

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF TELEPHONE AND	)	
DATA SYSTEMS, INC., AN IOWA CORPORATION,	)	
UNITED STATES CELLULAR CORPORATION, A	)	
DELAWARE CORPORATION, AND MO-TEL CELLULAR,	)	
INC., A GEORGIA CORPORATION D/B/A CELLULAR	)	CASE NO.
ONE WESTERN KENTUCKY CELLULAR TELEPHONE	)	93-276
COMPANY AND D/B/A WESTERN KENTUCKY CELLULAR	)	
TELEPHONE COMPANY, FOR APPROVAL OF THE	)	
MERGER OF A WHOLLY-OWNED SUBSIDIARY OF	)	
TELEPHONE AND DATA SYSTEMS, INC. AND MO-TEL	)	
CELLULAR, INC. AND THE TRANSFER OF THE	)	
SURVIVING CORPORATION TO UNITED STATES	)	
CELLULAR CORPORATION	)	

O R D E R

This matter arising upon joint petition of Telephone and Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC"), and Mo-Tel Cellular, Inc. ("Mo-Tel"), filed September 30, 1993, for reconsideration of the Commission's Order of September 10, 1993, denying confidential protection of certain terms and conditions of the acquisition of Mo-Tel by USCC on the grounds that disclosure of the information sought to be protected would result in competitive injury. The Commission granted a rehearing on October 18, 1993, and directed the joint petitioners to prefile testimony in support of their position.

In this proceeding TDS, Mo-Tel, and USCC seek approval of the acquisition by USCC of Mo-Tel's right to operate as a cellular telephone company in RSA #2 where Mo-Tel holds the non-wireline license from the Federal Communications Commission. The

acquisition will be accomplished by the merger of a wholly-owned subsidiary of TDS into Mo-Tel and the transfer of the corporate shares of the surviving entity to USCC. The terms and conditions of the transaction are contained in a letter agreement between the parties. Because the purchase price can be derived from the letter agreement, the parties, in particular USCC and TDS, have petitioned to protect those portions of the agreement which reveal that information.

The original petition for confidentiality was filed on August 6, 1993 and alleged that disclosure of the information would reveal the value USCC and TDS have placed on the property to be acquired. Because USCC and TDS compete with other telephone companies in acquiring and selling cellular wire line systems, USCC and TDS maintain that disclosure of this information would affect their ability to compete effectively in the market either as buyers or sellers.

In denying protection, the Commission found that although the prices paid for cellular systems help to establish the value of all cellular systems, the purchase price of any particular cellular system will ultimately be dependent upon the nature and character of the system itself and the price the potential buyers are willing to offer for the system. On the basis of this finding, the Commission concluded that the purchase price contained in the letter agreement had no competitive value and the petition should be denied.

In the petition for reconsideration and in their testimony filed November 17, 1993, the joint petitioners reiterate their earlier position that disclosure of the information would enable competitors for other systems as well as sellers of other systems to determine the methodology by which TDS and USCC value those other systems. The joint petitioners maintain that such competitors could use this information in making their own offers. This argument, however, continues to ignore the dynamics of the marketplace where sellers can seek the highest offers that potential buyers are prepared to make. Therefore, disclosure of the information is not likely to cause competitive injury and the petition should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the joint petition requesting confidentiality of the terms and conditions contained in a letter agreement be and is hereby denied.

Done at Frankfort, Kentucky, this 9th day of February, 1994.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner