

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF TELEPHONE AND)
DATA SYSTEMS, INC., AN IOWA CORPORATION,)
KENTUCKY RSA #9-10, INC., A KENTUCKY)
CORPORATION, AND ALPHA CELLULAR TELEPHONE)
COMPANY, A FLORIDA GENERAL PARTNERSHIP,)
FOR APPROVAL OF THE ACQUISITION BY)
TELEPHONE AND DATA SYSTEMS, INC. OF THOSE)
ASSETS OF ALPHA CELLULAR TELEPHONE) CASE NO. 94-385
COMPANY CONSTITUTING THE NON-WIRELINE)
CELLULAR OPERATIONS IN KENTUCKY RURAL)
SERVICE AREAS 9 AND 10, THE TRANSFER OF)
SUCH ASSETS TO KENTUCKY RSA #9-10, INC.,)
AND ESTABLISHMENT OF INITIAL TARIFFS)
DESCRIBING CONDITIONS OF SERVICE)

O R D E R

On October 28, 1994, Telephone and Data Systems, Inc. ("TDS"), Kentucky RSA #9-10, Inc. ("RSA #9-10"), and Alpha Cellular Telephone Company ("Alpha Cellular"), (hereinafter collectively referred to as "Joint Applicants") filed an application pursuant to KRS 278.020(4) and KRS 278.020(5) for necessary approvals for the acquisition by TDS of assets of Alpha Cellular.

The assets to be acquired include the Federal Communications Commission cellular and microwave licenses used in connection with the provision of cellular service by Alpha Cellular in RSA 9 and RSA 10, but excluding liabilities and obligations of Alpha Cellular (unless expressly assumed) and Alpha Cellular's cash, bank deposits, cash equivalents and accounts receivable (the "Alpha

Cellular assets"). The Joint Applicants also request approval of the transfer by TDS of the Alpha Cellular assets to RSA #9-10, and approval of the initial tariff of RSA #9-10.

The proposed transaction will involve transfer by TDS to Alpha Cellular certain of TDS's common shares in return for the Alpha Cellular assets. Contemporaneously with the acquisition of the Alpha Cellular assets by TDS, such assets will be transferred to RSA #9-10 by TDS. In consideration for the Alpha Cellular assets, United States Cellular Corporation, the indirect corporate parent of RSA #9-10, will deliver to TDS certain shares of United States Cellular Corporation common stock.

TDS is an Iowa corporation which owns subsidiaries that provide communication services including local exchange, cellular telephone, and radio paging services. RSA #9-10 is a Kentucky corporation which is a wholly owned subsidiary of United States Cellular Operating Company, which in turn is wholly owned by United States Cellular Corporation, of which TDS is majority owner. United States Cellular Corporation, through direct or indirect subsidiaries, owns or owns controlling interest in cellular telephone systems that provide service in the Evansville,

Indiana/Henderson, Kentucky MSA,¹ the Owensboro, Kentucky MSA,² Kentucky Rural Service Area 2,³ and Kentucky Rural Service Area 3.⁴

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- ¹ Evansville Cellular Telephone Company was authorized to provide cellular telephone service in the Kentucky portion of the Evansville, Indiana/Henderson, Kentucky MSA by Order of the Commission dated June 16, 1988, in Case No. 10228, In the Matter of the Application of Evansville Cellular Telephone Company for Establishment of Initial Rates and for the Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in Evansville, Indiana Metropolitan Statistical Area, Including Parts of Henderson County, Kentucky.
- ² United States Cellular Operating Company of Owensboro, an indirect subsidiary of United States Cellular Corporation, formerly known as Kentucky Cellular, Inc., was authorized to provide cellular service in the Owensboro MSA by Order of the Commission dated January 31, 1990, in Case No. 10286, In the Matter of Application of Kentucky Cellular, Inc. for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Cellular Radio Telecommunications Service to the Public in the Owensboro Metropolitan Statistical Area, and for Establishment of Initial Rates.
- ³ Kentucky RSA #2, Inc., a wholly owned subsidiary of United States Cellular Corporation, holds the non-wireline license for Kentucky Rural Service Area 2. The Commission approved the transfer of Kentucky RSA #2 to United States Cellular Corporation in its Order dated October 5, 1993, in Case No. 93-276, 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 One Western Kentucky Cellular Telephone 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 Transfer of the Surviving Corporation to United States Cellular Corporation.
- ⁴ Kentucky RSA #3, Inc., a wholly owned subsidiary of United States Cellular Corporation, holds the non-wireline license for Kentucky Rural Service Area 3. The Commission authorized United States Cellular Corporation's acquisition of Kentucky RSA #3, Inc. by Order dated June 28, 1993 in Case No. 93-118, The Joint Application of Telephone and Data Systems, Inc., United States Cellular Corporation and Tsaconas Cellular, Inc. for Approval of the Acquisition of Tsaconas Cellular, Inc. by Telephone and Data Systems, Inc. and Transfer to United States

Alpha Cellular, a Florida general partnership, holds the non-wireline licenses from the Federal Communications Commission for the rural service areas known as Cellular RSA Market 451, Kentucky 9-Elliott ("RSA 9"), and Cellular RSA Market 452, Kentucky 10-Powell ("RSA 10"). Alpha Cellular currently provides cellular telephone service in RSA 9⁵ and RSA 10.⁶

Joint Applicants submit that the proposed transaction is consistent with the public interest and that it will be made in accordance with law and for a proper purpose. The Commission has previously determined, in Case No. 93-276⁷ and Case No. 93-118,⁸ that United States Cellular Corporation and TDS have the financial, technical, and managerial abilities to provide reasonable service in Kentucky. Joint Applicants further assert that consumers will

Cellular Corporation.

