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

FCC 94I-065  
42569

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

DISMISSED BY  
 AUG 8 2 27 PM '94  
 FCC MAIL SECTION

ORDER

Adopted: August 5, 1994 ; Released: August 8, 1994

1. This order dismisses as moot a Petition of Telephone and Data Systems, Inc. and United States Cellular Corporation for Stay of Proceeding, filed March 11, 1994.<sup>1</sup> Petitioner asks the Commission to stay this proceeding pending action by the United States Court of Appeals for the District of Columbia Circuit in a related case.

2. On February 1, 1994, the Commission designated for hearing Telephone and Data System, Inc.'s (TDS) application for a construction permit for a cellular telephone system in the Wisconsin 8 (Vernon) Rural Service Area. Telephone and Data Systems, Inc., 9 FCC Rcd 938 (1994). The designated issue concerned whether TDS's subsidiary, United States Cellular Corporation (USCC), made misrepresentations or lacked candor in a proceeding in which USCC was the minority owner of La Star Cellular Telephone Company, an applicant for a cellular system in New Orleans, Louisiana. See La Star Cellular Telephone Co., 7 FCC Rcd 3762 (1992).

3. In La Star, the Commission concluded that the applicant was ineligible to apply for frequency Block B, the wireline block, because it was controlled by USCC, which was not eligible to apply for Block B in New Orleans. 7 FCC Rcd at 3766 ¶ 40. Because this finding warranted the dismissal of La Star's application, the Commission did not reach questions raised in La Star concerning whether USCC committed misrepresentations or

<sup>1</sup> The Commission also has before it an opposition, filed March 22, 1994, by Louisiana CGSA, Inc., and comments, filed March 17, 1994, by the Common Carrier Bureau.

lacked candor in that proceeding. 7 FCC Rcd at 3767 n.3. The Commission stated that these questions could be revisited in future proceedings involving the interests of the parties. Id.

4. While judicial review of the Commission's decision in La Star was pending, the Commission independently reviewed the allegations of misconduct against USCC and issued the above-cited hearing designation order initiating this proceeding. 9 FCC Rcd at 944-59 ¶¶ 13-38.

5. TDS asks the Commission to stay this proceeding pending action by the court in the La Star appeal. TDS contends that the Commission's designation order here depends on the adverse conclusions reached by the Commission in La Star. According to TDS, if the court fails to affirm the Commission's La Star decision, the Commission would have to revisit its designation order in this proceeding.

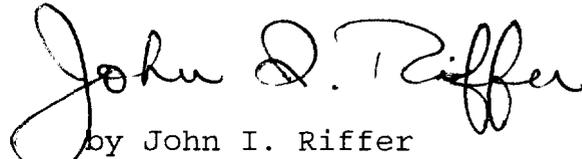
6. On March 29, 1994, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's decision. Telephone and Data Systems, Inc. v. FCC, 19 F.3d 655 (D.C. Cir. 1994). The court held that it was unable to determine whether the Commission's analysis concerning the control of La Star was consistent with precedent. The court directed the Commission to provide a more adequate explanation for its actions. Following remand, the parties were invited to comment on what further action should be taken. La Star Cellular Telephone Co., FCC 94I-040 (Apr. 20, 1994).

7. In light of the fact that judicial action has now been taken, TDS' petition, which asks the Commission to stay this proceeding pending judicial action, is now moot. The Commission now has before it comments on how to proceed as a result of the court's remand. In due course, it will take whatever action is warranted, including any action that may thereby be called for in this proceeding.

8. ACCORDINGLY, IT IS ORDERED, That pursuant to the authority delegated under 47 C.F.R. § 0.251(f)(2), the Petition of Telephone and Data Systems, Inc. and United States Cellular Corporation for Stay of Proceeding, filed March 11, 1994, IS

DISMISSED as moot.

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General Counsel

  
by John I. Riffer  
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