

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF TELEPHONE AND)
DATA SYSTEMS, INC., UNITED STATES)
CELLULAR CORPORATION AND TSACONAS)
CELLULAR, INC. FOR APPROVAL OF THE) CASE NO.
ACQUISITION OF TSACONAS CELLULAR, INC.,) 93-118
BY TELEPHONE AND DATA SYSTEMS, INC. AND)
THE TRANSFER TO UNITED STATES CELLULAR)
CORPORATION)

O R D E R

On March 30, 1993, Telephone and Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC") and Tsaconas Cellular, Inc. ("Tsaconas") filed a joint application requesting Commission approval for the acquisition by TDS and USCC of Tsaconas. Tsaconas currently holds the Federal Communications Commission's license to construct and operate the non-wireline cellular mobile radio system serving Rural Service Area ("RSA") No. 3.

TDS, an Iowa Corporation, is a telecommunications company with its stock traded on the American Stock Exchange. USCC is a Delaware Corporation that manages and invests in cellular systems throughout the country. Two USCC subsidiaries are operating in Kentucky. United States Cellular Operating Company of Evansville owns the controlling interest in Evansville Cellular Telephone Company currently operating in the Evansville, Indiana/Henderson, Kentucky metropolitan statistical area ("MSA"). Another USCC subsidiary, United States Cellular Operating Company of Owensboro, currently operates a cellular system in the Owensboro, Kentucky

MSA. TDS owns 97 percent of the combined voting power of USCC's Common Shares.

USCC currently owns a 20 percent interest in Kentucky RSA #3 Cellular General Partnership, the wireline carrier for RSA No. 3. USCC will sell its partnership interest in Kentucky RSA #3 Cellular General Partnership prior to its acquisition of Tsaconas.¹ TDS, USCC, Tsaconas Acquisition Company (a Delaware Corporation and subsidiary of TDS), Tsaconas, and the Tsaconas shareholders entered into an Acquisition Agreement dated March 11, 1993 which has been made a part of this filing. The Acquisition Agreement provides that TDS will accomplish the acquisition by merging Tsaconas Acquisition Company into Tsaconas with Tsaconas as the surviving corporation. The shares of the surviving corporation will be transferred to and held by USCC in exchange for shares of USCC pursuant to an Exchange Agreement which was made a part of this filing. The shareholders of Tsaconas will receive compensation in TDS common shares in exchange for their current shares of Tsaconas pursuant to the Acquisition Agreement. USCC intends to operate under the name "Kentucky RSA #3, Inc.," or another name specified by TDS.

¹ See Case No. 93-197, Joint Application of Brandenburg Cellular Corporation, Cellular Division of Logan Telephone Cooperative, Inc., North Central Telephone Cooperative, Inc., South Central Rural Telephone Cooperative Corp., Inc. and the United States Cellular Corporation for the Approval of the Transfer of the United States Cellular Corporation's Interest in Kentucky RSA #3 Cellular General Partnership.

Pursuant to KRS 278.020(5), the Commission has a 60-day period to review applications for transfer. Because information concerning USCC's plan to divest itself of the interest in RSA #3 Cellular General Partnership was made available to the Commission only four days before the 60-day period expired, the acquirers and the Commission, by agreement, extended the Commission's review period to June 28, 1993.

On May 21, 1993, Horizon Cellular Telephone Company LP ("Horizon") filed a motion to intervene and a brief in opposition to the joint application. Horizon asserts that it has a right to acquire Tsaconas because it had entered into a letter of intent with Tsaconas which was executed on June 19, 1992 and according to Horizon was a binding contract. Horizon stated that it has filed suit in Warren Circuit Court seeking an injunction prohibiting Tsaconas from attempting to sell the license and related assets to another entity and an order directing specific performance of the letter of intent. Horizon further alleges that approval of the proposed transfer would cause consumers to be charged higher "roamer" rates and cause the technical networking of RSA No. 3 to be reconfigured away from the Nashville MSA.

On June 1, 1993, TDS, USCC, and Tsaconas filed an objection to the petition to intervene and a response to Horizon's brief arguing that Horizon's intervention is untimely and unjustified. They claim that the Warren Circuit Court is the appropriate forum for Horizon to adjudicate the dispute concerning its letter of intent. The higher "roamer" rates and the change in network configuration

with their negative impact on customers are merely speculative according to TDS, USCC, and Tsaconas.

