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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	
)	WT Docket No. 00-130
TeleCorp PCS, Inc., Tritel, Inc. and)	DA 00-1589
Indus, Inc. for FCC Consent to)	
Transfer Control of, or Assign,)	
Broadband PCS and LMDS Licenses)	

**MOTION TO STRIKE OF TELECORP PCS, INC., et al., OR,
IN THE ALTERNATIVE, REQUEST FOR LEAVE TO FILE SUBSTANTIVE
RESPONSE TO LATE FILED COMMENTS**

TeleCorp PCS, Inc. ("TeleCorp") and its subsidiaries and affiliates (collectively, "Applicants") hereby request that the Commission strike the reply comments filed by Alpine PCS, Inc. ("Alpine") and Comanche and Leaco Rural Telephone Cooperatives ("Telco"),¹ or in the alternative, accept this substantive response. While the FCC may have adopted a more lenient pleading cycle for the above-captioned applications ("Applications") by permitting parties to file "comments," the Commission has not—and cannot lawfully under Section 309—relieve filers of the standing requirement and other filing rules for petitions to deny insofar as their putative "comments" seek denial of the Applications. Neither the Alpine nor the Telco filings have met these threshold burdens. Moreover, neither of the pleadings has any merit in any event. Alpine, for its part, merely choruses Nextel's petition without the addition of any substance. And, the Telco petition raises only one issue that has not

¹ Reply Comments of Alpine PCS, Inc. ("Alpine Petition"), WT Docket No. 00-130 (filed August 28, 2000); Reply Comments of Leaco Rural Telephone Cooperative, Inc. and Comanche County Telephone Company, Inc. in Support of Comments On or, In the Alternative, Petition to Deny of Nextel Communications, Inc. ("Telco Petition"), WT Docket No. 00-130 (filed August 28, 2000);

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previously been answered—the question of whether the Applicants’ assets have expanded consistent with the “normal growth” rules of the FCC. In the event that the Commission considers these filings, the Applicants have provided herein a brief reply on these points which Applicants hereby seek leave to file.

I. THE LATE-FILED ALPINE AND TELCO PLEADINGS SHOULD BE SUMMARILY DISMISSED

Both the Alpine and Telco pleadings should be struck for failure to comply with the FCC’s pleading rules. First, neither Alpine nor Telco has made any meaningful attempt to comply with the FCC’s requirements for standing. As Applicants explained in response to the Nextel Petition, standing is a requirement in order to seek denial of a filed application. Alpine has not made a meaningful attempt to meet this threshold requirement.² Although Telco addresses, in an insubstantial manner, the question of standing in its attachments, its arguments—to the extent they state a standing case, which they do not—are only relevant to ancillary transactions that are not part of this merger.³ The Alpine and Telco petitions therefore fail to meet the facial requirements for standing to contest the Applications.

² Alpine has alleged, in a footnote, that it has standing to contest Applicant’s designated entity qualifications based on (i) Alpine’s participation in designated entity auctions; and (ii) its ownership of the Hyannis, MA license, which overlaps TeleCorp’s footprint. While bidding against TeleCorp may have risen to the level of standing for contesting TeleCorp’s auction applications, it does not confer standing upon Alpine to request denial of an unrelated transaction years after the fact. Moreover, the “overlapping” license cited by Alpine is a *non-designated entity license* that, in fact, will be assigned to AT&T Wireless PCS, LLC as part of the transactions under review. Thus, TeleCorp’s designated entity status has no relationship with the overlap cited by Alpine.

³ Telco does not even attempt to make a standing argument specific to the Applications. While Telco’s attachments respond to challenges to Telco’s standing to contest entirely unrelated Royal Wireless, L.L.C. (“Royal”) transactions, even if Telco had standing to challenge Royal (which it does not), that standing would not give Telco the standing to challenge an entirely separate transaction. A petitioner does not have standing in a Commission proceeding based on its failure to obtain a license in another proceeding involving the same parties. See *Frontier Broadcasting Co., Cheyenne, Wyo. for Renewal Of License Of Station KFBC-TV, Cheyenne, Wyo.*, 18 Rad. Reg. 2d (P & F) 521 (1970) (citing *WGAL, Television, Inc.*, 13 Rad. Reg. 2d (P & F) 1131 (1968)).

