" for accounting purposes, (iv) take or fail to take any action which action or failure to take action would cause the Company or its stockholders (except to the extent that any stockholders receive cash in lieu of fractional shares) to recognize gain or loss for federal income tax purposes as a result of the consummation of the Merger, (v) make any acquisition of any assets or businesses other than (A) the acquisitions described on Schedule 6.1 hereto, (B) expenditures for fixed or capital assets in the ordinary course of business or (C) other acquisitions having a value (including the principal amount of indebtedness assumed) of less than $35,000,000 individually and $100,000,000 in the aggregate, (vi) sell any assets or businesses other than (A) the sales described on Schedule 6.1 hereto, (B) sales in the ordinary course of business or (C) other sales of less than $35,000,000 individually and $100,000,000 in the aggregate or (vii) enter into any contract, agreement, commitment or arrangement with respect to any of the foregoing;

(e) use all reasonable efforts to preserve intact their respective business organizations and goodwill, keep available the services of their respective present officers and key employees, and preserve the goodwill and business relationships with suppliers, distributors, customers, and others having business relationships with them and not engage in any action, directly or indirectly, with the intent to adversely impact the transactions contemplated by this Agreement;

(f) confer on a regular and frequent basis with one or more representatives of Parent to report operational matters of materiality and the general status of ongoing operations;

(g) not enter into or amend any employment, severance, special pay arrangement with respect to termination of employment or other similar arrangements or agreements with any directors, officers or key employees, except in the ordinary course and consistent with past practice; provided, however, that the Company and its subsidiaries shall in no event enter into any written employment agreement which provides for an annual base salary in excess of $125,000 and has a term in excess of one year or enter into or amend any severance or termination arrangement which provides for

payments to any person different from those contained in the letter prepared pursuant to Section 7.9(n);

(h) not adopt, enter into or amend any bonus, profit sharing, compensation, stock option, pension, retirement, deferred compensation, health care, employment or other employee benefit plan, agreement, trust, fund or arrangement for the benefit or welfare of any employee or retiree, except as required to comply with changes in applicable law or by Section 7.9 hereof, except (i) in the ordinary course of business and consistent with past practice or as required under the terms of such plans, and (ii) that the Company may increase the aggregate level of base compensation of its officers and employees in accordance with the terms of its 1990 salary compensation plan, and compensation for 1991 shall be determined on a basis comparable to that used for 1990;

(i) maintain with financially responsible insurance companies insurance on its tangible assets and its businesses in such amounts and against such risks and losses as are consistent with past practice; and

(j) confer with the representatives of Parent with respect to the making, or not making, of an election under Section 338(h)(10) of the Code in connection with the purchase of stock of McCaw Cellular Funding, Inc., a Washington corporation.

**Section 6.2 Control of the Company's Operations.** Nothing contained in this Agreement shall give to Parent, directly or indirectly, rights to control or direct the Company's operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of its operations.

**Section 6.3 Conduct of Business by Parent and Subsidiary Pending the Merger.** Except as set forth in Schedule 6.3 or as otherwise contemplated hereby, after the date hereof and prior to the Closing Date or earlier termination of this Agreement, unless the Company shall otherwise agree in writing, Parent shall, and shall cause its subsidiaries, to:

(a) conduct their respective businesses in the ordinary and usual course of business and consistent with past practice;

(b) not (i) split, combine or reclassify (whether by stock dividend or otherwise) its issued and

outstanding shares of Parent Common Stock, (ii) reduce dividends on the Parent Common Stock to a level of less than $0.395 per share per calendar quarter or make any extraordinary distribution on or with respect to Parent Common Stock, (iii) issue or sell any shares of Parent Common Stock for less than fair value, except for the issuance and sale of no more than 22,300,000 shares or equivalents, in the aggregate, under the Parent DRIP, Parent SP, Parent LTIP, Parent EIP, Parent ITDPs, Parent UIP, Parent PSP, Parent DCPD or other incentive and compensation plans (the "Parent Incentive Plans"), and shares issuable upon conversion of securities or exercise of options outstanding on the date hereof or issued in accordance herewith, or (iv) grant any options or issue any warrants exercisable for or securities convertible or exchangeable into Parent Common Stock, except (A) grants of options pursuant to the Parent Incentive Plans and grants of options or issuances of warrants or convertible securities with respect to up to 10,000,000 additional shares of Parent Common Stock and (B) securities which on the date of issue cannot be converted or exchanged for less than fair market value;

(c) not (i) take any action which would jeopardize the treatment of Parent's acquisition of the Company as a "pooling" for accounting purposes, (ii) take or fail to take any action which action or failure to act would cause the Company or its stockholders (except to the extent that any such stockholders receive cash in lieu of fractional shares) to recognize gain or loss for federal income tax purposes as a result of the consummation of the Merger, (iii) make any acquisition of any assets or businesses other than (A) the acquisitions described on Schedule 6.3 hereto, (B) expenditures for fixed capital assets in the ordinary course of business or (C) other acquisitions having a value (including the principal amount of indebtedness assumed) of less than $250,000,000 individually and $750,000,000 in the aggregate, (iv) sell any assets or businesses other than (A) the sales described on Schedule 6.3 hereto, (B) sales in the ordinary course of business or (C) other sales of less than $250,000,000 individually and $750,000,000 in the aggregate or (v) enter into any contract, agreement, commitment or arrangement with respect to any of the foregoing;

(d) use all reasonable efforts to preserve intact their respective business organizations and goodwill, keep available the services of their respective present officers and key employees, and preserve the goodwill and business relationships with suppliers,

distributors, customers and others having business relationships with them and not engage in any action, directly or indirectly, with the intent to adversely impact the transactions contemplated by this Agreement;

(e) confer on a regular and frequent basis with one or more representatives of the Company to report operational matters of materiality and the general status of ongoing operations; and

(f) maintain with financially responsible insurance companies insurance on its tangible assets and its businesses in such amounts and against such risks and losses as are consistent with past practice.

**Section 6.4 Redemption of Company Preferred Stock.** The Company shall cause to be redeemed all issued and outstanding shares of Company Preferred Stock, such redemption to be completed not later than the Closing Date.

**Section 6.5 Acquisition Transactions.** After the date hereof and prior to the Effective Time or earlier termination of this Agreement, unless Parent shall otherwise agree in writing, the Company shall not, and shall not permit any of its subsidiaries to, initiate, solicit, negotiate, encourage, or provide confidential information to facilitate, and the Company shall, and shall cause each of its subsidiaries to, (x) cause any officer, director or employee of, or any attorney, accountant or other agent retained by, the Company or any of its subsidiaries and (y) use its best efforts to cause any investment banker retained by the Company or any of its subsidiaries, not to initiate, solicit, negotiate, encourage, or provide confidential information to facilitate, any proposal or offer to acquire all or any substantial part of the business and properties of the Company and its subsidiaries, taken as a whole, or capital stock of the Company, whether by merger, purchase of assets, tender offer or otherwise, whether for cash, securities or any other consideration or combination thereof (such transactions, exclusive of an acquisition of assets that do not constitute substantially all of the assets of the Company and its subsidiaries taken as a whole, being referred to herein as "Acquisition Transactions"); provided, however, that the Company and its subsidiaries may furnish (on terms, including confidentiality and standstill terms, substantially similar to those set forth in the Memorandum of Understanding dated July 12, 1990 between Parent and Company) information concerning its business, properties or assets to a corporation, partnership, person or other entity or group (a "Potential Acquirer") if (i) the Company's Board of Directors is advised by one or more of its financial advisors that such Potential Acquirer has the financial wherewithal to consummate an Acquisition

Transaction that would yield a higher value to the Company's stockholders than will the Merger, (ii) the Company's Board of Directors determines that such Potential Acquirer may submit a bona fide offer to consummate an Acquisition Transaction on terms that would yield such a higher value to the Company's stockholders if provided with confidential information about the Company, and (iii) based upon the written opinion of Delaware counsel to the Company to such effect addressed and delivered to the Board of Directors of the Company (a copy of which shall have been furnished by the Company to Parent), the Company's Board of Directors determines that there is a significant risk that the failure to provide such confidential information would constitute a breach of its fiduciary duty to stockholders of the Company. Following receipt of a bona fide offer from a Potential Acquirer who meets the requirements of clause (i) above, and whose offer the Board of Directors of the Company determines would likely yield a higher value to the Company's stockholders as therein contemplated, the Company may, with respect to such Potential Acquirer, negotiate and take any of the actions otherwise prohibited by this Section 6.5 if, in the written opinion of Delaware Counsel to the Company addressed and delivered to the Board of Directors of the Company (a copy of which shall have been furnished by the Company to Parent), the failure to negotiate with such Potential Acquirer would constitute a breach of its fiduciary duty to the stockholders of the Company. In the event the Company shall determine to provide any information as described above, or shall receive any offer of the type referred to in this Section 6.5, it shall promptly inform Parent as to the fact that information is to be provided or that an offer has been received and shall furnish to Parent the identity of the recipient of such information or the proponent of such offer, if applicable, and, if an offer has been received, a description of the material terms thereof. The Company may enter into a definitive agreement for an Acquisition Transaction which meets the requirements of clause (i) above with a Potential Acquirer with which it is permitted to negotiate pursuant to this Section 6.5, provided that at least five business days prior to the Company's execution thereof the Company shall have furnished Parent with a description of all of the material terms thereof. Concurrently with the Company's execution of such a definitive agreement, Parent or the Company may terminate this Agreement.

## ARTICLE VII

## ADDITIONAL AGREEMENTS

**Section 7.1. Access to Information.** The Company and its subsidiaries shall afford to Parent and Subsidiary

and their respective accountants, counsel, financial advisors and other representatives (the "Parent Representatives") and Parent and its subsidiaries shall afford to the Company and its accountants, counsel, financial advisors and other representatives (the "Company Representatives") full access during normal business hours throughout the period prior to the Effective Time to all of their respective properties, books, contracts, commitments and records (including, but not limited to, Tax Returns) and, during such period, shall furnish promptly to one another (i) a copy of each report, schedule and other document filed or received by any of them pursuant to the requirements of federal or state securities laws or filed by any of them with the SEC, any PUC or the FCC in connection with the transactions contemplated by this Agreement or which may have a material effect on their respective businesses, properties or personnel and (ii) such other information concerning their respective businesses, properties and personnel as Parent or Subsidiary or the Company, as the case may be, shall reasonably request; provided that no investigation pursuant to this Section 7.1 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the Merger. Parent and its subsidiaries shall hold and shall use their best efforts to cause the Parent Representatives to hold, and the Company and its subsidiaries shall hold and shall use their best efforts to cause the Company Representatives to hold, in strict confidence all non-public documents and information furnished to Parent and Subsidiary or to the Company, as the case may be, in connection with the transactions contemplated by this Agreement, except that Parent, Subsidiary and the Company may disclose such information as may be necessary in connection with seeking the Parent Required Statutory Approvals and Parent Stockholders' Approval, the Subsidiary Stockholder's Approval, the Company Required Statutory Approvals and the Company Stockholders' Approval, and Parent, Subsidiary and the Company may disclose any information that any of them is required by law or judicial or administrative order to disclose. In the event that this Agreement is terminated in accordance with its terms, each party shall promptly redeliver to the other all non-public written material provided pursuant to this Section 7.1 and shall not retain any copies, extracts or other reproductions in whole or in part of such written material. In such event, all documents, memoranda, notes and other writing whatsoever prepared by Parent or the Company based on the information in such material shall be destroyed (and Parent and the Company shall use their respective best efforts to cause their advisors and representatives to similarly destroy their documents, memoranda and notes), and such destruction (and best efforts) shall be certified in writing by an authorized

officer supervising such destruction. The Company shall promptly advise Parent and Parent shall promptly advise the Company in writing of any change or the occurrence of any event after the date of this Agreement having, or which, insofar as can reasonably be foreseen, in the future may have, any material adverse effect on the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries or Parent and its subsidiaries, as the case may be, taken as a whole.

