

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CC Docket No. 01-73
)	
Joint Applications of Telephone and Data)	ITC-T/C-20010307-00128
Systems, Inc. and Chorus Communications,)	ITC-T/C-20010307-00129
Ltd. for Authority to Transfer Control of)	
Commission Licenses and Authorizations)	ULS File Nos.
Pursuant to Sections 214 and 310(d) of the)	0000352422
Communications Act and Parts 22, 63 and 90)	0000352426, <i>et al.</i>
of the Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: August 10, 2001

Released: August 10, 2001

By the Chief, Common Carrier Bureau; Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we approve the transfer of control applications filed on February 8, 2001, and March 7, 2001, by Telephone and Data Systems, Inc. (TDS) and Chorus Communications, Ltd. (Chorus) (collectively, the Applicants), pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act).¹ The applications were placed on public notice on March 20, 2001,² and no comments were received. The Applicants filed additional information in support of their applications in letters dated May 16, 2001, June 6, 2001, and August 3, 2001.³ Based on the record, we conclude that the public interest will be served by approval of the transfer of control applications, subject to the condition that Chorus divest to an

¹ See Chorus Communications, Ltd. and Telephone and Data Systems, Inc., Application to Transfer Domestic Blanket Section 214 Authority Held by Chorus and its Subsidiaries to Telephone and Data Systems, Inc. (filed Mar. 7, 2001) (*Domestic 214 Petition*); Applications for Assignments of Authorization and Transfers of Control to Telephone and Data Systems, Inc., ULS File Nos. 0000352422, 0000352426, 0000334628, and 0000352428 (filed Feb. 8, 2001).

² *Commission Seeks Comment on Application for Consent to Transfer Control Filed by Chorus Communications, Ltd. and Telephone and Data Systems, Inc.*, Public Notice, DA 01-715 (rel. Mar. 20, 2001).

³ See Letter from Arthur W. Bresnahan and Alan Y. Naftalin to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB Docket No. 01-73 (filed May 17, 2001) (*May 17 Ex Parte Letter*); Letter from Arthur W. Bresnahan and Alan Y. Naftalin to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB Docket No. 01-73 (filed June 6, 2001) (*June 6 Ex Parte Letter*); Letter from Warren G. Lavey and Peter Connolly to Aaron Goldberger, Common Carrier Bureau, Federal Communications Commission, CCB Docket No. 01-73 (filed Aug. 3, 2001).

unrelated third party before consummation certain wireless licenses that TDS is not permitted to hold or control under the Commission's rules.⁴

II. BACKGROUND

2. Chorus provides local exchange services in Wisconsin and Minnesota through both its incumbent local exchange carrier (LEC) and competitive LEC subsidiaries.⁵ Chorus also provides long distance services to 19,329 customers through two subsidiaries.⁶ In addition, Chorus holds, directly and indirectly, several radio licenses. The transferee, TDS, is a holding company, which through its wholly-owned subsidiary, TDS Telecommunications Corporation (TDS Telecom) and incumbent LEC operating subsidiaries, provides telecommunications service to approximately 731,000 access lines in 28 states.⁷ The Applicants propose to transfer control of certain of the wireless licenses and the domestic and international section 214 authorizations held by Chorus and its subsidiaries to TDS by merging Singer Acquisition Corporation, a wholly-owned subsidiary of TDS, with and into Chorus.⁸ The merger would make Chorus a wholly-owned subsidiary of TDS, and Chorus's subsidiaries would become wholly-owned indirect subsidiaries of TDS. Chorus proposes to divest its 75-percent interest in PCS Wisconsin and 18-percent interest in Madison SMSA before consummating the merger with TDS to comply with the Commission's rules.

⁴ On January 11, 2001, the U.S. Department of Justice and Federal Trade Commission granted early termination of their examination of the merger following their inquiry under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. *Grant for Early Termination of the Waiting Period Under the Premerger Notification Rules*, 66 Fed. Reg. 9,849, 9,850 (Feb. 12, 2001). The Minnesota Public Utilities Commission also approved the merger by order dated March 23, 2001.