In addition, both Alpine and Telco have tendered what amount to late-filed petitions to deny outside the statutory limits for such filings. Despite being labeled “Reply Comments,” both request relief—determination that TeleCorp is not qualified to control designated entity licenses—amounting to denial of the Applications as filed. Such petitions are untimely under Section 309 of the Communications Act. The impropriety of accepting these pleadings is heightened by the fact that neither party tenders any excuse as to why any of their arguments could not have been made earlier consistent with the deadline for initial comments and petitions to deny. Nor does either party seek a waiver of the deadline.

Even worse, Telco raises additional questions regarding the so-called “normal growth” rule and the applicability of the exemptions of Section 24.839 that were not raised initially in the comments to which Telco is purportedly “replying.” This is contrary to the policies of Section 1.45(c) of the Commission’s rules and should not be tolerated. By accepting these pleadings, the Commission would effectively place the Applicants in the untenable position of being forced to re-initiate a pleading cycle at the whim of any entity seeking to delay the proposed transactions. And, as demonstrated by these pleadings (none of which go to the competitive benefits of the merger), parties have been willing to file specious pleadings for ulterior purposes. Accordingly, the Commission should summarily dismiss the petitions or strike the petitions from the record.

II. THE LATE-FILED PETITIONS FAIL TO RAISE ANY REASONED BASIS FOR DELAYING GRANT OF THE APPLICATIONS

In the event that the Commission determines to consider these late-filed pleadings, Applicants believe they should be given an opportunity to respond to the allegations contained therein. Specifically, although Alpine’s pleading adds nothing to the record, the

Telco petition questions whether TeleCorp's growth falls within the parameters of "normal growth" under the designated entity rules and argues that certain transactions are not grandfathered under Section 24.839. Each of these arguments is addressed below.

A. TeleCorp's Growth in Assets Is Solely Attributable to "Normal Growth" Under Section 24.709(a)(3)

Designated entities must maintain their eligibility as entrepreneurs for a period of five years.⁴ However, the Commission also has "emphasize[d] that [it has] a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace."⁵ To facilitate growth and investment, increases in assets as a result of the following sources generally *will not* affect the licensee's continued eligibility as an entrepreneur:

- (i) equity investments from non-attributable investors;
- (ii) debt financing;
- (iii) "revenue from operations or other investments";
- (iv) "business development or expanded service";
- (v) "normal projected growth of gross revenues and assets";
- (vi) "growth such as would occur as a result of a control group member's attributable investments appreciating";
- (vii) growth "as a result of a licensee acquiring additional licenses;" or
- (viii) growth of another of an attributable investor's affiliates.⁶

Thus, the FCC "will allow licensees to retain their eligibility during the holding period, *even if the company has grown beyond [the] size limitations for the entrepreneurs' block.*"⁷

⁴ 47 C.F.R. § 24.709(a)(3).

⁵ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 403, 420 (1994) ("Fifth MO&O").

⁶ See 47 C.F.R. §24.709(a)(3); *Fifth MO&O* at 419-20.

As shown in the attached balance sheet and in its public securities filings, TeleCorp's assets as of June 2000 are \$967 million, \$467 million above the \$500 million cap. Telco (and Nextel before it) attempt to make much of TeleCorp's use of a \$495 million figure in the Applications, generally implying that TeleCorp has been disingenuous in its dealings with the Commission. This conclusion, however, is misplaced. *First*, the asset figure provided by TeleCorp was irrelevant to TeleCorp's eligibility under Section 24.839, and consequently TeleCorp believed the exercise of recalculating its assets was pointless. *Second*, TeleCorp did explain in its Applications that the figure inserted was taken from a filing made the last time TeleCorp calculated its assets which, it specifically noted, was dated and likely inaccurate. *Third*, the calculation of what assets must be included can be different, depending upon the licenses for which eligibility is sought, and therefore a single number is not defensible in any event.⁸ *Fourth*, TeleCorp had always calculated its assets under worst case circumstances, despite that it understood from discussions with FCC staff that some assets may be considered non-attributable, depending upon which accounting standards are used. While such choices are irrelevant if the gross assets are below the limit, TeleCorp did not wish to prejudice any arguments that it may have that certain of its assets should not be attributable. *Finally*, TeleCorp was unsure whether an application would even be accepted by the ULS system if the assets listed exceeded \$500 million.

