

H-2015, P-513/PA-90-628 ORDER APPROVING TRANSFER OF THREE SHARES  
OF DANUBE STOCK AND ACCEPTING COMPLIANCE FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Patrice M. Vick	Commissioner

In the Matter of the Joint  
Petition of Danube Telephone  
Company and Telephone and Data  
Systems, Inc. for Approval of  
the Acquisition of a Majority of  
the Outstanding Shares of Stock  
of Danube Telephone Company by  
TDS Telecommunications  
Corporation, a Wholly-owned  
Subsidiary of Telephone and Data  
Systems, Inc.

ISSUE DATE: April 16, 1991

DOCKET NO. H-2015, P-513/PA-90-  
628

ORDER APPROVING TRANSFER OF  
THREE SHARES OF DANUBE STOCK AND  
ACCEPTING COMPLIANCE FILING

**PROCEDURAL HISTORY**

Danube Telephone Company (Danube) is a Minnesota corporation providing local exchange service to approximately 430 customers in the Danube service area of southern Minnesota.

Telephone and Data Systems, Inc. is a telephone holding company which owns and operates approximately 80 independent telephone companies in 27 states. TDS Telecommunications Corporation (TDS) is a wholly-owned subsidiary of Telephone and Data Systems, Inc.

Danube and TDS reached an agreement in which TDS would acquire a majority of the outstanding shares of Danube stock. TDS made an offer to Danube stockholders to buy Danube shares through the exchange of TDS common stock, or in the alternative by paying \$13,350 per share. On August 28, 1990, Danube and TDS filed a joint petition seeking Commission approval of the acquisition.

On December 27, 1990, the Department of Public Service (the Department) filed its Report and Recommendation. During its investigation the Department had found that allegations of insider trading of Danube stock were under investigation by the Minnesota Department of Commerce and the Renville County Attorney. Certain former holders of Danube stock alleged that in February of 1989, before negotiations with TDS took place, certain Danube officials and their families had acquired stock from individuals without revealing significant "insider" information which would have influenced price.

Additional documents filed with the Commission indicated that nine former Danube shareholders had filed a civil suit in U.S. District Court in Minneapolis against officers of Danube Telephone Company as well as the Americana Bank of Danube. Becker et al v. Americana Bank of Danube et al, Civil Action No. CV4-90-777. The plaintiffs in the action alleged that the defendants had violated federal and state securities law as well as the federal racketeering law, and had committed common law fraud.

On January 31, 1991, the Commission issued its ORDER APPROVING ACQUISITION OF DANUBE STOCK BY TDS EXCEPT FOR CERTAIN SHARES. In that Order the Commission separated outstanding shares of Danube stock into two categories: shares which were not subject to dispute and twelve Disputed Shares. The twelve Disputed Shares were subject to investigation, civil suit, or both. The Commission allowed the immediate transfer of nondisputed shares, but required that safeguards be implemented with the transfer of any Disputed Share.

On February 19, 1991, the Commission issued its ORDER ALLOWING TRANSFER OF FOUR SHARES OF DANUBE STOCK. In that Order the Commission approved the transfer of four Disputed Shares which had been the subject of a settlement agreement in the district court proceeding. Four plaintiffs were allowed to receive one share each of Danube stock from certain defendants, together with rights and interests in the buyout agreement between Danube Telephone Company and TDS.

In February and March of 1991, petitions were filed with the Commission requesting approval of transfer of three shares. These three shares plus four others were the subject of a letter from TDS dated February 25, 1991, in which TDS informed the Commission that disputes concerning seven of the 12 Disputed Shares had been resolved.

The petitions for transfer of three Disputed Shares and the TDS compliance filing came before the Commission for consideration on April 9, 1991.

## **FINDINGS AND CONCLUSIONS**

### **The Three Disputed Shares**

In its January 31, 1991 Order, the Commission set up the following requirement for the transfer of Disputed Shares:

Holders of stock which has been subject to investigation or litigation referred to in the body of this Order, who wish to transfer their shares following resolution of the investigation or litigation, must petition the Commission for approval to transfer said

shares.

The three petitions for transfer of Disputed Shares were submitted to the Commission in order to comply with the above ordering paragraph.

#### The Reetz Share

Gerhardt Reetz disputed the ownership of one share of Danube stock which he had formerly owned. Mr. Reetz charged that the share was wrongfully obtained by Eldon Kohls. Mr. Reetz's allegations came to the attention of the Renville County Attorney and the Minnesota Department of Commerce; Mr. Kohls's acquisition came under investigation and the share became a Disputed Share. Mr. Reetz did not choose to become a plaintiff in the federal district court proceeding.

On November 19, 1991, following communications between Mr. Kohls and Mr. Reetz, Mr. Kohls agreed to convey the Danube share back to Mr. Reetz. On February 19, 1991, Mr. Reetz's attorney petitioned the Commission to approve the transfer of one Disputed Share from Mr. Kohls to Mr. Reetz.

