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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN RE APPLICATION OF

La Star Cellular Telephone Company

For a Construction Permit for Facilities Operating on Block B in Domestic Public Cellular Radio Telecommunications Service in the New Orleans MSA.

and

New Orleans CGSA, Inc.

To Amend its Construction Permit for Facilities Operating on Block B in the Domestic Public Cellular Radio Telecommunications Service, Call Sign KNKA224, in the New Orleans MSA.

CC Docket No
90-257

94-11

TO: The Commission

MOTION TO STRIKE

United States Cellular Corporation (USCC) files herewith, by its attorneys, its Motion to Strike the unauthorized and untimely April 8, 1993 "Response" filed by Potosi Company (Potosi) to USCC's March 9, 1993 Reply to Potosi's February 18, 1993 Opposition to USCC's February 2, 1993 Petition to Delete or Nullify the Effect of Footnote 3 of *La Star Cellular Telephone Company*, 7 FCC Rcd. 3762 (1992) (*Decision*).

The Commission's rules do not authorize the filing of a Response to a Reply to an Opposition to an initial pleading, and Potosi has neither asked leave to file its instant Response nor provided any justification whatever for doing so. The Potosi pleading is, therefore, unauthorized as well as inappropriate. It is also

grossly untimely, having been filed one month after USCC's March 9, 1993 Reply.

With this filing, Potosi evidently seeks to repeat in this proceeding the seemingly endless proliferation of unauthorized pleadings that occurred in MSD-91-26, on an expanding list of increasingly tangential and immaterial subjects.¹ In MSD-91-26, Potosi's July 9, 1991 request for a declaratory ruling on a narrow and specific subject has now led to no less than eight subsequent pleadings, most of them unauthorized and most of them filed by Potosi, most notably an unauthorized "Second Supplement" which Potosi filed on October 9, 1992, almost nine months after the previous USCC filing. Potosi's conduct in that proceeding was bad enough, but its principal effect has been to prevent Commission action on Potosi's own request for relief. Here, however, prompt action is needed not only by USCC and its affiliated companies, but also by the Commission itself to prevent clogging of its processes. Potosi's conduct is a blatant abuse of the Commission's processes to harass USCC and to deny USCC the due process that the Commission's rules are intended to afford parties to a proceeding. We urge the Commission to treat this Potosi filing as the abuse of process it is, reject it immediately and move immediately to a resolution of the issue raised by USCC's February 2, 1993 Petition.

There is nothing in the Potosi "Response" which would warrant the Commission in entertaining it. It represents no more than an illegitimate desire to have the last word. It consists of nineteen pages of text and 56 pages of attachments. All of the attachments were available to Potosi before it filed its February 18, 1993 pleading in this proceeding, and none of them are newly dis-

¹ Potosi is an adverse party in MSD-91-26 and is not a party in this proceeding. Potosi has filed here presumably to attempt to advance its position in MSD-91-26.

covered. The evident purpose of this Potosi Response is obfuscation and delay; we urge the Commission to defeat this purpose by striking the Response.

The ostensible purpose of this 75-page Potosi document is to argue about the significance of the word "decision" in the notes Mr. James Creekmore, a Potosi officer and member of the family owning a majority interest in Potosi, made of a conversation he had with Mr. Belendiuk, La Star's counsel, in February, 1988, concerning an application for interim authority La Star was preparing to file with the Commission. Potosi owned and operated a cellular system in Biloxi, Mississippi, an adjacent market to St. Tammany Parish, Louisiana, for which La Star was an applicant. La Star was interested in having signal contours which included a *de minimis* extension into the Biloxi MSA, and also in leasing capacity on the Biloxi cellular switch. According to the notes, Mr. Creekmore in essence acquiesced in the contour extension, but said Potosi would not agree to the use of its switch. Mr. Creekmore's notes state that Mr. Belendiuk said he "would call Don Nelson for a decision." Mr. Nelson is president of USCC which is a 49 percent owner of La Star and of Potosi.

If Mr. Creekmore recorded what Mr. Belendiuk said contemporaneously and correctly,² the question is what kind of a decision Mr. Belendiuk, who has no current memory of what he said (USCC Reply to Opposition, Declaration of Arthur Belendiuk, p. 1), meant. Potosi -- despite Mr. Belendiuk's flat denial that Mr. Nelson decided anything -- has spun an elaborate theory out of whole cloth and a variety of extraneous and irrelevant documents³ the effect of which is that

² If Mr. Belendiuk said he "would call Don Nelson **with your** decision," we would not have even a molehill, much less the mountain Potosi seeks to make of it.

³ Potosi appears to place principal reliance on 1989 testimony of Mr. Nelson in a Mississippi lawsuit with Potosi principals. That lawsuit has nothing to do
(continued...)

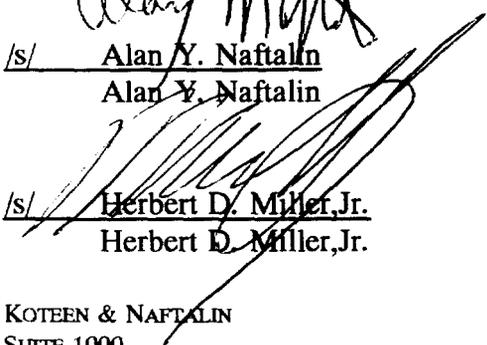
the decision Mr. Nelson was to make was what to do about the La Star interim application, and from there to argue that USCC was lacking in candor when it said Mr. Nelson was not active with La Star.⁴ But the only decisions about La Star proposals that are relevant here were made by Mr. Creekmore, not Mr. Nelson. Mr. Creekmore said the incursion was acceptable, and the incursion was included in the La Star proposal. Mr. Creekmore said Potosi's switch could not be used, and the use of the switch was not proposed. That is the best and the only probative evidence. Potosi's elaborate theory is obvious moonshine. There was nothing about the La Star proposals for Mr. Nelson to decide.

The unauthorized, untimely, and unhelpful Potosi Response should be stricken as an abuse of process and the Commission should deal promptly with USCC February 2, 1993 Petition based on the record in the La Star proceeding.

Respectfully Submitted,

United States Cellular Corporation

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³(...continued)

with the La Star proceeding. La Star is not mentioned; St. Tammany Parish is not mentioned, nor is switch sharing or contour incursion by La Star.

⁴ Potosi denies claiming that a USCC subsidiary was in control of La Star (Response, p.2).

CERTIFICATE OF SERVICE

I, Richard Massie, a secretary in the law offices of Koteen & Naftalin, hereby certify that true copies of the foregoing "Motion To Strike" have been served upon the following by hand delivery, this 22nd day of April, 1993:

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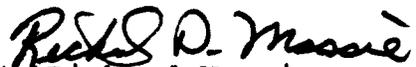
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