Now, however, Telco has raised the question of whether TeleCorp's growth has been "normal" under Section 24.709(a)(3)—in essence whether TeleCorp Holding Corp., Inc.

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⁷ *Id* at 468 (emphasis added).

⁸ For example, in the original C Block auction, applicants were permitted to exclude the assets of affiliates that would themselves qualify as "entrepreneurial companies."

(“THC”) remains eligible to hold the designated entity licenses it now holds. As a threshold matter, THC did not exist prior to 1996, and its sole assets in 1997 were a handful of F Block licenses. TeleCorp’s exclusive business is the offering of PCS to the public, a business it was able to enter based upon leveraging its F Block licenses into a regional footprint. All of TeleCorp’s assets are thus the direct result of THC’s designated entity licenses.

TeleCorp has attached an updated asset and liability reconciliation, along with a further breakdown of “Property, Plant and Expense” line items.⁹ On the asset side of the balance sheet, the accounts receivable and inventory line items relate to customer accounts for customers generated by TeleCorp itself—TeleCorp has never “purchased” customers as part of its license acquisitions. Moreover, the major fixed asset accounts, specifically “Wireless Network” and “Network Under Construction” within “Property, Plant and Equipment,” represent greenfield builds within TeleCorp’s licensed footprint, which consisted entirely of bare licenses. All of these assets, as well as TeleCorp’s cash reserves, intangibles, deferred financing costs, and other non-current assets can only be considered arising from “business development or expanded service” incident to the business of offering PCS to the public. Furthermore, all of the TeleCorp license assets shown under the category of “License/Financing Costs” fall squarely within growth “as a result of a licensee acquiring additional licenses” which the FCC considers “normal growth” under the *Fifth R&O*.¹⁰

⁹ The attached figures correspond to TeleCorp’s June 2000 10Q filing. As noted as a subsequent event to that filing, in July 2000, TeleCorp raised an additional \$450 million in a private high-yield debt offering. Obviously, as a private debt offering, the proceeds are considered “normal growth” under Section 24.709(a)(3).

¹⁰ Notably, Messrs. Vento and Sullivan also control some additional licensee companies, which results in a difference between the TeleCorp \$467 million asset figure for the end of 1998 and the \$495 million figure used on the FCC applications. Obviously, however, TeleCorp is responsible for the overwhelming majority of assets attributable to THC. The other ventures owned by Messrs. Vento and Sullivan have only bare licenses,

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Viewed from another perspective, all of the money raised by TeleCorp, which has been used to acquire its assets, is viewed as “normal growth” under Section 24.709(a)(3). In 1998, TeleCorp had raised \$165 million in equity from non-attributable sources, including venture capital funds and AT&T, and raised \$243.4 through debt. Since that time, TeleCorp has raised an additional \$428.1 million through non-attributable equity sources,¹¹ including \$253.5 million from an initial public offering in 1999. As noted on the attached balance sheet, TeleCorp also took on an additional \$486.2 million in debt, largely through realizing in April of 1999 \$328 million in gross proceeds from the sale of senior subordinated discount notes, which have now grown to \$374.9 million.

The debt amounts are shown on the balance sheet as “Long Term Debt” owed to the FCC (for licenses) or recognized equipment vendors, or senior debt owed to recognized financial institutions. These amounts fall squarely within “debt financing” considered normal growth under Section 24.709(a)(3). The large remaining source of funds, other than operating revenues reinvested by the Company, is represented by shareholders equity. TeleCorp’s *attributable* investors (Messrs. Vento and Sullivan) have not changed, however, since the company was initially capitalized in 1998, and consequently all of those amounts are “equity investments from non-attributable investors” considered “normal growth.”

As a final matter, the merger of two designated entity companies is also clearly within the parameters of “normal growth.” Even if not considered the “acquisition of new licenses,”

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which fit squarely within two categories considered normal growth—the *Fifth R&O* exclusion relating to acquisitions of additional licenses and “growth of another of an attributable investor’s affiliates.”