On June 18, 1993, Tsaconas filed an affidavit of Charles English, its counsel, attesting that the parties in the Warren Circuit Court civil action reached a mutually acceptable settlement resolving all claims asserted in the civil action. According to Tsaconas, a portion of the parties' settlement agreement requires Horizon to withdraw its petition for intervention in this proceeding.

On June 25, 1993, Horizon filed a reply to the objection of TDS, USCC, and Tsaconas to its petition for intervention. Horizon asserts that there is presently no final settlement of its litigation with Tsaconas, though "positive settlement negotiations have taken place." Further, Horizon did not withdraw its request for intervention.

On June 9, 1993, the Commission received a motion for full intervention from the partners in Kentucky RSA #3 Cellular General Partnership, the cellular division of Logan Telephone, Cooperative, Inc.; Brandenburg Cellular Corporation; North Central Telephone Cooperative, Inc.; and South Central Rural Telephone Cooperative, Inc. These partners, along with USCC, have requested the Commission approve the assignment of USCC's 20 percent general partnership interest in 4 equal shares of 5 percent each to the partners in Case No. 93-197. In support of their motion, the partners filed the notice of transfer which they received from USCC describing USCC's intent to transfer its 20 percent partnership

interest to Tsaconas. Because the partners exercised their right of first refusal, the USCC interest will be transferred to the partners instead of to Tsaconas. The partners primary concern is that issues of Horizon's suit remain unresolved. TDS, USCC, and Tsaconas filed their objection to the motion of the partners to intervene on June 18, 1993 alleging that the motion is untimely and that the partners assert no legitimate interest. TDS, USCC, and Tsaconas assert that the partners are causing unnecessary delays and their contention that the transaction may not be in the public interest is unfounded.

Upon review of these motions to intervene and being advised, the Commission hereby finds that its statutory authority in this proceeding is limited to a determination of whether persons acquiring the utility have the financial, technical, and managerial ability to provide reasonable service pursuant to KRS 278.020(4) and whether the proposed acquisition is to be made in accordance with law for a proper purpose and is consistent with the public interest pursuant to KRS 278.020(5). The Commission has no jurisdiction to determine any rights or obligations with respect to the alleged letter of intent between Horizon and Tsaconas. Accordingly, the motions to intervene of Horizon and of the partners in Kentucky RSA #3 Cellular General Partnership should be denied.

Based on a thorough review of the record, the Commission further finds that TDS and USCC possess the requisite financial, managerial, and technical expertise necessary to own and operate a

cellular telecommunications system in Kentucky RSA No. 3 and to provide reasonable and adequate service to the public. The acquisition by TDS and USCC of Tsaconas is a legitimate business transaction, is in conformity with applicable provisions of KRS Chapter 278, et. seq., and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. The motion of Horizon to intervene in this proceeding is hereby denied.

2. The motion of the partners in Kentucky RSA #3 Cellular General Partnership to intervene is hereby denied.

3. The acquisition by TDS and USCC of the cellular telecommunications system in RSA No. 3 of Tsaconas be and it hereby is approved, subject to the prior divestiture by USCC of its 20 percent interest in Kentucky RSA #3 Cellular General Partnership.

4. Within 10 days of the closing of the proposed acquisition, TDS and USCC shall refile their proposed tariff sheets in accordance with 807 KAR 5:011, and shall include any special contracts related to roamer rates.

5. TDS shall file a copy of the FCC approval of its acquisition of Tsaconas and subsequent assignment of interest to USCC, within five days after it receives such approval.

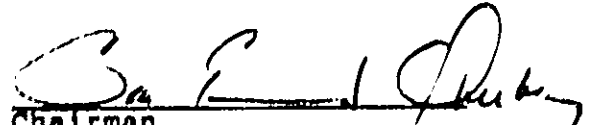
6. TDS and USCC shall file evidence of the transfer of USCC's 20 percent interest in Kentucky RSA #3 Cellular General Partnership within five days after closing occurs.

7. TDS, USCC, and Tsaconas shall file evidence of closing no later than five days after closing occurs or, in the alternative,


shall notify the Commission if the proposed acquisition does not occur.

Done at Frankfort, Kentucky, this 28th day of June, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director