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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR - 4 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
)
 TELEPHONE AND DATA) No. 10209-CL-P-715-B-88
 SYSTEMS, INC.)
)
 For Authority to Construct and)
 Operate a Domestic Cellular)
 Radio Telecommunications)
 System on Frequency Block B)
 to serve the Wisconsin 8 -)
 Vernon Rural Service Area;)
 Market No. 715)
 To: The Commission, en banc

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully reply to the Opposition to Application for Review (the "Opposition") filed in the captioned proceeding on March 26, 1991 by Telephone and Data Systems, Inc. (TDS). As their reply, the Settling Partners respectfully show:

In the application for review to which the Opposition responds, the Settling Partners seek reversal in part of the Order On Reconsideration issued by the Deputy Chief, Common Carrier Bureau, DA 90-1917, adopted December 31, 1990 and released January 15, 1991,¹ to the extent that the Recon. Order refused to dismiss TDS' application as defective for violation of Sections 22.921(b)(1) and 1.65 of the rules. The Recon. Order held that it would be "inequitable" to dismiss TDS' application, despite its finding that Section 22.921(b)(1) had been violated in this case. The Settling Partners demonstrated that the Recon. Order's holding is predicated on findings which are entirely unsupported in the record, and which simply cannot survive scrutiny in light of the facts in this case.

In tacit recognition of the obvious correctness of the Settling Partners' analysis, TDS in its opposition papers makes no more than a token effort to defend the Recon. Order's factual findings. In this regard, TDS merely advances a truly mysterious claim that the Settling Partners could have remedied any unfairness in TDS' conduct by simply excluding UTELCO from the settlement group at the time the group was substituted for the winning lottery applicant. See TDS Opposition at pp. 3-4.

¹ Telephone and Data Systems, Inc., 6 FCC Rcd 270 (CCB 1991) (hereinafter sometimes cited as the "Recon. Order").

The argument rests upon the premise that the Settling Partners may simply ignore their contractual obligations when convenient to do so, and dare TDS to sue them for breach of contract. That type of attitude, which can most charitably be described as cynical, may be the way others conduct their business affairs, but it most emphatically is not the way the Settling Partners do so. Indeed, one of the reasons the Commission should be offended by TDS' conduct in this case is the blight on the wireline settlement process which has been left by TDS' sharp, and apparently unethical, negotiating practices.

Apart from that limited exercise, TDS devotes its opposition papers to attempting to convince the Commission that it should not affirm the Recon. Order's finding that a violation of Section 22.921(b)(1) of the rules occurred when TDS maintained a separate and independent application for the Wisconsin 8 wireline cellular authorization, while its subsidiary UTELCO joined the settlement group which was attempting to achieve a full market settlement in Wisconsin 8. Conspicuous by its absence is any attempt whatsoever to refute the Settling Partners' specific showing in their application for review that the Recon. Order's analysis of the equities in this case is wholly unsupported by, and contrary to, the record in this case. Accordingly, for purposes of the review proceedings, the Settling Partners refutation of the Recon. Order must be accepted as uncontested.

When it adopted the lottery procedure for cellular applications, the Commission bluntly stated that "our concern is to maintain consistency, simplicity and fairness in the lottery selection process by preventing schemes whereby an applicant may obtain a controlling or significant interest in more than one application in a market. Cellular Radio Lotteries, 101 F.C.C.2d 577, 600 (FCC 1985). (Emphasis added). That is precisely what TDS did in this case. The Commission further promised to alert for a "creative applicant" engaging in schemes to "skew[] the lottery," and it promised unequivocally that "[w]e will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license." Id. at 600 & n. 68. Under these circumstances, the Commission should rule that TDS violated both Sections 22.921(b)(1) and 1.65 of the rules by its conduct, and that its application accordingly is dismissed as defective.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE
COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE
COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
and

VIROQUA TELEPHONE COMPANY

By 
Kenneth E. Hardman

Their Attorney

Kenneth E. Hardman, P.C.
KNOFF & BURKA
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036
Telephone: 202-223-3772

April 4, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply to Opposition to Application for Review upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 4th day of April, 1991.


Kenneth E. Hardman