**Section 7.2 Registration Statement and Proxy Statement.** Parent and the Company shall file with the SEC as soon as is reasonably practicable after the date hereof the Joint Proxy Statement/Prospectus and shall use all reasonable efforts to have the Registration Statement declared effective by the SEC as promptly as practicable. Parent shall also take any action required to be taken under applicable state blue sky or securities laws in connection with the issuance of Parent Common Stock. Parent and the Company shall promptly furnish to each other all information, and take such other actions, as may reasonably be requested in connection with any action by any of them in connection with the preceding sentance. The information provided and to be provided by Parent and the Company, respectively, for use in the Joint Proxy Statement/ Prospectus shall be true and correct in all material respects without omission of any material fact which is required to make such information not false or misleading.

**Section 7.3 Stockholders' Approval.** (a) The Company shall promptly submit this Agreement and the transactions contemplated hereby for the approval of its stockholders at a meeting of stockholders and, subject to the fiduciary duties of the Board of Directors of the Company under applicable law, shall use its best efforts to obtain stockholder approval and adoption (the "Company Stockholders' Approval") of this Agreement and the transactions contemplated hereby. Such meeting shall be held as soon as practicable following the date upon which the Registration Statement becomes effective. Subject to the fiduciary duties of the Board of Directors of the Company under applicable law, the Company shall, through its Board of Directors, recommend to its stockholders approval of the transactions contemplated by this Agreement.

(b) Parent shall promptly submit this Agreement and the transactions contemplated hereby for the approval of its stockholders at a meeting of stockholders and, subject to the fiduciary duties of the Board of Directors of Parent under applicable law, shall use its best efforts to obtain stockholder approval and adoption (the "Parent Stockholders' Approval") of this Agreement and the transactions

contemplated hereby. Such meeting shall be held as soon as practicable following the date on which the Registration Statement becomes effective. Parent (i) shall, through its Board of Directors, but subject to the fiduciary duties of the members thereof, recommend to its stockholders approval of the transactions contemplated by this Agreement, (ii) shall cause Subsidiary promptly to submit this Agreement and the transactions contemplated hereby for approval and adoption by Parent as its sole stockholder by written consent (the "Subsidiary Stockholder's Approval") and (iii) shall authorize and cause an officer of Parent to vote Parent's shares of Subsidiary Common Stock for adoption and approval of this Agreement and the transactions contemplated hereby and shall take all additional actions as the sole common stockholder of Subsidiary necessary to adopt and approve this Agreement and the transactions contemplated hereby.

**Section 7.4 Compliance with the Securities Act.** Parent and the Company shall each use its best efforts to cause each principal executive officer, each director and each other person who is an "affiliate," as that term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act, of Parent or the Company, as the case may be, to deliver to Parent and the Company on or prior to the Effective Time a written agreement (an "Affiliate Agreement") to the effect that such person will not offer to sell, sell or otherwise dispose of any shares of Parent Common Stock issued in the Merger, except, in each case, pursuant to an effective registration statement or in compliance with Rule 145, as amended from time to time, or in a transaction which, in the opinion of legal counsel satisfactory to Parent, is exempt from the registration requirements of the Securities Act and, in any case, until after the results covering 30 days of post-merger combined operations of Parent and the Company have been filed with the SEC, sent to stockholders of Parent or otherwise publicly issued.

**Section 7.5 Exchange Listing.** Parent shall use its best efforts to effect, at or before the Effective Time, authorization for listing on the New York Stock Exchange Inc. (the "NYSE"), the Midwest Stock Exchange, Incorporated (the "MSE"), and The Pacific Stock Exchange Incorporated (the "PSE"), upon official notice of issuance, of the additional shares of Parent Common Stock to be issued pursuant to the Merger.

**Section 7.6 Expenses.** Subject to Section 9.5, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, except that those expenses incurred in connection with printing the Joint

Proxy Statement/Prospectus shall be shared equally by Parent and the Company.

Section 7.7 Agreement to Cooperate. (a) Each of the parties hereto shall cooperate and use its best efforts to prepare and file with the FCC and the PUCs as promptly as practicable after the execution of this Agreement all requisite applications and amendments thereto, together with related information, data and exhibits, necessary to request issuance of orders approving the transactions contemplated by this Agreement by the FCC and the PUCs, each of which must become a Final Order in order to satisfy the condition set forth in Section 8.1(g). For the purposes of this Agreement, the term "Final Order" shall mean action by the FCC or a PUC as to which (i) no request for stay by the FCC or PUC, as applicable, of the action is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it has passed, (ii) no petition for rehearing or reconsideration, or application for review, of the action is pending before the FCC or PUC, as applicable, and the time for filing any such petition or application has passed, (iii) the FCC or PUC, as applicable, does not have the action under reconsideration or review on its own motion and the time for such reconsideration or review has passed, and (iv) no appeal to a court, or request for stay by a court, of the FCC's or PUC's action, as applicable, is pending or in effect, and, if any deadline for filing any such appeal or request is designated by statute or rule, it has passed.

(b) Subject to the terms and conditions herein provided, each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including using its reasonable efforts to obtain all necessary or appropriate waivers, consents and approvals and SEC "no-action" letters (including, but not limited to, required approvals under the Utilities Codes and the Federal Communications Act), to effect all necessary registrations, filings and submissions (including, but not limited to, filings under the HSR Act and any other submissions requested by the Federal Trade Commission or Department of Justice and filings with respect to the Parent Consent Decree) and to lift any injunction or other legal bar to the Merger (and, in such case, to proceed with the Merger as expeditiously as possible), subject, however, to the requisite votes of the stockholders of the Company, Subsidiary and Parent.

(c) In addition to the covenants set forth in Section 7.7(a) and (b), Parent, Subsidiary and the Company

each agree to take such actions as may be necessary to obtain any governmental consents, orders and approvals legally required for the consummation of the Merger and the transactions contemplated hereby, including the making of any filings, publications and requests for extensions and waivers, and shall (i) sell or otherwise dispose of their respective interests in licensees holding competing licenses for identical cellular telephone service areas (the party holding the smaller percentage of ownership in a competing licensee being obligated so to sell or dispose of its interest) and (ii) if required to obtain the approval of the FCC, the Department of Justice or any other governmental authority having jurisdiction over such matter, or if required by any court with jurisdiction over the subject matter to which any such requirement has been referred or appealed, hold separate, sell, or otherwise dispose of any subsidiary, subsidiaries, or assets, and accept entry of consent decrees in respect thereof. In the event that the sale or other disposition of any subsidiaries or assets is required as contemplated by clause (ii) above and the governmental authority or court having jurisdiction over the matter fails to specify which of Parent or the Company shall be obligated to consummate such sale or disposition, the parties shall negotiate in good faith the appropriate resolution of the problem, it being understood that the party holding the overlapping asset or subsidiary with the least value shall be obligated so to sell or dispose of its interest therein. Notwithstanding the foregoing, nothing in this Section 7.7(c) shall be construed to require (x) Parent or Subsidiary to (I) sell or otherwise dispose of any subsidiary or assets which either alone or in the aggregate with all such other sales or dispositions would constitute the sale or disposition of a "significant subsidiary" of Parent, (II) take any action the effectiveness of which cannot be conditioned upon the consummation of the Merger which would materially impair the business, operations, financial condition or prospects of Parent and its subsidiaries, taken as a whole, or (III) take any action which either would materially impair the business, operations, financial condition or prospects of Parent and its subsidiaries, taken as a whole, following the Merger or materially impair the value to Parent of the Merger; or (y) the Company to (I) sell or otherwise dispose of any subsidiary or assets which either alone or in the aggregate with all such other sales or dispositions would constitute the sale or disposition of a "significant subsidiary" of the Company, (II) take any action the effectiveness of which cannot be conditioned upon the consummation of the Merger which would materially impair the business, operations, financial condition or prospects of the Company and its subsidiaries, taken as a whole, or (III) take any action which either would materially impair the business, operations, financial condition or prospects of Parent and

its subsidiaries, taken as a whole, following the Merger or materially impair the value to Parent of the Merger. For purposes of this Section 7.7(c) the term "significant subsidiary" shall have the meaning attributed to such term by Rule 1-02(v) of Regulation S-X of the rules and regulations of the SEC, except that percentages of consolidated assets or income shall be measured against consolidated assets or income at June 30, 1990 (or for the twelve months then ended) rather than as of the end of the previous fiscal year (or for the twelve months then ended).

(d) The Company shall (subject to its fiduciary duties as a shareholder of Cellular) take such steps as may be necessary to amend the Restated Competition Agreement dated as of May 1, 1989 between the Company and Cellular (the "RCA") to permit the consummation of the transactions contemplated hereby without any obligation to make any offer to Cellular and to permit Parent and its affiliates to conduct their mobile cellular businesses following the Effective Time, such amendments to provide that (i) Parent and its subsidiaries and affiliates engaged in the mobile cellular business shall not constitute "Affiliates" of the Company for purposes of Section 2 of the RCA, (ii) Parent and its subsidiaries and affiliates will be obligated to make the offers contemplated by Sections 3 and 4 of the RCA except with respect to any acquisitions of (A) cellular properties contemplated by Parent or its subsidiaries at the Effective Time or (B) minority interests in "Pops" or entities in markets in which Parent and its subsidiaries either (I) have interests at the Effective Time or (II) acquire and retain interests thereafter as permitted by the RCA, as amended, and (iii) Parent and its affiliates may retain properties, assets or interests with respect to which Cellular has declined the offer contemplated by clause (ii) above.

**Section 7.8 Public Statements.** The parties shall consult with each other prior to issuing any press release or any written public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or written public statement prior to such consultation.

**Section 7.9 Employee Benefits.**

(a) **Core Benefits in General.** The parties have reviewed the Core Benefits provided, respectively, by Parent and its subsidiaries and by the Company and its subsidiaries on the date hereof and have determined that, as of the date hereof, the Core Benefits provided by Parent and its subsidiaries to their employees generally are, in the aggregate, substantially equivalent to the Core Benefits provided by the Company and its subsidiaries to their

employees generally. As used herein, "Core Benefits" shall mean pension, profit sharing, savings, medical, dental, death, dependent life insurance, short-term and long-term disability, vacation, and holiday benefits and health and dependent care benefits provided under a flexible spending arrangement, but excluding any temporary early retirement incentive benefits.