¹¹ TeleCorp’s equity investors are shown in the ownership table attached to the Applications. Because of THC’s control group structure, no investor holding less than 25 percent is attributable. Because no investor holds more than 25 percent of THC, no investors are attributable.

the Commission's recent Sixth Report and Order clarified grandfathering status for designated entity companies, and specifically permitted grandfathering of a post-merger entity where both parties to the merger were designated entities. The mere fact that the grandfathering exists implies, of course, that the asset (or revenue) cap for entrepreneurial status has been exceeded.

Under the circumstances, all of TeleCorp's asset growth is directly related to the normal growth of its business under the Commission's rules and policies. Accordingly, the allegations that TeleCorp has exceeded the "normal growth" limitations are unfounded, and THC remains fully qualified to hold its designated entity authorizations.

B. The Assignment Applications Fall Within the Grandfathering Provisions of Section 24.839

Telco also advances the argument that TeleCorp should not be permitted to do something directly that it clearly can do indirectly. Specifically, Section 24.839 of the Commission's rules explicitly permits *pro forma* assignments of designated entity licenses independent of the asset limit. Section 24.839 also explicitly permits assignments of designated entity licenses to companies already holding such licenses, independent of whether the assignee meets the asset limit. Logic dictates reading this rule in a manner that would permit an assignment of a designated entity license, regardless of whether the assignor met the entrepreneurial asset limit, if the assignor or a commonly-controlled affiliate of the assignor holds entrepreneurial licenses.

Nonetheless, Telco makes the hyper-technical argument that TeleCorp is not permitted to accomplish directly that which it is clearly permitted to accomplish indirectly. Telco does not, however, identify any regulatory purpose served by requiring licensees to act

in an indirect manner. On the other hand, in numerous instances, the Commission has acted to avoid burdening applicants with two-step processes in favor of more direct means, even if not specifically authorized under the rules. For example, broadcast licensees are routinely permitted to file single license assignment applications, even though it is explicitly contemplated that the assigned license will actually be owned by an intermediary corporation before being received by the assignor:

In the past applicants, such as the ones before us, have filed single long-form assignments, ... which involve an instantaneous pass-through of the license from the seller to the buyer through a third-party intermediary. In these pass-through cases, the sales contract submitted with the application include a contract between the seller and the buyer, which merely references the intermediary and the instantaneous pass-through. Thus, because the intermediary never actually exercises control of the licensee for an appreciable period of time, grant of a single long-form application contemplating this type of pass-through does not violate the mandate of Section 310(d).¹²

The FCC has also “constructively” amended two-step transactions to a single long form for the benefit of licensees.¹³ Similarly, the FCC has *sua sponte* modified rules to avoid a burdensome two-step process when a single step would serve the same end.¹⁴

¹² John H. Phipps, Inc. (Assignor) And WCTV Licensee Corp. (Assignee), 11 FCC Rcd 13053 (1996).

¹³ HLT Corporation And Hilton Hotels, 12 FCC Rcd 18144 (1997) (stating “the long-form application is hereby constructively amended to provide for the transfer of ITT Broadcasting from ITT directly to HLT, and the short-form application and STA request, and all related pleadings, are dismissed”).

¹⁴ Amendment of Part 22 of the Commission's Rules to Delete Section 22.119, 9 FCC Rcd 6513 (1994) (stating “However, rather than forcing RSA licensees to follow the two-step procedure just outlined (step one - receive authorization, step two - assign it), which wastes our staff resources, we allow the assignee to apply directly to us for a new cellular system in the ceded portion of the market upon evidence that the partitioning contract exists (see old 22.31(f)(2))”).

