

H-2015, P-513/PA-90-628 ORDER APPROVING TRANSFER OF SHARE OF  
DANUBE STOCK

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: August 1, 1991

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

ORDER APPROVING TRANSFER OF  
SHARE OF DANUBE STOCK

**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 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.

On April 16, 1991, the Commission issued its ORDER APPROVING TRANSFER OF THREE SHARES OF DANUBE STOCK AND ACCEPTING COMPLIANCE FILING. In that Order the Commission allowed the transfer of three Disputed Shares which had either been under investigation or had been part of the district court proceeding.

On July 5, 1991, a petition was filed with the Commission requesting removal of Disputed Share status from a share which had been part of the district court proceeding. The petition came before the Commission for consideration on July 16, 1991.

### **FINDINGS AND CONCLUSIONS**

The July 5 petition was filed on behalf of Mr. Tom Marum, one of the defendants in the ongoing federal district court proceeding. Mr. Marum had purchased a share of stock from Elinor Butenhoff; Ms. Butenhoff subsequently claimed in district court that the acquisition of the share had been fraudulent.

The petition indicated that Ms. Butenhoff and Mr. Marum had executed an Agreement and Covenant Not to Sue in the district court action. In return for certain consideration paid by Mr. Marum, Ms. Butenhoff agreed to dismiss him from the suit and to

consent to removal of Disputed Share status from the share. Although Ms. Butenhoff reserved the remainder of her claims against certain other defendants, the actual ownership of the share of stock was no longer in dispute.

In its January 31, 1991 Order, the Commission set out 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.

In this case, the issue of ownership of the formerly Disputed Share has been resolved through dismissal of the plaintiff's court claim against the owner. The owner of the share has properly petitioned the Commission for approval of transfer of the share. The Commission finds that it is in the public interest to remove Disputed Share status from the Marum 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; the Commission will therefore approve the removal of Disputed Share status from this share. It may now be freely transferred.

**ORDER**

1. The Commission approves the removal of Disputed Share status from the Marum share as explained in this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)