⁵ In Wisconsin, Mid-Plains, Inc. (Mid-Plains), a wholly-owned subsidiary of Chorus, serves 36,369 incumbent LEC lines in the Madison, Wisconsin area. Two other Chorus subsidiaries, Farmers Telephone Company (Farmers) and Dickeyville Telephone Corporation (Dickeyville) serve 7,273 and 1,463 incumbent LEC access lines, respectively, in other areas of Wisconsin. See *Domestic 214 Petition* at 4. Mid-Plains holds a 75-percent interest in PCS Wisconsin, LLC, which provides personal communications services (PCS) to the Madison area. Mid-Plains also holds an 18-percent interest in Madison SMSA Limited Partnership (Madison SMSA), which provides cellular service to the Madison area.

⁶ See *Domestic 214 Petition* at 5.

⁷ *Id.* In Wisconsin, TDS serves approximately 107,000 access lines through 16 incumbent LECs. *Id.*; *May 17 Ex Parte Letter* at 2. In Minnesota, TDS Telecom serves approximately 34,140 access lines through its incumbent LEC subsidiaries, and 49,900 access lines through a competitive LEC, US Link. *Domestic 214 Petition* at 5. TDS serves 78,784 access lines in Wisconsin through its competitive LEC subsidiary. *May 17 Ex Parte Letter* at 2. TDS also controls Madison Cellular Telephone Company and United States Cellular Corporation (USCC), which hold cellular licenses covering roughly the southern half of Wisconsin, among other locations throughout the country. *Id.* at Exhs. I & J.

⁸ See *Domestic 214 Petition* at 1. The applications for transfer of Chorus's international section 214 authorizations have been granted on a streamlined basis under section 63.12 of the Commission's rules, with consummation of the proposed transaction conditioned on grant of the wireless and domestic section 214 applications. See *International Authorizations Granted*, Report No. TEL-00377, DA 01-849 (rel. Apr. 5, 2001).

3. Pursuant to sections 214(a) and 310(d) of the Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of Chorus's licenses and authorizations will serve the public interest, convenience, and necessity.⁹ In discharging these statutory responsibilities, we have weighed the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the transfers of control serve the public interest, convenience, and necessity.¹⁰

III. DISCUSSION

4. After reviewing the record, we determine that the proposed transfer will not likely result in harm to competition in any relevant U.S. market and will likely yield public interest benefits. No qualifications or competitive issues have been raised concerning TDS's acquisition of Chorus's other wireless licenses, and we find no independent reason to believe that the proposed transaction raises those issues in light of the Applicants' agreement that Chorus must divest its interests in PCS Wisconsin and Madison SMSA before consummating its merger with TDS. To that end, we condition grant of the applications on Chorus divesting these interests before consummation of its transaction with TDS to ensure that the transaction will not result in a violation of the Commission's rules.

A. Divestiture of Chorus's Interests in PCS Wisconsin and Madison SMSA

5. Chorus holds an indirect, controlling 75-percent interest in PCS Wisconsin, LLC, the Madison PCS F block licensee. TDS is ineligible to hold this license because TDS does not qualify as an entrepreneur,¹¹ and Chorus has committed to divest the F block PCS license. To accomplish the divestiture, Chorus has filed alternate applications requesting consent to assign this license to either Metcalf Partners L.P. or the current PCS Wisconsin minority interest holder, Mt. Horeb Telephone Company.¹²

6. Chorus also holds an 18-percent interest in Madison SMSA Limited Partnership, a Madison MSA cellular licensee. Under the Commission's rules, TDS currently is precluded from acquiring Chorus' interest in the Madison cellular carrier because TDS controls the other cellular carrier in the Madison market. The Commission's rules preclude an entity that controls a cellular licensee from holding more than a five-percent interest in the other cellular licensee in that

⁹ 47 U.S.C. §§ 214(a), 310(d).

¹⁰ *Voicestream Wireless Corporation, Powertel, Inc. and Deutsche Telekom AG for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(d) of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, ¶ 17 (rel. Apr. 27, 2001).

¹¹ See 47 C.F.R. §§ 24.709, 24.839.