III. CONCLUSION

The Commission should not permit its processes to be abused by the late filing, without explanation, of petitions to deny in the guise of "reply comments," especially when the petitioners lack standing and the petitions raise new issues not previously before the agency. The Alpine and Telco petitions should be summarily struck from the record. In the ill-advised case that the FCC elects to consider these documents, even on an informal basis, the Applicants believe the Commission should consider the foregoing substantive reply to Telco's assertions. TeleCorp Holding Corp., Inc. and the affiliated designated entities contemplated by these proposed transactions, are fully qualified to hold designated entity licenses and to continue to acquire designated entity licenses. Respectfully submitted,

TELECORP PCS, INC., its Subsidiaries and its
Affiliates

By: _____



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September 1, 2000

TeleCorp Balance Sheet
(\$ Thousands)

	<u>1998</u>	<u>1999</u>	<u>Jun-00</u>
	Audited	Audited	
Current Assets:			
Cash	111,733	182,330	28,223
Accounts Receivable	-	23,581	36,514
Inventory (Handsets, etc.)	778	15,802	20,604
Other Current Assets	<u>3,404</u>	<u>3,828</u>	<u>6,344</u>
Total Current Assets	115,915	225,540	91,685
Fixed Assets:			
Property, Plant & Equipment	198,291	447,700	622,360
Accumulated Depreciation	<u>(822)</u>	<u>(47,250)</u>	<u>(91,326)</u>
Net Property, Plant & Equipment	197,469	400,450	531,034
License/Financing Costs			
PCS Licenses	104,737	221,650	239,478
Microwave Relocation Costs	12,457	47,835	41,797
Capitalized Interest	913	1,005	1,522
Accumulated Amortization	<u>-</u>	<u>(2,808)</u>	<u>(5,522)</u>
Net Licenses/Financing Costs	118,107	267,682	277,275
Intangible Assets	26,285	37,908	34,330
Deferred Financing Costs, net	8,585	19,577	18,647
Other Non-Current Assets	<u>283</u>	<u>1,044</u>	<u>13,626</u>
	<u>466,644</u>	<u>952,202</u>	<u>966,597</u>
Current Liabilities:			
Accounts Payable	14,592	38,903	6,654
Accrued Expenses	94,872	51,977	110,876
Other Current Liabilities (includes current l/t debt)	<u>11,127</u>	<u>40,579</u>	<u>27,560</u>
	120,591	131,459	145,090
Long Term Debt:			
Senior Subordinated Discount Notes	-	354,291	374,877
Senior Credit Facility	225,000	225,000	290,000
Lucent Notes Payable	10,460	43,504	45,353
U.S. Government Financing	<u>7,925</u>	<u>17,776</u>	<u>19,314</u>
	243,385	640,571	729,544
Less Current Portion	<u>-</u>	<u>(1,361)</u>	<u>(1,415)</u>
	243,385	639,210	728,129
Other Liabilities	2,677	8,906	17,666
Total Liabilities	366,653	779,575	890,885
Mandatory Redeemable Preferred Stock, net	164,491	263,181	279,128
Shareholders' Equity:			
Preferred Stock	103	149	149
Common Stock	493	856	890
Additional Paid in Capital net of Deferred Compensation*	(93)	224,440	279,917
Accumulated Deficit	<u>(65,003)</u>	<u>(315,999)</u>	<u>(484,372)</u>
	(64,500)	(90,554)	(203,416)
Total Liabilities, Redeemable Preferred & Stockholders' Equity	<u>466,644</u>	<u>952,202</u>	<u>966,597</u>

* also net of subscriptions receivable

TeleCorp Property and Equipment
(\$ Thousands)

	<u>1998</u>	<u>1999</u>	<u>Jun-00</u>
	Audited	Audited	
Gross PP&E:			
Wireless Network	-	364,491	509,816
Network Under Development	170,886	21,758	33,076
Computer Equipment	10,115	16,888	23,636
Internal Use Software	11,161	21,648	24,953
Leasehold Improvements	3,205	12,011	15,847
Furniture, Fixtures, Office Quip & Other	<u>2,924</u>	<u>10,904</u>	<u>15,032</u>
	198,291	447,700	622,360
Accumulated Depreciation	<u>(822)</u>	<u>(47,250)</u>	<u>(91,326)</u>
Net PP&E	197,469	400,450	531,034

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2000, I caused copies of the foregoing Joint Opposition of TeleCorp PCS, Inc., *et al.* to the Petition to Deny of Nextel Communications, Inc. to be delivered, First Class Mail, postage pre-paid, to the following:

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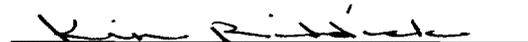
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