(b) Core Benefits During Transition Period. Except as otherwise provided in this Section 7.9, during the period from the Closing Date through and including December 31, 1991 (the "Transition Period"), Parent shall cause the Company and its subsidiaries to continue the Core Benefits which are provided by the Company and its subsidiaries as of the Closing Date, for all eligible employees of the Company and its subsidiaries who are employed on the Closing Date and who are not subject to one or more collective bargaining agreements ("Classified Employees").

(c) Transferred Employees During Transition Period. If, during the Transition Period, a former business unit of the Company and its subsidiaries is merged or otherwise combined with a business unit of Parent and its subsidiaries, or one or more Classified Employees are transferred to a business unit of Parent and its subsidiaries, Parent shall cause each Classified Employee who is affected by such merger, combination, or transfer to be provided with Core Benefits on the basis of the terms and conditions that then apply to similarly situated employees of the business unit to which the Classified Employee has been, directly or indirectly, transferred.

(d) Core Benefits Following Transition Period. Following the Transition Period, Parent shall cause the Company and its subsidiaries to continue the Core Benefits provided to eligible Classified Employees as of December 31, 1991, except to the extent (i) such benefits are replaced by benefits provided to similarly situated employees of Parent and its subsidiaries or (ii) corresponding benefits for similarly situated employees of Parent and its subsidiaries are eliminated.

(e) Service Credit. On and after the Closing Date, Parent shall cause each Classified Employee to receive credit, for purposes of eligibility (including eligibility for early retirement, disability and other benefits) and vesting, but not for purposes of benefit accrual (except as provided in Section 7.9(h)), under all Core Benefit plans of Parent and its subsidiaries in which they participate, for the service of such Classified Employee before the Closing Date, determined in accordance with the practices and procedures of the Company and its subsidiaries in effect on the Closing Date, as if such service had been rendered to

Parent and its subsidiaries. Nothing in this Section 7.9(e) shall alter or diminish the obligations of Parent and its subsidiaries under subsections (b), (c), and (d) of this Section 7.9 nor shall it be construed to require the Parent and its subsidiaries to make available to any Classified Employee any Core Benefits provided by Parent and its subsidiaries except to the extant such coverage is expressly provided for herein.

(f) Involuntarily Terminated. For purposes of this Section 7.9, the employment of a Classified Employee shall be considered to have been "Involuntarily Terminated" under such circumstances as shall be agreed to by the parties as set forth in the letter referred to in Section 7.9(n).

(g) Contel Retirement Savings Plan. Parent shall cause the Company and its subsidiaries to maintain CRSP throughout the Transition Period and thereafter until such time, if any, as CRSP is replaced with another defined contribution plan that is qualified under Section 401(a) of the Code that allows contributions under a qualified cash or deferred arrangement meeting the requirements of Section 401(k) of the Code, (to the extent such arrangements continue to be tax effective) and that provides for matching employer contributions at a rate no less favorable to participants than that provided under the tax-qualified savings plan of Parent and its subsidiaries covering similarly situated employees of Parent and its subsidiaries, and in the event CRSP is replaced, all participants therein who are employed by the Company or any of its subsidiaries on the date CRSP is replaced shall be entitled to a Matching Employer Contribution and, if eligible, a Basic Employer Contribution (both as defined in CRSP) based upon the participant's contributions to CRSP and compensation to the date CRSP is replaced (even though such person may not be employed on the last day of the applicable plan year). If the employment of a participant in CRSP terminates during the Transition Period as a result of death, disability, retirement or because the participant is Involuntarily Terminated, the participant shall be entitled to a Matching Employer Contribution and, if eligible, a Basic Employer Contribution based upon the participant's contributions to CRSP and compensation to the date of his or her termination (even though such person may not be employed on the last day of the applicable plan year), and if the employment of a participant in CRSP terminates during the Transition Period for any other reason the participant shall be entitled to a Matching Employer Contribution and, if eligible, a Basic Employer Contribution based upon the participant's contributions to CRSP and compensation to the Closing Date (even though such person may not be employed on the last day of the applicable plan year). Any participant in CRSP whose

employment is terminated prior to the Closing Date or after the Transition Period shall be entitled to a Matching Employer Contribution and a Basic Employer Contribution in accordance with the terms of CRSP as in effect at the time of termination. In the case of those Classified Employees of the Company and its subsidiaries who are eligible for Basic Employer Contributions under the terms of CRSP as in effect on the Closing Date, if such class of employees cease to receive such Basic Employer Contributions under CRSP (e.g., by reason of the amendment, replacement or termination of such plan), Parent shall cause such employees to participate in a defined benefit or defined contribution plan that is qualified under Section 401(a) of the Code and that provides benefits at the time of such change which, in the aggregate, are at least comparable to (i) the benefits attributable to Basic Employer Contributions provided under CRSP or (ii) benefits provided to similarly situated employees of Parent and its subsidiaries. If CRSP is merged into, or consolidated with, a replacement plan as described above, Parent shall cause the account balance of each Classified Employee who participates in CRSP to be transferred directly, in a plan-to-plan transfer, to the replacement plan with the transferred account values to be valued so as to include earnings and losses to a date not more than 30 days prior to the date of the merger or consolidation.

(h) Contel System Pension Plan. Notwithstanding Sections 7.9(b) and (d), Parent may, at any time on or after the Closing Date, cause the Contel System Pension Plan (the "Contel Pension Plan") to be amended, merged, terminated or altered (a "Plan Change"). However, if Parent causes the Contel Pension Plan to be so amended, merged, terminated or altered (other than an amendment described in Section 7.9(f)), Parent shall cause the Classified Employees who are affected by the Plan Change to be covered by one or more defined benefit plans that are qualified under Section 401(a) of the Code and that provide benefits that are no less favorable to Classified Employees than those provided under the tax-qualified pension plan of Parent and its subsidiaries covering similarly situated employees of Parent and its subsidiaries, subject to the following restrictions with respect to each Classified Employee who is affected by the Plan Change: (i) the accrued benefit of each such employee shall not be less than the greater of (x) the sum of such employee's accrued benefit under the Contel Pension Plan as of the date of the Plan Change plus the accrued benefit determined under the amended or successor plan for service on and after the date of the Plan Change (determined, for this purpose, without offset for benefits accrued under the Contel Pension Plan) or (y) the benefit that would have accrued under the amended or successor plan if all of the service recognized for benefit accrual

purposes under the Contel Pension Plan also were recognized for benefit accrual purposes under the amended or successor plan; (ii) solely for purposes of calculating benefits under the amended or successor plan, compensation received by such employee from the Company or another corporation participating in the Contel Pension Plan shall be treated as compensation that such employee received from a company participating in the amended or successor plan; and (iii) for a period of two years following the Plan Change, Parent may cause such employee's entitlement to optional forms of distribution (including a lump-sum distribution) and to early retirement benefits (including early retirement subsidies) under the amended or successor plan to be governed by the provisions of the Contel Pension Plan in effect immediately before the date of the Plan Change.

(i) Vesting in Qualified Plans. If, on or after the Closing Date and prior to the first anniversary of the Closing Date, a Classified Employee who participates in CRSP or in a tax-qualified defined benefit pension plan that was sponsored by the Company or a subsidiary thereof immediately before the Closing Date is Involuntarily Terminated from employment with Parent and its subsidiaries or with the Company and its subsidiaries, Parent shall cause such Classified Employee to be fully vested in his or her account balance under CRSP (or any successor thereto) and his or her accrued benefit under such defined benefit plan (or any successor thereto) as of the date of such Involuntary Termination.

(j) Welfare Benefits. During the Transition Period, the Classified Employees shall continue to participate in the "employee welfare benefit plans" (as such term is defined in Section 3(1) of ERISA) which are, as of the Closing Date, maintained or contributed to by the Company and its subsidiaries (collectively, the "Contel Welfare Plans"). The Contel Welfare Plans may not be amended or otherwise modified to affect adversely the benefits of employees during the Transition Period other than amendments and modifications which are required under applicable law. After the Transition Period, Parent shall have the right, subject to Section 7.9(d) and except as otherwise provided in this paragraph (j), to modify, eliminate or replace any of the Contel Welfare Plans but only if such modification, elimination or replacement provides at the time of such change welfare benefits which are substantially equivalent to welfare benefits which are provided to similarly situated employees of Parent and its subsidiaries. In the event a Contel Welfare Plan is replaced, at the time the Classified Employees commence participation in the replacement welfare plan, (i) any provisions in such plan which restrict benefits by reason of pre-existing conditions shall be waived, and (ii) such

employees shall receive credit under such plan for co-payments and payments under a deductible limit made by them during the plan year in accordance with the corresponding Contel Welfare Plan.

Parent expressly agrees to cause the Company and its subsidiaries to satisfy all obligations to employees who retire on or before December 31, 1991, and who are covered under the retiree medical and life insurance plans sponsored, maintained or contributed to by the Company and its subsidiaries (the "Covered Retirees" and the "Contel Retiree Plans", respectively) on the Closing Date. Parent agrees to cause the Company and its subsidiaries to continue to cover the Covered Retirees under the existing terms and benefits of the Contel Retiree Plans during the Transition Period. After the expiration of such period, if Parent chooses to modify retiree medical and life insurance coverage provided to Covered Retirees, Parent agrees to cause the Company and its subsidiaries to provide retiree medical and life insurance coverage to each Covered Retiree that is no less favorable than the coverage generally provided (as such coverage may be modified from time to time) to employees who retired from Parent or one of its subsidiaries at the same time and who were employed in a similar or comparable position to the one held by the Covered Retiree.

Parent also agrees to cause the Company and its subsidiaries to continue, during the Transition Period, the medical and life insurance coverage of employees of the Company and its subsidiaries who are disabled (as defined under both short-term disability and long-term disability plans of the Company and its subsidiaries) as of the Closing Date in accordance with terms of the medical and life insurance plans of the Company and its subsidiaries providing such coverage as in effect as of the Closing Date. In addition, Parent agrees to cause the Company and its subsidiaries to continue, during the Transition Period, the medical and life insurance coverage provided to surviving spouses of employees of the Company and its subsidiaries who died prior to the Closing Date in accordance with the terms of the medical and life insurance plans of the Company and its subsidiaries providing such coverage as in effect as of the Closing Date.