⁵ The Commission authorized Alpha Cellular to provide such service in RSA 9 in Case No. 91-377, In the Matter of Alpha Cellular Telephone Company, a Florida General Partnership, for the Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in the Rural Service Area Which Includes Elliott, Lawrence, Morgan, Magoffin, Johnson, Martin, Floyd and Pike Counties in Kentucky, for Approval of Financing, and for Establishment of Initial Rates.

⁶ The Commission authorized Alpha Cellular to provide such service in RSA 10 in Case No. 91-410, In the Matter of The Joint Application of Metro Mobile CTS of Powell, Inc. and Alpha Cellular Telephone Company, a Florida General Partnership, for Transfer of the Assets and Liabilities of CTS of Powell, Inc. to Alpha Cellular Telephone Company and of Related Financing.

⁷ See Footnote No. 3.

⁸ See Footnote No. 4.

benefit from the administrative efficiencies available to United States Cellular Corporation.

Pursuant to KRS 278.020(4), persons under the jurisdiction of the Commission are required to obtain Commission approval prior to the acquisition or transfer of ownership or control of a utility. KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval.

The Commission finds that KRS 278.020(4) and (5) are applicable to the proposed transaction as described by Joint Applicants. Therefore, Commission approval is necessary.

Pursuant to Administrative Case No. 344,⁹ cellular utilities are no longer required to file with the Commission tariffs containing wholesale or retail rates. However, cellular utilities must file tariffs describing their wholesale and retail conditions of service. Rather than adopting Alpha Cellular's current tariff, the acquirors propose to maintain uniformity among the United States Cellular Corporation affiliates' tariffs in Kentucky. Consequently, an original proposed tariff for Kentucky Rural Service Areas 9 and 10 was filed with this application. The Joint Applicants also have filed with the Commission eleven copies of the Alpha Cellular tariff annotated to demonstrate the ways in which it differs from the proposed tariff.

⁹ Administrative Case No. 344, Inquiry into the Provision and Regulation of Cellular Mobile Telephone Service in Kentucky, Order dated August 5, 1994.

The Commission, having determined that KRS 278.020(4) and (5) are applicable to the proposed transaction, finds that the acquirors have demonstrated the financial, technical, and managerial abilities to provide reasonable service to the public and that the proposed transaction is consistent with the requirements of KRS 278.020(4) and (5) and should be approved.

The Commission further finds that the proposed tariff of RSA 9-10 should be approved with the following modifications:

1. Refer to Original Sheet 14, Section XIX, Disconnection of Service for Cause, Heading A. Substitute for the existing paragraph the following language:

Upon non-payment of any sum due the Company, or upon violation of any of the conditions governing service, the Company may, without incurring any liability, terminate service to the customer in accordance with 807 KAR 5:006, Section 14.

2. Refer to Original Sheet 14, Section XX, Termination by Customer. Include under this heading terms which are consistent with 807 KAR 5006, Section 12, and which are applicable to termination by customers other than resellers and bulk users.

3. Refer to Original Sheet 10, heading styled "Section IX.B. (Con't.)." Change the text to "IX.A. (Cont.)."

4. Refer to Original Sheet 10, third full paragraph. Insert, after the words "18 months," the words "the Company shall notify customers in writing that."

5. Refer to Original Sheet 8, V. Add an additional item "L" and include in it the following language:

Acceptance of the liability provisions contained in this tariff by the Commission does not constitute its determination that the limitation of liability provided by the Company should, or would, be upheld in a court of law. The Commission recognizes that, just as it is within the province of the courts to adjudicate negligence claims and rights to recover damages therefor, it is also within the province of the courts to determine the validity of the exculpatory provisions of this tariff.

6. Refer to Original Sheet 6, IV, Term. Include terms of service for those customers who are not identified as authorized resellers or bulk users.

IT IS THEREFORE ORDERED that:

1. The proposed transaction consisting of the acquisition of the Alpha Cellular assets by TDS and United States Cellular Corporation, as described by the Joint Applicants, is hereby approved.

2. Joint Applicants shall notify the Commission within 10 days of the date of closing of the proposed transaction or, in the alternative, shall notify the Commission if the proposed transaction does not occur.


3. Within 10 days of the date of the consummation of the proposed transaction, RSA 9-10 shall file with the Commission a tariff that incorporates the modifications stated previously in this Order.

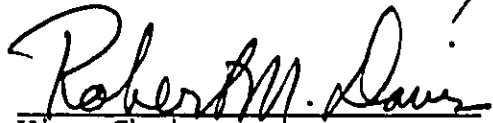
4. Within 30 days of the date of this Order, TDS and United States Cellular Corporation shall file organizational charts reflecting all Kentucky cellular operations, all associated

ownership interests, all associated corporate names, and all associated business names.

Done at Frankfort, Kentucky, this 13th day of December, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director