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FCC MAIL SECTION

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

FCC 94M-410
42192

JUN 21 2 33 PM '94

In re Application of)	DISCOVERED BY ✓ 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)	

ORDER

Issued: June 20, 1994 ; Released: June 21, 1994

Under consideration is the Motion to Compel Discovery, filed by GTE Mobilnet, Inc. (GTE) and Portland Cellular Partnership (PCP), on June 15, 1994; and the Comments on Motion to Compel Discovery, filed by Telephone and Data Systems, Inc. (TDS) and the United States Cellular Corporation (USCC), on June 15, 1994.

Preliminary Matter

As noted above, TDS and USCC have filed with this office a pleading in which they set forth comments in response to the Motion to Compel Discovery under consideration here. They include, as part of their presentation, a request that the Presiding Judge consider the additional argument contained therein when ruling on the instant Motion.

Movants have filed, attached to their Motion, a copy of the Objection of Telephone and Data Systems, Inc. and United States Cellular Corporation to Request No. 15 of the Request for the Production of Documents, prepared by TDS and USCC. Petitioners had ample opportunity to set forth whatever argument they consider relevant in their opposition statement. The Presiding Judge does not find sufficient cause for permitting them to submit an additional pleading at this time. The request for leave to file the additional comments set forth in the Comments on Motion to Compel Discovery filed by TDS and USCC will be denied.

Motion to Compel

Movants request an order of the Presiding Judge requiring TDS and USCC to produce the documents requested in item numbered 15 of the Request for the Production of Documents by Telephone and Data Systems, Inc. and the United States Cellular Corporation dated April 22, 1994. The documents sought pursuant to that request are the following: "[a]ll documents which reflect

objections or complaints by other of your partners of improper exercise of control in any cellular market in which you have a direct or indirect interest." GTE and PCP contend that the information sought pursuant to that request would have a bearing on whether or not TDS and USCC have committed willful and repeated violations of FCC rules or policies in the past in other cellular markets. They submit that the scope of this document discovery request is limited in nature, since they seek simply to determine whether or not there have been objections or complaints made by partners of applicants in other cellular markets of the improper exercise of control by TDS and/or USCC.

The Presiding Judge has made it clear in earlier rulings that this proceeding will be limited to an examination of the conduct of USCC and TDS in the so-called La Star proceeding. The request at issue here seeks documents relating to allegations, which may or may not have been made, concerning the conduct of TDS and/or USCC in other cellular market proceedings. Any allegation would be simply that, a mere allegation. In order to give such documentation any weight at all, assuming that such evidence was found to be admissible in this proceeding, a negative finding would have to be made against TDS or USCC with respect to each and every separate allegation of improper behavior in one or more proceedings involving other cellular markets. It is clear from the Commission's Hearing Designation Order released in this proceeding on February 1, 1994 (FCC 94-29) that it did not intend to order such a wide ranging inquiry: the sole focus of our investigation here is USCC's behavior in the La Star proceeding. Accordingly, the Presiding Judge concludes that Movants have failed to demonstrate that the documentation sought pursuant to Request numbered 15 is likely to produce documentation relevant to the subject matter of this proceeding, and the Motion will be denied.

Rulings

IT IS ORDERED, that the request of Telephone and Data Systems, Inc. and United States Cellular Corporation that they be permitted to file comments in response to the Motion to Compel Discovery, filed by GTE Mobilnet, Inc. and Portland Cellular Partnership, as set forth in their Comments on Motion to Compel Discovery, filed on June 15, 1994, IS DENIED.

AND IT IS FURTHER ORDERED, that the Motion to Compel Discovery, filed by GTE Mobilnet, Inc. and Portland Cellular Partnership, on June 15, 1994, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph P. Gonzalez
Administrative Law Judge