(X) Management Incentive Plan. If the Closing Date occurs before January 1, 1991, subject to the terms of the plan, Parent (i) shall cause the Company's Management Incentive Plan ("MIP") to continue through December 31, 1990, (ii) shall cause the annual incentive award under MIP for 1990 to each Classified Employee on the Company's corporate staff who participates in MIP to be not less than an amount determined by assuming that MIP's

incentive targets for 1990 have been achieved and (iii) shall cause the annual incentive awards under MIP to every other Classified Employee who participates in MIP to be not less than the amount determined, in accordance with the terms of MIP, by the President and Executive Vice President of the Company or their successors. If the Closing Date occurs on or after January 1, 1991, (a) the Company shall make awards under the 1990 plan year in accordance with its past practices under MIP, except that the provisions of clause (ii) of the immediately preceding sentence shall apply, and (b) the Company and its subsidiaries shall be entitled to determine the employees who are to participate in MIP for the 1991 plan year and to establish the incentive targets and incentive awards for such year in a manner and on a basis consistent with those utilized for the 1990 plan year. If the Closing Date occurs prior to July 1, 1991, Parent will cause MIP to continue in effect at least through June 30, 1991 and, in the event MIP is thereafter terminated during the 1991 plan year, the incentive award for each participant shall be the amount determined by the President and Executive Vice President of the Company or their successors, following the close of the 1991 plan year, as the incentive award that would be payable under the terms of MIP if it had continued for the full year except that the applicable award shall be multiplied by a fraction, the numerator of which is the lesser of (i) the number of days of the participant's active employment during 1991 prior to the termination of MIP or (ii) the number of days in 1991 prior to the termination of MIP and the denominator of which is 365. Notwithstanding the foregoing, (i) if a participant's employment is involuntarily terminated during the Transition Period, such employee shall be entitled to receive an incentive award through the last day worked in an amount determined in accordance with the immediately preceding sentence and (ii) if a participant's employment terminates during the Transition Period for any other reason, such employee's award shall be within the discretion of the plan committee. Except as provided herein, all payments under MIP shall be made in accordance with the terms of the plan as in effect on the Closing Date. If MIP is terminated during 1991, Parent shall cause each employee who was selected to participate in MIP for the 1991 plan year to become a participant, as of the date of MIP termination, for the balance of the 1991 plan year in either the Executive Incentive Plan or the Unit Incentive Plan maintained by Parent and its subsidiaries. In such event, the 1991 award under the Parent's plans shall be prorated as provided above. Parent shall determine the annual incentive plan or plans, if any, in which a Classified Employee shall participate, as well as the terms (including the terms governing the deferral of distributions) on which the Classified Employee shall participate therein, for all periods beginning on or after January 1, 1992.

(l) **Long-Term Incentive Plan.** Employees of the Company and its subsidiaries who participate in the Company's Long-Term Incentive Plan (the "LTIP") will receive payments for all performance periods commencing prior to the Closing Date in accordance with the terms of the LTIP, treating the Company as if it were not the surviving corporation in the merger contemplated by this Agreement.

(m) **Future Long-Term Incentive Plans.** The parties shall confer and decide on the extent to which, and the terms (including the terms governing the deferral of distributions) on which, Classified Employees shall participate in long-term incentive plans sponsored by Parent and its subsidiaries with respect to periods that include the portion of any performance period under LTIP that occurs on and after the Closing Date.

(n) **Severance and Retention Benefits.** Through a letter to the Company dated as of this date, Parent has agreed to cause the Company and its subsidiaries to provide certain severance and retention benefits to the employees of the Company and its subsidiaries.

(o) **Supplemental Income Plan.** Parent shall cause the Company's Senior Executive Supplemental Income Plan ("SIP") to continue in effect in accordance with its terms on the date hereof; provided that (a) Parent shall have the right to amend or terminate the plan in accordance with its terms, (b) Parent shall not permit any employee to participate in SIP unless such employee is a participant in SIP on the date hereof, and (c) the parties agree that SIP shall be amended to provide that, so long as SIP shall remain in effect, service with Parent and its subsidiaries will be credited for all purposes of SIP, including without limitation benefit accrual. No amendment, termination or replacement of SIP may decrease or eliminate any accrued benefits or adversely affect any vested rights existing at the time of such amendment, termination or replacement.

(p) **Deferred Income Plan.** On and after the Closing Date, Parent shall cause the Company's Executive Deferred Income Plan ("DIP") to continue in effect in accordance with its terms on the date hereof, but only with respect to deferral elections entered into thereunder before the date hereof; provided, however, that each participant in DIP as of the date hereof shall be entitled to make one additional compensation deferral election entered into between the date hereof and the Closing Date in accordance with the terms of DIP as in effect on the date hereof, except that such election shall only permit the deferral of compensation that would otherwise be received during the immediately succeeding five or less calendar years. Parent shall not permit any new deferral elections to be entered

into under DIP on or after the date hereof except in accordance with the immediately preceding sentence. Parent shall cause amounts deferred under DIP to accrue interest in accordance with the terms of DIP in effect on the date hereof, and all deferral elections entered into prior to the date hereof or in accordance with this paragraph (p) shall remain in full force and effect.

(q) No Duplication. Notwithstanding the foregoing provisions of this Section 7.9, nothing in this Agreement, express or implied, shall cause duplicate benefits to be paid or provided to or with respect to any current or former employee of the Company or its subsidiaries under any employee benefit plan or plans.

(r) Changes to Comply with Law, Etc. Notwithstanding the foregoing provisions of this Section 7.9, nothing in this Agreement, express or implied, shall prevent Parent and its subsidiaries from making any change in any employee benefit plan, program, or arrangement that Parent or a subsidiary determines to be necessary in order to comply with applicable law or to enable such plan, program, or arrangement to satisfy any requirements imposed by the Code (other than Section 280G of the Code).

(s) Sale or Other Disposition. Notwithstanding the foregoing, nothing in this Agreement, express or implied, shall require the continuation of any Core Benefits for Classified Employees of any subsidiary or business unit that is sold or otherwise disposed of following the date of such sale or disposition.

(t) Other Changes. Except as otherwise expressly provided by the provisions of this Section 7.9, nothing in this Agreement, express or implied, shall prevent Parent and its subsidiaries from making, or causing to be made, any change in any employee benefit plan, program, or arrangement maintained by the Company and its subsidiaries or the Parent and its subsidiaries; provided, however, that no changes may be made to any executive severance arrangements as in effect on the Closing Date except such changes as may be agreed upon between Parent and the applicable executive; and provided, further, that no change may be made to any plan, program or arrangement unless such change is permitted under the terms of the applicable plan, program or arrangement.

(u) Continued Employment. Nothing in this Section 7.9, express or implied shall confer upon any current or former employee of Parent, the Company or any of their respective subsidiaries any right to employment, or continued employment for any specified period, of any nature or kind whatsoever under or by reason of this Agreement.

(v) No Third Party Rights. Nothing in this Section 7.9, express or implied, shall be deemed to confer upon any person (including any beneficiary) other than the parties hereto any rights to enforce, by suit or any other judicial or administrative proceeding, any covenant or agreement contained in this Section 7.9, and the rights of any person (including any beneficiary) under any plan, program or arrangement described in or contemplated by this Agreement shall be determined without reference to the provisions of this Section 7.9.

(w) Employee Stock Purchase Plan. Subject to the following with respect to the 1990-1991 offering, the Company ESPP shall be continued for such offering and shall thereafter be terminated. Effective as of the Closing Date, all outstanding elections to purchase Company Common Stock under the 1990-1991 offering under the Company ESPP shall be converted to rights to purchase Parent Common Stock at a rate of 1.27 shares of Parent Common Stock for each share of Company Common Stock subject to an outstanding election to purchase at a price per share of Parent Common Stock equal to 85% of the average market price of Company Common Stock (determined in accordance with the provisions of the Company ESPP) as of the first day of the 1990-1991 offering divided by 1.27 or, if less, 85% of the average market price of a share of Parent Common Stock (determined in accordance with the provisions of the Company ESPP as though it were Company Common Stock) as of the last business day of the month in which the Purchase Period (as defined in the Company ESPP) ends. No amendments shall be made to the Company ESPP other than those, if any, necessary to give effect to the provisions of this paragraph (w). Parent shall assume all of the Company's obligations with respect to the issuance of stock under the Company ESPP from and after the Effective Time.

(x) Directors' Plan. Parent shall cause the Company to pay, in accordance with the terms of the plan as of the date hereof, all benefits accrued and vested under the Retirement Plan for Outside Directors of Contel Corporation (the "Contel Directors' Plan") as of the Closing Date, but no benefits shall accrue thereunder after the Closing Date except as hereinafter provided. For any director of the Company who becomes a director of Parent, (i) if such director is not entitled to a vested benefit under the Contel Directors' Plan, service as a director of the Company shall be treated as service as a director of Parent under the Retirement Plan for Non-Employee Members of the Board of Directors of GTE Corporation (the "GTE Directors' Plan"), and (ii) if such director is entitled to a vested benefit under the Contel Directors' Plan, (x) such director shall not be eligible for participation in the GTE Directors' Plan, (y) benefits under the Contel Directors'

Plan shall be based on the greater of the basic annual retainer (exclusive of attendance fees, retainers for committee membership or chairmanship and payments for travel or other expenses) paid by the Company or by Parent to such director and (z) the benefits under the Contel Directors' Plan shall become payable only upon such director ceasing to be a director of Parent.

Section 7.10 Option Plans. (a) The Company shall, in accordance with the terms of the Company SOP, cause (i) each unexpired outstanding option thereunder as of the date of this Agreement to become fully exercisable and (ii) each outstanding restricted stock unit thereunder as of the date of this Agreement to become vested, in each case at the Effective Time.

(b) In addition, prior to the Effective Time, the Company shall take such action as may be necessary to cause each unexpired and unexercised option under the Company SOP or issued by IPC (each a "Company Option") to be automatically converted at the Effective Time into an option (the "Parent Option") to purchase a number of shares of Parent Common Stock equal to the number of shares of Company Common Stock that could have been purchased under the Company Option multiplied by 1.27, at a price per share of Parent Common Stock equal to the option exercise price determined pursuant to the Company Option divided by 1.27 and subject to the same terms and conditions as the Company Option; and all unexpired and unexercised stock appreciation rights granted under the Company SOP shall similarly be converted into stock appreciation rights pertaining to Parent Common Stock on the basis of the same terms and conditions that apply to Company Options. The date of grant of the substituted Parent Option (or stock appreciation right) shall be the date on which the corresponding Company Option (or stock appreciation right) was granted. At the Effective Time, all references in the stock option agreements to the Company shall be deemed to refer to Parent. Parent shall assume all of the Company's obligations with respect to Company Options (and stock appreciation rights) as so amended and shall, from and after the Effective Time, make available for issuance upon exercise of the Parent Options all shares of Parent Common Stock covered thereby.

(c) From the date of this Agreement, the Company shall be entitled to grant stock options (but not restricted stock units) pursuant to the Company SOP to the Closing Date in accordance with the provisions of Section 6.1(c); provided, however, that any such stock options will be subject to the normal vesting and exercise provisions of the Company SOP but shall not be subject to the special provisions of the Company SOP regarding acceleration of

exercisability which would otherwise apply in connection with the Merger.

(d) The Company shall, in accordance with the terms of the Cellular SOP, cause each unexpired outstanding option thereunder as of the date of this Agreement to become fully exercisable at the Effective Time, but only if such option was granted at least one year before the Effective Time. After the Effective Time, Parent shall, in accordance with the terms of the Cellular SOP, cause each unexpired outstanding option thereunder as of the date of this Agreement, and which has not become fully exercisable pursuant to the preceding sentance, to become fully exercisable on the first anniversary of the date on which the option was granted. Neither the Company nor Parent shall accelerate the vesting of restricted stock units under the Cellular SOP pursuant to this Section 7.10(d).