¹² See ULS File Nos. 0000484077 (requesting consent to assign to Mt. Horeb Telephone Co.), 0000398367 (requesting consent to assign to Metcalf Partners L.P.).

market.¹³ Therefore, to comply with the Commission's rules, Chorus has committed to divest its interest in Madison SMSA Limited Partnership prior to consummation of the instant transaction,¹⁴ and requests approval to divest this interest to a divestiture trust pending sale to a third party. While the sale of Chorus' 18-percent interest in Madison SMSA Limited Partnership does not require Commission approval because it does not constitute a transfer of control of the license(s) involved, the Commission's rules place certain limitations on the establishment and administration of divestiture trusts.¹⁵

7. We grant Chorus' request that its interest in Madison SMSA be transferred to a divestiture trust. We have reviewed the proposed Trust Agreement and find that it complies with the Commission's requirements for divestiture trusts.¹⁶ We are satisfied that the Trustee will be independent, that he will be able to dispose of the properties as he sees fit, that communication between the Trustee and the Applicants will be limited to communications initiated by the Trustee seeking information needed to divest the interest, and that the trust will be of limited duration. In addition, the Trustee will report to the Commission every 60 days on progress towards ultimate divestiture. Grant of the applications referenced herein is conditioned, however, on further approval of material revisions to the Trust Agreement, and the failure to adhere to these critical elements of the Trust Agreement could subject the Applicants to an enforcement action by the Commission. We see no reason here, as we have in previous cases, to place a specific limit on the period of time for consummating the transfer of Chorus' interest in Madison SMSA to the divestiture trust because the interest must be divested to the trust before the merger with TDS may be consummated.¹⁷

B. Analysis of Public Interest Effects in the Local Exchange and Exchange Access Markets

1. Potential Public Interest Harms

8. The Commission has previously found that, absent conditions, a proposed merger of incumbent LECs could harm consumers by precluding the potential for one party to a transaction to enter the other's local exchange and exchange access markets as a competitor.¹⁸

¹³ See 47 C.F.R. § 22.942(a).

¹⁴ See Letter from Arthur W. Bresnahan and Peter Connolly to Magalie Roman Salas, Secretary, Federal Communications Commission, CCB Docket No. 01-73 at 1 (filed June 6, 2001).

¹⁵ See, e.g., *In the Matter of 1998 Biennial Regulatory Review of Spectrum Aggregation Limits for Wireless Telecommunications Carriers, et al.*, WT Dockets 98-205, 96-59, GN Docket No. 93-252, Memorandum Opinion and Order, 15 FCC Rcd 9,219, 9,269, ¶¶ 116-17 (1999).

¹⁶ See Attachment.

¹⁷ See, e.g., *In re Applications of GTE Corporation, Vodafone AirTouch plc, and Bell Atlantic Corporation*, Order, 15 FCC Rcd 11,608, ¶¶ 6-8 (2000).

¹⁸ *In re Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, NSD-L-96-10, Memorandum Opinion (continued....)

Specifically, the Commission has found that a proposed merger involving incumbent LECs can raise public interest concerns by eliminating the potential for competitive entry by or actual competition between the merging parties.¹⁹ To determine whether a proposed combination of incumbent LECs would cause a public interest harm, the Commission examines several relevant considerations, including the metropolitan areas involved;²⁰ the mobile telephony holdings of the parties, which could enhance their ability to springboard into adjacent markets;²¹ the announced plans and potential for one company to enter the other's markets;²² and the advantages of adjacent local exchange operations to support competitive entry.²³ The Commission has considered whether this type of analysis is necessary when the transaction pertains to smaller carriers, and found that it would, on a case-by-case basis, determine the competitive effects of such proposed transactions.²⁴

9. In this case, TDS and Chorus are actual competitors for local exchange and exchange access services in the Madison area.²⁵ Specifically, the proposed transaction would eliminate TDS as a competitor in two exchange areas in which Chorus is an incumbent LEC. After carefully reviewing the specific facts of this case, we are persuaded that the loss of TDS as a competitor in the Chorus exchanges is not likely to result in a public interest harm. We reach this conclusion for the following reasons. First, the record indicates that a significant number of actual and potential competitors will remain in the Madison area, and in the Chorus exchanges, even after the proposed transaction is consummated.²⁶ Second, the vast majority of TDS Metrocom's competitive LEC lines in the Middleton and West Towne exchanges serve business customers.²⁷ The Commission has recognized that such business customers, in particular larger businesses,

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and Order, 12 FCC Rcd 19,985 (1997) (*Bell Atlantic/NYNEX Order*). See also *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14,032 (2000) (*Bell Atlantic/GTE Order*); *In re Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14,712 (1999) (*SBC/Ameritech Order*).

¹⁹ See, e.g., *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,012-13, ¶ 44.

