

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

FCC 94M-654
50575

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)	

MEMORANDUM OPINION AND ORDER

Issued: December 29, 1994 ; Released: December 30, 1994

Under consideration are the Motion to Enlarge Issues, filed by the so-called Settlement Group¹, on July 22, 1994; the Opposition to Motion to Enlarge Issues, filed by Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) and the attached Appendix to Opposition to Motion to Enlarge Issues, filed on August 25, 1994; the Erratum to Opposition to Petition to Enlarge Filed by the Settlement Group, filed by TDS and USCC, on September 9, 1994; the Reply to Opposition to Motion to Enlarge Issues, filed by the Settlement Group on September 7, 1994; and the Wireless Telecommunications Bureau Comments on Motion to Enlarge the Issues, filed on December 9, 1994.

The Settlement Group requests that the issues in this proceeding be enlarged to include the following:

To determine whether Telephone and Data Systems, Inc. misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission concerning the relationship between UTELCO, Inc., and Telephone and Data Systems, Inc. from 1989 to the present, and, in this regard, whether Telephone and Data Systems, Inc. has violated Section 1.17 of the Commission's Rules, 47 C.F.R. Section 1.17.

¹Century 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.

The request is premised, essentially, on the argument that TDS deliberately misrepresented to this Commission the nature of the relationship that existed between TDS and UTELCO, Inc. (UTELCO) from 1989 until 1991. UTELCO, a wireline company with a presence in the Wisconsin 8 market, although not an applicant for the service at issue here, entered into a pre-lottery partial settlement agreement with twelve of the original applicants and three other wireline carriers that did not file applications. The Settlement Group contends that during this period of time UTELCO was simply another TDS subsidiary telephone company, under TDS' domination and control. In support of this argument, the Settlement Group points to certain internal documents produced during discovery which are used by TDS in its day-to-day operations. The Settlement Group argues that they demonstrate that UTELCO was considered by TDS, during this period of time, to be simply another one of its operating companies. This fact, they contend, is at variance with TDS' repeated representations to the Commission in this case concerning the nature of its relationship with UTELCO. Although the Settlement Group makes this argument, its discussion appears directed more to TDS's failure to respond to its argument that TDS, although a 49 percent owner of UTELCO, in fact controlled UTELCO, or to comment on the earlier finding of Common Carrier Bureau (now the Wireless Telecommunications Bureau) that TDS was not in control of UTELCO's actions. Although, it seeks both a misrepresentation and lack of candor issues, the essence of its argument is that TDS lacked candor with this Commission in failing to come forward and state clearly the exact nature of the relationship between the two entities, after the matter had been addressed by both the Settlement Group and the Bureau, and that by failing to do so, it was less than candid with this Commission.

As noted by the TDS and the Bureau, TDS's alleged control of UTELCO was not at issue in this proceeding and is still not at issue. At no point during the course of this proceeding did TDS deny that it was in fact in control of UTELCO, or for that matter address the control issue. The matter was raised by the Settlement Group, and then by the Bureau's finding that TDS was not in control of UTELCO. On appeal to the Commission, TDS did not comment on or take issue with the Settlement Group's argument that the Bureau erred and that TDS was in fact in control of UTELCO. Its appeal was directed to what it considered to be the Bureau's erroneous finding that TDS ownership interest in UTELCO created a prohibited cross ownership interest in violation of Section 22.921(b) of the Commission's rules.

TDS has not affirmed or denied that it is in control of UTELCO. It has not addressed the matter because it does not believe that the question of control is relevant to any issue at hand. Its ownership interest in UTELCO, which stands at 49 percent, was known to all parties. An ownership interest of that magnitude, irrespective of whether or not this interest enabled it to control UTELCO, was the sole relevant factor in determining whether a violation of Section 22.921(b) had occurred. TDS properly focused on that issue. To have raised the question of control would have unnecessarily complicated this proceeding and been time consuming and expensive to all parties concerned without contributing to the resolution of the matter at hand. For all intents and purposes, the debate as to control has been

generated by the Settlement Group without its designation by the Commission as an issue in this proceeding. To require TDS to respond to an argument which it considers irrelevant and unrelated to any designated issue would place an unnecessary burden on TDS and, for that matter, on this Commission. Finally, the Commission itself, in its *Memorandum Opinion and Order and Hearing Designation Order*, FCC 94-29, released February 1, 1994, leaves little doubt that it considers the question of control to be irrelevant, limiting itself in its discussion to the matter which it considered relevant, namely whether or not a violation of Section 22.921(b) had occurred, and its further finding that TDS had not violated the reporting requirements of Section 1.65 of the Commission's rules. No mention was made of control, although, as noted above, the issue was raised by the Settlement Group. The conclusion, therefore, is inescapable that the Commission, in its *Hearing Designation Order*, laid to rest any question as to whether control, as opposed to ownership interest, was relevant. The request to enlarge the issues will be denied.

Accordingly, IT IS ORDERED, that the Motion to Enlarge Issues, filed by the Settlement Group, on July 22, 1994, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph P. Gonzalez
Administrative Law Judge