(e) Cellular shall be entitled to grant stock options (but not restricted stock units) pursuant to the Cellular SOP from the date hereof to the Closing Date in accordance with the provisions of Section 6.1(c); provided, however, that any such stock option will be subject to the normal vesting and exercise provisions of the Cellular SOP.

Section 7.11 Directors' and Officers' Indemnification. (a) After the Effective Time, Parent and the Surviving Corporation shall, to the fullest extent permitted under applicable law, indemnify and hold harmless, each present and former director, officer, employee and agent of the Company or any of its subsidiaries (each, together with such person's heirs, executors or administrators, an "Indemnified Party" and collectively, the "Indemnified Parties") against any costs or expenses (including attorneys' fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of, relating to or in connection with any action or omission occurring prior to the Effective Time (including, without limitation, acts or omissions in connection with such persons' serving as an officer, director or other fiduciary in any entity if such service was at the request or for the benefit of the Company) or arising out of or pertaining to the transactions contemplated by this Agreement. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) the Company or Parent and the Surviving Corporation, as the case may be, shall pay the reasonable fees and expenses of counsel selected by the Indemnified Parties, which counsel shall be reasonably satisfactory to the Parent and the Surviving Corporation, promptly after statements therefor are

received, (ii) the Parent and the Surviving Corporation will cooperate in the defense of any such matter, and (iii) any determination required to be made with respect to whether an Indemnified Party's conduct complies with the standards set forth under New York or Delaware law and the Parent's or the Surviving Corporation's respective Certificates of Incorporation or By-Laws shall be made by independent counsel acceptable to the Parent or the Surviving Corporation, as the case may be, and the Indemnified Party; provided, however, that neither Parent nor the Surviving Corporation shall be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld).

(b) In the event the Surviving Corporation or Parent or any of their successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation or Parent shall assume the obligations set forth in this Section 7.11.

(c) Parent shall cause to be maintained in effect for six years from the Effective Time the current policies of the directors' and officers' liability insurance maintained by the Company (provided that Parent may substitute therefor policies of at least the same coverage containing terms and conditions which are no less advantageous) with respect to matters occurring prior to the Effective Time; provided, however, that Parent shall be required to provide such insurance (a) during the three-year period commencing at the Effective Time, only to the extent of the coverage which is obtainable in each such year at an annual cost not greater than 200% of the Company's current annual premium for its directors' and officers' liability insurance and (b) during the three-year period commencing on the third anniversary of the Effective Time, only to the extent of the coverage which is obtainable in each such year at an annual cost not greater than 150% of the Company's current annual premium for such insurance.

**Section 7.12 Corrections to the Joint Proxy Statement-Prospectus and Registration Statement.** Prior to the date of approval of the Merger by their respective stockholders, each of the Company, Parent and Subsidiary shall correct promptly any information provided by it to be used specifically in the Joint Proxy Statement-Prospectus and Registration Statement that shall have become false or misleading in any material respect and shall take all steps necessary to file with the SEC and have declared effective

or cleared by the SEC any amendment or supplement to the Joint Proxy Statement-Prospectus or the Registration Statement so as to correct the same and to cause the Joint Proxy Statement/Prospectus as so corrected to be disseminated to the stockholders of the Company and Parent, in each case to the extent required by applicable law.

Section 7.13 Company Rights Agreement. Prior to the Closing Date, the Company shall, upon the request of Parent, cause the rights issued under the Company Rights Agreement to be redeemed in accordance with the terms of Section 23 thereof, such that immediately prior to the Effective Time the only right of the holders thereof shall be to receive from the Company the redemption price of $.01 for each right held.

Section 7.14 Surviving Corporation Directors. Prior to the Closing Date, the Company shall either (a) cause Section 9.1(j) of the Credit Agreement dated as of January 18, 1990 among Contel Capital Corporation, the Company and the lenders listed therein to be amended either to delete any reference to the Company's directors or to specifically permit Parent to elect the individuals to serve as directors of the Surviving Corporation, without such election or service constituting a breach of that Section 9.1(j) or (b) cause the individuals, nominated by Parent to serve as directors of the Surviving Corporation, to be approved to become such directors by a majority of the individuals who are directors of the Company on the date hereof.

Section 7.15 Standstill. Parent agrees that until the expiration of two years from the date of termination of this Agreement, without the prior written consent of the Company, it will not (a) in any manner acquire, agree to acquire or make any proposal to acquire, directly or indirectly (i) a substantial portion of the assets of the Company or its subsidiaries taken as a whole or (ii) 5 percent or more of the issued and outstanding shares of Company Common Stock, (b) make or in any way participate, directly or indirectly, in any "solicitation" of "proxies" (as such terms are used in the proxy rules of the SEC) to vote, or seek to advise or influence any person with respect to the voting of, any voting securities of the Company or any of its subsidiaries or (c) form, join or in any way participate in a "group" (within the meaning of Section 13(d) of the Exchange Act) with respect to any voting securities of the Company or any of its subsidiaries.

## ARTICLE VIII

## CONDITIONS

Section 8.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) This Agreement and the transactions contemplated hereby shall have been approved and adopted by the requisite vote of the stockholders of the Company and Parent under applicable law and applicable listing requirements;

(b) Parent Common Stock issuable in the Merger shall have been authorized for listing on the NYSE upon official notice of issuance;

(c) The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated;

(d) The Registration Statement shall have become effective in accordance with the provisions of the Securities Act, and no stop order suspending such effectiveness shall have been issued and remain in effect;

(e) No preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the Merger shall have been issued and remain in effect (each party agreeing to use its reasonable efforts to have any such injunction, order or decree lifted);

(f) No action shall have been taken, and no statute, rule or regulation shall have been enacted, by any state or federal government or governmental agency in the United States which would prevent the consummation of the Merger;

(g) All governmental consents, orders and approvals legally required for the consummation of the Merger and the transactions contemplated hereby, including, without limitation, approval (if required) by the PUCs, the FCC, the Department of Justice or the court under the Parent Consent Decree and the SEC, shall have been obtained and be in effect at the Effective Time, and all consents, orders and approvals of the FCC or PUCs legally required for the

consummation of the Merger and the transactions contemplated hereby shall have become Final Orders; and

(h) The Company and Parent shall have received opinions of state regulatory counsel reasonably acceptable to each with respect to each of the states listed on Schedule 5.17(a) and (b), each dated the Closing Date and substantially to the effect that either (i) no consent of, filing with or approval by the PUC of the relevant state is required under the applicable laws of such state to consummate the Merger or (ii) all consents of, filings with and approvals by the PUC of the relevant state which are required to consummate the Merger have been obtained or made, as the case may be.

Section 8.2 Conditions to Obligation of the Company to Effect the Merger. Unless waived by the Company, the obligation of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Parent and Subsidiary shall have performed in all material respects their agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of Parent and Subsidiary contained in this Agreement shall be true and correct in all material respects on and as of (i) the date made and (ii) (except (x) for Section 4.7, (y) in the case of representations and warranties expressly made solely with reference to a particular date and (z) to the extent the failure of such to be true and correct in all material respects on and as of the Closing Date is the result of actions expressly mandated by Section 7.7(c)) the Closing Date, and the Company shall have received a certificate of the Chairman of the Board and Chief Executive Officer, the President or a Vice President of Parent and of the President and Chief Executive Officer or a Vice President of Subsidiary to that effect;

(b) The Company shall have received an opinion of its special counsel, Cahill Gordon & Reindel, in form and substance reasonably satisfactory to the Company, dated the Closing Date, or a ruling from the IRS, in form and substance reasonably satisfactory to the Company, to the effect that the Company and its stockholders (except to the extent any stockholders receive cash in lieu of fractional shares) will recognize no gain or loss for federal income tax purposes as a result of consummation of the Merger;

(c) The Company shall have received an opinion from O'Melveny & Myers, special counsel to Parent and Subsidiary, dated the Closing Date, substantially in the form set forth in Exhibit II hereto;

(d) The Company shall have received "comfort" letters from Arthur Andersen & Co., certified public accountants for Parent and Subsidiary, dated the date of the Proxy Statement, the effective date of the Registration Statement and the Closing Date (or such other date reasonably acceptable to the Company) with respect to certain financial statements and other financial information included in the Registration Statement in customary form;

(e) The Company shall have received a letter from Arthur Andersen & Co., certified public accountants for the Company, dated the Closing Date, addressed to the Company, in form and substance reasonably satisfactory to the Company, stating that the Merger will qualify as a "pooling of interests" transaction under generally accepted accounting principles;

(f) The Company shall have received the written opinion of O'Melveny & Myers, FCC counsel for Parent, dated the Closing Date, substantially to the effect that all consents of and approvals by the FCC which are required to consummate the Merger have been obtained and have become Final Orders;

(g) Since the date hereof, (i) there shall have been no changes that constitute, and (ii) no event or events shall have occurred which have resulted in or constitute, a material adverse change in the business, operations, properties, assets, condition (financial or other), results of operations or prospects of Parent and its subsidiaries, taken as a whole (exclusive of changes or events resulting from regulatory, business or economic conditions of general applicability);

(h) All governmental consents, orders, and approvals legally required for the consummation of the Merger and the transactions contemplated hereby, including, without limitation, approval (if required) by the PUCs, the FCC and the SEC, shall have been obtained and be in effect at the Closing Date, and no such consent, order or approval shall have any terms which in the reasonable judgment of the Company, when taken together with the terms of all such consents, orders or approvals, would materially impair the value to Parent of the Merger, and no governmental authority shall have promulgated any statute, rule or regulation which, when taken together with all such promulgations,

would materially impair the value to Parent of the Merger;

(i) Parent shall have received the opinions required by Section 8.3(l), and copies thereof shall have been delivered to the Company; and

(j) The Company shall have received from each of Goldman, Sachs & Co. and Salomon Brothers Inc an opinion, dated as of the date on which the Joint Proxy Statement/Prospectus is first distributed to the stockholders of the Company, confirming, with no new qualifications other than those that are customary for transactions of this sort and additional qualifications relating to circumstances not material to the conclusion stated in such opinion, the opinion delivered by such firm to the Company on the date hereof, as contemplated by Section 5.19.