The Commission finds that it is in the public interest to approve the transfer of the Danube share from Mr. Kohls to Mr. Reetz. The reporting safeguards built into the Commission's February 19 Order are no longer necessary in this case. The safeguards were meant to protect Danube ratepayers from the premature transfer of stock ownership to TDS, while controversy still surrounded the ownership and value of the shares. The Commission finds that such controversy no longer exists in this case. The parties have freely and knowingly agreed to the transfer. This share was never a part of the district court litigation, so no conflict between the Commission's action and the disposition of the Court can arise. The Renville County Attorney's office has closed its investigation regarding all Disputed Shares. Although the ownership of the stock by Mr. Kohls may still be under investigation by the Department of Commerce, Mr. Kohls has voluntarily given up his disputed ownership. Ongoing investigation, if any, would center upon Mr. Kohls' acquisition of the share. The investigation would not affect Mr. Reetz's present ownership.

The Commission will approve the transfer of one Disputed Share from Mr. Eldon Kohls to Mr. Gerhardt Reetz.

#### The Kurtz Share

Farmers Elevator Cooperative brought a claim in federal district court against Gary Kurtz. The claim centered on Mr. Kurtz's ownership of one Disputed Share. Although no formal settlement was reached between the parties, Farmers Elevator Cooperative voluntarily dismissed its court claim against Mr. Kurtz. The share is not the subject of investigation by the Department of

Commerce or the Renville County Attorney.

The Commission finds that it is in the public interest to remove Disputed Share status from the Kurtz share. The share is no longer the subject of litigation. It is not under investigation by any authority. No reason now exists for Commission safeguards, and the Commission will therefore approve the removal of Disputed status from this share. It may now be freely transferred.

#### The Mueller Share

Danube Telephone Company informed the Commission that TDS has set up an escrow account which Danube is administering. TDS placed in the account full payment at the agreed amount for the 12 Disputed Shares. Danube as escrow agent will pay over the value of each share as the various disputes are settled or investigations closed and the Commission approves the transfer.

Kenneth Mueller held one share of Danube Telephone Company stock. Prior to his death, Mr. Mueller sold that share to Eldon Kohls. The transfer was brought to the attention of the Renville County Attorney and the Minnesota Department of Commerce. Mr. Kohls's acquisition came under investigation and the share became a Disputed Share.

Since Mr. Mueller's death, Mr. Kohls has agreed to tender the share back to Mr. Mueller's surviving spouse and heir, Marilyn Mueller, for the original purchase price. On March 13, 1991, Ms. Mueller's attorney petitioned the Commission to approve the transfer of the Disputed Share from Mr. Kohls to Ms. Mueller. In order to expedite the transfer, the parties agreed that Mr. Kohls would tender the share to the escrow account held by Danube, with instructions to pay out the value of the share to Ms. Mueller upon receipt of a Commission Order authorizing the transfer.

The Commission finds that it is in the public interest to approve this settlement. No controversy currently surrounds the share. The stock ownership was never a part of the district court proceeding and the county attorney's investigation has been dismissed. If the share is under investigation by the Department of Commerce, the investigation would center on Mr. Kohls's acquisition of the stock and not Ms. Mueller's ownership. There is no further need for Commission safeguards, and the share may be transferred.

The Commission will approve the release of the proceeds for the Disputed Share from the escrow account upon the tender of the share by Eldon Kohls.

#### TDS Notification of Resolution of Dispute

In its January 31, 1991 Order, the Commission set up the

following requirements for the transfer of Disputed Shares of Danube stock:

Within 30 days of a final judgment or settlement of the federal District Court proceeding, File No. CV 4-90-777, TDS shall submit a compliance filing to inform the Commission of the resolution of issues regarding the disputed shares.

At any time that TDS determines that a formerly disputed share is no longer the subject of any civil law suit or other proceeding, in any case not covered by Paragraph 3 above, TDS shall submit a compliance filing informing the Commission of the basis of its determination.

On February 25, 1991, TDS submitted a compliance filing to conform to the above two requirements. The filing covered the disposition of seven shares of Danube stock.

The letter filed by TDS noted the transfers of the three Disputed Shares discussed above. The Commission finds that the Company's notification sufficiently explains the "basis of [the Company's] determination" that the three shares are "no longer the subject of any civil law suit or other proceeding". The Commission will accept the Company's notification regarding the disposition of the three Disputed Shares discussed in this Order.

The Company's February 25 letter also officially notified the Commission of the transfer of four shares of stock pursuant to settlement agreement, previously approved in the Commission's February 19, 1991 ORDER ALLOWING TRANSFER OF FOUR SHARES OF DANUBE STOCK. The Commission finds that this notification also sufficiently explains the "basis of [the Company's] determination" that the four shares are "no longer the subject of any civil law suit or other proceeding". The Commission will accept the Company's notification regarding the disposition of the four shares which were the subject of the Commission's February 19, 1991 Order.

#### **ORDER**

1. The Commission approves the following transfers:
  - a. One share of Danube stock from Eldon Kohls to Gerhardt Reetz.
  - b. One share of Danube stock from Eldon Kohls to the TDS escrow account and the release of the proceeds to Marilyn Mueller.
2. The Commission approves the removal of Disputed Share status from the Kurtz share as explained in this Order.
3. The Commission accepts the compliance filing of TDS dated

February 25, 1991.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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