²⁰ *SBC/Ameritech Order*, 14 FCC Rcd at 14,746-77, 14,789, ¶¶ 69, 168; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd 20,015-19, ¶¶ 54-57.

²¹ *SBC/Ameritech Order*, 14 FCC Rcd at 14,748, 14,751-54, ¶¶ 73, 81-85.

²² *Bell Atlantic/GTE Order*, 15 FCC Rcd 14088, 14090-92, ¶¶ 100, 105, 108, 110; *SBC/Ameritech Order*, 14 FCC Rcd at 14749-54, ¶¶ 77-86; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19990-91, ¶ 8.

²³ *SBC/Ameritech Order*, 14 FCC Rcd at 14,753-54, ¶ 85; see also *Bell Atlantic/GTE Order*, 14 FCC Rcd 14,764, ¶ 108.

²⁴ *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, FCC 99-105, Third Memorandum Opinion and Order, 14 FCC Rcd 10,816, 10,830, ¶ 19 (1999).

generally face more competitive choices than residential customers, and that business customers are more attractive to competitive LECs than residential customers.²⁸ Third, the record indicates that TDS has made a significant investment to expand beyond its incumbent LEC exchanges and provide competitive LEC services in Madison.²⁹ The extent of TDS's competitive LEC activities in Madison provides specific, identifiable evidence that, rather than reducing competition, the transaction will instead increase competition by making TDS a stronger competitor to SBC in the local market in the Madison area. In sum, although the presence of TDS as a competitor in Chorus's exchanges in the Madison area is a serious consideration in this case, we conclude that the Applicants have sufficiently demonstrated through credible record evidence that these other relevant factors mitigate the potential harm to local competition in the Madison area. Moreover, with respect to long distance services, the merged company will provide long distance services to less than one percent of the customers in Wisconsin and thus will not pose a competitive threat to competition in the provision of long distance services.³⁰

10. Furthermore, aside from the Madison area exchanges discussed above, there is no evidence of intent on the part of either party in this transaction to engage in any significant further entry into any of the markets of the other party.³¹ The *Bell Atlantic/NYNEX Order*, the

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²⁵ For purposes of this transaction, we analyze the Wisconsin markets for local exchange and exchange access in which the Applicants provide service. See *In re Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,120, ¶ 167 (1998) (*MCI/WorldCom Order*) (analyzing those geographic markets for local exchange and exchange access services in which one or both of the merging parties provide service). Of the Chorus exchanges at issue in the proposed transaction, the only ones that raise potential competitive concerns are the Middleton and West Towne exchanges, located in the Madison, Wisconsin area. In these exchange areas, TDS's competitive LEC subsidiary, TDS Metrocom, provides exchange services in competition with Chorus's incumbent LEC subsidiary. *May 17 Ex Parte Letter* at 4-5.

²⁶ SBC-Ameritech, the largest incumbent LEC in Wisconsin, is the incumbent LEC in the City of Madison and some of the surrounding communities. *May 17 Ex Parte Letter* at 2, 4. Verizon and CenturyTel, the second and third largest incumbent LECs in Wisconsin, respectively, and Mt. Horeb Telephone Company also provide incumbent LEC service in the vicinity of Madison. *Id.* In addition, several competitive LECs provide service in the Madison area. For instance, KMC Telecom, McLeod, and ChoiceOne provide competitive LEC service in and around Madison, including the Middleton and West Towne exchanges. *Id.* at 5. Finally, Applicants represent that, Charter Communications, a cable television operator in Madison, has been upgrading its services in the Middleton and West Towne exchanges and has announced plans to provide local telephone service. *Id.* at 5-6.

²⁷ The Applicants state that some of TDS Metrocom's 340 residential lines in the Chorus exchanges serve TDS employees. *May 17 Ex Parte* at 5.

²⁸ See, e.g., *Bell Atlantic/GTE Order*, 14 FCC Rcd at 14,096, ¶ 121.

²⁹ *May 17 Ex Parte Letter* at 4.

³⁰ *MCI/WorldCom Order*, 13 FCC Rcd at 18,047-48, ¶ 36; see also *Domestic 214 Petition* at 5.

³¹ Chorus's non-Madison exchanges, operated by Chorus subsidiaries Farmers Telephone Company and Dickeyville Telephone Corporation, are both small rural exchanges. Farmers serves 7,273 access in four (continued....)