Section 8.3 Conditions to Obligations of Parent and Subsidiary to Effect the Merger. Unless waived by Parent and Subsidiary, the obligations of Parent and Subsidiary to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the additional following conditions:

(a) The Company shall have performed in all material respects its agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects on and as of (i) the date made and (ii) (except (x) for Section 5.7, (y) in the case of representations and warranties expressly made solely with reference to a particular date and (z) to the extent the failure of such to be true and correct in all material respects on and as of the Closing Date is the result of actions expressly mandated by Section 7.7(c)) the Closing Date, and Parent shall have received a Certificate of the President and Chief Executive Officer or of a Vice President of the Company to that effect;

(b) Parent shall have received an opinion of its special tax counsel, O'Melveny & Myers, in form and substance reasonably satisfactory to Parent, dated the Closing Date, or a ruling from the Internal Revenue Service, in form and substance reasonably satisfactory to Parent, to the effect that Parent and Subsidiary will recognize no gain or loss for federal income tax purposes as a result of consummation of the Merger;

(c) Parent shall have received an opinion from Cahill Gordon & Reindel, special counsel to the Company dated the Closing Date, substantially in the form set forth in Exhibit IV hereto;

(d) Parent shall have received "comfort" letters from Arthur Andersen & Co., certified public accountants for the Company, dated the date of the Proxy Statement, the effective date of the Registration Statement and the Closing Date (or such other date reasonably acceptable to Parent) with respect to certain financial statements and other financial information included in the Registration Statement in customary form;

(e) Parent shall have received a letter from Arthur Andersen & Co., certified public accountants for Parent, dated the Closing Date, addressed to Parent, in form and substance reasonably satisfactory to Parent, stating that the Merger will qualify as a "pooling of interests" transaction under generally accepted accounting principles;

(f) Parent shall have received the written opinion of FCC counsel for the Company reasonably acceptable to Parent, dated the Closing Date, substantially to the effect that all consents of and approvals by the FCC which are required to consummate the Merger have been obtained and have become Final Orders;

(g) The Affiliate Agreements required to be delivered to Parent pursuant to Section 7.4 hereof shall have been furnished as required by Section 7.4;

(h) Since the date hereof, (i) there shall have been no changes that constitute, and (ii) no event or events shall have occurred which have resulted in or constitute, a material adverse change in the business, operations, properties, assets, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole (exclusive of changes or events resulting from regulatory, business or economic conditions of general applicability);

(i) All governmental consents, orders, and approvals legally required for the consummation of the Merger and the transactions contemplated hereby, including, without limitation, approval (if required) by the PUCs, the FCC and the SEC, shall have been obtained and be in effect at the Closing Date, and no such consent, order or approval shall have any terms

which in the reasonable judgment of Parent, when taken together with the terms of all such consents, orders or approvals, would materially impair the value to Parent of the Merger, and no governmental authority shall have promulgated any statute, rule or regulation which, when taken together with all such promulgations, would materially impair the value to Parent of the Merger;

(j) The RCA shall have been amended as provided in Section 7.7(d);

(k) The Company shall have received the opinion(s) required by Section 8.2(j), and copies thereof shall have been delivered to Parent; and

(l) Parent shall have received from each of Merrill Lynch Capital Markets and PaineWebber Incorporated an opinion, dated as of the date on which the Joint Proxy Statement/Prospectus is first distributed to the shareholders of Parent, confirming, with no new qualifications other than those that are customary for transactions of this sort and additional qualifications relating to circumstances not material to the conclusion stated in such opinion, the opinion delivered by such firm to Parent on the date hereof, as contemplated by Section 4.17.

## ARTICLE IX

## TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing Date, whether before or after approval by the stockholders of the Company or Parent:

(a) by mutual consent of Parent and the Company;

(b) by either Parent or the Company, so long as such party has not breached its obligations hereunder (except for such breaches as are clearly immaterial), after July 31, 1991, if the Merger shall not have been consummated on or before July 31, 1991 (the "Termination Date");

(c) unilaterally by Parent or the Company (i) if the other fails to perform any covenant in any material respect in this Agreement, and does not cure the failure in all material respects within 30 business days after the terminating party delivers written notice of the alleged failure, (ii) if the other fails to recommend to its stockholders through its Board of

Directors the approval of the transactions contemplated by this Agreement or withdraws such recommendation, or (iii) if any condition to the obligations of that party is not satisfied (other than by reason of a breach by that party of its obligations hereunder), and it reasonably appears that the condition cannot be satisfied prior to July 31, 1991;

(d) by either Parent or the Company as provided in Section 6.5; or

(e) by either Parent or the Company if any of the conditions to such party's performance set forth in Sections 8.2(i), 8.2(j), 8.3(k) or 8.3(l) remain unsatisfied for a period of 40 days after the SEC shall have indicated its willingness to accelerate the effectiveness of the Registration Statement.

**Section 9.2 Effect of Termination.** In the event of termination of this Agreement by either Parent or the Company, as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no further obligation on the part of either the Company, Parent, Subsidiary or their respective officers or directors (except as set forth in this Section 9.2 and in Sections 7.1, 7.6, 7.15 and 9.5 which shall survive the termination). Nothing in this Section 9.2 shall relieve any party from liability for any breach of this Agreement.

**Section 9.3 Amendment.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto and in compliance with applicable law.

**Section 9.4 Waiver.** At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant thereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party.

**Section 9.5 Expense Reimbursement; Etc.** If requested in writing by Parent, the Company shall pay to Parent immediately upon the receipt of such request a payment constituting reimbursement of expenses in the amount of $50,000,000 (less any amount otherwise paid by the Company on account of expenses of Parent or Subsidiary and without any requirement that Parent account for actual

expenses) (the "Reimbursement Payment") if (i) prior to the termination of this Agreement any person, corporation, partnership or other entity or "group" (as defined in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) other than Parent, Subsidiary or any of their respective affiliates or a group of which any of Parent, Subsidiary or any of such affiliates is a member (each, a "Person") becomes the "beneficial owner" (as defined in Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) of more than thirty-five percent (35%) of the then outstanding shares of Company Common Stock upon completion of a tender offer or an exchange offer by such Person for outstanding shares of Company Common Stock, (ii) the Company or Parent terminates this Agreement pursuant to Section 9.1(d), or (iii) prior to the termination of this Agreement and following the announcement of a proposal by any Person to acquire, directly or indirectly, more than thirty-five percent (35%) of then outstanding shares of Company Common Stock or substantially all of the assets of the Company either (x) Parent or the Company terminates this Agreement pursuant to so much of Section 9.1(e) as relates to Section 8.2(j) or 8.3(k) (unless at the date of such termination (I) no such proposal by any Person shall remain outstanding and (II) the failure to confirm the opinions referenced in Section 8.2(j) shall not be a result, in whole or in part, of any such proposal or proposals by any Person), or (y) the Company's stockholders shall have disapproved the Merger and the Board of Directors of the Company shall have failed to recommend or shall have withdrawn its recommendation that the Company's stockholders approve the Merger.

## ARTICLE X

## GENERAL PROVISIONS

**Section 10.1 Non-Survival of Representations and Warranties.** All representations and warranties in this Agreement shall not survive the Merger.

**Section 10.2 Brokers.** The Company represents and warrants that, except for Goldman, Sachs & Co. and Salomon Brothers Inc, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. Parent and Subsidiary represent and warrant that, except for Merrill Lynch Capital Markets and PaineWebber Incorporated, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the

transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Subsidiary.

Section 10.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, mailed by registered or certified mail (return receipt requested) or sent via facsimile to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Parent or Subsidiary to:

GTE Corporation
One Stamford Forum
Stamford, Connecticut 06904
Attention: Corporate Secretary

with a copy to:

O'Melveny & Myers
555 13th Street, N.W.
Suite 500 West
Washington, D.C.
Attention: Jeffrey J. Rosen, Esq.

(b) If to the Company, to:

245 Perimeter Center Parkway
Atlanta, Georgia 30346
Attention: Walter M. Grant, Esq.

with a copy to:

Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005
Attention: Joseph Conway, Esq.

Section 10.4 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Nothing in this Agreement shall be deemed to prohibit Parent from (a) redeeming the rights issued under the Parent Rights Agreement or (b) if the rights issued under the Parent Rights Agreement are so redeemed, entering into a new rights agreement which shall take effect before or after the Effective Time.

Section 10.5 Miscellaneous. This Agreement (including the documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and

oral, among the parties, or any of them, with respect to the subject matter hereof; (b) is not intended to confer upon any other person any rights or remedies hereunder, except for rights of Indemnified Parties under Section 7.11; (c) shall not be assigned by operation of law or otherwise; and (d) shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of law).

Section 10.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

Section 10.7 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and except as set forth in the exception to Section 10.5(b), nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, Parent, Subsidiary and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

GTE CORPORATION

By: James L. Johnson
Name: James L. Johnson
Title: Chairman of the Board

GTE EXCHANGE CORPORATION

By: Marianne Drost
Name: Marianne Drost
Title: Secretary

CONTEL CORPORATION

By: Donald W. Nelson
Name:
Title:

# APPENDIX

## Glossary of Defined Terms

The following terms, when used in this Merger Agreement, have the meanings ascribed to them in the corresponding sections of this Merger Agreement listed below.

| | | |
|---|---|---|
| "Acquisition Transactions" | -- | Section 6.5. |
| "Affiliate Agreement" | -- | Section 7.4. |
| "Agreement" | -- | Preamble. |
| "Cellular" | -- | Section 5.3(a). |
| "Cellular SOP" | -- | Section 5.3(a). |
| "Classified Employees" | -- | Section 7.9(b). |
| "Closing" | -- | Section 3.6. |
| "Closing Date" | -- | Section 3.6. |
| "Code" | -- | Preamble. |
| "Company" | -- | Preamble. |
| "Company Certificates" | -- | Section 3.3(c). |
| "Company Common Stock" | -- | Section 3.1(a). |
| "Company Controlled Group Plan" | -- | Section 5.13(b). |
| "Company Convertible Preferred Stock" | -- | Section 5.2(a). |
| "Company DRIP" | -- | Section 5.2(b). |
| "Company ESPP" | -- | Section 5.2(b). |
| "Company Financial Statements" | -- | Section 5.5. |
| "Company Option" | -- | Section 7.10(b). |
| "Company Permits" | -- | Section 5.10. |
| "Company Plans" | -- | Section 5.13(a). |
| "Company Preferred Stock" | -- | Section 5.2(a). |
| "Company PUCs" | -- | Section 5.4(c). |
| "Company Representatives" | -- | Section 7.1. |
| "Company Required Statutory Approvals" | -- | Section 5.4(c). |
| "Company Rights Agreement" | -- | Section 3.1(a). |
| "Company SEC Reports" | -- | Section 5.5. |
| "Company SOP" | -- | Section 5.2(b). |
| "Company Stockholders' Approval" | -- | Section 7.3(a). |
| "Company 10-K" | -- | Section 5.3(b). |
| "Company 10-Q" | -- | Section 5.3(b). |
| "Contal Directors' Plan" | -- | Section 7.9(x). |
| "Contal Pension Plan" | -- | Section 7.9(h). |
| "Contal Retiree Plans" | -- | Section 7.9(j). |
| "Contal Welfare Plans" | -- | Section 7.9(j). |
| "Core Benefits" | -- | Section 7.9(a). |
| "Covered Retirees" | -- | Section 7.9(j). |
| "CRSP" | -- | Section 6.1(c). |
| "DGCL" | -- | Section 1.1. |
| "DIP" | -- | Section 7.9(p). |
| "Effective Time" | -- | Section 1.2. |
| "ERISA" | -- | Section 4.13(a). |

