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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 REPLY TO SUPPLEMENT FOR MOTION FOR LEAVE TO INTERVENE

On April 7, 1994, Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) (collectively referred to as TDS), pursuant to an order by the presiding administrative law judge, filed a Supplement to their Motion for Leave to Intervene. The Acting Chief, Common Carrier Bureau (Bureau) hereby responds to TDS's supplement.

1. On March 28, 1994, the Bureau filed comments on Wisconsin RSA #8, Inc.'s (WRSA) Motion to Intervene in the captioned proceeding. Although the Bureau did not oppose WRSA's motion, the Bureau did request that additional information be provided concerning WRSA's intentions upon intervening. The presiding administrative law judge agreed that questions exist as to the movant's intent and accordingly ordered WRSA to file a supplement setting forth in detail how it views its role at the hearing. See Order, FCC 94M-210 (released March 31, 1994). On April 7, 1994, TDS filed the supplement as required. The Bureau believes that the

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supplement fails to answer all the questions and concerns that the Bureau has about WRSA's goal for intervening in this proceeding.

2. In its Reply, TDS merely states that the HDO did not reflect the fact that TDS had assigned its interest in the Wisconsin 8 market to WRSA and then transferred control of WRSA to USCC. This argument fails to acknowledge that the HDO rescinded the grant in the market which restored all of the applications in this market to the original pending status.[1] TDS was the original applicant in the market. Therefore, TDS's application, not WRSA's, is the application which is currently before the trier of fact in this proceeding. Accordingly, the Bureau still fails to understand what WRSA's intentions are in this proceeding.[2]

3. Moreover, WRSA is silent on how it intends to assist TDS and USCC in going forward with the designated issues. The Order requiring the supplement specifically requested that WRSA provide such information. However, the Bureau was pleased that WRSA does not intend to participate separately from TDS and USCC. Should WRSA's motion to intervene be granted, the Bureau requests the trier of fact re-emphasize that TDS is and party to this proceeding and is expected to remain so and to prohibit WRSA from participating separately from TDS and USCC.

4. The remainder of TDS's reply relates to TDS's Motion for Modification of the Issues and Caption. The Bureau remains opposed to this motion. TDS's reply was absolutely silent as

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[1] The settling partners correctly noted this fact in their Consolidated Opposition to Motion for Leave to Intervene and Motion for Modification of Issues and Caption.

[2] In informal discussions with TDS's counsel, Bureau trial staff has learned that because WRSA had purchased its interest in the Wisconsin 8 market from TDS for value, it seeks to intervene to protect its value in the market. Bureau counsel queries why no discussion of this was made in TDS's reply.

to the Bureau's procedural argument. The Bureau renews its request that TDS's motion be dismissed as procedurally defective.

5. As to the merits, TDS's Reply is also lacking. TDS, in a slightly nebulous manner, acknowledges that this proceeding involves more than the Wisconsin 8 authorization only. This proceeding involves the basic character qualifications of TDS. Despite the fact that there are no other authorizations before the trier of fact other than the Wisconsin 8 authorization, many authorizations have been conditioned on the outcome of this proceeding. Therefore, this proceeding undoubtedly reaches beyond the Wisconsin 8 authorization. The trier of fact in this proceeding will not be taking action against those other authorizations, but, depending upon the outcome of the instant proceeding, the Commission may be able to take action against those other authorizations without further proceedings.

6. TDS claims that the motions were not intended to have any substantive impact. But a change in the caption and the issues indeed will have a substantive impact. If the caption and issues are changed to name only WRSA, it will avoid any findings or conclusions as to TDS's character. This would prevent the Commission from being able to take any action against the conditioned authorizations if such actions are necessary. Because of the substantive nature of the modifications requested by TDS, the Bureau asks the motions be denied. The changes could only lead to confusion and mischief.

7. TDS argues that the Bureau's proposed change in issues is too broad because only one TDS subsidiary is involved. The Bureau still believes that its proposed modification is appropriate because it will allow the trier of fact to determine that based upon the misdeeds, if any, of one TDS subsidiary, whether such misdeeds effect TDS's qualifications to be a

Commission licensee, or any other TDS subsidiary's (in this case, WRSA's) qualifications to be a Commission licensee. If the trier of fact believes that the Bureau's issue is too broad, the Bureau suggests limiting to inquire whether TDS or WRSA possess the requisite character qualifications. This limits the scope to only one TDS subsidiary and continues to recognize that it is TDS's application that is at issue in this proceeding.

8. Moreover, TDS did not address the change in issues proposed by Louisiana CGSA, Inc. (LCGSA). LCGSA proposed to modify the issue to inquire whether TDS through its subsidiary WRSA possesses the requisite character qualifications. The Bureau would not object to this modification.

For the foregoing reasons, the Acting Chief Common Carrier Bureau, requests that the motions filed by TDS be denied.

Respectfully submitted,

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

April 13, 1994

By: Joseph P. Weber
Joseph Paul Weber
Trial Attorney

CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on April 13, 1994, copies of the foregoing Reply to Supplement for Motion for Leave to Intervene were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

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