

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

RECEIVED

MAR 28 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)	CC Docket No. 94-11
)	
TELEPHONE AND DATA SYSTEMS, INC.)	File No. 10209-CL-P-715-B-88
)	
)	
For facilities in the Domestic Public)	
Cellular Telecommunications Radio Service)	
on Frequency Block B, in Market 715,)	
Wisconsin 8 (Vernon), Rural Service Area)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**COMMON CARRIER BUREAU'S COMMENTS ON SJI, INC.'S
PETITION FOR LEAVE TO INTERVENE**

On March 18, 1994, SJI, Inc. (SJI) filed a Petition for Leave to Intervene in the above-captioned proceeding. The Acting Chief, Common Carrier Bureau (Bureau) supports the limited intervention of SJI.

1. The Captioned proceeding is to determine whether United States Cellular Corporation (USCC), a subsidiary of Telephone and Data Systems, Inc. (TDS), misrepresented facts, lacked candor, or attempted to mislead the Commission during the La Star Cellular Telephone Company proceeding.¹ USCC was involved in the La Star proceeding through its 49 percent ownership of La Star Cellular Telephone Company (La Star), an applicant to provide cellular service in St. Tammany Parish in the New Orleans Metropolitan Statistical Area. SJI owned the remaining 51

¹ See La Star Cellular Telephone Company, 6 FCC Rcd 6860 (I.D. 1991), aff'd, 7 FCC Rcd 3762 (1992), appeal pending sub nom., Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

No. of Copies rec'd
List A B C D E

024

percent of La Star.

2. One of the issues considered in the La Star proceeding was whether La Star was controlled by SJI, the party eligible to apply for a cellular authorization in the New Orleans MSA. Upon a full evidentiary hearing, the presiding administrative law judge determined that SJI was not in control of La Star. Principals from both USCC and SJI testified in the La Star hearing. The instant proceeding is to determine whether USCC misrepresented facts, lacked candor, or attempted to mislead the Commission in its testimony concerning SJI's alleged control of La Star.

3. Section 1.223 requires that a party requesting intervention set forth its interest in the proceeding and show how its participation will assist in the determination of the designation issues. See RKO General, Inc., 94 FCC 2d 879 (1983). SJI meets this burden. The Bureau agrees that SJI has interests which may need to be protected in the instant proceeding. Because USCC and SJI were partners in La Star, any examination of whether the USCC witnesses lacked candor in testifying about the control of La Star certainly has the potential of implicating or otherwise affecting the SJI witnesses as well.

4. Additionally, SJI has demonstrated that its participation will assist in the determination of the issues. The Bureau believes that it is unavoidable that some or all of the SJI principals who testified in the La Star proceeding will need to be called to testify in the instant proceeding. Therefore, SJI's participation will facilitate in making the witnesses available. Moreover, as a party to the La Star proceeding, SJI is familiar with the facts and circumstances involved in that proceeding. This knowledge will assist in the introduction of evidence. The Commission made New Orleans CGSA, Inc. a party to this proceeding for that same reason. See Telephone and Data

Systems, Inc., FCC 94-29 (released Feb. 1, 1994) at ¶ 38.

5. However, the Bureau believes that SJI should be allowed to participate on a limited basis only. Although SJI may have interests which may need to be protected during the proceeding, SJI has no interest in the outcome of the proceeding. The proceeding is to determine whether USCC's conduct during the La Star proceeding disqualifies TDS from holding the license for the Wisconsin 8 Rural Service Area. SJI has no interest in the Wisconsin 8 market. Furthermore, SJI has no interest in a determination made about TDS's overall character qualifications to be a Commission licensee.

6. Moreover, the Bureau does not agree with SJI that findings in the instant proceeding may be used against SJI in other proceedings. Any finding against TDS or USCC would be limited to those parties. Because there is no issue designated against SJI, there can be no findings made against SJI. Therefore, the Bureau believes that SJI's participation should be limited to the degree necessary to protect its interest. The Bureau maintains it would not be useful to allow SJI to call witnesses, to file a written direct case, to file a bill of particulars, or to file proposed findings of fact and conclusions of law.² Accordingly, the Bureau requests that SJI be allowed to intervene, but on a limited basis.

7. Section 1.223(b) of the Commission's allows the presiding administrative law judge to "permit intervention . . . limited to a particular stage of the proceeding." 47 C.F.R. § 1.223(b). The Bureau requests that SJI's participation be limited to protecting SJI's interests only.

² Should testimony in this proceeding implicate or otherwise damage SJI's interests, the Bureau has no objection to SJI filing proposed findings of fact and conclusions of law to those issues only. However, because it is outside of SJI's interest in the proceeding, the Bureau does not believe it would be useful for SJI to comment on USCC's character.

8. The Bureau recognizes that Section 1.27 of the Rules allows any witness called to appear to have the right to be represented by counsel. Accordingly, any SJI witnesses could have their interests protected when they are called to testify without SJI's status as a party in this proceeding. However, the Bureau also recognizes that other non-SJI witnesses may testify to matters concerning SJI or its interests. Therefore, the Bureau supports SJI's limited participation to enable it to cross-exam such witnesses.

Therefore, for the foregoing reasons, the Common Carrier Bureau supports the intervention of SJI, Inc., but believes that SJI's participation should be limited to the protection of SJI's interests only.

Respectfully submitted,

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

March 28, 1994

By: 
Joseph Paul Weber
Trial Attorney

CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on March 28, 1994, copies of the foregoing Comments on SJI, Inc.'s Petition for Leave to Intervene were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

DELIVERED BY HAND

Honorable Joseph Gonzalez
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554

Alan Y. Naftalin, Esq.
Herbert D. Miller, Jr., Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

R. Clark Wadlow, Esq.
Mark D. Schneider, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Kenneth E. Hardman, Esq.
Moir & Hardman
2000 L Street, N.W.
Suite 512
Washington, D.C. 20036

L. Andrew Tollin, Esq.
Luisa L. Lancetti, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 2000-6-5289

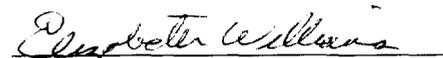
Michael B. Barr, Esq.
Hunton & Williams
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Douglas B. McFadden, Esq.
Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W.
Suite 810
Washington, D.C. 20006

Howard J. Symons, Esq.
James A. Kirkland, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Timothy E. Welch, Esq.
Hill & Welch
1330 New Hampshire Avenue, N.W.
Suite 113
Washington, D.C. 20036

Lawrence M. Miller, Esq.
Elisabeth M. Washburn, Esq.
Schwartz, Woods & Miller
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036-1702


Elizabeth Williams