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| "Exchange Act" | -- | Section 4.4(c). |
| "Exchange Agent" | -- | Section 3.3(a). |
| "Exchange Ratio" | -- | Section 3.1(b). |
| "FCC" | -- | Section 4.4(c). |
| "Federal Communications Act" | -- | Section 4.4(c). |
| "Final Order" | -- | Section 7.7(a). |
| "GTE Directors' Plan" | -- | Section 7.9(x). |
| "HSR Act" | -- | Section 4.4(c). |
| "Indemnified Party" | -- | Section 7.11(a). |
| "Investment Company Act" | -- | Section 4.14. |
| "Involuntarily Terminated" | -- | Section 7.9(f). |
| "IPC" | -- | Section 5.2(b). |
| "IRS" | -- | Section 4.12(a). |
| "Joint Proxy Statement/Prospectus" | -- | Section 4.9. |
| "June Earnings Release" | -- | Section 5.5. |
| "LTIP" | -- | Section 7.9(k). |
| "Merger" | -- | Preamble. |
| "Merger Filing" | -- | Section 1.2. |
| "MIP" | -- | Section 7.9(j). |
| "MSE" | -- | Section 7.5. |
| "NYSE" | -- | Section 7.5. |
| "Parent" | -- | Preamble. |
| "Parent Common Stock" | -- | Section 3.1(b). |
| "Parent Consent Decree" | -- | Section 4.4(c). |
| "Parent Controlled Group Plan" | -- | Section 4.13(b). |
| "Parent DCPD" | -- | Section 4.2(c). |
| "Parent DRIP" | -- | Section 4.2(c). |
| "Parent EIP" | -- | Section 4.2(c). |
| "Parent Financial Statements" | -- | Section 4.5. |
| "Parent Incentive Plans" | -- | Section 6.3(b). |
| "Parent ITDPs" | -- | Section 4.2(c). |
| "Parent LTIP" | -- | Section 4.2(c). |
| "Parent Option" | -- | Section 7.10(b). |
| "Parent Permits" | -- | Section 4.10. |
| "Parent Plans" | -- | Section 4.13(a). |
| "Parent PSP" | -- | Section 4.2(c). |
| "Parent PUCs" | -- | Section 4.4(c). |
| "Parent Representatives" | -- | Section 7.1. |
| "Parent Required Statutory Approvals" | -- | Section 4.4(c). |
| "Parent Rights Agreement" | -- | Section 3.1(b). |
| "Parent SEC Reports" | -- | Section 4.5. |
| "Parent SP" | -- | Section 4.2(c). |
| "Parent Stockholders' Approval" | -- | Section 7.3(b). |
| "Parent UIP" | -- | Section 4.2(c). |
| "Parent 10-K" | -- | Section 4.3. |
| "Parent 10-Q" | -- | Section 4.3. |
| "Person" | -- | Section 9.5. |
| "Plan Change" | -- | Section 7.9(h). |
| "Potential Acquirer" | -- | Section 6.5. |
| "Proxy Statement" | -- | Section 4.9. |
| "PSE" | -- | Section 7.5. |
| "PUCs" | -- | Section 4.4(c). |
| "RCA" | -- | Section 7.7(c). |
| "Registration Statement" | -- | Section 4.9. |

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| "Reimbursement Payment" | -- | Section 9.5. |
| "SEC" | -- | Section 4.4(c). |
| "Securities Act" | -- | Section 4.4(c). |
| "SIP" | -- | Section 7.9(n). |
| "Subsidiary" | -- | Preamble. |
| "subsidiary" | -- | Section 4.3. |
| "Subsidiary Common Stock" | -- | Section 3.2. |
| "Subsidiary Stockholder's Approval" | -- | Section 7.3(b). |
| "Surviving Corporation" | -- | Section 1.1. |
| "Tax Return" | -- | Section 4.12(c). |
| "Taxes" | -- | Section 4.12(b). |
| "Termination Date" | -- | Section 9.1(b). |
| "Transition Period" | -- | Section 7.9(b). |
| "Utilities Codes" | -- | Section 4.4(c). |
| "1989 Company Balance Sheet" | -- | Section 5.12. |
| "1989 Parent Balance Sheet" | -- | Section 4.12. |

(END OF APPENDIX A)

APPENDIX B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement") is made and entered into as of the 27th day of December, 1990, among GTE Corporation ("GTE"), Contel Corporation ("Contel"), GTE California Incorporated ("GTEC"), GTE West Coast Incorporated ("GTE West Coast"), Contel of California, Inc. ("Contel Cal") and the California Cable Television Association ("CCTA"), with reference to the following facts:

A. On September 14, 1990, GTE and Contel filed a joint application (A.90-09-043) with the California Public Utilities Commission ("Commission") seeking the Commission's authorization to change indirect control of Contel's regulated California public utility subsidiaries.

B. By protest dated October 19, 1990, and amended October 24, 1990, CCTA objected to the expedited, ex parte relief sought in the joint application and indicated that CCTA would ask the Commission to impose mitigation consistent with Public Utilities Code Sections 853 and 854 as part of the Commission's granting the joint application.

C. GTE, Contel, and CCTA have resolved their differences concerning the joint application and the issues raised by CCTA's protest and this Settlement embodies that resolution.

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D. GTEC, GTE West Coast, and Contel Cal are parties to this Settlement solely for the purpose of facilitating the settlement by agreeing to conditions contained in Paragraphs 2 and 3 below.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. No Admission. This Settlement constitutes a compromise of disputed claims and does not represent an admission by any party of any matter or fact.

2. Fully Allocated Cost Studies. GTEC agrees that, within Phase III of the Commission's I.87-11-033, GTEC will conduct, file in the proceeding, and furnish to CCTA bottoms up and tops down fully allocated cost studies ("FAC") as those terms are defined in GTEC's "Guide to Cost Studies," dated November 30, 1990, for the GTEC service categories listed in Schedule A attached hereto and incorporated herein by reference.

A. The FAC shall be completed no later than the last day allowed by the Commission for amendments of Phase III cost studies.

B. Neither CCTA nor any other party shall have a right to access to the FAC until such party has

provided GTEC with a fully executed copy of GTEC's standard non-disclosure agreement.

3. Fiber Deployment. By this Settlement, GTE West Coast, Contel and Contel Cal agree that, from the date of the Commission's approval of this Settlement, any deployment of fiber plant beyond feeder cable will be governed by the rules and conditions applicable to GTEC under the Commission's D.89-10-031 (October 12, 1989).

4. Withdrawal Of Opposition. Upon approval of this Settlement by the Commission, CCTA's protest of A.90-09-043 and its opposition to the Joint Motion of GTE, Contel and the Division of Ratepayer Advocates filed on December 20, 1990 shall be deemed withdrawn.

5. Joint Motion. GTE, Contel and CCTA agree to file this Settlement together with a motion and proposed order that requests waiver of the comment period required by Rule 51.4; immediate approval by the ALJ; and setting the Settlement for final Commission approval on the January 9, 1991 conference calendar.

6. Successors And Assigns. This Settlement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

APPENDIX B

7. Complete Agreement. All terms, covenants and conditions of this Settlement are set forth herein, and there are no warranties, agreements or understanding, express or implied, with respect to the subject matter of this Settlement except such as are expressly set forth herein. This Settlement may only be modified or amended by mutual agreement of the parties, in writing, which specifically refers to this Settlement.

8. No Representations. Each party acknowledges that this Settlement is made without reliance upon any statement or representation of any other party, their representative or agent, except as expressly provided herein.

9. Sole Remedy. This Settlement shall be enforceable before the Commission, and Commission proceedings shall constitute the sole remedy of any party hereto for any alleged breach of this Settlement.

10. Counterparts. This Settlement may be executed in one of more counterparts, all of which together shall constitute one agreement.

Dated: 12/27/90

GTE CORPORATION

By [signature]
Its Attorney

APPENDIX B

Dated: 12-27-90

CONTEL CORPORATION

By Robert J. Gloistein
Its Attorney

Dated: _____

GTE CALIFORNIA INCORPORATED

By _____
Its _____

Dated: _____

GTE WEST COAST INCORPORATED

By _____
Its _____

Dated: 12-27-90

CONTEL OF CALIFORNIA, INC.

By Robert J. Gloistein
Its Attorney

Dated: 12/27/90

CALIFORNIA CABLE TELEVISION ASSOCIATION

By _____
Its VICE PRESIDENT
REGULATORY & LEGAL AFFAIRS

Dated:_____

CONTEL CORPORATION

By_____
Its_____

Dated: December 27, 1990

GTE CALIFORNIA INCORPORATED

By_____
Its State Director-Regulatory & Industry Affairs

Dated: December 27, 1990

GTE WEST COAST INCORPORATED

By_____
Its Area Vice President-Regulatory & Governmental Affairs

Dated:_____

CONTEL OF CALIFORNIA, INC.

By_____
Its_____

Dated:_____

CALIFORNIA CABLE TELEVISION ASSOCIATION

By_____
Its_____

SCHEDULE A

## Description of Costing Methodologies

The purpose of this section is to present an overview of the cost study methodology being utilized by GTEC. The first subsection provides a definition of the type of cost study GTEC is performing. The second and third subsections describe the process being used in the development of Tops-down and Bottoms-up Fully Allocated Cost analysis. The fourth subsection contains a list of those service specific studies to be completed by GTEC subject to this Settlement.

## I. Cost Study Definition

### Fully Allocated Cost (FAC) Analysis

A fully allocated cost analysis is a study whereby all costs, including direct, joint, and common costs, are linked to specific services through either direct assignment or an allocation procedure. The telephone industry's separations process represents one widely accepted fully allocated cost study. The separations cost study is known as a fully allocated "tops-down" study because the process begins with costs at a total company level and allocates them down to a service category level (e.g., Exchange, Intrastate MTS, Intrastate Private Line). In addition to this "tops-down" process, there are fully allocated "bottoms-up" studies. These studies begin with costs which are directly incurred to provide an individual service; these costs are then built up to a fully allocated level by allocating joint and common costs.

## II. Fully Allocated Tops-Down Cost

GTEC will utilize a separations based cost study to provide fully allocated tops-down cost. The separations process is a prescribed methodology that has been used by the telecommunications industry for more than half a century. While there have been many changes and simplifications of the rules and regulations over the years, the process has been and remains a widely used method for determining access rates, and settlements, and for the monitoring of earnings.

The separations process consists of collecting basic data such as the total company financial records, conducting basic studies which provide the cost allocators,

and applying the separations rules according to Parts 36 and 69 of the FCC's rules and regulations within the California State Cost System (CSCS).

Since the separations methodology ties to the Company's books, it will serve as a useful frame of reference for other cost studies. However, because costs are not defined to the specific service and rate element level, the studies have limited application. For instance, special access cost is not broken down into individual services such as voice grade and DDS, or into rate elements such as special access line, special transport, and supplemental features.

To provide the rate element detail that fulfills the requirements for fully allocated cost as outlined in the Ruling, GTEC will rely on fully allocated bottoms-up cost studies.

## III. Fully Allocated Bottoms-Up Cost

GTEC will rely on fully allocated bottoms-up cost studies to provide the detail that is not available from the tops-down separations studies. GTEC's methodology is in compliance with the Commission's D.83-04-012, which sets forth the costing procedure in support of rates for the provisioning of telephone services in California. The fully allocated bottoms-up process consists of two basic components: (1) Identification of the costs directly associated with the provisioning of the service and (2) Allocation of common expenses.

### Identification of Provisioning Cost

The costs associated with provisioning of a service can sometimes be obtained from the Company's records, but by and large, financial data is not kept at this level of detail. Given the absence of detailed financial data at the service specific level, GTEC has relied on engineering models which itemize the materials and work activities associated with the provisioning of each specific service in the historical test year. This process results in the identification of investments and expenses directly associated with each service.