SBC/Ameritech Order and the *Bell Atlantic/GTE Order* expressed the Commission's concerns where carriers may have had intent to enter one another's markets and, thus, were likely to be competitors if the proposed transaction did not take place.³² Similarly, the advantages that incumbent LECs have to support competitive entry in adjacent exchanges are not present here, since neither the Farmers exchanges nor the Dickeyville exchange is adjacent to a TDS incumbent LEC exchange.³³ Although USCC, a TDS affiliate, provides cellular service in many parts of Wisconsin, including areas served by Farmers and Dickeyville,³⁴ Chorus's customers in these exchanges make up only a small portion of the population of USCC's service areas in Wisconsin and therefore are not likely to have a significant effect on any decision by USCC to provide fixed wireless or other services.³⁵ In addition, TDS uses separate facilities, and billing, branding and operation resources from USCC, thus eliminating some of the competitive entrant advantages that otherwise would flow from TDS's affiliation with USCC.³⁶ In short, we find no reason to conclude that, but for the proposed transaction, TDS is likely to be a significant market participant in the Farmers or Dickeyville exchanges, or that Chorus is likely to be a significant market participant in the TDS exchanges.

2. Potential Public Interest Benefits

11. We determine, based on the record and as discussed above, that the proposed transfer of control is likely to result in public interest benefits through enhanced competition in the market for domestic and foreign telecommunications services by strengthening TDS's ability to compete against larger incumbent LECs and long distance providers.³⁷ The record also indicates that the proposed transaction will result in economic and operational efficiencies.³⁸ Accordingly, we conclude that the proposed transaction, on balance, will benefit the public.

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exchanges, and Dickeyville serves 1,463 access lines in one exchange. *See May 17 Ex Parte Letter* at Exh. D. The Commission has previously found that such largely rural and less populated areas are less attractive to new entrants. *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14,095, ¶ 117.

³² *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14,088, 14,090-92, ¶¶ 100, 105, 108, 110; *SBC/Ameritech Order*, 14 FCC Rcd at 14,745, ¶ 66; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19,990-91, ¶ 8.

³³ *May 17 Ex Parte Letter* at 3-4.

³⁴ *Id.* at 6. Currently, Chorus does not provide wireless service in its or TDS's service area. *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See, e.g., MCI/WorldCom Order*, 13 FCC Rcd at 18,134-35, ¶ 194.

³⁸ *May 17 Ex Parte Letter* at 7.

IV. CONCLUSION

12. For the forgoing reasons, we conclude that the transaction likely will yield tangible public interest benefits that outweigh any potential public interest harms. Accordingly, we approve the requested transfer of the domestic wireline section 214 authorizations and the wireless licenses associated with these applications, subject to the wireless conditions described below.

V. ORDERING CLAUSES

13. Accordingly, having reviewed the domestic wireline and wireless applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214 (a) and (c), and 309 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, and 310(d), that the application for transfer of control of the domestic section 214 authorizations and the applications for transfer of control of wireless licenses filed by TDS and Chorus in the above captioned proceeding ARE GRANTED.

14. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and (j), 309, and 310(d), and sections 0.331 and 22.942 of the Commission's rules, 47 C.F.R. §§ 0.331 and 22.942, that the grant of these applications is subject to the condition that, prior to consummating the merger transaction described in the applications, Chorus divest enough of its interest in Madison SMSA Limited Partnership to an unrelated third party such that the consummation of the merger transaction will not violate 47 C.F.R. § 22.942.

15. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and (j), 309, and 310(d), and sections 0.331, 24.709 and 24.839 of the Commission's rules, 47 C.F.R. §§ 0.331, 24.709 and 24.839, that the grant of these applications is subject to the condition that, prior to consummating the merger transaction described in the applications, Chorus divest its F block PCS license to an unrelated third party such that the transaction(s) contemplated in the Joint Applications will not violate 47 C.F.R. §§ 24.709 or 24.839.

16. IT IS FURTHER ORDERED that the grant of these applications is subject to the condition that Applicants seek further approval before making material revisions to their Trust Agreement.

17. IT IS FURTHER ORDERED that this action is taken under delegated authority pursuant to 47 C.F.R. §§ 0.91, 0.291, 0.131, and 0.331.

18. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

ATTACHMENT

DIVESTITURE TRUST AGREEMENT