### Allocation of Common Cost

Common costs are allocated to specific services in the bottoms-up methodology by taking the investment associated with each service and applying the appropriate annual charge factors. GTEC utilizes annual charge factors for allocating expenses incurred for rate of return, income

taxes, depreciation, general plant operations, plant specific operations, customer operations (including marketing, sales, and service), corporate expenses, other taxes, and ratemaking adjustments.

## IV. Studies to be Completed by GTEC

| | Bottoms Up FAC | Tops Down FAC |
|---|---|---|
| 1. Digital Data Service | | |
| A. Special Access Lines | | |
| 1. 2.4 Kbps | X | |
| 2. 4.8 Kbps | X | |
| 3. 9.6 Kbps | X | |
| 4. 56 Kbps | X | X |
| B. Digital Special Transport | | |
| 1. Fixed (each speed) | X | |
| 2. Variable (each speed) | X | |
| C. Nonrecurring Service Order Costs | | |
| 1. All components | X | |
| D. High Speed Private Line | | |
| 1. Access Line | X | |
| 2. Transport Termination | X | |
| 3. Special Transport | X | |
| 4. Nonrecurring Costs | X | |
| 2. Special Access | | |
| A. Analog 2 & 4 Wire | | |
| 1. Special Access Line | X | |
| 2. Special Transport | | |
| a. Fixed | X | |

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| | | |
|---|---|---|
| | b. Variable | X |
| 3. | Supplemental Features | |
| | a. Bridging | X |
| | b. Conditioning | X |
| | c. Switching Arrangements | X |
| | d. Other | X |
| 4. | Multiplexing Arrangements | |
| | a. Voice/DS1 | X |
| | b. Digital Data | X |
| 5. | Nonrecurring Service Order Costs | X |
| 3. | <u>High Speed Private Line</u> | |
| A. | Access Line | X |
| B. | Transport Termination | X |
| C. | Special Transport | X |
| D. | Nonrecurring Costs | X |
| 4. | <u>Local Message Charges (0-12 Miles)</u> | |
| A. | Initial Minute | |
| 1. | Switching | X |
| 2. | Switched Transport | X |
| 3. | Transport | X |
| 4. | Billing Costs | X |
| B. | Subsequent Minute | |
| 1. | Switching | X |
| 2. | Switched Transport | X |
| 3. | Transport | X |
| 4. | Billing Costs | X |

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| | | | |
|---|---|---|---|
| 5. | Contrax Loop | X | X |

(END OF APPENDIX B)

APPENDIX C

CONDITIONS OF APPROVAL

1. Definition. For purposes of these conditions "Contel California Companies" is defined as all of the subsidiaries of Contel Corporation which are subject to regulation by this Commission.

2. Maintenance of the Status Quo. Pending a final decision in this proceeding, GTE shall maintain the respective Contel California Companies, and their businesses, assets, and operations in all respects as separate entities, businesses, assets, and operations apart from any other subsidiary or affiliate of GTE and separate and apart from Contel. During that time, the Contel California Companies shall be managed with consideration only of the best long-term interests of those companies and their customers as well as any potential adverse effect on competition. The interim authorization granted herein shall not be deemed to authorize GTE to change the structure of or relationship between GTE California Incorporated and any other subsidiary or affiliate of GTE.

3. Separateness of the Contel California Companies. Maintenance of the status quo shall consist of, but not necessarily be limited to, GTE doing the following:

A. Maintaining separate books and records.

B. Maintaining separate management and other personnel.

C. Maintaining separate offices.

D. Maintaining the services presently provided by Contel Service Corporation, Contel Management Corporation, and other Contel affiliates to Contel of California. These services shall be provided under one or more service contracts between Contel of California and GTE Service Corporation and other GTE affiliates. Such service contracts shall stipulate that the charges for such

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services shall be at actual cost, but shall not exceed the 1990 charges to Contel of California adjusted by the annual growth of the Gross National Product Price Index (GNP-PI).

E. Refraining from exercising direction or control over, or influencing directly or indirectly, the management or policies of the Contel California Companies, or their businesses, assets, and operations, including refraining from changing the composition of the management of any of the businesses, assets, and operations of the Contel California Companies. Provided, however, that GTE, its officers, directors, agents, subsidiaries, divisions, groups, affiliates, employees, and attorneys may exercise such direction and control over Contel's California operations as is necessary to assure compliance with the Commission's orders. Provided further that nothing in this subparagraph shall be construed to preclude GTE, its subsidiaries or affiliates from providing services to the Contel California Companies as referred to in this Paragraph 3, or from offering service improvement programs, engineering standards which do not compromise or degrade service or accounting conventions (all subject to the Commission's reasonableness review). To the extent that any such service improvement program, engineering standard, or accounting convention is not within the scope of the service contracts referred to in subparagraph D, such services shall also be provided at cost.

F. Refraining from using any assets of the Contel California Companies for the benefit of GTE or GTE subsidiaries. Provided, however, that the Contel California Companies may, in the usual course of business, pay dividends to their parent corporation.

G. Refraining from receiving or obtaining access to, or use of, any material confidential information not in the public domain relating to the businesses, assets, and operations of the Contel California Companies. "Material confidential information"

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as used herein means competitively sensitive or proprietary information not independently known to GTE from sources other than Contel and its subsidiaries and includes, but is not limited to, sales data, market shares, marketing plans and methods, and trade secrets. Provided, however, that nothing in this subparagraph shall be construed to prevent GTE from receiving confidential information concerning the financial results of the Contel California Companies of the sort normally reported to a parent company. Provided further that nothing contained in this subparagraph shall be construed to prevent GTE, its subsidiaries or affiliates from receiving or using such information as is necessary to provide services to any of the Contel California Companies.

H. Refraining from selling, transferring, disposing of, encumbering or otherwise impairing the marketability or viability of any of the businesses, assets, and operations of the Contel California Companies, except in the ordinary course of the business of the Contel California Companies. Provided, however, that the pending application by Contel to dispose of Contel Office Communications, Inc. shall not be affected by this provision.

I. Refraining from commingling any of the businesses, assets, and operations of the Contel California Companies with any of the businesses, assets, and operations of GTE or any subsidiaries of GTE.

J. Limiting dealings between the Contel California Companies and GTE's California companies (GTE California Incorporated, GTE West Coast Incorporated, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, GTE Mobilnet of California Incorporated, and GTE Cellular Communications Corporation) to normal commercial activity of the sort that would occur between them if there were no common ownership.

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K. Taking all other reasonable and necessary steps to maintain the Contel California Companies and their businesses, assets, and operations as a separate and independent entities such that GTE could readily divest itself of the Contel California Companies in the event that the Commission finally disapproves the change in indirect control or conditions its approval in ways not acceptable to GTE.

L. Nothing contained herein is intended to supersede the provisions or requirements of the GTE Consent Decree in United States v. GTE Corp., 1985-1 Trade Cas. (CCH) ¶ 66,355 (D.D.C. 1985), and in the event of any conflict between these provisions and the GTE Consent Decree, the GTE Consent Decree shall govern.

M. Exclusively as pertaining to Contel Cellular of California, Inc., maintenance of the status quo shall consist of, but not necessarily be limited to, the following:

(1) Maintaining Contel Cellular Inc., the parent of Contel Cellular of California, Inc., separate and independent from GTE Mobilnet and any other cellular operations owned or managed by GTE prior to the interim authorization, and maintaining the existing organization and structure of Contel's cellular operations in California.

(2) Maintaining a chief executive officer (CEO) and chief financial officer (CFO) of Contel Cellular Inc. who are not otherwise officers, directors or employees of GTE or any of its subsidiaries or affiliates.

(3) Maintaining as members of the board of directors of Contel Cellular Inc. at least three individuals who are not otherwise officers, directors or employees of GTE or any of its subsidiaries or affiliates other than Contel Cellular Inc.

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(4) Assuring that any policy affecting Contel's California cellular operations is approved by either the CEO or the CFO of Contel Cellular Inc., who may consider only the best long-term, unilateral interests of the Contel California Companies as well as any potential adverse effect on competition in approving or disapproving any policy.

(5) Assuring that any services provided to Contel Cellular Inc. for the benefit of any Contel California cellular company by any subsidiary or affiliate of GTE are provided under a separate written contract that describes the services to be provided.

4. Final Authorization. As soon after the interim authorization as practical, the Commission shall proceed to final consideration of the change in indirect control of the Contel California Companies. This final consideration shall include the following:

A. The final consideration shall be conducted pursuant to Section 854 of the Public Utilities Code in its entirety as well as any other applicable statute or rule.

B. Not earlier than 12 months nor later than 18 months from the date of the Commission's interim authorization, GTE will submit a plan for consolidation of selected operations or the complete consolidation of Contel Cal and GTE Cal, and will file complete testimony supporting the application.

C. The Office of the Attorney General shall render its Advisory Opinion pursuant to Section 854(b)(2) on a date to be determined. The Division of Ratepayer Advocates shall also submit its report and recommendations on a date to be determined.

D. It is possible that GTE may desire to consolidate cellular or other non-wireline telephone operations in California prior to the time specified in subparagraph B. In that event, GTE shall file an appropriate application with the Commission not

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earlier than six months from the date of the Commission's interim authorization, and the review shall be conducted pursuant to Section 854 of the Public Utilities Code in its entirety as well as any other applicable statute or rule.

5. No Prejudgment of Final Review. The interim authorization herein shall not prejudge any issue involved in the Commission's final review of the pending application. In rendering its final decision on the application, the Commission may make any lawful order as if the interim authorization had never taken place, including without limitation: (i) approving the change in indirect control unconditionally; (ii) approving the change in indirect control with conditions; or (iii) disapproving the change in indirect control.

6. Divestiture. In order to preserve the Commission's ability to disapprove or condition its approval as if no interim authorization had taken place, in the event the Commission disapproves the application or approves the application with conditions GTE is unwilling to accept, and the Commission's decision is upheld or not reviewed by the California and United States Supreme Courts, GTE shall, within 18 months of the decision becoming final, enter into one or more agreements to divest itself of the Contel California Companies as follows:

A. In the case of Contel of California, GTE will sell the company as a going concern.

B. In the case of Contel Cellular of California, Inc., wholly owned by Contel Cellular Inc., approximately 10% of the outstanding shares of which are owned by persons other than Contel, GTE will use its position as the indirect majority shareholder to cause Contel Cellular Inc. or Contel Cellular of California, Inc. to divest the California properties it controls or manages in a manner that is fair and equitable to the minority shareholders.

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C. In the case of Contel ASC, GTE will sell the California properties subject to the Commission's jurisdiction.

D. Any sale of the Contel California Companies pursuant to this paragraph shall be subject to Commission approval under the terms of the Public Utilities Code and Commission rules and regulations.

7. No Precedent. The procedure adopted in this proceeding shall not be taken to be a precedent for any other proceeding under Section 854 of the Public Utilities Code, nor shall it be interpreted to define the application of Section 854 to holding company mergers generally.

(END OF APPENDIX C)